



Oregon  
Theodore R. Kulongoski, Governor

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NOTICE OF ADOPTED AMENDMENT

04/15/2014

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 010-09R

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, May 02, 2014

This amendment was submitted to DLCD for review prior to adoption 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: Steve Ochs, City of Eugene  
Gordon Howard, DLCD Urban Planning Specialist  
Ed Moore, DLCD Regional Representative  
Amanda Punton, DLCD Natural Resources Specialist

<paa> YA



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

FOR DLCD USE

File No.: 010-09R (17980)  
[17836]  
Received: 4/11/2014

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 09-6**

Date of adoption: 3/30/2010

Date sent: 4/11/2014

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): No

No

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

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

Local contact (name and title): Steven Ochs

Phone: 541-682-5453

E-mail: [steve.p.ochs@ci.eugene.or.us](mailto:steve.p.ochs@ci.eugene.or.us)Street address: 99 W 10<sup>th</sup> Ave

City: Eugene

Zip: 97404-

### 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 R-2	to R-3	Acres: 22.66
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:
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Location of affected property (T, R, Sec., TL and address): 17-04-24-10 Tax Lots 1000 and 1102

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

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.

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

**ZONE CHANGE REQUEST**

**Application File Name:**

Goodpasture Island PUD (Z 09-6)

**Applicant's Request:**

Zone change approval from R-2/PD/WR Medium Density Residential with Planned Unit Development and Water Resources Conservation overlays to R-3/PD/WR Limited High Density Residential with Planned Unit Development and Water Resources Conservation overlays.

**Applicant/Owner:**

Goodpasture Partners LLC, Brent Keys, Phone: (503) 224-8023

**Applicant's Representative(s):**

Donald Sowieja, Myhre Group Architects Inc., Phone: (503) 236-6000

**Lead City Staff:**

Steve Ochs, Associate Planner, Eugene Planning Division, Phone: (541) 682-5453

**Subject Property/Location:**

Tax Lots 1000 and 1102 of Assessor's Map 17-04-24-10. Located on the southwest side of Goodpasture Island Road near the intersection of Alexander Loop, on the east side of the Willamette River.

**Relevant Dates:**

Application submitted on December 2, 2009; application deemed complete at applicant's request on December 21, 2009; public hearing held January 20, 2010. Extensions to the 120-day clock received.

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This application Z 09-6 has a companion application, No. PDT 09-1, TIA 09-4, ARA 09-6. This decision is for the zone change request only. The hearing official prepared a separate decision for the companion application; however, there is a single record for both of the applications.

**Application Referrals and Public Hearing Notice**

Upon the deeming this zone change application complete at the applicant's request, the Eugene Planning Division provided information concerning the application to other appropriate city departments, public agencies, service providers, and the affected neighborhood group, the

Cal Young Neighborhood Association. Notice of the public hearing on this application was also mailed and posted in accordance with the applicable code requirements at EC 9.7315.

### **Summary of the Public Hearing**

The hearing official held a public hearing on this application (in conjunction with the applicant's companion application No. PDT 09-1, TIA 09-4, ARA 09-06) on January 20, 2010. The hearing official stated he had no conflicts of interests and no *ex parte* communications. No person objected to the hearing official conducting the hearing.

Steve Ochs, Associate Planner, Gabe Flock, Senior Planner, Gary McNeel, Senior Transportation Analyst, and Kathryn Brotherton, Assistant City Attorney, were present and spoke for the city. The city recommended the application complied with the approval criteria for a zone change, including the state Transportation Planning Rule.

Donald Sowieja, Myhre Group, Architects, presented the application for the applicant.

Greg Vik spoke in favor of the application.

John Brown had neutral comments, neither for, nor in opposition to the application.

Liam Sherlock and Zack Mittge, Hutchison, Cox, Coons, DuPriest, Orr & Sherlock, PC, presented testimony and evidence in opposition to the application for Willamette Oaks, LLC. Gunnar Schlieder, Geosciences, Inc. also presented evidence for Willamette Oaks, LLC. Charles Cobb, President of Willamette Oaks Residents Association, Jack Terry, Past President of River Island Estates, Barbara Mitchell, President of Cal Young Neighborhood Association, Tom Mitchell, Chair of the Cal Young Neighborhood Association Transportation Task Force, and Ken Tollenaar, Cal Young Neighborhood Association all spoke in opposition to the application.

Don Sowieja and Michael Robinson, Perkins Coie, representing the applicant, presented rebuttal testimony.

The applicant and Mr. Mittge requested to hold the record open to allow time for submission of additional evidence. The hearing official established the following deadlines: February 3, 2010 for submission of new evidence, February 10, 2010 for submission of rebuttal, and February 17, 2010 for the applicants' final legal argument. On February 16, 2010, the applicant requested a one-week extension for its submission of final legal argument; Willamette Oaks, LLC objected; the hearing official granted the extension orally on February 17, 2010, and produced a written order after close of business on February 17, 2010 for city staff to distribute.

### **Documents Considered by the Hearing Official**

The hearing official received and reviewed more than 150 documents totaling over 1500 pages, including voluminous application materials with multiple appendices, referral comments, the staff recommendation, dozens of comments to the hearing official (including lengthy submissions from Willamette Oaks), and the applicant's final legal argument. Typically, the hearing official lists each document; however the vast number of documents makes such a list impractical here. City staff has preserved the originals of each document in the city files.

### Site Characteristics and Present Request

The subject site is approximately 23 acres in area, currently vacant, and zoned R-2/PD/WR, Medium Density Residential with Planned Unit Development and Water Resources Conservation overlays. Property to the north is zoned R-2/PD/WR and developed with apartments and condominiums. A portion of the property to the west is also zoned R-2/PD/WR, and developed with a retirement center. Property to the southeast is zoned R-2/PD/WR, and developed with an assisted care facility. The remainder of surrounding properties are zoned PL Public Land and include natural resources such as the Willamette River which lies to the west of the subject site, and Delta Ponds to the south.

The applicant is requesting approval of a zone change to R-3/PD/WR, Limited High Density Residential with Planned Unit Development and Water Resources Conservation overlays for the subject property. As proposed, the existing Planned Unit Development (/PD) and Water Resources Conservation (/WR) overlays will be retained. The applicant's request also addresses the Transportation Planning Rule (TPR) under criteria at OAR 660-012-0060. It is further noted that the zone change is being processed concurrently with a tentative PUD (PDT 09-1), Traffic Impact Analysis (TIA 09-4) and Adjustment Review (ARA 09-5), which are addressed in a separate concurrent decision.

The Planning Commission approved a previous zone change request for this property (see Peace Health, Z 08-4), but the Oregon Court of Appeals remanded the decision on the basis that a Transportation Planning Rule evaluation had to be completed before the approval of the zone change and could not be deferred to time of development. Further discussion of the application history is provided in the TPR evaluation.

### Evaluation of Zone Change Request Under Eugene Code Provisions

The Eugene Code sections 9.7330 and 9.8865, requires the Hearing Official to review an application for a zone change and consider pertinent evidence and testimony as to whether the proposed change is consistent with the criteria required for approval, shown below in **bold** typeface. In some cases, according to EC 9.8860(2), overlay zones can be applied in response to plan policies or where the use of overlay zones is necessary to address future development considerations.

**EC 9.8865(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.**

The Metro Plan diagram designates the subject property for high-density residential use. Residential Land Use and Housing, Residential Density Policy A.9 states that high density is defined as over dwelling units per acre. EC Table 9.2750 specifies two zones that have a minimum of 20 units per acre density: R-3 Limited High Density and R-4 High Density. The R-3 and R-4 zones implement the Metro Plan because they specify a minimum density consistent with the minimum density for land designated high density in the Metro Plan.

In the prior application for a zone change on this property (No. Z 08-4), the hearing official stated that the current R-2 zoning for the property is consistent with the Metro Plan because the maximum density in the R-2 zone is greater than 20 units per acre. See Decision of the Hearing Official at 3, No. Z 08-4 (Aug. 7, 2008). At the hearing on the current application, staff explained that the city has more consistently determined that the Eugene Code zoning is consistent with the Metro Plan designation when the minimum density of the Eugene Code zoning is consistent with the minimum density standard in the Metro Plan. The hearing official accepts this explanation, and now concludes that the R-2 Medium Density Residential Zone (which has a minimum of 10 dwelling units per acre and a maximum of 28 dwelling units per acre) does not implement the Metro Plan because the minimum density is not at least 20 dwelling units per acre.

The staff report stated that there are no specific policies or other provisions in the Metro Plan that conflict with the proposed R-3 zoning in this instance. The applicant's written statement (dated Dec. 2, 2009) provides findings of consistency with regard to numerous adopted policies of the Metro Plan. Note that these findings are different than the findings in the written statement for the PUD application (dated June 17, 2009). The staff report stated that the policies that the applicant analyzed in its written statement provide broad directives to the local government, contain aspirational language, or are inapplicable, and thus are not mandatory approval criteria for the proposed zone change. To the extent these policies apply, the hearing official adopts the findings in the applicant's statement for each of these policies except for the policies specifically discussed below, which Willamette Oaks identifies and argues that the applicant did not address or the application does not comply with. See Letter from Zack Mittge at 19–24 (Jan. 20, 2010).

Before analyzing the policies that Willamette Oaks specifically mentions, the Hearing Official notes that LUBA has made clear that not all text in a comprehensive plan may be used as approval criteria. In fact, LUBA observed with respect to a 2003 City of Eugene zone change application, "As our cases have recognized, local governments face a 'recurring problem' in 'identifying the relevant approval standards, if any, in the local government's comprehensive plan.'" *Bothman v. City of Eugene*, 51 Or LUBA 426, 438 (2006) (quoting *Save Our Skyline v. City of Bend*, 48 Or LUBA 192, 209 (2004)). LUBA further explained:

“[E]ven where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require, as does EC 9.8865(1) and (2), consistency with applicable plan provisions.”

*Id.* at 439. Whether a specific provision applies to a quasi-judicial application, depends first on whether the Metro Plan “itself expressly assigns a particular role to some or all of the plan’s goals and policies.” *Id.* (citing *Save Our Skyline*, 48 Or LUBA at 210). If there is no express role, then it is appropriate to consider the text and context of the particular provision.

The Metro Plan defines “policy” as: “A statement adopted as part of the *Metro Plan* or other plans to provide a specific course of action moving the community toward attainment of its goals.” Metro Plan, Glossary, V-4. This definition indicates that policies are actions relating to communities, not specific land use applications. This is in comparison to the definition of “policy” in the WAP, described below, which states that policies are “guidance for decision-making” and that “city programs, actions, and decisions will be evaluated on the basis of their ability to implement adopted policies.” WAP 4.

The Metro Plan does not provide an express role for using policies as decisional standards, thus, it is appropriate to review each policy for its text and context:

*A.12: Coordinate higher density residential development with the provision of adequate infrastructure and services, open space, and other urban amenities.*

This policy could apply to an application for a zone change; however, EC 9.8865(3) already implements this policy. EC 9.8865(3) states, “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.” To the extent this policy is a decisional standard, if the application complies with EC 9.8865(3), then it complies with this policy. The findings below relating to EC 9.8856(3) are incorporated here by reference.

*C.32:<sup>1</sup> Local governments shall require site-specific surveys and geologic studies where potential problems exist. When problems are identified, local governments shall require special design considerations and construction measures be taken to offset the soil and geologic constraints present, to protect life and property, public investments, and environmentally-sensitive areas.*

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<sup>1</sup> Willamette Oaks mistakenly listed this as Policy 28.

The text of this criterion suggests that it applies only to applications where there is physical development proposed. Here, that physical development is the proposed traffic mitigation. EC 8320(11)(d) ensures this will be reviewed as part of the PUD.

*D5: New development that locates along river corridors and waterways shall be limited to uses that are compatible with the natural, scenic, and environmental qualities.*

The text of this policy (specifically the words, “shall be limited to uses”) indicates that it applies when developing lists of allowable uses in zoning ordinances. This policy could also apply to a site-specific application such as this application where the zoning code allows, on a case-by-case basis, for limiting the range of uses allowed. Additionally, this policy implements a number of Metro Plan findings. For example, finding 12 states that residential and commercial development along the Willamette River Greenway provides greater opportunity for public access and enjoyment than industrial use. Implicit in finding 12 is that residential development is compatible with the natural, scenic, and environmental qualities of water features, consistent with this policy.

Willamette Oaks pointed out that the proposed road widening, which the applicant proposes as mitigation in response to the Transportation Planning Rule, is within the Willamette River Greenway. The hearing official addresses this point below in the section of this decision relating to mitigation in response to the Transportation Planning Rule.

*E2: Natural vegetation, natural water features, and drainage-ways shall be protected and retained to the maximum extent practical. Landscaping shall be utilized to enhance those natural features. This policy does not preclude increasing their conveyance capacity in an environmentally responsible manner.*

This policy could apply to a site-specific development application. Here, this policy has already been applied to the property by the current /WR overlay designation and need to comply with EC 9.4900 et seq., which states that the purpose of the /WR overlay is to provide conservation of significant riparian areas, wetlands and other water-related wildlife habitat areas included on the city’s Goal 5 inventory, and the water quality within these resource areas.

*E4: Public and private facilities shall be designed and located in a manner that preserves and enhances desirable features of local and neighborhood areas and promotes their sense of identity.*

This policy provides broad policy direction to the city and is implemented through numerous provisions of the code, depending on the type of development proposed. The concurrent decision lists some of the PUD criteria that implement this policy. Here, the policy could apply because the zone change application proposes new public facilities in the form of traffic mitigation. The applicant’s proposal for compliance with the TPR would offset all traffic impacts and actually improve the operation of one intersection. For example, the applicant

explained: “\* \* \* the PUD mitigation is not only sufficient for offsetting the impact from the proposed zone change under Year 2010 conditions, but allows the Northbound Delta Highway Ramps at Goodpasture Island Road intersection to meet applicable standards.” See Letter from Matthew W. Zoll, P.E. at 5 (Dec. 29, 2009). The terms “desirable features of local and neighborhood areas” and “promotes their sense of identity” do not seem to apply to traffic mitigation.

*E5: Carefully develop sites that provide visual diversity to the urban area and optimize their visual and personal accessibility to residents.*

Willamette Oaks’ testimony related only to the PUD proposal, not to the zone change or the traffic mitigation. This policy does not apply to this zone change application.

*F4: Require improvements that encourage transit, bicycles, and pedestrians in new commercial, public, mixed use, and multi-unit residential development.*

This policy is broad policy direction to the city, as demonstrated by EC 9.8320(5)(b), which requires that a PUD provide safe and adequate pedestrian, bicycle, and transit circulation. This policy, however, could apply to this zone change application because the request includes traffic mitigation in the form of physical improvements to area roads. Here, the proposed mitigation includes a new Goodpasture Island Road bridge, which would include new and improved bicycle lanes and sidewalks. Other bicycle and pedestrian improvements within the PUD are reviewed in the companion PUD decision.

*F10: Protect and manage existing and future transportation infrastructure.*

This policy provides broad direction to local governments; it does not provide any guidance for decision-making on a quasi-judicial application.

*F14: Address the mobility and safety needs of motorists, transit users, bicyclists, pedestrians, and the needs of emergency vehicles when planning and constructing roadway system improvements.*

The text of this policy specifies that it applies only when planning and constructing roadway system improvements. It would not be applicable to this zone change application except that the applicant is proposing roadway system improvements. The criteria applicable to the companion PUD application include review for mobility and safety needs pursuant to 9.8320(5)(b), 9.8320(6), and 9.8680(1). The findings relating to those sections are incorporated here by reference. Because the PUD application, which also includes construction of the improvements proposed to comply with the Transportation Planning Rule, complies with these criteria, the proposed zone change complies with this policy.

- *F36: Require that new development pay for its capacity impact on the transportation system.*

This policy is broad policy direction to the city. The City of Eugene implements this policy through its system development charges for transportation. See EC 7.700 et seq. As applied to the current zone change application, the applicant is paying for all of the traffic mitigation projects.

The proposed zone change is consistent with the Metro Plan.

**EC 9.8865(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.**

The Willakenzie Area Plan (WAP) is the adopted refinement plan applicable to this request. The subject site is also within the Goodpasture Island Region. The Willakenzie Land Use Diagram and the Goodpasture Island Region Diagram both show the subject property is designated for high-density residential use.

As noted in the staff report, the following Goodpasture Island Region policies are applicable to the applicant's request:

*Goodpasture Island Region Policy 1: The City shall require that planned unit development procedures be required for all future residential development in the Goodpasture Island Region to ensure adequate review of the following factors:*

- A. *Development of a comprehensive circulation system;*
- B. *Provision of recreation facilities for intended residents;*
- C. *Provision for pedestrian and bicycle linkages between developments and to the riverfront trail system and the Delta Pines open-space system;*
- D. *Sensitivity of development to the natural setting, especially to the Willamette River Greenway and the Delta Ponds;*
- E. *Encouragement of a variety of dwelling types, heights, and setbacks; and*
- F. *Provision for pedestrian linkages to transit stops, where practical.*

This policy is met with retention of the /PD overlay zoning as proposed, which ensures that PUD procedures are required for future residential development. The applicant has submitted a concurrent PUD application, which is addressed in a separate decision document.

*Goodpasture Island Policy 2: The City shall ensure that future planned unit developments in the Goodpasture Island region shall achieve an overall minimum-density level of 10 units per acre.*

The proposed zone change is generally consistent with this policy because the proposed R-3 Limited High Density Residential zoning establishes a minimum density of 20 units per acre, well over the minimum density described above. The relevance of this policy to the applicant's proposed PUD is addressed in the companion PUD/TIA/ARA decision.

*Goodpasture Island Region Policy 4: The City shall recognize that area on the west side of Goodpasture Island Road and north of Delta Ponds, as depicted in the Willakenzie Land Use Diagram, as appropriate for medium- to high-density residential development.*

*4.1 Amend the Metro Plan Diagram from medium-density to a high-density residential designation for the above-referenced area, as depicted on the Willakenzie Land Use Diagram.*

This policy is broad direction to the city; it is not applicable to a site-specific development. The Staff Report stated that the Metro Plan diagram has already been amended by the city from a medium to high-density residential designation, consistent with the language above. The zone change request further implements this policy by making the zoning consistent with the Metro Plan and WAP designations for high-density residential development.

The staff report stated that there are no other policies in the WAP that conflict with the proposed R-3 zoning in this instance. The applicant's written statement (dated Dec. 2, 2009) provides findings of consistency with regard to numerous adopted policies of the WAP. Note that these findings are different than the findings in the written statement for the PUD application (dated June 17, 2009). The staff report stated that the policies that the applicant analyzed in its written statement are not directly applicable as decisional standards or mandatory approval criteria for the proposed zone change. To the extent these policies apply, the hearing official adopts the findings in the applicant's statement for each of these policies except for the policies specifically discussed below, which Willamette Oaks identified and argued that the application did not address or does not comply with. See Letter from Zack Mittge at 24–26 (Jan. 20, 2010).

*Neighborhood Design Element Natural Resources Area Protection Policy 1: Significant wetland, riparian, waterway, and upland site in the Willakenzie area shall be protected from encroachment and degradation in order to retain their important functions related to fish and wildlife habitat, flood control, sedimentation and erosion control, water quality control, and groundwater pollution control."*

This policy give broad policy direction to the city, and as the applicant pointed out, the city has adopted EC 9.8320(4), which requires protection of natural features at the time of application for a PUD. Compliance with EC 9.8320(4) is addressed in the companion decision. As well, proposed zone retains the /WR overlay, and the applicant has agreed that it must apply for and receive a Willamette River Greenway permit for some of its proposed traffic mitigation. For these reasons, the application complies with this policy.

*Goodpasture Island Policy 10: The City shall discourage further degradation of wetland or riparian areas within the Delta Ponds ecosystem.*

10.1 *Any filling of the wetland areas north of the existing Valley River Center parking lot shall be consistent with Federal and State regulations and locally adopted wetlands policies.*

10.2 *Develop programs to discourage dumping of garbage and establishment of transient camps within sensitive wildlife habitat areas.*

This policy give broad policy direction to the city, and as the applicant pointed out, the city has adopted EC 9.8320(4), which requires protection of natural features at the time of application for a PUD. EC 9.8320(4)(a)1.d specifically requires review for preserving wetlands and riparian areas and EC 9.8320(4)(a)2 requires a development's general design and character to avoid natural features. Compliance with EC 9.8320(4) is addressed in the companion decision. As well, proposed zone retains the /WR overlay. For these reasons, the application complies with this policy.

*WAP Natural Resources Greenway Policy 7: Significant fish and wildlife habitats, as identified in the adopted Natural Resources Special Study, or Metropolitan Plan Natural Assets and Constraints Working Paper shall be protected. Sites subsequently determined to be significant by the Oregon Department of Fish and Wildlife shall also be protected.*

This policy give broad policy direction to the city, and as the applicant pointed out, the city has adopted EC 9.8320(4), which requires protection of natural features at the time of application for a PUD. EC 9.8320(4)(a)1.b specifically requires review for preserving habitat for all rare animal species and EC 9.8320(4)(a)2 requires a development's general design and character to avoid natural features. Compliance with EC 9.8320(4) is addressed in the companion decision. As well, proposed zone retains the /WR overlay. For these reasons, the application complies with this policy.

*WAP Natural Resources Greenway Policy 8: The natural vegetative riparian fringe along the Willamette River, as identified on the Willakenzie Area Plan Natural Resources Area Map, shall be protected and enhanced to the maximum extent practicable.*

This policy give broad policy direction to the city, and as the applicant pointed out, the city has adopted EC 9.8320(4), which requires protection of natural features at the time of application for a PUD. EC 9.8320(4)(a)1.a specifically requires review for preserving habitat for significant on-site vegetation and EC 9.8320(4)(a)2 requires a development's general design and character to avoid natural features and vegetation, and buildings must be sited to assure preservation of significant on-site vegetation. Compliance with EC 9.8320(4) is addressed in the companion decision. As well, proposed zone retains the /WR overlay. For these reasons, the application complies with this policy.

*WAP Natural Resources Greenway Policy 9: Scenic qualities and viewpoints, as identified in the Metro Plan Natural Assets and Constraints Working Paper shall be preserved.*

This policy probably gives policy direction to the city at the time it zones property. As applied to the proposed zone change, the Natural Assets and Constraints Working Paper does not show any scenic viewpoints on the subject property. The paper describes water features as having scenic qualities, and the proposed zone change on land will not change those qualities of the water.

*Willakenzie Area Plan Residential and Land Use Policy 3: Ensure that development plans include street sizes adequate to meet future demands.*

This policy applies to "development plans," and this application for a zone change does not include a development plan. It does, however, propose increasing street sizes as mitigation to comply with the Transportation Planning Rule. The findings addressing the TPR below demonstrate that the proposed mitigation would ensure that the planned development proposed in the companion PUD/TIA/ARA application includes street sizes adequate to meet future demand. To the extent this policy applies to the companion planned development, the companion PUD/TIA/ARA decision addresses it.

The proposed zone change is consistent with the Willakenzie Area Plan.

**EC 9.8865(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.**

The minimum level of key urban facilities and services are defined in the Metro Plan as including wastewater service, stormwater service, transportation, solid waste management, 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 on a district wide basis (Metro Plan, Glossary page V-3). Referral comments from Public Works staff indicate that wastewater, stormwater, and transportation facilities are currently available or can be extended in an orderly and efficient manner within a reasonable time frame as needed. All other services mentioned above are available to all properties within Eugene's Urban Growth Boundary upon annexation and are therefore available to serve the subject property.

Willamette Oaks specifically argues that the applicant did not address impacts to Alexander Loop and other transportation facilities that would service the site, and that the applicant's proposed changes to Goodpasture Island Road would be inconsistent with TransPlan. See Letter from Zack Mittge at 26-27 (Jan. 20, 2010). The applicant responded that these statements do not address the substantial evidence already in the record from the Public Works staff referral comments.

Because the Transportation Planning Rule requires a substantially similar inquiry as EC 9.8865(3), the hearing official will rely on the findings below relating to the TRP to demonstrate that the proposed zone change can be served by orderly extension of transportation facilities and services. The findings below demonstrate that the application is consistent with the TRP.

The proposed zone change complies with this criterion.

**EC 9.8865(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.**

(p) **EC 9.4915 /WR Water Resources Conservation Overlay Zone Siting Requirements (only for the purposes of adding the overlay zone. See EC 9.4960.).**

\* \* \*

The residential siting requirements listed above apply only to establishment of the R-1.5 zone, and thus are not applicable to the proposed zone change. The property currently has, and the applicant proposes to retain, the /WR Water Resources Conservation overlay. This criterion has been met.

**EC 9.8865(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.**

The requested zone change does not involve the application of the NR zone. This criterion is not applicable.

**Compliance with Transportation Planning Rule (TPR) (OAR 660-012-0000 et seq.)**

660-012-0060

**(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) As measured at the end of the planning period identified in the adopted transportation system plan:
  - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
  - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
  - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:
  - (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
  - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.
  - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
  - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
  - (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.
- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:
  - (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
  - (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
  - (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of

- the facility by the time of the development through one or a combination of transportation improvements or measures;**
- (d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and**
  - (e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.**

The evidence relating to compliance with the Transportation Planning Rule (TPR) is quite confusing. The confusion is the result of the history of zone change applications on the subject property and the applicant's combining of necessary evidence for the TPR and the evidence for a transportation impact analysis (TIA) made necessary because there would be a "significant effect" pursuant to OAR 660-012-0060(2). Below is a comprehensive description of the application history.

**A. Application History:**

As noted above, this is the applicant's second zone change application for the site. The first zone change application for the subject property was approved by the hearing official, who made a finding that the zone change would have a significant effect pursuant to OAR 660-012-0060(2) (see Hearing Official Decision, Peace Health, Z 08-4 August 7, 2008). The hearing official imposed a condition for the applicant to conduct a TIA prior to development. The Planning Commission modified the hearing official decision, removing the findings related to significant effect, and modifying the condition of approval. The Planning Commission approved the application with a condition that allowed the applicant to defer demonstrating compliance with the State's TPR until the PUD application stage, when the applicant could demonstrate that the proposed PUD would be consistent with the TPR. Willamette Oaks appealed the decision to the Land Use Board of Appeals, which affirmed. Willamette Oaks appealed to the Oregon Court of Appeals. While the city's conditional approval of the first zone change application was on appeal, the applicant submitted applications for PUD approval and Transportation Impact Analysis (TIA) Review approval, along with a transportation analysis to address the State TPR as required by the condition imposed by the first zone change process.

The applicant submitted the initial TIA on June 17, 2009, and provided supplemental information to the city on August 17, 2009. On October 20, 2009, the applicant submitted revised mitigation measures (replacement of the existing Goodpasture Island Road bridge) to address impacts that the proposed development will have on the Goodpasture Island

Road/Delta Highway interchange. On November 16, 2009, the applicant submitted another revised mitigation proposal, summarizing which of the applicant's previously submitted mitigation measures were being retained and which of the applicant's previously submitted mitigation measures were revised. The November 16, 2009, submission also proposed two additional mitigation measures; those mitigation measures addressed the development's impact on the Valley River Drive and Goodpasture Island Road intersection and the existing Alexander Loop and Goodpasture Island Road intersection (south of the proposed intersection). The applicant's November 16, 2009, submittal also clarified the sources of relevant data, analysis, and information contained in the various reports submitted by the applicant to date.

On November 18, 2009, the Court of Appeals remanded the zone change decision back to the city. *Willamette Oaks, LLC v. City of Eugene*, 232 Or App 29, 220 P3d 445 (2009). The court held that a zone change cannot be approved unless the city determines whether the *zone change* will have a "significant effect on a transportation facility" before approving the change. *Id.* at 448-49.

Subsequently, on December 2, 2009, the applicant submitted the current zone change application with limited TPR findings. On December 16, 2009, the applicant's attorney submitted findings addressing the TPR. This letter stated that these findings replace the findings that the applicant with the zone change application. Attached to the new findings was a letter dated December 15, 2009, from JRH to the applicant with TPR analysis. The December 16, 2009 submittal stated that the zone change would have a significant effect pursuant to OAR 660-012-0060(1)(c)(B) and (C), and proposed a trip cap to address that effect.

In response to completeness review comments provided by the city, on December 29, 2009, the applicant submitted supplemental information regarding the zone change application's compliance with the TPR. The applicant's December 29, 2009 stated that the city should consider the mitigation strategies proposed in its November 16, 2009 letter (relating to the TIA for the PUD) as a part of its mitigation strategy for purposes of compliance with the TPR for this zone change application. Specifically, the applicant's December 29, 2009, letter incorporates the following five documents into the applicant's TPR analysis for this new zone change application:

1. June 17, 2009, Traffic Impact Analysis for Goodpasture Island Road Housing Development.
2. August 17, 2009, Letter from JRH to Becky Taylor (PW/ENG) re Response to Comments on Goodpasture Island PUD (TIA 09-04).
3. October 20, 2009, Letter from JRH to Becky Taylor (PW/ENG) re Goodpasture Island Road Planned Unit Development Operational and Queuing Analysis of 2-Lane Bridge with Turn Lane Mitigation Alternative.

4. November 16, 2009, Letter from JRH to Becky Taylor (PW/ENG) re Goodpasture Island Road Planned Unit Development Operational and Queuing Analysis of Dual Left-Turn Lane Mitigation Alternative for Goodpasture Island Road at Northbound Delta Highway Ramps.
5. December 15, 2009, Letter from JRH to Becky Taylor (PW/ENG) re Goodpasture Island Road Housing Development – TPR Analysis for Zone Change.

Staff referred to these five documents and the applicant's December 29, 2009 letter from JRH to Becky Taylor collectively as "the TPR Packet."

Because the vast majority of the TPR Packet was submitted prior to the Court of Appeal's remand of the previous zone change decision, much of the TPR Packet contains data, information and analysis that is irrelevant to this zone change application. Specifically, the TPR Packet contains data, information and analysis regarding the proposed PUD's impact on the city's transportation facilities as well as information, data and analysis regarding the applicant's compliance with the city's TIA Review criteria. Additionally, some of the data, information and analysis provided in the most recent submissions appear to contradict previous submissions. Only the data, information and analysis in the TPR Packet relevant to the applicant's compliance with the TPR are discussed in these findings.<sup>2</sup> The data, information and analysis in the TPR Packet relevant to the compliance with the city's TIA Review criteria are discussed separately in the staff report for the concurrent PUD application.

**B. Transportation Facilities Analyzed:**

<sup>2</sup> For example, the applicant's TPR Packet analyzes the performance of the impacted transportation facilities in 2008, 2010, 2020 and 2031. The 2020 analysis relates to the City's TIA Review requirements (which are not applicable in this zone change application). Additionally, much of the TPR Packet compares the R-2 worst-case scenario to the R-3 trip capped/mitigated PUD. TPR analysis must compare the worst-case scenario for R-2 with the worst-case scenario for R-3. However, since the applicant was originally allowed to defer demonstrating compliance with the TPR to the PUD/development stage, it was appropriate to compare the worst-case scenario for R-2 with the maximum impact that the proposed development could have on the transportation facilities, i.e., the worst-case scenario for the proposed PUD. The TPR Packet does provide the number of trips that would be generated by the subject property under an R-2 worst-case scenario as well as the number of trips that will be generated by the "worst-case" PUD, i.e., worst-case R-3 with the trip cap. Thus, while many of the tables throughout the TPR Packet do not make the TPR-required comparison, the necessary information is provided in appendices to the TPR Packet. Additionally, for the two impacted transportation facilities that are currently failing, the December 29, 2009, letter provides current facility performance, facility performance with a trip cap and facility performance with a trip cap plus additional mitigation.

City of Eugene and Lane County staff were consulted in the scoping and development of the applicant's June 17, 2009 Transportation Analysis and generally agree that the analysis methods used in that Analysis are acceptable. The applicant's June 17, 2009 Transportation Analysis included analysis of the following existing transportation facilities:

<b>Impacted/Analyzed Transportation Facilities</b>		
<b>Street</b>	<b>Classification</b>	<b>Jurisdiction</b>
Goodpasture Island Road at Valley River Drive	Minor Arterial/ Minor Arterial	City of Eugene
Goodpasture Island Road at Alexander Loop	Minor Arterial/ Local Street	City of Eugene
Goodpasture Island Road at Kingsley Road	Minor Arterial/ Local Street	City of Eugene
Goodpasture Island Road at Goodpasture Island Loop	Minor Arterial/ Major Collector	City of Eugene
Goodpasture Island Road at Southbound Delta Highway Ramps	Minor Arterial/ Principal Arterial	City of Eugene & Lane County
Goodpasture Island Road at Northbound Delta Highway Ramps	Minor Arterial/ Principal Arterial	City of Eugene & Lane County

Willamette Oaks argued in its post-hearing submission that the applicant has not provided any analysis of the Valley River Drive/Valley River Way intersection south of the proposed development. Letter from Zack Mittge at 2 (Feb. 3, 2010). Neither the city nor the applicant responded to this assertion, but nevertheless, the record shows that Willamette Oaks is mistaken. The applicant did provide analysis. For example, Page 3 of the applicant's June 17, 2009 TIA specifically states that the scope of PUD traffic impact study includes the Goodpasture Island Road at Valley River Drive intersection. Page 21 also describes the Southbound Delta Highway to Valley River Drive interchange (which is the same interchange as Valley River Road/Valley River Way). The TIA found that the 2031 conditions with the proposed PUD (and no mitigation mentioned) would result in a LOS D, which meets city standards. As well, the applicant's Nov. 16, 2009, submission also proposed two additional mitigation measures; one of which addressed impact on the Valley River Drive. Letter from JRH at 3 (Nov. 16, 2009).

Jack Terry, past Board Chair of River Island Estate Homeowners Association stated at the hearing that the applicant did not examine the intersection of Goodpasture Island Road and the bike path between the new bike bridge and the Willamette River, which is 3/10 mile south of Alexander Loop and 1/10 mile south of the end of curve. Mr. Terry is correct; however, the TPR does not require analysis of intersections between vehicle traffic facilities and bicycle facilities.

C. OAR 660-012-0060(1) (generally):

The TPR requires a determination of which existing and planned transportation facilities will experience a “significant effect” as a result of a proposed amendment, and defines what constitutes a significant effect.

The “end of the planning period,” for purposes of the TPR analysis concerning local facilities is the horizon year identified in the adopted transportation system plan (*TransPlan*), or 2015. When a state facility is impacted, the planning horizon is the planning period identified in the adopted local or regional transportation system plan (*i.e.*, *TransPlan*, 2015) or fifteen years from the date of the proposed zone change, (*i.e.*, 15 years from 2010), whichever is later. Because 2025 is later than 2015, the end of the planning period for state facility purposes is 2025.<sup>3</sup> Based on input from technical staff from Lane County and City of Eugene, the applicant’s analysis under OAR 660-012-0060 extends the planning period to 2031. While 2031 is not the date specified by the TPR, this later date provides a more conservative estimate by accounting for more background growth.

The applicant’s R-2 worst-case scenario analysis presumes a maximum density of 28 units per acre, with a total of 590 units. The trip generation under this R-2 worst-case scenario would be 293 in the AM peak hour and 342 in the PM peak hour, with 3,696 total trips. The applicant’s R-3 worst-case scenario analysis has a density of 56 units per acre, with a total of 1182 units. The trip generation under this R-3 worst-case scenario would be 583 trips in the AM peak hour and 668 trips in the PM peak hour. Letter from JRH to Don Sowieja at 3–5 (Dec. 15, 2009). “Trip” is defined as a single directional vehicle trip that has one origin and one destination. “Peak hour” is defined as the four highest contiguous 15-minute traffic volume periods.

Willamette Oaks argued that the applicant improperly analyzed the impact of its proposed PUD, not the proposed zone change, as the Transportation Planning Rule requires. Letter from Zack Mittge at 4–5 (Jan. 20, 2010). The hearing official disagrees. Willamette Oaks pointed to the applicant’s original TIA, and asserted the applicant evaluated less than half of the number of trips that a reasonable worst-case scenario would generate. Willamette Oaks is mistaken. The applicant’s traffic engineer evaluated a reasonable worst-case scenario, which is substantially similar to the reasonable worst case scenario that Willamette Oaks describes (the applicant predicted daily trips of 7254 and Willamette Oaks discussed daily trips of 7526). Letter from JRH to Don Sowieja at 3–5 (Dec. 15, 2009).

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<sup>3</sup> The applicant incorrectly identifies the Central Lane Metropolitan Planning Organization’s (MPO) adopted Regional Transportation Plan (RTP) as the adopted transportation system plan that establishes the planning period for state facilities. The Central Lane MPO RTP is not a local or regional transportation system plan (TSP), rather, it is a regional transportation plan (RTP). Thus, the planning period of the Central Lane MPO RTP does not establish the applicable planning period for impacted state facilities.

Willamette Oaks also asserts that the applicant did not address the extent of the impacts or identify the facilities that would be affected. Willamette Oaks is again mistaken. The applicant's traffic engineer specifically referred to transportation facilities identified in "Tables 8 and 9 on Page 31 for Year 2008 conditions" of its June 17, 2009 Goodpasture Island Housing Development TIA. Those tables clearly show which facilities do not meet mobility standards. The applicant's traffic engineer then concluded, "Any additional traffic beyond that which can be generated by the current zoning, i.e., any development scenario that generates more traffic than a "reasonable worst case" R2 trip generation scenario, would further reduce facility performance levels below standards regardless of study year." Letter from JRH to Don Sowieja at 4, 5 (Dec. 15, 2009).

The applicant properly considered the impacts of the proposed zone change.

#### **660-012-0060(1)(c)(A)**

At the hearing, Willamette Oaks argued that the proposed zone change would alter the functional classification of Alexander loop from a local street to a minor arterial. See Letter from Zack Mittge at 3-4 (Jan. 20, 2010). Willamette Oaks pointed to the *Eugene Arterial and Collector Street Plan* at 34, Fig. 4. Willamette Oaks argues that the existing and approved uses on Alexander Loop already account for more than 1000 trips per day and the proposed zone change would permit traffic levels in excess of 7500 trips per day.

Staff responded to Willamette Oaks' argument. Letter from Steve Ochs to Hearing Official at 1-2 (Feb. 3, 2010). Staff pointed out that while the proposed zone change would increase the number of daily trips on Alexander Loop, a street's average daily traffic (ADT) is only one of five factors that the city uses to classify streets. The *Eugene Arterial and Collector Street Plan* at 34-35 lists the following five criteria used for determining street classification: (1) average daily traffic; (2) use by non-auto modes of travel, i.e., the number and types of modes using the roadway; (3) the length of the street; (4) the spacing of the street from other parallel collector/arterials; and, (5) the connectivity of the street to streets of higher classification.

The *Eugene Arterial and Connector Street Plan* does not describe local streets. However, the connectivity factor of the Plan notes, "the street lengths, traffic control, and/ or street geometry are usually composed so that anyone but local travelers would consider the route inconvenient, except for access to the immediate neighborhood " *Eugene Arterial and Connector Street Plan* at 35

The *Eugene Arterial and Connector Street Plan* at 31 describes "Collector Streets" as: "The primary function of collector streets is to assemble traffic from the interior of an area and deliver it to the closest arterial street." The connectivity factor of the Plan states, "collector streets often connect local neighborhood streets with one or two arterial streets, thus helping provide connectivity at the neighborhood scale rather than a city-wide level." *Id* at 35. Staff

also described collector streets as typically serving traffic that do not have a point of origin or destination on that roadway and generally have some component of through traffic.

Staff also noted that even if more weight was to be given to ADT than the other four classification factors, the ADT that the proposed zone change would add to Alexander Loop does not necessitate reclassifying the street. Specifically, using the most recent information provided by the applicant, the projected daily traffic volumes on the two legs of Alexander Loop are approximately 1,900 to 2,500 ADT.<sup>4</sup> A number of local streets in the City of Eugene carry more than 1,500 ADT, and a number of collector streets carry fewer than 1,500 ADT (some as some 400 ADT). See Attachment A to Memorandum from Steve Ochs to Hearing Official (Feb. 3, 2010)).

The *Eugene Arterial and Connector Street Plan* at 29 describes “Arterials” as: “The primary function of arterial streets is to provide a high degree of vehicular mobility; however, they may also serve a minor role to provide land access. The nature of arterial streets dictates that their designs typically limit property access and on-street parking to improve traffic capacity for through traffic.” More specifically, the *Eugene Arterial and Connector Street Plan* at 30. describes “Minor Arterials” as: “Minor arterials connect the nearby rural areas to cities and function within cities as conduits for a large proportion of intra-urban trips. These streets provide the next level of urban connectivity below major arterials. Minor arterials sometimes provide a fairly high degree of intra-regional connectivity; in most cases their main role tends to be serving intra-city mobility.”

The applicant also provided findings relating to the five criteria in the *Arterial and Collector Street Plan*. Letter from Michael Robinson to Hearing Official at 3–4 (Feb. 3, 2010). The hearing official incorporates those findings here.

Based on the five street classification factors, even with the additional trips generated by the proposed zone change, staff recommended that Alexander Loop would still be a local street. Although Alexander Loop would connect to Goodpasture Island Road, which is a minor arterial (as collector streets “often do”), Alexander Loop would serve traffic that has its point of origin on Alexander Loop and does not serve through traffic. Staff also pointed out several examples where actual ADT is greater or lower than the Typical Traffic Volume Ranges shown in the *Arterial and Collector Street Plan* (Fig. 4 at 34). Similarly, Alexander Loop specifically provides property access, which arterials typically limit.

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<sup>4</sup> These figures are calculated taking into account the applicant’s proposed trip cap as mitigation. The applicant’s concurrent PUD applicant proposes to change Alexander Loop from a single roadway connecting to Goodpasture Island Road at a single point to a loop that has two connections to Goodpasture Island Road. The City noted that the total trips on the roadway will be split between the two legs. The City estimated that the northerly leg would carry approximately 1900 ADT and the southerly leg would carry approximately 2500 ADT.

Willamette Oaks provided an analysis from Branch Engineering (dated Feb. 2, 2010), which applied the street classification matrix from the *Arterial and Collector Street Plan* (Appendices D and E) using the ADT information from the applicant's materials. This is the only analysis using the city's own method. However, the hearing official does not understand why Branch Engineering selected the Connectivity ratings that it did.<sup>5</sup> Branch used a Connectivity rating of 0 points for the existing condition of Alexander Loop, and a rating of 2 points for the proposed Alexander Loop. Appendix E assigns a Connectivity rating of 0 when there are no connections to collectors or arterials. Here, Alexander Loop in its current form connects to a minor arterial—Goodpasture Island Road (See *Arterial and Collector Street Plan* Appendix C, Street Classification Map), which suggests that it ought to have a Connectivity rating of at least 1 point, which would give Alexander Loop in its current form a total rating of 6, which would suggest that it is already a neighborhood collector. Similarly, the hearing official is unsure why Branch assigned a Connectivity Rating of 2 points to the proposed Alexander Loop. Appendix E assigns 2 points when the street would connect with two minor arterials or would complete a significant collector loop. Appendix E does not define "significant collector loop." However, Alexander Loop, when completed would have two connections to the same (i.e., only one) minor arterial, and assuming Alexander Loop is currently a local street, it would not seem to complete a significant collector loop.

The evidence thus shows that Branch Engineering may have selected the wrong Connectivity rating for the existing Alexander Loop. Assigning 1 point to the connectivity rating would show that Alexander Loop is already a neighborhood collector. But Appendix E does not state how many rating points should be assigned for the existing and proposed situation here. There would seem to be some subjectivity to assigning a rating when a local street connects to only one minor arterial, when one street connects twice to the same minor arterial, and what constitutes a "significant collector street." Without explanation why Branch Engineering used the connectivity ratings that it did, the hearing official cannot conclude that the proposed zone change would change the functional classification of Alexander Loop.

#### **660-012-0060(1)(c)(B) and (C)**

In determining whether there would be a significant effect under subsections (B) and (C), Level of Service D (LOS D) is considered the minimum acceptable performance standard for City of Eugene facilities. As identified in *TransPlan*, LOS A represents the least congested conditions and LOS F the most congested. Performance standards from the *Oregon Highway Plan* (OHP) are applied to state facilities, and some Lane County facilities, that are located in the Eugene-Springfield metropolitan area. For those facilities, the minimum acceptable performance standard specified in the OHP is a volume to capacity ratio (v/c) that does not exceed 0.80.

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<sup>5</sup> Branch did not accurately summarize the 0-point rating in its tables. It stated "0=Connects w/0 or 1 Collectors." Appendix E does not specify 0 points when a street would connect with 1 collector.

The applicant's reasonable worst-case scenario of residential development at 56 units per acre (a total of 1,182 units) concluded that the R-3 development scenario would significantly affect the intersection of the Goodpasture Island Road at the Delta Highway southbound ramp and the intersection of Goodpasture Island Road at the Delta Highway northbound ramp. Letter from JRH to Don Sowieja at 3-5 (Dec. 15, 2009) referring to Goodpasture Island Road Housing Development TIA at 31 (June 17, 2009). Table 8 shows AM Peak Hour Performance, and identifies two intersections that are already failing: Goodpasture Island Road at Southbound Delta Highway Ramps (failing with a v/c ration of 0.87) and Goodpasture Island Road at Northbound Delta Highway Ramps (failing at LOS F and v/c ratio of 1.06). Table 9 shows PM Peak Hour Performance, and identifies two intersections that are already failing: Goodpasture Island Road at Southbound Delta Highway Ramps (failing with a v/c ration of 0.87) and Northbound Approach Only - Off Ramp (failing at LOS E and v/c ratio of 1.02).

Based on this analysis, the applicant concluded that there would be a significant effect on these transportation facilities pursuant to subsections (B) and (C). Letter from JRH to Don Sowieja at 3-5 (Dec. 15, 2009); Letter from Michael Robinson to Hearing Official at 5-6 (Feb. 3, 2010).

**D. OAR 660-012-0060(2):**

Pursuant to OAR 660-012-0060(1), when a local government determines that a development would significantly affect an existing or planned transportation facility, the local government must put in place measures as provided in OAR 660-012-0060(2) to assure that the allowed land uses are consistent with the identified function, capacity and performance standards (level of service, volume to capacity ratio, etc.) of the facility. If there are no measures that would assure that the allowed land uses are consistent with the identified function, capacity and performance standards of the facility, the city could still approve the proposed amendment if the applicant demonstrates compliance with OAR 660-012-0060(3).

It is not clear whether the applicant is proposing to comply with the TRP pursuant to OAR 660-012-0060(2)(e) or 0060(3). The staff report stated that the applicant is proposing to comply with the TRP pursuant to subsection (3), but the applicant seems to have consistently proposed to comply with both subsections (2)(e) and (3). Letter from Michael Robinson at 5-6 (Dec. 16, 2009); Letter from Michael Robinson at 9-11 (Feb. 3, 2010).

OAR 660-012-0060(2)(e) states:

(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

\* \* \*

(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local

governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

OAR 660-012-0005(15) defines "Minor transportation improvements" as:

include, but are not limited to, signalization, addition of turn lanes or merge/deceleration lanes on arterial or collector streets, provision of local streets, transportation system management measures, modification of existing interchange facilities within public right of way and design modifications located within an approved corridor. Minor transportation improvements may or may not be listed as planned projects in a TSP where the improvement is otherwise consistent with the TSP. Minor transportation improvements do not include new interchanges; new approach roads within the influence area of an interchange; new intersections on limited access roadways, highways or expressways; new collector or arterial streets, road realignments or addition of travel lanes.

The applicant's submittals relating to mitigation have not been easy to follow, but ultimately, they culminate in three mitigation projects, which together the applicant asserts would result in there being no significant effect to an existing or planned transportation facility. A letter from JRH to Becky Taylor, City of Eugene Public Works Engineering at 5-7 (December 29, 2009) explains:

A mitigation strategy was identified in the original TIA dated June 17, 2009 that offset the impact from the proposed planned unit development (PUD) for Year 2020 conditions in terms of intersection average vehicle delays and volume-to-capacity ratios. That mitigation strategy was also sufficient for offsetting impacts from the "R-3 with Trip Cap" development scenario. The mitigation strategy from the original TIA included providing signal coordination between the two ramp terminal signals, and installation of right-turn pocket on the westbound approach at the Northbound Delta Highway ramp terminal intersection.

As shown in the operation analysis results shown in the attachments [attachments to the original letter, not this decision], the above referenced mitigation strategy from the original TIA is sufficient for offsetting impacts from the zone change given AM peak hour conditions. However, given PM peak hour conditions, the mitigation is not sufficient for offsetting the impacts from the proposed zone change.

A more robust mitigation strategy was developed through consultation with the City of Eugene as part of their review of the PUD application. The PUD mitigation strategy was analyzed and documented in a November 16, 2009 letter to Becky Taylor from JRH Transportation Engineering ("Dual Left-Turn Lane Mitigation Analysis Letter"). The mitigation strategy described in that letter was analyzed for Year 2020 and Year 2031 conditions to determine if the impacts from the proposed zone change would be offset.

As shown in the attached operational analysis output and Table 2 [neither reprinted in this decision], the PUD mitigation is not only sufficient for offsetting the impact from the proposed zone change under Year 2010 conditions, but allows the Northbound Highway Ramps at Goodpasture Island Road intersection to meet applicable standards.

The letter then referred to the five documents listed above that constitute the "TPR packet." This December 29, 2009 letter was the last word from the applicant on compliance with the TPR and proposed mitigation prior to the hearing:

Based on the TPR Packet as a whole, staff understood the applicant to propose the following three mitigation measures:

#### Mitigation Measure #1 – Southbound Delta Highway/Goodpasture Island Road Off Ramp

Change the lane use of the Southbound Delta Highway off ramp approach to Goodpasture Island Road to include a left-turn lane and a shared left/right-turn lane.

#### Mitigation Measure #2 - Goodpasture Island Road Bridge

Widen Goodpasture Island Road to include dual left-turn lanes from Goodpasture Island Road to Northbound Delta Highway by: (a) constructing a second bridge structure north of the existing Goodpasture Island bridge over Delta Highway, such that the existing bridge would accommodate eastbound travel and the new bridge would accommodate westbound travel; (b) widening Goodpasture Island Road east of the existing bridge to provide four travel lanes that would accommodate two eastbound left-turn lanes and single through lanes in each direction; (c) widening the northbound Delta Highway on-ramp to two lanes to facilitate the two left-turn lanes and a lane drop to merge traffic into a single lane in advance of the existing weaving area; (d) tapering Goodpasture Island Road to the existing width; and (e) installing traffic signal modifications to accommodate the proposed roadway changes.

#### Mitigation Measure #3 – Trip Cap

Limit total trips generated by the development site to 287 trips in the AM peak hour and 321 trips during the PM peak hour.<sup>6</sup>

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<sup>6</sup> The applicant's December 15, 2009, letter proposes a trip cap of 293 trips in the AM peak hour and 342 trips in the PM peak hour; this proposed trip cap is higher than the trip cap proposed in the applicant's June 17, 2009, TIA. Because the trip cap proposed in the applicant's December 15, 2009, letter is higher than, and inconsistent with, the trip cap proposed by the applicant for the PUD application and TIA Review application (both of which are being considered concurrently with this application), the City defaults to the more restrictive trip cap that would be imposed if the PUD and TIA Review applications are approved.

The trip cap corresponds to the applicant's PUD proposal for:

- Apartments: 458 Units (ITE Land Use Code 220 "Apartment")
- Senior Housing: 125 Units (ITE Land Use Code 252 "Senior Adult Housing – Attached")
- Commercial Development: 7011 square feet (ITE Land Use Code 814 "Specialty Commercial")

Additional details, including a conceptual drawing of the mitigation measures, can be found in the applicant's November 16, 2009, letter. The staff report analyzed these three proposals and listed these three proposals in a proposed condition of approval, and the applicant did not object to the staff report's analysis or the proposed condition of approval.

At the hearing, two issues arose. First, staff submitted a memorandum suggesting that the trip cap be translated into a maximum number of units by type. This would provide a way for tracking and ensuring enforcement of the trip cap. Several people who spoke at the hearing also indicated that tracking trips would be difficult. These folks generally suggested that the application should be denied because a trip cap would be too difficult to enforce. Willamette Oaks suggested that the trip cap would not be imposed as a condition of approval because it is not feasible. Letter from Zack Mittge at 6–8 (Jan. 20, 2010). Willamette Oaks also argued that a trip cap is not a permissible mitigation measure under subsection (2)(e) because that subsection does not specifically list it. *Id.* at 8–10. The hearing official disagrees with this latter argument. Subsection (2)(e) states, "Providing other measures as a condition of development or through a development agreement or similar funding method, *including* transportation system management measures \* \* \*" (emphasis added). The term "including, makes the list of measures in this subsection illustrative. The list is non-restrictive and does not exclude a trip cap.

The hearing official agrees that a trip cap by itself would be difficult to enforce; but that stating the trip cap in terms of development allowed makes the trip cap effectively enforceable. The following condition of approval is thus appropriate:

Mitigation #3 – Trip Cap – The maximum development on the site shall be limited so that it would not produce more than 287 trips in the AM peak hour and 321 trips during the PM peak hour as determined by the Institute of Transportation Engineers Trip Generation Manual. The city may allow development intensity beyond this maximum number of peak hour vehicle trips only if the applicant submits to the city and ODOT a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule (TPR) at OAR 660-012-0060. The applicant shall seek and the city shall consider such approval using the city's Type II land use application procedure.

Second, Willamette Oaks argued that the proposed new bridge is not a “minor transportation improvement,” as that term is defined in OAR 660-012-0005(15), and is not consistent with TransPlan.<sup>7</sup> In support of this argument, Willamette Oaks submitted a Technical Memorandum from Branch Engineering (Feb. 10, 2010). This memorandum stated an opinion that the bridge was a major transportation facility, but did not give any reasoning, or address the definitions in OAR 660-012-0005.

The definition of “minor transportation improvement” specifically *includes* “addition of turn lanes.” OAR 660-012-0005(15). The proposed lanes are turn lanes. *See* Attachment 4B (attached to Letter from JRH to Don Sowieja (Feb. 3, 2010). For this reason, the hearing official concludes that the bridge is a “minor transportation improvement.”

Because the bridge is a “minor transportation improvement,” there is no need to amend TransPlan. OAR 660-012-0005(15) specifically notes that a “minor transportation improvement” may or may not be listed as planned projects in a TSP.

The following table presents a summary of the significantly affected transportation facilities as identified in the applicant’s TPR Packet. The table provides the anticipated performance in 2031 (end of the applicant’s planning period) under the R-2 designation (reasonable worst-case scenario); anticipated performance in 2031 if the proposed development is constructed with a trip cap but no other mitigation measures; and the anticipated performance in 2031 if the proposed development is constructed with a trip cap and proposed mitigation measures.<sup>8</sup>

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<sup>7</sup> Willamette Oaks also argued that the bridge does not comply with EC 9.8680(1). That provision relates to Traffic Impact Analysis, which is not a criterion for this zone change application.

<sup>8</sup> As noted above, because the TPR Packet was originally prepared for the PUD application, the “2031 with Development” numbers are provided; these numbers would be consistent with 2031 development in R-3 with a trip cap, thus, the City relies on these numbers as the R-3 with trip cap in 2031.

Transportation Facility	Performance		
	2031 Worst-Case (R-2)	2031 with Development	2031 with Development & Mitigation
Goodpasture Island Road at Delta Highway southbound off ramp	0.92 v/c (AM) 1.05 v/c (PM) LOS D (AM) LOS F (PM)	0.92 v/c (AM) 1.03 v/c (PM) LOS C (AM) LOS D (PM)	0.82 v/c (AM) 0.96 v/c (PM) LOS B (AM) LOS C (PM)
Goodpasture Island Road at Delta Highway northbound off ramp	1.01 v/c (AM) 1.10 v/c (PM) LOS F (AM) LOS F (PM)	1.09 v/c (AM) 1.29 v/c (PM) LOS F (AM) LOS F (PM)	0.84 v/c (AM) 0.81 v/c (PM) LOS C (AM) LOS C (PM)

As demonstrated in the table above, the mitigation measures proposed in the applicant's TPR Packet will not only reduce any effect to no significant effect at the end of the planning period, but the mitigation will improve the performance of the significantly affected transportation facilities to be consistent with the city's identified Level of Service for these facilities (LOS D). However, both the northbound and the southbound off ramps will continue to perform below the County's service standard of 0.80 v/c or better. Because the applicant has not demonstrated that the three proposed mitigation measures will improve the performance of the two facilities to all of the applicable performance standards by the end of the planning period, as proposed, the applicant's mitigation measures for the southbound and northbound off ramps do not meet the requirement of OAR 660-012-0060(2)(e).

**E. OAR 660-012-0060(3):**

OAR 660-012-0060(3)(a) & (b): As shown in the following table, both the northbound and the southbound ramps are currently performing below acceptable performance standards by either exceeding v/c .80 or exceeding both v/c .80 and LOS D. There are no planned transportation facilities that will achieve consistency with the performance standards of these two facilities by the end of the planning period.

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Transportation Facility	Performance	
	2010 "Greenfield"/ Existing Conditions <sup>9</sup>	2010 with 3 Mitigation Measures
Goodpasture Island Road at Delta Highway southbound off ramp	0.78 v/c (AM) 0.85 v/c (PM) LOS B (AM) LOS B (PM)	0.74 v/c (AM) 0.84 v/c (PM) LOS B (AM) LOS B (PM)
Goodpasture Island Road at Delta Highway northbound off ramp	.91 v/c (AM) 1.01 v/c (PM) LOS D (AM) LOS E (PM)	0.74 v/c (AM) .72 v/c (PM) LOS C (AM) LOS C (PM)

OAR 660-012-0060(3)(c): The applicant must demonstrate that the developer will "mitigate the impacts of the amendment in a manner that [will] avoid further degradation of the transportation facility by the time of development." For this application, this means that the applicant must show that, at the time of development the northbound and southbound off ramps will not perform any worse than those two off ramps are performing today.

The applicant and city staff disagree on how to apply the "no further degradation" standard in OAR 660-012-0060(3). The applicant argues that the proper analysis would take into account the trips that could currently be developed under the R-2 zone, and the city staff argues that

<sup>9</sup> The applicant's 2010 Greenfield information shows both the northbound and the southbound off ramps performing considerably better than the two ramps were performing in 2008. Specifically, the applicant's December 29, 2009, letter states that, in 2008, the southbound ramp was performing at 0.87 v/c in both the AM and PM peak hours, while that same letter states that under 2010 Greenfield conditions the southbound ramp will perform at 0.78 v/c (AM) and 0.85 v/c (PM). Additionally, the applicant's December 29, 2009, letter states that, in 2008, the northbound off ramp was performing at 1.06 v/c and LOS F (AM) and 1.02 v/c and LOS E (PM), while that same letter states that under 2010 Greenfield conditions the northbound ramp will perform at 0.91 v/c and LOS D (AM) and 1.01 v/c and LOS E (PM). The differences between values for 2008 (current) and 2010 Greenfield appears to have resulted from running the Synchro model with a user-specified traffic signal cycle length in the 2008 analysis (120 seconds) and not for the 2010 analysis, which the model calculated as an 89.3 second cycle. The inconsistency does not impact whether the proposed zone change complies with the TPR. These findings rely on the applicant's 2010 Greenfield level of service information for the two off ramps because that information creates a more stringent standard for establishing that the proposed zone change will not further degrade the two facilities.

the proper analysis would be no further degradation from the current condition. Determining which interpretation is correct is not necessary because the applicant concurred with the city's recommended conclusion and conditions of approval. No matter which interpretation is correct, the TPR Packet contains the necessary information to determine whether the proposed zone change can be found consistent with that TPR provision. The table above reflects the city's interpretation, which is the more conservative approach. The information in the table comes from the applicant's December 29, 2009, letter, and shows implementation of the applicant's three proposed mitigation measures would prevent both the southbound and the northbound off ramps from degrading below their current failing levels of service. That is sufficient to conclude that the application complies with OAR 660-012-0060(3).

One last issue remains. Pursuant to OAR 660-012-0060(3)(c), the mitigation measures must be in place at the time of development. The TPR Packet does not expressly state when mitigation measures #1 and #2 would be in place. At the hearing, the applicant requested that the hearing official determine that "time of development" means at the completion of all development pursuant to the PUD. The hearing official disagrees. In a phased development, such as the applicant is proposing concurrently, there would be many years of significant impact to transportation facilities, and there would be "further degradation" until the end of the final phase. This is not consistent with the intent of OAR 660-012-0060(3). As well, if the applicant chose not to complete all of the proposed development under the PUD, there would be the possibility that mitigation would never be constructed, or that a dispute might arise over how much of the required mitigation the applicant should construct. ODOT, *Transportation Planning Rule (TPR) Reviews Guidelines for Implementing Section 660-012-0060* at 20-21 (April 2006) (submitted as Att. B. to Letter from Steve Ochs (Feb. 3, 2010)) recommended that the "time of development" for phased development should be considered at the time of the first phase of the development." Applying the term "time of development" in this manner would be consistent with the intent of OAR 660-012-0060(3) and would ensure there would be no significant impact to transportation facilities and no further degradation.

OAR 660-012-0060(3)(d) & (e): The proposed zone change does not involve property located in an interchange area; and, no state highways are affected. Thus, OAR 660-012-0060(3)(d) and (e) are satisfied. The hearing official notes that ODOT commented on the June 17, 2009 TIA and recommended that the city impose a condition of approval for a trip cap specifying no more than 324 trips at PM peak hour. The hearing official is unsure whether this letter was intended to respond specifically to OAR 660-012-0060(3)(e), but even if it did not, then the letter demonstrates that the city provided ODOT with notice of the proposal and provided ODOT an opportunity to respond. The application either complies with OAR 660-012-0060(3)(e) or the city properly applied subsections (a) through (d) as subsection (e) permits.

#### **F. Conclusion**

Based on record and the findings above, and with a condition of approval relating to mitigation, the proposed zone change complies with Goal 12 as implemented through OAR 660-012-0060.

## Willamette River Greenway Permit

Willamette Oaks also argued that the proposed mitigation measures 1 and 2, which the applicant proposes as mitigation in response to the Transportation Planning Rule, is within the Willamette River Greenway. Letter from Zack P. Mittge, 20–22 (Jan. 20, 2010). Staff agreed. Memo from Steve Ochs 5–6 (Feb. 3, 2010). Staff noted that had it received a Greenway Permit application, it could have combined that review with the current proceedings. Greenway permits are reviewed through a Type III process. Staff opined that the proposed mitigation measures do not appear to require a Statewide Planning Goal Exception under Metro Plan policy D.1, and stated that the Willamette River Greenway policies in the Metro Plan and Willakenzie Area Plan would be addressed at the time of the Willamette River Greenway review. The applicant stated that it would apply for a Willamette River Greenway review. Letter from Michael C. Robinson 19 (Feb. 3, 2010). In further rebuttal, both Willamette Oaks and the applicant offer differing opinions about the need for a goal exception. The hearing official declines to address the need for a goal exception at this time. That question will be ripe at the time the applicant applies for the Willamette River Greenway review. At this point in time, the following condition of approval is appropriate:

Prior to issuance of any development permits, the Applicant shall apply for and receive final approval of a Willamette River Greenway permit under the provisions of the Eugene Code effective to Willamette River Greenway permits effective at the time of the Willamette River Greenway application.

## **Decision**

Based on the complete administrative record and the findings and conclusions above, the Hearings Official APPROVES the applicant's requested zone change from R-2/PD/WR Medium Density Residential with Planned Unit Development and Water Resources Conservation overlays to R-3/PD/WR Limited High Density Residential with Planned Unit Development and Water Resources Conservation overlays, subject to the following condition of approval. Parties are cautioned to use the conditions of approval in this decision, not the recommended conditions in the staff report, *because some conditions of approval have changed*.

1. Pursuant to OAR 660-012-0060(3)(c), the applicant's proposed mitigation measures #1, #2 and #3 set out below, shall be in place by the time of first occupancy of the first phase of the PUD.

Mitigation #1 – Southbound Delta Highway/Goodpasture Island Road Off Ramp - Change the lane use of the Southbound Delta Highway off ramp approach to Goodpasture Island Road to include a left-turn lane and a shared left/right-turn lane.

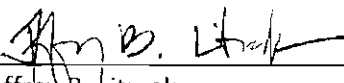
Mitigation #2 - Goodpasture Island Road Bridge - Widen Goodpasture Island Road to include dual left-turn lanes from Goodpasture Island Road to Northbound Delta Highway by: (a) constructing a second bridge structure north of the existing Goodpasture Island bridge over Delta Highway, such that the existing bridge would accommodate eastbound travel and the new bridge would accommodate westbound travel; (b) widening Goodpasture Island Road east of the existing bridge to provide four travel lanes that would accommodate two eastbound left-turn lanes and single through lanes in each direction; (c) widening the northbound Delta Highway on-ramp to two lanes to facilitate the two left-turn lanes and a lane drop to merge traffic into a single lane in advance of the existing weaving area; (d) tapering Goodpasture Island Road to the existing width; and (e) installing traffic signal modifications to accommodate the proposed roadway changes.

Mitigation #3 – Trip Cap – The maximum development on the site shall be limited so that it would not produce more than 287 trips in the AM peak hour and 321 trips during the PM peak hour as determined by the Institute of Transportation Engineers Trip Generation Manual. The city may allow development intensity beyond this maximum number of peak hour vehicle trips only if the applicant submits to the city and ODOT a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule (TPR) at OAR 660-012-0060. The applicant shall seek and the city shall consider such approval using the city's Type II land use application procedure.

2. Prior to issuance of any development permits, the Applicant shall apply for and receive final approval of a Willamette River Greenway permit under the provisions of the Eugene Code effective to Willamette River Greenway permits effective at the time of the Willamette River Greenway application.

Dated this 17 day of March 2010.

Mailed this 17 day of March 2010.

  
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Jeffrey B. Litwak  
Hearings Official

SEE NOTICE OF HEARING OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS

**FINAL ORDER, FINDINGS, AND CONCLUSIONS  
OF THE EUGENE PLANNING COMMISSION:  
GOODPASTURE ISLAND PUD  
(PDT 09-1, TIA 09-4, ARA 09-6 AND Z 09-6)**



**I. INTRODUCTION**

The Eugene Hearings Official held a public hearing for the subject applications on January 20, 2010. The Hearings Official issued two (2) decisions approving the requests on March 17, 2010. On March 29, 2010, appeals of the Hearings Official's decisions were filed by Zack P. Mittge of Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock, P.C. on behalf of Willamette Oaks LLC. The appeal is comprised of 18 assignments and 23 sub-assignments of error for the tentative PUD, traffic impact analysis and adjustment review applications and 9 assignments and 20 sub-assignments of error for the zone change application. The appeal asserts that the Hearings Official erred in his findings and decisions with respect to applicable approval criteria in EC 9.8320, EC 9.8680, EC 9.8030 and 9.8865 of the Eugene Code (EC), and Oregon Administrative Rule (OAR) 660-012-0060.

On April 23, 2010, in accordance with EC 9.7655(1), the City mailed written notice of the appeal hearing to the applicant, the appellant, the Cal Young Neighborhood Association, all persons who submitted written comments in regard to the original applications, and all persons who requested notice. The written notice included the required elements set forth in EC 9.7655(2).

The Planning Commission held a public hearing on this appeal on May 5, 2010. At the public hearing, Michael Robinson and Don Sowieja provided oral testimony on behalf of the applicant followed by Pat Knox Blum and Greg Vik in support of the applicant. Zack Mittge provided oral testimony on behalf of the appellant Willamette Oaks LLC followed by Charles Cole and Ken Tollenaar who also provided testimony in opposition to the applicant. The applicant's counsel Michael C. Robinson opened with rebuttal followed by Don Sowieja, Brian Genovese and Mike Peebles. Written testimony was also provided by the parties and other individuals at the hearing which is included in the record unless specifically excluded below.

The Planning Commission closed the public hearing on May 5, 2010 but extended the open record for additional written argument from the appellant until May 12, 2010 and for final written argument from the applicant until May 19, 2010. Both parties submitted additional argument which is included in the record and considered by the Planning Commission on appeal, except for items specifically noted below which are excluded from the record.

After the public record was closed, the Planning Commission deliberated the appeal issues at its meeting on May 24, 2010, before taking final action on the appeal. The appeal is based on the record and limited to the assignments of error contained in the appeal statement submitted. As described below, the Planning Commission affirms the Hearings Official's decisions to approve the subject applications with additional findings and modifications to approval conditions in some instances. Those additional findings and modifications are detailed below with respect to each related assignment of error.

## II. APPLICABLE CRITERIA

The concurrent zone change, tentative PUD, traffic impact analysis and adjustment review applications are required to meet the following approval criteria:

### **EC 9.8865 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.

### **OAR 660-012-0060 - Transportation Planning Rule (in part):**

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) As measured at the end of the planning period identified in the adopted transportation system plan:
    - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
    - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
    - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:
  - (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
  - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division;

such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;

(b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.

#### **EC 9.8320 Tentative Planned Unit Development Approval Criteria- General.**

The hearings official shall approve, approve with conditions, or deny a tentative PUD application with findings and conclusions. Decisions approving an application, or approving with conditions shall be based on compliance with the following criteria:

(1) The PUD is consistent with applicable adopted policies of the Metro Plan.

(2) The PUD is consistent with applicable adopted refinement plan policies.

(3) The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.

(4) The PUD is designed and sited to minimize impacts to the natural environment by addressing the following:

(a) Protection of Natural Features.

1. For areas not included on the City's acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:
  - a. Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under State or Federal law), and native plant communities.
  - b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under State or Federal law).
  - c. Prominent topographic features, such as ridgelines and rock outcrops.
  - d. Wetlands, intermittent and perennial stream corridors, and riparian areas
  - e. Natural resource areas designated in the Metro Plan diagram as "Natural Resource" and areas identified in any city-adopted natural resource inventory.
2. For areas included on the City's acknowledged Goal 5 inventory:
  - a. The proposed development's general design and character, including but not limited to anticipated building locations, bulk and height, location and distribution of recreation space, parking, roads, access and other uses, will:
    - (1) Avoid unnecessary disruption or removal of attractive natural features and vegetation, and
    - (2) Avoid conversion of natural resource areas designated in the Metropolitan Area General Plan to urban uses when alternative locations on the property are suitable for development as otherwise permitted.
  - b. Proposed buildings, road, and other uses are designed and sited to assure preservation of significant on-site vegetation, topographic features, and other unique and worthwhile natural features, and to prevent soil erosion or flood hazard.
    - (b) Tree Preservation. The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:
      1. Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;
      2. Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;
      3. Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;
      4. Trees that provide a buffer between potentially incompatible land uses;
      5. Trees located along the perimeter of the lot(s) and within building setback areas;
      6. Trees and stands of trees located along ridgelines and within view corridors;
      7. Trees with significant habitat value;
      8. Trees adjacent to public parks, open space and streets;
      9. Trees located along a water feature;
      10. Heritage trees.
    - (c) Restoration or Replacement.
      1. For areas not included on the city's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:
        - a. Planting of replacement trees within common areas; or
        - b. Re-vegetation of slopes, ridgelines, and stream corridors; or
        - c. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.

To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320.

2. For areas included on the city's acknowledged Goal 5 inventory, any loss of significant natural features described in criteria (a) and (b) above shall be consistent with the acknowledged level of protection for the features.

(d) Street Trees. If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305.

(5) The PUD provides safe and adequate transportation systems through compliance with the following:

(a) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).

(b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.

(c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.

(6) The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.

(7) Adequate public facilities and services are available to the site, or if public services and facilities are not presently available, the applicant demonstrates that the services and facilities will be available prior to need. Demonstration of future availability requires evidence of at least one of the following:

(a) Prior written commitment of public funds by the appropriate public agencies.

(b) Prior acceptance by the appropriate public agency of a written commitment by the applicant or other party to provide private services and facilities.

(c) A written commitment by the applicant or other party to provide for offsetting all added public costs or early commitment of public funds made necessary by development, submitted on a form acceptable to the city manager.

(8) Residents of the PUD will have sufficient usable recreation area and open space that is convenient and safely accessible.

(9) Stormwater runoff from the PUD will not create significant negative impacts on natural drainage courses either on-site or downstream, including, but not limited to, erosion, scouring, turbidity, or transport of sediment due to increased peak flows or velocity.

(10) Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 Solar Lot Standards or as modified according to subsection (11) below.

(11) The PUD complies with all of the following:

(a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).

(b) EC 9.6500 through EC 9.6505 Public Improvement Standards.

(c) EC 9.6706 Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas - Standards.

(d) EC 9.6710 Geological and Geotechnical Analysis.

(e) EC 9.6730 Pedestrian Circulation On-Site.

(f) EC 9.6735 Public Access Required.

(g) EC 9.6750 Special Setback Standards.

(h) EC 9.6775 Underground Utilities.

(i) EC 9.6780 Vision Clearance Area.

(j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

(k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.

An approved adjustment to a standard pursuant to the provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard.

(12) The proposed development shall have minimal off-site impacts, including such impacts as traffic, noise, stormwater runoff and environmental quality.

(13) The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.

(14) If the tentative PUD application proposes a land division, nothing in the approval of the tentative application exempts future land divisions from compliance with state or local surveying requirements.

(15) If the proposed PUD is located within a special area zone, the applicant shall demonstrate that the proposal is consistent with the purpose(s) of the special area zone.

#### **EC 9.8680 Traffic Impact Analysis Approval Criteria.**

The planning director shall approve, conditionally approve, or deny an application for Traffic Impact Analysis Review following a Type II process, or as part of a Type III process when in conjunction with a CUP or PUD. Approval or conditional approval shall be based on compliance with the following criteria:

(1) Traffic control devices and public or private improvements as necessary to achieve the purposes listed in this section will be implemented. These improvements may include, but are not limited to, street and intersection improvements, sidewalks, bike lanes, traffic control signs and signals, parking regulation, driveway location, and street lighting.

(2) Public improvements shall be designed and constructed to the standards specified in EC 9.6505 Improvements - Specifications. The requirement of improvements based on a traffic impact analysis does not negate the ability of the city traffic engineer to require improvements by other means specified in this code or rules or regulations adopted thereunder.

(3) An exception to any or all of the requirements listed in the "Standards for Traffic Impact Analyses" for development that generate less than 100 trips in any peak hour may be granted if the applicant demonstrates that the study is not necessary in order to demonstrate compliance with this subsection.

(4) In addition to the above criteria, if the Traffic Impact Analysis Review was required based on EC 9.8670(4), the improvements shall also address the structural capacity of the street in the County's jurisdiction and address identified structural deficiencies, or reduction in the useful life of existing street structures related to the proposed development. Improvements may be needed to eliminate the identified structural deficiencies and to accommodate vehicle impacts to structures.

#### **EC 9.8030 Adjustment Review Approval Criteria**

(2) Setback Standards Adjustment. Where this land use code provides that the setback standards applicable to specific zones may be adjusted, the standards may be adjusted upon finding that the proposed setback is consistent with the following applicable criteria:

(a) Minimum and Maximum Front Yard Setback Adjustment. The minimum or maximum required front yard setback may be adjusted if the proposal achieves all of the following:

1. Contributes to the continuity of building facades along the street.

2. Creates an attractive pedestrian environment along all adjacent streets
3. Is compatible with adjacent development.

Maximum front yard setbacks may be adjusted without any requirement for pedestrian amenities if the location of the front yard is unsafe or intrinsically unsuitable for pedestrians or to protect disruption to significant natural resources.

(9) Bicycle Parking Standards Adjustment. Where this land use code provides that the bicycle parking standards may be adjusted, the standards may be adjusted upon finding that the design achieves all of the following:

- (a) Consistency with EC 9.6100 Purpose of Bicycle Parking Standards; and
- (b) Shared bicycle parking remains convenient and clearly visible for users.

### III. RECORD BEFORE THE PLANNING COMMISSION

The record before the Planning Commission consists of the Eugene Planning Commission Agenda Item Summary for Appeal of Hearings Official Decision: Goodpasture Island PUD (PDT 09-1, TIA 09-4, ARA 09-6 and Z 09-6) dated May 5, 2010; the decision of the Eugene Hearings Official, Goodpasture Island PUD (PDT 09-1, TIA 09-4, ARA 09-6) dated March 17, 2010 ("PUD Decision"); the decision of the Eugene Hearings Official, Goodpasture Island PUD (Z 09-6) dated March 17, 2010 ("Zone Change Decision"); the written and oral testimony presented by appellant, applicant, and other parties to the Planning Commission; and all written and oral testimony (including City staff reports) presented to and not rejected by the Hearings Official. The entire City Planning & Development Department file was physically before, and subject to limited exceptions specifically stated in Section IV of this Order, not rejected by, the Planning Commission prior to the close of the record.

### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the applicable law and all argument and evidence in the record, the Planning Commission finds that the subject applications satisfy all applicable approval criteria. Accordingly, the Planning Commission hereby incorporates with the specified conditions of approval, adopts, and affirms the PUD Decision and the Zone Change Decision, including the findings and conditions stated in such decisions and including any attachments, exhibits, or documents incorporated therein (together, "Decisions"), except as this Order specifically modifies the Decisions. In the event of a conflict between the Decisions and this Order, this Order shall prevail.

#### A. EVIDENTIARY ISSUES

##### 1. Applicant's Use of Experts on Rebuttal

The appellant asserts that the applicant presented new evidence to the Planning Commission by providing rebuttal testimony from the applicant's consultants. The appellant's assertion suggests that the Planning Commission should reject all rebuttal testimony offered by the applicant's consultants because that testimony is "evidence" (as opposed to "argument") simply because it was offered by an "expert," even if the testimony is based only on evidence already in the record. The appellant cites to a 2008 LUBA decision (*Freedman v. City of Grants Pass*) in support of its assertion.

The Eugene Code defines "evidence" as "facts, documents, data, or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision." The Planning Commission finds that the testimony offered by the applicant's consultants did not provide the Planning Commission with new facts, documents, data, or other information at all. Rather, the applicant's consultants provided or referred to materials already placed before the Hearings Official (some of them in an enlarged format) and restated conclusions already presented to the Hearings Official. While some testimony from the applicant's traffic engineer may have been close to the evidentiary line, testimony was offered in response to Planning Commission questions for purposes of clarification, not offered to demonstrate compliance or noncompliance with the standards and applicable approval criteria. The Planning Commission does not make a general rejection of all testimony provided by the applicant's consultants as the appellant suggests.

## 2. Applicant's submittal of "evidence" during "final argument"

The appellant argues that in accepting a 2/18/10 letter from the applicant's engineer during the final rebuttal period, the Hearings Official violated ORS 197.763(6)(e), which provides for a final rebuttal period during which the applicant may submit "final written arguments in support of the application" but may not submit "any new evidence." The statute defines "argument" as "assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. 'Argument' does not include facts." The statute defines "evidence" as "facts, documents, data or other information offered to demonstrate compliance with the standards believed by the proponent to be relevant to the decision."

As noted below in regards to the second PUD assignment of error, the Planning Commission found that the Hearings Official did not rely on the letter in the PUD Decision so, to the extent its acceptance was in error, it is a procedural issue and harmless one. Nonetheless, the Planning Commission modifies the Hearings Official decision to reject the letter below and does not consider the two page letter from K&A Engineering, Inc. ("Response to GeoScience Review of 2/10/2010" dated February 18, 2010) as part of the Planning Commission decision on appeal.

## 3. Appellant's Evidence Regarding Appeal Fee Amount

EC 9.7655(2) limits the nature of evidence that the Planning Commission can consider on appeal as follows: "The record from the proceeding of the Hearings Official or Historic Review Board shall be forwarded to the appeal review authority. No new evidence pertaining to the appeal issues shall be accepted." Pursuant to this section, the Planning Commission cannot accept any new evidence, and there is no process for an exception to this rule. In accordance with EC 9.7655(2) the Planning Commission cannot accept the new evidence noted below and therefore will not consider the following items as part of the Planning Commission's decision on this appeal:

1. Two full paragraphs from pages 1 and 2 (last paragraph that begins on Page 1 through end of first full paragraph on Page 2) of, and all 7 pages of Exhibits to, the appellant's letter dated May 5, 2010 from Zack Mittge "Re: Tentative planned unit development. . .". (see findings below regarding appellant's first PUD assignment of error on appeal fees).

2. First full paragraph (C) on Page 2 from appellant's rebuttal letter dated May 12, 2010 from Zack Mittge (see findings below regarding appellant's first PUD assignment of error on appeal fees).

As noted above, the Planning Commission's decision on this appeal is otherwise based upon consideration of all other relevant evidence and argument within the record to date.

## **B. JURISDICTIONAL ISSUE**

In a letter dated May 5, 2010, the applicant raises a jurisdictional issue. Specifically, the applicant asserts that the Planning Commission lacks authority to consider any part of this appeal because the appeal fee submitted by the appellant at the time the appeal was filed was incorrect. This issue is different from the appellant's first assignment of error addressed below, which challenges the reasonableness of the City's appeal fee. Unlike the appellant's issue, the issue raised by the applicant raises a *jurisdictional* question; the resolution of this issue could result in the Planning Commission's dismissal of the appeal.

EC 9.7655(2) states that "[t]he appeal shall be submitted on a form approved by the city manager, be accompanied by a fee established pursuant to EC Chapter 2, and be received by the city no later than 5:00 p.m. of the 12th day after the notice of decision is mailed." The appeal form provides: "A filing fee must accompany all Hearing's [sic] Official and Historic Review Board appeals. The fee varies depending upon the type of application and is adjusted periodically by the City Manager. Check with Planning staff at the Permit and Information Center to determine the required fee or check on the web at: [www.eugeneplanning.org](http://www.eugeneplanning.org)." (pages 12 and 24 of record).

Within the required time, the appellant submitted two appeal forms and appeal statements accompanied by an appeal fee (initial receipt of \$16,229.48 appeal fee at page 21 of record). The applicant does not dispute that the appellant "checked with Planning staff at the Permit and Information Center to determine the required fee" or that the fee paid by the appellant was the amount it was directed to pay by City staff. Also, the applicant does not dispute the fact that, when the applicant alerted City staff to an error in the City staff's calculation of the appeal fee, resulting in an undercharge of \$135.37, City staff notified the appellant of the undercharge and the appellant immediately paid the difference. However, the applicant asserts that the initial \$135.37 underpayment divested the Planning Commission of its jurisdiction to consider the appeal (see pages 2-3 of letter from Michael Robinson dated May 5, 2010).

In addressing this jurisdictional issue, the Planning Commission takes official notice, pursuant to EC 9.7095(1), of the receipts and related e-mails attached to this final order as Attachment A.

While it is clear that the City's code requires that an appeal include an appeal fee, the City's code does not specify the consequence of an underpayment of an appeal fee based on a City staff miscalculation. We are cited to nothing in the code that indicates that the consequence should be dismissal of the appeal and we decline to do so, particularly considering the facts that this applicant relied on City staff's calculation, that the underpayment was slight and that it was immediately addressed when the appellant was notified.

### C. ADDITIONAL FINDINGS AND MODIFIED CONDITIONS OF APPROVAL

The March 29, 2010 written appeal statements submitted by Zack P. Mittge of Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock, P.C. on behalf of Willamette Oaks LLC, include a total of twenty-seven assignments of error with 43 sub-assignments of error. Each of these assignments and sub-assignments of error are set forth below, followed by the Planning Commission's findings of fact and conclusions of law as to each one.

**Appellant's First PUD Assignment of Error:**

***The City errs by imposing an appeal fee that is disproportionate to the actual average costs of an appeal, and is unreasonable.***

EC 9.7655(3) requires that appeal statements specify how the Hearings Official: (1) failed to properly evaluate the application; or (2) made a decision that was not consistent with the applicable criteria. The appellant does not specify how the imposition of the allegedly unreasonable appeal fee is the result of the Hearings Official's failure to properly evaluate the application or the Hearings Official's decision's inconsistency with an applicable criterion. The Planning Commission's review is limited to whether the Hearings Official: (1) failed to properly evaluate the application; or (2) made a decision that was not consistent with the applicable criteria.

While appellant may be raising an important issue, it is not one that the Planning Commission can substantively address. The Hearings Official's decision did not determine or impose the appeal fee and it would have been beyond the scope of the Hearings Official's authority to do so. The Planning Commission's review must be based on the evidentiary record that was created before the Hearings Official. The Hearings Official's record does not include any evidence to form the basis for this appeal issue, or to resolve it. As noted above, the appellant's impermissible new evidence related to his issue has been rejected and is not considered in the Planning Commission's decision on appeal.

Even if the appellant was correct in its assertion that the City's appeal fee structure dictated an appeal fee that, in this case, is too high, that determination would not result in a change to the Hearings Official's decision and it does not call the Planning Commission's jurisdiction into question. Whether the City's appeal structure, as applied in this case, is inconsistent with state law is an independent question that is beyond the scope of the Planning Commission's authority. The Planning commission lacks the authority to allow any deviation from the City's adopted fee structure.

The Planning Commission therefore denies the appellant's first PUD assignment of error.

**Appellant's Second PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in accepting additional evidence from the applicant after the close of the evidentiary record.***

This statement is insufficient to satisfy EC 9.7655(3). As described above, that code section requires an appeal statement to explain specifically how the Hearings Official failed to properly evaluate the application or make a decision consistent with the applicable criteria. The appellant's appeal statement

is not a specific explanation. It does not identify which portion of the applicant's materials submitted after the close of the evidentiary hearing, were allegedly "additional evidence."

It is only as a precautionary measure that the Planning Commission now addresses this appeal issue further. The following analysis and determinations should be considered only if a higher appeal body (e.g. the Land Use Board of Appeals or the Oregon Court of Appeals) determines that the appellant's appeal statement was sufficiently specific on this issue.

On the date of the Planning Commission's public hearing, May 5, 2010, the appellant submitted a memo that did provide a specific allegation of Hearings Official error (May 5, 2010, Mittge Letter re PUD Decision Appeal, page 2). There, the appellant states that the Hearings Official erred when he accepted, as part of the applicant's final rebuttal, a letter from K&A Engineering, Inc. The appellant argues that in accepting the engineer's letter, the Hearings Official violated ORS 197.763(6)(e), which provides for a final rebuttal period during which the applicant may submit "final written arguments in support of the application" but may not submit "any new evidence." The statute defines "argument" as "assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. 'Argument' does not include facts." The statute defines "evidence" as "facts, documents, data or other information offered to demonstrate compliance with the standards believed by the proponent to be relevant to the decision."

The appellant asserts that any testimony from an engineer is forbidden after the close of the evidentiary record because that testimony is "evidence" (as opposed to "argument"), even if the testimony is based only on evidence already in the record. The appellant asserts that the Hearings Official should have rejected the engineer's letter because the mere fact that this testimony was offered by an "expert" makes it "evidence" as opposed to "argument." The appellant cites to a 2008 LUBA decision (*Freedman v. City of Grants Pass*) in support of its assertion.

The Hearings Official considered whether he needed to specifically reject the engineer's letter, which addressed a geotechnical standard from the Eugene Code; he determined that such rejection was not necessary because "it is of little value to demonstrating compliance with this standard." See Page 91 of the record (Hearings Official PUD decision, page 55). It is clear that the letter had no effect on the Hearings Official's decision. Instead of relying on the applicants' engineer's letter, the Hearings Official found that the applicant had not sufficiently addressed the geotechnical standard and imposed conditions. There is no harm caused (and none is alleged) by the way in which the Hearings Official acted with respect to the letter. There has been no demonstration that the Hearing Official improperly evaluated the application or that he made a decision inconsistent with the applicable criteria.

Nonetheless, to eliminate any argument that the City's final decision is based on evidence that was wrongly included in the record, the Planning Commission hereby modifies the Hearings Official's decision to reject the letter from K&A Engineering, Inc, dated February 18, 2010.

The Planning Commission affirms the appellant's second PUD assignment of error.

***Appellant's Third PUD Assignment of Error:***

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in approving***

***the applicant's traffic impact analysis because the applicant failed to evaluate all required roadways, failed to measure impacts at the applicable horizon year and at each phase of the development, failed to evaluate all peak periods, failed to evaluate all on-site conditions, provides deficient mitigation measures, and does not address the proposed bridge in its analysis.***

The Hearings Official addresses this issue on pages 31-47 of the PUD decision. For the reasons set forth in the May 5 Staff Report, Michael C. Robinson's May 5 letter to the Planning Commission on behalf of the applicant ("Applicant's May 5 Letter"), and Michael C. Robinson's May 19 letter to the Planning Commission on behalf of the applicant ("Applicant's May 19 Letter"), the Planning Commission denies the appellant's third PUD assignment of error and affirms, adopts, and incorporates the Hearings Official's findings and conclusions regarding the traffic impact analysis set forth on pages 31-47 of the PUD Decision.

**Appellant's Fourth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in approving a PUD based on a deficient zone change.***

The Hearings Official completed an analysis of the proposed zone change and found that substantial evidence in the whole record supports the conclusion that the requested zone change satisfies all applicable approval criteria. For the reasons set forth in the May 5 Staff Report, Applicant's May 5 Letter, and Applicant's May 19 Letter, the Planning Commission denies the appellant's fourth PUD assignment of error and affirms, adopts, and incorporates the Hearings Official's findings and conclusions regarding the zone change on this issue set forth in the PUD Decision based on the approved zone change decision.

**Appellant's Fifth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in approving a PUD application where the applicant had failed to provide the required neighborhood meeting under EC 9.7007.***

The Planning Commission finds no evidence in the record to indicate that the Hearings Official erred in approving a PUD application without a neighborhood meeting under EC 9.7007. The appellant asserted that the ordinance was in effect on June 12, 2009 as LUBA affirmed it on that date. While the ordinance was affirmed on June 12, 2009, due to the appeal period the ordinance did not become effective until July 7, 2009 after the appeal period had expired. The Hearings Official correctly points out that because the applicant submitted its application on June 18, 2009, prior to the effective date of the provision (on July 7, 2009) the new neighborhood meeting requirement is not applicable to the application.

As the neighborhood/applicant meeting was not a requirement at the time the applicant submitted the PUD, the Planning Commission concurs with the Hearings Official's findings that the proposed tentative PUD is consistent with application requirements based on substantial evidence in the record.

The Planning Commission therefore denies the appellant's fifth PUD assignment of error and affirms, adopts, and incorporates the Hearings Official's findings and conclusions regarding the neighborhood meeting as set forth on pages 4 and 5 of the PUD Decision.

**Appellant's Sixth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in failing to properly apply applicable Metro Plan provisions to the proposed PUD.***

- a. The Hearings Official erred by permitting a massive increase in traffic associated with proposed Planned Unit Development without providing for adequate transportation improvements or infrastructure, and without considering the safety or mobility needs of area residents or the character of the residential neighborhood contrary to Metro Plan provisions E-4, F-4, F-10, and F-14.***
- b. The Hearings Official erred by approving a massive and dense development in an area immediately adjacent to the Willamette River and Delta Ponds contrary to Metro Plan provisions D-5, E-4 and E-5.***
- c. The Hearings Official erred by approving a PUD with a proposed bridge and road widening in the Willamette River Greenway contrary to Metro Plan provisions D-5 and E-2.***
- d. The Hearings Official erred by failing to require the applicant to provide site-specific surveys and geological studies for areas of potential problems, or specific mitigation measures as required by Metro Plan [P]olicy C-32.***
- e. The Hearings Official erred in assuming that the applicant will pay for its capacity impact on the system under Metro Plan [P]olicy F-36 when the applicant has not fully addressed its impact on the system, and has not provided financial commitments to address the impacts it identifies.***
- f. The Hearings Official erred in concluding that there is adequate transportation infrastructure to service the proposed PUD pursuant to Metro Plan [P]olicy A-12.***

The Hearings Official completed a detailed analysis of the cited Metro Plan policies at pages 5-8 of the PUD Decision and 4-8 of the Zone Change Decision and found that substantial evidence in the whole record supports the conclusion that the cited policies are either not applicable or are satisfied in this case. For the reasons set forth in the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission denies the appellant's sixth PUD assignment of error and affirms, adopts, and incorporates the Hearings Official's findings and conclusions on this issue set forth at pages 5-8 of the PUD Decision and 4-8 of the Zone Change Decision.

**Appellant's Seventh PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in failing to properly apply applicable Willakenzie Area Plan policies and provisions to the PUD.***

- a. The Hearings Official erred in approving a PUD which includes massive development adjacent to the Delta Ponds as well as street widening and bridge construction within the Willamette River Greenway, where the applicant failed to demonstrate compliance with Willakenzie Area Plan Natural Resource Area Protection Policies 1 and 10.***

- b. The Hearings Official erred in approving a massive development adjacent to the Willamette River and Delta Ponds where the applicant failed to demonstrate that such an increase in size and density is consistent with the preservation of the scenic qualities of those areas as provided in Willakenzie Area Plan Greenway Policy 9.**
- c. The Hearings Official erred in approving a PUD's local street size when it is inadequate to meet future demands under the R-3 zoning as required by Willakenzie Area Plan Land Use Policy 3.**

The Hearings Official completed a detailed analysis of the cited Willakenzie Area Plan policies at pages 8-13 of the PUD Decision and found that substantial evidence in the whole record supports the conclusion that the cited policies are either not applicable or are satisfied in this case. For the reasons set forth in the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 letter, the Planning Commission denies the appellant's seventh PUD assignment of error and affirms the Hearings Official's findings and conclusions on this issue set forth on pages 8-13 of the PUD Decision.

**Appellant's Eighth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in approving a PUD that does not provide for adequate screening from surrounding properties considering the anticipated building locations, bulk and height.***

The Hearings Official completed a detailed analysis of this issue at pages 14-17 of the PUD decision and found that the proposed PUD will provide adequate screening from surrounding properties considering the anticipated building locations, bulk, and height. The Planning Commission finds that the PUD Decision provides adequate findings as to each parcel, and there is no substantial evidence in the record of any error by the Hearings Official. For the reasons set forth in the May 5 Staff Report, the Applicant's May 5 Letter, the Applicant's May 19 letter, and based upon a review of the building elevations, site plans, and landscape plans, the Planning Commission denies the appellant's eighth PUD assignment of error and affirms the Hearings Official's findings and conclusions on this issue set forth on pages 14-17 of the PUD Decision.

**Appellant's Ninth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in finding that the PUD is designed and sited to minimize impacts to the natural environment because the applicant proposes bridge construction within the Willamette River Greenway, proposes to disrupt upland habitat areas of the Western pond turtle, and provides for the construction of a massive berm and structures adjoining the sensitive Delta Ponds area.***

The Hearings Official completed a detailed analysis of this issue at pages 12-13, 18-19, and 74-75 of the PUD Decision and found that the proposed PUD is designed and sited to minimize impacts to the natural environment, subject to two (2) conditions of approval, one requiring that the applicant obtain a Willamette River Greenway permit prior to issuance of any development permits and the other requiring that the project ecologist indicate the timeframe for the construction of the turtle fence. The Planning Commission finds that the PUD Decision provides adequate findings on this issue, and there is

no substantial evidence in the record of any error by the Hearings Official. For the reasons set forth in the May 5 Staff Report, the Applicant's May 5 Letter, the Applicant's May 19 letter, the Planning Commission denies the appellant's ninth PUD assignment of error and affirms the Hearings Official's findings and conclusions on this issue set forth at pages 12-13, 18-19, and 74-75 of the PUD Decision.

**Appellant's Tenth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons by imposing a condition of approval that requires entry onto adjoining properties to meet the requirements of the applicant's proposed enhancement plan.***

For the reasons set forth at pages 41 and 42 of the PUD Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's tenth PUD assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues set forth at pages 41 and 42 of the PUD Decision.

**Appellant's Eleventh PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in determining the PUD provides safe and adequate transportation system when the applicant failed to design streets that conformed to applicable City requirements, failed to provide adequate pedestrian, transit and bicycle access, and has failed to conform to the requirements of Traffic Impact Analysis Review.***

Again, the appellant's statement is vague and fails to identify an applicable criterion to which these arguments apply, as required by EC 9.7655(3). Nonetheless, the Planning Commission further addresses this issue as a precautionary measure in the event of additional appeals.

EC 9.8320(5) addresses the adequacy of the transportation system and Traffic Impact Analysis (TIA) Review requirements. The Hearings Official's PUD Decision addresses street design on pages 25-27. As noted previously in the record, based on the five street classification factors and even with the additional trips generated by the proposed zone change, staff recommended and the Hearings Official agreed that Alexander Loop would still be a local street. Although Alexander Loop would connect to Goodpasture Island Road, which is a minor arterial (as collector streets "often do"), Alexander Loop would serve traffic that has its point of origin on Alexander Loop and does not serve through traffic. There several examples where actual ADT is greater or lower than the Typical Traffic Volume Ranges shown in the *Arterial and Collector Street Plan*. See February 3, 2010 City staff Memorandum to Hearings Official, Attachment A (Pages 274-286 of the record). Similarly, Alexander Loop specifically provides property access, which collectors typically limit. The Hearings Official correctly notes that the functional classification of Alexander Loop will remain a local street and therefore the street dedication and related improvements and are consistent with that classification.

The Hearings Official's PUD Decision addresses pedestrian, bicycle and transit circulation on pages 30 and 31 (pages 66 and 67 of the record) and further discussion of pedestrian access was provided in the TIA findings. The Hearings Official's PUD Decision also provided findings regarding TIA provisions on

pages 31 – 46. The Hearings Official responded to several concerns raised by the appellant and neighborhood group including sight distance, certainty of mitigation and the feasibility of the trip cap by requiring additional conditions of approval that specifically addressed these concerns. The Hearings Official noted that the applicant's proposed mitigation which includes a trip cap, widening of Goodpasture Island Road bridge and several other physical improvements resulted in the applicant complying with TIA provisions.

The Hearings Official also noted that, in the initial evidentiary hearing, several neighbors testified as to the safety of the pedestrian crossing across Goodpasture Island Road at Alexander Loop. The applicant proposed a traffic signal at this intersection in its original traffic impact analysis. The Hearings Official's PUD Decision addresses the possible signal on pages 40-42. Staff recommended, and the Hearings Official agreed that the proposed mitigation currently did not meet warrants for the Manual for Uniform Traffic Control Devices (MUTCD). See Staff Memo to Hearings Official dated February 3, 2010 pages 7 and 8 (pages 280-282 of the record) and the Staff Report dated January 20, 2010 for the PUD pages 27 and 28.

City staff based its initial recommendation on the MUTCD requirements, taking into account the geometric alignment and traffic conditions on Goodpasture Island Road. As discussed in the Staff Memo to Hearings Official dated February 3, 2010 pages 7 and 8 (pages 280-282 of the record), Public Works staff analyzed several walking speeds. The MUTCD recommends using a walking speed of 1.2 meters (4 feet) per second; for pedestrians who walk slower than that, or where wheelchairs routinely use a crosswalk, a walking speed of less than 4 feet per second should be considered. The distance used is from the curb or shoulder to the far side of traveled way or to a median of sufficient width for pedestrians to wait. Current conditions where the distance from the curb to the median refuge is about 17 feet, a normal ambulatory individual would need about 4.25 seconds to cross each travel lane and bicycle lane to and from the median refuge, a slower paced individual could require 6 seconds. An 8 second crossing speed, which is just over 2 feet per second, is at the outer limits of walking speed addressed in the MUTCD. Even using the 8 second crossing speed, Public Works staff determined a pedestrian could safely cross the one lane of traffic to the center median refuge.

Unwarranted signals generally experience greater rates of red-light running and higher rear-end collision experience as well as increased vehicular delay because users become conditioned to the normally green indication (since it changes infrequently and irregularly changes based on pedestrian demand), a condition compounded at this location given the high percentage of routine users. While traffic signals are often seen as a "catch all" solution, installing signals before warrants are met can cause accidents/injuries/fatalities that may never have occurred prior to providing the signal, so great care must be taken before proceeding. While the applicant may offer to construct the traffic signal, the operation and maintenance costs are the City's responsibility in perpetuity. The estimated maintenance cost would be approximately \$2,000 to \$4,000 per year.

The applicant also provided analysis for application of a High-Intensity Activated Crosswalk (HAWK). This is a pedestrian activated signal and requires 20 pedestrian crossings during the peak hour regardless of roadway speed, vehicular traffic volumes, or pedestrian crossing distance to meet warrants. The applicant's analysis indicated the "Lane Transit District has indicated that there are a total of eight (8) boardings and eight (8) alightings at the Alexander Loop stops throughout an average weekday." The applicant did not provide projected pedestrian crossings at build-out but the current

number of transit users appears to be low. As there had been no projected pedestrian crossings included in the applicant's analysis, the Hearings Official added the condition below to require a future traffic study and possible mitigation if and when warrants are met.

The Hearings Official revised the staff recommendation and added a condition (see Condition of Approval #5) that:

".....the applicant shall conduct a traffic study prior to construction of the final phase of PUD development to determine if any mitigation is necessary for the southerly intersection of Alexander Loop and Goodpasture Island Road. The applicant shall provide necessary mitigation prior to occupancy of the final PUD phase."

While the intent of the condition is to address pedestrian safety, it is vague as to the intent of the mitigation. As the intent of this condition is to ensure future pedestrian safety, Condition of Approval #5 shall be modified to add the words "to ensure pedestrian safety at the crosswalk" after the word "necessary." The following two sentences shall also be added: "The traffic study shall focus on pedestrian safety and shall address possible safety improvements at the intersection including, but not limited to, pedestrian activated signals and pedestrian activated warning beacons. The traffic study shall be subject to review and approval in accordance with the City's Type II land use application procedures for Traffic Impact Analysis Review, but limited to consideration of potential pedestrian safety improvements." As modified, Condition of Approval #5 will read as follows:

The applicant's proposed mitigation measure #5, for the installation of a traffic signal at the existing (southerly) intersection of Alexander Loop and Goodpasture Island Road, shall be omitted from the applicant's TIA Packet. The final PUD plans shall note that the applicant shall conduct a traffic study prior to construction of the final phase of PUD development to determine if any mitigation is necessary to ensure pedestrian safety at the crosswalk at the southerly intersection of Alexander Loop and Goodpasture Island Road. The traffic study shall focus on pedestrian safety and shall address possible safety improvements at the intersection including, but not limited to, pedestrian activated signals and pedestrian activated warning beacons. The traffic study shall be subject to review and approval in accordance with the City's Type II land use application procedures for Traffic Impact Analysis Review, but be limited to consideration of potential pedestrian safety improvements. The applicant shall provide necessary mitigation prior to occupancy of the final PUD phase.

In addition to clarifying the intent of the approval condition related to pedestrian safety improvements at the intersection, the inclusion of a Type II land use application process will ensure that public notice and opportunity for appeal is properly ensured due to the discretion involved in determining compliance. It also affords the direct input of the City's Public Works staff and City Engineer to ensure workable design solutions in the event that future pedestrian improvements are needed. The necessary justification and design details for possible pedestrian safety improvements are not sufficient at this time to require improvements upon initial development of the PUD.

This condition effectively defers a finding of compliance with EC 9.8320(5)(b), at least as to pedestrian safety measures at this intersection. This is a permissible deferral, because the record demonstrates

that compliance with the approval criterion is "possible." The Planning Commission finds that it is possible to satisfy the requirements of EC 9.8320(5)(b) to provide safe and adequate pedestrian circulation based upon the testimony of City Public Works staff regarding pedestrian walking speeds as analyzed at the subject location. Further, as discussed above, deferral is permissible because the City has ensured that interested parties will have the same participatory rights as those allowed in the original process. The condition affords the direct input of the City's Public Works staff and City Engineer to ensure workable design solutions in the event that future pedestrian improvements are needed. The necessary justification and design details for possible pedestrian safety improvements are not sufficient at this time to require improvements upon initial development of the PUD.

With these additional findings and imposition of the modified condition of approval, the Planning Commission denies the appellant's eleventh PUD assignment of error.

**Appellant's Twelfth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in determining that the PUD would not be a significant risk to public health and safety and where the applicant failed to address impediments to emergency response, and provided a geotechnical analysis that concealed hazardous conditions on the site.***

The Hearings Official completed a detailed analysis of this issue and found on pages 47-48 of the PUD Decision that the proposed PUD would not be a significant risk to public health and safety. The Planning Commission finds that the PUD Decision provides adequate findings on this issue, and there is no substantial evidence in the record of any error by the Hearings Official. For the reasons set forth in the May 5 Staff Report, the Applicant's May 5 Letter, the Applicant's May 19 letter, the Planning Commission denies the appellant's twelfth assignment of error and affirms adopts and incorporates the Hearings Official's findings and conclusions on this issue set forth on pages 47-48 of the PUD Decision.

**Appellant's Thirteenth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons by imposing a condition of approval that improperly defers analysis of existing geotechnical hazards on-site to a process outside of the PUD approval.***

Again, the appellant's statement is vague and fails to identify an applicable criterion to which these arguments apply, as required by EC 9.7655(3). However, the appellant's materials submitted after the initial appeal statement do indicate the relevant approval criteria at EC 9.8320(11)(d) and EC 9.6710, and thus are further addressed below.

As the record indicates, the Hearings Official received testimony regarding geotechnical analysis from the appellant. The Hearings Official, through two conditions of approval specific to geotechnical analysis, required the applicant provide additional geotechnical information prior to receiving subsequent building permits. This would ensure the conditions of approval are met prior to development activity occurring on the subject site. The Hearings Official provided further findings and responded to evidence provided previously by the appellants in regards to this geotechnical issue on

pages 54 through 56 of the PUD Decision. In response to additional evidence provided by the appellant (see January 18, 2010 memo from Gunnar Schlieder on pages 777 to 786 of the record) the Hearings Official found that an additional condition of approval was warranted in addition to staff's recommendation.

Condition of Approval #13 which is addressed in the Hearings Official's PUD Decision on pages 54-56 was included to ensure the geotechnical report addressed all the area required prior to final PUD approval. A final PUD is required for every approved tentative PUD and is primarily intended to ensure that tentative plan approval conditions have been met. The final PUD is a required part of the PUD process and approval of the final site plan through this process is required prior to development permits being issued by the City.

Condition of Approval #14 regarding geotechnical analysis which is addressed on page 56 of the Hearings Official's PUD Decision, requires the applicant to address points raised in two other reports submitted by the appellant and requires the updating to occur prior to City review of subsequent permits. As review of the geotechnical report by staff could involve some discretion, compliance with Condition of Approval #14 should be evaluated in conjunction with public notice and opportunity for appeal, as part of the final PUD approval which is reviewed under EC Type II application procedures. The items to be addressed shall be clarified in the condition and the required updating shall occur, prior final PUD approval. As such, Condition of Approval #14 shall be modified as follows:

The applicant shall update the geotechnical analysis it has submitted to date to address the points raised in the two GeoScience reports (dated Jan. 18, 2010 and Feb. 10, 2010) which are:

- To ensure the geotechnical report is internally consistent with respect to boring numbers and elevations
- The geotechnical report shall include information on the development site as required by Eugene Administrative Rule R-9.6710-C through H along with Exhibit A.

If necessary, the applicant shall revise its current geotechnical recommendations to be in accord with the updated information. The City shall confirm that the geotechnical analysis has addressed all of the points in the GeoScience reports prior to final PUD approval.

This condition effectively defers a finding of compliance with the applicable standard. This is a permissible deferral because the record shows that compliance with the approval standard is possible. The Planning Commission finds that EC 9.8320(11)(d) and EC 9.6710 require completion of a geological and geotechnical analysis and that, based upon the testimony of applicant's geotechnical experts and City staff, it is possible to prepare this analysis in accordance with the identified criteria. This deferral is also supported by the fact that the future review will provide the same participatory rights as allowed in the original process.

With the revised condition of approval, it is ensured that the geotechnical analysis requirements will be met prior to final PUD approval and in a manner that is consistent with Oregon law. The Planning Commission therefore finds that the modified condition of approval does not involve improper deferral and denies the appellant's thirteenth PUD assignment of error.

**Appellant's Fourteenth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in determining that the subject property conformed to applicable minimum standards.***

- a. The Hearings Official erred by approving a PUD that does not improve its street system to the proper standard.***
- b. The Hearings Official erred in approving a PUD that does not conform to the City's geological and geotechnical analysis requirements.***
- c. The Hearings Official erred by approving a PUD that does not conform to required special setbacks.***
- d. The Hearings Official erred by approving a PUD that does not conform to adequate sight distance requirements and by imposing an inadequate condition of approval to address this deficiency.***
- e. The Hearings Official erred in approving a PUD that does not conform to the City's stormwater requirements with regard to stormwater destination or treatment.***
- f. The Hearings Official erred in approving a PUD that exceeds maximum building heights.***
- g. The Hearings Official erred in approving a PUD that does not conform to building setback requirements.***
- h. The Hearings Official erred in approving a PUD that exceeds maximum building dimensions.***
- i. The Hearings Official erred in approving a PUD that permits parking within required front-yard setbacks.***

For the reasons set forth on pages 61-74 of the PUD Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's fourteenth PUD assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 61-74 of the PUD Decision.

**Appellant's Fifteenth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in determining that the PUD would have minimal off-site impacts on scenic and environmental resources, the Willamette River Greenway, and traffic.***

For the reasons set forth in the PUD Decision pages 74-75, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicants May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's fifteenth PUD assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 74-75 of the PUD Decision.

**Appellant's Sixteenth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in finding that the proposed development would be reasonably compatible and harmonious with***

***adjacent and nearby land uses when the application would have significant impacts on traffic, pedestrian and bicycle safety, scenic views, and import a massive influx of development and impacts into a quiet residential neighborhood.***

For the reasons set forth on pages 75-76 of the PUD Decision , the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's sixteenth PUD assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 75-76 of the PUD Decision.

**Appellant's Seventeenth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in approving a PUD where the applicant failed to meet its burden of proof with regard to each of the required standards.***

For the reasons set forth on pages 4-77 of the PUD Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's seventeenth PUD assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 4-77 of the PUD Decision.

**Appellant's Eighteenth PUD Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons by approving adjustments to applicable minimum standards.***

- a. The Hearings Official erred in approving an adjustment to maximum building dimensions on lots 1, 2 and 3.***
- b. The Hearings Official erred in approving an adjustment that would permit through-vehicle movement on lots 2-5.***
- c. The Hearings Official erred in approving an adjustment to permit all parking courts to exceed maximum building size and minimum separation requirements.***
- d. The Hearings Official erred in approving an adjustment to permit parking to be located between the building and the street on lots 3, 4 and 5.***
- e. The Hearings Official erred in approving adjustments to sign standards for the proposed PUD.***

For the reasons set forth on pages 61-74 of the PUD Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's eighteenth PUD assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 61-74 of the PUD Decision.

**Appellant's First Zone Change Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons by approving a zone change that is contrary to the Oregon Transportation Planning Rule.***

The Planning Commission finds that the Zone Change satisfies the Oregon Transportation Planning Rule ("TPR") for the reasons set forth below in response to individual sub-assignments of error. In summary, the applicant properly determined that the proposed development would significantly affect the following intersections: (a) the intersection of Goodpasture Island Road at the Delta Highway southbound offramp; and (b) the intersection of Goodpasture Island Road at the Delta Highway northbound offramp. Further, the applicant proposed three measures to mitigate these impacts. The proposed mitigation measures are consistent with the TPR. The appellant has not presented substantial evidence to rebut the expert testimony offered by the applicant. The Hearings Official did not err in finding that the Zone Change is consistent with the TPR. As discussed in detail below, the TPR analysis within the record and the Hearings Official's findings adequately establish that, with the conditions of approval imposed, the application complies with the TPR. The Planning Commission denies this assignment of error.

- a. The Hearings Official erred by approving a zone change that doubled both the minimum and maximum density on the property from R-2 density (10-28 units per acre) to R-3 density (20-56 units per acre) without requiring an analysis of a reasonable worst-case R-3 density on all affected facilities, or evaluating or providing mitigation for those impacts.***

The record reflects that applicant's transportation analysis makes the proper "worst-case scenario" presumptions regarding density and vehicle trips for both the R-2 and R-3 zones. Specifically, the record demonstrates that the applicant's traffic consultant, JRH Transportation Engineering ("JRH"), presumed a density of 28 units per acre under the existing R-2 zoning, or 590 units on the subject property. JRH estimated that these 590 units would generate 293 trips in the AM peak hour, 342 trips in the PM peak hour, and 3,696 daily trips. JRH presumed a density of 56 units per acre under the proposed R-3 zoning or 1,182 units. JRH estimated that these 1,182 trips would generate 583 AM peak hour trips, 668 PM peak hour trips, and 7,254 daily trips. The Hearings Official properly concluded the applicant accurately analyzed the number of trips that the proposed zone change would generate and that the applicant's unit density and trip numbers was the reasonable worst-case scenario for the proposed R-3 zone.

Regarding the applicant's analysis of the impacted facilities, the applicant provided the information necessary to conduct the required TPR analysis in the applicant's TIA appendices. Additionally, for the two impacted transportation facilities that are currently failing, the applicant's December 29, 2009, letter provides current facility performance, facility performance with a trip cap and facility performance with a trip cap plus additional mitigation. Planning Commission finds that the Hearings Official and staff were correct in finding that based on all of the applicant's materials as a whole there is sufficient information to adequately analyze the zone change application for compliance with the TPR. Additionally, the Planning Commission finds that the appellant did not submit substantial evidence in support of the conclusion that the TPR analysis failed to take into account all affected intersections, such as a traffic study analyzing the intersections in question.

The Planning Commission concludes that the TPR analysis within the record and Hearings Official's findings adequately establish that, with the conditions of approval imposed, the application complies with the TPR. The Planning Commission denies this sub-assignment of error.

***b. The Hearings Official erred by approving a zone change that does not address transportation impacts at the planning horizon as required by law.***

The TPR requires analysis of transportation impacts at the "end of the planning period." The "end of the planning period" for purposes of the TPR analysis concerning local facilities is the horizon year identified in the adopted transportation system plan (*TransPlan*); *TransPlan's* horizon year is 2015. When a state facility is impacted, as in this case, the planning period is the horizon year identified in the adopted local or regional transportation system plan (*i.e.*, *TransPlan*, 2015) or fifteen years from the date of the proposed zone change, (*i.e.*, 15 years from 2010), whichever is later. Because 2025 is later than 2015, the end of the planning period for state facility purposes is 2025. Based on input from Lane County and City of Eugene staff, the applicant's analysis under OAR 660-012-0060 extends the planning period to 2031. Because using 2031 as the end of the planning period provides a more conservative estimate of background growth and traffic in the region, the Hearings Official accepted the applicant's use of the 2031 planning period. Appellant does not offer substantial evidence on the record, such as a competing traffic study, to establish that extending the planning period to 2031 resulted in the applicant failing to identify or address the transportation impacts of the zone change. The Planning Commission finds that the Hearings Official and staff were correct in accepting 2031 as the end of the planning period for purposes of the applicant's TPR analysis. Accordingly, the Planning Commission denies this sub-assignment of error.

***c. The Hearings Official erred by misapplying the Eugene Arterial and Collector Street Plan to approve a zone change that would alter the functional classification of Alexander Loop without a finding of significant affect, or imposing appropriate mitigation measures, and where the applicant failed to seek an amendment to the Transportation System Plan.***

***d. The Hearings Official erred by allowing land uses that would result in types or levels of travel that are inconsistent with the functional classification of Alexander Loop without a finding of significant affect, and without imposing appropriate mitigation measures.***

The Planning Commission finds that the applicant did not err. Based on the five street classification factors, even with the additional trips generated by the proposed zone change, staff and the Hearings Official properly concluded that Alexander Loop would remain a local street. Alexander Loop would connect to Goodpasture Island Road, which is a minor arterial (as collector streets "often do"), Alexander Loop would serve traffic that has its point of origin on Alexander Loop and does not serve through traffic. The record includes several examples where actual ADT is greater or lower than the Typical Traffic Volume Ranges shown in the *Arterial and Collector Street Plan*. See February 3, 2010 City staff Memorandum to Hearings Official, Attachment A (Pages 274-286 of the record). Similarly, Alexander Loop specifically provides property access, which collectors typically limit.

Even if more weight was to be given to ADT than the other four classification factors, the ADT that the proposed zone change will add to Alexander Loop does not necessitate reclassifying the street. Specifically, using the most recent information provided by the applicant, the projected daily traffic volumes on the two legs of Alexander Loop are approximately 1,900 to 2,500 ADT. A number of local streets in the City of Eugene (see Attachment A) carry more than 1,500 ADT, including: Arcadia Street; Crest Drive; Friendly Street south of 28th; Orchard Street; Villard Street; Elysium Street east of Coburg; Acorn Park Street; 24th Avenue west of Willamette; 8th Avenue from Chambers to Jefferson; and, and 32nd from Alder to Onyx. These streets all carry between 1,500 and 3,900 ADT. Additionally, there are collector streets that carry fewer than 1,500 daily trips as well (some as low as 400 ADT), including: 39th Avenue west of Willamette; Jeppesen Acres Road east of Gilham; 25th Avenue west of Hawkins; Donald Street north of Fox Hollow; Friendly Street south of 18th; Gilham Road north of Ayres; Beacon Drive. See February 3, 2010 City staff Memorandum to Hearings Official, Attachment A, page 286 of the record.

The Hearings Official correctly rejected as unpersuasive testimony offered by Appellant's consultant that attempted to apply the City's street classification methodology to the facts of this case. The Hearings Official correctly found that the proffered analysis did not appear to comport with the point system utilized by the City. The Planning Commission finds that the appellant has failed to submit substantial evidence to rebut the conclusion that Alexander Loop is properly classified as a local street. Based upon substantial evidence in the record, the Planning Commission finds that the Hearings Official did not err in concluding that the functional classification of Alexander Loop will remain as a local street.

Therefore, the Planning Commission denies these sub-assignments of error.

- e. The Hearings Official erred by relying on a "trip cap" as a mitigation measure, when "trip cap(s)" are not an approved method of mitigation, and the proposed trip cap is not feasible or effective.***
- f. The Hearings Official erred by imposing a defective "trip cap" condition of approval, and by including terms in that condition that would provide for future expansion of the use outside the context of Transportation Planning Rule and without a public hearing.***

The Hearings Official addresses this issue on page 25 of the zone change decision (page 145 of the record). The appellant asserts that the trip cap is not feasible or permissible mitigation under section (2)(e) of the Transportation Planning Rule.

First, there is no requirement in TPR to demonstrate feasibility. Given that feasibility is a practical matter of implementation the Hearings Official noted that the "feasibility concern" is addressed as the trip cap to this specific development makes it both feasible and enforceable as the trip cap corresponds to the applicant's PUD proposal. As noted in the record, the 287 AM peak hour trips and 321 peak hour trips correspond to the applicant's PUD proposal. As compliance with the PUD final site plan is required through a performance agreement and at time of building permit, compliance with the trip cap will be assured. See February 3, 2010 City staff Memorandum to Hearings Official, Attachment A (page 278 of the record).

In an October 21, 2009 letter to the City of Eugene (page 1363 of the record) ODOT also recommended a trip cap be implemented through conditions of approval to comply with TPR. If a trip cap were "not feasible" it is assumed ODOT would not have recommended such a condition of approval.

The Hearing Official also correctly disagrees with the appellant's latter argument that the trip cap is not "permissible mitigation". Subsection (2)(e) states, "Providing other measures as a condition of development or through a development agreement or similar funding method, *including* transportation system management measures \* \* \*" (emphasis added). The term "including, makes the list of measures in this subsection illustrative. The list is non-restrictive and does not exclude a trip cap.

Condition of Approval #3 of the Hearings Official's PUD Decision, which is addressed on page 39 and 77, requires that proposed intensification be consistent with TPR and subject to the City's Type II land use application process. This type of process is consistent with the Type II procedures to modify Type III applications, and the Type II process includes referral to ODOT, public notice and opportunity appeal. While the applicant indicates willingness to modify the requirement to include a Type III process involving a public hearing any future expansion of the trip cap, the Planning Commission finds it unnecessary to afford appropriate public process in this instance.

Based on substantial evidence in the record, the Hearings Official did not err in conditioning the trip cap and concluding that a trip cap was feasible and permissible. The Planning Commission denies these sub-assignments of error.

- g. The Hearings Official erred by approving a zone change based on a new road bridge across Delta Hwy that is neither an existing or planned transportation facility, and where the applicant had failed to seek an amendment to the Transportation System Plan to accommodate its proposed new road bridge.***
- h. The Hearings Official erred in finding that a proposed new bridge on Goodpasture Island Road across Delta Hwy is a "turn lane" that is a "minor transportation improvement."***

As noted in the February 3, 2010 City staff Memorandum (page 275 of the record), whether Mitigation Measure #2, the Goodpasture Island Road Bridge which is shown on pages 1279 of the record and listed as Condition #1 of the Zone Change page 151 of the record (Hearings Official Decision Z 09-6 page 31), is a "minor transportation improvement" as that term is defined by the TPR is irrelevant. The applicant is not relying on OAR 660-012-0060(2)(e) for compliance with the TPR; rather, the applicant relies on OAR 660-012-0060(3) to demonstrate TPR compliance. Because 0060(3), unlike 0060(2)(e), does not include the term "minor transportation improvement," the meaning and scope of that phrase need not be decided for purposes of this application.

Even if the applicant was relying on OAR 660-012-0060(2)(e) for compliance with the TPR, the measures listed in 0060(2)(e) are not exclusive, that is, the TPR does not prevent use of a mitigation measure that is not explicitly listed in 0060(2)(e). OAR 660-012-0060(2)(e) states that compliance with subsection 0060(1) can be achieved by: "Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system

measures, demand management or minor transportation improvements." Transportation system management measures, demand management and minor transportation improvements are merely examples of acceptable "other measures." Had the drafters of 0060(2)(e) intended to limit "other measures" to the three examples listed in 0060(2)(e), the provision would have needed to state: *"Providing transportation system measures, demand management or minor transportation improvements as a condition of development or through a development agreement or similar funding method."* Since 0060(2)(e) does not include such limiting language, it is reasonable to conclude that no so limitation should be imposed.

Lastly, even if 0060(2)(e) limits the "other measures" to the three listed measures, the Goodpasture Island Road Bridge improvement is a "minor transportation improvement" as that term is defined by OAR 660-0012-0005(15). Specifically, the proposed improvement does not add any through lanes to Goodpasture Island Road; rather, the proposed improvement only adds new turn lanes. The new turn lanes will provide storage for left turning queues and will channelize the westbound-to-northbound movement. Accordingly, the proposed improvement is a "minor improvement" as that term is defined by the TPR.

However, the Planning Commission does find the proposed mitigation included as zone change condition of approval #1, as described in the Hearings Official's zone change decision on pages 24 and 31 (pages 144 and 151 of the record) includes language inconsistent with the definition of "minor improvement" by requiring "... (b) widening Goodpasture Island Road east of the existing bridge to provide four travel lanes that would accommodate two eastbound left-turn lanes and single through lanes in each direction..." To remedy this error, zone change condition of approval #1 is hereby modified to read "... (b) widening Goodpasture Island Road east of the existing bridge to accommodate two eastbound left-turn lanes and single through lanes in each direction....".

As revised Condition of Approval #1 of the zone change decision will read:

Pursuant to OAR 660-012-0060(3)(c), the applicant's proposed mitigation measures #1, #2 and #3 set out below, shall be in place by the time of first occupancy of the first phase of the PUD.

Mitigation #1 – Southbound Delta Highway/Goodpasture Island Road Off Ramp - Change the lane use of the Southbound Delta Highway off ramp approach to Goodpasture Island Road to include a left-turn lane and a shared left/right-turn lane.

Mitigation #2 - Goodpasture Island Road Bridge - Widen Goodpasture Island Road to include dual left-turn lanes from Goodpasture Island Road to Northbound Delta Highway by: (a) constructing a second bridge structure north of the existing Goodpasture Island bridge over Delta Highway, such that the existing bridge would accommodate eastbound travel and the new bridge would accommodate westbound travel; (b) widening Goodpasture Island Road east of the existing bridge to accommodate two eastbound left-turn lanes and single through lanes in each direction; (c) widening the northbound Delta Highway on-ramp to two lanes to facilitate the two left-turn lanes and a lane drop to merge traffic into a single lane in advance of the existing weaving area; (d) tapering Goodpasture Island Road to the

existing width; and (e) installing traffic signal modifications to accommodate the proposed roadway changes.

Mitigation #3 – Trip Cap – The maximum development on the site shall be limited so that it would not produce more than 287 trips in the AM peak hour and 321 trips during the PM peak hour as determined by the Institute of Transportation Engineers Trip Generation Manual. The city may allow development intensity beyond this maximum number of peak hour vehicle trips only if the applicant submits to the city and ODOT a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule (TPR) at OAR 660-012-0060. The applicant shall seek and the city shall consider such approval using the city’s Type II land use application procedure.

The Planning Commission therefore finds that the modified condition of approval is consistent with the “minor transportation” definition in the event that such a determination is even necessary. The Planning Commission denies this sub-assignment of error.

- i. The Hearings Official misapplied the Transportation Planning Rule by permitting development from the proposed amendment to further degrade facilities that are already failing, and permitting the applicant to use the nondegradation standard for facilities that were not demonstrated by already failing.***

The Hearings Official addresses this issue on pages 148 and 149 of the record. City staff provided their own analysis of the applicant’s information prior to the public hearing and included this information to the Hearings Official in the zone change staff report on pages 12 and 13 (pages 985-988 of the record). The staff report concludes that the applicant’s TPR analysis did contain the necessary information to determine whether the proposed zone change can be found consistent with TPR provisions and specifically provided a table showing how the applicant’s proposed mitigation prevents further degradation (page 14 of zone change staff report, page 987 of the record). The Hearings Official correctly concluded that while there had been disagreement between City staff and the applicant regarding the application of this standard, determining which interpretation is correct is not necessary as the applicant concurs with the City’s conclusion, and provides mitigation to prevent further degradation (Hearings Official Zone Change Decision page 29, page 149 of the record).

Given the findings and modified condition of approval above, the Planning Commission concludes that the Hearings Official did not err by approving the zone change with respect to TPR. The Planning Commission concurs with the Hearings Official’s findings that the proposed zone change is consistent with OAR 660-012-0060.

With the additional findings and modified condition of approval above, the Planning Commission denies the appellant’s first zone change assignment of error.

**Appellant’s Second Zone Change Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons by imposing conditions on a zone change.***

Again, the Planning Commission finds the appellant's statement is vague and fails to identify an applicable criterion to which these arguments apply, as required by EC 9.7655(3). Nonetheless, the Planning Commission further addresses this issue as a precautionary measure in the event of additional appeals. However, the appellant's materials submitted after the initial appeal statement provides specificity regarding TPR deferral.

The appellant asserts that compliance with TPR is being deferred. This is not the case. Compliance with TPR is being provided at the time of zone change with a process in place to ensure consistency with TPR into the future. There is no deferral of compliance as asserted by the appellant. The applicant's current application must meet TPR. The future process is to ensure consistency with TPR into the future. The Type II process includes referral to ODOT along with notice and appeal timelines and is the same type of process used to modify other Type III applications such as PUD's, CUP's and Greenway Permits.

In regards to the ability to condition the zone change, EC 9.7730 provides that the Hearings Official ".....shall approve, approve with conditions, or deny a Type III application." A zone change is a Type III application. While the appellant asserts this is a general procedure and the zone change criteria do not specify that allowance, there is nothing that precludes the ability to condition the approval as set forth in other sections.

The Planning Commission finds that the EC 9.7330, Oregon Revised Statute 227.175(4) and the Land Use Board of Appeals (*Barge v. Clackamas County*, 39 Or LUBA 183 (2000), *Thomas v. Wasco County*, 30 Or LUBA 302 (1996) and *Citizens for Protection of Neighborhoods v. City of Salem*, 47 Or LUBA 111 (2004)) provide authority for the Hearings Official to impose a condition of approval on a zone change. As recently as *Willamette Oaks v. City of Eugene* (LUBA No. 2008-173) (and involving the same parties as this case) it has been found that ORS 227.215 permits the City of Eugene to impose conditions of approval on zone changes.

The Planning Commission therefore denies the appellant's second zone change assignment of error.

**Appellant's Third Zone Change Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons by approving a zone change that is inconsistent with the TransPlan under Goal 12.***

For the reasons set forth in the Zone Change Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's third zone change assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues set forth on pages 11-12 and 18-27 of the Zone Change Decision.

**Appellant's Fourth Zone Change Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons by approving a zone change that is inconsistent with the City's public facility plan under Goal 11.***

For the reasons set forth on pages 11-12 and 18-27 of the Zone Change Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's fourth zone change assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 11-12 and 18-27 of the Zone Change Decision.

**Appellant's Fifth Zone Change Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons by approving a zone change based on construction within the Willamette River Greenway that could not be permitted without a Goal exception pursuant to the Metro Plan and Willakenzie Area Plan.***

The Planning Commission finds the appellant's statement is vague and fails to identify an applicable criterion to which these arguments apply, as required by EC 9.7655(3). Nonetheless, the Planning Commission further addresses this issue as a precautionary measure in the event of additional appeals.

The Hearings Official provides Condition of Approval #20 in the PUD Decision on pages 13 and 82 that requires the applicant to apply for and receive a Willamette Greenway permit prior to development and correctly notes that the need for a Goal exception will be ripe at the time the applicant applies for the Willamette Greenway criteria.

The Planning Commission finds no evidence in the record to indicate that the Hearings official erred in approving the zone change, as the need for a goal exception will be ripe at the time of application for a Willamette River Greenway permit. The Planning Commission denies appellant's fifth zone change assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 13 and 82 of the PUD decision and 9-11 of the Zone Change Decision.

**Appellant's Sixth Zone Change Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in failing to properly apply applicable Metro Plan provisions to the proposed decision to rezone the subject property.***

- a. The Hearings Official erred by doubling the residential density on the site, without providing for adequate transportation improvements or infrastructure, and without considering the safety or mobility needs of area residents or the character of the residential neighborhood contrary to Metro Plan provisions E-4, F-4, F-10, and F-14.***
- b. The Hearings Official erred by approving a zone change that would increase building height and density in an area immediately adjacent to the Willamette River and Delta Ponds contrary to Metro Plan provisions D-5, E-4 and E-5.***
- c. The Hearings Official erred by approving a zone change with a proposed bridge and road widening in the Willamette River Greenway contrary to Metro Plan provisions D-5 and E-2.***
- d. The Hearings Official erred by failing to require the applicant to provide site-specific surveys and geological studies for areas of potential problems, or specific mitigation measures as required by Metro Plan [P]olicy C-32.***

- e. *The Hearings Official erred in assuming that the applicant will pay for its capacity impact on the system under Metro Plan policy F-36 when the applicant has not fully addressed its impact on the system, and has not provided financial commitments to address the impacts it identifies.*
- f. *The Hearings Official erred in concluding that there is adequate transportation infrastructure to service the proposed high density residential development pursuant to Metro Plan policy A-12.*
- g. *The Hearings Official erred by conflating PUD criteria with relevant Metro Plan provisions and by referencing findings associated with a particular PUD application into the zone change decision.*

For the reasons set forth in the Zone Change Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's sixth zone change assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 5-8 of the PUD decision and pages 4-8 of the Zone Change Decision.

**Appellant's Seventh Zone Change Assignment of Error:**

*The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in failing to properly apply applicable Willakenzie Area Plan policies and provisions to the proposed zone change.*

- a. *The Hearings Official erred in approving a zone change based upon street widening and bridge construction within the Willamette River Greenway, and increasing density and building height adjoining the Delta Ponds where the applicant failed to demonstrate compliance with Willakenzie Area Plan Natural Resource Area Protection Policies 1 and 10.*
- b. *The Hearings Official erred in approving a zone change including increased density and building heights adjoining the scenic Willamette River and Delta Ponds where the applicant failed to demonstrate that such an increase in size and density is consistent with the preservation of the scenic qualities of those areas as provided in Willakenzie Area Plan Greenway Policy 9.*
- c. *The Hearings Official erred in concluding that a local street size is appropriate when it is inadequate to meet future demands under the R-3 zoning as required by Willakenzie Area Plan Land Use Policy 3.*
- d. *The Hearings Official erred by conflating PUD criteria with relevant Willakenzie Area [P]lan provisions and by referencing findings associated with a particular PUD application into the zone change decision.*

For the reasons set forth in the Zone Change Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's seventh zone change assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 8-13 of the PUD Decision and pages 8-11 in the Zone Change Decision.

**Appellant's Eighth Zone Change Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in finding that the density allowed by the proposed zoning can be served through the orderly extension of transportation facilities.***

For the reasons set forth in the Zone Change Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's eighth zone change assignment of error and affirms, incorporates, and adopts the Hearings Official's findings on these issues as set forth on pages 11-12 of the Zone Change Decision.

**Appellant's Ninth Zone Change Assignment of Error:**

***The Hearings Official misinterpreted applicable law and made a decision that is not supported by adequate findings, substantial evidence or substantial reasons in approving the zone change despite the applicant having failed to meet its burden of proof as to the issues listed above.***

For the reasons set forth in the Zone Change Decision, the May 5 Staff Report, the Applicant's May 5 Letter, and the Applicant's May 19 Letter, the Planning Commission finds that appellant has not demonstrated that the Hearings Official erred. The Planning Commission denies appellant's ninth zone change assignment of error and affirms, incorporates, and adopts the Hearings Official's findings as set forth on pages 4-30 of the Zone Change Decision.

**V. CONCLUSION**

The Eugene Planning Commission has reviewed the record and the appellant's assignments of error, and has voted to affirm the decisions of the Hearings Official to approve the zone change, tentative PUD, traffic impact analysis and adjustment review requests for Goodpasture Island PUD (Z 09-6, PDT 09-1, TIA 09-4 and ARA 09-6). Additional findings and modified conditions of approval are provided in Section IV of this Final Order; the modified conditions of approval are also included below for reference.

**PUD Decision Condition of Approval #5, as modified:**

The applicant's proposed mitigation measure #5, for the installation of a traffic signal at the existing (southerly) intersection of Alexander Loop and Goodpasture Island Road, shall be omitted from the applicant's TIA Packet. The final PUD plans shall note that the applicant shall conduct a traffic study prior to construction of the final phase of PUD development to determine if any mitigation is necessary to ensure pedestrian safety at the crosswalk at the southerly intersection of Alexander Loop and Goodpasture Island Road. The traffic study shall focus on pedestrian safety and shall address possible safety improvements at the intersection including, but not limited to, pedestrian activated signals and pedestrian activated warning beacons. The traffic study shall be subject to review and approval in accordance with the City's Type II land use application procedures for Traffic Impact Analysis Review, but be limited to

consideration of potential pedestrian safety improvements. The applicant shall provide necessary mitigation prior to occupancy of the final PUD phase.

**PUD Decision Condition of Approval #14, as modified:**

The applicant shall update the geotechnical analysis it has submitted to date to address the points raised in the two GeoScience reports (dated Jan. 18, 2010 and Feb. 10, 2010) which are:

- To ensure the geotechnical report is internally consistent with respect to boring numbers and elevations
- The geotechnical report shall include information on the development site as required by Eugene Administrative Rule R-9.6710-C through H along with Exhibit A.

If necessary, the applicant shall revise its current geotechnical recommendations to be in accord with the updated information. The City shall confirm that the geotechnical analysis has addressed all of the points in the GeoScience reports prior to final PUD approval.

**Zone Change Condition of Approval #1 as modified:**

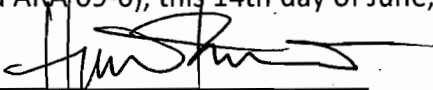
Pursuant to OAR 660-012-0060(3)(c), the applicant's proposed mitigation measures #1, #2 and #3 set out below, shall be in place by the time of first occupancy of the first phase of the PUD.

Mitigation #1 – Southbound Delta Highway/Goodpasture Island Road Off Ramp - Change the lane use of the Southbound Delta Highway off ramp approach to Goodpasture Island Road to include a left-turn lane and a shared left/right-turn lane.

Mitigation #2 - Goodpasture Island Road Bridge - Widen Goodpasture Island Road to include dual left-turn lanes from Goodpasture Island Road to Northbound Delta Highway by: (a) constructing a second bridge structure north of the existing Goodpasture Island bridge over Delta Highway, such that the existing bridge would accommodate eastbound travel and the new bridge would accommodate westbound travel; (b) widening Goodpasture Island Road east of the existing bridge to accommodate two eastbound left-turn lanes and single through lanes in each direction; (c) widening the northbound Delta Highway on-ramp to two lanes to facilitate the two left-turn lanes and a lane drop to merge traffic into a single lane in advance of the existing weaving area; (d) tapering Goodpasture Island Road to the existing width; and (e) installing traffic signal modifications to accommodate the proposed roadway changes.

Mitigation #3 – Trip Cap – The maximum development on the site shall be limited so that it would not produce more than 287 trips in the AM peak hour and 321 trips during the PM peak hour as determined by the Institute of Transportation Engineers Trip Generation Manual. The city may allow development intensity beyond this maximum number of peak hour vehicle trips only if the applicant submits to the city and ODOT a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule (TPR) at OAR 660-012-0060. The applicant shall seek and the city shall consider such approval using the city's Type II land use application procedure.

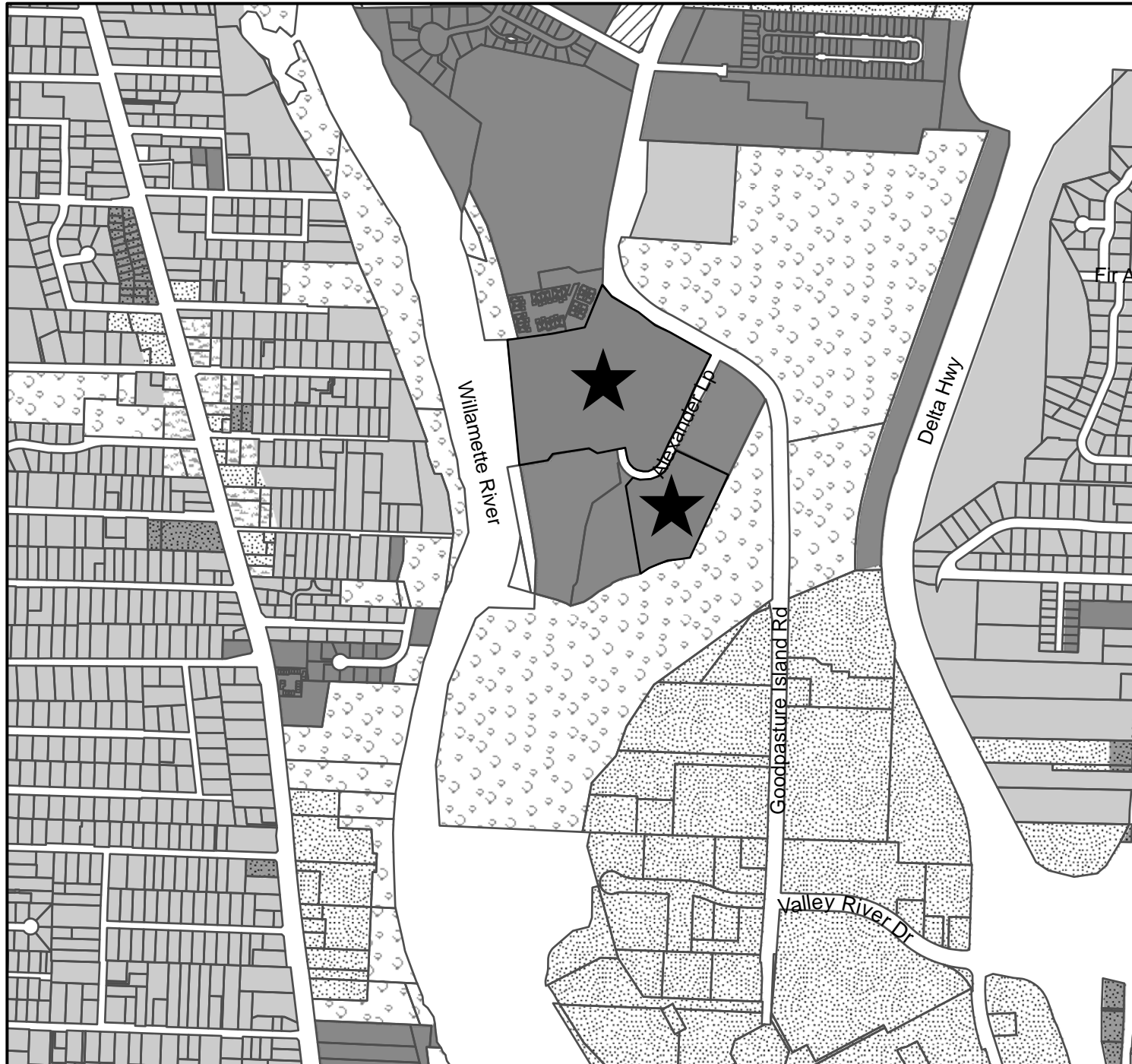
Accordingly, approval is hereby affirmed for zone change, tentative PUD, traffic impact analysis and adjustment review for Goodpasture Island PUD. The foregoing findings and conclusions are adopted as the Final Order of the Eugene Planning Commission for Goodpasture Island PUD (Z 09-6, PDT 09-1, TIA 09-4 and ARA 09-6), this 14th day of June, 2010.



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Heidi Beierle, Chair  
Eugene Planning Commission

Attachment A - Receipts and emails regarding appeal fee paid.



★ Subject Site

**Applicant's Proposal**

Proposed zone change from R-2/PD/WR Medium Density Residential with the Planned Unit Development and Water Resources overlay to R-3 Limited High Density Residential with Planned Unit Development and Water Resources overlays.

Creation of a 5 Parcel, 583-unit multi-family development with 10 apartment buildings, one age-restricted apartment building, two residential use clubhouses, a neighborhood commercial building, open space and associated infrastructure.

**Zoning**

- C-1 Neighborhood Commercial
- C-2 Community Commercial
- GO General Office
- PL Public Land
- R-1 Low Density Residential
- R-2 Medium Density Residential
- R-3 Limited High Density Residential

