



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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NOTICE OF ADOPTED AMENDMENT

10/30/2013

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 005-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, November 13, 2013

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

<paa> YA



FORM

2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **20-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

DATE STAMP	☐ In person ☐ electronic ☐ mailed
	DEPT OF
	OCT 25 2013
	LAND CONSERVATION AND DEVELOPMENT
For Office Use Only	

Jurisdiction: **City of Eugene**Local file number: **Z 13-3**Date of Adoption: **10/3/2013**Date Mailed: **9/20/2013**Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: **7/17/2013**☐ Comprehensive Plan Text Amendment☐ Comprehensive Plan Map Amendment☐ Land Use Regulation Amendment☒ Zoning Map Amendment☐ New Land Use Regulation☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Change of zoning from R-1 to R-2

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from:

to:

Zone Map Changed from: **R-1**to: **R-2/PD**Location: **89295 and 89297 Old Coburg Road**Acres Involved: **6**

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☐ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ NoDLCD file No. 005-13 (19927) [17652]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Becky Taylor**

Phone: (541) 682-5437 Extension:

Address: 99 West 10th Avenue

Fax Number: 541-682-5572

City: **Eugene**

Zip: 97404-

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

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

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

ZONE CHANGE REQUEST

INTRODUCTION

Application File Name (Numbers):

Old Coburg Road LLC (Z 13-3)

Applicant's Request:

Zone change from R-1 Low-Density Residential to R-2 Medium-Density Residential.

Subject Property/Location:

Tax Lots 500, 600, and 700 of Assessor's Map 17-03-16-41 located on the east side of Old Coburg Road, southwest of North Game Farm Road, north of Chad Drive.

Relevant Dates:

Zone change application submitted on April 23, 2013; supplemental information submitted on July 1, 2013; application deemed complete on July 11, 2013; public hearing held on September 4, 2013.

Applicant's Representative:

Carol Schirmer, Schirmer Satre Group

Lead City Staff:

Becky Taylor, Associate Planner, Eugene Planning Division.

Summary of the Public Hearing

The Hearings Official held a public hearing on this application on September 4, 2013. The Hearings Official stated he had no conflicts of interests and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing. Becky Taylor (Taylor), Associate Planner, and Gabe Flock, Senior Planner, were present for the hearings. Taylor presented the staff report at the public hearing, recommending approval of the zone change request and also recommended that a planned unit development (PD) overlay be applied to the property.¹

The applicant's representative, Carol Schirmer, provided a brief overview of the subject property and the requested zone change. Schirmer generally agreed with staff's conclusions,

¹ The staff report stated that city staff took no position on whether the PD overlay was required. At the public hearing, however, staff clarified that it believed the overlay was required.

but argued that the PD overlay was not required. The applicant's traffic engineer explained the conclusions from the traffic impact analysis (TIA). Opponents argued against the zone change request, primarily because of traffic issues and effects on property values. At the conclusion of the public hearing, the Hearings Official closed the record.

FACTS

The subject property is 6.2 acres of vacant land located on the east side of Old Coburg Road, just south of the intersection of Old Coburg Road and North Game Farm Road, north of Chad Drive. The applicant requests that the property be rezoned from R-1 Low-Density Residential to R-2 Medium-Density Residential. The Metro Plan designation for the property is Medium Density Residential. The property is largely surrounded by I-1 Campus Industrial land, and there is an area of R-1 Low-Density Residential land abutting the northwest area of the property. The property's former plan designation was Campus Industrial, but the plan designation was changed to Medium Density Residential in 2007. The proposed zone change seeks to bring the zoning into compliance with the plan designation.

DOCUMENTS CONSIDERED BY THE HEARINGS OFFICIAL

I have considered all of the documents in the planning file for the proposed zone change (Z 13-3) as well as the exhibits submitted and testimony provided at the public hearing.

ANALYSIS

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

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

- "(1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.
- "(2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.
- "(3) The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.
- "(4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in:
* * * * *
- "(f) EC 9.2735 Residential Zone Siting Requirements. * * * * *

- “(5) In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the city to ensure the area is maintained as a natural resource area for a minimum of 50 years.”

EC 9.8865(1)

EC 9.8865(1) requires that the proposed zone change be consistent with applicable provisions of the Metro Plan. The most obviously applicable provision of the Metro Plan is the plan designation for the property. The plan designation was changed from Campus Industrial to Medium Density Residential in 2007. The R-2 Medium-Density Residential zone implements the Medium Density Residential plan designation. Therefore, the proposed zone change is consistent with the plan designation.

The applicant identified several potentially applicable Metro Plan policies and explained why the proposed zone plan is consistent with those policies. Those policies include Residential Land Use and Housing Element Policies A. 9, A. 10, A. 11, A. 13, A. 16, A.17, and A. 22; Economic Policy B. 2; and Transportation Policy F. 3. There was no contrary evidence submitted or testimony provided that specifically addressed any of these policies. I agree with the applicant's conclusions and adopt the findings regarding these policies provided in pages 5-7 of the April 23, 2013 zone change application submitted by applicant's planners.² Opponents provided no other argument that the proposed zone change is inconsistent with the Metro Plan. Therefore, I find that the proposed zone change is consistent with the provisions of the Metro Plan and that EC 9.8865(1) is satisfied.

EC 9.8865(2)

EC 9.8865(2) requires that the proposed zone change be consistent with the applicable adopted refinement plans. In the present case, the applicable refinement plans include the Willakenzie Area Plan (WAP) and also the Coburg/Crescent Subarea of the WAP. The applicant identified several potentially applicable WAP policies and explained why the proposed zone change is consistent with those policies. Those policies include Land Use Policies and Proposed Actions – General Policy 1; and Residential Policies and Proposed Actions – Residential Policies 4 and 5. There was no contrary evidence submitted or testimony provided that specifically addressed any of these policies. I agree with the applicant's conclusions and adopt the findings regarding these policies provided on page 8 of the April 23, 2013 zone change application submitted by applicant's planners.

While I agree with the applicant that the proposed zone change is consistent with those provisions of the WAP, the zone change must also be consistent with any provisions applicable to the Coburg/Crescent Subarea. Staff identified Policy 5 from the Coburg/Crescent Subarea, which provides:

² As discussed below, I do not agree with the applicant's conclusion that OAR 660-012-0060(9) provides an exception to other requirements of the Transportation Planning Rule.

"The City of Eugene shall require that planned unit development procedures be required for all residential developments within the Coburg/Crescent subarea. The intent of this requirement is to ensure adequate review of the following factors:

- "A. Development of a comprehensive street network;
- "B. Provision of pedestrian and bicycle linkages between residential, commercial, industrial, educational, and recreational areas;
- "C. Encourage a variety of dwelling types, heights, and setbacks;
- "D. Provision of adequate and attractive buffering between residential, commercial, and industrial developments, and
- "E. Provision of pedestrian linkages to transit stops where practical."

Policy 5 provides that the City "shall require that [PD] procedures be required for all residential developments" in the subarea. The PD procedures are found at EC 9.8300 – 9.8375. The applicant argues that the language of Policy 5 predates the updating of the EC, and that the revised EC more than adequately addresses the factors listed as the intent of Policy 5 without having to use the PD overlay. The applicant also argues that other provisions of the WAP specifically state that certain overlay zones should be applied, while the language of Policy 5 merely states that the city "shall require that [PD] procedures be required." According to the applicant, that means PD procedures could be applied without a PD overlay. The applicant also states that the PD overlay would greatly increase the cost of any development projects and add extra opportunities for potential appeal.

Even though the language of Policy 5 does not specifically state that a PD overlay is required, it certainly requires that PD procedures be imposed. By using the word "shall," Policy 5 makes such procedures mandatory rather than aspirational or discretionary. EC 9.4310 (Applicability of PD Overlay) provides that: "The /PD overlay zone applies to all property where /PD is indicated on the Eugene overlay zone map, *or when the PUD process is required by an adopted refinement plan.* * * *" (Emphasis added.) EC 9.8305(1) (Applicability of PD Tentative Plan) provides that the PD provisions shall be applied when, among other things: "The proposal is subject to review and approval through *the PUD process according to an adopted refinement plan* * * *" (Emphasis added.)

As the applicability provisions demonstrate, the EC does not anticipate a PD overlay only when a refinement plan specifically requires the overlay itself, but also when a refinement plan requires a "PUC process." I do not see that there is any difference between a "PUD process" and the "PUD procedures" required by Policy 5. Even though Policy 5 does not specifically require imposition of an overlay zone, it does require the imposition of PUD procedures, and the EC makes clear that the manner in which PUD procedures are accomplished is through the PD overlay zone. While I sympathize with the applicant's position and would likely not impose the PD overlay if it were discretionary, I do not believe the applicable provisions provide a choice as to whether the PD may be applied.

Therefore, I find that EC 9.8865(2) is satisfied with the imposition of the PD overlay.

EC 9.8865(3)

EC 9.8865(3) requires that the uses and densities allowed by the proposed zoning can be served through the orderly extension of key urban facilities and services. Key urban facilities and services are defined in the Metro Plan as: wastewater service, stormwater service, transportation, water service, fire and emergency medical services, police protection, city-wide parks and recreation programs, electric service, land use controls, communication facilities, and public schools. In a public works referral response dated May 8, 2013, staff determined that key urban facilities and services are available to serve the proposed uses and densities. Other than traffic issues, there was no argument that EC 9.8865(3) was not satisfied.³ I agree with staff and the applicant's findings that the proposed uses and densities can be served through the orderly extension of key urban facilities and services. Therefore, I find that EC 9.8865(3) is satisfied.

EC 9.8865(4)

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

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

The proposed zone change is from R-1 to R-2 and not R-1.5. Thus, EC 9.275 is not applicable to the current application. Therefore, I find that EC 9.8865(4) is satisfied.

EC 9.8865(5)

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

Transportation Planning Rule

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

"(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly

³ I address the transportation and traffic issues below.

affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- “(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- “(b) Change standards implementing a functional classification system; or
- “(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.
 - “(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - “(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
 - “(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

If a proposed zone change would “significantly affect an existing or planned transportation facility” then certain measures must be put in place to approve the zone change. Initially, the applicant argues that it was not required to undergo the analysis of OAR 660-012-0060(1) because it qualified for an exception under OAR 660-012-0060(9), which provides:

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

- “(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

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

There is no dispute that subsections (a) and (c) of OAR 660-012-0060(9) are satisfied. The proposed zone change is consistent with the plan designation, and the property was not exempted from the TPR as part of an urban growth boundary amendment. The proposed zoning, however, is not consistent with the transportation system plan (TSP). The City's TSP, TransPlan, was last amended in 2001. In 2001, the subject property was still designated Campus Industrial. Although the Metro Plan was amended to change the plan designation for the subject property from Campus Industrial to Medium Density Residential in 2007, TransPlan was not amended. Thus, the proposed zoning is not consistent with the TSP.

The applicant argued, among other things, that because it demonstrated that there was no significant effect on a transportation facility during the plan change decision in 2007, that the proposed zoning is consistent with the TSP. After discussions in which staff indicated the exception would not apply, the applicant conducted a TIA in order to that demonstrate that there was no significant effect on a transportation facility. Because the applicant conducted a TIA and seeks to demonstrate compliance with OAR 660-012-0060(1), it no longer argues that it is entitled to an exception under OAR 660-012-0060(9).⁴

The applicant's traffic engineer conducted a detailed TIA regarding the proposed zone change. The TIA analyzed the traffic differences between the current R-1 Low-Density Residential zoning and full build out under the proposed R-2 Medium-Density Residential zoning. The TIA analyzed three intersections to determine whether the proposed zone change would have a significant effect on a transportation facility. The three intersections are Crescent Avenue and North Game Farm Road, Chad Drive and Shadowview Road, and North Game Farm Road and Old Coburg Road. The TIA determined that there would be minimal impact on the studied intersections and the transportation system and that the proposed zone change would not significantly affect a transportation facility under the TPR. Staff concurred with applicant's traffic engineer that the proposed zone change would not significantly affect a transportation facility.

The only opponent's evidence or testimony that could be construed to challenge the findings in the TIA, came from Judith Van (Van). Van asserted that the nearby intersections of Coburg Road and Chad Drive and North Game Farm Road and Beltline Highway are already

⁴ If the applicant had argued that it was entitled to the OAR 660-012-0060(9) exception, I would agree with staff's conclusion that the proposed zone change is not consistent with the TSP and therefore does not satisfy OAR 660-012-0060(9)(b).

overburdened with traffic and are hazardous. The applicant's traffic engineer explained that those intersections were not considered in the TIA because so few trips would be generated that would reach those intersections. According to the traffic engineer, the trips generated by the proposed zone change would be so dispersed as to have a negligible impact on those intersections. Staff also clarified that under city scoping requirements that the intersections were not required to be considered for purposes of the TPR. I agree with the applicant's traffic engineer and staff that those intersections did not need to be considered.

I further agree with the findings of the applicant's traffic engineer and staff regarding compliance with the TPR and adopt the findings contained in the July 1, 2013 TIA (except for the finding regarding compliance with OAR 660-012-0060(9)) and the August 5, 2013 staff TPR analysis. Therefore, I find that the proposed zone change complies with the TPR.

Other Challenges

Opponents raised a number of other issues that they argued should result in denial of the proposed zone change. Opponents were particularly concerned about increased traffic in the area. Except as discussed above under the TPR, the arguments regarding increased traffic were not directed at any particular approval criterion. To the extent they addressed EC 9.8865(3) regarding provision of key facilities and services, the arguments were anecdotal and were not sufficient to overcome to evidence presented in the TIA. As the TIA demonstrates, the changes in traffic expected to be generated by the proposed zone change are very minimal and do not run afoul of EC 9.8865(3) or any other approval criterion.

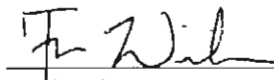
Opponents also argued that the proposed zone change would cause noise and light pollution, raise costs in the area, cause a glut of apartment units, and cause a decrease in property values. While some of those concerns, such as light pollution, will be addressed during any subsequent development proposal, opponents have not established that any of these concerns apply to any of the approval criteria for a zone change, and I do not see that they do. Therefore, I find no reason to deny the application on those grounds. While I sympathize with the opponents' desire to keep the area in its less developed state, the property is planned for Medium Density Residential, and the proposed zone change brings the zoning into compliance with the plan while meeting all of the approval criteria for a zone change.

DECISION

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant's request for a zone change from R-1 Low-Density Residential to R-2 Medium-Density Residential zoning and applies a PD overlay to the subject property.

Dated this 18th day of September, 2013.

Mailed this 20 day of September, 2013.



Fred Wilson
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS



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Planning**

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