



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

AMENDED NOTICE OF ADOPTED AMENDMENT

November 6, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Medford Plan Amendment
DLCD File Number 011-07



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: November 21, 2007

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
Praline McCormack, City of Medford

<paa> ya/

PROP **2**

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DATE STAMP
DEPT OF
NOV 02 2007
LAND CONSERVATION AND DEVELOPMENT
For DLCD Use Only

Jurisdiction: **City of Medford**

Local file number: **ZC-06-018**

Date of Adoption: **10/25/2007**

Date Mailed: **10/31/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 8/29/2007

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".

Order ratifying the city planning commission's decision of April 27, 2006 granting approval of a request for changing the zoning from SFR-4/EA (Single-Family Residential - 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single-Family Residential - 4 units per acre) zoning district on the southerly 7.23-acre portion of a 25.58-acre parcel located approximately 1000 feet north of Lone Pine Road.

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

Plan Map Changed from:

to:

Zone Map Changed from: **SFR-4/EA**

to: **SFR-4**

Location: **West of Foothill Rd., ~1000' north of Lone Pine**

Acres Involved: **7**

Specify Density: Previous: **4 units per acre**

New: **4 units per acre**

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...

45-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 No

DLCD # 011-07(16363)

DLCD file No. _____

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

011-07

Local Contact: **Praline McCormack, Planner II**

Phone: (541) 774-2380 Extension:

Address: 200 S. Ivy

Fax Number: 541-774-2564

City: Medford

Zip: 97501-

E-mail Address:

praline.mccormack@cityofmedford.org

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**

per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:

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

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: webserver.lcd.state.or.us. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing mara.ulloa@state.or.us.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

BEFORE THE MEDFORD PLANNING COMMISSION

STATE OF OREGON, CITY OF MEDFORD

IN THE MATTER OF PLANNING COMMISSION FILE)
ZC-06-18 APPLICATION FOR A ZONE CHANGE SUBMITTED) **ORDER**
BY CEDAR LANDING LLC)

ORDER ratifying the city planning commission's decision of April 27, 2006 granting approval of a request for changing the zoning from SFR-4/EA (Single Family Residential – 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single Family Residential – 4 units per acre) zoning district on the southerly 7.23-acre portion of a 25.58-acre parcel located approximately 1000 feet north of Lone Pine Road.

WHEREAS, the Land Use Board of Appeals remanded the city planning commission's April 27, 2006 decision approving ZC-06-18 and directed the city to give notice to DLCD of the zoning map amendment, and allow DLCD the time provided in ORS 197.610(1) to provide notice to persons who have requested notice that the zone map amendment was pending.

WHEREAS, on August 29, 2007, the city sent notice of the zoning map amendment ZC-06 to DLCD pursuant to ORS 197.610(1).

WHEREAS, the city planning commission in the public interest has given consideration to changing the zoning of real property described below from SFR-4/EA (Single Family Residential – 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single Family Residential – 4 units per acre) zoning district on the southerly 7.23-acre portion of a 25.58-acre parcel located approximately 1000 feet north of Lone Pine Road; and

WHEREAS, the city planning commission has given notice of, and held, a public hearing, and after considering all the evidence presented hereby adopts the Planning Commission Staff Report dated February 22, 2006, Applicant's Findings – Exhibit "A," and Legal Description – Exhibit "B" attached hereto and hereby incorporated by reference; now, therefore,

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MEDFORD, OREGON, that:


The zoning of the following described area within the City of Medford, Oregon:

37 1W 16AB Tax Lot 1400

is hereby changed from SFR-4/EA (Single Family Residential – 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single Family Residential – 4 units per acre) zoning district.

Accepted and approved this 25th day of October, 2007.

CITY OF MEDFORD PLANNING COMMISSION


Planning Commission Chair

ATTEST:


Planning Department Representative



Planning Department

Continuous Improvement – Customer Service

City Hall – Lausmann Annex • Room 240 • 200 South Ivy Street • Medford, Oregon 97501

October 31, 2007

Cedar Landing LLC
3155 Cedar Links Dr
Medford, OR 97504

RE: FILE NO.: ZC-06-018

The Medford Planning Commission at its regular meeting of October 25, 2007, approved the Final Order containing Findings of Fact relating to the approval of the following request: Order ratifying the city planning commission's decision of April 27, 2006 granting approval of a request for changing the zoning from SFR-4/EA (Single-Family Residential - 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single-Family Residential - 4 units per acre) zoning district on the southerly 7.23-acre portion of a 25.58-acre parcel located approximately 1000 feet north of Lone Pine Road.

This request was granted as per Staff Report dated October 16, 2007.

The final date for filing an appeal is 21 days from the date of the decision. The written appeal and filing fee must be received by the City Recorder no later than 5:00 p.m. on November 15, 2007. Appeals must be filed in the form prescribed, and will be decided based upon Medford Code Sections 10.051-10.056 (copies available).

Robert O. Scott, AICP
Planning Director

kg

Enclosure: Staff Report/Final Order/Legal Description

cc: Hoffbuhr & Associates, 880 Golf View Drive, Ste 201, Medford, Or 97504
Affected Agency
Interested Parties



City of Medford

STAFF REPORT

Date: October 16, 2007
To: Planning Commission
From: Kelly Akin, Senior Planner *ka*
By: Praline McCormack, Planner II *pm*
Subject: Cedar Landing Zone Change Remand Hearing (ZC-06-018)
Cedar Landing, LLC, Applicants (Hoffbuhr & Associates, Inc., Agent)

Background

Proposal

Zoning overlay removal before the City on remand from the Land Use Board of Appeals (LUBA). The hearing is being held to receive testimony or other evidence from DLCD (if DLCD elects to participate) and from those persons notified by DLCD, and to receive any response to those comments from the applicant and any interested persons. The application in question requested a change of zone from SFR-4/EA (Single-Family Residential – 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single-Family Residential – 4 units per acre) zoning district on the southern 7.23-acre portion of a 25.58-acre parcel located approximately 1000 feet north of Lone Pine Road.

Related Projects

Cedar Landing Preliminary Planned Unit Development (PUD-05-35) with tentative plat of the following related subdivisions: LDS-05-36 (Cascade Terrace), LDS-05-37 (Sky Lakes Village), LDS-05-38 (The Village), and LDS-05-39 (High Cedars) approved by the Planning Commission on April 27, 2006.

Background

The Planning Commission adopted the Final Order granting approval of the zone change on April 27, 2006 (Exhibit "A"). Opponents filed an appeal of the approval decision to the City Council, and the appeal was heard on June 15, 2006 (Exhibit "B"). The City Council denied the appeal and upheld the Planning Commission findings. Opponents then filed an appeal to the Land Use Board of Appeals (LUBA). LUBA's Final Opinion and Order were issued on February 1, 2007 (Exhibit "C"). Opponents argued that the City made three assignments of error. LUBA agreed with only one. The City failed to

provide notice to the Department of Land Conservation and Development (DLCD) of the zoning map amendment to remove the EA (Exclusive Agriculture) overlay from a portion of the property, as required by ORS 197.610(1) (Page 7 of Exhibit "C").

LUBA determined that the failure to provide said notice requires remand, and that is the purpose of this remand hearing. The City has notified DLCD and has allowed the time provided in ORS 197.610(1) for DLCD to provide notice to persons who have requested such notice from DLCD. This hearing is being held to receive testimony or other evidence from DLCD (if DLCD elects to participate) and from those persons notified by DLCD, and to receive any response to those comments from the applicant and any interested persons. This hearing is not intended to provide a forum for additional testimony from those individuals who previously testified or had an opportunity to testify in the original hearings on this zone change except as their comments may be in response to testimony or evidence presented by DLCD or persons notified by DLCD.

Exhibits

- "A" Final Order dated April 27, 2006 and Staff Report dated February 22, 2006
- "B" Excerpt from City Council Minutes of June 15, 2006
- "C" LUBA Final Opinion and Order dated February 1, 2007 (LUBA No. 2006-132)

PLANNING COMMISSION AGENDA: October 25, 2007**April 27, 2006****April 13, 2006****March 23, 2006****March 1, 2006****December 14, 2005**

BEFORE THE MEDFORD PLANNING COMMISSION

STATE OF OREGON, CITY OF MEDFORD

IN THE MATTER OF PLANNING COMMISSION FILE)
ZC-06-18 APPLICATION FOR A ZONE CHANGE SUBMITTED) ORDER
BY CEDAR LANDING LLC)

ORDER granting approval of a request for changing the zoning from SFR-4/EA (Single Family Residential – 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single Family Residential – 4 units per acre) zoning district on the southerly 7.23-acre portion of a 25.58-acre parcel located approximately 1000 feet north of Lone Pine Road.

WHEREAS, the city planning commission in the public interest has given consideration to changing the zoning of real property described below from SFR-4/EA (Single Family Residential – 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single Family Residential – 4 units per acre) zoning district on the southerly 7.23-acre portion of a 25.58-acre parcel located approximately 1000 feet north of Lone Pine Road; and

WHEREAS, the city planning commission has given notice of, and held, a public hearing, and after considering all the evidence presented hereby adopts the Planning Commission Staff Report dated February 22, 2006, Applicant’s Findings – Exhibit “A,” and Legal Description – Exhibit “B” attached hereto and hereby incorporated by reference; now, therefore,

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MEDFORD, OREGON, that:

The zoning of the following described area within the City of Medford, Oregon:

37 1W 16AB Tax Lot 1400

is hereby changed from SFR-4/EA (Single Family Residential – 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single Family Residential – 4 units per acre) zoning district.

Accepted and approved this 27th day of April, 2006.

CITY OF MEDFORD PLANNING COMMISSION


Planning Commission Chair

ATTEST:


Planning Department Representative

A
ZC-06-18

City of Medford

February 22, 2006

STAFF REPORT

File No.: ZC-06-18

Applicant: Cedar Landing L.L.C. (Hoffbuhr & Associates, Inc., Agent)

Request: Consideration of a request for a change of zone from SFR-4/EA (Single Family Residential – 4 units per acre/Exclusive Agricultural Overlay) to SFR-4 (Single Family Residential – 4 units per acre) zoning district on the southerly 7.23-acre portion of a 25.58-acre parcel located approximately 1000 feet north of Lone Pine Road.

BACKGROUND:

A memorandum from the City Attorney (Exhibit "B") provides a detailed history, prescribed process and legal analysis applicable to the removal of the subject E-A (Exclusive Agricultural) Overlay and the concurrent applications for the Cedar Landing Planned Unit Development (PUD-05-35etal).

RELEVANT SECTIONS OF THE LAND DEVELOPMENT CODE:

The zone change criteria that is not relevant to this particular application is hereby omitted from the following citation. Section 10.227 of the Land Development Code states the following:

"The approving authority (Planning Commission) shall approve a quasi-judicial zone change if it finds that the zone change complies with subsections (1) and (2) below:

1. *The proposed zone is consistent with the Oregon Transportation Planning Rule (OAR 660) and the General Land Use Plan Map designation. (When the City of Medford's Transportation System Plan (TSP) is adopted, a demonstration of consistency with the acknowledged TSP will assure compliance with the Oregon Transportation Planning Rule.) Where applicable, the proposed zone shall also be consistent with the additional locational standards of the below sections (1)(a), and (1)(b), (1)(c), or (1)(d). Where a special area plan requires a specific zone, any conflicting or additional requirements of the plan shall take precedence over the locational criteria below.*
2. *It shall be demonstrated that Category A urban services and facilities are available or can and will be provided, as described below, to adequately serve the subject property with the permitted uses allowed under the proposed zoning, except as provided in subsection (c) below. The minimum standards for Category A services and facilities are contained in the MLDC and Goal 3, Policy 1 of the Comprehensive Plan "Public Facilities Element."*

(a) Storm drainage, sanitary sewer, and water facilities must already be adequate in condition, capacity, and location to serve the property or be extended or otherwise

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February 22, 2006

improved to adequately serve the property at the time of issuance of a building permit for vertical construction.

(b) Adequate streets and street capacity must be provided in one of the following ways:

(i) Streets which serve the subject property, as defined in Section 10.461(2), presently exist and have adequate capacity;

(c) In determining the adequacy of Category A facilities, the approving authority (Planning Commission) may evaluate potential impacts based upon the imposition of special development conditions attached to the zone change request.

FINDINGS:

The applicant's Findings of Fact and Conclusions, received February 2, 2006, are hereby incorporated by this reference and attached hereto as Exhibit "A." The applicant's findings include a discussion of the above zone change criteria with additional comments pertaining to the removal of the E-A (Exclusive Agricultural) Overlay.

PROJECT REVIEW:

Comprehensive Plan/Transportation Planning Rule:

The proposal is consistent with the General Land Use Plan (GLUP) Map in that the subject area is designated Urban Residential (UR); The change of zone is from SFR-4/EA to SFR-4; the SFR-4 zoning district is allowed within the UR designation.

As per pages 3 through 7 of the applicant's Findings of Fact and Conclusions (Exhibit "A"), this proposal can be found to be consistent with the Oregon Transportation Planning Rule (OAR 660), the City of Medford's adopted Transportation System Plan (TSP) and the General Land Use Plan Map designation. While criteria relating to facility adequacy is not largely applicable to this zone change application, the applicant has included a Traffic Impact Analysis prepared by JRH Transportation Engineering (Exhibit "B") as a precaution to assure that the removal of the E-A Overlay will not place any resulting impacts upon the transportation system and is thereby consistent with the TPR and the TSP.

Location Standards

The location standards applicable to residential zone changes are not applicable to this request as the current SFR-4 zoning district is the default classification for the Urban Residential (UR) land use designation.

Exclusive Agriculture

As substantiated on pages 11 through 13 in the Findings of Fact and Conclusions (Exhibit "A"), the subject 7.23-acre ± property has not been necessary to preserve agricultural lands or

ZC-06-18

February 22, 2006

agricultural uses within the City's urban environment for at least, a 20-year time period. As has been stated in the record, the City ordered the removal of the E-A Overlay by way of a 1986 land use action. The evidence provided in this application demonstrates, for a second time, that the removal of the E-A Overlay is consistent with *Statewide Planning Goal 14* (Urbanization) requiring an orderly transition from rural land uses to urban land uses on the subject property and that the subject change is also consistent with the Urbanization Element of the *City of Medford Comprehensive Plan*.

Urban Services and Facilities:

The "Public Facilities Element" of the Comprehensive Plan lists two categories of public facilities. Category "A" facilities include sanitary sewer, storm drain, and water systems; and transportation (streets). These facilities are the minimum necessary to support development and must, therefore, be available or made available upon development.

Category "B" facilities include fire and police protection, parks, schools, solid waste management (garbage), and health services. These facilities enhance and protect development within the city and are provided in response to development that occurs, rather than prior to approval of development. No findings regarding availability of Category "B" facilities are, therefore, required prior to approval of this zone change application.

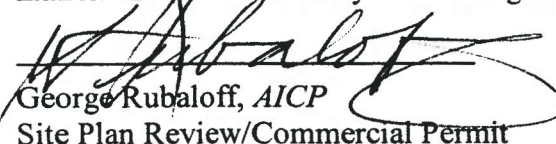
Category "A" Facilities

The residential zoning is established for the subject area and the respective agencies have stated that there is no need to demonstrate the adequacy of Category "A" public facilities to support the removal of the E-A Overlay; however, consistent with the Transportation Planning Rule, an analysis and discussion is included in the application relating to street facilities.

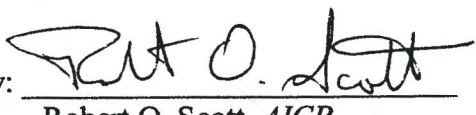
RECOMMENDED ACTION:

Direct staff to prepare a Final Order for the next meeting for approval of ZC-06-18 as per the Staff Report dated February 22, 2006 including:

- Exhibit "A" Findings of Fact and Conclusions received February 2, 2006;
- Exhibit "B" JRH Traffic Impact Analysis received February 7, 2006;
- Exhibit "C" Memorandum from the City Attorney dated February 14, 2006;
- Exhibit "D" Memorandum from the Public Works Department dated February 15, 2006;
- Exhibit "E" E-A Overlay Zone Change Map received February 21, 2006.


George Rubaloff, AICP
Site Plan Review/Commercial Permit

Reviewed by:


Robert O. Scott, AICP
Planning Director

PLANNING COMMISSION AGENDA: MARCH 1, 2006

BEFORE THE PLANNING COMMISSION
FOR THE CITY OF MEDFORD, OREGON

IN THE MATTER OF AN APPLICATION)	
FOR REMOVAL OF AN "EA" OVERLAY)	
ON PROPERTY DESCRIBED AS T.37S-)	FINDINGS OF FACTS
R.1W-SEC. 16, TAX LOT 1400, LOCATED)	AND
NORTH OF EUCALYPTUS DRIVE, WEST)	CONCLUSIONS
OF FOOTHILL ROAD; CEDAR LANDING)	
LLC, APPLICANTS; HOFFBUHR & ASSO-)	
CIATES, INC. AGENTS)	

RECEIVED

FEB 02 2006

PLANNING DEPT.

Property Owners: Monty & Theresa Jantzer
3535 Cedar Links Dr.
Medford, OR 97504

Applicants: Cedar Landing, LLC
3155 Cedar Links Dr.
Medford, OR 97504

Agents: Hoffbuhr & Associates, Inc.
880 Golf View Drive, Ste. 201
Medford, OR 97504

Consultants: Richard Stevens & Associates, Inc.
PO Box 4368
Medford, OR 97501

CITY OF MEDFORD **A 11**
 EXHIBIT # _____
 File # 16-06-18

Purpose:

A portion of the subject site contains an Exclusive Agriculture (EA) Overlay for the City of Medford. The EA overlay, at the time of submission, was not identified on the 2004 zoning map distributed by the City, however, the 2005 zoning map (4/1/2005) does reflect the EA overlay and after this date the applicant was then notified. This area was estimated to be approximately 16 acres with the previous reviews by the City, however, the actual acreage is 7.23 acres. This is based on the legal description prepared for this application. This EA Overlay is identified on the Official Zoning Map for the City of Medford. The applicants are requesting a minor revision to the City of Medford Zoning Map for the removal of the EA Overlay. Based on discussions and communications with Medford Planning Staff and the City Attorney's office, the appropriate mechanism for removal of the "EA" overlay is the zone change standards found in Sections 10.225-10.227, MLDC.

The EA overlay was established in December, 1986 with the City wide revision to the Zoning Map and applicable sections of the Code. The Conditional Use Permit approval (File No. CUP-86-4) for the Cedar Links Golf Course occurred in September, 1986, which required removal of the EA district prior to construction. This overlay was placed on a portion of the subject site, approximately 3 months after the review and approval of CUP 86-4 by the City of Medford. Upon discussions with Planning Staff, Mr. Mark Gallagher, this may have been an oversight to remove the EA Overlay and revise the Zoning Map upon the applicants construction and development of Cedar Links Golf Course.

APPLICABLE STANDARDS

In order to approve a Zoning Map amendment, the applicant must submit findings addressing Sections 10.225 - 10.227 of the Medford Land Development Code. A review of Section 10.226 identifies that an application for a change of zoning must contain the following:

1. A vicinity map, identifying the proposed area to be changed.
2. An assessor's map with the proposed zone change area identified.
3. Legal description of the area to be changed, prepared by a licensed surveyor or title company.
4. Property owner's names, addresses and map and tax lot numbers within 200 feet of the subject property, typed on mailing labels.
5. Findings prepared by the applicant or his representative addressing the criteria for zone changes as per Section 10.227, Zone Change Criteria.

FINDING:

The Planning Commission finds that this application for a request to remove the "EA" overlay on the Zoning Map on the subject site, with the information presented in support of the application, is consistent with the criteria for submission as required above, accompanied with the applicable maps, the legal description of the area to be changed, and the names and addresses of all adjacent properties within 200 feet typed on mailing labels, and findings consistent with the requirements of Section 10.227 MLDC.

**FINDINGS IN COMPLIANCE WITH SECTION 10.227 OF THE
MEDFORD LAND DEVELOPMENT CODE:**

Section 10.227 provides that the approving authority (Planning Commission) **shall** approve a quasi-judicial zone change if it finds that the zone change complies with subsections (1) and (2) below:

- (1) The proposed zone is consistent with the Oregon Transportation Planning Rule (OAR 660) and the General Land Use Plan Map designation. (When the City of Medford's Transportation System Plan (TSP) is adopted, a demonstration of consistency with the acknowledged TSP will assure compliance with the Oregon Transportation Planning Rule.) Where applicable, the proposed zone shall also be consistent with the additional locational standards of the below section (1)(a), (1)(b), (1)(c), or (1)(d). Where a special area plan requires a specific zone, any conflicting or additional requirements of the plan shall take precedence over the locational criteria below.
- (2) It shall be demonstrated that Category A urban services and facilities are available or can and will be provided, as described below, to adequately serve the subject property with the permitted uses allowed under the proposed zoning except as provided in subsection c) below. The minimum standards for Category A services and facilities are contained in the MLDC and Goal 3, Policy of the Comprehensive Plan "Public Facilities Element."

Consideration of the above criteria shall be based upon the eventual development potential for the area, and the specific zoning district being considered.

1. CONSISTENCY WITH OAR 660, DIVISION 12: TRANSPORTATION

Chapter 660, Division 12 of the Oregon Administrative Rules provides for implementation of the Statewide Transportation Goal (Goal 12). It is also designed to explain how local governments and state agencies responsible for transportation planning can demonstrate compliance with other statewide planning goals, and to identify how transportation facilities are provided on rural lands consistent with the goals.

The Transportation Planning Rule directs local governments to incorporate transportation planning processes that will:

- A. Consider all modes of transportation including rapid transit, air, water, rail, highway, bicycle and pedestrian.
- B. Inventory local, regional, and state transportation needs.

- C. Consider the social consequences that would result from using different combinations of transportation modes.
- D. Avoid total reliance upon any one mode of transportation.
- E. Minimize adverse social, economic, and environmental impacts and cost;
- F. Conserve energy;
- G. Meet the needs of the transportation disadvantaged by the improving service;
- H. Facilitate the flow of goods and services so as to strengthen the local and regional economy;
- I. Conform with local and regional comprehensive plans.

More specifically, there are provisions within the chapter that apply specifically to Comprehensive Plan and Land Use Regulation Amendments.

These provisions are contained in OAR 660-012-0060, which states:

“1) Amendments to functional plans, acknowledged comprehensive plans and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ration, etc.) of service of the facility. This shall be accomplished by either:

- a) Limiting allowed land uses to be consistent with the planned function, capacity, and performance standards of the transportation facility;**
- b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;**
- c) Altering land use designations, densities or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or**
- d) Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multi modal travel choices are provided.**

2) A plan or land use regulation amendment significantly affects a transportation facility if it:

a) Changes the functional classification of an existing or planned transportation facility;

b) Changes standards implementing a functional classification system;

c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.

3) Determinations under subsections 1 and 2 of this section shall be coordinated with affected transportation facility and service providers and other affected local governments.

Discussion:

I. Existing Transportation Facilities:

An overview of existing transportation facilities that would provide service to the subject property indicates that ground transportation via existing City designated residential, collector and arterial streets is the sole transportation facility that is affected by this amendment to the zoning map.

The site does not have access to rail, light rail, water, or other alternative transportation facilities or services. Pedestrian and bicycle access will be made available via the sidewalks and bicycle lanes in the immediate vicinity; the future improvement of Cedar Links Drive and Foothill Road will provide these additional improvements in this area. The site is accessible by motor vehicle Cedar Links Drive and Foothill Road.

II. Transportation Planning Issues:

An evaluation of the subject property and the orientation, location and size of the existing structural development, as well as the existing and historic uses of the properties, indicates that there are basically two transportation issues that should be addressed:

1. The first planning issue is access management, involving the size, location, orientation and control of the access onto Cedar Links Drive and Foothill Road; and
2. Trip generation potential, and if that trip generation will result in a significant effect on the function, capacity, or performance standards on Cedar Links Drive, Foothill Road or Springbrook Road or any new residential streets.

1. Access Management:

The subject property is located adjacent to Cedar Links Drive (designated as a collector street) and Foothill Road (designated as an arterial street). The future development of this site will take access from these roadways. The development plan for the site will conform with all access management and location requirements of the City of Medford and Jackson County to insure adequate and effective Access Management.

This issue will be addressed during the Tentative Plat/Planned Unit Development review process. The applicant submits that this requested change on the zoning map will not have a significant effect on the access management for the transportation facility serving the site.

2. Trip Generation Potential:

Existing and potential uses on this property is in essence already documented, and the traffic counts on Cedar Links Drive and Foothill Road are such that the current capacity of the roadways will not be compromised by the proposed uses generated from this site.

A comparison of the traffic capacity and the traffic counts of this immediate area provided by the City of Medford along with Traffic Impact Analysis prepared by JRH Engineering, which demonstrates that there is adequate street capacity available, or can be made available to serve the subject site. The JRH analysis also demonstrates that the cumulative impact, when considering the existing trips generated from this 7.54 gross acreage portion of the Golf Course, will not warrant a traffic study. The analysis concludes that the maximum potential development of 30 dwelling units will result in a net increase of 246 ADT's. This capacity of the existing road system will not be adversely affected by this application.

This issue, as part of the overall traffic management plan for this area, can be found to be consistent with the existing traffic facilities for the City of Medford, Jackson County, and ODOT.

CONCLUSION:

The City of Medford concludes that based on the information contained herein this application is consistent with the intent of the Statewide Transportation Planning Rule, in that:

- 1. The site is within an incorporated city with an adopted and acknowledged Comprehensive Plan.**
- 2. The property is located adjacent to a collector street, Cedar Links Drive and an arterial street, Foothill Road. Uses proposed are consistent with the Comprehensive Plan and the zoning designation being SFR-4.**

3. **The removal of the EA overlay on the official Zoning Map does not significantly affect the overall transportation capacity, including the Medford I-5 Interchanges, or performance standards of the existing transportation facility, as defined in OAR 660-012-0060 since the proposed use will be consistent with the maximum uses established for the site (SFR-4).**

FINDING:

The city of Medford finds that this request for removal of the EA Overlay is consistent with the Transportation Planning Rule, and is in compliance with Section 10.227(1) MLDC. There are no adverse impacts contemplated on the Medford I-5 Interchanges, or the local street system.

CONSISTENCY WITH THE GENERAL LAND USE PLAN MAP:

A review of the General Land Use Plan Map of the City of Medford indicates that this area of the City is designated on the General Land Use Plan Map as "Urban, Residential". The map designations contained in the General Land Use Plan Element of the Comprehensive Plan indicates that permitted zoning districts within the "Urban Residential" Designation are SFR-2, SFR-4, SFR-6 and SFR-10, consistent with the provisions of Section 10.306 of the Medford Land Development Code.

The EA overlay district is not identified on the GLUP map or within the Comprehensive Plan for the City of Medford.

The existing zoning district for the subject property is SFR-4. This district is consistent with the Urban Residential designation as identified on the GLUP map.

FINDING:

As the subject property lies within the Urban Growth Boundary and City Limits of the City of Medford, and found to be committed to Urban use, and specifically, delineated on the General Land Use Plan Map as Urban Residential, the removal of the EA overlay while retaining the underlying SFR-4 zoning district is found to be consistent with the General Land Use Plan Map. This application is in compliance with Section 10.227(1) MLDC.

CONSISTENCY WITH THE LOCATIONAL STANDARDS:

Subsection 10.227(1) MLDC for the locational standard is not applicable to this application for removal of the EA overlay. The underlying SFR-4 zoning district is existing and also does not require any locational standards.

FINDING:

The City of Medford finds, that a portion of the subject site requesting removal of the EA overlay district and retaining the SFR-4 zoning district, that the locational standards are not applicable to this application. This application is in compliance with Subsection 10.227(1) MLDC.

2. COMPLIANCE WITH URBAN SERVICES AND FACILITIES

The next criterion for a zone change is:

“Urban services and facilities are available to adequately serve the property, or will be made available upon development.”

It is the applicants position that with the underlying SFR-4 zoning district, existing on the subject stie, the demonstration of compliance with the urban services and facilities, is not applicable for the removal of the EA overlay. However, if the City determines that these standards are applicable, the Medford Comprehensive Plan, Public Facilities Element, Goal 3, Policy 1, provides the list of Category “A” services and facilities to be considered. These are:

Sanitary Sewer,
Water,
Storm Drainage, and
Streets

Sanitary Sewer:

Sanitary sewer service is existing and available in the area, and is provided by the City of Medford. There is an 8 inch line existing adjacent to Cedar Links Drive and an 8 inch line along Farmington Avenue. These sanitary sewer lines provide service to the general vicinity. Service can be extended into Cedar Landing PUD development without significantly impacting the system. There is sufficient capacity existing to serve the subject site.

Sewage treatment is provided by the City of Medford Regional Waste Water Treatment Plant. The plant has a capacity of serving a population of 190,800 persons with service presently at approximately 115,000 persons. The plant has the capacity to serve the region for the foreseeable future.

Water Service:

Water will be provided by the Medford Water Commission. The vicinity is currently served with a 24 inch main line in Cedar Links Drive that serves 8 inch lines in Cedar Links Drive and Farmington Avenue. These lines serve the area for water and can be extended into the subject site, as there is sufficient capacity to serve the proposed PUD development.

Water supply is adequate to serve the urban population of Medford until the year 2050. The Medford Water Commission has sufficient distribution and capacity to serve the proposed development.

Storm Sewer:

The construction and improvements in the area will require that all storm water discharge to comply with the City of Medford Master Storm Sewer program. The storm water facilities will be engineered and contain retention areas to meet the Medford Storm Sewer standards.

The subject site is located within the Midway Drainage Basin. There is no Storm Sewer lines existing within the project area. There exists surface drainage and ponds which can be incorporated as part of the Master Storm Sewer Program, which currently directs water off site. There are also several storm drain facilities stubbed to the project boundaries for connection to serve the proposed uses.

Streets:

Cedar Links Drive and Foothill Road with the extension of Farmington Avenue, are the primary streets serving the subject property. There are also new streets being proposed for street connectivity within Cedar Landing PUD. The proposed PUD is designed to accommodate the street circulation plans adopted by the City of Medford.

Foothill Road is designated as an arterial street, the design capacity for an improved arterial street is 28-32,000 ADT. Cedar Links Drive is designated as a collector street, with a design capacity of 15-18,000 ADT. The remaining streets within the project are identified as residential streets by the City of Medford.

The following calculations are based on the subject area being 7.23 acres (7.54 gross acres) zoned SFR-4. ($7.54 \times 4 = 30.16 \text{ DU}$: $30 \text{ DU} \times 9.57 = 287.1 \text{ ADT}$) When considering the existing trips for a portion of the golf course being 41 ADT, the total net trips generated from this site will be 246 ADT. ($287 \text{ ADT} - 41 \text{ ADT} = 246 \text{ ADT}$)

The most current traffic volumes (2004) for the immediate vicinity were provided by the City of Medford Engineering Department as related by Mr. Ralph Browning.

Cedar Links Drive-

east of Wilkshire	2200 ADT
west of Wilkshire	3200 ADT
east of Springbrook Rd.	5100 ADT

Foothill Road-

south of Cedar Links Dr.	9500 ADT
--------------------------	----------

The additional trips generated from the subject area will not adversely impact the immediate street system. There is sufficient street capacity available in the area to support the proposed development and anticipated uses.

CONCLUSION:

Based upon the above discussion concerning Category "A" public facilities and services, it is concluded that this application for removal of the "EA" overlay can be served. The property is capable of accommodating development within the capacity of existing and improvements can be made available for the Category "A" public facilities and services onto the subject site.

FINDING:

Based on the above discussions, the City of Medford finds that the removal of the EA overlay complies with Section 10.227(2). The Category "A" public facilities and services are available or can be made available and have sufficient capacity to serve the site.

SECTION 10.360:**Discussion:**

The EA Overlay standards are found in Sections 10.360 and 10.361 MLDC. Section 10.361 MLDC establishes the allowed uses within the EA Overlay, which is restricted to agricultural buildings. The development of the site and use as Cedar Links Golf Course is not consistent with the EA designation.

Section 10.360 MLDC prescribes that lands containing the EA overlay may be removed from the overlay district pursuant to applicable Comprehensive Plan policies. Upon reviewing the Goals, Policies and Implementation sections of the Comprehensive Plan, the Urbanization Element is the only applicable reference. The purpose of the Urbanization Element states:

“The purpose of the “Urbanization Element” of the Comprehensive Plan is to identify the policies that the City of Medford, in cooperation with Jackson County, has adopted to comply with Statewide Planning Goal 14: Urbanization.

*STATEWIDE PLANNING GOAL 14: URBANIZATION: TO
PROVIDE FOR AN ORDERLY AND EFFICIENT TRANSITION
FROM RURAL TO URBAN LAND USE”*

The Urbanization Element Policy 10 also includes language that farm use shall be encouraged through zoning and tax incentives. Policy 10 states:

“Land within the urbanizable area which currently supports a farm use, as defined by ORS 215.203, shall be encouraged, through zoning and appropriate tax incentives, to remain in that use for as long as is ‘economically feasible’ for the property owner.

- a. *‘Economically feasible,’ as used in this policy, is interpreted to mean feasible from the standpoint of the property owner. Implementation of this policy will be done on a voluntary basis. Exclusive Farm Use (EFU) zoning may be applied to qualifying land by the county, with the understanding that such land is considered available over a period of time for urban uses.*
- b. *This policy applies only to areas in the UGB identified by the city or county Comprehensive Plans as agricultural land, and shall not be used as a standard to review other land use application within the urbanizable area.*

- c. *This policy is not intended to preclude the use of EFU land for essential public facilities and service to serve the urban and urbanizable areas.*"

The purpose of Goal 14: Urbanization states:

"To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

Urbanizable Land is defined within Goal 14 as:

"Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned."

The EA overlay can be determined to be a rural use with the allowed uses prescribed in Section 10.361 (Agricultural Buildings). Rural lands are typically located outside of the Urban Growth Boundary (UGB) with Jackson County zoning, Exclusive Farm Use (EFU). Agricultural uses and buildings are defined as resource uses with the State and are designated as rural land uses.

The UGB boundary typically is used to separate rural lands from urbanizable lands within the State of Oregon. The transition from rural uses to urban uses on the subject site has been established. With the subject property being within the Medford City Limits and is currently designated with the SFR-4 zoning district on the entire property, the site is now considered to be urban. The appropriate public facilities and services are available and planned to serve the future development, consistent with Goal 14. The subject property and the proposed Planned Unit Development may also be considered an infill project considering the existing surrounding development.

The City of Medford can determine that the portion of the property that contains the EA overlay does not currently support a farm use as defined in ORS 215.203 and is considered to be for Urban uses and that there has been an orderly transition from rural land uses to urban land uses.

CONCLUSION:

The City of Medford concludes that there is approximately 7.23 acres of land with an EA Overlay, that is within the City of Medford and zoned SFR-4. The revision to the zoning map requires that the applicable Policies of the Comprehensive Plan be addressed. The only applicable reference is found in the Urbanization Element.

The City also concludes that this area is not currently in farm use as defined in state law and is no longer defined as rural land as defined in Goal 14 of the Statewide Planning Goals and Guidelines. The EA overlay is no longer applicable to the site, consistent with Goal 14 and the Urbanization Element of the Medford Comprehensive Plan.

FINDING:

The City of Medford finds that the portion of the site with the EA Overlay is no longer applicable with property being within the City of Medford with the SFR-4 zoning district. The site is no longer rural in nature and that the removal of the EA Overlay will be consistent with the Urbanization Element of the Medford Comprehensive Plan and Goal 14 of the Statewide Planning Goals and Guidelines and is in compliance with Section 10.360 MLDC.

SUMMARY

In order for an amendment to the Medford Zoning Map to be approved, the Planning Commission must find that the applicant has made the requisite findings and conclusions for a zone change/ map amendment for removal of the EA overlay.

A review of the application and supporting documentation will demonstrate that the application complies with the applicable standards for the Medford Land Development Code, is consistent with the GLUP map, is consistent with the Oregon Transportation Planning Rule and is consistent with Statewide Planning Goals and Guidelines, in that this application:

1. Requests removal of the EA overlay designation from the Medford Zoning Map while retaining the SFR-4 zoning district.
2. That urban services and facilities are available or can be made available to adequately serve the property, and cumulative impacts from the development of the site, will not affect the capability of the City to provide the site with water, sanitary sewer, storm drainage and streets. The capacity of the water system and sanitary sewer facilities demonstrates this proposal will not tax the capacity of the plants, due to the preexisting levels of development planning.
3. The applicant is aware that they are subject to, with any change of use, the systems development charges adopted by the City of Medford to insure that developers pay their fair share of extending public facilities such as water, sanitary sewer and streets if necessary.
4. The removal of the EA overlay will not adversely impact any I-5 interchange nor any other state facility, in compliance with the Transportation Planning Rule, OAR 660-012-0060.
5. Is consistent with the Urbanization Element of the Medford Comprehensive Plan and consistent with Goal 14 of the Statewide Planning Goals and Guidelines.

With this information in hand, the applicant respectfully requests that the City of Medford to remove the EA overlay on a portion of the subject site on the Medford Zoning Map.

Respectfully Submitted,

Richard Stevens & Associates, Inc.
February 1, 2006



February 6, 2006

Alex Georgevitch, PE
 City of Medford Public Works
 411 West 8th Street
 Medford, Oregon 97501

RE: EA Overlay Removal

CITY OF MEDFORD
 EXHIBIT #
 File # LC-06-18

Dear Alex,

JRH Transportation Engineering evaluated the impacts of a proposed zone change application to remove an Exclusive Agricultural (E-A) overlay on 7.23 acres (7.54 gross acres) west of Foothill Road and north of Sycamore Way. The 7.23 acres currently exist as the southeast portion of the Cedar Links Golf Course. (Refer to Figure 1 for a vicinity map) The Medford Land Development Code (MLDC) Section 10.461 required a traffic impact analysis (TIA) to determine project impacts to the transportation system as a result of the E-A overlay removal. The proposed E-A overlay removal allows the underlying SFR-4 zoning to be developed to its potential.

1.0 TRIP GENERATION

Potential build out of the proposed 7.23 acres (7.54 gross acres) under SFR-4 zoning will allow up to 30 single family residential (SFR) dwelling units. Thirty SFR dwelling units are estimated to generate 30 PM peak hour trips according to the Institute of Transportation Engineers (ITE) *Trip Generation*. Of the 30 PM peak hour trips, 19 trips are estimated to be inbound and 11 trips outbound. All trips are considered new trips to the transportation system. Refer to Table 1 for trip generations.

Table 1: SFR-4 PM Peak Hour Trip Generations

Land Use	PM Trip Rate	Size (DU)	PM Trips	% In	PM Inbound	% Out	PM Outbound
Single Family Residential	1.01	30	30	0.63	19	0.37	11
Total					19		11

RECEIVED

FEB 07 2006

PLANNING DEPT.



FIGURE 1 : VICINITY MAP

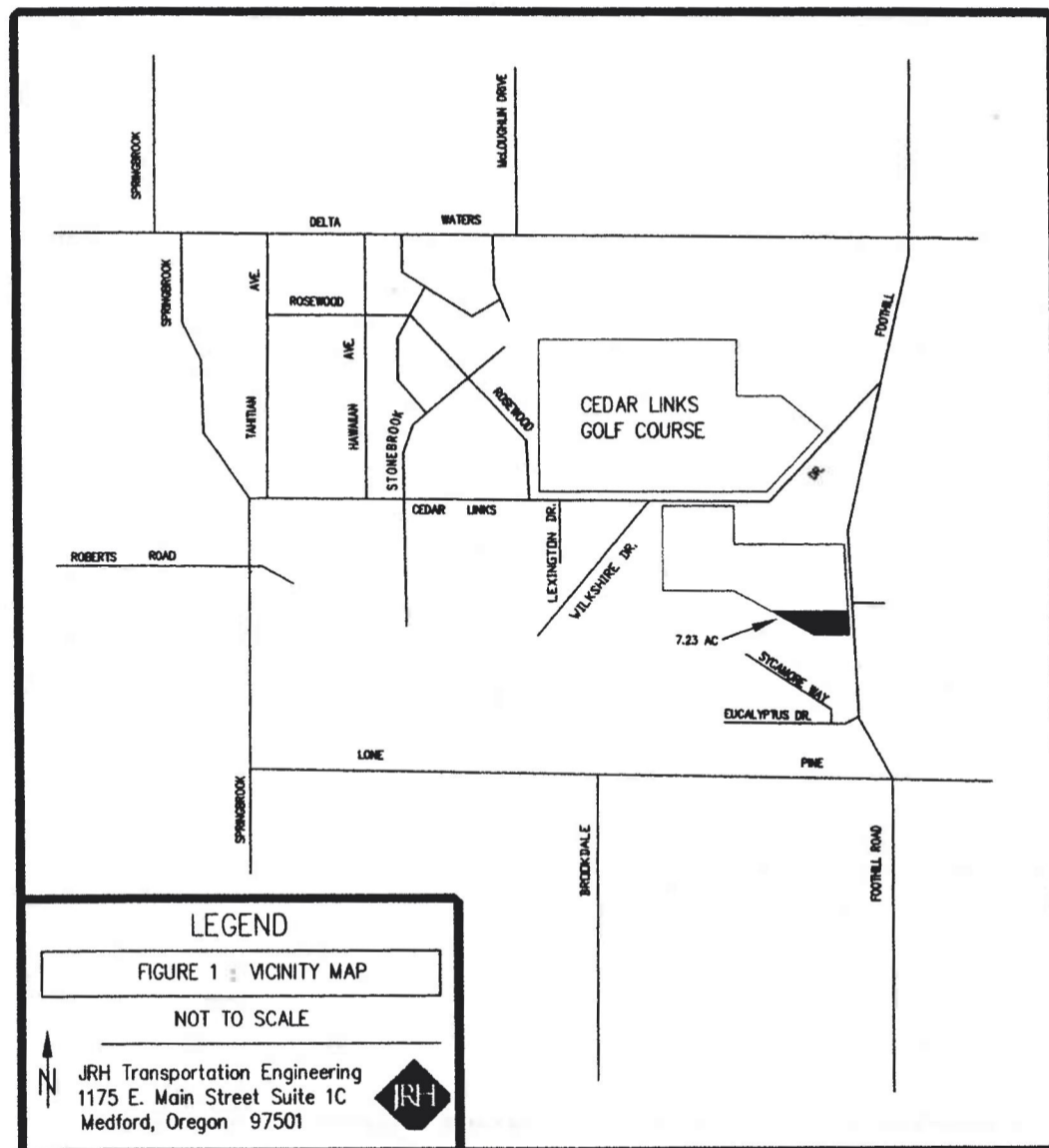
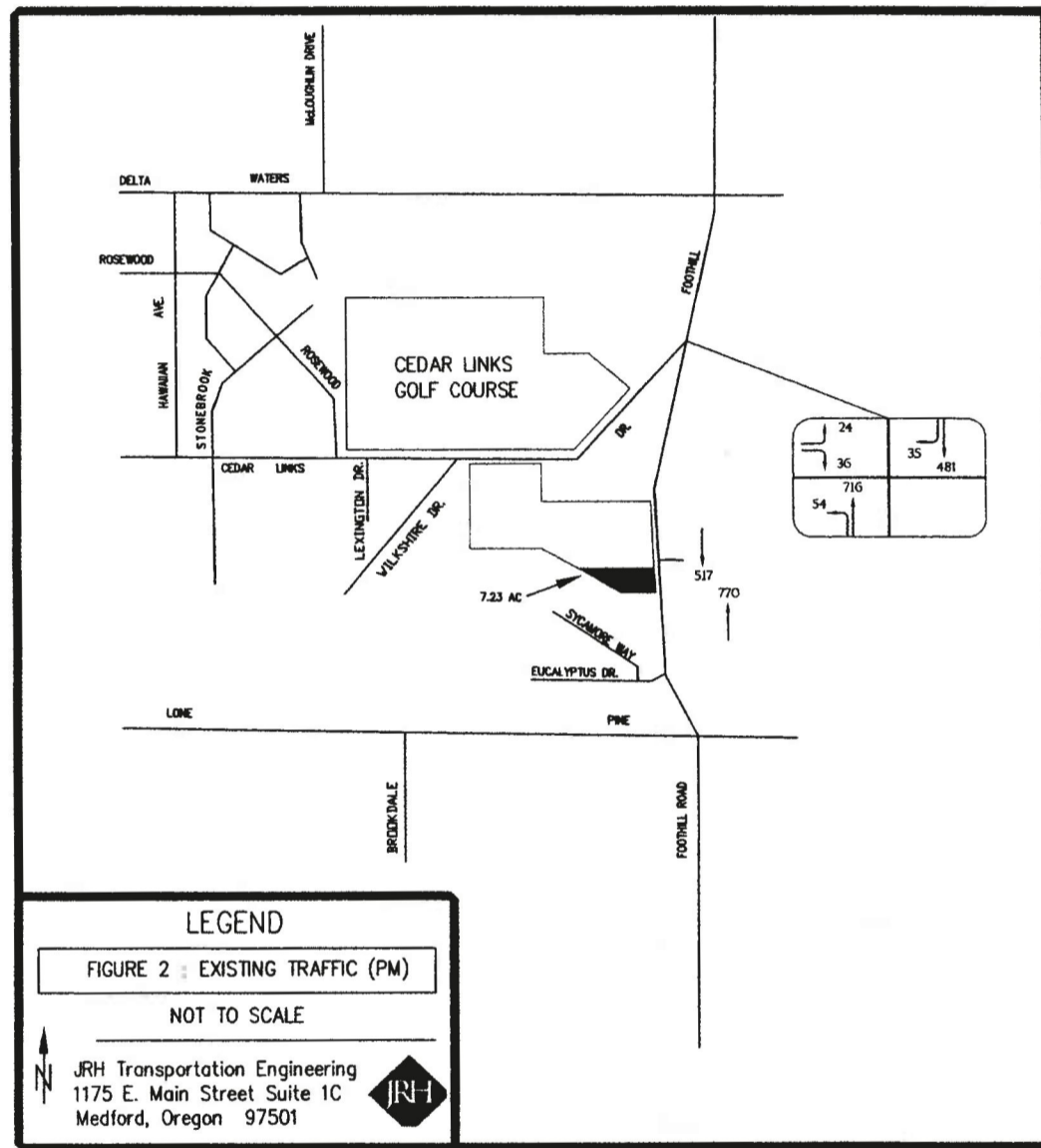




FIGURE 2 : EXISTING TRAFFIC (PM)



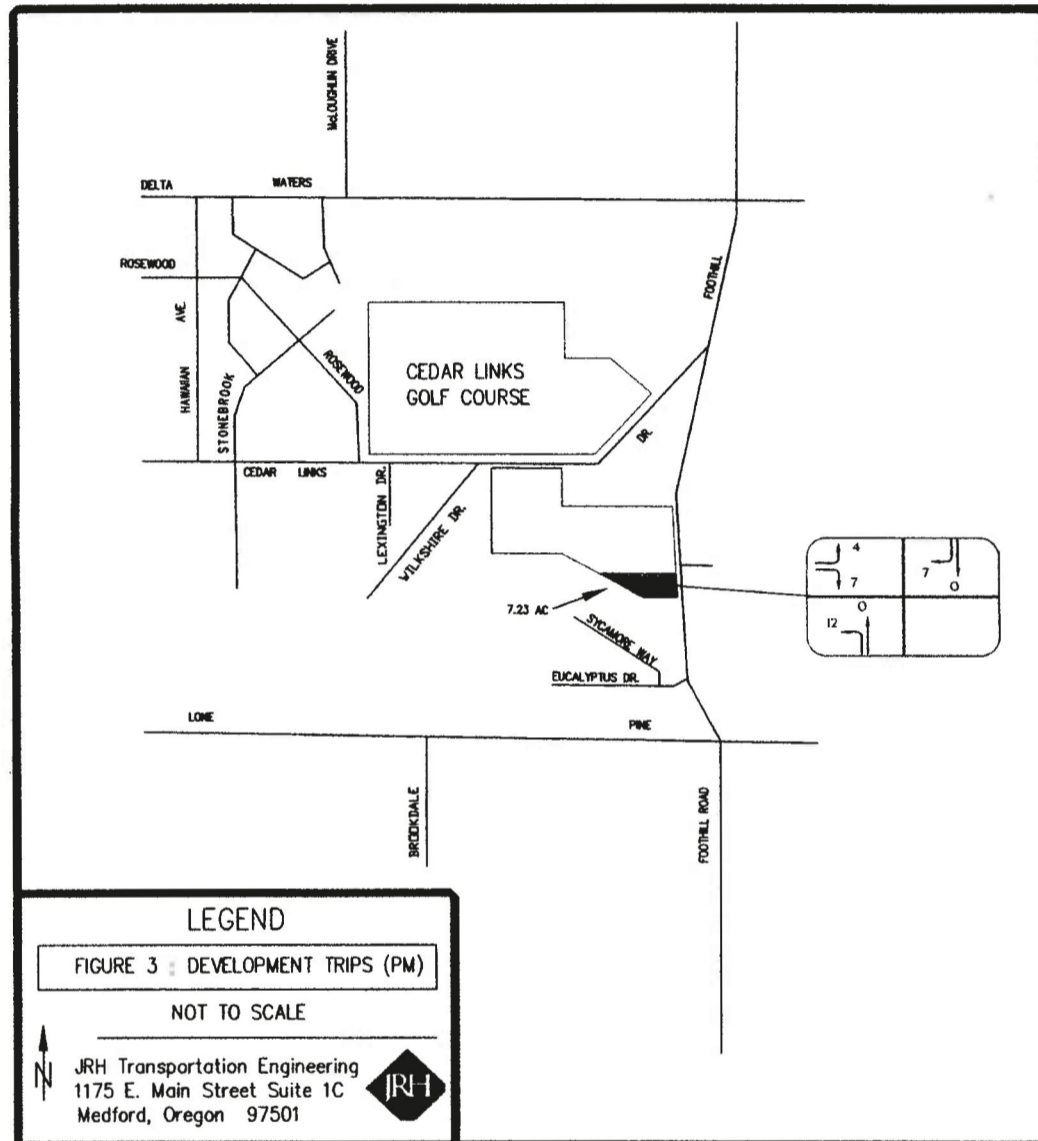


2.0 TRIP DISTRIBUTIONS & ASSIGNMENT

The MLDC requires project trips to be distributed out to 25 peak hour trips in any direction to determine the study area. Any intersection involving collectors and arterials that are impacted by 25 or more peak hour trips are required to be evaluated as part of the study area. The 7.23 acres under evaluation are proposed to take access to Foothill Road through a local street connection. Using existing percentage splits along Foothill Road, approximately 40% of inbound trips are estimated to come from the north and 60% from the south. Similarly, 40% of outbound trips are estimated to go to the north and 60% to the south. Distributing proposed project trips with these percentage splits results in 19 PM peak hour trips to/from the south and 11 PM peak hour trips to/from the north. The study area, therefore, includes the project access point to Foothill Road but zero intersections requiring an analysis. Refer to Figure 3 for project trip distributions to and from Foothill Road.



FIGURE 3 : DEVELOPMENT TRIPS (PM)





3.0 ROADWAY CHARACTERISTICS

Tables 2 through 5 address roadway characteristics and conditions along Foothill Road near the proposed project access point.

Table 2: Roadway Characteristics

Roadway	Functional Classification	Number of Lanes Per Direction	Lane Widths	Sidewalks / Bike Lanes
Foothill Road	Arterial	1	11'	No / No
Proposed Local Street	Proposed Local	1	Per City standard	Per City standard

Table 3: Roadway Existing Descriptions

Roadway	Bicycle Facilities	Pedestrian Facilities	Transit Facilities
Foothill Road	None existing but planned in road improvement projects	None Existing, Planned	None Existing
Proposed Local Street	None Proposed	Proposed	None Proposed

Table 4: Proposed Traffic Control:

Location	Traffic Control	Notes
Foothill Road & Project Access	Two-way Stop Controlled	Project Access eastbound

Table 5: Intersection Crash History:

Location	Crash History
Foothill Road at Proposed Project Access	None



4.0 SUMMARY & CONCLUSIONS

The development potential, as a result of the proposed E-A overlay removal, on 7.23 acres (7.54 gross acres) results in 30 PM peak hour trips to the transportation system. Once distributed out of the site all trips go to and come from Foothill Road through a proposed local street connection. Using existing traffic splits, approximately 19 PM peak hour trips are shown to go to and come from the south while 11 PM peak hour trips are shown to go to and come from the north. Less than 25 PM peak hour trips are shown to reach any intersection involving collectors and arterials once distributed out of the proposed access point to Foothill Road. No intersections, therefore, require an analysis under the Medford Land Development Code.

It is concluded that there are no impacts to the transportation system as a result of the proposed zone change. I hope this addresses any questions and concerns regarding the proposed zone change application.

Sincerely,

Kimberly Parducci, PE, PTOE
JRH Transportation Engineering

Cc: Planning Department
Client



RENEWAL DATE 12/31/06



CITY OF MEDFORD

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MEDFORD, OREGON 97501
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PUBLIC WORKS DEPARTMENT
ENGINEERING & DEVELOPMENT DIVISION

February 3, 2006

Kimberly Parducci, PE, PTOE
JRH & Associates
1175 East Main Street, Suite 1C
Medford, Oregon 97504

The proposed zone change to remove the Exclusive Agriculture (E-A) overlay on 7.54 gross acres will require a traffic impact analysis (TIA) to determine project impacts to the transportation system. The net increase in traffic generation from current golf course to City SFR-4 on 7.54 gross acres exceeds 250 average daily trips, which is the code standard for when a TIA is required. The analysis must be prepared by a licensed engineer in the State of Oregon and follow our current TIA methodology. The general format is as follows and pertains to City of Medford and Jackson County facilities that involve collector and arterial streets. ODOT facilities should be addressed with ODOT using ODOT criteria.

1. A TIA should always analyze the potential traffic generation of a parcel(s) with the following exceptions:
 - a. A Planned Unit Development (PUD) is being proposed with a site plan that the traffic analysis will be based on and stipulated to.
 - b. The potential traffic generation of the parcel(s) cannot be supported by the transportation facilities and a stipulation (trip cap) is being proposed.
2. All trip distributions into and out of the transportation system must reflect existing traffic count data for consistency or follow the current transportation model used by the City. If alternate splits are used to distribute traffic then justification must be provided and approved by the Public Works Director prior to first submittal of the TIA.
3. Any intersection where the proposed development can be expected to contribute 25 or more trips during the analysis peak period shall be analyzed. Intersections having less than 25 peak period trips are not substantially impacted and will not be included in the study area.
4. Pipeline traffic must be considered into the existing count data before the impacts of project traffic are evaluated. Once the study area is defined by the applicant's traffic engineer and a written request is received, Public Works will supply all necessary pipeline information within one week.
5. The TIA shall determine all improvements or mitigation measures necessary to maintain facility adequacy at study area intersections. Mitigation measures may include stipulations and/or construction of necessary transportation improvements and shall be required to the extent that the

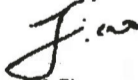
Cedar Landing Zone Change TIA Scoping Letter
Page 2 of 2

transportation facilities operate at an acceptable level of service (LOS) with the addition of project traffic.

6. Peak period turning movement counts must be at least two-hour minimums and capture the peak period. Counts must be less than two years old and adjusted to the design year of the project. A seasonal traffic adjustment is required on study area streets if counts were not prepared during the peak period of the year and count data shows a 10% increase in traffic volumes.
7. All LOS analyses shall follow operational procedures per the current Highway Capacity Manual. Ideal saturation flow rates greater than 1800 vehicles per hour per lane should not be used unless otherwise measured in the project vicinity. Queue lengths shall be calculated at the 95th percentile where feasible. Actual peak hour factors should be used for each movement or lane group in the analysis. For new intersections, peak hour factors exceeding 0.90 shall not be assumed unless justification is provided and approved by the Transportation Manager.
8. Unsignalized intersections shall be evaluated for signal warrants if the level of service (LOS) is determined to be below standard minimums. Channelization requirements, such as left and right turn lanes, shall also be evaluated where failing facilities are identified and none are currently provided.
9. Signalized intersection analyses shall be in accordance with the City's timing sheets. Analyses will follow either pre-timed, actuated-coordinated, or actuated-uncoordinated timing plans. Once the study area is defined by the applicant's traffic engineer and a written request is received, Public Works will supply all timing information within one week.
10. Comprehensive Plan Amendment application requires a Year 2023 analysis that includes an analysis of the TSP project list. If additional projects are required, then a financial analysis shall also be included. The Zone Change application shall include Year of Build analysis and mitigation.
11. This scoping letter shall be included as an appendix in the initial study and subsequent revisions.
12. This scoping letter and any traffic impact analysis will be expired after 180 days. It is the applicant's responsibility to resubmit the scoping letter request if the traffic impact analysis is not submitted during 180 days period.

The City's complete TIA methodology can be found in the Medford Land Development Code, section 10.461. Any TIA that is not in accordance with this methodology will be returned to the applicant without review. If you have any questions, feel free to contact me at 774-2111.

Sincerely,



David Jiao
Assistant to the Traffic Engineer

Cc: Alex Georgevitch, Transportation Manager
Jim Maize, Principle Planner

Zone Change for E-A Removal

Trip Generation

Development	Land Use	ADT trip rate	PM trip rate	Size	ADT	PM trips	% IN	% OUT	PM IN	PM OUT
SFR -4	210	9.57	1.01	30	287	30	0.63	0.37	19	11
Total									19	11

Zone Change for E-A Removal

Page 1

Intersection movement	% of Inbound	% of Outbound	Existing 2005	Seasonal Adj. Factor	Pipeline	Adjusted Existing 2005
Foothill Rd/Cedar Links						
EBL	0	0	24	1	0	24
EBT	0	0	0	1	0	0
EBR	0	0	27	1	9	36
SBL	0	0	0	1	0	0
SBT	0	0	402	1	79	481
SBR	0	0	35	1	0	35
WBL	0	0	0	1	0	0
WBT	0	0	0	1	0	0
WBR	0	0	0	1	0	0
NBL	0	0	46	1	8	54
NBT	0	0	659	1	57	716
NBR	0	0	0	1	0	0

JRH Transportation Engineering
 1175 East Main Street, Suite 1C

Medford, Oregon 97501 File Name : FoothillCedarLinks12Hr05

Site Code : 00000001

Start Date : 6/22/2005

Page No : 1

Groups Printed- Unshifted

Start Time	Foothill Rd From North					From East					Foothill Rd From South					Cedar Links From West					Int. Total
	Rig ht	Thr u	Lef t	Ped s	App. Total	Rig ht	Thr u	Lef t	Ped s	App. Total	Rig ht	Thr u	Lef t	Ped s	App. Total	Rig ht	Thr u	Lef t	Ped s	App. Total	
Factor	1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		
07:00	3	96	0	0	99	0	0	0	0	0	0	61	2	0	63	3	0	1	0	4	166
07:15	4	89	0	0	93	0	0	0	0	0	0	65	0	0	65	2	0	5	0	7	165
07:30	6	137	0	0	143	0	0	0	0	0	0	68	3	0	71	7	0	2	0	9	223
07:45	14	175	0	0	189	0	0	0	0	0	0	94	0	0	94	6	0	3	0	9	292
Total	27	497	0	0	524	0	0	0	0	0	0	288	5	0	293	18	0	11	0	29	846
08:00	3	119	0	0	122	0	0	0	0	0	0	44	6	0	50	7	0	5	0	12	184
08:15	7	121	0	0	128	0	0	0	0	0	0	61	3	0	64	6	0	0	0	6	198
08:30	3	78	0	0	81	0	0	0	0	0	0	57	0	0	57	7	1	0	0	8	146
08:45	10	84	0	0	94	0	0	0	0	0	0	69	4	0	73	3	0	2	0	5	172
Total	23	402	0	0	425	0	0	0	0	0	0	231	13	0	244	23	1	7	0	31	700
09:00	5	75	0	0	80	0	0	1	0	1	0	49	0	0	49	3	0	4	0	7	137
09:15	1	66	0	0	67	0	0	0	0	0	0	52	2	0	54	2	0	2	0	4	125
09:30	3	67	0	0	70	0	0	0	0	0	0	52	4	0	56	4	0	2	0	6	132
09:45	8	80	0	0	88	0	0	0	0	0	0	74	2	0	76	5	0	5	0	10	174
Total	17	288	0	0	305	0	0	1	0	1	0	227	8	0	235	14	0	13	0	27	568
10:00	11	51	0	0	62	0	0	0	0	0	0	54	1	0	55	4	0	1	0	5	122
10:15	9	66	0	0	75	0	0	0	0	0	0	65	1	0	66	3	0	4	0	7	148
10:30	3	75	0	0	78	0	0	0	0	0	0	71	2	0	73	3	0	1	0	4	155
10:45	6	83	0	0	89	0	0	0	0	0	0	70	9	0	79	6	0	1	0	7	175
Total	29	275	0	0	304	0	0	0	0	0	0	260	13	0	273	16	0	7	0	23	600
11:00	7	57	0	0	64	0	0	0	0	0	0	74	4	0	78	7	0	4	0	11	153
11:15	3	71	0	0	74	0	0	0	0	0	0	57	4	0	61	5	0	1	0	6	141
11:30	9	72	0	0	81	0	0	0	0	0	0	71	4	0	75	5	0	6	0	11	167
11:45	3	69	0	0	72	0	0	0	0	0	0	76	4	0	80	6	0	3	0	9	161
Total	22	269	0	0	291	0	0	0	0	0	0	278	16	0	294	23	0	14	0	37	622
12:00	10	74	0	0	84	0	0	0	0	0	0	74	3	0	77	3	0	5	0	8	169
12:15	6	70	0	0	76	0	0	0	0	0	0	75	9	0	84	4	0	2	0	6	166
12:30	11	74	0	0	85	0	0	0	0	0	0	69	6	0	75	7	0	5	0	12	172
12:45	3	66	0	0	69	0	0	0	0	0	0	77	4	0	81	6	0	4	0	10	160
Total	30	284	0	0	314	0	0	0	0	0	0	295	22	0	317	20	0	16	0	36	667
13:00	6	84	0	0	90	0	0	0	0	0	0	79	5	0	84	8	0	7	0	15	189
13:15	7	81	0	0	88	0	0	0	0	0	0	77	6	0	83	7	0	6	0	13	184
13:30	5	76	0	1	82	0	0	0	0	0	0	78	5	0	83	4	0	4	0	8	173
*** BREAK ***																					
Total	18	241	0	1	260	0	0	0	0	0	0	234	16	0	250	19	0	17	0	36	546
14:00	4	84	0	0	88	0	0	0	0	0	0	97	5	0	102	9	0	6	0	15	205
14:15	6	65	0	0	71	0	0	0	0	0	0	100	5	0	105	2	0	3	0	5	181
14:30	5	84	0	0	89	0	0	0	0	0	0	98	9	0	107	4	0	7	0	11	207
14:45	7	80	0	0	87	0	0	0	0	0	0	103	4	0	107	3	0	8	0	11	205
Total	22	313	0	0	335	0	0	0	0	0	0	398	23	0	421	18	0	24	0	42	798

JRH Transportation Engineering
 1175 East Main Street, Suite 1C

50.1 PAGE 29

Medford, Oregon 97504 File Name : FoothillCedarLinks12Hr05

Site Code : 00000001

Start Date : 6/22/2005

Page No : 2

Groups Printed- Unshifted

Start Time	Foothill Rd From North					From East					Foothill Rd From South					Cedar Links From West					Int. Total
	Rig ht	Thr u	Lef t	Ped s	App. Total	Rig ht	Thr u	Lef t	Ped s	App. Total	Rig ht	Thr u	Lef t	Ped s	App. Total	Rig ht	Thr u	Lef t	Ped s	App. Total	
Factor	1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		
15:00	5	93	0	0	98	0	0	0	0	0	0	120	11	0	131	3	0	2	0	5	234
15:15	6	104	0	0	110	0	1	0	0	1	0	123	5	0	128	6	0	11	0	17	256
15:30	6	106	0	0	112	0	0	0	0	0	0	125	4	0	129	10	0	3	0	13	254
15:45	16	115	0	0	131	0	0	0	0	0	0	147	3	0	150	5	0	8	0	13	294
Total	33	418	0	0	451	0	1	0	0	1	0	515	23	0	538	24	0	24	0	48	1038
16:00	6	98	0	0	104	0	0	0	0	0	0	140	5	0	145	6	0	18	0	24	273
16:15	6	109	0	0	115	0	0	0	0	0	0	116	8	0	124	4	0	7	0	11	250
16:30	8	96	0	0	104	0	0	0	0	0	0	136	8	0	144	2	0	5	0	7	255
16:45	11	102	0	0	113	0	0	0	0	0	0	157	12	0	169	7	0	5	0	12	294
Total	31	405	0	0	436	0	0	0	0	0	0	549	33	0	582	19	0	35	0	54	1072
17:00	8	114	0	0	122	0	0	0	0	0	4	157	12	0	173	4	0	7	0	11	306
17:15	11	98	0	0	109	0	0	0	0	0	0	190	17	0	207	8	0	3	0	11	327
17:30	5	88	0	0	93	0	0	0	0	0	0	155	5	0	160	8	0	9	0	17	270
17:45	2	84	0	0	86	0	0	0	0	0	0	116	7	0	123	4	0	7	0	11	220
Total	26	384	0	0	410	0	0	0	0	0	4	618	41	0	663	24	0	26	0	50	1123
18:00	9	81	0	0	90	0	0	0	0	0	0	97	6	0	103	9	0	5	0	14	207
18:15	3	78	0	0	81	0	0	0	0	0	0	87	6	0	93	6	0	7	0	13	187
18:30	3	60	0	0	63	0	0	0	0	0	0	80	7	0	87	4	0	5	0	9	159
18:45	5	63	0	0	68	0	0	0	0	0	0	58	5	0	63	3	0	1	0	4	135
Total	20	282	0	0	302	0	0	0	0	0	0	322	24	0	346	22	0	18	0	40	688
Grand Total	298	4058	0	1	4357	0	1	1	0	2	4	4215	237	0	4456	240	1	212	0	453	9268
Apprch %	6.8	93.1	0.0	0.0		0.0	50.0	50.0	0.0		0.1	94.6	5.3	0.0		53.0	0.2	46.8	0.0		
Total %	3.2	43.8	0.0	0.0	47.0	0.0	0.0	0.0	0.0	0.0	0.0	45.5	2.6	0.0	48.1	2.6	0.0	2.3	0.0	4.9	

JRH Transportation Engineering
 1175 East Main Street, Suite 1C

Medford, Oregon 97501 File Name : FoothillCedarLinks12Hr05

Site Code : 00000001

Start Date : 6/22/2005

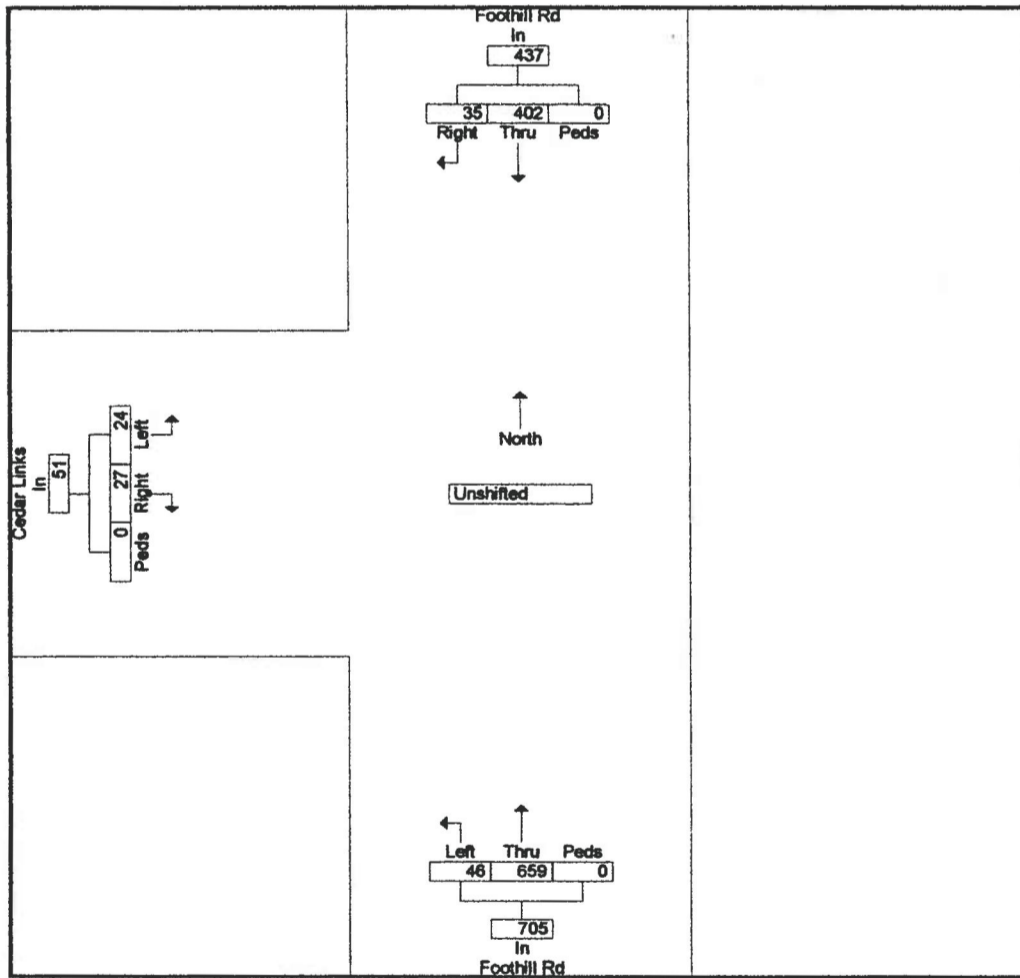
Page No : 3

50.1 PAGE 30

Start Time	Foothill Rd From North					From East					Foothill Rd From South					Cedar Links From West					Int. Total
	Rig ht	Thru	Lef t	Ped s	App. Total	Rig ht	Thru	Lef t	Ped s	App. Total	Rig ht	Thru	Lef t	Ped s	App. Total	Rig ht	Thru	Lef t	Ped s	App. Total	

Peak Hour From 16:45 to 17:30 - Peak 1 of 1

By Approach	16:45					16:45					16:45					16:45				
Volume	35	402	0	0	437	0	0	0	0	0	4	659	46	0	709	27	0	24	0	51
Percent	8.0	92.0	0.0	0.0		-	-	-	-		0.6	92.9	6.5	0.0		52.9	0.0	47.1	0.0	
High Int. Volume	8	114	0	0	122	-	-	-	-	-	0	190	17	0	207	8	0	9	0	17
Peak Factor					0.89										0.85					0.75
					5									6						0



**CITY OF MEDFORD
INTEROFFICE MEMORANDUM**



CITY ATTORNEY

TO: Rob Scott, Planning Director
FROM: Lori Cooper, Senior Assistant City Attorney
SUBJECT: E-A Overlay on Cedar Links Property
DATE: February 14, 2006

You have asked this office for an analysis on what process should be used to remove an Exclusive Agriculture (E-A) Overlay.

As discussed in more detail below, staff recommends the following process be used to address the E-A Overlay on this application.

I. History

A "Notice of Planning Commission Action" dated December 19, 1986 states that "on September 25, 1986, the Medford Planning Commission granted the request for final order approval of a conditional use permit for an 18-hole golf course on approximately 111.44 acres, located on the north and south sides of Cedar Links Drive, west of Foothill road, within an RR-5 (Rural Residential - 5 acre minimum lot size, county designation) and E-A (Exclusive Agriculture, city designation) zoning district - proposed R-1-8 (Single Family residential - 8,000 square foot minimum lot size) zoning district," as provided for in the Medford Zoning Ordinance at the time.

The R-1-8 zoning designation became effective November 5, 1986, per City Council action on September 18, 1986, Ordinance No. 5726.

Ordinance No. 5726 annexed 87.85 acres and changed the zone of those 87.85 acres from RR-5 to R-1-8 located on the north and south side of Cedar Links Drive.

Some time later, Medford changed the nomenclature for its zoning districts, and R-1-8 zones became SFR-4 zones (Single Family Residential, 4 units per acre).

The 1986 CUP approval required the removal of the E-A Overlay; however, there is no evidence that the E-A Overlay was ever officially removed from the property in question.

CITY OF MEDFORD
EXHIBIT #
File # LC-06-18

11C 11

II. Applicable Standards and Criteria

The Medford Land Development Code does not clearly spell out how an E-A Overlay can be removed.

Medford Code (MC) §10.360 states:

The E-A district is intended to provide a land use classification within an urban environment which allows for the preservation of agricultural lands through zoning. Lands containing the E-A overlay maybe removed from this district pursuant to applicable Comprehensive Plan policies.

The only section of the Comprehensive Plan that would appear to apply to this situation is the Urbanization Element. The purpose of the Urbanization Element is “to identify the policies that the City of Medford, in cooperation with Jackson County, has adopted to comply with Statewide Planning Goal 14: Urbanization: To Provide For An Orderly And Efficient transition From Rural To Urban Land Use.”

The Urbanization element Policy 10 includes language that farm use shall be encouraged through zoning and tax incentives. Policy 10 states:

“Land within the urbanizable area which currently supports a farm use, as defined by ORS 215.023, shall be encouraged, through zoning and appropriate tax incentives, to remain in that use for as long as is ‘economically feasible’ for the property owner.

- a. ‘Economically feasible,’ as used in this policy, is interpreted to mean feasible from the standpoint of the property owner. Implementation of this policy will be done on a voluntary basis. Exclusive Farm Use (EFU) zoning may be applied to qualifying land by the county, with the understanding that such land is considered available overt a period of time for urban uses.
- b. This policy applies only to areas in the UGB identified by the city or county Comprehensive Plans as agricultural land, and shall not be used as a standard to review other land use application within the urbanizable area.
- c. This policy is not intended to preclude the use of EFU land for essential public facilities and service to serve the urban and urbanizable areas.”

City of Medford Comprehensive Plan, Urbanization Element, Page 5.

The transition from rural uses to urban uses on the subject property has been established. The property is within the Medford city limits, and is currently designated SFR-4. The facts support a conclusion that the property which contains the E-A overlay does not support a farm use as defined in ORS 215.203, is now considered to be urban, and there has been an orderly transition from rural land uses to urban land uses on the property.

III. Process to Remove E-A Overlay

The only indication of how an E-A Overlay can be removed is in MC §10.360, which states, in part, that lands containing the E-A Overlay may be removed from this district pursuant to applicable Comprehensive Plan policies.

The zone change process is a logical way to remove the E-A overlay, since an overlay is similar to a zone in that it is a land classification and is listed along with zoning districts in MC §10.300.

There do not appear to be any specific zone change criteria in the Land Development Code or the Comprehensive Plan which would apply to removal of the E-A Overlay. Therefore, it would be appropriate for the applicant to present evidence of the history of the E-A Overlay, such as 1) removal of the E-A Overlay was a condition of approval for the 1986 CUP for the Cedar Links Golf Course, 2) there is no evidence that this was ever done, 3) the Comprehensive Plan does not mention the E-A Overlay, and 4) removal of the E-A Overlay is consistent with Comprehensive Plan policies.

IV. The “Fixed Goal Post Rule” and *Davenport v. Tigard*

The opponents of the proposed Cedar Landing development have cited ORS 227.178(3), also known as the “fixed goal post rule,” to support their contention that even if the E-A Overlay is removed before action is taken on the PUD applications, the applications would still be subject to the E-A Overlay which was in effect when the subject applications were deemed complete on February 28, 2005.

The opponents have also cited *Davenport v. City of Tigard* to bolster their contention. For the reasons discussed below, neither ORS 227.178(3) nor *Davenport* are dispositive.

A. ORS 227.178(3) (“Fixed Goal Posts” Rule)

ORS 227.178(3) states that approval or denial of the application shall be based upon the standards and criteria applicable at the time the application was first submitted. The thrust of the opponents’ argument is that the E-A overlay is a standard and criteria that was applicable when the application was first submitted in early 2005, and that the only development allowed in the E-A overlay is “agricultural buildings,” therefore the creation of residential lots in the area covered by the E-A overlay would not be allowed.

The “goal posts” in this case have not been moved. The E-A Overlay is an artifact of the era when the property was still in the County, and was supposed to have been removed from the property in 1986 as a condition of the Conditional Use approval granted for the Cedar Links Golf Course. Through some oversight, the condition which required removal of the overlay was not formally completed. For the past 20 years, the property has not been in compliance with the condition of approval of the 1986 CUP which required the removal of the E-A Overlay. The underlying zone on the subject property is SFR-4 (Single Family Residential – 4 units/acre), so the proposed use (High Cedars subdivision;

single family lots) is permitted in the underlying zone.

ORS 227.178(3) requires that the city approve or deny a permit based on the standards and criteria applicable at the time the application for a permit was first submitted. Stated differently, ORS 227.178(3) prohibits approving or denying a permit based on standards or criteria that were adopted subsequent to the time the application for a permit was first submitted. In this case, all of the criteria which were in effect when the application was submitted are being applied to the decision. The removal of the E-A Overlay was required before the current applications were submitted.

Medford Land Development Code (MLDC) §§ 10.101 and 10.102 expressly allow an applicant to consolidate and simultaneously process zone change and PUD applications. MLDC §10.101 provides that “the applicant for a development permit may choose to request approval of all, any one, or a combination of required plan authorizations. A request for approval of a specific plan authorization may follow, at any time, the application for other required plan authorization.” MLDC §10.102 also provides that the applicant “at the time of application or any time thereafter, may request approval of any one or combination of required plan authorizations . . .”

There is no disputing that the applicant in this case could have applied for a zone change at the same time that it applied for the PUD, pursuant to MLDC §§ 10.101 and 10.102. There is no logical reason why the applicant should be precluded from applying for a zone change before a final decision is made on the PUD application, as long as adequate notice and an opportunity to be heard is given to all parties.

The original staff report (dated November 2, 2005) for the Cedar Landing PUD included reference to the existence of the E-A Overlay and a discussion of the implications of the E-A Overlay. The E-A Overlay issue was discussed at the first public hearing on the Cedar Landing PUD (November 10, 2005) and was also discussed in the applicant’s written findings, as well as in written materials submitted by opponents of the proposed development. At least one more public hearing on the proposed PUD will be noticed and held, and that notice and hearing will include an application for removal of the E-A Overlay. Adequate notice and opportunity to comment will be given, and the substantial rights of all parties will be protected.

LUBA has held in numerous cases that the city has substantial latitude in determining whether an alteration in a permit proposal requires a complete re-hearing or rather can be taken up in the course of the ongoing proceeding, even after a remand or reversal from LUBA. *Bonner v. Portland*, 11 Or LUBA 40 (1984); *Billington v. Polk County*, 13 Or LUBA 125 (1985); *S & J Builders v. Tigard*, 14 Or LUBA 708 (1986); *Wentland v. Portland*, 23 Or LUBA 321 (1992); *Seitz v. Ashland*, 24 Or LUBA 311 (1992); *Corbett v. Portland*, 25 Or LUBA 601 (1993).

B. Davenport v. City of Tigard

The opponents of the Cedar Landing proposal have cited *Davenport v. City of Tigard*,

121 Or App 135 (1993) for the proposition that the Cedar Landing PUD application cannot be approved based on a future process to amend the zoning map to remove the E-A overlay.

Davenport held that changes in law that went into effect after an application was made but before the decision on the application was made did not apply to the application. The court ruled that approval of the development was improper where it could not have been approved but for amendments that went into effect after the application was made.

The standards and criteria at issue in *Davenport* had to do with street system improvements related to traffic safety concerns. After initially denying the application, the city amended its Comprehensive Plan Transportation Map and changed the classification of certain streets serving the subject property. This amendment was not acknowledged (pursuant to ORS 197.625, which states that Comprehensive Plan amendments must be acknowledged by DLCD) at the time of the application's resubmission; therefore the old, unamended provisions remained the applicable standards and criteria by which the application had to be analyzed.

Davenport is not applicable to the Cedar Landing situation for two reasons. First, the legislature enacted ORS 197.625(3) in direct response to the principle holding of *Davenport* and its companion case, *Von Lubken v. Hood River County*, 118 Or App 246 (1993). See *Western States Development Corporation v. Multnomah*, 37 Or LUBA 835 (2000). ORS 197.625(3)(a) now provides that "an amendment to a comprehensive plan or land use regulation is effective at the time specified by local government charter or ordinance." Therefore, the legislature rejected the principle holding of *Davenport* by adopting a statute that expressly permits what the court concluded was not permissible.

Second, *Davenport* did not specifically address the question of whether or not an applicant may submit an application for removal of an overlay via a zone change process while its PUD application is pending. In addition, the City is requiring the applicant to receive approval for the overlay removal in a concurrent zone change/PUD application process, as is allowed by MLDC §§ 10.101 and 10.102.¹ This is different than the situation in *Davenport*, where the city had approved the apartment development application before the Comprehensive Plan Map amendments were acknowledged. Therefore, *Davenport* is not applicable to the Cedar Landing situation.

Please let me know if you have any questions or would like to discuss this further.

¹ This differs from the direction given to the applicant in a January 17, 2006 letter from the Planning Department, where the applicant was informed that the zone change process to remove the E-A Overlay must be "fairly advanced" before proceeding with the Pending PUD application. This memo supersedes the January 17, 2006 letter from the Planning Department.

CITY OF MEDFORD
INTER - OFFICE MEMORANDUM

TO: Planning Department

FROM: Public Works Department

SUBJECT: Zone Change Request, File No. ZC-06-18

DATE: February 15, 2006

The traffic study for Exclusive Agriculture (E-A) overlay on 7.23 acres (7.54 gross acres) west of Foothill Road and north of Sycamore Way was prepared by JRH Transportation Engineering and submitted to Public Works for review at February 07, 2006.

The study analyze SFR-4 zoning scenario on 7.53 gross acres which allows maximum 30 single family units on this property. The result shows there are no impacts to the transportation system as a result of the proposed zone change. Based on this, Public Works recommends approval to remove the Exclusive Agricultural Overlay.

CITY OF MEDFORD
EXHIBIT # _____
File # ZC-06-18 "D"

EA/ZONE CHANGE MAP
HIGH CEDARS at CEDAR LANDING
PLANNED UNIT DEVELOPMENT

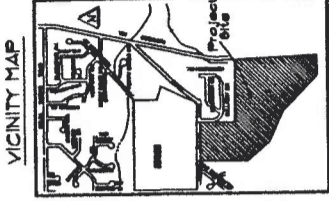
LOCATED WITHIN
 SECTION 14, T31N, R11E, W1E, Oregon
 City of MEDFORD, Oregon

ADJACENT PARCEL NO. A-100000-02
 THIS TRACT IS
 ZONING DISTRICT _____
 AREA _____

OWNER
 MERRILL LANTIER
 333 CEDAR LANDING DRIVE
 MEDFORD, OREGON 97504

AGENT
 MORRIS & ASSOCIATES, INC.
 1000 N. GARDNER STREET, SUITE 200
 MEDFORD, OREGON 97504
 (541) 754-4444

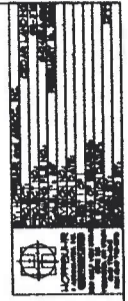
APPLICANT
 MERRILL LANTIER
 333 CEDAR LANDING DRIVE
 MEDFORD, OREGON 97504

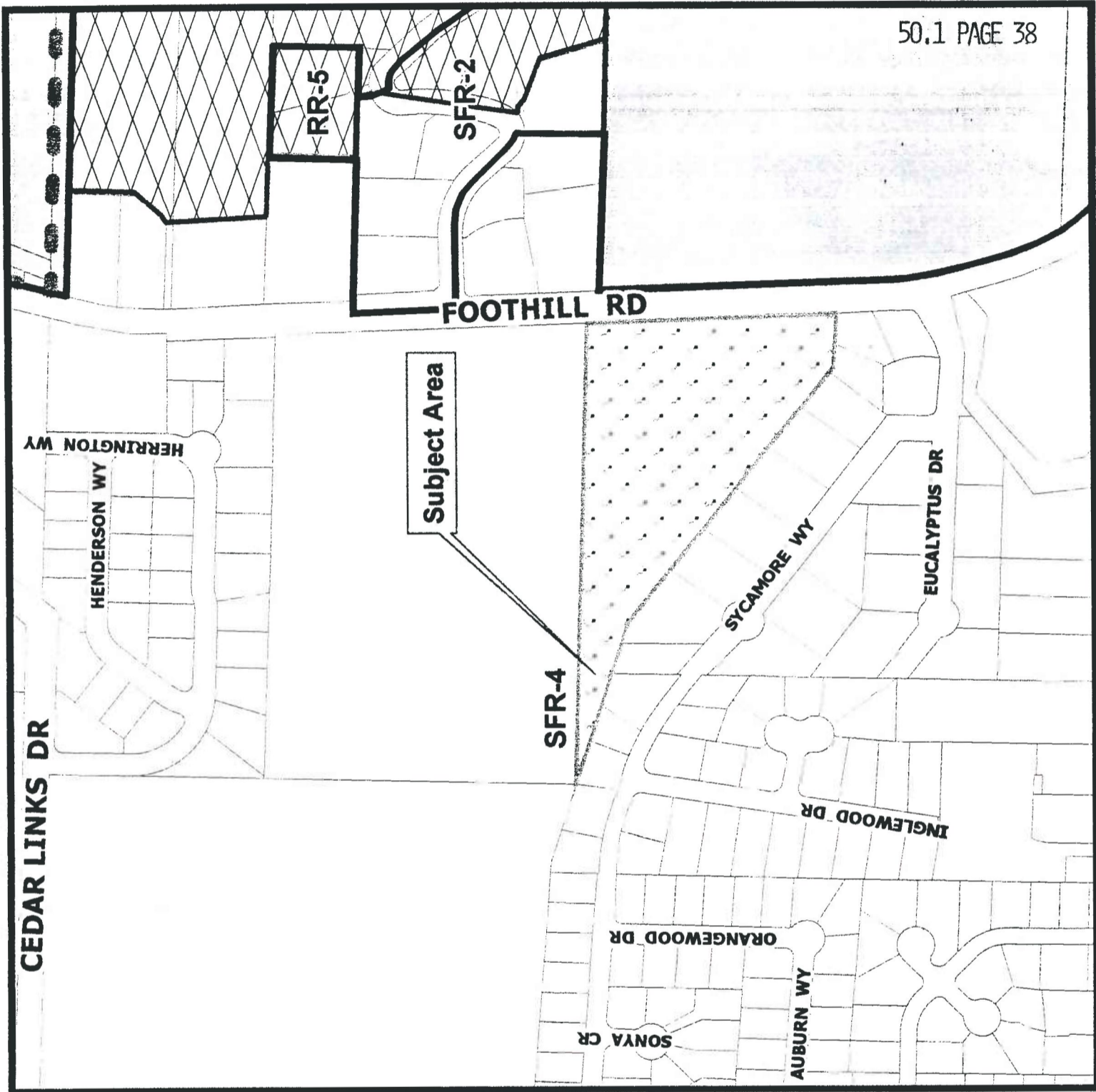


"E"
 CITY OF MEDFORD
 EXHIBIT # _____
 File # **LC-06-18**

LEGEND:
 EA AREA
 HIGH CEDARS

50.1 PAGE 37
RECEIVED
FEB 21 2006
 PLANNING DEPT





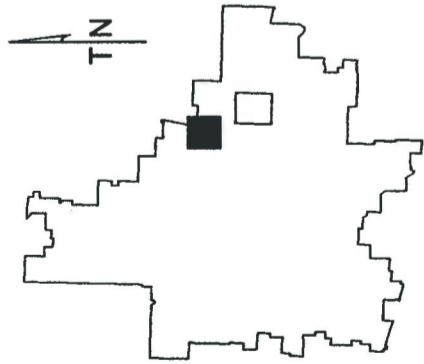
Vicinity Map

- UGB
- City Limits
- OVERLAY**
- Airport Approach
- Airport Radar
- Central Business
- Exclusive Agricultural
- Freeway
- Historic Outline
- Limited Service
- Planned Development
- Southeast

FILE NUMBER:
ZC-06-18

APPLICANT:
Monte R. &
Theresa Jantzer

Map: 371W16
TL: 1400



DATE: 1/25/2006



Back

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[City of Medford Oregon / Mayor & Council](#)

When available, the full agenda packet may be viewed as a pdf file by scrolling to the bottom of the page and clicking on the icon.

Thursday, June 15, 2006

MEDFORD CITY COUNCIL MEETING

June 15, 2006

NOON SESSION

The regular meeting of the Medford City Council was called to order in Council Chambers at Medford City Hall at 12:00 noon on the above date with the following members and staff present.

Mayor Gary Wheeler; Councilmembers Jason Anderson (*left as noted), Greg Jones, Skip Knight, Jim Key, Jim Kuntz, Claudette Moore, John Statler (*arrived as noted) and Bob Strosser.

City Manager Michael Dyal; Deputy City Manager Bill Hoke; City Attorney John Huttli; City Recorder Glenda Owens.

Employee Recognition

Michael Dyal, City Manager, presented certificates to employees from the following departments: Finance and Police.

Introduction of New Employees

Joseph Turner, Operator for Public Works department was introduced.

Employee of the Quarter

George Rubaloff, Planning Department was recognized as the Employee of the Quarter for the 2nd Quarter of 2006.

* Councilmember Statler arrived.

20. **Approval or correction of the minutes of the June 1, 2006, regular meeting**
 There being no corrections, the minutes were approved as presented.

30. **Oral requests and communications from the audience**

- 30.1 Leena Lee, 228 E. Main Street, Medford, representing the Arts Commission, addressed council and requested that the council keep the Carnegie Library Building for an Art Museum.
- 30.2 Shari Young, 3816 Annette's Way, Medford, addressed council regarding the Carnegie Building and expressed a desire to keep the building as a cultural facility.
- 30.3 Jillian Coldiron, 47 Eastwood Drive, Medford, addressed council regarding the need to keep the Carnegie Building as an art or cultural center.

Councilmember Statler asked for study session schedule to discuss this issue. City Manager Michael Dyal noted that this issue is a part of a broader subject to be presented in study session on June 29, 2006.

40. **Consent calendar**

- 40.1 COUNCIL BILL 2006-130 An ordinance authorizing a one-year extension of an Intergovernmental Agreement in the amount of \$32,000.00 with Jackson County Community Justice Program for maintenance services on an as needed basis.
- 40.2 COUNCIL BILL 2006-131 An ordinance granting to City of Ashland, Department of Electrical Utilities, Ashland Fiber Network Division, the non-exclusive privilege to use the public to construct and maintain communication facilities within the City of Medford.
- 40.3 COUNCIL BILL 2006-132 An ordinance authorizing exemption from competitive bidding and awarding a contract in the amount of \$76,760.00 to Sungard HTE, Inc., for continued technical support and future software enhancements.
- 40.4 COUNCIL BILL 2006-133 An ordinance authorizing execution of an agreement to permit reimbursement to the developers Michelle Nistler, Patrick Latendresse, and Gregory Vandyck, of excess Street SDC credits in the amount of \$1,037.90 for dedication of right-of-way in Hunter Place Subdivision.

B
 2C-06-18

support and access to trainings. He encourage the councilmembers to support this program.

80.14 Councilmember Knight requested an update on the vandalism at the skate park. Brian Sjothun, Parks & Recreation Director, reported that the skate park has been reopened. Councilmembers discussed monitoring of the facility and liability issues.

80.15 Councilmember Strosser requested staff response on the issue of maintenance of the 6-12 inch section of land between the sidewalks and the property owners fencing, in particular along Phoenix Road. Brian Sjothun, Parks & Recreation Director, reported that the contractor who is doing this maintenance work has been made aware of the issue and will be taking care of the weeds. Cory Crebbin, Public Works Director, noted that this historic right of way between the sidewalk and private property is no longer a design requirement.

80.16 Councilmember Strosser requested a report on the effect of the closure of the city print shop and the compilation of agenda packets. Council discussed the amount of information provided and City Attorney John HuttI noted that on matters of legislative and/or quasi judicial issue, the council is making findings based on the record and therefore need to receive the record for review.

80.17 Mayor Wheeler reported on the Taste of History event.

80.18 Mayor Wheeler congratulated the Neighborhood Leadership Academy graduates.

80.19 Councilmembers discussed the traffic study requirements and interpretation of the Municipal Code and requested staff provide information on the timeline and process to revise the Municipal Code language.

*Jason Anderson left.

80.20 Councilmember Knight addressed council regarding the vacating of big box stores and the ongoing maintenance of the landscaping. He would like to see an ordinance mandating the maintenance of landscaping and removal of signage from the building when vacated. Councilmember Key suggested this would address all types and sizes of stores.

90. Adjournment to evening session

Council adjourned to the evening session at 1:25 p.m.

.....
EVENING SESSION
 7:00 P.M.

The evening session of the Medford City Council was called to order at 7:00 p.m. in Council Chambers at City Hall with the following persons present.

Mayor Gary Wheeler; Councilmembers Jason Anderson, Jim Key, James Kuntz, Claudette Moore, John Statler and Bob Strosser.

Councilmembers Greg Jones and Skip Knight were absent.

City Manager Michael Dyal; Deputy City Manager Bill Hoke; Senior Assistant City Attorney Lori Cooper; City Recorder Glenda Owens.

110. Oral requests and communications from the audience

110.1 John Michaels, 843 W. 2nd Street, Medford addressed council regarding the extension of the Medford Urban Renewal Agency and the development of Middleford Commons. He expressed concern that the agency is considering transferring the agency's \$4.25 million commitment to the S. Interchange Project to the city. He requested the council place the project on hold and look at options regarding the staggering of terms for agency board members or moving the agency into the city organization as a department.

Councilmember Strosser requested Mr. Michaels send in his concerns in writing regarding this issue so they can be reviewed. City Manager Michael Dyal noted that the Council will be holding a study session on this topic on June 28, 2006.

110.2 Michael Davis, 601 Spring Valley Drive, Medford, addressed council regarding the access of the general public to city owned artwork. He requested that the Carnegie Building be set up as a display area for permanent display of art.

110.3 Andrea Budavari, 2040 Serenity Drive, Medford, addressed council regarding the proposed sale of the Carnegie Building and requested that the council take a step back and look at other options for keeping the building.

110.4 Shari Young, 3816 Annette's Way, Medford, addressed council and requested that the council delay selling or disposing of the Carnegie Building.

110.5 Glen Anderson, 2387 Gene Cameron Way, Medford, addressed council regarding the Land Development Code and how it is used by prospective home buyers. However, when the council or planning commission do not clearly follow the plan and make changes, it impacts owner's net worth.

110.6 Becky Coffman, 2387 Gene Cameron Way, Medford, addressed council regarding the issue raised by Mr. Anderson and the reduction in value of homes that results from the land is caused.

120. Public hearings

120.1 Consideration of an appeal of the preliminary PUD plan for Cedar Landing, a mixed use development combining 496 dwelling units with commercial uses and a congregate care facility on five parcels totaling 122.12 acres located on the north and south side of Cedar Links Drive approximately 1,400 feet southwest of Foothill Road, within a SFR-4 (Single Family Residential - 4 units per acre) zoning district and partially within an E-A (Exclusive Agricultural) Overlay proposed for removal. (PUD 05-35) (Land Use, Appeal)

Councilmembers Anderson, Key, Kuntz, Moore, Statler and Strosser all declared ex parte communications received via email and telephone and that it would not affect their decision on this appeal. Mayor Wheeler also declared ex parte communication and that it would not affect his decision in this matter, if called upon to vote.

Rob Scott, Planning Director, presented a staff report and clarified the issues of appeal presented by the appellant on the removal of the EA Overlay; action taken by the Planning Commission should not have allowed the rezoning of the property to remove the EA Overlay without submittal of a new PUD application; errors of the Planning Commission in approving deviations to the minimum lot area and minimum lot width; the Planning Commission erred in approving the deviation from standards for collector streets regarding paved width and bike lane width; Planning Commission erred in not conditioning the Public Works requirements; and in finding compliance with the traffic facilities requirements.

Public hearing opened

1. Tom Michaels, Chairperson, North East Medford Neighborhood Coalition, addressed the council and requested rebuttal time. Mr. Michaels addressed concerns of the coalition and requested that the council direct the applicant to apply for a zone change in order to remove the EA Overlay. He also spoke to the width deviation from city standard for bike width.
2. Caroline Hernandez, 2895 Wilkshire Drive, Medford, representing the North East Medford Neighborhood Coalition, addressed council regarding the appeal and the negative impacts on the community. Ms. Hernandez then read a statement from James Greathouse.

Councilmembers requested clarity of points raised in Ms. Hernandez' presentation in regards to traffic issues and street widths. Councilmember Statler questioned the traffic study submitted by the coalition that showed results 31% higher than the applicant's traffic study. Ms. Hernandez reported that the Planning Commission dismissed the coalition study and accepted the applicants study.

3. Glen Anderson, 2383 Gene Cameron Way, Medford, addressed council regarding the Fair Housing Act and the applicant's use of this for reduced traffic impact.
4. Tim Brophy, representing Cedar Landing, LLC, 201 W. Main St., Medford addressed the council regarding the individual points presented in the appeal and presented the applicants position and information on how they have addressed these issues within the confines of law. The EA Zone designation was removed prior to the development of the golf course in 1985. In addition, there is no evidence of why the EA Overlay was added to the General Land Use Plan map and at the time of this application; the map did not reflect an EA Overlay. Mr. Brophy noted that the deviation granted by the Planning Commission in regards to the street and bike lane widths was put forward to address citizen concerns regarding several significant trees that may have needed to be removed. The applicant has not objection to removal of the deviation but acknowledges that the trees would be removed to accommodate the standard. Mr. Brophy also reported that the statement in the Agenda Item Commentary and the Executive Summary regarding the realignment and signalizations at the intersection of Foothill Drive and Cedar Links Drive should be stated that the applicant agrees to construct the realignment and install the signal by December 31, 2008. This is dependent upon the City's completion of acquisition of right of way for this realignment. If the City has not completed acquisition by January 1, 2008 the applicant would not make a deposit with the city for this project.

Councilmembers discussed how the applicant would ensure ongoing compliance to the Fair Housing Act. Mr. Brophy noted that they would develop CC&R's that would be a deed restriction and would run with the land.

Councilmembers discussed the phasing of the projects and the results of

the applicant desiring to change the original plan. It was noted that if the applicant decided to develop any part of this application differently than approved, the applicant would need to submit a new application. The development is monitored at the time of final plat approval and upon the issuance of building permits.

Mayor Wheeler called for a recess at 9:15 p.m.

Meeting reconvened with same persons present at 9:26 p.m.

5. Tom Michaels addressed council under rebuttal and requested that the council uphold the appeal.
6. Glen Anderson addressed council under rebuttal and requested council uphold the appeal.

Public hearing closed.

Senior Assistant City Attorney Lori Cooper reviewed the council options in rendering a decision on this matter.

Motion: Deny the appeal and uphold the Planning Commission findings.

Moved by: Jim Key Seconded by:
 Claudette Moore

Roll call: Councilmembers Anderson, Key, Kuntz, Moore and Strosser voting yes.
 Councilmember Statler voted no.
 Motion carried and so ordered.

130. Ordinances and resolutions
 None

140. Further reports from the City Manager and staff

140.1 City Manager Michael Dyal addressed council regarding spreadsheet distributed detailing options for raising revenues and proposed uses. This spreadsheet is for council review in preparation of the June 22, 2006 study session.

140.2 City Manager Michael Dyal announced that a special council study session will be held on June 28, 2006 to review and discuss options for the \$4.25 million S. Interchange contribution due from the Medford Urban Renewal Agency which may become the responsibility of the City.

150. Propositions and remarks from the Mayor and Councilmembers

150.1 Councilmember Statler addressed the council agenda packet volume of information and expressed concern about what he is expected to review on appeals and council issues.

160. Adjournment

There being no further business, this Council meeting adjourned at 9:54 p.m.

The proceedings of the City Council meeting were recorded on tape and are filed in the City Recorder's office. The complete agenda of this meeting is filed in the City Recorder's office.

Glenda Owens
 City Recorder

= "mso-bidi-font-size: 10.0pt; mso-bidi-font-family: Arial" > Meeting reconvened with same persons present at 9:26 p.m.

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Public hearing closed.

Senior Assistant City Attorney Lori Cooper reviewed the council options in rendering a decision on this matter.

Motion: Deny the appeal and uphold the Planning Commission findings.

Moved by: Jim Key Seconded by:
 Claudette Moore

Roll call: Councilmembers Anderson, Key, Kuntz, Moore and Strosser voting yes.
 Councilmember Statler voted no.
 Motion carried and so ordered.

130. Ordinances and resolutions
 None

140. Further reports from the City Manager and staff

140.1 City Manager Michael Dyal addressed council regarding spreadsheet distributed detailing options for raising revenues and proposed uses. This spreadsheet is for council review in preparation of the June 22, 2006 study session.

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

NORTH EAST MEDFORD NEIGHBORHOOD
COALITION, TOM MICHAELS, GEORGE
EBERT, JAMES SHARP, and LOIS NOBLES,
Petitioners,

vs.

CITY OF MEDFORD,
Respondent,

and

CEDAR LANDING, LLC,
Intervenor-Respondent.

LUBA No. 2006-132

FINAL OPINION
AND ORDER

Appeal from City of Medford.

Corinne C. Sherton, Salem, filed the petition for review and argued on behalf of petitioners. With her on the brief was Johnson & Sherton, PC.

Lori J. Cooper and John R. Hutt, Medford, filed a response brief and argued on behalf of respondent.

Timothy E. Brophy, Medford, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief were Dominic M. Campanella, and Brophy, Mills, Schmor, Gerking, Brophy & Paradis, LLP.

RYAN, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member, participated in the decision.

REMANDED 02/01/2007

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

CITY OF MEDFORD
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NATURE OF THE DECISION

Petitioners appeal a city decision approving (1) a preliminary Planned Unit Development (PUD) plan for a mixed-use development, (2) tentative plat approvals for four subdivision areas within the development, and (3) a zone change to remove an Exclusive Agriculture (EA) overlay from a portion of the subject property.

FACTS

The subject property is a 122-acre property located in the City of Medford, and is zoned Single Family Residential – 4 Dwelling Units per Gross Acre (SFR-4).¹ A 7.3-acre portion of the subject property is also subject to an EA zoning overlay district.² The property was formerly the Cedar Links Golf Club, a public golf course. The property is bisected by Cedar Links Drive running east/west, and is surrounded by single family residences.

In January, 2005, Cedar Landing, LLC (applicant or intervenor) applied for approval of a preliminary PUD plan for development of the property, and for tentative plat approval for four subdivision areas on the property, known as High Cedars, Sky Lakes, Cascade Terrace, and The Village. Record 1448. The PUD proposal contains 294 detached single-family lots, 58 pad lots, 39 condominiums, and a 150-unit congregate care facility, totaling 541 dwelling units. Record 1453.³ The final proposed tentative PUD plan designated 68 lots in the Cascade Terrace subdivision, 34 lots in the High Cedars subdivision, and 3 lots in the

¹ The SFR-4 zone permits outright detached single-family residences, duplexes and pad lot developments. Medford Land Development Code (MLDC) 10.314. Multi-family dwellings, congregate care facilities and commercial uses are prohibited in the SFR-4 zone except as allowed under the PUD approval process. MLDC 10.314.

² The Exclusive Agricultural overlay district restricts development to agricultural buildings. MLDC 10.361.

³ According to MLDC 10.703, a “pad lot” is a lot “within a common area for non-residential use.”

1 Sky Lakes subdivision as “Senior (55 plus) housing project.” Record 674. The proposed
2 congregate care facility is located in The Village subdivision.

3 After the city had begun its review of the PUD proposal, the applicant learned for the
4 first time that a 7.3-acre portion of the property contained an EA overlay.⁴ In January, 2006,
5 acting pursuant to the city’s advice, the applicant submitted a zone change application to
6 remove the EA overlay from a portion of the subject property. Record 14, 567, 1070. The
7 city consolidated its review of the zone change application with its pending review of the
8 PUD and subdivision applications.

9 The planning commission held hearings on both the PUD and subdivision
10 applications, and the zone change application, and ultimately approved all applications.
11 Petitioners appealed the planning commission’s decision to the city council, which held a
12 hearing on the appeal. The city council affirmed the planning commission’s decisions. This
13 appeal followed.

14 **FIRST ASSIGNMENT OF ERROR**

15 Petitioners argue that it was error for the city to approve the PUD and subdivision
16 applications because at the time those applications were submitted, part of the property was
17 subject to the EA overlay district that prevented development of the property as proposed.
18 According to petitioners, ORS 227.178(3)(a) required the city to apply the standards and
19 criteria of the EA overlay district to the PUD and subdivision applications.⁵ Petitioners

⁴ Intervenor and the city (respondents) assert, and petitioners do not dispute, that the EA overlay did not appear on the version of the city’s zoning maps of the property that were in use by the city when intervenor filed its applications.

⁵ ORS 227.178(3)(a) provides:

“If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.”

1 assert that to the extent the city interpreted MLDC 10.101 and 10.102 to allow for
2 consolidation of the later filed zone change application with the previously filed PUD and
3 subdivision applications, that interpretation is inconsistent with ORS 227.175(2) and exceeds
4 the city's authority granted under that statute.⁶ Respondent answers that the city properly
5 consolidated and processed the zone change application concurrently with the PUD and
6 subdivision applications under MLDC 10.101 and 10.102, and that those code sections are
7 consistent with ORS 227.175(2).

8 ORS 227.175(2) provides in relevant part:

9 "The governing body of the city shall establish *a consolidated procedure* by
10 which an applicant *may apply at one time for all permits or zone changes*
11 *needed for a development project*. The consolidated procedure shall be
12 subject to the time limitations set out in ORS 227.178. * * *" (Emphasis
13 added.)

14 Petitioners read ORS 227.175(2) to allow consolidated processing of all permits and
15 zone changes necessary for a development project only if the necessary applications are filed
16 *on the same date*. In other words, if a zone change will be needed to remove or alter an
17 approval standard that would preclude approval of a permit application, the zone change
18 must be submitted on the same date as the permit application. If a necessary zone change
19 application is not filed on the same date as other development permit applications, we

⁶ MLDC 10.101, which governs development permit applications, provides in relevant part:

"* * * The applicant for a development permit may choose to request approval of all, any one,
or a combination of required plan authorizations. A request for approval of a specific plan
authorization may follow, *at any time*, the application for other required plan authorizations."
(Emphasis added).

MLDC 10.102, which governs plan authorizations such as the PUD application and the zone change
application, provides in relevant part:

"* * * The development permit application will identify the required plan authorization
necessary for issuance of a development permit. The applicant for a development permit, *at*
the time of application or any time thereafter, may request approval of any one or
combination of required plan authorizations as identified on the development permit
application." (Emphasis added.)

1 understand petitioners to contend, the development applications must be judged by the
2 standards applicable in the originally applicable zone, which in most or all cases would
3 almost certainly mean that the proposed development must be denied. The practical effect of
4 petitioner's construction of ORS 227.175(2) is that a consolidated review process is not
5 available for development applications and necessary zone change applications that are not
6 filed on the same date. An applicant that belatedly discovers that pending development
7 permit applications are inconsistent with a zoning requirement that was in effect on the date
8 the development permits applications were filed would have to withdraw all development
9 permit applications and begin anew with review of those development permit applications.
10 We disagree with petitioners that ORS 227.175(2) must be read in that manner or that it
11 compels that outcome.

12 The clear intent of ORS 227.175(2) is to facilitate consolidated review of multiple
13 applications, including zone changes, that will be required to approve a development project.
14 ORS 227.175(2) and ORS 227.178(3)(a) work together to ensure that development
15 applications that require a zone change are judged by the standards and criteria that apply
16 under the new zoning designation, not the standards and criteria that would apply under the
17 zoning designations that existed when the development applications were filed. In that
18 sense, the consolidated review procedure authorized by ORS 227.175(2) functions to some
19 degree as an exception to or modification of the fixed goal post rule at ORS 227.178(3). The
20 intent of that statutory scheme is significantly thwarted by reading those two statutes to
21 effectively prohibit consolidated review except where the applicant files the development
22 applications and necessary zone change applications on the same date. In many cases it may
23 not be clear on the date that development applications are filed that the proposed
24 development requires a zone change. Certainly it was not clear in this case.

25 More importantly, ORS 227.175(2) does not explicitly require that all development
26 and necessary zone change applications must be filed "on the same date" in order to employ

1 a consolidated review and thus judge the development application by the standards of the
2 zone applied for. Instead, ORS 227.175(2) requires the city to “establish a consolidated
3 procedure by which an applicant may apply at one time for all permits or zone changes
4 needed for a development project.” The less specific phrase “at one time” does not suggest
5 that the legislature intended the statute to authorize a consolidated procedure *only* if all the
6 applications necessary for proposed development are filed on the same date. As explained,
7 the purpose and intent of ORS 227.175(2) is to facilitate processing of development
8 proposals that require multiple applications, including zone changes. Viewed in that light,
9 the phrase “at one time” is better understood as a description of the consolidated process,
10 rather than an implicit prohibition on consolidated review where all necessary applications
11 are not filed at precisely the same time.

12 The use of the phrase “consolidated procedure” connotes a *process* by which all
13 necessary development applications for a single development project are considered in the
14 same proceeding. We understand the phrase “may apply at one time,” when read in
15 conjunction with the phrase “consolidated procedure,” to mean that all development
16 applications may be submitted and processed in the same proceeding. Further, while we
17 agree with petitioners that ORS 227.178(3)(a) provides protection for an applicant for a
18 development permit, as well as project opponents, from the laws changing in the middle of
19 the application process, that statute must be read together with and harmonized with ORS
20 227.175(2), if possible. *Fairbanks v. Bureau of Labor and Industries*, 323 Or 88, 94, 913
21 P2d 703 (1996). ORS 227.175(2) expressly envisions consolidating permit reviews that will
22 apply existing laws with zone changes that will alter existing laws. We read ORS 227.175(2)
23 as allowing an applicant to request review of multiple applications in a “consolidated
24 procedure” and continue to enjoy the protections of the fixed goal post statute as to each
25 application, even if the application for a necessary zone change is not filed on the same date
26 as the development applications. This reading harmonizes the clear intent of ORS

1 227.175(2) to allow applicants to consolidate all necessary applications in a single
2 proceeding with the fixed goal post protection for each application afforded under ORS
3 228.178(3)(a). It was not error for the city to consolidate and process the zone change
4 application with the PUD and subdivision applications under MLDC 10.101 and 10.102 and
5 ORS 227.175(2).

6 The first assignment of error is denied.

7 **SECOND ASSIGNMENT OF ERROR**

8 In their second assignment of error, petitioners assign error to the city's failure to
9 give notice to the Department of Land Conservation and Development (DLCD) of the zoning
10 map amendment to remove the EA overlay from a portion of the property, as required by
11 ORS 197.610(1).⁷ Specifically, petitioners argue: (1) the MLDC is an acknowledged land
12 use regulation, (2) the EA overlay district and the city's zoning map applying the EA zoning
13 district to the subject property are part of that acknowledged land use regulation, and (3) the
14 adoption of a resolution approving a change to the zoning map therefore constitutes a post-
15 acknowledgment amendment to a land use regulation. Unless some exception or exemption
16 applies, we agree with petitioners that the proposal to amend the city's zoning map to remove
17 the EA overlay district is "[a] proposal to amend a local government acknowledged * * *
18 land use regulation" and that notice to DLCD was required under ORS 197.610(1). *See* n 7.

19 Respondents answer that the removal of the EA overlay from the property was not an
20 amendment to a land use regulation requiring notice to DLCD under ORS 197.610(1),
21 because the zoning map amendment is a "small tract zoning map amendment" which is

⁷ ORS 197.610(1) provides:

"A proposal to amend a local government acknowledged comprehensive plan *or land use regulation* or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption.* * * The notice shall include the date set for the first evidentiary hearing. * * *" (Emphasis added).

1 expressly excluded from the definition of “land use regulation” under OAR 660-018-
2 0010(11).⁸ We are not persuaded by respondent’s argument that the zoning map
3 amendment is exempt under OAR 660-018-0010(11). The rule does not define “small tract
4 zoning map amendment,” and the city makes no attempt to explain why the amendment to
5 the city’s zoning map qualifies as a “small tract zoning map amendment.”

6 Moreover, upon closer review of the rule’s exemption for small tract zoning map
7 amendments from the ORS 197.610(1) DLCD notice requirement, we are unable to locate
8 any specific statutory authority for such an exemption. The phrase is not defined in any
9 currently effective statute or rule. The original version of ORS 197.015(11), which was
10 adopted during the 1981 legislative session by Oregon Laws, Chapter 748, Section 1, defined
11 “land use regulation” to exclude “small tract zoning map amendments.” The original version
12 of OAR 660-018-0010(11) mirrored the statute’s language, and became effective on
13 December 15, 1981. *See* n 8. ORS 197.605, which was also adopted by the legislature in
14 1981, in Oregon Laws Chapter 748, Section 3, was the first statute to refer to “small tract
15 zoning map amendments.” ORS 197.605(4) provided in relevant part:

- 16 “(a) A small tract zoning map amendment is subject to review for
17 compliance with the goals in the manner provided in sections 4 to 6,
18 chapter 772, Oregon Laws 1979, as amended by sections 35 to 36a,
19 chapter 748, Oregon Laws 1981 if;
- 20 “(A) The amendment applies to land outside an acknowledged urban
21 growth boundary;
- 22 “(B) The Local government has a comprehensive plan that was
23 acknowledged before July 1, 1981; and

⁸ OAR 660-018-0010(11) provides:

“‘Land Use Regulation’ means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan. ‘Land use regulation’ does not include *small tract zoning map amendments*, conditional use permits, individual subdivisions, partitioning or planned unit development approvals or denials, annexations, variances, building permits, and similar administrative-type decisions.” (Emphasis added)

1 “(C) The acknowledged comprehensive plan has not been reviewed
2 under ORS 197.640.

3 “(b) If [LUBA] determines that an amendment described in paragraph (a)
4 of this subsection is consistent with specific related land use policies
5 contained in the acknowledged comprehensive plan or land use
6 regulations, the amendment shall be considered to be in compliance
7 with the goals. * * *”

8 ORS 197.605 established joint jurisdiction between LUBA and the Land
9 Conservation and Development Commission (LCDC) on issues arising from amendments of
10 acknowledged comprehensive plans and land use regulations. LCDC’s review authority over
11 such amendments generally encompassed review of amendments for statewide planning goal
12 compliance, while LUBA’s review authority encompassed issues other than goal compliance,
13 *e.g.*, compliance with a statute, or an acknowledged comprehensive plan or ordinance.
14 However, pursuant to ORS 197.605(4) and Oregon Laws 1979, Chapter 772, Sections (4)
15 through (6), as amended by Oregon Laws 1981, Chapter 748, Sections 35 through 36(a),
16 LUBA was authorized to review certain decisions known as “small tract zoning map
17 amendments” for statewide planning goal compliance. *See former* ORS 197.605(4); see also
18 *Babb v. City of Veneta*, 8 Or LUBA 197, 200 (1983) (discussing LCDC and LUBA’s
19 jurisdiction over amendments to acknowledged comprehensive plans and land use
20 regulations); *Worcester v. City of Cannon Beach*, 9 Or LUBA 307, 320-21 (discussing
21 LUBA’s review authority over certain small tract zoning map amendments.)

22 ORS 197.605 was repealed in 1983. At the same time that ORS 197.605 was
23 repealed, LUBA was given jurisdiction to review all PAPAs.⁹ However, the language in the
24 1981 version of ORS 197.015(11) exempting small tract zoning map amendments from the
25 definition of land use regulation, and thus from the requirement to provide notice of the
26 proposed small tract zoning map amendment to DLCD under ORS 197.610(1), remained in

⁹ *See Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572, 582-84, *aff’d* 207 Or App 8, 139 P3d 990 (2006) for a general discussion of the 1983 legislation.

1 the statute until 1989, when the legislature amended ORS 197.015(11) to remove the
2 language.¹⁰ Arguably, small tract zoning map amendments were not subject to the ORS
3 197.610(1) requirement that notice of post acknowledgment land use regulation amendments
4 be provided to DLCD, until the exception for “small tract zoning map amendments” was
5 removed from the ORS 197.015(11) definition of land use regulation in 1989.

6 The legislature’s amendment of the statutory definition of “land use regulation” to
7 delete the former exemption for “small tract zoning map amendments,” together with the
8 unqualified requirement in ORS 197.610(1) that notice of post-acknowledgment land use
9 regulation amendments be sent to DLCD, leaves all post-acknowledgment land use
10 regulation amendments, including small tract zoning map amendments, subject to the ORS
11 197.610(1) notice requirement. However, the language exempting small tract zoning map
12 amendments found in the original version of OAR 660-018-0010(11) remains in the current
13 version of the rule. *See* n 8. The language in the rule that exempts “small tract zoning map
14 amendments” almost certainly represents an oversight on LCDC’s part to conform its rule to
15 the changed statutory definition of land use regulation. The rule now refers to a statutory
16 distinction that no longer exists, and is arguably inconsistent with ORS 197.015(12) and
17 ORS 197.610(1).

18 LCDC has broad rule-making authority under ORS 197.040(1) and has authority to
19 broaden or enhance statutory requirements. *Lane County v. LCDC*, 325 Or 569, 583, 942
20 P2d 278 (1997). But LCDC does not have rulemaking authority to waive or make
21 unnecessary the statutory notice of proposed post-acknowledgment land use regulation
22 amendments that is required by ORS 197.610(1). While in certain circumstances, DLCD

¹⁰ The statutory definition of “land use regulation” now appears at ORS 197.015(12) and provides:

“‘Land use regulation’ means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.”

1 may promulgate rules that are broader than or that vary in some way from the authorizing
2 language found in a statute, such rules cannot be inconsistent with state statutes. *See City of*
3 *West Linn v. LCDC*, 200 Or App 269, 284, 113 P3d 935, *rev den* 339 Or 609 (2005) (LCDC
4 rule that did not require application of locational factors set out in Goal 14 violated the goal
5 and was invalid); *see also Altamirano v. Woodburn Nursery, Inc.*, 133 Or App 16, 23, 889
6 P2d 1305 (1995) (an agency may not, by its rules, limit the terms of a statutory definition to
7 include only part of its ordinary meaning).

8 The failure to provide notice to DLCD of the proposed amendment to the zoning map
9 to remove the EA overlay requires remand.¹¹ *See Oregon City Leasing, Inc. v. Columbia*
10 *County*, 121 Or App 173, 177, 854 P2d 495 (1993) (failure to comply with ORS 197.610(1),
11 if compliance is required, is a substantive matter requiring remand); *Friends of Bull*
12 *Mountain v. City of Tigard*, 51 Or LUBA 759, 776, *dismissed* 208 Or App 189, ___ P3d ___
13 (2006) (same). On remand, the city must give notice to DLCD of the zoning map
14 amendment and include such information as the statute requires, and allow DLCD the time
15 provided in ORS 197.610(1) to provide notice to persons who have requested notice that the
16 zone map amendment is pending.

17 The second assignment of error is sustained.

18 **THIRD ASSIGNMENT OF ERROR**

19 Petitioners argue that the city erred in finding that the standards set forth in MLDC
20 10.235(C)(7) governing traffic impacts were satisfied because the applicant's traffic impact
21 analysis (TIA) for the project was generated using a faulty assumption that certain sections of
22 the project would include "senior housing." Petitioners argue that that assumption was

¹¹ In *Neighbors for Sensible Dev. v. City of Sweet Home*, 40 Or LUBA 21 (2001), we found without discussion or analysis that no notice to DLCD was required because the zoning map amendment at issue in that case was a small tract zoning map amendment, which was exempted from the definition of "land use regulation" under OAR 660-018-0010(11). Our decision in *Neighbors for Sensible Dev.* is inconsistent with our conclusion in this case that ORS 197.610(1) requires notice of all post acknowledgment land use regulation amendments to DLCD and that part of our decision in *Neighbors for Sensible Dev.* is overruled.

1 flawed because the final decisions did not impose any conditions of approval requiring
2 certain dwelling units to be age-limited in a manner consistent with the requirements of the
3 Fair Housing Act, 42 U.S.C. §§ 3606 et seq.

4 The TIA based its traffic generation projections on an assumption that the PUD
5 would contain 105 units of senior housing. Based on that assumption, the TIA projected
6 lower traffic than a standard single family dwelling would generate (3.71 average daily trips
7 (ADT) for a senior housing unit versus 9.57 ADT for a standard single family residence).
8 Record 1104. The lower ADT figures resulted in a conclusion by the city that the
9 requirements of MLDC 10.235(C)(7)(d) were met.

10 We disagree with petitioners that the applicant's TIA was based on flawed
11 assumptions. The approved tentative plan specifically proposes 105 senior housing units in
12 its High Cedars and Cascade Terrace subdivisions. The TIA reasonably assumed that the
13 project would include the 105 units of senior housing proposed by the tentative plan. The
14 city approved the tentative plan, including the proposal for 105 units of senior housing. It is
15 reasonable to assume that the final PUD plan will be consistent with the approved tentative
16 plan, since MLDC 10.240(G) provides that a final PUD plan may only be approved if it is
17 "substantially consistent" with the preliminary plan. Therefore, the final PUD plan
18 presumably will also propose 105 units of senior housing. We do not believe the city was
19 required to impose a separate condition of approval requiring the senior housing in order to
20 ensure that the final PUD plan proposes the senior housing that was proposed on the
21 approved tentative plan.

22 In addition, we reject petitioners' argument that the applicant should have been
23 required to prove that the project can meet the requirements for the Fair Housing Act prior to
24 preliminary PUD approval. Nothing cited to us in the Act requires a developer to fulfill the
25 requirements of the Act at any particular stage of the development approval process, and
26 petitioners do not allege that the project cannot qualify for such exemption at a later time. In

1 addition, if in the future the project is unable to qualify for the Fair Housing Act exemption,
2 the applicant presumably would be required to seek approval of a revision of the final PUD
3 plan according to the provisions of MLDC 10.245(A) in order to vary from the approved
4 senior housing component of the final PUD plan.

5 The third assignment of error is denied.

6 The city's decision is remanded.

46

Exhibit "B"

BEGINNING at the Southeast corner of Lot 9 of STEWERT ACRES, in the South One-half (1/2) of Section 16, Township 37 South, Range 1 West of the Wilamette Meridian, Jackson County, Oregon; thence, along the Southerly boundary of said Lot as follows: North 89°20'55" West 148.62 feet (Plat North 89°37' West 149.1 feet); thence North 54°19'30" West 787.24 feet (Plat North 54°06' West 787.4 feet); thence North 73°43'04" West 408.40 feet (Plat North 73°36' West 109.0 feet) to the Southwest corner thereof; thence East(erly) 1141.06 feet to the Easterly boundary of said Lot 9; thence, along said Easterly boundary, South 03°53'09" East (Plat South 3°45' East) 57{6.63} feet, more or less, to the Point of Beginning.

Containing 7.27 acs., more or less

REGISTERED
PROFESSIONAL
LAND SURVEYOR

David M. Minneci

OREGON
JULY 26, 1988
DAVID M. MINNECI
2349

David M. Minneci
L.S. 2349 - Oregon
Expires 12-31-06
Hoffbuhr and Associates, Inc.

January 13, 2006
(CedarEA.doc)

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Planning Dept.

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COUNTY CLERK
2006-06-18