



# Oregon

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

Date: 01/12/2015  
Jurisdiction: City of Eugene  
Local file no.: Z 14-5  
DLCD file no.: 005-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 12/30/2014. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 36 days prior to the first evidentiary hearing.

### Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

### DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us)



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

**FOR DLCD USE**  
 File No.: 005-14 {22398}  
 Received: 12/30/2014

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

Jurisdiction: City of Eugene

Local file no.: **Z 14-5**

Date of adoption: 11/26/14

Date sent: 12/30/2014

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

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 8/5/14

No

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

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

Local contact (name and title): Becky Taylor, Associate Planner

Phone: 541-682-5453

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

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

City: Eugene

Zip: 97401-

**PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY**

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

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

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

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

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

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

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

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

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

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

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

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

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

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

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

Change from C-1	to GO	Acres: 4.85
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

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

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address): 17-03-09-24/00500, 4010 County Farm Road

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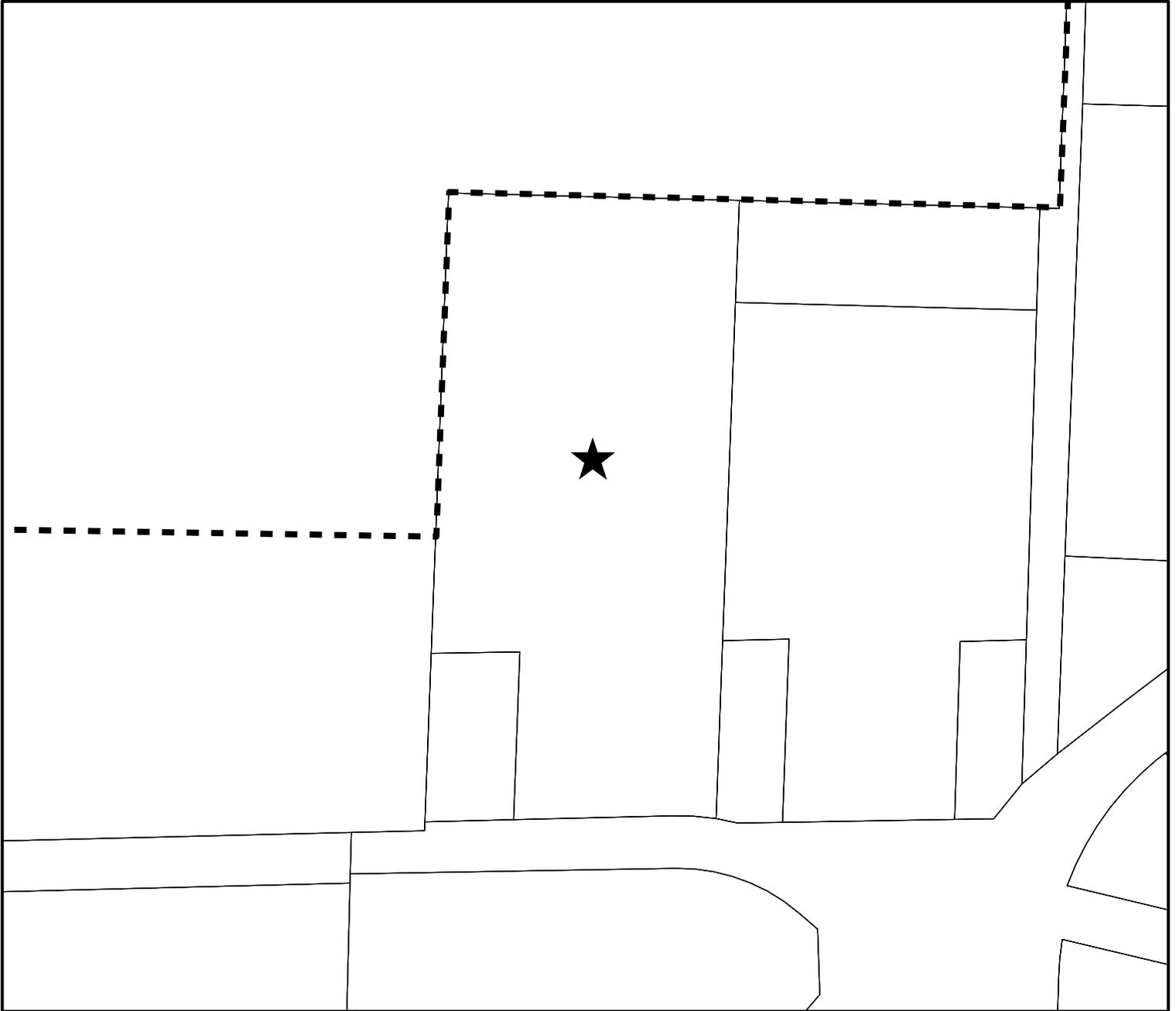
List affected state or federal agencies, local governments and special districts:

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

**Van Slyke, John and Payung (Z 14-5)**  
**17-03-09-24/00500**



GO General Office



**Zoning**

 Eugene Urban Growth Boundary

 Subject Site





**FINAL ORDER, FINDINGS, AND CONCLUSIONS  
OF THE EUGENE PLANNING COMMISSION:  
VAN SLYKE ZONE CHANGE (Z 14-5)**

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**I. INTRODUCTION**

The Hearings Official (HO) held the initial public hearing on this request on September 10, 2014. The applicant, Kim O'Dea of the Law Office of Bill Kloos PC, on behalf of John and Payung Van Slyke, testified against the staff recommendation for the /SR Site Review Overlay as a condition of zone change approval from C-1 Neighborhood Commercial to GO General Office. The HO agreed with the staff analysis and issued his decision for the GO/SR zoning on September 24, 2014.

On October 1, 2014, Bill Kloos filed an appeal, on behalf of the applicant, challenging the HO decision to apply the /SR overlay. The appeal statement identifies four assignments of error (all relating to the /SR overlay) in the Hearings Official's findings and decision with respect to applicable Eugene Code (EC) approval criteria at EC 9.8865.

On October 17, 2014, in accordance with EC 9.7655(1), the City mailed written notice of the appeal hearing to the applicant, the appellant, the Northeast Neighbors, all persons who submitted written comments in regard to the original applications, and all persons who requested notice. The written notice included the required elements set forth in EC 9.7655(2).

The Planning Commission (PC) held a public hearing on the appeal on October 28, 2014. At the public hearing, five people spoke in favor of the appeal to remove the /SR Overlay. The PC closed the public hearing and the record that same night and began its deliberations. The commission reached its final decision on November 3, 2014.

The appeal is based on the record and limited to the assignments of error contained in the appeal statement submitted. As described below, the PC modifies the HO's decision to remove the /SR Site Review Overlay. Those additional findings and modifications are detailed below with respect to the related assignment of error.

**II. RECORD BEFORE THE PLANNING COMMISSION**

The record before the PC consists of the Eugene Planning Commission Agenda Item Summary and related attachments for Appeal of Hearings Official Decision: Van Slyke (Z 14-5) dated October 28, 2014; the written and oral testimony presented by appellants, applicant, and other parties to the Planning Commission; the decision of the Eugene Hearings Official dated September 24, 2014; and all record materials (including written and oral testimony, City staff reports and application materials) presented to the HO. The entire City Planning & Development Department file was physically before the PC prior to its final decision.

EC 9.7655(2) limits the nature of evidence that the PC can consider on appeal as follows: "The record from the proceeding of the Hearings Official or Historic Review Board shall be forwarded to the appeal review authority. No new evidence pertaining to the appeal issues shall be accepted." Pursuant to this section, the PC cannot accept any new evidence, and there is no process for an exception to this rule.

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

After consideration of the applicable law and all argument and evidence in the record, the PC modifies the HO's decision to remove the /SR Overlay, as described below. In the event of any conflict between his decision and this Final Order, this Final Order shall prevail.

The HO considered the following three policies from the Willakenzie Area Plan (WAP) in determining the applicability of the /SR Overlay.

#### General Policies and Proposed Actions

2. *The City shall ensure that future commercial development and redevelopment in the Willakenzie planning area is sensitive to and compatible with existing and planned development in the surrounding area.*
  - 2.1 *Amend the Eugene Code to ensure that commercial developments are attractive, compatible with surrounding land uses, and reflect recommendations in the Willakenzie Plan, the Commercial Lands Study, and other design studies.*
  - 2.2 *Apply the /SR Site Review suffix to all parcels zoned or designated for C-1 Neighborhood Commercial or C-2 General Commercial development in the Willakenzie planning area, using the Willakenzie Commercial Siting and Development Guidelines as the review criteria. These guidelines will be used to evaluate commercial development and redevelopment proposals until such time as the City adopts citywide commercial development standards or guidelines.*
5. *Site review procedures or special development standards shall be considered for properties which abut or face one another, when the uses permitted on those properties are potentially incompatible.*

#### North Region – Unincorporated Subarea

2. *The City shall require future developments on parcels abutting the UGB to provide an effective transition between urban and rural land uses. This transition is intended to minimize potential conflicts with adjacent agricultural and sand and gravel operations.*

Additionally, the HO relied on the PC's previous decision on the Benson zone change case (Z 13-3). The HO stated: "If the Planning Commission had not reversed the hearings official's position on site review in the Benson case, I might well agree with the applicant and prior hearings officials that the site review overlay should not be applied. Given the Planning Commission's decision in Benson and Planning Commission review authority over zone change requests such as this, I agree with staff that the site review overlay is necessary to ensure compliance with the mandatory approval criterion of WAP Policy 2 and 5. Site review overlay is therefore made a condition of approval." (Page 8)

The applicant objects to the /SR Overlay, citing four assignments of error, as follows:

***First Assignment of Error: The HO erred in making a decision based on his guess about what the Planning Commission might decide about Site Review for this application, based on what it did in the Benson decision, rather than relying on his own reading of the law that applies. The Commission should remand this decision to the HO with the direction to make a decision based on his own reading of the law.***

***Second Assignment of Error: The HO erred in saying (page 4 para 2) that the applicant agreed that WAP Policy 2 is an approval criterion for this decision.***

***Third Assignment of Error: Having agreed with the applicant that the /SR "Applicability" provisions of EC 9.4410 say that /SR may be applied if it is "required by a refinement plan," the HO erred in applying the /SR while also finding that there is "nothing in the WAP that specifically requires the imposition of the site review overlay." Decision at 6 para 3.***

***Fourth Assignment of Error: The HO erred in imposing the /SR overlay for the reasons stated in the applicant's Hearing Memorandum dated September 18, a copy of which is attached here and incorporated herein.***

Given the overlapping nature of these assignments of error, the following findings have been consolidated accordingly.

PC finds that the HO erred in his consideration of the Benson case, as to the relevance to this case. The Benson case was based on completely different policy and context. The Benson case was based on WAP Residential Policy 8, regarding medium and high density residential land uses directly abutting low density land uses. In the Benson case, the PC found that /SR was warranted by Policy 8 for the zone change to medium-density residential for property abutting low-density residential properties. In the Benson case, the PC found that the multi-family development standards were not sufficient to address compatibility. The PC did not intend for the Benson decision to equate to a broader policy decision that all code standards subsequent to the WAP adoption were insufficient to address compatibility. The PC finds that compatibility needs to be determined on a case-by-case basis. PC also acknowledged the Welch Boys zone change decision (Z 10-7) which determined that the application of /SR was not required, based on consideration of the same WAP commercial policies and similar circumstances to this appeal. PC concludes that the HO did err with respect to his reliance on the Benson case, and lack of consideration of the Welch Boys decision. Therefore, PC finds the HO erred with respect to Assignments of Error #1 and #4 above.

With respect to Assignments of Error #2 and #3, the PC finds that the proposed GO zone is not incompatible with the surrounding medium-density and commercial zones and designations that predominately surround the property in question. Given this context, PC finds that development of this site under the GO standards would be sensitive to and compatible with existing and planned development in the surrounding area, as called for in General Policy 2, without the need for site review. Based on that determination, Policy 5 has also been adequately considered.

With regard to the UGB, which abuts the northern boundary of the site, PC finds that the proximity of GO zoned land adjacent to farm land does not result in any apparent conflicts which require additional compatibility measures. Therefore, PC concludes that North Region – Unincorporated Subarea Policy 2 is also satisfied without the need for site review.

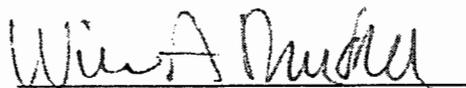
To the extent the above policies are mandatory, PC is unanimous that they were met without the imposition of the /SR overlay. In particular, General Policy 2 is met because the GO zone is compatible with existing and planned development in the surrounding area. Some commissioners have expressed concern about the sufficiency of the commercial development standards to address compatibility in all instances, and find that this policy needs to be preserved for future application on a case-by-case basis. However, the PC is unanimous in its decision that compatibility was not an issue for this particular site.

As discussed in Assignment of Error #2, PC finds that the phrase “required by a refinement plan” is essentially determined on a case-by-case basis, requiring contextual review of the proposal to determine whether compatibility is an issue. While the PC unanimously agrees that there are no compatibility concerns in this particular case, the PC hereby clarifies that in future cases, site review may be required by the refinement plan, depending on the context of that specific case.

Based on the findings above, PC finds that the HO erred with respect to Assignment of Errors #2 and #3, as qualified above.

#### IV. CONCLUSION

The Eugene Planning Commission has reviewed the record and the appellant’s assignments of error, and has voted to modify the HO decision to remove the /SR Overlay. Accordingly, zone change approval is granted, as modified. The foregoing findings and conclusions are adopted as the Final Order of the Eugene Planning Commission on November 3, 2014.



William Randall, Chair  
Eugene Planning Commission

Attachment A: Hearings Official’s Decision

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

**ZONE CHANGE REQUEST**

**INTRODUCTION**

**Application File Name (Number):**

Van Slyke, John and Payung (Z 14-5)

**Applicant's Request:**

Zone change from C-1 Neighborhood Commercial to GO General Office.

**Subject Property/Location:**

Located at 4010 County Farm Road, on the north side of County Farm Road, Northwest of Coburg Road and North Game Farm Road intersection; Tax Lot 500 of Assessor's Map 17-03-09-24; approximately 4.85 acres.

**Relevant Dates:**

Zone change application submitted on June 25, 2014; application deemed complete on July 30, 2014; public hearing held on September 10, 2014.

**Applicant's Representative:**

Kim O'Dea from the Law Office of Bill Kloos, PC.

**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 10, 2014. The Hearings Official stated he had no conflicts of interests, was not biased, 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 with the condition of a SR Site Review Overlay.

Kim O'Dea (O'Dea) testified that she agreed with the staff report except for the imposition of the site review overlay. O'Dea argued that there was no basis to impose the site review overlay, and that staff merely thought it would be a good idea rather than something required by the code. Staff responded to O'Dea's arguments. At the conclusion of the public hearing, the Hearings Official closed the record.

## **FACTS**

The subject property is approximately 4.85 acres on the north side of County Farm Road northwest of the Coburg Road and North Game Farm Road intersection. The property is zoned C-1 Neighborhood Commercial and currently has a house and accessory structures. The house has been used in the past for residential purposes, and the accessory structures have been in commercial use. The house and accessory structures are currently vacant. The property was recently annexed into the City where it was determined that the north and northwest boundaries of the property are also the edge of City limits and the urban growth boundary (UGB). The property to the east is zoned Agricultural and Neighborhood Commercial and is in commercial use by the Country Inn. The other surrounding properties are primarily undeveloped. The property to the southwest is outside the City but within the UGB and is currently in agricultural use and designated for Medium Density Residential uses. Across County Farm Road to the south are 13 acres of undeveloped land inside the City that are zoned R-2 Medium-Density Residential and C-2 Community Commercial, both with Site Review overlays. The property to the north and northwest is outside the City and UGB and is in agricultural use. The applicant did not request a site review overlay, but the staff report recommends imposition of a site review overlay.

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

I have considered all of the documents in the planning file for the proposed zone change (Z 14-5) as well as the testimony and documents 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 \* \* \*.
- “(5) In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the city to ensure the area is maintained as a natural resource area for a minimum of 50 years.”

**EC 9.8865(1)**

EC 9.8865(1) requires that the proposed zone change be consistent with applicable provisions of the Metro Plan. The most obviously applicable provision of the Metro Plan is the plan designation for the property. The plan designation for the property is Commercial. GO General Office is one of four commercial categories that align with the Commercial designation of the property. As the staff report states, the property is well suited for GO zoning which is designed to be in transitional locations between residential and commercial uses. No specific Metro Plan policies were identified as being applicable to the application. 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 Refinement Plan (WAP). The WAP is parcel-specific in this case and designates the property as Commercial. As discussed earlier, the GO zone is consistent with the Commercial designation.

In addition to being consistent with the parcel-specific designation of the property in the WAP, the application must also be consistent with all applicable policies of the WAP. It is often difficult to determine which policies in a refinement plan are mandatory approval criteria and which are merely aspirational. It is also sometimes difficult to determine how an approval criterion must be satisfied once it is found to be mandatory. These are the issues contested in this case in determining whether a site review overlay should be required to approve the zone change

request.

The WAP includes both policies and proposed actions. Some of the policies include language such as “shall” and “must” that make them mandatory approval criteria. Others only state that they “should be considered” or certain things should be “discouraged” and are therefore only aspirational. The proposed actions are not adopted as policies, so they are not in themselves approval criteria, but they provide direction for implementing the policies, some of which are approval criteria.

We begin with Policy 2 and the accompanying proposed actions:

“Policy 2: The City *shall ensure* that future commercial development and redevelopment in the Willakenzie planning area is *sensitive to and compatible with* existing and planned development in the surrounding area.

“Proposed Action 2.1: Amend the Eugene Code to ensure that commercial developments are attractive, compatible with surrounding land uses, and reflect recommendations in the Willakenzie Plan, the Commercial Lands Study, and other design studies.

“Proposed Action 2.2: Apply the /SR suffix to all parcels zoned or designated for C-1 Neighborhood Commercial or C-2 General Commercial in the Willakenzie planning area, using the Willakenzie Commercial Siting and Development Guidelines as the review criteria. These guidelines will be used to evaluate commercial development and redevelopment proposals until such time as the City adopts citywide commercial development standards or guidelines.” (Emphases added.)

WAP Policy 2 provides that the City “shall ensure” that development is “sensitive to and compatible with existing and planned development” in the area. That is mandatory language, and the parties agree that this is an approval criterion. The applicant argues that the WAP policies were written over 20 years ago when there were less stringent development approval criteria so a site review overlay was necessary to ensure compatibility. According to the applicant, as stated in the proposed actions, the City amended the code to incorporate these concerns in the development process. Therefore, the applicant argues that the City has ensured that future development will be “sensitive to and compatible with existing and planned development,” and Policy 2 is satisfied by the later development process.

The City argues that while the code was amended to include more requirements for development, the code amendments are not in themselves enough to ensure that Policy 2 is satisfied. According to the City, the development standards for GO zoning ensure proper

development of the site itself, but do not specifically ensure compatibility with existing and planned development in the surrounding area.

The City also points to other policies that provide additional reasons for requiring a site review overlay. WAP Policy 5 provides:

“Site review procedures or special development standards shall be considered for properties which abut or face one another, when the uses permitted on those properties are potentially incompatible.”

This policy only requires that site review “shall be considered” for abutting properties when the permitted uses are potentially incompatible, so it is not an approval criterion. The City argues that even though it is not an approval criterion, it lends support for imposing the site review overlay because the Medium Density designated properties across County Farm Road have a site review overlay and this demonstrates a trend for site review overlays in the area. The applicant responds that the GO zone is specifically designed to provide a compatible transition zone between residential and commercial areas, so that a site review overlay is not necessary. The applicant further argues that just because other properties have site review overlays does not mean the subject property should also be required to have one.

Subarea Policy 2 of the North Region – Unincorporated Subarea provides:

“The City shall require future developments on parcels abutting the UGB to provide an effective transition between urban and rural land uses. This transition is intended to minimize potential conflicts with adjacent agricultural and sand and gravel operations.”

This policy states with mandatory language that the City “shall require” parcels abutting the UGB to provide a transition between urban and rural uses, which makes this an approval criterion. The property abuts the UGB to the north and northwest. According to the City, although the GO zone is designed to provide a transition between commercial and medium density residential development it does not address compatibility with agricultural sand and gravel uses. The applicant responds that the site review approval criteria do not include a generalized authorization to limit GO uses or to make them compatible with rural agricultural and sand and gravel uses.

Subarea Policy 10 provides:

“The City shall recognize the existing neighborhood commercial zoning at the northwest corner of County Farm Road and Coburg Road and shall discourage future commercial rezonings in the immediate area.”

The language of Subarea Policy 10 is not mandatory as it merely directs the City to “recognize” existing commercial zoning in the area and to “discourage” future commercial rezonings in the area. The City recognizes that this is not an approval criterion but argues the site review overlay would further the policy of preventing further commercialization of the area. The applicant argues the policy merely recognizes the existing commercial uses and discourages any additional commercial uses.

The preceding review of applicable policies and proposed actions leaves us with a mandatory requirement to ensure that the proposed zone change is “sensitive to and compatible with existing and planned development in the area” and that the City “shall require” developments “abutting the UGB to provide an effective transition between urban and rural uses.” There are also non-mandatory policies and proposed actions that may influence the decision. The City argues that the best way to satisfy the approval criteria and intent of the policies and proposed actions is to impose a site review overlay. The applicant argues no site review overlay is necessary.

Initially, the applicant argues that the City has no authority to impose a site review overlay in the first place. According to the applicant, there is nothing in the applicability provisions for site review at EC 9.4410 that allow a site review overlay to be imposed in this case. EC 9.4110, however, provides: “\* \* \* In addition, the /SR overlay zone may be required by a refinement plan. \* \* \*” While there may be nothing in the WAP that specifically requires the imposition of a site review overlay, I agree with the City that the WAP may require compliance with certain policies where imposition of a site review may be the best or only way to satisfy policies that are mandatory approval criteria.

We are essentially left with WAP policies that require that the proposed zone change be compatible with surrounding properties, including properties outside the City and UGB. The dispute is whether the code amendments adopted after the WAP was written satisfy those compatibility concerns or whether the site review overlay is required. The applicant argues that prior hearings official decisions demonstrate that the site review is not necessary. In particular, the applicant cites the decision in Welch Brothers LLC (Z 10-7). In Welch Brothers LLC, the applicant requested a zone change from R-3 to GO and to remove the SR overlay from an existing GO-zoned property. The request was approved with support of City staff. The pertinent reasoning from the hearings official stated:

“Several changes have occurred to the Eugene Code since 1998 that have eliminated the need for Site Review to address issues of compatibility \* \* \*. The Eugene Code has been updated to include development standards that specifically address the scale, bulk, building and parking coverage of commercial development. \* \* \* As such, all the issues raised \* \* \* to be addressed by site review will be addressed by updated standards and other requirements.” Decision 5.

There are also more recent hearings official decisions that follow the same logic. This issue arose in the recent Benson zone change case (Z 13-2). In that case, City staff recommended imposition of a site review overlay in a request to change the zoning from R-1 Low-Density Residential to R-2 Medium-Density Residential. The hearings official approved the zone change but did not require the site review overlay. On appeal, the Planning Commission modified the hearings official’s decision and imposed a site review overlay. The pertinent Planning Commission findings state:

“The Planning Commission finds that local context distinguishes the subject site from past precedents where the /SR Overlay was not applied. The official record includes two cases where application of the /SR Overlay was denied by a local Hearings Official. \* \* \* the Hearings Official in both past cases asserted that the City’s adopted Multi-Family development standards effectively replaced and negated the need for application of the /SR Overlay. The Planning Commission disagrees with this reading of the past legislative action, and can find no indication of the City Council intent on which to base such assertions. Furthermore, the Planning Commission finds that the Multi-Family development standards are limited in their scope, primarily addressing the design and orientation of buildings. The site review standards, on the other hand, address a much wider range of development issues, including natural resource protection, tree preservation and impacts on adjacent transportation systems. Therefore, *the policy direction in favor of applying the /SR Overlay to address compatibility remains in effect in the Willakenzie Area Plan*, and it should be applied to the subject site.” Supplemental Findings 2 (emphasis added).

While the Welch Brothers LLC case involved a zone change from R-3 to GO and the Benson case involved a zone change from R-1 to R-2, both cases involve the same general principle as the present case of whether the WAP provides a basis for imposing a site review overlay in addition to the requirements of development in the specific zone. Even though different policies and proposed actions of the WAP were at issue, all of the policies and proposed actions generally concern whether site review is necessary to ensure compatibility.<sup>1</sup> In addition,

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<sup>1</sup> For instance, the site review in Benson was largely based on WAP Policy 8, which provides: “Promote compatibility between low-density residential uses and medium- to high-density residential land uses.” That is very similar to WAP Policy 2 quoted earlier. Proposed Action 8.1 provides: “Apply the site review/ suffix to all parcels

the Planning Commission cited Policy 5 in the Benson case, which is applicable here. While the parties could certainly argue about what components of the Welch Brothers LLC and Benson cases are or are not identical to the present case, I believe the two cases represent fundamentally different understandings of the EC and WAP.

Under the reasoning in Welch Brothers LLC and the hearings official in Benson, the action described by Proposed Policy 2.1 has already occurred. The EC was amended in the early 2000s to ensure the compatibility described in the WAP was achieved. Under that reasoning, it would be unnecessary, redundant, and burdensome on applicants to impose the additional time, expense, and potential litigation of the site review process. On the other hand, the Planning Commission's decision in Benson represents a very different position. Under the Planning Commission's reasoning, the EC updates did not fully implement all the policies in the WAP, including compatibility, and the WAP policies are very important in ensuring that compatible development occurs. In particular, site review is an important and necessary process for ensuring such compatibility.<sup>2</sup>

If the Planning Commission had not reversed the hearings official's position on site review in the Benson case, I might well agree with the applicant and prior hearings officials that the site review overlay should not be applied. Given the Planning Commission's decision in Benson and Planning Commission review authority over zone change requests such as this, I agree with staff that the site review overlay is necessary to ensure compliance with the mandatory approval criterion of WAP Policy 2 and 5.<sup>3</sup> Site review overlay is therefore made a condition of approval.

With the site review overlay, EC 9.8665(2) is satisfied.

**EC 9.8865(3)**

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

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designated medium- or high-density residential land use which directly abut low-density residential land uses." That is very similar to Proposed Action 2.2

<sup>2</sup> The Benson case has apparently been appealed to LUBA but has not been decided as of the date of this decision.

<sup>3</sup> Although the applicant argues that there is nothing in the site review approval criteria that is not covered by general development standards, EC 9.8440 provides that: "The site review's general design and character is reasonably compatible with surrounding properties, as it relates to building locations, bulk and height, noise, glare and odors."

recreation programs, electric service, land use controls, communication facilities, and public schools.

When the property was annexed into the City, a requirement was a demonstration that minimum levels of key urban facilities and services could be provided in an orderly, efficient, and timely manner. The annexation decision found that such services could be provided. The staff report also states that wastewater service to the site will require an extension of the public system. At the time of annexation, the applicant's engineer provided a conceptual wastewater service plan that was acceptable to the Public Works staff. Therefore, I find that EC 9.8865(3) is satisfied.

**EC 9.8865(4)**

EC 9.8865(4) requires that the proposed zone change be consistent with certain applicable siting requirements set out for the specific zone, including the Commercial Zone Siting Requirements of EC 9.2150. While EC 9.2150 has requirements for C-1 and C-4 zones, there are no requirements for GO zoning. Therefore, I find that EC 9.8865(4) is satisfied.

**EC 9.8865(5)**

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

**Transportation Planning Rule**

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

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

“(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

“(b) Change standards implementing a functional classification system; or

“(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

“(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

“(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

“(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

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

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

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

“(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

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

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

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

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

#### **DECISION**

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant’s request for a zone change from C-1 Neighborhood Commercial to GO General Office zoning. Pursuant to the above findings, Site Review Overlay for the subject property is a condition of approval.

Dated this 24<sup>th</sup> day of September, 2014.

Mailed this 26 day of September, 2014.

  
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Fred Wilson  
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS