



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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NOTICE OF ADOPTED AMENDMENT

12/24/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Shady Cove Plan Amendment
DLCD File Number 001-10R

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, January 03, 2013

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

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

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

Cc: Margaret Borgen, City of Shady Cove
Gordon Howard, DLCD Urban Planning Specialist
Josh LeBombard, DLCD Regional Representative
Gary Fish, DLCD Transportation Planner
Christine Shirley, DLCD Natural Hazards/Floodplain Specialist

<paa> YA/I

**FORM 2****DLCD**

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

DATE STAMP	<input type="checkbox"/> In person <input type="checkbox"/> electronic <input type="checkbox"/> mailed
	DEPT OF
	DEC 17 2012
	LAND CONSERVATION AND DEVELOPMENT
For Office Use Only	

Jurisdiction: **City of Shady Cove**Local file number: **ZC 10-01**Date of Adoption: **12/6/2012**Date Mailed: **12/13/2012**Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 8/31/2012☐ Comprehensive Plan Text Amendment☒ Comprehensive Plan Map Amendment☐ Land Use Regulation Amendment☒ Zoning Map Amendment☐ New Land Use Regulation☐ Other:

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

Comprehensive Plan Amendment from Public to Medium Density Residential and a zone change from P (Public) to R-2 (Medium Density Residential) for a 19.59-acre parcel. The proposed action follows a voluntary remand of an appeal to LUBA regarding the City's original decision to deny the request.

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

Plan Map Changed from: **Public**to: **Medium Density Residential**Zone Map Changed from: **Public**to: **R-2 Medium Density Residential**Location: **West end of Brophy Way (34-1W-28)**Acres Involved: **19**Specify Density: Previous: **NA**New: **7-10 du/ac.**

Applicable statewide planning goals:

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

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD file No. 001-10R (18099) [17285]

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

Jackson County, ODFW, ODOT, FEMA

Local Contact: **Debby Jermain**

Phone: **(541) 878-8204** Extension:

Address: **PO Box 1210**

Fax Number: **541-878-2226**

City: **Shady Cove**

Zip: **97539-**

E-mail Address: **mbscoa@embarqmail.com**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

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

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

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

After recording, return to:
City of Shady Cove
22451 Highway 62
PO Box 1210
Shady Cove OR 97539

City of Shady Cove

Ordinance No. 266

**AN ORDINANCE OF THE CITY OF SHADY COVE, OREGON AMENDING
THE COMPREHENSIVE PLAN AND CHANGING THE ZONING MAP OF
THE CITY OF SHADY COVE**

Whereas, the City of Shady Cove received an application for a Comprehensive Plan Amendment from Public to Medium Density Residential and a Zoning Map Change from P (Public) to R2 (Medium Density Residential, 6,000 sq. ft. minimum lot size) and referred to as ZC10-01 and located on Brophy Way; and

Whereas, after a voluntary remand of an appeal to the Land Use Board of Appeals, a Public Hearing was convened before the Common Council of the City of Shady Cove on October 18, 2012; and

Whereas, the Common Council of the City of Shady Cove determined, based on the hearings record and the attached findings, that the request for a Comprehensive Plan Amendment and Zone Change is consistent with the applicable criteria and approved the request.

**THE COUNCIL OF THE CITY OF SHADY COVE ORDAINS AS
FOLLOWS:**

The Comprehensive Plan Map Amendment and Zoning Map Change are approved as follows:

- | | |
|------------------------|---|
| Section 1: Title | This Ordinance shall be known as the amended Comprehensive Plan and Zoning Map Ordinance of the City of Shady Cove, Oregon. |
| Section 2: Description | A map, attached as Exhibit B, identifies the property which is referenced as Tax Lots 400 & 402 on the Jackson County Assessor's Map No. 34 1W-28. |
| Section 3: Amendment | The Shady Cove Comprehensive Plan Map is amended from Public to Medium Density Residential and the Zoning Map is amended to change the zoning of Tax Lots 400 & 402 on Jackson County Assessor's Map No. 34-1W-28 from P (Public) to R2 (Medium Density Residential, 6,000 sq. ft. minimum lot size) subject to the following conditions: |

1. A left-turn shall be installed on Highway 62 at the Brophy Way intersection prior to the issuance of any building permits for any development greater than 3 single family residences and a park.
2. The applicant shall contribute a proportional share of the cost to install a southbound right-turn lane on Highway 62 at the intersection of Brophy Way prior to the issuance of any building permits for any development greater than 3 single family residences and a park. The Cost and contribution shall be determined by City staff in consultation with ODOT at the time of development application.
3. Any development that requires a street installation shall provide for internal street connectivity between Tax Lots 910 (Parcel 2 of Partition Plat P-12- 2009); a part of the original Tax Lot 900) and 400 and identified on the tentative plan. Specific standards shall be applied at the time of development application.
4. Prior to issuance of any building permits for any development greater than 3 single family residences and a park, the applicant shall improve Brophy Way to a local street classification from the intersection of Highway 62 to the development. Specific construction standards in relation to streets, sidewalks, street lights, water, sanitary sewer, storm drain, and other utilities will be applied at the time of development application.
5. The primary domestic potable water and irrigation water shall be supplied from stored water in Lost Creek Reservoir.
6. The future development on Tax Lot 400 shall not exceed 40 dwelling units

Section 4: The City Council adopts, as its own, and incorporates by reference the findings attached as Exhibit A.

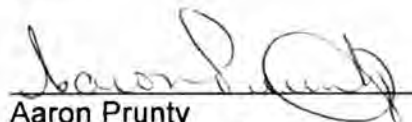
PASSED AND APPROVED by the Common Council of the City of Shady Cove this 6th day of December, 2012.

Approved:



Ron Holthusen
Mayor

Attest:



Aaron Prunty
Assistant to the City Administrator

Council Vote:

Councilor Hayes
Councilor Kyle
Councilor Hughes
Mayor Holthusen
Councilor Ulrich

Y
Y
N
Y
Y

EXHIBIT "A"

FINDINGS OF FACT AND CONCLUSIONS OF LAW FILE NO. ZC 10-01: ORDINANCE 266

I. NATURE OF APPLICATION:

The property owners, Flywater, LLC and Malko Investments, LLC, own two parcels of land located in Township 34 South, Range 1 West, Section 28, Tax Lots 400 and 402. The properties consist of approximately 19.59 acres, per the Jackson County Assessor's Office, within the City Limits of Shady Cove. The applicants requested a Comprehensive Plan Amendment/Zone Change to change the designation on the properties from Public, to Medium Density Residential with the (R-2) zoning district.

This matter was properly before the Shady Cove City Council on remand from the Land Use Board of Appeals (LUBA). This matter was a de-novo hearing with the record open for evidence and comments from all parties to the application.

The applicant has identified and addressed the applicable criteria which applied to this application, found in Section 154.439 Shady Cove Code of Ordinances. The applicable State Wide Planning Goals, particularly Goals 5 and 12, along with the applicable Goals and Policies of the Comprehensive Plan for the City of Shady Cove were addressed. In addition, two conceptual plans were submitted for review.

The most recent change to this proposal by the applicant is for a stipulated cap of a maximum of 40 dwelling units within the project boundaries to be specific on Tax Lot 400. In addition, the floodplain boundaries and digital datum has been updated by FEMA that is applicable for this review. Chapter 151 SCDC was also updated in March, 2011 to reflect these updates. These adjustments addressed several concerns raised when the application was first reviewed in 2010.

II. COMPLIANCE WITH THE SHADY COVE DEVELOPMENT CODE:

Chapter 154, Section 154.439 provides the standards for a Minor Plan Map Amendment. This map amendment and change of zoning does not and did not demonstrate to have a significant impact on neighboring lands. This is confirmed with the Public Works information, ODOT discussions and findings within the Staff Report.

The Shady Cove City Council has interpreted it's Code of Ordinances and found that this application before the City Council is a Minor amendment and is in compliance with the review criteria. Comprehensive Plan Amendments, minor or major, are a legislative process in the City of Shady Cove. The Shady Cove planning staff has throughout the application review process represented this application as being a Minor Comprehensive Plan Amendment, a Type IV review. The applicant has addressed the applicable approval criteria found in Section 154.439, Shady Cove Code of Ordinances (SCCO).

Section 154.380 provides the process for Plan Map Amendments that are prescribed to be a Type IV application before the City. This is consistent with the Summary Table for Development Permits in Section 154.382. This application request is for a minor plan map amendment and change of zoning from Public (P) to the Medium Density R-2 zoning district was properly reviewed by the City of Shady Cove.

The Shady Cove City Council rejects the opponents argument and finds that there is no documentation from any jurisdiction from the State, Jackson County or City Staff that any significant impacts have been identified beyond the subject property boundaries, including the Rogue River Drive and Highway 62 intersection, and determines that the minor map amendment criteria are appropriate for reviewing the proposal.

III. COMPLIANCE WITH STATEWIDE PLANNING GOALS:

The Statewide Planning Goals and Guidelines generally do not apply, because the State has acknowledged the City's Comprehensive Plan and Zoning Ordinance as in compliance with the statewide planning goals, ORS 197.175(2)(D). However, applicable Goals have been identified for further consideration and review that have been sufficiently addressed by the applicants, specifically Goals 5, 6, 7, 11 & 12 demonstrating compliance with the current Statewide Planning Goals.

GOAL 5:

The City of Shady Cove does not have a codified ordinance for riparian corridors, therefore, Goal 5 is applicable to demonstrate compliance. The purpose of Statewide Planning Goal 5 is to "...protect natural resources, conserve scenic areas, historic areas and open space", and also protects Aggregate Resource uses. An aspect of Goal 5 is to ensure that fish and wildlife areas and habitats are inventoried, protected and managed in accordance with the Oregon Wildlife Commission's Fish and Wildlife Management Plans, and consistent with both OAR 660-23-0040 and OAR 660-023-0110.

OAR 660-023-0090 provides the guidelines for riparian corridors. Within OAR 660-023-0090(5) the State of Oregon has established guidelines for establishing the riparian corridor boundary. This subsection also provides for the safe harbor standard at 75 feet from the top of bank. OAR 660-023-0090(5) states:

"As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

(a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank."

The City of Shady Cove has established a 75 foot boundary from the top of bank or mean high water mark for the Rogue River, on these specific subject properties. This area will provide protection for wildlife habitat, fish habitat and native riparian plant species. The safe harbor standard as recommended in the Administrative Rules, does inhibit future development within this defined area that conserves this scenic area along the Rogue River and preserve the natural area and vegetation.

Within OAR 660-023-0090(8) the State also establishes uses that are not allowed within the riparian corridor area. The City of Shady Cove has established these same standards for the subject properties to be consistent with the provisions of Goal 5. The provisions of OAR 660-023-0090(8) are:

As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt an ordinance to protect a significant riparian corridor as follows:

(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

- A. Streets, roads, and paths;*
- B. Drainage facilities, utilities, and irrigation pumps;*
- C. Water-related and water dependent uses; and*
- D. Replacement of existing structures with structures in the same location.*

The City of Shady Cove does place these development restrictions on the subject property and provides review by the Public Works Director for compliance. The applicants have agreed to minimize any construction impacts on the riparian area for the drainage facilities, potable water facilities, pumps, pathways, etc. Compliance with the safe harbor provisions, or any future Riparian Ordinance, shall be applied at the development review phase on the subject property.

Another provision that is applicable for demonstrating consistency with Goal 5 is OAR 660-023-0090(8)(b), which provides:

"The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow:

- (A) Removal of non-native vegetation and replacement with native plant species; and*
- (B) Removal of vegetation necessary for the development of water-related or water-dependent uses;"*

With these provisions within OAR's, the City of Shady Cove implements these standards for the subject property as conditions for this application, even though the Ordinance does not have these criteria for review. By agreeing to comply with the safe harbor provisions, it is demonstrated that the Goal 5, Riparian Habitat standards can be met with the future development plan, even though there is no codified ordinance regarding riparian habitat. These provisions are specific to this application and to the subject property only, and do not affect the other lands within the City.

The applicants have agreed to these standards and will be in compliance with the future development of the property. The proposed R-2 zoning district and future development, particularly adjacent to the Rogue River, can be designed and constructed to enhance and improve the habitat values within the identified riparian area. The Shady Cove City Council finds that it is feasible to develop the property and meet the Statewide Planning Goal 5 standard for riparian corridors, in part because the width of the floodway further restricts opportunities for development in proximity to the riparian corridor. In addition, the City Council finds that the applicant has contacted the appropriate State and County agencies for other potential Goal 5 inventories, including: archaeological sites, wetlands and scenic corridors. These other Goal 5 inventories have been addressed with responses from the applicable agencies with no concerns, that are satisfied for demonstrating compliance.

GOAL 6:

The City of Shady Cove has not incorporated it's NPDES information into the current Ordinance. Therefore, Goal 6 is applicable with Oregon DEQ comments and standards for compliance with the 1200C permitting process for storm water discharge control and quality. With the presence of the Rogue River, water quality discharge will be carefully studied and designed by a professional engineer to meet or exceed City and DEQ standards. The Shady Cove City Council finds that this information will be provided with the development phase/subdivision for the residential uses and reviewed by the Public Works Department and DEQ.

GOAL 7:

The identified natural hazards that could potentially affect the property are flooding and fire. The City of Shady Cove has procedures in place to protect people and property from flooding (Chapter 151, SCCO) and from fire (Fire District 4). Future development of the property shall comply with State and Federal Flood Plain Management regulations, with no development of structures within the Floodway. The recently updated FEMA DFIRM information has been provided and was reviewed by the Shady Cove City Council.

Fire protection is provided by Fire District #4 and the subject property is within their boundaries. The applicants have testified that a quick disconnect for fire protection purpose is feasible with the irrigation siphon system. The quick disconnect, or other approved connection, will allow for fire prevention equipment to connect to a readily source of water without accessing the banks of the River for fire protection purposes.

The Shady Cove City Council recommends that one be provided with the installation of the irrigation system. Installation shall be applied with the future residential development phase of the property.

The applicants have provided the current Digital Flood Insurance Rate Map (DFIRM) information that identifies the location of both the floodway and the floodplain for the purpose of determining the appropriate location for development. The future development will comply with all requirements, both state and federal, for construction in the floodplain. It is the applicants' intent to preserve the integrity of the floodway by not proposing or allowing any structures that restrict high water events, to protect future residents from potential flooding and other known natural hazards. As required, there will be no development of structures within the Floodway.

GOAL 11:

The City of Shady Cove does not have a public water system, and property owners are required to provide their own water, through private and community water systems. The project will acquire water rights from the Rogue River to serve the future development. Based on a letter in the record from Arthur Armour with the US Army Corps of Engineers, there is 6,177 ac-ft. of storage available for Municipal and Industrial Water Supply. In addition, a letter in the record from Bill Parks with the US Bureau of Reclamation, there is approximately 75% of the 35,000 ac-ft. allocated to irrigation from Lost Creek Reservoir. It has been demonstrated that sufficient water supply is available to serve the future proposed urban development of the properties.

The use of a back up well may be necessary during turbid water conditions. Connection to a future Public Water System is recommended by the City, if one becomes available.

GOAL 12:

The applicants' have submitted a Traffic Impact Analysis that considered all applicable factors including Level of Service, accidents, etc. There were two recommendations made with traffic generation thresholds that warrant improvements to the transportation system to accommodate safe turning movements at the intersection of Brophy Way and Highway 62. There were no additional significant impacts beyond this intersection identified in the TIA, by ODOT, or by the Public Works Director for the City of Shady Cove, consistent with the provisions of the Statewide Planning Goal 12.

The City of Shady Cove adopted a Local Street Network Plan (LSNP) in 2007. This document, along with the Comprehensive Plan, is intended to ensure compliance with the State's Transportation Planning Rule (TPR). The only identified project that could potentially affect the property is an identified long-range river-crossing connection from Brophy Way to Bond Road. The cost of the project may be prohibitive, but any development on the applicant's property can be designed to avoid needed right-of-way should the bridge ever be constructed. Given the high cost of the bridge, a preferred alternative may be to amend the LSNP to remove or relocate the project.

The TIA identified that up to 61 dwelling units could be established on the lands outside of the identified floodway on Tax Lot 400, that could be developed to the maximum density with the R-2 zoning designation. The applicants have agreed to stipulate to a maximum of 40 dwelling units to be located on Tax Lot 400. This is a significant reduction of potential traffic generation on the local street system from the maximum number of units allowed in medium-density residential zoning. The intersection of Brophy Way and Highway 62 is identified in the LSNP as currently operating at an LOS of A southbound and C eastbound.

The Shady Cove City Council rejects the opponents' arguments that the TIA should be extended to Rogue River Drive at Highway 62 for review by ODOT and City Staff, and finds that the TIA satisfied ODOT and City transportation concerns.

IV. COMPLIANCE WITH SHADY COVE COMPREHENSIVE PLAN ELEMENTS

SECTION A. Citizen Involvement:

This element of the Comprehensive Plan is associated with Goal 1 of the Statewide Planning Goals. The City has developed a notice program for upcoming events and public hearings through mailed notices, newspaper, etc.

The Shady Cove City Council rejects the opponents' argument that notice is deficient, in that the opponents have been involved with the application process prior to the first public hearing with the applicable criteria for review.

SECTION B. Population:

There are no goals or policies identified within the Population Element to address. This section provides historical data for projections of future trends for future planning needs.

SECTION C. Economic Development:

This element of the Comprehensive Plan is united with Goal 9 of the Statewide Planning Goals. The minor amendment and change of zoning is in compliance with the future development in accordance with the City's economic goals and policies for the area. Although the property is zoned P (Public), it is privately owned and therefore not available for public use to enhance tourism as an economic strategy in Shady Cove.

At the time of development the applicant is required to submit a site plan that will demonstrate compliance with the off street parking standards and the street circulation requirements for the R-2 district of the City. The future development plan will be submitted and reviewed by the City for consistency with the City's Plans, with adjacent development and the community.

SECTION D. Natural Resources and Hazards:

This element of the Comprehensive Plan is associated with Goals 5, 6 and 7 of the Statewide Planning Goals. The City has adopted three Goals within the Natural Resources Element. These are identified as:

- * *Use natural resources wisely.*
- * *Preserve to the highest extent possible air and water quality, historical sites, scenic and open space areas, and fish and wildlife habitat.*
- * *To protect life and property from flooding and other known natural hazards.*

The conceptual plans are consistent with the Goals, and the future development plan will be consistent with the Goals of the Natural Resources and Hazards Element of the Comprehensive Plan by preserving the water quality, scenic and open space, and fish and wildlife habitat to the greatest extent possible. An aspect of Goal 5 is to ensure that fish and wildlife areas and habitats are inventoried, protected and managed in accordance with the Oregon Wildlife Commission's Fish and Wildlife Management Plans, and consistent with both OAR 660-23-0040 and OAR 660-023-0110 (Goal 5 Riparian Habitat Rules). With the implementation of a 75 foot riparian corridor setback, this satisfies and supports both DLCD and ODF&W comments. The applicants have agreed to this safe harbor standard, and it is applied as a condition of approval for future development.

The Shady Cove City Council finds that this Safe Harbor standard does preserve the pristine qualities of the Rogue River, by providing a natural vegetation buffer along the banks of the Rogue River that limits development. The City Council rejects the opponents' arguments that the Safe Harbor standard does not meet the standard for conserving the pristine qualities of the Rogue River. The Safe Harbor provisions will provide a visual screen between the river and future development to preserve the scenic area and will retain the natural riparian vegetation to filter surface water flowing to the river to preserve the water quality, fish habitat and wildlife habitat to the greatest extent.

The other natural hazards that could potentially affect the property are flooding and fire. The City of Shady Cove has procedures in place to protect people and property from flooding and from fire. Future development of the property shall comply with State and Federal Flood Plain Management regulations, no development of structures is proposed within the Floodway.

The Shady Cove City Council rejects opponents' arguments that no development is allowed within the 100 year floodplain. A conflict with definition was found in the SCCO, therefore, the City Council interprets the definition found in Chapter 153 for "Buildable Areas" is not applicable and conflicts other definitions in the Ordinance and other Ordinance provisions. The definition of "Unbuildable Areas" in Chapter 153 is appropriate and shall be used for definition purposes with all future development. The City Council finds that Chapter 151 clearly allows development within the 100 year Floodplain with a Floodplain Review application prior to building permits. Opponents' argument, if true, would needlessly hamper any construction within this river front city.

The fire protection is provided by Fire District #4 and the subject properties are within their boundaries. The future development of the property shall provide the necessary facilities for fire protection and maneuvering of equipment. The Shady Cove City Council rejects the opponents' argument that the future development will increase wildfire hazards. The City Council recommends that the applicants provide for an approved Fire District #4 quick disconnect on the irrigation water source facility, from the stored water in Lost Creek Reservoir, to provide improved fire protection in the area of existing development and the future development of the project.

SECTION E. Recreational Facilities:

This element of the Comprehensive Plan is associated with Goal 8 of the Statewide Planning Goals. The applicants have proposed a portion of the subject properties to be a Public park for river access and recreational opportunities (Tax Lot 402), with the remaining portion to be developed for residential uses (Tax Lot 400). The Shady Cove City Council rejects the opponents argument that the proposed development does not provide for public access to the river, and finds that Tax Lot 402 will be dedicated for City park purposes. Because both lots are privately owned, the public currently is not permitted access to the river. A component of the proposed development of the property is a public park providing access to the river.

SECTION F. Public Facilities and Services:

This element of the Comprehensive Plan is associated with Goal 11 of the Statewide Planning Goals. The City of Shady Cove has an existing framework of public facilities to serve urban development in a timely, orderly and efficient manner. The City of Shady Cove currently does not have a public water system. Property owners within the City Limits are required to provide their own water, through private and community water systems. The Flywater project shall acquire water rights from the Rogue River to serve the future development. Based on a letter in the record from Arthur Armour with the US Army Corps of Engineers, there is 6,177 ac-ft. of storage available for Municipal and Industrial Water Supply. In addition, a letter in the record from Bill Parks with the US Bureau of Reclamation, there is approximately 75% of the 35,000 ac-ft. allocated to irrigation from Lost Creek Reservoir. Sufficient water supply is available to serve the future proposed development of the properties.

The Shady Cove City Council rejects opponents' argument that existing wells will be impacted with the future development. The City finds that the primary water source will be from stored water from Lost Creek Reservoir that will not significantly impact neighboring wells. The Shady Cove City Council also finds that the proposed comprehensive plan amendment and zone change is in an area of the City with existing and planned improvements such as City streets, City sanitary sewer, electrical service and phone service. These facilities are existing adjacent to the subject properties with sufficient capacity to serve the future urban development. The framework of urban services and facilities are in place for extension onto the subject properties for future urban residential development.

SECTION G. Housing:

This element of the Comprehensive Plan is associated with Goal 10 of the Statewide Planning Goals. The City of Shady Cove has established Residential zoning designations to provide for the housing needs of its citizens. The requested R2 zoning district allows for a mixture of housing types that can serve varied income levels.

SECTION H. Land Use Plan:

This element of the Comprehensive Plan is united with Goal 2 of the Statewide Planning Goals. The Land Development Code implements the process and policy framework of the Comprehensive Plan. The Land Development Code requires an application and public hearing process for review of the minor comprehensive plan amendment. The public hearings before the Planning Commission and City Council of the City of Shady Cove have demonstrated compliance.

SECTION I. Urbanization:

This element of the Comprehensive Plan is united with Goal 14 of the Statewide Planning Goals. The subject properties are within the City Limits. The City Council determines that the most efficient use of the land will be residential. The requested zoning district is required in order for the property to be developed to urban standards of the City of Shady Cove. These development standards are in place to ensure that the City of Shady Cove is a liveable, friendly community.

Local Street Network Plan:

This element of the Comprehensive Plan is associated with Goal 12 of the Statewide Planning Goals. The City of Shady Cove adopted a Local Street Network Plan (LSNP) in 2007. This document, along with the Comprehensive Plan, is intended to ensure compliance with the State's Transportation Planning Rule (TPR). The intersection of Brophy Way and Highway 62 is identified in the LSNP as currently operating at an LOS of A southbound and C eastbound.

The applicants have submitted a Traffic Impact Analysis that considered all applicable factors including Level of Service. There were two recommendations made with the traffic generation thresholds that warrant improvements to the transportation system. Both improvements are turning movements at the intersection of Brophy Way and Highway 62. There were no additional significant impacts that warranted improvements beyond this intersection identified in the TIA, by ODOT, or by the Public Works Director for the City of Shady Cove.

The third criterion is a submission of a conceptual plan. The applicants have submitted two differing conceptual development plans for review by Staff. These plans are for discussion purposes and review that differ from a formal detailed development plan that is submitted with a land division application for analysis.

The City Council rejects the opponents' argument that a detailed plan is needed for a general finding of feasibility to develop the property. The City Council finds that the two conceptual plans submitted meets the Standard for review and that based on these plans Staff was able to comment and make recommendations accordingly for the future development plan for residential development on Tax Lot 400.

V. CONCLUSIONS OF LAW:

Based upon the record before the City Council and having reviewed all of the evidence and testimony and weighed it against the applicable criteria, the Shady Cove City Council makes the following CONCLUSIONS OF LAW:

The application, ZC 10-01, does in fact meet the criteria of Section 154.439 SCCO, and the City Council concludes that this application is a Minor Comprehensive Plan Map amendment to the Medium Density designation, with a concurrent change of zoning request to the R-2 district. The request complies with the standards of the Shady Cove Code of Ordinances, Comprehensive Plan and complies with state law.

Any potential conflicts within the Ordinance have been addressed and resolved by the City Council interpreting the Shady Cove Code of Ordinances, particularly definitions and code requirements in Chapters 151 and 153, SSCO. The application is approved, with the following conditions:

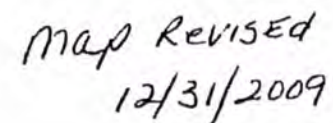
1. A left-turn shall be installed on Highway 62 at the Brophy Way intersection prior to the issuance of any building permits for any development greater than 3 single family residences and a park.
2. The applicant shall contribute a proportional share of the cost to install a southbound right-turn lane on Highway 62 at the intersection of Brophy Way prior to the issuance of any building permits for any development greater than 3 single family residences and a park. The Cost and contribution shall be determined by City staff in consultation with ODOT at the time of development application.
3. Any development that requires a street installation shall provide for internal street connectivity between Tax Lots 910 (Parcel 2 of Partition Plat No. P-12-2009; a part of the original Tax Lot 900) and 400 and identified on the tentative plan. Specific standards and the recommendations shall be applied at the time of development application.
4. Prior to issuance of any building permits for any development greater than 3 single family residences and a park, the applicant shall improve Brophy Way to a local street classification from the intersection of Highway 62 to the development. Specific construction standards in relation to streets, sidewalks, street lights, water, sanitary sewer, storm drain, and other utilities will be applied at the time of development application.

5. The primary domestic potable water and irrigation water shall be supplied from stored water in Lost Creek Reservoir.

6. The future residential development on Tax Lot 400 shall not exceed 40 dwelling units and meet the R-2 zoning district standards.

The future development plan will provide floodplain information to ensure that any future development of structures meets the City standards in Chapter 151 along with the building codes and design. Also, the applicants have agreed and stipulated to a maximum of 40 dwelling units to reduce the potential cumulative traffic impacts on Brophy Way and agreeing to the identified improvements within the TIA submitted along with the recommendations from ODOT and the Public Works Department.

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Salem, Oregon 97301-2540