



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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

Date: April 27, 2015

Jurisdiction: City of Banks

Local file no.: PA/ZC-8-96

DLCD file no.: 002-96

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 04/20/2015. 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 not submitted to DLCD 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



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

FOR DLCD USE
File No.: 002-96 {7672}
Received: 4/20/2015

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 Banks

Local file no.: **MOD1-14/MOD2-14**

Date of adoption: April 17, 2015

Date sent: April 20, 2015

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): Unknown. 1996

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:

No

Local contact (name and title): Jolynn Becker, City Manager

Phone: 503.324.5112

E-mail: jbecker@cityofbanks.org

Street address: 13680 NW Main Street

City: Banks

Zip: 97106

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:

None

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	to	Acres:
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):

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.

The application(s) sought amendment to a prior condition of approval in 1996. See attached Notice of Decision.



**City of Banks
City Council Notice Decision**

Subject: Modification of PUD 9-96 and PA/ZC 8-96; Request to eliminate Condition 9 from PUD 6-96 and PA/ZC 8-96, which require a secondary access to the southeast corner of Arbor Village to be constructed when Phase 9 is developed.

Findings and Reasons: As findings supporting its decision, the City Council incorporates the April 14, 2015 Findings of Fact, Conclusions of Law and Decision of the City Council MOD1-14/MOD2-14.

Conclusion: The City Council concludes that MOD1-14 and MOD2-14 meet the applicable approval criteria and should be approved.

Order: The City of Banks City Council approves applications MOD1-14 and MOD2-14 subject to the conditions of approval listed in the April 14, 2015 Findings of Fact, Conclusions of Law and Decision of the City Council MOD1-14/MOD2-14.

Description and Date of Final Decision: On April 14, 2015, the City Council adopted Finding and Conclusions, finalizing the City Council's decision to approve City Casefile MOD1-14 and MOD2-14.

How to Obtain More Information: The decision is available for review on the City of Banks website. A copy may be obtained at cost at the following address:

City Manager
City of Banks
City Hall
13680 NW Main Street
Banks, OR 97106
503-324-5112

Right to Appeal: This decision may be appealed by filing a written Notice of Intent to Appeal with the State of Oregon Land use Board of Appeals (LUBA) within 21 days of April 17, 2015, the date of this Notice of Decision. For more information contact LUBA at:

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, OR 97301
503-373-1265

DATED this 17th Day of April, 2015

Peter C. Edison, Mayor



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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF THE CITY COUNCIL
MOD1-14/MOD 2-14**

DATE: April 14, 2015

REQUEST: Modification of PUD 6-96 and PA/ZC 8-96; Request to eliminate Condition 9 from PUD 6-96 and PA/ZC 8-96, which require a secondary access to the southeast corner of Arbor Village to be constructed when Phase 9 is developed.

APPLICANT: South Banks Joint Venture/West Hills Development Co.
735 SW 158th Avenue
Beaverton, OR 97006

PROPERTY: Phase 9 of Arbor Village Planned Unit Development, Washington County Tax Map 2N331CD TL 11400. Approximately 8.25 acres.

APPLICABLE CODE: The appropriate code criteria to use are the criteria in place when the application was filed. Only the requested modification will be reviewed against the criteria. This is not a review of the entire Arbor Village development or future development of Phase 9. Therefore the applicable criteria are as follows:

Planned Unit Development (“PUD”) Amendment – Code Chapter 151, Sections 135-142, 172

Plan Amendment and Zone Change – Code Chapter 151, Sections 156 and 157

On January 13, 2015, and April 6, 2015, the Banks City Council heard the above referenced applications and tentatively approved the applications with six (6) conditions of approval. The Banks City Council hereby adopts the following findings of fact and conclusions of law in support of its decision, including six (6) conditions of approval.

DECISION

The Banks City Council APPROVES MOD1-14 and MOD2-14 to remove Condition 9 from City files PUD 6-96 and PA/ZC 8-96, subject to the following conditions:

1. Prior to development the applicant shall be required to apply for a zone change from Industrial (I) to Single Family Residential (R-5).
2. Contingent upon approval of the zone change required by Condition 1, development in Phase 9 shall contain single family residential uses only.
3. If Arbor Village Phase 9 is rezoned to Single Family Residential (R-5), the number of dwelling units shall be limited to a maximum of 42 dwelling units.
4. Prior to development the applicant shall contribute \$20,000 to a transportation study for an east/west connection.
5. Prior to development the applicant will stub a public right of way and dedicate it for Phase 9.
6. The applicant shall enter into an agreement with the City of Banks, Oregon no later than thirty (30) days following the effective date of MOD1-14 and MOD2-14 that is substantially similar to the draft agreement placed before the Banks City Council at the public hearing on April 6, 2015.

1. EXECUTIVE SUMMARY

West Hills Development (“WHD”) applied to amend the conditions of approval for Phase 9 of the Arbor Village Planned Unit Development. Arbor Village Planned Unit Development (File No. PUD 9-96) was subject to several conditions of approval including requiring a secondary access at the southeast corner of Arbor Village be constructed when Phase 9 is developed. Specifically, as approved, the condition read as follows:

“A provision for secondary street access at the southeast corner of the site shall be constructed by the applicant commensurate with future Phase 9 development.”

The applicant testified that Condition 9 could not be accomplished due to the following:

1. The railroad crossing of the Portland and Western Railroad (“P&WRR”) and Port of Tillamook Bay (“PTB”) running along the east side of the PUD prohibits a crossing;
2. The inability to access Oregon Highway 6; and
3. The inability to construct a road extension under the Oregon Highway 6 bridge and parallel to the railroad.

For these reasons, the applicant applied for a modification to PUD 9-96 and PA/ZC to delete Condition of Approval 9.

Considerations

In reviewing this application, the City Council considered the following questions in addition to the adopted approval criteria summarized below:

1. Does the deletion or imposition of Condition of Approval 9 create or exacerbate a significant, documented, credible traffic safety hazard?
2. Does traffic circulation, function and capacity in and around Arbor Village require the secondary access to prevent the failure of an intersection due to traffic attributable to the Arbor Village development? Does the development create or exacerbate a documented traffic hazard?
3. Is there a citywide circulation pattern that assumes or requires this cross city connection in this particular location? Is there a city-reason to require a connection in this location?

The basis for requiring Condition of Approval 9 in the previous decisions was that the City anticipated the need for an east-west connection to improve connectivity between the west side of the city and the urban growth areas. It has been and remains a long-standing goal of the City to provide this east-west connection. A critical consideration in this proceeding is whether this location is the best place for the connection in light of how the City has developed in the intervening 20 years.

The City Council concludes that there was no substantial evidence in the record in 1996-1998 that the condition could be achieved or that it was reasonably related to the impacts of Arbor Village. In fact, the 2010 Transportation System Plan provides the only thorough analysis addressing the east-west connection. (**Appendix 2, Applicant Response to Incomplete Letter and Attachments**). The memorandum demonstrates that the Arbor Village secondary access in Phase 9 is not the preferred location for an east-west crossing. The preferred location is further north near the Sunset Avenue location for the following reasons:

1. Sunset Avenue will better serve the growth of the urban growth boundary expansion by providing a direct connection to the heart of Main Street;
2. Sunset Avenue is capable of handling the through traffic. Additionally, the connection at Arbor Village would tie into local residential streets not designed to accommodate substantial through traffic. Oak Way is listed with a functional classification as a collector, however with an existing pavement width of 30 feet it clearly does not meet the City's current collector street standard of 40-48 feet.

3. The potential impact to the Highway 6/Aerts Road/Washington Street intersection is problematic due to safety and queuing issues and additional reconfiguration and design requirements ODOT will impose any impose on any such connection.

The applicant studied all of the possible options for secondary access. There are only three potential means of implementing the condition, and the City Council finds that none is feasible for these reasons:

1. Direct Access to Highway 6 Option. Direct access is not possible for the following reasons:

- The grade differential between the site and highway make construction of an access impractical
- The inability to provide appropriate sight distance due to the railroad overpass
- ODOT access management policy prohibits an access to be located close to the existing Highway 47 (Main Street) interchange.

2. Connection of an At-Grade Crossing to Connect to Aerts Road Option

- ODOT rail policy would likely prohibit any new public at-grade crossings. In this location, two crossings would be required due to the railroad track configuration.
- At present, there is no public right-of-way across the tracks available to make the connection, and acquisition of such an access would be entirely up to the affected railroad companies.

3. Access to Wilkesboro Road Option

- This option would require an undercrossing of the highway that would run parallel to the railroad tracks. Such a connection would require extensive infrastructure costs including the widening of the Highway 6 overpass and right- of-way acquisition. The costs are prohibitive and not proportional to the impacts of the Arbor Village development. An access at this location is contrary to the location identified in the City’s adopted TSP.

2. PLANNING HISTORY

The site has been part of multiple planning approvals related to Arbor Village. These include the following land use actions:

File Nos.	Approvals
PA/ZC 8-96	Changed the Comprehensive Plan and Zoning classifications of Arbor Village to allow for the PUD. (Appendix 1, Applicant Submittal and Attachments)
PUD 9-96	Approved the preliminary site development plan for Arbor Ridge PUD.

	(Appendix 1, Applicant Submittal and Attachments)
PUD 9.1-97	Approved the final Arbor Village PUD plan
SUB 12-97	Plat approval for the Arbor Village subdivision
PUD 9.2-98	Use Determination certifying that mini-storage is a permitted use in the General Industrial zone
PUD 9.3-98	Denied application to remove Condition 9 from PUD approval. (Appendix 1, Applicant Submittal and Attachments)
Aug. 12 2008	City Council approval of restrictive covenant against the property in lieu of annual bonding requirement in order to memorialize Condition 9 of the approval. (Appendix 2, Applicant Response to Incomplete Letter and Attachments)

3. DESCRIPTION OF SITE AND SURROUNDING AREA

Arbor Village is a PUD located in the southeast corner of the City of Banks. The PUD was originally approved in 1997. Arbor Village consists of 50 acres in nine (9) phases. Phase 9 is the only phase in Arbor Village not yet constructed.

Phase 9 is an approximately 8.4 acre vacant parcel located at the southeast corner of the PUD. The property is zoned General Industrial (“I”). Phase 9 is bounded by a swale and associated wetland buffer that drains much of the PUD. Phase 9 is bounded by Oregon Highway 6 to the south and the railroad to the east. The site abuts single-family homes to the north and west.

Street access to the site is provided by a stub of NW Ashton Drive at the site’s northeast corner and access through an undeveloped lot to NW Buckshire Street near the northwest corner.

4. REQUEST TO DELETE CONDITION 9

PUD9-96FindingsforCondition9. The applicant testified that it wished to develop Phase 9 of Arbor Village but could not do so if it is required to comply with Condition 9. Twenty years of inactivity for Phase 9 proves this assertion. The justification and findings in the staff report for PUD 9-96 are as follows:

“In conformance with the Plan, the proposed PUD will be providing a new east-west route, with a design similar to Oak Way, as the primary means of access into the South Banks area. Regarding the secondary access provision, there appear to be two options for accomplishing this objective, i.e. cross the railroad near the southeast corner of the site and connecting to the County road system; or crossing under Hwy. 6 over pass structure at the southeast corner and connecting

to Wilkesboro Road. These options will affect the PUD's final development of Phase 9, and a determination of the preferred option should be part of approving a development for this phase."

City of Banks Staff Report PUD 9-96, adopting findings of CPA/ZC 98-96.
(Appendix 1, Applicant Submittal and Attachments)

The applicant testified in the current proceedings that this condition is unsupported by substantial evidence; it does not specify what sort of secondary access must be constructed, and it does not consider the practical cost differences between the two, or the feasibility of either of the alternatives.

Prior Request and Denial to Remove Condition 9. In 1998, the applicant requested the City modify Condition 9. The applicant's engineer requested the condition be rephrased to state the following:

"The Phase 9 development shall include a provision for a future secondary street access, so that it may be constructed when a secondary access becomes necessary."

Letter from Ryan O'Brien, LDC Design Group, to the City of Banks, dated August 25, 1998. **(Appendix 1, Applicant Submittal and Attachments)**

The applicant found that the construction of the required secondary access was not feasible for the following reasons:

1. Deeding of the right-of-way for the secondary access within the railroad right-of-way may not be granted by the railroad due to conflicts between the two uses.
2. Alterations caused by the construction of the access road would likely impact the 100-year flood elevation, which is in direct conflict with local and federal standards.
3. Construction of the secondary access road will require physical modification of the Wilson River Highway (Highway 6) overpass to remove bridge supports and establish a retaining wall.
4. Necessary modifications were cost prohibitive.
5. A secondary access road may also conflict with the existing on-grade rail crossing on Wilkesboro Road to the south due to required grade separation between street intersections and rail crossings.
6. Improvements to the Wilkesboro Road/rail crossing could require substantial improvements including condemnation of residences.

At that time, staff concluded that the condition of approval should remain because it was based on a Comprehensive Plan policy (Goal 12, Transportation) that was applied to Arbor Village PUD and provided findings that “the City has recently commenced work regarding the comprehensive plan update which will include a detailed assessment of this planning issue.” **(Appendix 1, Applicant Submittal and Attachments)** At that time, staff believed that the condition satisfied a comprehensive plan policy to provide secondary access into the South Banks area for purposes of reducing traffic impacts on Main Street. However it should be noted that the policy in 1998 does not appear to be based on any, much less a full, analysis – that analysis would come four years later during the 2010 UGB study and the Transportation System Plan (“TSP”) that supported the expansion.

The condition of approval was based upon the following finding from the 1997 PUD staff report from the final PUD development plan approval (PUD9.1-97):

“The requirement for the applicant to provide secondary access at the southeast corner of the site with Phase 9 is still applicable. Two route alternatives, i.e., crossing the railroad to the East or extending under the Hwy overpass to the South, will need to be studied further with the comprehensive plan update. It is further noted that a future road extension at the northeast corner of the site will be considered at the same time. Since this road extension would entail a railroad crossing as well, the City may need to prioritize which crossing should be submitted for approval by the State Public Utility Commissioner (presuming the Commissioner was to approve only one crossing in this area.”

PUD 9.1-97 Staff Report, 5-15-97 **(Appendix 1, Applicant Submittal and Attachments)**

The City Council finds that the Transportation System Plan adopted since that time provides guidance and facts addressing the crossing matter. On this basis, the City Council concludes that Condition 9 is no longer necessary and can be deleted.

CityofBanksTransportationSystemPlan. The City adopted a new Transportation System Plan (“TSP”) as part of the 2010 Urban Growth Boundary expansion. **(Exhibit 2, Applicant Response to Incomplete Letter and Attachments includes a copy of the 2010 TSP)** The 2010 TSP identified opportunities for enhanced circulation, including the need for east-west connections when warranted based on future growth. The need for the east-west connection is identified in the 2010 TSP as a means to provide future connectivity and provide alternative routes to intersections failing to meet mobility standards if future improvements are not made by 2029. The 2010 TSP identifies two intersections as failing to meet mobility standards under 2029 Future No Build conditions. These intersections are Hwy. 47 at Banks Road and Hwy. 6 at Aerts Road.

Prior planning studies, including the Banks Comprehensive Plan Transportation Element – 1998 update and the 1999 Banks Transportation Network Plan also recommended an east-west connection to provide connectivity to growth areas and an alternative to Hwy. 6 for intra-city travel, but not based on operational deficiencies.

The 2010 TSP identified an east-west overcrossing to support the future growth of UGB areas and provides several options for the overcrossing location. In the TSP narrative for the crossing at Arbor Village, the TSP states that the southern (Arbor) location is not preferred due to the location being so far south. The preferred location by the City, Washington County and ODOT is at Sunset Avenue which will provide a better connection to the heart of Main Street. The TSP found the location in Arbor Village appears to far south to be the sole east-west crossing and would result in out of direction travel for significant portions of intra-city traffic in the future. In addition, the City Council finds that the southern connection at Arbor Village would tie into local residential streets not designed to accommodate substantial through traffic. Traffic from UGB areas would then utilize Oak Way to connect to Main Street. Oak Way is listed with a functional classification of a collector, however, with an existing pavement width of 30 feet, it does not meet the collector street standard of 40-48 feet (Banks Municipal Code Section 152) and therefore could greatly and negatively impact the Arbor Village development if a cross-connection were constructed in Phase 9 as originally required.

Although the City desires an east-west connection across the railroad, the Oregon Department of Transportation Rail Division discourages at-grade crossings. From the beginning, ODOT expressed opposition to an at-grade crossing based upon concerns related to trespassing and liability of people crossing over the tracks. It is highly unlikely that ODOT will support an at-grade crossing today, and the TSP acknowledges that the railroad crossing would require a grade-separated overpass. In its discussion of cost, the 2010 TSP identified the cost of grade-separated overpasses to exceed \$20 million. This leaves the overpass as the only realistic east-west access across the railroad. It is unrealistic to expect one developer to pay the whole cost of an improvement identified in the TSP as meeting a city-wide need even if it were located in the correct place, which a Phase 9 crossing would not.

5. WRITTEN TESTIMONY REGARDING TRAFFIC

The City's Traffic Consultant, DKS and Associates, and ODOT reviewed all application materials regarding the request to remove Condition 9, including a traffic analysis.

The letters are included as **Appendix 4, Letters from City Traffic Consultant and ODOT.**

In sum, DKS and Associates concurs with staff that, based upon the 2010 TSP and previous planning studies, the east-west overcrossing is recommended to support the

City's future growth areas. The TSP provides alternatives for the overcrossing location, and the Arbor Village location is not preferred due to the location being so far south, the potential hazards at the Highway 6/Washington Street/Aerts Road intersection, and the inability of Oak Way to handle the through traffic adequately or safely. The City Council finds that the testimony of DKS and Associates supports approving the applicant's request to delete the requirement to complete an overcrossing in the location approved in the PUD.

ODOT has requested a new traffic impact study. The City Council will require a traffic impact study with a future development application.

6. PROCEDURES

A. Nature of Application

The proposed application is quasi-judicial in nature because it was applicant-initiated and applies to a closed class and only a single development.

B. Notices of Public Hearings

The City provided timely notice on the applicable form to the Oregon Department of Land Conservation and Development ("DLCD"), more than 35 days before the initial legislative public hearing for the Amendments by the Planning Commission. This notice satisfied the City's pre-hearing obligations for notice to DLCD.

The City published timely notices in its newspaper of record for both the Planning Commission's and Board's hearings relating to the application. The published notice listed the dates, times, and places of the Planning Commission and City Council hearings. These notices satisfied the City's pre-hearing obligations for notice to the public.

C. Planning Commission Public Hearing

On November 25, 2014, the Planning Commission conducted a public hearing to discuss the application. A quorum of the Planning Commission attended the hearing. At the commencement of the hearing, Chair Gene Stout read the quasi-judicial announcements required by ORS 197.763. Commissioner Sam Van Dyke recused himself because his family owns land near the subject site. Stacey Goldstein, City Planner, then presented the staff report, which included a recommendation to approve the application. Following presentation of the staff report, the Planning Commission accepted testimony from the applicant and members of the public in favor, neutral, and in opposition to the application. After that, Michael Robinson presented rebuttal on behalf of the applicant.

No one made any procedural objections or requested a continuance or that the record be held open.

At the conclusion of the hearing, the Planning Commission closed the public hearing and discussed the application. Commissioner Deeth made a motion, seconded by Commissioner McAllister, that the Planning Commission recommend approval of the application to the City Council, subject to five conditions. The Planning Commission voted 6-0 to approve the motion.

The Planning Commission adopted findings in support of its decision on December 16, 2014.

D. City Council Public Hearing

On January 13, 2015, the City Council conducted a public hearing to discuss the application. A quorum of the City Council attended the hearing. At the commencement of the hearing, Mayor Pete Edison read the quasi-judicial announcements required by ORS 197.763. No members of the City Council declared bias or conflicts of interest. Councilor Michael Nelson disclosed that his wife sat on the Planning Commission when it reviewed the application, and he reviewed her notes. No member of the public challenged the impartiality of the City Council or its members. Stacey Goldstein, City Planner, then presented the staff report, which included a recommendation to approve the application. Following presentation of the staff report, the City Council accepted testimony from the applicant and members of the public in favor, neutral, and in opposition to the application. After that, attorney Seth King and traffic engineer Chris Brehmer presented rebuttal on behalf of the applicant. At the conclusion of the public hearing, the City Council voted to continue the matter.

On April 6, 2015, the City Council conducted a continued public hearing for the application. A quorum of the City Council attended the hearing. At the commencement of the hearing, Mayor Edison read the quasi-judicial announcements required by ORS 197.763. No members of the City Council declared bias or conflicts of interest. Mayor Edison declared that he had met with the applicant on three occasions to discuss the application. No member of the public challenged the impartiality of the City Council or its members. No one asked for an opportunity to question any Councilor or to rebut the Mayor's disclosure. Stacey Goldstein then summarized the staff report. Following presentation of the staff report, the City Council accepted testimony from the applicant and supporters of the application. The City Council called for testimony from persons who were neutral or in opposition to the application, but no one appeared.

No one made any procedural objections or requested a continuance or that the record be held open.

At the conclusion of the hearing, the City Council closed the public hearing and discussed the application. Councilor Keller made a motion, seconded by Councilor Nelson, that the City Council approve the application, subject to the Planning Commission's recommended conditions, except to modify Condition 3 to allow development of up to 42 lots and to add Condition 6 authorizing the Mayor to enter a development agreement consistent with the draft agreement presented to the City Council. The City Council voted 7-0 to approve the motion. Councilor Keller then made a motion, and Councilor Biehl seconded, that the City Council remove the covenant recorded against the subject property that imposed the requirement set forth in PUD Condition 9 and authorized the Mayor to execute the covenant. The City Council voted 7-0 to approve the motion.

The City Council adopted findings in support of its decision on April 14, 2015.

7. APPLICABLE APPROVAL CRITERIA

The approval criteria apply only to the requested modification – the removal of Condition of Approval 9. Banks Zoning Code ("BZC") Chapter 151 sections 135-142 provide the procedural and substantive criteria for the PUD amendment. The applicable substantive approval criteria are provided below in boldface followed by the City Council's findings in response to each.

A. PUD AMENDMENT

151.136 Standards

(B) Planned unit developments shall abut or have access to a minor arterial street and shall have minimal direct access to local roads.

Finding: The PUD has access to Main Street (Hwy. 47) a designated arterial street. Two street connections are provided with the adjoining Banks Estates Subdivision, i.e. Devonmoor Avenue and Buckshire Street. This section is met without the requirement of Condition 9 requiring secondary access.

151.138 Development Standards

Finding: The applicant states that the application does not involve any substantive changes in the underlying subdivision plat or the development standards for the PUD. The following subsections do not apply: subdivision plat (A), open space (B), density (C), lot size (D), parking requirements (E), signs (F), setbacks (G) pedestrian and bicycle

circulation (H), utilities (J) or permitted uses (K). However, criterion (H) does apply as Condition 9 was imposed based on the criterion related to “streets and roads”.

(H) Streets and roads. Necessary streets and roads within the planned unit development shall be dedicated to the public and constructed to standards determined by the Planning Commission and City Engineer.

Finding: All roadways in Arbor Village, with the exception of a future internal roadway for Phase 9, have been constructed to the standards in place at the time of the 1996 (1992?) approval. Public streets have been dedicated to the public system, and certain streets have been developed as private streets. This application proposes to remove the requirement for a secondary access in Phase 9 without any changes to the existing system. This section is met.

B. PLAN AMENDMENT AND ZONE CHANGE

151.157 Comprehensive Plan and Zoning Amendments Criteria

(A) Quasi-judicial comprehensive plan and or zoning amendment applications shall be approved if the following criteria have been met:

(B) The proposed change is consistent with and supportive of the Comprehensive Plan goals, objectives, and policies.

Finding: The proposal involves only the request to remove Condition 9 related to a secondary access. For this reason, the application only implicates Goal 12 of the Banks Comprehensive Plan, which provides as follows:

Goal: “To develop and encourage a safe, convenient and economic transportation system.”

The applicant has provided a detailed discussion regarding consistency with Goal 12. Based upon that testimony and the additional recommendations in the staff report, the City Council adopts the following findings on this issue.

SafetyConcernswiththeWashingtonAvenue/AertsRoad/OregonHighway6 Intersection

1. The 2010 TSP assumes that the secondary access would connect NW Washington Avenue and thereby funnel traffic to the Washington Avenue/Aerts Road/Oregon Highway 6 intersection. This is problematic because the TSP further identifies significant queuing constraints at the Aerts Road/Highway 6 intersection in addition to safety issues and future deficiencies. The safety issue is documented in the TSP as the results

of motorists on Aerts Road trying to find “gaps” in OR 6 traffic where traffic is moving at a posted speed of 55 miles per hour.

2. The intersection spacing requirements under the Oregon Highway Plan “OHP” prohibit an alternative access to Oregon Highway 6 near Banks. The TSP noted that Banks will need to utilize the two existing access points to Highway 6. As such, the only potential entry/exit point for traffic moving through is the Washington Avenue/Aerts Road/Highway 6 intersection.

Based upon the above, the City Council finds that the required east-west connection in Condition 9 is in conflict with Goal 12 giving the lack of queuing space and diminished function of the intersection that would occur if the connection was implemented in Phase 9 through Condition 9. Safety of the intersection would be compromised by implementation of Condition 9 in the required location.

DKS Review of the Transportation Impact Study for Phase 9 of the Arbor Village Development

DKS and Associates, the City Traffic consultant, reviewed the 2014 Traffic Analysis memo prepared by Kittelson and Associates which supports the 2006 traffic study submitted by the applicant. **(Appendix 1, Applicant Submittal and Attachments)** The study, while eight years old and typically not accepted after 5 years was accepted due to no significant changes in volume trends or development in the area. The study found the following:

1. The primary access to Arbor Village at Main Street and Oak Way was anticipated to operate within ODOT and Washington County mobility standards. The finding did not include an east-west over crossing and therefore the east-west overcrossing is not necessary to mitigate deficiencies.
2. Phase 9 of Arbor Village would not likely impact the operations of Main Street and Trellis Court and that 95 percent of the trip distribution was anticipated to access Highway 6 and Highway 47 (Main Street) south of Oak Way. Therefore Phase 9 of Arbor Village is not likely to impact the intersection operations at Main Street and Trellis Way. Therefore the secondary access is not needed from a capacity or circulation standpoint.
3. The Transportation Planning Rule compliance analysis evaluated “worst-case” weekday trip generation for the current industrial zoning and the proposed residential zoning. Findings show that the proposed residential zoning results in a significant reduced trip generation than the existing industrial zoning designation.

The one condition of approval for Arbor Village specified the installation of a traffic signal at the NW Oak Way/Main Street intersection. This condition has been fulfilled

and the signal is operational. The City Council finds that a secondary access in Phase 9 is not needed in light of current and projected development in the City and the 2010 TSP revision.

Transportation Planning Rule, OAR 660, Division 12—Transportation Planning

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

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

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

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Finding: The key determination under this section is whether the proposed plan amendment/removal of Condition 9 would have a significant effect on an existing or planned transportation facility. The City Council concludes that the removal of Condition 9 will not change the functional classification of existing streets, nor does it reduce the capacity of the existing transportation system. The east-west connection, while identified conceptually in the TSP, is not a “planned facility” as defined by OAR 660-012-0060(4)(b). This is important because in order to qualify as a “planned facility” a specific project and funding mechanism must be in place.

The removal of Condition 9 does not change the assignment of functional classifications to public streets nor will it change the level of existing or planned development in Arbor Village. The street system currently serving Arbor Village is not functioning below identified performance standards and is operating within level-of-service standards. The City Council finds that the applicant’s request does not conflict with the requirements of the TPR.

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3. The City will promote adequate transportation linkages between residential, commercial and industrial use areas. This will be done through street improvements, new streets, marked turning lanes, warning signs, and or/speed reduction. Problems identified in the plan are of first priority.

Finding: The applicant states that Phase 9 is already fully served by local streets and a collector. The City’s transportation system provides connections between Banks’ downtown, the residential areas of Arbor Village, and Phase 9.

The City Council finds that, while Condition 9 provides an east-west connection, the location in Arbor Village Phase 9 is not the preferred location.

A technical memorandum prepared by CH2MHILL in 2010, 5.1 Transportation Needs, Opportunities and Constraints Report identifies several impediments to locating the east-west crossing in the Arbor Village location. (**Appendix 1, Technical Memorandum 5.1 prepared by CH2MHILL, 2010**) It is important to note that this analysis was not done when the policy for an east-west connection was first added to the Comprehensive Plan in 1988. The analysis demonstrates that a grade-separated overcrossing is necessary; however, such an overcrossing is prohibitively expensive (\$20-30 million), and the need for a secondary access is based on build out of the entire UGB, not just Arbor Village.

The study provided two alternatives, 3a and 3b. Alternative 3a would entail constructing an overcrossing from Phase 9 to the UGB expansion area. Alternative 3b would entail constructing an overpass at Sunset Avenue to the UGB area. The study concluded, along with ODOT and Washington County support, that 3b was the preferred location for the following reasons:

1. Alternative 3a appears to be too far south to be the sole east-west railroad crossing and would result in out of direction travel for significant portions of intra-city traffic. An at-grade crossing in this area is infeasible because of the tracks to be crossed are currently used for track-switching, an activity that is highly incompatible with at-grade crossings. In addition, traffic would be funneled through local streets in Arbor Village, specifically Oak Way, which functions as a local street and was not designed to accommodate the through traffic.
2. Alternative 3b is located more central to downtown Banks. Sunset Avenue, although not classified as a collector street, currently functions as such.

8. MODIFICATIONS TO PLANNING COMMISSION CONDITIONS OF APPROVAL

As explained above, the City Council modified the Planning Commission's recommended conditions of approval in two ways, by: (1) revising Condition 3 to increase the number of allowable lots on the subject property to 42; and (2) adding Condition 6 requiring applicant to enter a development agreement with the City. This section of the findings explains why the City Council made these modifications to the Planning Commission's recommended conditions.

The City Council added Condition 6 requiring applicant to enter into a development agreement with the City consistent with the draft presented to City Council at its April 6, 2015 meeting and included in the record for this matter. The City Council finds that adoption of this condition serves the public interest because it requires applicant to complete, at applicant's expense, various transportation improvements that will benefit the community, including the following: removal and replacement of sidewalk sections that have buckled because of street tree growth; removal and replacement of certain street trees, street curb sections, and one section of NW Buckshire Street; and repair of any City streets damaged by construction of Phase 9. The City Council finds that the applicant's completion of these reasonable and appropriate transportation improvements will offset the removal of the requirement to complete the railroad crossing improvement. Further, the City Council finds that the various transportation improvements are roughly proportional to the projected impact of applicant's development and thus are permissible. The applicant concurs and agrees with the requirement that it construct these repairs and improvements, subject to the terms of the development agreement. Finally, the City Council further finds that the draft

agreement was not entered into the record until after the Planning Commission recommendation and thus the Planning Commission was not able to take it into account in its review of the application.

Additionally, the City Council modified Condition 3 to allow up to 42 dwelling units in Phase 9 if it is rezoned to Single-Family Residential (R-5). The City Council finds that the modification serves the public interest. The City Council finds that applicant's development of Phase 9 will continue to be subject to compliance with the City of Banks Zoning Ordinance standards. Accordingly, approval of these eight additional dwelling units will not grant a special privilege to applicant or impose any adverse effects on others.

9. CONCLUSION AND CONDITIONS OF APPROVAL

Based upon the evidence and argument presented, the City Council finds that the request meets the applicable criteria and hereby APPROVES MOD1-14 and MOD2-14 to remove Condition 9 from City files PUD 6-96 and PA/ZC 8-96, subject to the following conditions:

1. Prior to development the applicant shall be required to apply for a zone change from Industrial (I) to Single Family Residential (R-5).
2. Contingent upon approval of the zone change required by Condition 1, development in Phase 9 shall contain single family residential uses only.
3. If Arbor Village Phase 9 is rezoned to Single Family Residential (R-5), the number of dwelling units shall be limited to a maximum of 42 dwelling units.
4. Prior to development the applicant shall contribute \$20,000 to a transportation study for an east/west connection.
5. Prior to development the applicant will stub a public right of way and dedicate it for Phase 9.
6. The applicant shall enter into an agreement with the City of Banks, Oregon no later than thirty (30) days following the effective date of MOD1-14 and MOD2-14 that is substantially similar to the draft agreement placed before the Banks City Council at the public hearing on April 6, 2015.

Appendices (for cross-reference purposes only; items are set forth in the record):

Appendix A. Applicant's submittal including the following exhibits:

Exhibit 1: Notice of Decision PA/ZC 8-96

Exhibit 2: Notice of Decision PUD 9-96

Exhibit 3: LDC Design Group letter dated August 25, 1998

Exhibit 4: Staff Report dated 9-24-98 to Modify Condition 9 of the PUD

Exhibit 5: Kittleson and Associates Traffic Impact Analysis dated March 13, 2014

Appendix B. Applicant's Resubmittal including the following exhibits:

Exhibit 1: City of Banks 2010 TSP

Exhibit 2: Banks Comprehensive Plan Transportation Element – 1998 Update

Exhibit 3: Banks Transportation Network Plan – 1999

Exhibit 4: Banks City Council Covenant Record – 2008

Exhibit 5: Technical Memorandum 5.2, Banks Transportation System Plan Alternatives Evaluation Report, CH2M HILL 2010

Exhibit 6: Technical Memorandum 5.1, Banks UGB Expansion / Transportation System Planning: Transportation Needs, Opportunities and Constraints Report, CH2M HILL 2010

Exhibit 7: Transportation Impact Study for Phase 9 of Arbor Village Development – Banks, Oregon, Kittleson and Associates, 2006

Appendix C: Letters from DKS and Associates (9/4/14) and Oregon Department of Transportation (8/15/14)