



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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[www.lcd.state.or.us](http://www.lcd.state.or.us)



## NOTICE OF ADOPTED AMENDMENT

10/30/2013

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Eugene Plan Amendment  
DLCD File Number 007-13

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

Appeal Procedures\*

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

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

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

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

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

<paa> YA



FORM

2

DLCD

## Notice of Adoption

☐ In person ☐ electronic ☐ mailedDATE  
STAMP

DEPT OF

OCT 25 2013

LAND CONSERVATION  
AND DEVELOPMENT

For Office Use Only

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

Jurisdiction: **City of Eugene**Local file number: **Z 13-5**Date of Adoption: **10/3/2013**Date Mailed: **9/20/2013**Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: **8/1/2013**☐ Comprehensive Plan Text Amendment☐ Comprehensive Plan Map Amendment☐ Land Use Regulation Amendment☒ Zoning Map Amendment☐ New Land Use Regulation☐ Other:

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

Change of zoning from AG to R-1 and R-2, R-1 to R-2, and R-1/SR to R-1

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

Plan Map Changed from:

to:

Zone Map Changed from: **AG, R-1, R-1/SR**to: **R-1 and R-2**Location: **3800 North Delta Highway**Acres Involved: **161**

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? ☐ YES ☐ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ NoDLCD file No. 007-13 (19953) [17653]

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

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Local Contact: **Becky Taylor**

Phone: (541) 682-5437 Extension:

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Fax Number: 541-682-5572

City: **Eugene**

Zip: 97404-

E-mail Address: [becky.g.taylor@ci.eugene.or.us](mailto:becky.g.taylor@ci.eugene.or.us)

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## **ADOPTION SUBMITTAL REQUIREMENTS**

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

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

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

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

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

**ZONE CHANGE REQUEST**

**INTRODUCTION**

**Application File Name (Numbers):**

Jeffries, Deborah and Eric (Z 13-5)

**Applicant's Request:**

To rezone a portion of the property from R-1/SR Low-Density Residential with Site Review Overlay to R-1 Low-Density Residential without the Site Review Overlay. To rezone a portion of the property from AG Agricultural to primarily R-1 Low-Density Residential and a portion of one tax lot to R-2 Medium-Density Residential.

**Subject Property/Location:**

Tax Lots 304, 305, 306, 1200, 1201, 1202, 1207, and 1211 of Assessor's Map 17-03-07-00, currently the River Ridge Golf Course at 3800 North Delta Highway on the north side of Ayres Road and on both sides of North Delta Highway.

**Relevant Dates:**

Zone Change application submitted on July 1, 2013; supplemental information submitted on July 27, 29, and 31, 2013; application deemed complete on July 31, 2013; public hearing held on September 4, 2013.

**Applicant's Representatives:**

Bill Kloos, Law Office of Bill Kloos.

**Lead City Staff:**

Becky Taylor, Associate Planner, Eugene Planning Division.

**Summary of the Public Hearing**

The Hearings Official held a public hearing on this application on September 4, 2013. The Hearings Official stated he had no conflicts of interests and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing. Becky Taylor (Taylor), Associate Planner, and Gabe Flock, Senior Planner, were present for the hearings. Taylor presented the staff report at the public hearing, recommending approval of the zone change request and removal of the Site Review Overlay.

The applicant's representative, Bill Kloos (Kloos), provided a brief overview of the subject property and the requested zone change. A number of opponents testified in

opposition to the proposed zone change. The opponents were primarily neighbors who live along the current golf course that are concerned that apartment buildings will be built near their homes. Kloos responded to numerous issues raised by opponents. At the conclusion of the hearing, the applicant considered requesting that the record be left open, but eventually decided against such a request. The record was subsequently closed.

## **FACTS**

The subject property is approximately 109 acres of land that includes the River Ridge Golf Course as well as parcels developed with residences and undeveloped land. The property is located on both the east and west sides of Delta Highway north of Ayres Road. Property to the east of Delta Highway was recently annexed into the city and still retains AG Agricultural zoning. The applicant requests that the western portion of the property be rezoned from R-1/SR Low-Density Residential with a Site Review Overlay to R-1 Low-Density Residential without the Site Design Overlay. The applicant requests that the eastern portion of the property be rezoned from AG Agricultural to primarily R-1 Low-Density Residential with the southern 15 acres of Tax Lot 1211 rezoned to R-2 Medium-Density Residential. The proposed zone change to R-2 Medium-Density Residential in the southern portion of Tax Lot 1211 drew most of the opposition as many opponents live on the existing golf course. Opponents are concerned about the potential effects of removing the golf course and the construction of multi-family housing.

## **DOCUMENTS CONSIDERED BY THE HEARINGS OFFICIAL**

I have considered all of the documents in the planning file for the proposed zone change (Z 13-5) as well as the exhibits submitted and testimony provided at the public hearing.

## **ANALYSIS**

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

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

- "(1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.
- "(2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.
- "(3) The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.

"(4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in:

"\* \* \* \* \*

"(f) EC 9.2735 Residential Zone Siting Requirements. \* \* \* \* \*

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

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

EC 9.8865(1) requires that the proposed zone change be consistent with applicable provisions of the Metro Plan. The most obviously applicable provision of the Metro Plan is the plan designation for the property. The plan designation for all of the property is Low Density Residential except for 15 acres in the southern portion of Tax Lot 1211 that is designated Medium Density Residential. The applicant's proposed zone changes seek to bring the zoning into compliance with the plan designations. R-1 Low-Density Residential zoning implements the Low Density Residential plan designation, and R-2 Medium-Density Residential zoning implements the Medium Density Residential plan designation. Therefore, the proposed zone change is consistent with the plan designations.

The applicant identified several potentially applicable Metro Plan policies and explained why the proposed zone change is consistent with those policies. Those policies include Residential Land Use and Housing Element – Policies A.2 and A.3 and Environmental Resources Element – Policy C.2. There was no contrary evidence submitted or testimony provided that specifically addressed any of these policies. I agree with the staff and applicant's conclusions that the proposed zone changes are consistent with these policies and adopt and incorporate the applicant's findings provided in the July 26, 2013 Supplemental Narrative. Opponents provided no other argument that the proposed zone change is inconsistent with the Metro Plan. Therefore, I find that the proposed zone change is consistent with the provisions of the Metro Plan and that EC 9.8865(1) is satisfied.

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

EC 9.8865(2) requires that the proposed zone change be consistent with the applicable adopted refinement plans. In the present case, the applicable refinement plan is the Willakenzie Area Plan (WAP). The applicant identified several potentially applicable WAP policies and explained why the proposed zone change is consistent with those policies. Those policies include WAP General Use Policies 3, 5, 6, and 7; General Residential Policies 2, 3, 6, 7, 8, and 8.1; and Unincorporated Subarea Policies 12 and 13. As the applicant explains, many of those policies are development policies and are not directly applicable to the zone change request, even though such concerns may be addressed by the Multi Family Design Standards of EC 9.5500 that may apply to any future development proposals. The applicant also explains how the proposed zone change is consistent with the other directly applicable policies. I agree

with the applicant's and staff findings that the proposed zone change is consistent with those WAP policies and adopt and incorporate the findings in the applicant's July 29, 2013 Supplemental Narrative and pages 4-5 of the staff report.<sup>1</sup>

While most of the opponents' evidence and testimony was not directed at specific provisions of the Metro Plan or WAP, there were some issues that could be construed to raise WAP provisions. Opponents argued that more green space or open space should be required to approve the proposed zone change. The staff report explains that the WAP designates the subject property as Low Density Residential and Medium Density Residential, which is consistent with the proposed zone change. The staff report also explains that the original printed version of the WAP identifies the western portion of the property as having a Parks and Open Space designation. The staff report further explains that the Parks and Open Space designation was incorrectly applied as part of a housekeeping amendment package in 2004, and that the property's designation was corrected back to Low Density Residential by a City initiated plan amendment in 2009 that also specifically included an amendment to the WAP. In other words, there is no Parks and Open Space Designation anywhere on the property, and the absence of any proposed areas zoned for such uses does not violate any provision of the WAP.

Opponents also raised two provisions from the WAP that they argue are inconsistent with the proposed zone change. The Willakenzie Planning Area Goals state a number of ways to provide for compatibility between new and existing development. Opponents quote two of those goals: "Protect and improve the existing residential quality of the Willakenzie area" and "Ensure that new development is in scale and harmony with the existing neighborhood character." At the public hearing, staff explained that these goals are not mandatory approval criteria, but rather aspirational goals. The preamble to the Willakenzie Area Goals states:

"The purpose of the planning goals is to set an overall framework for planning in the area and to provide a check against findings, policies, and proposed actions that will be developed in later stages of the planning process."

The language of the preamble and the goals themselves provide aspirational language that may have provided guidance to the larger planning for the Willakenzie area, in particular decisions about what plan designations may be appropriate for various properties. I do not see that the identified policies affect consideration of a zone change proposal. I agree with staff that the planning goals identified by opponents do not provide applicable approval criteria and do not render the proposed zone change inconsistent with the WAP. Therefore, I find that the proposed zone change is consistent with the WAP and satisfies EC 9.8865(2).

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

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<sup>1</sup> I agree with staff that the Unincorporated Subarea policies are applicable to the application. The applicant had earlier suggested that the annexation of the property rendered the Unincorporated Subarea policies inapplicable. The applicant later addressed those issues, and those are the findings adopted and incorporated by this decision.

EC 9.8865(3) requires that the uses and densities allowed by the proposed zoning can be served through the orderly extension of key urban facilities and services. Key urban facilities and services are defined in the Metro Plan as: wastewater service, stormwater service, transportation, water service, fire and emergency medical services, police protection, city-wide parks and recreation programs, electric service, land use controls, communication facilities, and public schools. When the subject property was annexed into the city earlier this year, the applicant was required to demonstrate that key urban facilities and services could be provided. The Supporting Narrative submitted for the annexation explains that all key urban facilities and services are available for the property. The Supporting Narrative was submitted as Exhibit C to the zone change application at pages 8-9. No evidence was submitted or testimony provided that persuades me that the applicant is incorrect that the proposed zone change can be served by the orderly extension of key urban facilities and services. Therefore, I find that EC 9.8665(3) is satisfied.

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

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

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

The proposed zone change is primarily to R-1 Low-Density Residential and to one area of R-2 Medium-Density Residential, but not R-1.5. Thus, EC 9.2735 is not applicable to the current application. Therefore, I find that EC 9.8865(4) is satisfied.

#### **EC 9.8865(5)**

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

#### **Transportation Planning Rule**

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

- “(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this

rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

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

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

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

- “(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;
- “(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

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

As discussed above, the proposed zoning for the property is consistent with the existing comprehensive plan designations. The plan designation is Low Density Residential for the majority of the property and Medium Density Residential for 15 acres of Tax Lot 1211. Thus, OAR 660-012-0060(9)(a) is satisfied.

The City’s acknowledged Transportation System Plan (TSP) is TransPlan. When TransPlan was adopted in 2001, the subject property was designated Low Density Residential and Medium Density Residential, and has remained unchanged.<sup>2</sup> Thus, the proposed zoning is consistent with the TSP, and OAR 660-012-0060(9)(a) is satisfied.<sup>3</sup>

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

### **Other Challenges**

Opponents raised a number of other issues that they argued should result in denial of the proposed zone change. The opposition to the proposed change focused almost exclusively on the 15 acres of Tax Lot 1211 that are proposed to be rezoned to R-2 Medium-Density Residential. Except as discussed above, the objections to the proposed zone change to R-2 Medium-Density Residential do not specifically reference any of the approval criteria for a zone change. The objections instead concern loss of green space, loss of the buffer of a golf course between other uses, loss of the pastoral view and privacy provided by the golf course, and loss of property values. Unfortunately for opponents, even if true those arguments do not provide a basis for denying the proposed zone change. Opponents also argue that there will be adverse impacts upon traffic, noise and pollution, stormwater, supply of apartments, and burdens on schools. The problem with these arguments is that to the extent they have to be considered at all, they will be considered at the development permit process for any future development of the property. While I sympathize with the opponents’ concerns, the genesis of those concerns is that there is Medium Density Residential planned land adjoining their upscale Low Density Residential neighborhood. The concerns they raise are inherent in plan and zone boundaries. Unfortunately for opponents, the die was cast when the subject portion of the property was planned for Medium Density

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<sup>2</sup> The plan designations remained the same, except for the housekeeping corrections that changed and then changed back portions of the property. Those changes occurred after adoption of TransPlan and do not change the original assumptions in TransPlan.

<sup>3</sup> I further adopt and incorporate the applicant’s findings regarding OAR 660-012-0060(9) as provided on pages 11-12 of the July 1, 2013 zone change application.

Residential. While the opponents' concerns may affect the applicant's future development plans, they do not provide a basis for denying the proposed zone change.

### **SR Overlay**

As discussed earlier, the applicant also requests that the portion of the property on the west side of Delta Waters Highway be rezoned from R-1 Low-Density Residential/SR Site Review Overlay to R-1 Low-Density Residential without the SR overlay. In other words, the applicant seeks to remove the SR overlay.

A brief history of the SR overlay for the subject property is helpful in understanding the issue. In 1988, the owners of the property applied for a zone change to allow them to subsequently apply for a conditional use permit for a golf course. The April 13, 1988 staff report recommended approval, but also recommended application of an SR overlay to ensure: "Due consideration to the preservation of attractive and distinctive historical and natural features." The City approved the zone change and applied the SR overlay. The owners subsequently obtained conditional use approval for a golf course and driving range in 1988 after obtaining Site Review approval. The Site Review approval explained that the SR overlay was originally applied to ensure consideration of the Ayres homestead improvements on the property, which included an early 1900s house, smaller cottage, smokehouse, greenhouse, pump house, and stand of mature trees around the homestead. The 1988 decision noted that since the SR overlay had been approved, the City's Historic Preservation Specialist had fully documented the improvements, and no historic designations were applied. The applicant explains that under the zoning code in effect in 1988, the SR overlay was used to ensure that special consideration would be given to particular features of a site or the surrounding neighborhood. In the present case, the SR overlay was to ensure consideration of the historical features associated with the Ayres homestead.

The applicant makes two arguments in favor of removing the SR overlay: (1) if the initial decision whether to apply an SR overlay were to be made today, the overlay would not be imposed, and (2) removing the SR overlay is consistent with the zone change approval criteria. As the applicant explains, if the imposition of an SR overlay were being considered for the first time today, there would be no reason to impose the overlay. In the present case, the SR overlay was imposed to give the City time to give due consideration to the historical features associated with the Ayres homestead. The City subsequently did give due consideration to the Ayres historical features. The City's Historic Preservation Specialist fully documented the historical features, but declined to apply any historic designations. The purpose of the SR overlay was to give the City an opportunity to review the historical features, and the City subsequently reviewed those features. At that point, the entire purpose of the SR overlay had been fulfilled. I agree with the applicant that there is nothing in the R-1 Low-Density Residential zoning requirements that would necessitate an SR overlay on the property. Additionally, EC 9.4410 provides when SR overlays apply:

**“Applicability.** The /SR overlay zone applies to all property where /SR is indicated on the Eugene overlay zone map. In addition, the /SR overlay zone may be required by a refinement plan. \* \* \*”

The only reason for maintaining the SR overlay is because it is indicated on the overlay map. There is nothing in the applicable refinement plan (the WAP) or R-1 Low-Density Residential zoning that would impose the SR overlay. As discussed above, the original reason for the SR overlay under the prior code was fulfilled years ago, and the SR overlay no longer serves its intended purpose. The applicant provides a detailed analysis and history of the City removing such overlays when they were imposed prior to the new EC in 2001 and no longer serve the intended purpose, and are not required by any refinement plan. I agree with the applicant’s argument that under such circumstances an overlay may be removed.

In order to remove an overlay under these circumstances, the proposal must still satisfy the zone change approval of EC 9.8865 listed above. The applicant provides analysis of the zone change approval criteria on pages 18-20 of its July 1, 2013 zone change application. There was no evidence submitted or testimony presented regarding any of the zone change approval criteria regarding removal of the SR overlay. I agree with the applicant’s findings for EC 9.8865 at pages 18-20 and adopt and incorporate those findings. The only evidence or testimony in opposition specifically to the removal of the SR overlay was testimony from Brad Boyd (Boyd), who argued that it was unfair to accept favorable existing conditions, such as the Medium Density Plan Designation for part of Tax Lot 1211, but to challenge inconvenient existing conditions like the SR overlay. Unfortunately for Boyd, his “having your cake and eating it too” argument does not refute the fact that the reason for the SR overlay in the first place no longer exists and that the proposed removal satisfies all of the zone change approval criteria. I agree with the applicant that the SR overlay should be removed.

#### **Tax Lot 1211**

One final issue needs to be resolved. The applicant requests that Tax Lot 1211 be rezoned from one zoning designation, AG Agricultural, to two zoning designations, R-1 Low-Density Residential and R-2 Medium-Density Residential. As discussed above, the proposed zone change satisfies the approval criteria for the requested zone change. Because Tax Lot 1211 is proposed to be split-zoned, it is not immediately apparent where the boundary between the R-1 Low-Density Residential zone and the R-2 Medium-Density Residential zone should be located. As discussed above, the southern 15 acres of Tax Lot 1211 has a Metro Plan designation of Medium Density Residential. This designation is documented by an excerpt from the WAP (Exhibit I of the applicant’s July 1, 2013 zone change application) that has a large-scale map generally showing a Medium Density Residential area in the southern portion of what is now Tax Lot 1211. There is also a more detailed, smaller-scale map submitted by the applicant (Site Map Proposed Zoning attached to the staff report) showing an east-west line marking the proposed boundary approximately a third of the way up Tax Lot 1211 from Ayres Road.

In its zone change application, the applicant states:

"Because there is an unclear transition between plan designations, there is some ambiguity as to where the designation boundary lies. The applicant will defer to the City as to its interpretation of its own plan maps about the exact location of the [split-zoning] boundary."

Although I agree with the applicant's request to rezone the property, including the split-zoning of Tax Lot 1211, the lack of a precise description on the proposed split-zone boundary makes it difficult to establish the boundary. While it would have been preferable to have a legal description of the proposed boundary that I could rely upon, I understand the applicant's position. The applicant was concerned that if it proposed the exact boundary, an opponent or the City could oppose the application on the basis that the proposed boundary is incompatible with the applicable plan policies because of an inaccurate legal description.

The best map of Tax Lot 1211 in the record that has been drawn to my attention is the site map attached to the staff report. At the public hearing, the applicant's representative stated that the site map attached to the staff report is accurate and drawn to scale. According to the applicant's representative, the site map could be enlarged to provide the precise location of the proposed split-zoning boundary. Opponents objected to using the site map to locate the boundary, but did not provide any legal argument against such use. I am not aware of any legal basis that prevents me from using the site map to establish the boundary. While this is a less than ideal situation, in lieu of having a legal description to rely upon, I find that the boundary between the R-1 Low-Density Residential and R-2 Medium-Density zone on Tax Lot 1211 is located as shown on the site map attached to the staff report.

#### DECISION

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant's request for: (1) a zone change from R-1 Low-Density Residential/SR Overlay to R-1 Low-Density Residential without the SR Overlay for Tax Lots 304, 305, and 306; (2) a zone change from AG Agricultural to R-1 Low-Density Residential for Tax Lots 1200, 1201, 1202, and 1207; and (3) a zone change from AG Agricultural to R-1 Low-Density Residential and R-2 Medium-Density Residential for Tax Lot 1211 with the boundary between the two zones as shown on the site map attached to the staff report.

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

Mailed this 20 day of September, 2013.



Fred Wilson  
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS



**Planning & Development  
Planning**

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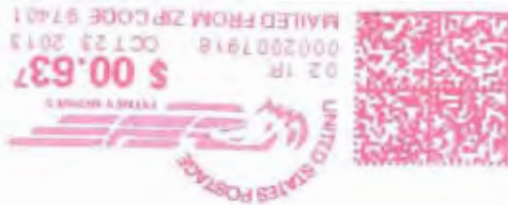
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DEPT OF

OCT 25 2013

LAND-USE DIVISION

Department of Land Conservation and  
Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540



9730132540 C007

