

The PC further finds that the HO's condition for additional screening along the east and south property lines is appropriate to address EC 9.8320(12) and EC 9.8320(13), but that more specificity is necessary regarding the screening requirement to ensure compliance. The HO did not adequately specify the type of landscaping required (see Condition #15 on page 64 of the HO decision) other than to require a combination of landscaping and fencing that would screen the buildings from view from adjacent properties. Here, responding to arguments about the uncertainty and adequacy of the public process, and deferring a determination of compliance to a later stage of review, the PC finds that the condition of approval should be modified. To add more specificity, for clarity and objectivity upon review at the final PUD stage, and recognizing that the City's Type II application process for final PUD approval affords adequate public notice and opportunity for appeal, the PC modifies the HO's decision to replace approval Condition #15, with the following:

- The final PUD plans shall show landscaping along the eastern and southern property lines meeting the High Screen Landscape Standard (L-3) at EC 9.6210(3), except for the portion of the south property line which includes a proposed wall for screening of the parking and access area (see related Condition #13). Also note that the landscaping cannot be placed within the public wastewater easement along the east property line, per the restriction at EC 9.6500(3).

The PC also finds that there needs to be a condition to ensure that the concrete wall along the west boundary includes vegetation, as proposed. Specifically, the applicant's proposal to plant "espaliered" trees along the outside face of the wall as a feature to help soften the appearance is acceptable, but should be required as a condition of approval. In addition, while the HO allowed the applicant's request for a reduced setback for the proposed wall to be located on the property line if the necessary maintenance access easement is obtained from the adjoining owner (see Condition #13), the applicant indicated at the appeal hearing that a five-foot setback would be provided and the PC concludes that the setback is necessary to ensure compatibility. To address these concerns, the PC modifies the HO's decision to replace Condition #13, with the following:

- The final PUD plans shall show the applicant's proposal for "espaliered" trees along the outside face of the proposed wall as a requirement. Plans shall also be revised to show a minimum 5-foot setback for the wall along the west and south boundaries of the site. The required landscaping shall be the responsibility of the owner(s) and maintained as a requirement of the PUD approval.

With these additional findings and conditions of approval, the PC concludes that the approval criteria at EC 9.8320(13) will be met. These requirements also address compliance with EC 9.8320(3) regarding adequate screening, EC 9.8320(12) regarding minimal off-site impacts, and related modifications to applicable standards allowed by the HO under EC 9.8320(11)(k).

**Seventh Assignment of Error: The Decision erred by finding the application met EC 9.8320(3) "The PUD will provide adequate screening from surrounding properties including, but not limited to anticipated locations, bulk, and height."**

The PC confirms that the PUD cannot rely on the cedar trees on adjacent lands to the north as screening for the development because those trees are not within the development's control. As addressed previously, under the sixth assignment of error, the PC has modified the HO decision to establish conditions of approval to ensure adequate screening along all property lines; those findings and conditions are incorporated by reference to address this seventh assignment of error and EC 9.8320(3).

The PC further finds that the proposed "clustering" of dwellings includes a form of attached single-family units in dispersed buildings, which minimizes the overall impact of the allowed R-1 density which might occur in other multi-family designs (i.e. an apartment complex). Based on the available evidence, the PC concludes that this is acceptable, as long as the proposed design otherwise meets the PUD approval criteria. In this case, the proposal for "clustering" necessarily increases the size of each individual building, but not in a way that offends the requirements for compatibility, screening, or overall character of the area. The PC concludes that added conditions of approval noted above will provide enough clarity to ensure adequate screening which will be implemented during the final PUD process, involving adequate opportunity for public review and comment, as well as appeal provisions.

Except as modified above, the HO findings on pages 9-14 are hereby incorporated by reference as further evidence of compliance with the applicable criteria appealed under this assignment of error.

**Eighth Assignment of Error: The Decision erred by finding the application met EC 9.8320(11)(a) "The PUD complies with EC 9.2000 through EC 9.3915 regarding lot dimensions and density requirements for the subject zone."**

- A. Sub-assignment of Error 8.A: the Hearings Official erred in his calculation of the net density area pursuant to EC 9.2751...**
- B. Sub-assignment of Error 8.B: the Hearings Official erred in his understanding of the concept of "clustering" under EC 9.8300(1)(e).**

The PC finds that the HO did not err in his calculation of net density by not subtracting public easement areas, as asserted by the appellant. Even if these additional areas are subtracted from the net density calculation, staff's analysis shows and PC affirms that the PUD complies with the net density allowance in R-1 zoning for 14 units per acre.

The PC finds that the HO did not err in his understanding of the concept of clustering under EC 9.8300(1); however, as discussed previously under the sixth assignment of error, the PC finds that there appears to be sufficient open space within the development site to accommodate the changes required by the PC, which will necessarily result in more clustering of the dwellings within the development site. As discussed under the sixth assignment of error, the PC is modifying the HO's decision to require additional setbacks and landscaping to ensure compliance. Here, as modified, those requirements further the PUD purposes with regard to clustering of dwellings, and are therefore incorporated by reference. Except as modified above, the HO findings on pages 33-35 are hereby incorporated by reference as further evidence of compliance with the applicable criteria appealed

under this assignment of error.

**Ninth Assignment of Error: The Decision erred by finding the application met EC 9.8320(11)(k) "All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development; EC 9.2795 Solar Setback Standards."**

The PC finds that the HO did not err in his interpretation of the solar setback standard and that he was correct in granting an exception pursuant to EC 9.2795(3)(c)(1) Exemptions to Solar Setback Requirements, based on the right-of-way being required along the entire north property line. The HO findings on pages 43-50 are hereby incorporated by reference as further evidence of compliance with the applicable criteria appealed under this assignment of error.

**Tenth Assignment of Error: The Hearings Official made a decision that was not supported by substantial, probative and reliable evidence in the whole record; and the Decision improperly construed the applicable law."**

- A. ***Sub-assignment of Error 10.A: The HO erred by not adequately considering the preponderance of evidence and analysis in the "Constitutional findings for Exaction" produced by the Eugene Public Works Department (PWD).***
- B. ***Sub-assignment of Error 10.B: the Hearings Official erroneously found that Oakleigh Lane was not an "access lane."***
- C. ***Sub-assignment of Error 10.C: The Hearings Official used erroneous data for traffic counts in on or more places..."***
- D. ***Sub-assignment of Error 10.D: The Hearings Official erroneously allowed the impermissible new and non-responsive evidence submitted by the applicant's representatives on October 16, 2013, without providing an opportunity for opponents to respond, despite the timely, written request by Paul Conte.***

As addressed previously, the PC finds that the constitutional findings included in the staff report and PW referral comments (Pages 2-4 of Exhibit PH-30) had no applicability other than the abutting street segment because the findings were used only to justify exactions from the applicant. Further, the PC finds that immediate improvements are not required of the development, either abutting the development site, or on any part of Oakleigh Lane, based on the findings and conclusions provided previously under the second assignment of error, which are incorporated here by reference.

The PC affirms the HO's decision that Oakleigh Lane is a low-volume residential street under existing and proposed conditions, as the street has not yet been designed and built to urban City standards and the projected ADT is within the 250 to 750 range. The conditions imposed by the HO for right-of-way dedication and irrevocable petition from the developer will ensure that the PUD contributes its

proportional share of the future local improvement. The PC finds the traffic generation to be consistent with the proposed residential use, which is within the permissible density range. As such, the PC agrees with the HO that the traffic generated by the development is not "significant" within the context of EC 9.8320(12).

The PC finds that the various trip generation estimates provided in the record do not change the determination that Oakleigh Lane is a low-volume residential street. The PC finds that the HO did not err in his conclusions that relied on ADT estimates, and the relevance of this alleged error is unclear in the appeal statement as it does not identify any related approval criteria to which the argument applies. The HO findings on pages 18-29 are hereby incorporated by reference as further evidence of compliance under the approval criterion appealed under this assignment of error.

The PC finds that the HO was correct in allowing the applicant's October 16, 2013 submittals into the record, as they were responsive to evidence and argument submitted up to October 9, 2013, as explained in the HO's decision. The PC also affirms the HO's Order Denying Reopening the Evidentiary Record. The HO findings on pages 3-4 are hereby incorporated by reference as further evidence of the open record appealed under this assignment of error.

#### **IV. CONCLUSION**

The Eugene Planning Commission has reviewed the record and the assignments of error in the appeal, and has voted to modify and affirm the decision of the Hearings Official to conditionally approve the tentative PUD for Oakleigh Meadows Co-housing (PDT 13-1). Additional findings and modified conditions of approval are provided in Section III of this Final Order; the modified conditions of approval are also included below for reference. All other conditions imposed by the Hearings Official remain applicable as set out in the Hearings Official's decision.

##### **Added Conditions of Approval:**

- The final PUD plans shall show a building setback of 5 feet from the front property line along the newly dedicated right-of-way boundary for Oakleigh Lane. A 10 foot setback shall be shown along the remainder of the north property line, along the newly dedicated right-of-way for a bike/pedestrian path. (See related Condition #3.)
- The final PUD plans shall show landscaping along the north property line consistent with the applicant's proposed landscape plan (Sheet L2 of Exhibit PH-69), but moved south within the required five foot setback outside of the newly dedicated right-of-way for Oakleigh Lane. The applicant shall also revise the site plans to show landscaping that meets the City's L-2 standard at EC 9.6210, along the remainder of the north property line, but without the requirement for additional canopy trees.

##### **Condition of Approval #13 (as modified/replaced):**

- The final PUD plans shall show the applicant's proposal for "espaliered" trees along the outside face of the proposed wall as a requirement. Plans shall also be revised to show a minimum 5-foot setback for the wall along the west and south boundaries of the site. The required

landscaping shall be the responsibility of the owner(s) and maintained as a requirement of the PUD approval.

**Condition of Approval #15 (as modified/replaced):**

- The final PUD plans shall show landscaping along the eastern and southern property lines meeting the High Screen Landscape Standard (L-3) at EC 9.6210(3), except for the portion of the south property line which includes a proposed wall for screening of the parking and access area (see related Condition #13). Also note that the landscaping cannot be placed within the public wastewater easement along the east property line, per the restriction at EC 9.6500(3).

Accordingly, PUD approval is hereby affirmed. The foregoing findings and conclusions are adopted as the Final Order of the Eugene Planning Commission for Oakleigh Meadows Co-Housing PUD (PDT 13-1) this \_\_\_\_\_ day of December, 2013.

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William Randall, Chair  
Eugene Planning Commission

Attachment A: December 11, 2013 City Attorney Memo from Anne Davies

**Eugene City Attorney's Office****Memorandum**

**Date:** December 11, 2013  
**To:** Eugene Planning Commission  
**From:** Anne C. Davies  
**Subject:** Oakleigh PUD PDT 13-01

The Planning Commission has asked for guidance on a couple of issues prior to continuing deliberations on the Oakleigh PUD.

1. *Bothman v. City of Eugene*

The first assignment of error in the appeal statement asserts that the Planning Commission must address two Metro Plan policies that the hearings official failed to address (*Metro Plan Policy F.26* and *Metro Plan Policy F.36*). The appellant argues that the Planning Commission must address these policies even though they are not worded as mandatory approval criteria.

The general rule is that a comprehensive plan or refinement plan policy need not be addressed in a specific land use action (such as this PUD) unless the policy uses mandatory language that would make it an applicable approval criterion. However, there are some instances where the language of a policy is not mandatory, but where the language could require the Planning Commission to "consider" the policy or weigh certain factors. In the case cited, *Bothman*, the refinement plan policy in question provided: "[r]ecognize the existing general office and commercial uses located along the west side of Coburg Road, north of Willakenzie Road, and discourage future rezonings of these properties." LUBA held that, in a request to rezone several properties within that area from C-1 and GO to C-2, the Planning Commission was required to at least "consider" the policy. LUBA recognized that the role that any particular policy would play depends on the actual text and context of the policy at issue.

The two policies raised by the appellant in this case are not like the policy at issue in *Bothman*. Policy F.26 provides: "Provide for a pedestrian environment that is well integrated with adjacent land uses and is designed to enhance the safety, comfort, and convenience of walking." Policy F.36 provides: "Require that new development pay for its capacity impact on the transportation system." First, the applicant contends that the policies do not provide mandatory approval standards. Letter dated December 5 from Zack Mittge. Further, unlike the policies in *Bothman*, where the policies actually sought to discourage the exact planning action that was being proposed, the text and context of these policies do not appear to require any additional consideration for the proposed PUD. The Planning Commission should include

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findings explaining (1) why those policies are or are not mandatory approval criteria, and (2) whether the policies require any additional consideration even if they are not mandatory approval criteria. If the Planning Commission determines that consideration of those policies is not required, the Planning Commission could also choose to make alternative findings that, even though consideration of the policies is not required, approval of the PUD is nonetheless consistent with those policies.

## 2. Exaction Primer

In order to approve any proposed development, the local decision maker must be able to point to sufficient evidence and rationale demonstrating that each and every approval criterion is satisfied. If an approval criterion is not or cannot be satisfied, then the application should be denied. Sometimes a particular approval criterion can be satisfied, but only if a condition of approval is imposed.

Where that condition of approval is the requirement that an applicant or property owner dedicate land for public use, the local government must make constitutional findings justifying the exaction (often referred to as Dolan findings). The findings must demonstrate, first, that there is a legitimate state interest justifying the imposition of the exaction. Second, the local government must demonstrate that there is a nexus between the permit condition and a legitimate state interest. *I.e.*, the condition being imposed actually serves or furthers the valid public purpose. Finally, the local government must demonstrate that the exaction and the anticipated impact of the proposed development are "roughly proportionate." For instance, a local government cannot require a developer of a duplex to construct a new three-lane highway, because the condition imposed would have absolutely no relationship to the amount of traffic to be generated by the proposed development.

In this case, Public Works staff provided Dolan findings on public interest, nexus and rough proportionality justifying the dedications that the City was requiring of the applicant. The findings are very formulaic. They identify the public interest in having a 45-foot right of way dedication (PW Referral Comment at 2), the necessary nexus between the required dedication and the public interest (PW Referral Comment at 3, first full paragraph), and explain how the dedication is roughly proportional to the anticipated impacts of the proposed development (PW Referral Comment at 3, second paragraph). A similar analysis is done for the pedestrian and bicycle dedication (PW Referral Comment at 4). The Hearings Official and the applicant point out that the Dolan findings do not state that the roadway will be unsafe unless it is improved now; rather, they state that safe vehicular, bicycle, pedestrian and emergency access will be at risk in the future without the required dedication. The findings point out that this is the last opportunity the City will have to require the dedication needed for any future street construction.

Further, the Dolan findings do not even attempt to justify requiring that the applicant actually construct or improve the road, only that the applicant dedicate portions of its land for a public right-of-way. Had the applicant been required to improve Oakleigh Lane, the City would have needed to provide similar findings justifying that requirement.

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There is no challenge to the exaction findings themselves in this case. That would be an argument that an applicant would typically make to fight the City's ability to require that it dedicate land to the public. The gist of Appellant's Tenth Assignment of Error is that the exaction findings (referenced above) demonstrate that neither Oakleigh Lane nor the bike/ped path will be safe unless they are improved, and unless Oakleigh Lane is improved all the way to the east end of the subject property. The Hearings Official concludes that the exaction findings cannot be read to say that the existing roadway is not safe, Decision at 27, and concludes that the existing paved surface provides safe passage of vehicles. Decision at 26. That finding is based on evidence in the PW Referral Comments. Regarding the need for Oakleigh Lane to be immediately improved, Public Works staff stated:

"With the exception of street lights, Oakleigh Lane has an approximate 19 foot wide paved surface, but has not been improved to city standards, lacking curbs and gutters, storm drainage, sidewalks, and street trees. As is typical for unimproved local streets in the River Road area, i.e., those streets which do not have paving, curb & gutter and sidewalks or which have not been striped to identify dedicated travel lanes; the expectation is that pedestrians and bicyclists will share the paved surface with vehicles. Additionally, there is a tendency on dead end streets such as Oakleigh, for motorists to travel at slower, more cautious speeds, because of the perceived narrowness of the street. Until such time that property owners elect to improve Oakleigh Lane to full City standards, including sidewalks, the existing paved surface in Oakleigh Street will continue to adequately provide for motorized and foot traffic, as well as for emergency vehicles and delivery services, provided the paved surface is not blocked by parked vehicles. Since the existing paved surface provides safe passage for two-way vehicular traffic, bicycles, pedestrians and emergency vehicles, and since there is nothing to suggest that the impacts of the proposed development will result in unsafe conditions in Oakleigh Lane, it is appropriate to defer public improvements via an irrevocable petition." (PH-30 at 14).

To address Assignment of Error 10.A., the Planning Commission has to decide whether the Hearings Official erred in concluding that the Dolan findings do not determine that vehicle, bike and pedestrian traffic along Oakleigh Lane will be unsafe unless the full length of Oakleigh Lane is improved now.

ACD:abm

**SUMMARY MINUTES**  
**Eugene Planning Commission Regular Meeting**  
Atrium Building – Sloat Room  
11:30 a.m., December 9, 2013

**PLANNING COMMISSIONERS PRESENT:**

William Randall, Chair  
John Jaworski, Vice Chair  
John Barofsky  
Rick Duncan

**PLANNING COMMISSIONERS NOT PRESENT:**

Stephen Baker  
Jon Belcher  
Jeff Mills

**CITY STAFF PRESENT:**

Carolyn Burke, Steve Nystrom, Becky Taylor, Gabe Flock, Anne Davies

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Meeting called to order at 11:30 a.m. by Commissioner Randall, Chair.

**I. PUBLIC COMMENT:**

None.

**II. DELIBERATIONS ON APPEAL OF HEARINGS OFFICIAL DECISION FOR OAKLEIGH MEADOWS COHOUSING (PDT 13-1)**

Anne Davies gave a summary on the Hearings Official record and addressed questions regarding the admissibility of items presented in that process.

Planning Commission continued discussion. No action taken during this meeting.

**III. ITEMS FROM COMMISSION AND STAFF**

Carolyn Burke announced that the City Council Action on Single Family Code Amendments that was originally scheduled tonight (December 9, 2013) has been postponed.

Meeting adjourned at 1:34 p.m.

Recorded by: Rhonda Crocker (from webcast)



## Eugene Planning Commission

Phone: 541-682-5481  
www.eugene-or.gov/pc

## AGENDA

**Meeting Location:**  
Sloat Room—Atrium Building  
99 W. 10<sup>th</sup> Avenue  
Eugene, OR 97401

The Eugene Planning Commission welcomes your interest in these agenda items. Feel free to come and go as you please at any of the meetings. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hours notice. To arrange for these services, contact the Planning Division at 541-682-5675.

### **MONDAY, DECEMBER 9, 2013 – REGULAR MEETING (11:30 a.m. to 1:30 p.m.)**

**11:30 a.m. I. PUBLIC COMMENT**

The Planning Commission reserves 10 minutes at the beginning of this meeting for public comment. The public may comment on any matter, **except for items scheduled for public hearing or public hearing items for which the record has already closed.** Generally, the time limit for public comment is three minutes; however, the Planning Commission reserves the option to reduce the time allowed each speaker based on the number of people requesting to speak.

**11:40 a.m. II. DELIBERATIONS ON APPEAL OF HEARINGS OFFICIAL DECISION FOR OAKLEIGH MEADOWS COHOUSING (PDT 13-1)**

Staff: Becky Taylor 541-682-5437

**1:15 p.m. III. ITEMS FROM COMMISSION AND STAFF**

- A. Other Items from Staff
- B. Other Items from Commission
- C. Learning: How are we doing?

Commissioners: Steven Baker; John Barofsky; Jonathan Belcher; Rick Duncan; John Jaworski (Vice-Chair); Jeffery Mills; William Randall (Chair)

**AGENDA ITEM SUMMARY**  
**December 9, 2013**

**To:** Eugene Planning Commission

**From:** Becky Taylor, Associate Planner

**Subject:** Deliberations on Appeal of the Hearings Official's Decision -- Oakleigh Meadows Co-Housing PUD (PDT 13-1)

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**ACTION REQUESTED**

To deliberate on an appeal of the Hearings Official's decision approving a tentative PUD application for Oakleigh Meadows Co-Housing PUD, and to take action to affirm, reverse, or modify the approval.

**BRIEFING STATEMENT**

Following the public hearing on this appeal, held on December 5, 2013, the Planning Commission's task is to deliberate on the appeal issues raised, and issue a final decision on whether to affirm, reverse, or modify the Hearings Official's decision to approve the application. The Planning Commission's decision must be made in accordance with the procedures for appeals at EC 9.7650 through EC 9.7685, which limit consideration to the existing evidentiary record and issues set out in the appellant's written statement.

Time constraints under the statutory 120-day rule mean that a final local decision by the Planning Commission must be issued no later than December 20<sup>th</sup>. The record was closed to additional testimony after the hearing, and no additional extensions of time were granted by the applicant under the statutory 120-day rule. In order to meet these time constraints, staff has scheduled deliberations for the PC's regular Monday meetings on December 9<sup>th</sup> and 16<sup>th</sup> to facilitate a final written decision by the deadline. The full record has been provided separately, including all other testimony, evidence and application materials to date. For ease of reference during deliberations, a reduced version of the applicant's site plan, the written appeal statement and Hearings Official's decision are also attached.

Background

The proposal for Oakleigh Meadows Co-Housing PUD includes the development of 29 dwelling units, including a common house with shared kitchen facilities. The applicant's co-housing concept qualifies as a multi-family residential use under the City's land use code, which requires PUD approval in the R-1 zone. The subject property is a vacant 2.3 acre site, located at the end of Oakleigh Lane, east of River Road near the Willamette River. The proposed design includes attached single-family dwellings arranged with two, three and four units per building. The common house is located toward the center of the site, with driveway access and parking along the west boundary, and open space along the east boundary toward the river. The Hearings Official's decision also includes a useful summary on pages 4-5, with more information about site characteristics and specifics of the applicant's proposal. A reduced version of the applicant's site plan is also attached for ease of reference (see Attachment A).

The Hearings Official held the initial public hearing on this request on October 2, 2013. Following the hearing and open record period for additional testimony, he approved the applicant's tentative PUD with 15 conditions of approval on November 12, 2013. The applicant's concurrent request for a Willamette Greenway Permit was also approved but is not challenged by the opponents as part this appeal. The Hearings Official's decision is also attached for reference (see Attachment B).

As relevant here, the conditions of approval established by the HO's decision require right-of-way dedication along the north property line to accommodate future improvements that would widen Oakleigh Lane, and provide a hammerhead turnaround and bicycle/pedestrian way. Irrevocable petitions were required for these future improvements, in lieu of immediate improvement. The decision also granted exceptions to the maximum cul-de-sac length for Oakleigh Lane, which already exceeds 400 feet, and to street connectivity standards based on the applicant providing a conceptual development plan for adjacent lands to the north. The decision also granted modifications to front and interior yard setbacks, such that development would be within a foot of the street and, if easements are granted by the abutting property owners, within five feet of interior property lines to the west and south.

On November 22, 2013, an appeal was filed by the River Road Community Organization. The co-appellant is Bryn Thoms, the owner of adjacent lands to the north. The appeal statement identifies ten primary assignments of error in the Hearings Official's decision, which address two main areas of concern: transportation and compatibility. While different PUD approval criteria and related standards are involved under each of these main areas of concern, Appeal Issues 1, 2, 3, 4, 5, 6 (in part), and 10 focus on traffic impacts associated with the proposed development. Appeal Issues 6 (in part), 7, 8 and 9 are primarily focused on criteria related to compatibility with the surrounding area. The written appeal statement is also attached for reference (see Attachment C).

Initial deliberations on these two primary areas of concern could help to show the Planning Commission's inclination toward these overarching issues, as to whether the proposed development is a compatible fit with the surroundings, and whether adequate improvements exist within Oakleigh Lane to handle the additional traffic impacts. To this end, staff recommends that the chair begin with an opportunity to hear from each commissioner as to these primary issues and any specific approval criteria or appeal arguments they wish to address or prioritize in deliberations. It appears that Appeal Issue 6 may be the best place to start deliberations, where arguments related to both of these main areas of concern are raised under the approval criterion at EC 9.8320(13).

To facilitate the deliberations, staff has provided a more detailed summary of the appeal issues in Attachment D, with references provided to relevant findings in the Hearings Official's decision, the appeal statement, and other related evidence or testimony in the record. The summary also provides some initial suggestions for how the commission might address each appeal issue, in deciding whether to affirm, reverse or modify the Hearings Official's decision to approve the application.

#### **ATTACHMENTS**

- A. Applicant's Site Plan
- B. Hearings Official's Decision

- C. Written Appeal Statement
- D. Summary of Appeal Issues

**FOR MORE INFORMATION:**

Please contact Becky Taylor, Associate Planner, Eugene Planning Division, by phone at (541) 682-5437, or e-mail at [becky.g.taylor@ci.eugene.or.us](mailto:becky.g.taylor@ci.eugene.or.us)

**AGENDA ITEM SUMMARY**  
**December 9, 2013**

**To:** Eugene Planning Commission

**From:** Becky Taylor, Associate Planner

**Subject:** Deliberations on Appeal of the Hearings Official's Decision -- Oakleigh Meadows Co-Housing PUD (PDT 13-1)

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Initial deliberations on these two primary areas of concern could help to show the Planning Commission's inclination toward these overarching issues, as to whether the proposed development is a compatible fit with the surroundings, and whether adequate improvements exist within Oakleigh Lane to handle the additional traffic impacts. To this end, staff recommends that the chair begin with an opportunity to hear from each commissioner as to these primary issues and any specific approval criteria or appeal arguments they wish to address or prioritize in deliberations. It appears that Appeal Issue 6 may be the best place to start deliberations, where arguments related to both of these main areas of concern are raised under the approval criterion at EC 9.8320(13).

To facilitate the deliberations, staff has provided a more detailed summary of the appeal issues in Attachment D, with references provided to relevant findings in the Hearings Official's decision, the appeal statement, and other related evidence or testimony in the record. The summary also provides some initial suggestions for how the commission might address each appeal issue, in deciding whether to affirm, reverse or modify the Hearings Official's decision to approve the application.

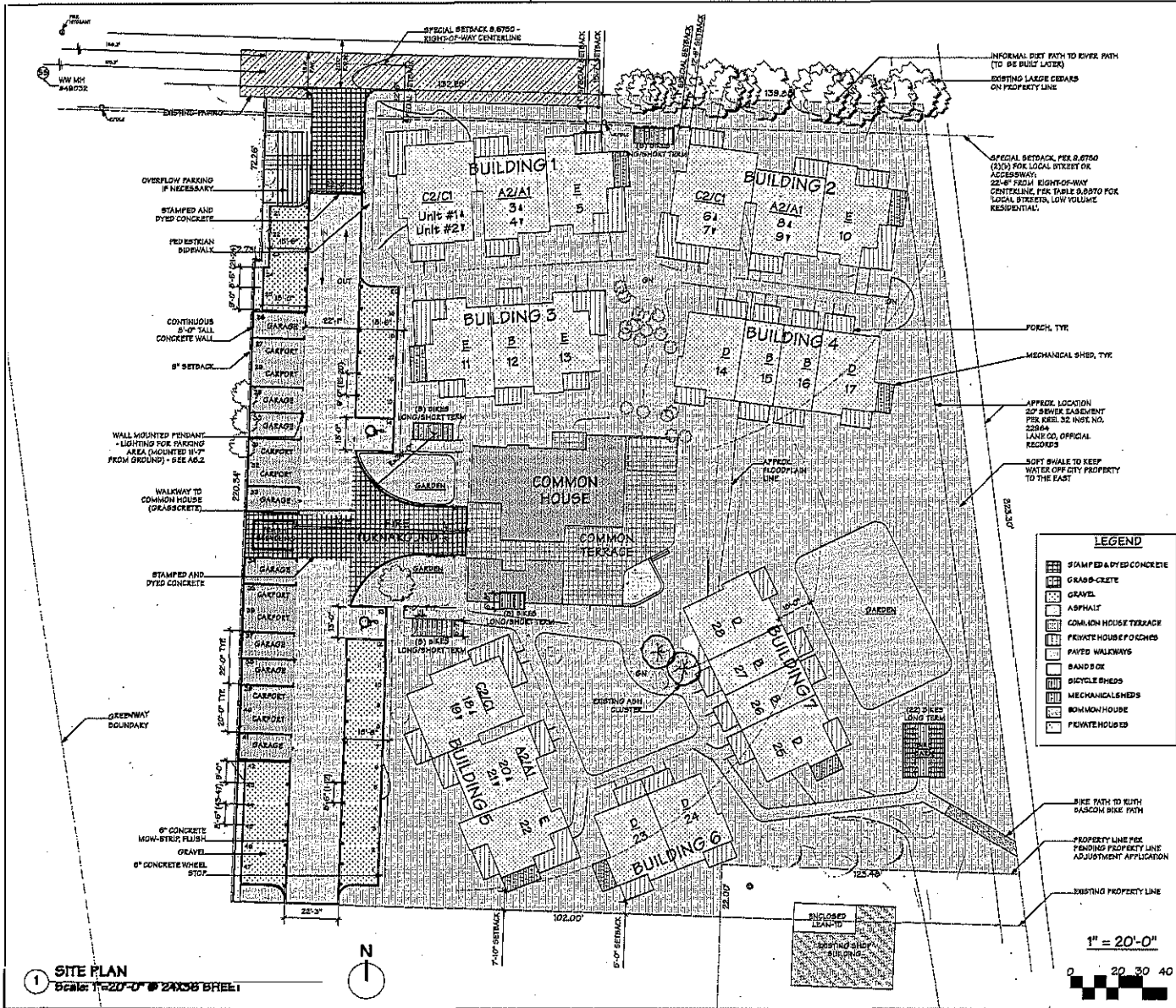
#### **ATTACHMENTS**

- A. Applicant's Site Plan
- B. Hearings Official's Decision

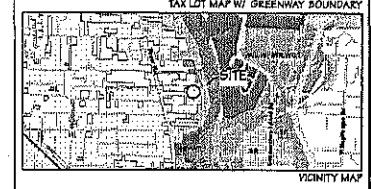
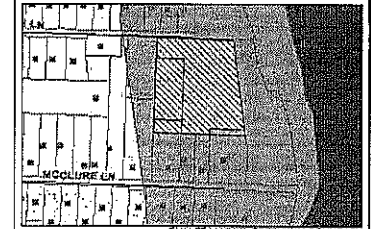
- C. Written Appeal Statement
- D. Summary of Appeal Issues

**FOR MORE INFORMATION:**

Please contact Becky Taylor, Associate Planner, Eugene Planning Division, by phone at (541) 682-5437, or e-mail at [becky.g.taylor@ci.eugene.or.us](mailto:becky.g.taylor@ci.eugene.or.us)



GENERAL NOTES



SITE COVERAGE

SITE COVERAGE	102,806.89 SF
BUILDINGS (includes carports & garages)	33,879.52 SF (33%)
PARKING	14,202.31 SF (14%)
OPEN SPACE (includes pathways)	54,727.06 SF (53%)

BUILDING TYPE MATRIX

BUILDING #	BUILDING TYPES	QUANTITY
6	D-D	1
3	E-B-E	1
4, 7	D-B-B-D	2
1, 2, 5	C-A-E	3
<b>TOTAL</b>		<b>7</b>

UNIT TYPE MATRIX

UNIT	BED	BATH	TYPE	QTY.	UNIT SF	UNIT TYPE SF
A1	2	1	FLAT	3	955	2865
A2	2	1	FLAT	3	955	2865
B	2	1.5	TOWNHOUSE	5	1088	5440
C1	3	2	FLAT	3	1218	3654
C2	3	2	FLAT	3	1218	3654
D	3	2	TOWNHOUSE	6	1305	7830
E	4	3	TOWNHOUSE	5	1632	8160
<b>TOTALS</b>				<b>28</b>		<b>34,468</b>

PARKING SUMMARY

TYPE	QUANTITY
GARAGES	8
CARPORTS	8
OPEN PARKING	31
<b>TOTAL CAR PARKING</b>	<b>47</b>
BIKE SHED PARKING	51 (788 SF)



PRELIMINARY DRAWINGS

McManis & Durkin Architects  
1000 Broadway, Suite 200  
Portland, OR 97202  
Tel: 503.228.1111  
Fax: 503.228.1112



OAKLEIGH MEADOWS  
CONDOMINIUM  
ENGINEER, OREGON 97144

SITE PLAN

PLANNED UNIT DEVELOPMENT (PUD) PROJECT  
Scale: TO LAYOUT SHEETS  
Drawn: MLD  
Rev: BIC  
Date:

A1.1

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

**Planned Unit Development and Willamette Greenway Request**

**Application File Name (Numbers):**

Oakleigh Meadows Co-Housing PDT 13-1, WG 13-1

**Applicant's Request:**

Tentative Planned Unit Development and Willamette Greenway Permit approval for a 29-unit cohousing development.

**Subject Property/Location:**

Tax Lot 5500 of Assessor's Map 17-04-24-24 and Tax Lot 400 of Assessor's Map 17-04-24-13; Located at the east terminus of Oakleigh Lane.

**Relevant Dates:**

Applications submitted on June 18, 2013; supplemental application materials submitted on August 12, 2013; application deemed complete on August 12, 2013; public hearing held on October 2, 2013, record closed on October 23, 2013.

**Applicant's Representatives:**

Will Dixon, AIA  
Zack Mittge, Attorney

**Lead City Staff:**

Becky Taylor, Associate Planner, Eugene Planning Division, Phone: (541) 682-5437

**Summary of the Public Hearings and Open Record**

The Hearings Official held a public hearing on this application on October 2, 2013. At the hearing the Hearings Official stated he had no conflicts of interest or *ex parte* communications to disclose, and made all the required statements under ORS 197.763. No person objected to the Hearings Official conducting the hearing. The following is a summary of testimony and evidence submitted at the hearing and subsequent open record period and is not intended to be a complete list of evidence in the record.

**October 2, 2013 Public Hearing**

At the October 2, 2013, public hearing staff provided an overview of the staff report and highlighted certain aspects of the application.

Mr. Will Dixon testified on behalf of the applicant. He agreed with the findings of the staff report and to the recommended conditions of approval. He noted that the subject property is located in the Willamette River Greenway, but not within the protected buffer immediately adjacent to the river. He stated that the location of the proposed wall along the west boundary of the property could be perfected at the time of final PUD approval. He identified a September 27, 2013 letter from the applicant's traffic consultant that showed peak hour vehicle trips estimated between 15-29 trips, which did not warrant a traffic impact study.

Numerous persons testified in support of the application. Many in support are "members" of the co-housing project and expressed their aspirations for the quality of life they desired from the co-housing development. At least one proponent stated that the flexibility of design provided by the PUD provisions was well suited to the co-housing design. Another proponent suggested that the proposal met the density and design goals set forth in the Metro Plan and Envision Eugene.

Numerous neighbors testified in opposition to the application. Attorney Lauren Regan spoke on behalf of many of those neighbors. She stated that the residents of 21 homes on Oakleigh Lane were opposed to the application. The wall proposed for the western boundary was identified as particularly offensive to neighbors. She stated that the Metro Plan requires density such as that proposed to be located closer to River Road, not at a dead end of a small lane.

She asserted that the Willamette Greenway (statewide planning goal) was not met, and the proposal would also violate Goal 5. She also testified that the proposal did not provide sufficient screening from neighboring properties or the Willamette Greenway and associated bike path.

Other neighbors testified that the density and size of the proposed buildings were simply too large for a lane predominated by single family residences. Many neighbors were alarmed that a significant amount of fill would be needed to bring the eastern portion of the property above the floodplain level in order to allow development. Fears were expressed that the filled area would adversely impact the underlying sewer and would shunt stormwater onto the open space area between the subject property and the bike path.

Several neighbors suggested that a TIA should be required because even by the applicant's calculation of 168 new daily vehicles trips, the increase represents a 145% increase in traffic over existing levels. Opponents also asserted that the safety of pedestrians, children and bicyclists would be threatened by the increased number of cars. At least one opponent asserted that a traffic analysis should also look at impacts on the commercial zoned lands along River Road near the intersection with Oakleigh.

Several neighbors objected to the decreased setbacks proposed for several buildings. They felt that such setbacks are so much smaller than what is typical in the neighborhood that they would be incompatible with the look and feel of the existing lane. Similarly, the neighbors felt

that visual screening along every boundary line was insufficient. This view was particularly strong for the eastern boundary line. Other neighbors were worried about the proposed right-of-way dedication and thought that the dedication might be imposed from the subject property all the way to River Road.

Rick Rubin argued that the site is only 10 feet above the groundwater level which varies with the level of the Willamette River. He stated that this would make stormwater management difficult – causing the stormwater to be discharged on the adjacent City owned open space.

Several neighbors argued that the co-housing proposal would be incompatible with the surrounding lands because it would invite strangers into the neighborhood and be disruptive to wildlife.

The applicant's team made several observations during their rebuttal. First was that the proposed density for the co-housing project was lower than what the Low Density Residential zoning would ordinarily allow. They also noted that the project would not be visible from the bike path along the river because large numbers of trees already screened the river from the subject property.

Attorney Zack Mittge identified several rules, goals and plans which were identified by the opponents which he stated did not apply to the application. These included:

- Statewide Planning Goals generally, and specifically Goals 5 and 15,
- Metro Plan goals and objectives,
- Lane County code provisions argued by opponents,
- Lower River Road Concept Plan – which he argued had not been adopted

He stated that no additional on-street parking would result from the project, and that Oakleigh Lane is designed for up to 750 vehicle trips per day. On the topic of stormwater, he distinguished between “treatment” which would occur on site, and “discharge” of treated water which would be evenly spread along the eastern boundary of the site.

### **Open Record Period**

At the end of the October 2, 2013 hearing, the Hearings Official set an open record period at the request of several parties. The record was left open for: 1) argument and evidence on any topic by any party until October 9, 2013, 2) then until October 16, 2013 for responsive testimony and evidence to information submitted before October 9, 2013, and 3) the applicant's final comment was due October 23, 2013.

Numerous parties submitted written testimony and evidence prior to the October 9, 2013 deadline. Those documents are indexed as Exhibits PT-1 through PT-34. More comments were received by the October 16, 2013 deadline. Those documents are indexed as PT.R-01 through PT.R-13.

On October 16, 2013, Mr. Paul Conte submitted an objection to some documents submitted by the applicant. He asked that the record be reopened at that time. Exhibit PT.R-01. He made another request to have the record reopened on October 25, 2013. On November 5, 2013, the Hearings Official denied those requests in an order entitled "Order Denying Request to Reopen Evidentiary Record." While the Hearings Official declined to reopen the record, I made no decision on the question of whether to rely on the six documents that Mr. Conte objected to. That November 5, 2013 order is incorporated into this decision by this reference. Where the Hearings Official has relied on the disputed evidence, I have explained why the evidence is admissible under the rules set for the open record period.

After the November 5, 2013 Order was sent, Staff forwarded an October 31, 2013 letter from the applicant's attorney that apparently had just arrived in the Planning Staff's mail. The Hearings Official was unable to review that letter prior to issuing November 5, 2013 Order, and therefore, the order does not respond to the applicant's arguments.

On November 8, 2013, Mr. Conte attempted to submit a letter to the Hearings Official. The letter was forwarded via e-mail by Staff. Upon opening the e-mail and seeing it contained further argument about reopening the record, the Hearings Official made a determination not to read or consider the letter. That letter is excluded from this record.

### **Site Characteristics**

The subject property consists of 2.3 acres in two tax lots that are considered one development site under the current ownership. The property was recently annexed (see City File A 13-1) and is zoned R-1 Low-Density Residential. The east boundary of the subject property abuts undeveloped City parkland that contains Goal 5 Water Resources associated with the Willamette River, which borders the City property farther to the east. Otherwise, the surrounding properties primarily consist of single-family dwellings on individual lots or undeveloped lots that have potential for future residential development (i.e. at the north end of Oakleigh Lane and abutting the west boundary of the subject property.) Refer to Attachment A for a vicinity map.

Oakleigh Lane terminates near the midpoint of the northern boundary of the subject property, which will provide sole access to the development. Instead of extending the street along the entire length of the property, the applicant requests an exception to the street connectivity standards. To support the exception, the applicant has submitted a conceptual development plan for the undeveloped property to the north, to show how it could be further divided without necessitating an extension of Oakleigh Lane. Issues regarding Oakleigh Lane are addressed under approval criterion EC 9.8320(5).

Regarding the undeveloped property to the west, the applicant proposes a "green wall" as a buffer between the garages, recycling structure, vehicle use and parking areas abutting the west property boundary. EC 9.6420 requires vehicle uses areas to be setback seven feet from

property lines with a landscape buffer. EC 9.2750 requires structures to be setback five feet from interior property lines or ten feet between buildings. The applicant seeks modifications to these code standards through the PUD process. Staff notes that if the Hearings Official approves the applicant's request, EC 9.2751(7) still requires the applicant to obtain an easement from the abutting property owner. Staff's recommendations are provided under approval criterion EC 9.8320(11)(k), in the following evaluation.

### Summary of Land Use Applications

**Tentative PUD** – The applicant requests tentative Planned Unit Development (PUD) approval for the creation of a co-housing residential facility, with 28 dwelling units within seven buildings arranged around a community building. Staff found that the community building includes bedrooms and a kitchen; therefore, it is also considered a dwelling unit included in the residential density of the subject property. The applicant indicates that the dwelling units will be divided as condominiums for private ownership, whereas the land and community building will be commonly owned and managed by a homeowners association.

EC 9.2740 Residential Zone Land Use and Permit Requirements confirm that PUD approval is required for multiple-family (three or more dwellings on the same lot) development in the R-1 zone. The PUD process allows for a review of the specific location, design and intensity of a proposed multiple-family development in the R-1 zone to determine, among other things, whether the development is reasonably compatible with adjacent and nearby land uses. Multiple-family development is also required to meet specific development standards at EC 9.5500, which establish design regulations, such as building mass, orientation, and articulation.

At the same time, the PUD process allows for design flexibility, if the design meets the PUD purpose statements at EC 9.8300, which are intended to achieve flexibility in architectural design, clustering of buildings, and providing for economy of shared services and facilities. Accordingly, the applicant seeks several modifications to development code standards through the PUD process. The PUD approval criteria at EC 9.8030 are evaluated in the following staff analysis.

**Willamette Greenway Permit** – The property is within the City's adopted Willamette Greenway boundary, which requires Willamette Greenway (WG) permit approval prior to development. (Refer to Attachments A and B for a depiction of the adopted Willamette Greenway boundary – the area in which WG permit approval is required for intensification, change of use or development according to EC 9.8805.)

The Willamette River is located about 243 feet to the east of the subject property, according to the applicant's topographical survey prepared by Poage Engineering & Surveying, Inc. (See Attachment D-1.) The land between the river and the subject property is owned by the City, as an undeveloped natural resource area that contains /WR Water Resource (Goal 5) conservation areas. In this area (outside Willakenzie Area Refinement Plan which has an adopted WG setback distance from the river of 35 feet), and in accordance the WG permit approval criteria

EC 9.8815(4) and (5), there is no specific, pre-determined or adopted setback from the river under the City's implementing provisions of Goal 15 (Willamette Greenway).

The /WR conservation area at this location is greater than the typical 100-foot setback from top-of-bank along the Willamette River; here, the adopted riparian area boundary extends landward beyond the 100-foot setback from top of bank. Staff found that the /WR conservation area does not extend onto the subject property. As shown on Attachment A, the subject property is at least 53 feet from the boundary of the regulated resource area.

#### **Documents Considered by the Hearings Official**

The Hearings Official has considered all the documents listed above and all the submissions into the record prior to and including the applicant's final comment dated October 23, 2013.

#### **Rules not Considered by the Hearings Official**

Prior to discussing the applicable criteria under EC 9.8320 and 9.8800 the Hearings Official considers it important to identify various state and local rules that do not apply to this application.

The Statewide Planning Goals adopted by the Land Conservation and Development Commission do not apply directly to this application. The Metro Plan and the city's zoning and development provisions in Eugene Code, Chapter 9 have been acknowledged as complying with the Statewide Planning Goals under LCDC's rules, and therefore, those goals no longer apply directly.

The Lane County Code is a separate and discrete set of rules that do not apply within the City of Eugene. See PT-22.

The Metro Plan goals and objectives do not apply directly to this application. However, applicable Metro Plan "policies" are relevant and applicable through EC 9.8320(1) and EC 9.8815(3). Metro Plan goals and objectives may be used as context for understanding Metro Plan policies, but those goals and objectives did not apply directly.

Generally, the "purpose statements" set forth in EC 9.8300 are not approval criteria applicable to PUD Tentative Plans. Typically, purpose statements are not considered approval criteria. *Watts v. Clackamas County*, 51 Or LUBA 166, 172 (2006). The one exception is when an applicable approval criterion explicitly requires consistency with the purpose statement. That is the case with respect to EC 9.8320(11)(k).

The Lower River Road Concept Plan does not contain applicable approval criteria. Although the plan might be considered as context for understanding other related planning provisions, it is not intended to apply directly to individual land-use applications. EC 9.8010.

The "Needed Housing" provisions of EC 9.8325 do not apply to this application. The proposed co-housing buildings take a physical form similar to apartments or multifamily dwellings and will be

individually owned presumably in fee simple form – condominiums. This form meets both the EC definition of “multifamily dwelling” and the State definition of “needed housing.” ORS 197.303(1)(a). However, the provisions of EC 9.8325 only become applicable if the applicant elects to proceed under those provisions. EC 9.8325 allows an applicant to choose the general PUD criteria at EC 9.8320 which is the case for this application.

### **Issues Not Relevant to the Applicable Approval Criteria**

At both the October 2, 2013 public hearing and in written submissions, there was a significant amount of testimony that the Hearings Official cannot deem relevant, and therefore, cannot consider as part of this review. This evidence and argument includes:

- Generalized statements of support. See Exhibits HE-22 and 26 for examples.
- Generalized statements of opposition. See Exhibits HE-5 and 18 for examples.
- Comparison of the proposal to other co-housing developments elsewhere. PT-1.
- The relative cost of the proposed condominiums and assertions that the co-housing development will not be financially solvent.
- The results of meetings between the applicant and neighbors, and allegations that plans changed when out-of-state co-housing proponents became involved.
- Perceived fear of strangers visiting the neighborhood and asserted negative impacts.

### **Evaluation of Tentative PUD Request**

**EC 9.8320(1): The PUD is consistent with applicable adopted policies of the Metro Plan.**

#### ***Staff Findings:***

The applicant has addressed several Metro Plan policies (pages 12 through 22 of the applicant’s June 14, 2013 written statement), and to the extent that those additional findings and policies of the Metro Plan are also relevant here, staff generally concurs with the applicant’s statements. Staff also notes that the proposal for clustered dwellings, which will be divided into condominiums, is consistent with Metro Plan Residential Policies A.17 and A.20, which encourage a range of housing types and home ownership. With regard to Environmental Policies, the subject property is within the floodplain and Willamette Greenway. Policy C.31 calls for development regulations within the floodway fringe to minimize damage to life and property; accordingly, the City has adopted special flood hazard development standards, beginning at EC 9.6706, which will apply at the time of development and are further discussed at approval criterion EC 9.8030(10)(c). With regard to the Willamette Greenway, Policies D.2 and D.3 require land use regulations and limit new development to uses that are compatible with the natural, scenic, and environmental qualities. The applicant has applied for concurrent WG permit approval, which is evaluated below, following the PUD evaluation.

Staff also notes that the City's R-1, Low-Density Residential Zone implements, and is consistent with, the low-density residential land use designation for the subject property in the Metro Plan. The subject property is zoned R-1, and the proposed PUD is therefore subject to the applicable R-1 zoning provisions as discussed throughout the following approval criteria and related standards. To the extent that the PUD is found to be consistent with those applicable zoning provisions and the PUD approval criteria, as is the case here, it is also consistent with the more general policies of the Metro Plan and the approval criterion here at EC 9.8320(1).

### ***Opponents' Arguments***

Opponents argue that the applicant should have addressed two Metro Plan policies concerned with allocation of residential densities - A.12 and A.13. PT-4. Generally, many neighbors argued that the proposed co-housing is too dense compared to the existing individual single family homes on Oakleigh Lane. PT-2, PT-9.

### ***Hearings Official Conclusions***

The findings of the staff report are sufficient to show compliance with EC 9.8320(1) and the Hearings Official adopts them by this reference. The opponents assert that policies A.12 and A.13 apply, but do not effectively explain why that must be the case. The Hearings Official is unconvinced that Metro Plan policies A.12 and A.13 apply. The subject property is zoned Low Density Residential which is the same zone that the majority of the neighborhood is zoned. No increase in density is sought. The proposal does not implicate the "higher density residential development" identified in policy A.12 and the proposal does not represent an "increase" in residential density which is the focus of policy A.13. Even if the two policies do apply, the proposal is consistent with them because the density proposed is within the range allowed by the Low Density Residential zoning designation.<sup>1</sup>

**EC 9.8320(2): The PUD is consistent with applicable adopted refinement plan policies.**

### ***Staff Findings***

The River Road / Santa Clara Urban Facilities Plan (RR/SC UFP) serves as the applicable adopted refinement plan for the area included in this tentative PUD proposal. The property is designated Low-Density Residential on the Land Use Diagram in the refinement plan. Based on the prior findings at EC 9.8320(1), which are incorporated here by reference, the proposed development complies with the applicable plan designation as implemented through the R-1 zone. The applicant has also addressed several RR/SC UFP policies (pages 23 through 25 of the applicant's June 14, 2013 written statement). To the extent those policies are applicable or relevant to this request, staff generally concurs with the applicant's findings.

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<sup>1</sup>The opponents' arguments concerning the density calculations are discussed below.

Further, the Residential Land Use Element Policy 2.0 provides for a diversity of housing types; the related action suggested by the RR/SC UFP at 2.1 calls for innovative residential development, such as planned unit developments, for new residential development on larger parcels (page 2-14). Based on the above findings, the PUD is consistent with the applicable criterion here, at EC 9.8320(2).

### ***Hearings Official Conclusions***

The record does not appear to contain argument that the application does not comply with the applicable refinement plan. However, at both the October 2, 2103 public hearing and in some of the written submission, there does seem to be a misunderstanding that the Lower River Road Concept Plan is the applicable refinement plan. That is not the case, and as explained above, the Lower River Road Concept Plan does not contain approval criteria applicable to this application, nor is it implicated by EC 9.8320(2).

**EC 9.8320(3): The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.**

### ***Staff Findings***

Surrounding properties are primarily developed with single-family dwellings on individual lots. The abutting lands to the west and north are vacant lots designated for low-density residential use. City parkland abuts the east property boundary, which is zoned with the /WR Water Resource overlay that establishes a conservation area abutting the Willamette River, farther to the east.

**West Property Line** – With regard to building locations and screening along the west property line, the applicant's plans show a row of garages abutting the west property line, interrupted toward the midpoint of the property with a recycling building, and flanked to the north and south by gravel parking spaces. The residential development standards at EC 9.2750 require structures to be setback five feet from property lines and 10 feet between structures. The parking area standards at EC 9.6420 require vehicle parking spaces to be on a durable, dust-free surface, with a seven-foot wide landscape strip abutting the property line.

The applicant states that their proposed gravel parking spaces will be durable and dust-free because the gravel will be placed over drainage fabric, rather than dirt. Instead of a building setback and landscape strip, the applicant proposes a "green wall," a continuous eight-foot tall concrete wall with espaliered trees every ten feet, along the west property line. Since the proposed wall is over six feet in height, it is also considered a structure that is subject to the setback requirement. The proposed design requires a modification to code standards, which is allowed by approval criterion EC 9.8320(11)(k) ("proposed non-compliance"); based on those subsequent findings and conditions, which are incorporated here by reference, the PUD will provide adequate screening along the west property boundary. Staff notes that, if the Hearings Official approves the modification, the applicant is still required by EC 9.2741(7) to obtain an

easement from the abutting property owners (Tax Lots 100 and 5700).

**North Property Line** – With regard to the north property line, the applicant’s landscape plan (Sheet L2) shows continuous landscaping, except for the driveway entrance, which is flanked by proposed landscape beds with new tree plantings. As shown on Sheet A1.1 of the applicant’s plans (see Attachment D-2), Oakleigh Lane abuts the western portion of the north property line with 20 feet of right-of-way width. South of the existing 20-foot right-of-way, along the north property line, the applicant’s plans show an additional 20 feet of special setback area to enable future right-of-way acquisition, should Oakleigh Lane need to be widened in the future.

The applicant’s plans show private landscaping and stormwater facilities within the special setback, which is typically not allowed. The proposed buildings are just south of the special setback, which means that those buildings would not have sufficient setbacks from the street if it is widened in the future. Public Works staff indicates that the special setback is not necessary, which resolves the above concerns presented by the applicant’s plans. Instead, Public Works staff recommends just enough right-of-way dedication to: (a) meet the minimum right-of-way width to enable future improvement of Oakleigh Lane, with an additional 22.5 feet of right-of-way along the north property line, between the west property line and the east margin of the proposed driveway (50 feet of lineal frontage); (b) provide right-of-way for a future hammerhead turnaround and sidewalk to enable further development of adjacent lands to the north (Tax Lot 200), for an area that is 13 feet wide and 199 feet in length, along the north property boundary; and (c) reserve an area for a future bicycle and pedestrian connection from the future hammerhead to the east property boundary, abutting the City parklands, for an area that is 13 feet wide and 24 feet long. (Refer to Attachment B.) The street right-of-way is evaluated in greater detail under approval criterion EC 9.8320(5).

Building 1, abutting the portion of Oakleigh Lane that is east of the proposed driveway, is setback by a minimum of 21 feet. (Refer to Attachment D-3 for a detail of the north line building setbacks.)

The northwest corner of Building 1 is setback 23 feet from the existing north property line, which is just outside the 22.5-foot right-of-way dedication being required. Following the 22.5-foot wide and 50-foot long right-of-way dedication at the northwest property corner, the abutting portion of Building 1 would have a front yard setback of about half a foot. The required front yard setback is 10 feet. The northeast corner of Building 1 is setback from the existing northern property line by 21 feet, which is outside the abutting area of right-of-way dedication being required. The right-of-way requirement along the northeast portion of Building 1 is 13 feet; hence, the building setback would be about eight feet, which is also less than the 10-foot front yard setback requirement. The applicant requests a modification to the front yard setback requirements, in accordance with the PUD purpose statements. This issue is evaluated later in this report, under approval criterion EC 9.8320(11)(k).

The easterly portion of the north property line is bordered by a row of existing large cedars, which are primarily located on the property to the north. Three attached dwelling units (Building 2) are proposed to be located south of these trees, with the closest part of the

building being setback 12 feet from the north property line. With the 13 feet of additional right-of-way being required along this portion of the north property line, the northwest corner of Building 2 would be within the right-of-way, which is not acceptable. As such, the following condition of approval is necessary:

- The final PUD plans shall show Building 2 located outside (moved south) of the required right-of-way dedication along the north property line.

The above condition protects the right-of-way. Following right-of-way dedication, the required setback would be 10 feet; however, the building would have no setback if it were just moved south of the right-of-way, as conditioned above. Again, the applicant requests a modification to the setback standards, which is evaluated under approval criterion EC 9.8320(11)(k).

Another consideration for the north property line is the row of cedar trees on the abutting lands to the north. Although the applicant's plans (Sheet L3) show preservation of the trees (refer to Attachment D-4), the critical root zone (CRZ) of the cedars projects into more than half of Building 2. It is unclear whether this is an acceptable level of disturbance. As such, the following condition of approval is necessary:

- Prior to final PUD approval, the applicant shall submit a report from a certified arborist confirming that the row of cedars on adjacent lands to the north can survive the construction impacts of the proposed development (and include any necessary protection measures to ensure survival). The final PUD plans shall show the location of Building 2 and any related protection measures (e.g. construction fencing for protected CRZ areas) consistent with the arborist's recommendations.

Based on the above findings, conditions, and the subsequent findings provided at EC 9.8320(11)(k), which are incorporated here by reference, the PUD will provide adequate screening along the north property line.

**East Property Line** – The east property line abuts City parkland, which is an undeveloped natural resource area bordered by the Willamette River farther to the east. The distance between the subject property and the ordinary high water line of the Willamette River ranges between 200 and 243 feet, according to the applicant's topographical survey. The applicant's topographical survey also shows the approximate boundaries of the special flood hazard area, notes that the base flood elevation is about 401 feet, and indicates that about 100 feet of the eastern portion of the property is below the base flood elevation. Between the 401-foot contour and the east property boundary, the applicant's survey shows a 26-inch diameter cedar, to the north, and a filbert cluster to the south.

The applicant's tree removal and preservation plan (Sheet L3, Attachment D-4) indicates that the 26-inch cedar will be removed to accommodate three dwelling units abutting the north property line. This building is approximately 10 feet from the east property line. Buildings to the south are located farther from the east property line, with the closest building being a bike

storage shed, which is about 20 feet from the east property line, near the southern property boundary. The applicant's tree removal and preservation plan shows that the filbert cluster, and a row of fruit trees along the southern property boundary, will be preserved. Based on these findings, the PUD will provide adequate screening along the east property line.

**South Property Line** – As noted above, a row of fruit trees along the eastern portion of the southern property line will be preserved. The applicant's removal and preservation plans indicate that a 24-inch fir and a 22-inch hemlock need to be removed to accommodate three dwelling units near the western portion of the south property line. Sheet A1.1 of the applicant's plans (see Attachment D-2) show Building 5 and 6 setback seven and five feet from the southern property line, respectively, with the exception of the southeast corner of Building 6, which appears to be within a foot of the property line. It is noted that the affected property owner to the south submitted a letter in support of the proposed development (Mr. Adee). Further, as recommended at EC 9.8320(11)(k), the applicant will be required to obtain an easement from the abutting property owner for the substandard building setback. Sheet L2 of the applicant's plans shows a 30-inch fence along the south property line, abutting Building 6. As such, staff assumes there is sufficient screening along the south property line abutting Buildings 5 and 6.

The southwest corner of the site has a paved vehicle use area and gravel parking areas. The applicant proposes landscape planter beds between the parking spaces and the southern property line and an eight-foot tall concrete wall on the southern property line, abutting the vehicle use area. As discussed previously, the concrete wall is a structure subject to interior yard setback requirements, which is five feet. With the wall located on the property line, the applicant will be required to obtain an easement from the affected property owner (Tax Lot 5600), as conditioned at EC 9.8320(11)(k). It is noted that the owner of Tax Lot 5600, Mr. Campbell, submitted a letter in support of the proposed development. Based on these findings, the PUD will provide adequate screening along the south property line.

With regard to the overall bulk and height of the proposed buildings, the largest building is the common house, which is located toward the center of the site. None of the buildings exceed the maximum building height of 30 feet, established by the R-1 zone at EC 9.2750. The building dimensions are also within the maximums of the multiple-family development standards at EC 9.5500. Based on these findings, building bulk and height does not appear to necessitate further screening mitigation.

Based on the available information and the above findings and conditions, the PUD will comply with approval criterion EC 9.8320(3).

### ***Opponents' Arguments***

The neighbors are generally dissatisfied with the proposed screening along all four property boundaries.

**West Boundary**— The neighbors argue that the proposed eight-foot wall is too tall, unsightly, out of scale with the surrounding neighborhood and violates the required 5 foot setback under EC 9.2750. PT-1, PT-2. The neighbors, including the adjacent property owner to the west, state that the applicant will not be granted an easement to allow the screening wall to be placed on or near the property line. HE-65, HE 66, PT-2.

**North Boundary** - The neighbors argue that insufficient screening is proposed along the north property boundary primarily because setback standards will not be met in that area. They are concerned about a row of mature cedar trees that could be adversely affected by the development. Neighbors argue that the setbacks along the north property line and the screening should be similar to that of residences along Oakleigh Lane - since the north property line fronts on the lane. PT-1, PT-2. The neighbors also argue that the development will not be sufficiently screened from the "public path/bike path" that traverses the north property line and leads to the Willamette River bike path further to the east.

**East Boundary** - The neighbors argue that the applicant has provided no screening along the eastern boundary which is adjacent to city owned open space. The neighbors argue that the row of trees between the Willamette River bike path and the subject property are not sufficient to screen the development from the intervening public open space. PT-1, PT-2.

**South Boundary** - The neighbors expressed the same concerns about the south property line as expressed toward the eastern property boundary. PT-1.

### ***Hearings Official Conclusions***

In a relatively recent decision, the Land Use Board of Appeals affirmed the former Hearings Official's interpretation of the terms "adequate" and "screening" as used in EC 9.8320(3). *Northgreen Property LLC. V. City of Eugene*, \_\_ Or LUBA \_\_ (LUBA No. 2011-099, March 5, 2012). That interpretation concluded that EC 9.8320(3) does not require a development to be completely obscured from view, but that it be screened "to a reasonable extent" considering the proposed use. The Hearings Official adheres to that interpretation here.

**West Boundary** - The Hearings Official generally concurs with Staff's findings for the screening along the western boundary and adopts those findings by this reference. In addition, the applicant's final comment responds to the argument that the proposed wall fails to provide adequate screening. The applicant notes that the definition of "screening" in EC 9.0500 includes "walls." At the October 2, 2013 hearing the applicant testified that a "green wall" was being proposed - which would plant espaliered trees along the outside of the wall facing neighboring properties. The applicant also submitted an example site plan which shows that the overall design of the PUD can be maintained even if the neighboring property owner does not grant an easement allowing the wall to be located very close to the west property

boundary. PT 18.<sup>2</sup> Although the proposed wall is not the type of screening that the neighbors would prefer, it will have the quality of completely obscuring the adjacent parking area, and to some extent the buildings beyond. The example site plan shows that the development as proposed can accommodate a 5 foot setback for the wall even if the adjacent property owners do not grant an easement.

**Northern Boundary** - The Hearings Official generally concurs with Staff's findings for the screening along the northern boundary and adopts those findings by this reference. Based on the neighbors' arguments, it does not appear that they were aware of the applicant's landscape plan and intention to preserve the cedar trees along the northern boundary. Even with the reduced setbacks, those plans certainly meet the standard of screening adjacent properties to a reasonable extent.

**Eastern Boundary**— Both the Staff findings and the applicant rely on trees and intervening vegetation that already exists between the subject property and the Willamette River bike path to meet the requirements of EC 9.8320(3) for the eastern boundary. The Hearings Official agrees with the neighbors, that the applicant's approach is insufficient. The record is clear that the open space immediately adjacent to the eastern boundary is owned by the City and open for public access and use. Although the proposed development will be very unlikely to be visible from users of the bike path, the development will be completely unscreened from view from the perspective of users of the immediately adjacent public open space. Thus, the application does not comply with EC 9.8320(3) for the eastern boundary.

However, based on the submitted site plans, there appears to be sufficient space to accommodate landscaping or other screening elements near the eastern boundary of the proposal without causing the PUD to fall out of compliance with other applicable provisions. Therefore, the application can be approved with a condition requiring sufficient screening, or landscaping consistent with city standards for the eastern boundary. The Hearings Official has added a condition with such a requirement below.

**Southern Boundary** - Part of the southern boundary is screened by the adjacent filbert orchard, and the balance of the boundary is proposed to be screened by a 30 inch fence. Although the Hearings Officer generally agrees with the Staff findings for the southern boundary, in this instance a 30 inch high fence is unlikely to screen the development from property owners to the south to a reasonable extent. As part of the condition noted above, the Hearings Official will require the applicant to revise the landscape plan or provide a taller fence along the southern boundary.

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<sup>2</sup> The Hearings Official considers the example site plan in PT-18 to directly respond to comments made in PT-1 and PT-2 (submitted on October 9, 2013) and, therefore, it does not constitute new evidence being entered into the record.

**EC 9.8320(4):** The PUD is designed and sited to minimize impacts to the natural environment by addressing the following:

- (a) **Protection of Natural Features.**
1. For areas not included on the City's acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:
    - a. Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under State or Federal law), and native plant communities.
    - b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under State or Federal law).
    - c. Prominent topographic features, such as ridgelines and rock outcrops.
    - d. Wetlands, intermittent and perennial stream corridors, and riparian areas.
    - e. Natural resource areas designated in the Metro Plan diagram as "Natural Resource" and areas identified in any city-adopted natural resource inventory.

#### ***Staff Findings***

The subject property is within the Willamette Greenway boundary, and as noted previously, an adopted Goal 5 water resource conservation area is located east of the subject property, on the City parklands. (Refer to Attachment A.) There is no natural resource area designated in the Metro Plan or any other adopted natural resource inventory that includes protected resources on the subject property. The available information indicates that the subject property does not contain any rare plant or animal species, prominent topographical features, wetlands, streams, or riparian areas. With regard to significant natural features, the applicant states that the site is primarily a meadow, consisting of a cover crop of short grass with scattered fruit and fir trees. Tree preservation is evaluated below.

#### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(4)(a) and adopts those findings by this reference. The record does not appear to contain any argument that rare plant or animal species exist on the subject property. Mr. Mark Conley submitted several plant lists and letters which show a great deal of thought and time expenditure attempting to catalog the plant and animal species that are on the subject property. PT-5, PT-6, PT.R-11. However, the Hearings Official cannot find an argument that the species listed are rare plants or animal species which might trigger protection under EC 9.8320(4)(a).

- (b) **Tree Preservation.** The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:

1. **Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;**
2. **Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;**
3. **Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;**
4. **Trees that provide a buffer between potentially incompatible land uses;**
5. **Trees located along the perimeter of the lot(s) and within building setback areas;**
6. **Trees and stands of trees located along ridgelines and within view corridors;**
7. **Trees with significant habitat value;**
8. **Trees adjacent to public parks, open space and streets;**
9. **Trees located along a water feature;**
10. **Heritage trees.**

### ***Staff Findings***

The applicant states that there are approximately 135 existing trees on the subject property (see page 28 of the applicant's June 14, 2013 written statement). The applicant's tree removal and preservation plan is shown on sheet L3 (Attachment D-4). The applicant states that only four "significant" trees will be removed, according to the following definition:

EC 9.0500 Significant Tree: A living, standing tree having a trunk with a minimum cumulative diameter breast height of 8 inches, or, when there are multiple trunks, having a minimum cumulative diameter breast height of 8 inches, considering the 2 largest trunks measured at 4.5 feet above mean ground level at the base of the trunk or trunks.

The location, species, and size of the trees on the subject property are also shown in the applicant's topographical survey, which confirms that most of the trees are fruit and filbert trees that are less than eight-inches in diameter. Most of those trees are proposed for removal. The larger fruit trees along the southeast property line are proposed for preservation, which complies with the above approval criterion as these trees provide screening and buffering functions. The applicant also proposes to preserve a group of ash trees, west of Building 7, and a cluster of young cedar trees between Buildings 3 and 4. Preservation of these trees complies with the above criterion because they are stands of trees, rather than isolated individuals. The most significant tree being preserved on the subject property is a 14-inch fir located in the southwest portion of the property. The applicant's plans delineate the critical root zone (CRZ) of the tree to show that it can survive construction impacts, which are primarily the surrounding vehicle use areas, rather than buildings.

The applicant's plans also show the CRZ of three fir trees on the adjacent property to the west to show that the proposed parking garages and concrete wall will not require their removal. As

discussed previously at EC 9.8320(3), the applicant has not delineated the CRZ for the row of cedars abutting the north property line. Under the screening criterion at EC 9.8320(3), staff recommended a condition for the final PUD plans to show the CRZ of the row of cedars abutting the north property line, with either supporting documentation from a certified arborist that the trees could survive construction impacts or moving Building 2 farther to the south, outside the CRZ. Based on the condition established at EC 9.8320(3), which is incorporated by reference, approval criterion EC 9.8320(4) is also satisfied.

### ***Opponents Arguments***

At least one comment claims that the application does not meet this provision. PT-1. However, that argument is nearly incomprehensible. The opponent identifies several larger trees on the subject property, but the comment does not appear to respond to the applicant's tree preservation plan.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(4)(b) and adopts those findings by this reference. Certainly several significant trees will be removed. However, that is allowed under EC 9.8320(4)(b) as some significant trees can be removed with provided mitigation. There is no evidence showing that applicant is unwilling or unable to provide that mitigation. The applicant's information also shows that measures will be taken that are reasonably calculated to protect the root zone of the cedars to the north.

#### **(c) Restoration or Replacement.**

1. For areas not included on the city's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:
  - a. Planting of replacement trees within common areas; or
  - b. Re-vegetation of slopes, ridgelines, and stream corridors; or
  - c. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.

To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320.

The Hearings Official concurs with Staff's finding that the area is not included on the City's acknowledged Goal 5 inventory. The applicant proposes to mitigate the removal of four trees by planting approximately 26 new trees within the common areas. Based on these findings, this criterion is met.

- #### **(d) Street Trees. If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to**

the process at EC 6.305.

Staff found that no street trees are proposed for removal. The Hearings Official finds this provision is not applicable.

**EC 9.8320(5)**: The PUD provides safe and adequate transportation systems through compliance with the following:

- (a) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).

***Staff Findings***

Oakleigh Lane abuts the west half of the north boundary of the subject property. The applicant's survey shows that the portion of Oakleigh Lane abutting the subject property has 20 feet of right-of-way width, with approximately 19 feet of pavement width that partially overlaps the north boundary of the subject property, outside the public right-of-way. Instead of dedicating additional right-of-way to widen the roadway, the applicant proposes a 20-foot special setback from the north property boundary (which coincides with the official right-of-way centerline).

East of the roadway is a row of cedar trees, which are primarily on adjacent lands to the north. Hence, extending Oakleigh Lane to the east would necessitate right-of-way dedication from the northerly property owner and, potentially removal of the cedar trees. Instead of extending Oakleigh Lane to the east, the applicant submitted a street connectivity study prepared by Access Engineering, LLC, which shows how the adjacent lands to the north could be further divided with flag lot access off the existing 20 feet of right-of-way, with just an additional five-foot right-of-way dedication (as multiple flag lots require 25 feet of street frontage). (Refer to Attachment D-5.)

Referral comments from Public Works confirm that the proposed street layout provides a safe and adequate transportation system, subject to additional findings and conditions for compliance with EC 9.6805 through EC 9.6875 Street Standards, as provided below. With regard to EC 9.6805 Dedication of Public Ways, Public Works staff recommends right-of-way dedication west of the development's driveway, so that the abutting street, Oakleigh Lane, will comply with EC 9.6870 Street Width. Public Works staff also recommends right-of-way dedication, east of the driveway, to enable the construction of a hammerhead turnaround, consistent with EC 9.6820 Cul-de-Sacs and Turnarounds. Public Works staff confirms that no additional right-of-way or special setback is required based on the acceptability of the applicant's street connectivity study; Public Works staff recommends the exception to EC 9.6815 Street Connectivity be approved. Details of these findings, with the recommended conditions of approval, are provided below.

Pursuant to EC 9.6850 Dedication of Public Ways, as a condition of any development, the City may require dedication of public ways for bicycle and/or pedestrian use as well as for streets and alleys, provided the City makes findings to demonstrate consistency with constitutional requirements. The public ways for streets to be dedicated to the public by the applicant shall conform to the adopted

right-of-way map and EC Table 9.6870. EC 9.6870 Street Width confirms that the required right-of-way width for Oakleigh Lane is 45 feet, based on the street functioning as a Low-Volume Residential Street. Public Works staff confirms that there are currently 25 residential tax lots along Oakleigh Lane, and with the addition of 29 dwelling units proposed by the subject development, the Average Daily Traffic (ADT) would be greater than 500 trips per day, which is within the expected 250-750 ADT range for low-volume streets.

The existing right-of-way width abutting the subject property is 20 feet, which was dedicated by properties to the north, per the Plat of Oakleigh in 1927. The southerly margin of this 1927 dedication is the official right-of-way centerline for Oakleigh Lane. Any additional dedications required of the subject development would be based on this centerline. Based on the right-of-way requirement of 45 feet for a low-volume street, and the existing 20 feet of right-of-way width located north of centerline, an additional 22.5 feet of right-of-way dedication (half of 45 feet) from the subject property is necessary, for the portion of the street being impacted by the subject development (i.e. from the site driveway to the west property boundary, which is about 50 lineal feet).

Oakleigh Lane currently terminates near the proposed driveway. As noted above, the right-of-way width needs to be expanded by an additional 22.5 feet in width for a length of 50 feet, between the northwest property corner, over the proposed site entrance, and five feet east of the proposed driveway to accommodate the approach apron and sidewalk. Beyond that point, Public Works staff confirms that right-of-way is needed to enable further development of adjacent lands to the north, and to provide a future hammerhead turnaround and sidewalk at the east end of the street. The acceptability of not extending the street, further to the east, is based on an exception to EC 9.6815 Street Connectivity. Public Works staff confirms that the applicant's alternative street plan, along with their narrative that addresses the intent statements at EC 9.6815(1), an exception is warranted pursuant to EC 9.6815(2)(g)(1).

The applicant's alternate street study (Figure 1, Attachment D-5) identifies the amount of right-of-way necessary to construct an emergency vehicle turnaround at the end of Oakleigh Lane, and to provide the necessary frontage for flag lot development of undeveloped adjacent lands to the north (Tax Lot 200). Public Works staff indicates that the applicant's proposal is sufficient to accommodate the turnaround, but not the area necessary to extend the sidewalk along the south side of the turnaround, to separate pedestrians from vehicles and provide a safe public walking surface for the residents of the proposed development. The amount of right-of-way necessary to allow for the construction of the proposed turnaround and adjacent sidewalk would be a strip that is 13 feet wide by 199 feet in length. These dimensions assume that the turnaround would be 21 feet wide and that the north edge of the turnaround would match the existing edge-of-pavement in Oakleigh Lane, which is shown on the tentative plans as being six feet south of the existing right-of-way. The addition of a six-inch curb, five-foot sidewalk, and six inches behind the sidewalk, as necessary for construction purposes, results in the need for a total of 33 feet of right-of-way (for the future hammerhead turnaround at the east end of Oakleigh Lane), 13 feet of which is within the bounds of the proposed development (with the balance coming from the northerly property, whenever that property decides to develop).

Construction of the hammerhead turnaround is not necessary or feasible at this time; the need will be based on further development of adjacent lands to the north. The right-of-way secured with this development will enable future development of that northerly property.

EC 9.6820 Cul-de-Sacs and Turnarounds require streets that are longer than 150 feet to terminate with a cul-de-sac bulb or an emergency vehicle turnaround (or hammerhead). The street connectivity exception also warrants an exception to the 400-foot maximum length of a dead-end street, pursuant to EC 9.6820(5)(b).

With regard to EC 9.6835 Public Accessways, Public Works staff notes that the nearest public accessway is located farther to the north, between the east terminus of East Hilliard Lane and the public bike path that runs along the west bank of the Willamette River. The Pedestrian and Bicycle Master Plan identifies a future connector from the east end of McClure Lane to the riverfront path, farther to the south of the subject property. The development proposes an internal sidewalk system that terminates at the southeast property corner, which would enable a future connection through the abutting City parkland to the McClure system to the south. (Refer to Attachment C.)

The segment of the internal sidewalk system that is located between the most easterly building (a bike barn) and the east property line is shown as having a graveled, rather than a paved, surface. This unimproved surface is appropriate because there are no plans or funding for construction of a public path on the City property at this location. Residents of the development will naturally want to walk across the City parkland toward the river. Parks staff state no objections or concerns. This proposed path at least delineates a more confined direction of travel, rather than random wandering through the City's resource area. This portion of the City property has been cultivated as a filbert orchard, which has been maintained by the former owner of the subject property, as discussed in the applicant's written statement. There appears to be an informal path between the orchard and the subject property that would direct travelers to the southerly McClure Lane right-of-way. Public Works staff confirms that the planned bicycle and pedestrian connection through the City's parkland is from McClure Lane toward the easterly West Bank Bike Path, which is a regional facility that borders the west bank of the Willamette River.

The applicant's plans also show an informal path, along the north property line, from the existing end of Oakleigh Lane to the riverfront path system. On page 31 of the written statement, the applicant indicates that the path "will be improved and maintained by Oakleigh Meadow, LLC." The applicant does not propose to improve the path with pavement, but rather to keep its current conditions open to the public. The right-of-way dedication being required for Oakleigh Lane covers most of this informal path. Between this right-of-way and the east property line (24 lineal feet), a 13-foot wide public access way is necessary to provide for a future bike path connection from the approved turnaround and sidewalk in the direction of the West Bank Bike Path.

In order to ensure compliance with the standards of EC 9.6835 Public Accessways, EC 9.6820 Cul-de-Sacs and Turnarounds, and to implement the applicant's alternative street study, as required for an exception to EC 9.6815 Street Connectivity, the following conditions of approval are necessary:

- Prior to final PUD approval, the applicant shall revise the final site plan to show the dedication of 22.5 feet of right-of-way along the northerly boundary of the development, between the westerly boundary of the proposed development and a line that is 50 feet east of the westerly boundary, and also to show the dedication of 13 feet of right-of-way extending from the aforementioned line (the east end of the required 22.5 feet of right-of-way dedication) to a line that is 117 feet beyond (east of) the existing the existing right-of-way (for a total length of 199 feet). Additionally, the revised site plan shall show the dedication of a 13-foot wide Public Accessway along the northerly boundary, which extends from the east end of the aforementioned right-of-way to the easterly property boundary (for a total distance of 24 lineal feet).
- Prior to final PUD approval, the applicant shall submit for review and approval by City staff and recording at Lane County Deeds and Records, a street deed which reflects the right-of-way as shown on the final site plan.

(Refer to Attachment B for a depiction of the required dedication areas.)

Constitutional Findings for Exaction:

It is in the public's interest to have Oakleigh Lane consist of 45 feet of right-of-way through the development site's entry drive aisle and to consist of 33 feet beyond the drive aisle to the terminus of the street in order to ensure: safety for pedestrians, bicyclists and motorists traveling on Oakleigh Lane (a low-volume street); the efficient provision of emergency services; and that the proposed development and adjacent properties are accessible via Oakleigh Lane.

There is a nexus between the requirement to dedicate 22.5 feet of right-of-way west of the drive aisle and 13 feet east of the drive aisle and the public interest at issue. The 22.5 feet of right-of-way will result in one-half of the 45 feet of right-of-way which is necessary to construct Oakleigh Lane to the City's minimum street design standards which have been established for a low-volume street. The 13 feet of right-of-way will provide sufficient right-of-way on the south side of the centerline to construct emergency vehicle turnaround with adjacent sidewalks to City standards. Improving Oakleigh Lane to these standards will: allow for two-way vehicular and bicycle traffic; provide separation between vehicular traffic and pedestrians; and provide for emergency response and access to adjacent lots. Because 45 feet of right-of-way is the minimum amount of right-of-way necessary to construct Oakleigh Lane in this manner as a low-volume street, and because 33 feet of right-of-way is the minimum amount of right-of-way necessary to construct the turnaround at this location, the public interest in safe vehicular, pedestrian and bicycle travel and emergency response and access will be at risk if the 22.5 and 13 foot strips of right-of-way are not dedicated.

The requirement to dedicate 22.5 feet of right-of-way from the westerly boundary of the proposed development primary drive aisle and 13 feet from the drive aisle to a line that is 117 feet in length, as measured from east of the existing terminus of the right-of-way is roughly proportional to the impact that the proposed development will have on the City's transportation facilities. The proposed development will result in a 29 new residential units.

These residential units will be accessible only from Oakleigh Lane. Currently, 25 lots, consisting of a mix of residential, general office and commercial zoning have structures that take access onto Oakleigh Lane; thus, the additional 29 residential units will increase the number of structures that access this Oakleigh Lane by over 100 percent. The construction of the new (structures will result in an increase of vehicular traffic onto Oakleigh Lane by approximately 164 new vehicular trips per day. See Trip Generation Manual from the Institute of Transportation Engineers (ITE) for Residential Condo / Townhouses (Category 230).

Without the additional right-of-way, Oakleigh Lane cannot be improved to the City's minimum street design standards and the 164 new vehicle trips per day generated by the proposed development, along with the additional pedestrian and bicycle traffic generated by the proposed development, will not be assured of safe access via Oakleigh Lane. This is the last opportunity that the City will have to require the dedication of the right-of-way prior to the City needing the right-of-way for street construction.

It is also in the public interest to have a connected street and bike path system that allows pedestrians and bicyclists to safely and efficiently use the public system as a means of travelling throughout the City and to use alternative modes of transportation when traveling between the commercial, residential and recreational areas of the City.

There is a nexus between the requirement to dedicate a 13 foot public accessway and the public interest at issue. The dedication of a 13 foot public accessway will allow for the construction of a 12 foot wide bike path connecting Oakleigh Lane to the West Bank Bike Path. The 13 foot public access way will also allow for the south edge of the bike path to be aligned with the south edge of the future Oakleigh sidewalk and provide an additional six inches on each side of the bike path for constructability purposes. Because 13 feet is needed to construct a bike path connector in this manner as a standard 12 foot wide bike path, the public interest in safe pedestrian and bicycle travel between Oakleigh Lane and the West Bank Bike Path and throughout the City will be at risk if the 13 foot public access way is not dedicated.

Dedication of the 13 foot public access way is roughly proportional to the impact that the proposed development will have on the City's transportation facilities. The proposed development will result in 29 residential units. By creating new residential units, the proposed development will increase the number pedestrians and bicyclists using the bike path system. Using LCOG's Metro Trans Model "EMME 2" to determine vehicular and non-vehicular components for the street system, projections for bike/pedestrian trips generated by a proposed residential development of 29 units would generate five percent of the estimated 168 Average Daily Vehicular Trips from the development, or approximately eight bike/pedestrian trips per day. However, based on the applicant's written statement and because of the proximity of this development to the West Bank Bike Path, it is safe to assume that the number of daily bike/pedestrian trips from this proposed development would be significantly greater than the projected eight trips. Regarding the size of the dedication in comparison to the size of the proposed development site, the total area of the public access way is approximately 312 square feet, or approximately 0.3 percent of the total development site. This development

application is the last opportunity that the City will have to require the dedication of the public access way prior to the City needing the public access way for bike path construction.

The above findings and conditions demonstrate compliance with: EC 9.6805 Dedication of Public Ways; EC 9.6835 Public Accessways; EC 9.6870 Street Width; EC 9.6815 Street Connectivity; and EC 9.6820 Cul-de-Sacs and Turnarounds. Based on compliance with EC 9.6870, the street standards at EC 9.6850 Street Classification Map are also met. Public Works staff confirms that the following street standards do not apply: EC 9.6830 Intersections of Streets and Alleys, because no intersections are being created; EC 9.6810 Block Length, because no new local streets are proposed or required; EC 9.6840 Reserve Strips because, given the location of the required right-of-way, a reserve strip would not prevent access to adjacent properties, which would be the only purpose of a reserve strip in this case; EC 9.6845 Special Safety Requirements because the street is a dead-end and, therefore, discourages use by non-local motor vehicle traffic; EC 9.6855 Street Names, because no new streets are being created; EC 9.6860 Street Right-of-Way Map, because the proposal does not amend the adopted map; and EC 9.6875 Private Street Design Standards because the internal access is a driveway, rather than a private street.

Based on the above findings and conditions, the development will comply with the applicable street standards at EC 9.6800 through EC 9.6875.

### ***Opponent Arguments***

Numerous neighbors argued that the anticipated increase in vehicle trips would make Oakleigh lane unsafe. Many of these comments raised this concern in general terms raising the fear that the existing neighbors would be put in danger as they walked, biked, played and drove along the lane. These type comments are represented well by Exhibits PT-9 and HE-12. Others commented in more detail about alleged errors in the designation of Oakleigh Lane as a low volume residential street, and the associated right-of-way needs. The following is a summary of those more detailed comments:

- Oakleigh Lane is an “access lane” not a “low volume residential street” – and this misclassification caused the Staff to erroneously not require a traffic study. PT-1, PT-2, and PT-4.
- The Lower River Road Concept Plan states that conditions for pedestrians and bicyclists in the vicinity are worsening. PT-1 and PT-2.
- Treating the access lane designation as a standard, opponents argue that the aggregate of existing average daily trips (about 200) combined with the ADT produced by the co-housing proposal (164) would greatly exceed the 250 maximum daily trips for which access lanes are designed. PT-1 and PT-2.
- The increase of 164 ADT is a 145% increase in the number of current vehicle trips experienced by the neighborhood. That is deemed significant, and alleged to

inherently create unsafe conditions for children, bicyclists, pedestrians and drivers along Oakleigh Lane. PT-1 and PT-2.

- The existing right-of-way of Oakleigh Lane is insufficient for safe travel of the newly generated vehicle trips. PT-1.
- The Staff's conclusion that a dedication of land for the necessary right-of-way along the subject property's frontage on Oakleigh Lane is proof that the development will cause unsafe conditions for the length of Oakleigh Lane. PT-4.
- Safe conditions cannot be assured on Oakleigh Lane unless the right-of-way along the entire lane is increased to 45 feet and the paved surface increased. That cannot occur because the local residents have not agreed to it and structures might need to be removed in order to widen the street. PT-4 and PT.R-2.
- The Hearings Official cannot rely on Staff's conclusory opinion that the proposal will create no new adverse traffic safety conditions. PT.R-2.
- The applicant's street connectivity study is flawed and does not demonstrate that nearby properties can be developed to their maximum potential. PT-1 and PT-4.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(5) and adopts those findings by this reference – consistent with the findings below.

The opponents have raised numerous "safety" concerns and arguments that go well beyond the fundamental requirement of EC 9.8320(5). The very structure of EC 9.8320(5) does not require an applicant to prove that a proposed development will be safe from any and all asserted and or imagined traffic safety threats. The language of EC 9.8320(5) states: "[t]he PUD provides safe and adequate transportation systems through compliance with the following:" The underlined section demonstrates that the provision is limited by its own words to a requirement showing three things: a) that EC 9.6800 through 9.6875 can be met, b) that pedestrian, bicycle and transit circulation can be achieved, and c) that if necessary a Traffic Impact Analysis has been done and mitigation provided. In other words, the adopted provisions of EC 9.8320(5) assume that if those three criteria can be met, a "safe and adequate transportation system" will result.

EC 9.8320(5)(a) requires an applicant to demonstrate that it is possible, when necessary, for the applicant to "dedicate" sufficient land to accommodate public ways, including right-of-way for streets under EC 9.6800-8675. The purpose of those sections of the code are set forth in EC 9.6800 and states: "[s]ections 9.6800 through 9.6875 establish standards for the dedication, design and location of public ways to address the purpose of this land use code contained in EC 9.0020 Purpose." The pertinent sections of EC 9.6800 are EC 9.6805 and EC 9.6870. Importantly, EC 9.6805 allows the city to "require dedication of public ways for bicycle and/or pedestrian use as

well as for streets and alleys \* \* \*.” EC 9.6870 sets forth the “width” of the right-of-way and paved service to be “dedicated” in order to conform to the standards set forth in Table 9.6870.

The opponents arguments fundamentally misconstrue the requirement of EC 9.8320(5)(a) which is to ensure that a proposed development is capable of dedicating sufficient land along the property frontage to meet the right-of-way width requirements for that street designation. A “dedication” is a form of legal “taking” of property for public use that is intended to provide for public safety and offset impacts imposed by development. Because EC 9.8320(5)(a) is concerned with the dedication of land for a street, neither that provision nor EC 9.6800-9.6875 set forth standards that an existing street must meet in order to serve a proposed development. By its nature, a dedication only applies to the land that is subject to the given land-use application. Therefore, Staff have properly applied EC 9.8320(5)(a) by considering and requiring sufficient dedication of land to meet the right-of-way requirements for either an access lane or a low volume residential street - along the frontage of the subject property. Whether or not Staff have miscategorized Oakleigh Lane as a low volume residential street, and the Hearings Official does not agree that a mistake was made, is of no consequence because Table 9.6870 shows right-of-ways in the range of 40’ to 55’ for both access lanes and low volume residential streets. The Hearings Official considers Staff’s categorization to be more accurate given the increase in ADT moves the lane into the 250-750 ADT range. But, in any case, the record amply demonstrates that the applicant is both willing and able to dedicate land along the northwest corner of the subject property and adjacent to Oakleigh Lane for the purpose of providing sufficient right away and a public accessway. Nothing more is required by EC 9.8320(5)(a).

Based on the above interpretation of EC 9.8320(5)(a), the opponents arguments as set forth above are not relevant to whether the applicant has met the requirement to dedicate sufficient land to create a 45 foot right-of-way along Oakleigh Lane. Although eloquently argued, Mr. Conte’s substantial analysis of the Staff findings are well outside the scope of EC 9.8320(5)(a), EC 9.6805 and EC 9.6870. Oakleigh Lane need not have a dedicated 45 foot right-of-way and associated paved surface from River Road to the subject property in order to meet EC 9.8320(5)(a) because that provision is a standard for the “dedication” of land, not a “service” standard akin to level of service – LOS. Neither does EC 9.8320(5)(a) require the neighbors to now dedicate a portion of their property to the widening of the right-of-way or paved surface of Oakleigh Lane.

As to the applicant’s street connectivity study, the Hearings Official agrees with Staff’s analysis. The applicant’s August 6, 2013 connectivity study provides analysis required to comply with EC 9.6815(2)(g)(1)(b) which allows for alternative street designs if it can be shown that “undeveloped or partially developed properties within a quarter mile can be adequately served by alternative street layouts.” The opponents are incorrect that the standard for allowing the exemption is a showing that nearby properties can be developed to their maximum potential. The applicant’s study identifies only one property in the vicinity that remains undeveloped and adequately shows that it can be served by the alternative street lay out proposed. That is enough to qualify for the exemption.

- (b) **Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.**

### ***Staff Findings***

The applicant's plans show pedestrian and bicycle circulation within the development via interconnected paths between the buildings and bicycle parking areas. The applicant notes that there is an existing worn path along the north property line, between the Oakleigh Lane roadway and the east property line, abutting the City parklands. The applicant proposes to keep this path open, but does not explicitly show any dedications to the public to enable continued access. The previous requirement for additional right-of-way dedication (13 feet wide and 24 feet long) will address this issue and satisfy the above criterion.

With regard to bicycles and pedestrians traveling westward on Oakleigh Lane toward transit services on River Road, referral comments from Public Works staff state that, for unimproved local streets in the River Road area (i.e., streets that lack sidewalks and have not been striped to identify dedicated travel lanes), the expectation is that pedestrians and bicyclists will share the paved surface with vehicles. Additionally, there is a tendency on dead end streets such as Oakleigh Lane, for motorists to travel at slower, more cautious speeds, because of the perceived narrowness of the street.

Public Works staff confirm that, until such time that property owners elect to improve Oakleigh Lane to full City standards (including sidewalks), the existing paved surface of Oakleigh Lane will continue to adequately provide for vehicle and pedestrian traffic, as well as for emergency vehicles and delivery services, provided the paved surface is not blocked by parked vehicles. With regard to public comments received about vehicle parking occurring on the shoulders of the roadway, Public Works staff notes that, technically, such parking is not allowed. The street could be signed for no parking as part of improving the street, but not before, because the City does not maintain unimproved streets.

Public Works staff states that the existing paved surface provides safe passage for two-way vehicular traffic, bicycles, pedestrians and emergency vehicles. As such, Public Works staff indicates that there is nothing to suggest that the impacts of the proposed development will result in unsafe conditions in Oakleigh Lane. Public Works staff confirms that it is appropriate to defer public improvements via an irrevocable petition.

Referral comments from Lane Transit District (LTD) staff also confirm that transit service is provided from River Road (i.e. 51 Santa Clara and 52 Irving routes), to the west. LTD staff states no objection to the proposed development.

### ***Opponent Arguments***

The Hearings Official views most of the arguments identified above in the findings for EC 9.8320(5)(a) to be equally directed at EC 9.8320(5)(b). Again, the strenuous assertion made by neighbors is that the increase in ADT will necessarily decrease the safety of pedestrians, children, and bicyclists traveling along Oakleigh Lane.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(5)(b) and adopts those findings by this reference.

The Hearings Official also concurs with the applicant's October 23, 2013 final argument that the queuing effect of having a single travel lane along Oakleigh Lane is likely to result in lower speeds and acceptably safe conditions for pedestrians. The applicant provided evidence in support of this position from the city's Arterial and Collector Street Plan. The neighbors submitted this very same information in Exhibit PT-1. The queuing effect is deemed effective for streets that have less than 750 ADT. Even with the added trips attributable to the co-housing proposal, the ADT for Oakleigh will be closer to 400 ADT at most. It is reasonable to expect that the queuing effect identified in the ACSP will work to calm speeds and provide reasonably safe passage pedestrians if the co-housing is approved. Once again, the Hearings Official has not been directed to evidence that shows that pedestrian safety will necessarily be decreased to unacceptable levels simply because 164 ADT are added to Oakleigh Lane.

As to Mr. Conte's assertion that the Staff's own findings concede that pedestrian and bicycle traffic will not be assured safe use of Oakleigh Lane, the Hearings Official disagrees. PT-4. The statement Mr. Conte alights on is a finding related to explaining the justification for the dedication required under EC 9.8320(5)(a). Staff's conclusions are properly understood to require the proposed PUD to dedicate sufficient right-of-way along the subject property's frontage to allow Oakleigh Lane to be brought up to the low volume residential street standard along that frontage. That is consistent with requiring the proposed PUD to meet current street design standards rather than allowing the development to access Oakleigh Lane in its current form. The Hearings Official agrees with the applicant's conclusion that there is no inconsistency in the Staff's findings.

- (c) **The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.**

### ***Staff Findings***

The proposed development does not meet any of the thresholds established in EC 9.8650 through 9.8680. The creation of 29 dwelling units is estimated to generate an additional 29 peak hour trips, which is well below the 100-trip threshold for requiring a Traffic Impact Analysis. Referral comments from Public Works staff indicate no concerns related to traffic

safety issues or poor service levels which will result from this development. Based on these findings, the above criterion does not apply.

### ***Opponent Arguments***

The neighbors strenuously argue that a TIA is needed because of the increase in ADT the proposed co-housing will produce. As noted above under the findings for EC 9.8320(5)(a), they argue that a 145% increase in the ADT should trigger a review, and that in any case the increase in traffic will bring safety risks that are unacceptable. Mr. Conte argues that in addition to the increase in ADT, an incredible increase of over 5,000 pass-by trips will be generated, and that should be sufficient reason to trigger a TIA. Mr. Conte also argues that the Staff's conclusion that there are no concerns with the safe operation of Oakleigh Lane has been rebutted by his analysis and cannot be viewed as sufficient substantial evidence of compliance. PT-4, PT.R-2.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(5)(c) and adopts those findings by this reference.

EC 9.8320(5)(c) invokes EC 9.8670 on the question of when a TIA may be required to support a PUD application. There are three primary circumstances in which a TIA may be required: 1) when the development will generate more than 100 peak hour vehicle trips, 2) when "the increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action, and 3) where approval of the development will result in level-of-service failures of the roadway system in the vicinity. If none of these conditions will result from approval of the PUD, then the code does not require a TIA and the City cannot force an applicant to provide one.

Although the Hearings Official understands the neighbors' concerns about increased numbers of vehicles using Oakleigh Lane, the strong assertion that an increase in ADT will result in traffic accidents or actual danger to pedestrians and bicyclists is not supported by evidence in the record. Assertion is not evidence, and neither is an explanation of inductive reasoning. Therefore, the Hearings Official cannot substitute the neighbors' very strongly held opinions that more cars will necessarily decrease traffic safety for actual evidence. Anecdotal instances of unsafe traffic conditions are also not enough to trigger a TIA.

Moreover, EC 9.8320(5)(c) and EC 9.8670 contemplate certain types of evidence concerning traffic conditions and makes implicit decisions about when mitigation measures might be needed. Those implicit assumptions are that under EC 9.8670(1), a proposal will not potentially create unsafe traffic conditions unless the development will increase peak vehicle trips by more than 100 trips. Under EC 9.8670(2), it is implied that a TIA and associated mitigation measures do not need to be considered unless there is evidence of "problems" caused by accident rates, traffic volumes or speeds. The third implied safety concern is that a TIA is needed if LOS is not sufficient in for the roads and intersections in the immediate vicinity.

This record contains uncontroverted evidence that the proposed development will come nowhere close to producing the 100 peak hour trips necessary to trigger a TIA. That standard does not discuss or contain a requirement to provide a TIA simply because ADT will rise by a certain percentage, or a certain number of pass-by trips will be generated. To interpret EC 9.8320(5)(c) and EC 9.8670(1) otherwise would be to add language and concepts to the provision that do not exist. That would violate ORS 174.010. The Hearings Official has not been directed to evidence in the record that shows accident rates for Oakleigh Lane or at the intersection with River Road are a problem. Nor have other documented "problems" with traffic volumes or speeds been submitted by any party. Contrary to Mr. Conte's assertion, Staff's position that there are no traffic safety concerns associated with the proposal or Oakleigh Lane is some evidence that a TIA under EC 9.8670(2) is not necessary. Public Works did a lengthy and thorough analysis of traffic conditions that is largely repeated in the Staff report. Neither Mr. Conte nor any other party submitted evidence to the contrary, and that is what is required in order for Staff or the Hearings Official to determine that EC 9.8670(2) might be implicated by this application. Finally, LOS at the intersection of Oakleigh Lane and River Road appears to be adequate and there is no evidence in the record showing that the proposal will reduce the LOS to an unacceptable or failing service level. Therefore, there is no evidentiary basis for requiring a TIA or assuming that the increase in ADT will necessarily lead to unsafe conditions along the lane.

**EC 9.8320(6): The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.**

### ***Staff Findings***

Regarding soil erosion and slope failure, the applicant's geotechnical analysis confirms that the site is geologically stable and adequate for development. The analysis provides construction techniques consistent with industry standards, none of which indicate the existence of unsafe sub-surface conditions. Public Works staff confirms that the analysis indicates no soil conditions that would otherwise require extensive construction to mitigate any significant geological hazards or soil drainage issues. Due to the size of the development, an erosion prevention permit will be required prior to any ground-disturbing activities.

With regard to flood hazard, the subject property is within a special flood hazard area; as such, development of the subject property is subject to the special flood hazard area development standards at EC 9.6706 through EC 9.6709, which is addressed in greater detail at EC 9.8320(11) and is incorporated here by reference. The development itself will not result in unreasonable risk of flood, per the stormwater management evaluation at EC 9.8320(11)(j).

With respect to the provision of emergency vehicle response, the applicant states the proposed access on Oakleigh Lane and the hammerhead turnaround within the development site is sufficient for the proposed development. Referral comments from Public Works staff indicate

that this on-site turnaround must provide for emergency vehicle access by being within a temporary emergency access easement. The proposed turnaround area meets the dimension requirements for a hammerhead. Referral comments from the Fire Marshal state no concern with the turnaround. The permanent turnaround is anticipated at the end of Oakleigh Lane, when properties to the north further develop. As recommended previously at EC 9.8320(5)(a), the applicant is required to dedicate right-of-way for the portion of the future turnaround that would overlap the subject property. Based on these findings, the following condition of approval is necessary:

- Prior to final PUD approval, the applicant shall dedicate a temporary emergency vehicle access easement over the on-site hammerhead and the access drive from Oakleigh Lane, and show this easement on the final PUD plans.

Other public health concerns and necessary infrastructure improvements are otherwise addressed with respect to approval criteria at EC 9.8320(5)(b) and (11)(b). Given the available information, and based on the findings as set forth above, it is concluded that the proposed development will comply with this criterion.

#### ***Opponent Arguments***

The neighbors raised concerns about stormwater quantity and quality both during the October 2, 2013 hearing and in written comments during the open record period. PT-15. While not expressly directed at compliance with EC 9.8320(6), some of the arguments could be construed to invoke that section. The primary concerns were that untreated stormwater might be discharged and that the quantity of stormwater likely to be generated could not be adequately managed on-site. Rick Rubin submitted information on precipitation and calculations on the size of a theoretical cistern that might be needed to accommodate that volume of water. PT-15.

#### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(6) and adopts those findings by this reference.

The applicant submitted an October 15, 2013 letter from SSW Engineers which appears to be intended to respond to both public comment at the October 2, 2013 hearing, and Mr. Rubin's calculations. PT.R-6. Mr. Conte objects to this letter as new evidence. PT.R-1. The Hearings Officer finds that to the SSW Engineers letter appears to be calculated to respond to Mr. Rubin's October 9, 2013 letter and complies with the Hearings Official's open record schedule set at the October 2, 2013 hearing.

More importantly, the SSW Engineers letter does not add new information so much as explain the stormwater analysis that was already in the record on July 30, 2013, and which was attached to the letter. It does not appear that Mr. Rubin was aware of the prior stormwater

analysis in the record. There is no argument that the applicant's stormwater analysis is in error, or does not conform to the city's Stormwater Manual.

The applicant's stormwater analysis is substantial evidence showing that the anticipated amount of stormwater generated by the development can be adequately treated and discharged in compliance with EC 9.8320(6). Mr. Rubin's comments do not contradict or undermine the applicant's report sufficient to conclude that the applicant's information is unreliable. *Walmart Stores Inc. v. City of Bend*, 52 Or LUBA 261, 272 (2006).

**EC 9.8320(7): Adequate public facilities and services are available to the site, or if public services and facilities are not presently available, the applicant demonstrates that the services and facilities will be available prior to need. Demonstration of future availability requires evidence of at least one of the following:**

- (a) Prior written commitment of public funds by the appropriate public agencies.
- (b) Prior acceptance by the appropriate public agency of a written commitment by the applicant or other party to provide private services and facilities.
- (c) A written commitment by the applicant or other party to provide for offsetting all added public costs or early commitment of public funds made necessary by development, submitted on a form acceptable to the city manager.

Staff relied on the Public Works staff findings that adequate public utilities and services, including wastewater service, are presently available to the site as indicated on the applicant's plans. Further findings at EC 9.8320(11)(b) and (j), regarding public improvements and stormwater respectively, are incorporated herein by reference as further evidence that these services are available to or can be retained on-site. The provision of water and electric services and other utilities is subject to review by the Eugene Water and Electric Board (EWEB) or other utility providers. Referral comments from EWEB staff confirm that the water system needs to be upgraded within Oakleigh Lane and looped through the subject property for a connection with the system in McClure Lane. Approval conditions related to water service are included below, at EC 9.8320(11)(b). The applicant's written statement also confirms their commitment to provide funds necessary for development. The Hearings Official agrees with these findings and adopts them by this reference.

**EC 9.8320(8): Residents of the PUD will have sufficient usable recreation area and open space that is convenient and safely accessible.**

Staff concluded, and the Hearings Official agrees, that the applicant's site plan shows common open space provided at the center of the development that is convenient and safely accessible by all residents. Further, there is ample open space as part of the abutting City parkland, which abuts the east boundary of the subject property and includes regional bicycle facilities (i.e. the West Bank Bike Path). This criterion is met.

**EC 9.8320(9): Stormwater runoff from the PUD will not create significant negative impacts on natural drainage courses either on-site or downstream, including, but not limited to,**

**erosion, scouring, turbidity, or transport of sediment due to increased peak flows or velocity.**

### ***Staff Findings***

The site contours indicate that the subject property currently sheet drains to the east. The applicant proposes to maintain the existing drainage patterns by directing overflow from the proposed on-site stormwater management facilities toward the east property line, abutting the City parkland. The on-site stormwater management facilities consist of piped collection and conveyance systems that are interspersed with pollution-reduction facilities, which include filtration rain gardens abutting the dwellings and a vegetated swale in the common open space. The overflow to the parkland will be dispersed evenly toward the east property boundary with four outfalls that are designed to reduce flow volumes and velocities.

Referral comments from Public Works staff confirm that the overflow to the parkland is acceptable, provided the flow is not concentrated or otherwise cause damage to the City's property. The preliminary design information provided by SSW Engineers confirms that the development will meet this expectation, as well as the stormwater development standards at EC 9.6791 through EC 9.6797, which is addressed in detail at EC 9.8320(11)(j) and is incorporated here by reference.

Based on these findings, the development will comply with this criterion.

### ***Opponent Arguments***

As noted above, in the findings for EC 9.8320(6) the neighbors raised concerns about the quantity of stormwater and how it will be treated and discharged. Questions were raised about how the discharge onto the adjacent open space to the east would be modulated to mimic pre-development levels.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(9) and adopts those findings by this reference. The findings supporting EC 9.8320(6) are also incorporated here by this reference.

The application materials and Staff's findings explain that treated stormwater will be discharged onto the adjacent City open space to the east of the proposed PUD. The record shows that the city agreed to allow this discharge. There are no "natural drainage courses" in that area, and neither the record nor any evidence submitted by the neighbors indicates that erosion is anticipated to result from the discharge of treated stormwater.

**EC 9.8320(10): Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 Solar Lot Standards or as modified according to subsection (11) below.**

Staff found, and the Hearings Official agrees that this criterion does not apply because the development does not include one-family detached dwellings. Further, EC 9.2790 applies to the creation of lots in the R-1 zone, whereas the subject development is not creating any new lots. Nevertheless, the solar setback standards of EC 9.2795 apply to all structures on R-1 zoned lots, 4,000 square feet or greater, with a north-south dimension of at least 75 feet. The applicable solar setback standards are evaluated at EC 9.8320(11)(k).

**EC 9.8320(11): The PUD complies with all of the following:**

- (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
  2. The /WQ Management Area.

***Staff Findings***

The development is not creating residential lots; as such, EC 9.2760 Residential Zone Lot Standards do not apply. The subject property is not within a /WR or WQ area. With regard to density, based on the R-1 Low-Density Residential zoning and EC 9.2750 Residential Zone Development Standards, the subject property is permitted to have a maximum net density of 14 units per acre. EC 9.2751(1)(b) explains that net density is the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of residents in the development, such as common open space or recreational facilities. EC 9.2751(1)(c) states that, for calculating net density, the acreage of land considered part of the residential use shall exclude public and private streets and alleys, public parks, and other public facilities.

The subject property is 102,808 square feet (2.3 acres). The right-of-way dedications being required total 4,024 square feet:  $(22.5 \times 50) + (13 \times 199) + (13 \times 24)$ . Additionally, there is an existing public wastewater easement along the east property line that affects 3,230 square feet of the subject property (10 feet wide and 323 long). These areas  $(4,024 + 3,230)$  need to be subtracted from the gross density to establish the allowable density of 14 units per net acre  $(102,808 - 7,254)$ . With 95,554 square feet (2.19 acres) of net area, the allowable density is 30 units. The development includes 29 units (including the common house), which is within the allowed net density. The proposed 29 units on 2.19 net acres translate to a density of 13 units per acre.

EC 9.8310(4)(a) Tentative PUD General Application Requirements confirm that easements benefiting the residents of the PUD may be included in the residential density calculations. As such, the proposed driveway is not excluded from this calculation. It is further noted that the shared driveway is not a private street, which is typically necessary to provide frontage for the creation of lots; the development is not creating additional lots. The on-site turnaround is also

not a public facility in that it is not open to the general public (for those traveling on Oakleigh Lane), but only to provide emergency vehicle access to the development. Eugene Water and Electric Board (EWEB) staff has indicated that an off-site easement is needed to provide a looped water system prior to development of the subject property, but has not indicated that any easements are needed through the subject property.

Based on the above findings, the PUD complies with EC 9.8320(11).

### ***Opponent Arguments***

The neighbors make two fundamental arguments. First, that the common house contains four hotel type rooms and should be counted as four dwellings. PT-2. Second, that areas that will be encumbered by a utility easement must be removed from the calculation of net density. PT-1. The easements the neighbors say must be taken out of the calculations are:

- The 20 foot sanitary sewer easement on the east property line.
- The EWEB water line easement and an associated access road width.
- The fire and garbage turnaround.
- The right-of-way to be dedicated to the city along the north property line.
- Pending property line adjustment must be removed.
- The bike path right-of-way along the north property line.

Based on the exclusions asserted by the opponents, the proposed co-housing development is not entitled to 29 dwelling units.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(11)(a) and adopts those findings by this reference consistent with the findings set forth below.

EC 9.2751 sets forth the rules for calculating "net density." EC 9.2751(1)(b) explains what must be considered a "dwelling unit" for the purpose of those calculations:

For the purposes of this section "net density" is the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of the residents in the development, such as common space or recreation facilities.

The Hearings Official concurs with Staff's treatment of the common house as one dwelling unit. The common house appears to include kitchen facilities, bathroom and four rooms that can be utilized for guests. There is no indication in the record that the four rooms will be permanently occupied by residents or guests. The common house closely fits the definitions applicable to dwellings in EC 9.0500. The common house does not meet the definition of "hotel/motel" as

defined in EC 9.0500. The Hearings Official concludes that Staff's decision to count the common house as one dwelling is consistent with EC 9.2751.

EC 9.2751(1)(c) sets forth areas that must be excluded from the net density calculation. Those exclusions include, "public and private streets and alleys, public parks, and other public facilities." The neighbors assert that easements that might accommodate public facilities like water and sewer lines must be excluded. The applicant argues that easements are not the same as "public facilities" and are not required to be excluded.

The Hearings Official agrees with the applicant. EC 9.2751(1)(c)(1) uses the specific language "public facilities." The provision does not include the word "easements." If the provision was intended to exclude easements it would so state. Adding that concept to the provision would violate ORS 174.010. Public facilities are not defined in EC 9.0500. However, "public facility projects" are defined in the Metro Plan. Those definitions contemplate above ground physical structures such as water reservoirs, pump stations, and drainage or detention ponds. The Hearings Official has not been directed to information in the record that would necessitate removing the land area associated with easements where the infrastructure that utilizes the easement is below ground. Therefore, none of the easements identified by the opponents must be excluded from the net density calculation – including the sewer easement on the eastern boundary.

Similarly, the garbage and emergency turn around does not become a public facility simply because it might be used by public entities periodically. Those areas do not reasonably fall into the category of "public facilities."

As to the areas that the neighbors argue should be excluded due to pending property line adjustments, it appears that the area along the northern property line has already been excluded due to the required dedications. It is unclear whether the property line adjustment on the southeast corner was taken into account. However, even if that area is excluded (2706 square feet) with the addition back of the land Staff removed for the sewer line easement (3230 square feet) the proposed density of 29 units still meets the density restrictions for the low density residential zone.

**(b) EC 9.6500 through EC 9.6505 Public Improvement Standards.**

**EC 9.6500 Easements**

The Staff report found, and the Hearings Official agrees that this section authorizes the City to require dedication of easements for wastewater sewers and other public utilities and access under certain circumstances. This section also prohibits obstructions within public easements. The applicant's survey and engineering plans indicate that there are no existing or proposed easements, other than the 20-foot wide public sewer easement that overlaps the east boundary of the subject property and an underground 72-inch wastewater trunk line. The

applicant's plans show no encroachments within this public easement, other than the paths along the north and south property boundaries for bicycles and pedestrians.

Public Works staff notes that the applicant's title report identifies the following three easements, which are not shown on the tentative plans: (1) an easement recorded on August 6, 1947 at Book 353, Page 146 in favor of the United States for power lines and appurtenances; (2) an easement reserved in a deed recorded March 6, 1942 at Book 229, Page 60 from Nellie McClure, a single person, to H.H. Harris and Gladys M. Harris for a roadway; and (3) an easement recorded October 11, 1949 at Book 403, Page 285 in favor of the United States of America. The applicant's surveyor has confirmed that all these easements are shown on the survey map and do not impact the applicant's proposed development.

In regards to additional public easements, Public Works staff only identify the need for a temporary emergency vehicle access easement; see the prior findings and condition at EC 9.8320(5)(a), which are incorporated here by reference. Referral comments from the Eugene Water and Electric Board (EWEB) also indicate the potential need for additional easements, which will be more precisely determined when the service design is approved by EWEB; refer the findings and condition at EC 9.8320(11)(b) and the referenced water standards at EC 9.6505(1), which are incorporated by reference.

Based on the above findings, the proposed development will comply with EC 9.6500.

#### **EC 9.6505 Improvements—Specifications**

This section requires all public improvements to be designed and constructed in accordance with adopted plans and policies, the procedures specified in EC Chapter 7, and standards and specifications adopted pursuant to EC Chapter 7. Additionally, all developments are required to be served by and implement infrastructure improvements including water, sewage, streets, street trees, street lights, sidewalks, access ways, and stormwater drainage.

#### **EC 9.6505(1) Water Supply**

Staff found, and the Hearings Official agrees, that water service for the proposed development must be provided in accordance with Eugene Water and Electric Board (EWEB) policies and procedures. Referral comments from EWEB staff are as follows:

The existing water infrastructure in Oakleigh Lane and McClure Lane is inadequate to serve any additional development or provide the necessary fire flows along Oakleigh Lane. Therefore, prior to any development of the site, significant upgrades of the water facilities in Oakleigh Lane and McClure Lane along with a loop connection between these streets through the project site will be required to serve the property. Easements will be required across private property to make the loop connection to McClure Lane to the south. The developer will need to fill out EWEB's standard design agreement prior to EWEB proceeding with design of the upgrades.

To ensure compliance with the water supply standards of EC 9.6505(1), the following conditions of approval are also necessary:

- Prior to final PUD approval, the applicant shall provide documentation from EWEB, confirming that water facilities are available for the proposed development.

As conditioned above, the PUD will comply with EC 9.6505(1).

#### **EC 9.6505(2) Sewage**

Staff found, and the Hearings Official agrees that this standard requires all developments to be served by wastewater sewage systems of the City, in compliance with the provisions of EC Chapter 6. The applicant proposes to connect to the existing eight-inch public wastewater system within Oakleigh Lane, abutting the northwest property boundary. Public Works staff confirms that an eight-inch lateral was stubbed (under City Contract File No. 1992-0011) to the subject property from the manhole (structure number 49033) to the subject property. Public Works staff notes that there is a pending assessment for this wastewater infrastructure, which will become due at the time of development. Based on these findings, the applicant's proposed wastewater system conceptually complies with applicable sewage specifications, subject to a more detailed review during the subsequent site development and building permit processes.

#### **EC 9.6505(3) Streets and Alleys and (4) Sidewalks**

##### ***Staff Findings***

EC 9.6505(3)(b) requires the developer to pave streets adjacent to the development site to the width specified in EC 9.6870 Street Width with provision for drainage and construction of curbs and gutters, sidewalks, street trees and street lights adjacent to the development site according to the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways and standards and specifications adopted pursuant to EC Chapter 7 and other adopted plans and policies.

Public Works staff confirms that Oakleigh Lane is not improved to City standards because it lacks curbs and gutters, storm drainage, sidewalks, and street trees. The street does have existing street lights and the 19-foot wide pavement width provides safe passage for two-way traffic. As such, Public Works staff indicates that it is appropriate to defer public improvements via an irrevocable petition, with the following condition of approval:

- The applicant shall submit an Irrevocable Petition for public improvements in Oakleigh Lane to include paving, curbs and gutters, storm drainage, sidewalks, and street trees.

Irrevocable petitions enable the City to initiate a local improvement process and obligate the property owners to pay their proportional share of the street construction costs in the future. The City could construct the street when the majority of benefitting property owners agrees to pay for the improvements. Based on the above findings and condition, the development will comply with the applicable street improvement standards.

### ***Opponent Arguments***

As discussed above, the neighbors raised numerous arguments related to the right-of-way requirements for Oakleigh Lane and asserted that the categories of “access lane” and “low volume residential street” constitute design standards that Oakleigh Lane must be brought up to in order to support the proposed PUD. It is unclear to the Hearings Official whether those arguments are also directed at compliance with EC 9.6505(3 & 4).

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff’s findings for EC 9.6505(3 & 4) and adopts those findings by this reference. The Hearings Official also incorporates the findings above for EC 9.8320(5) by this reference.

EC 9.6505(3) requires that any streets adjacent to the proposed development be paved by the developer consistent with applicable street width standards. The evidence discussed in the findings for EC 9.8320(5) demonstrates that the applicant will be able to accommodate the necessary right-of-way, street width, and sidewalks if necessary along the portion of Oakleigh Lane adjacent to the subject property.

### **EC 9.6505(5) Bicycle Paths and Accessways.**

Public right-of-way dedication is being required along the north property line, overlapping an existing worn path between the terminus of Oakleigh Lane and the easterly City parklands, to enable a future bicycle and pedestrian access way. Refer to the previous findings and condition at EC 9.8320(5), which are incorporated by reference.

- (c) **EC 9.6706 Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas – Standards.**

### ***Staff Findings***

The subject property is within a Special Flood Hazard Area (SFHA), per the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Map (FIRM) 41039C-1128-F, dated June 2, 1999. The applicant’s topographical survey prepared by Poage Engineering and Surveying, Inc. delineates the SFHA boundaries and notes that the Base Flood Elevation (BFE) is 401.2 feet.

Development is allowed to occur within the SFHA, subject to review and approval for compliance with applicable development standards during the building permit process. These standards generally require structures to be located at least one foot above the BFE, among other requirements. At the time of development, these standards may be addressed through several alternatives, including elevated building foundations or, typically, placing fill on the building site. Specific measures for compliance with SFHA standards will be subject to further City review and approval at the time of building permits.

Public Works staff does not concur with the applicant's floodplain delineation, but finds that it is relatively accurate. Buildings 1, 2, 4, the northernmost garage, the northernmost bike shed, and the bike barn are located entirely within the SFHA, whereas Buildings 3 and 7 are located partially within the SFHA. Staff notes that the highest BFE shall be used for the entire development site, unless each structure (including the bike barn) has a specific BFE determination that has been approved by City staff. To ensure compliance with the applicable SFHA standards, the following condition of approval is necessary:

- The final site plan shall delineate the Special Flood Hazard Area, identify Base Flood Elevation (for the entire site or for each building), and note that development of the site will be required to comply with the standards at EC 9.6707 through EC 9.6709.

As conditioned, the development will comply with the applicable SFHA standards.

#### ***Opponent Arguments***

The neighbors raised concerns about the amount of fill that will need to be placed on the subject property – they estimate 2500 cubic yards. They argue that perhaps part of the eastern sewer easement will be at least partially covered with fill. They wonder if retaining walls will be necessary to bring the BFE up to required height. They also wonder who will be responsible for repairs to Oakleigh Lane if the dump trucks that will presumably be needed to haul that fill onto the site damage the road. PT-1.

#### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.6706 and EC 9.6709 and adopts those findings by this reference.

While the neighbors' concerns are understandable, they do not raise issues that are relevant under EC 9.6706 and EC 9.6709. Those provisions are concerned with how the elevated areas and structures will be constructed. Fill in the SFHA is allowed subject to a development permit under EC 9.6707. The same is true of structures in the SFHA under EC 9.6709. There is no evidence in the record which demonstrates those standards cannot be met.

**(d) EC 9.6710 Geological and Geotechnical Analysis.**

Staff found, and the Hearings Official agrees that the geotechnical analyses requirements beginning at EC 9.6710 apply because the proposed development is a PUD that has slopes in excess of five percent. The applicant submitted a geotechnical analysis prepared by Foundation Engineering, Inc. Public Works staff confirms that the applicant's analysis meets the Level Three Analysis requirements of EC 9.6710(4)(c) and Administrative Order AO-58-02-25-F. The analysis includes the results of sub-surface investigation and testing, to establish soil types and distribution, and the characteristics of the site and soils, in relation to the proposed development. The analysis includes design recommendations for construction and inspection.

Public Works staff confirms that the analysis confirms the suitability of the site for the proposed development and notes that the geotechnical recommendations are industry standards. Nevertheless, to ensure compliance as proposed, the following condition of approval is necessary:

- The final PUD site plans shall note that construction permits shall conform to the applicant's geotechnical analysis.

Based on the above findings and condition, the geotechnical standards at EC 9.6710 will be met.

**(e) EC 9.6730 Pedestrian Circulation On-Site.**

Staff found and the Hearings Official agrees, that the development meets these standards by providing pedestrian connections between the dwelling units and common facilities. The findings for EC 9.8320(5)(b) are also incorporated here by this reference.

**(f) EC 9.6735 Public Access Required.**

Staff found, and the Hearings Official agrees, that the development will have access onto a public street, Oakleigh Lane, consistent with this standard. Referral comments from Public Works staff confirm that the other requirements of this standard are also met.

**(g) EC 9.6750 Special Setback Standards.**

Staff found, and the Hearings Official agrees, that the applicant's plans show a 20-foot special setback from the north property line for future right-of-way for Oakleigh Lane. Public Works staff confirms that a special setback is not needed, based on the right-of-way needs being exacted as a condition of development. The required dedication to provide needed right of way obviates the need for a special setback along the northern property line. The findings and conditions at EC 9.8320(5)(a) are incorporated here by this reference.

**(h) EC 9.6775 Underground Utilities.**

To ensure compliance with this standard, the following condition of approval is necessary:

- The final PUD plans shall note that all on-site utilities will be placed underground consistent with EC 9.6775.

As conditioned, the development will comply with this standard.

**(i) EC 9.6780 Vision Clearance Area.**

This standard does not apply because the subject property is not located at a street intersection.

**(j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.**

***Staff Findings***

In regards to EC 9.6791 Stormwater Destination, Public Works staff confirms that on-site management of stormwater runoff from the development is required because there is no public stormwater system available to serve the property. At the same time, the applicant's geotechnical analysis concludes that the site is not suitable for infiltration. Therefore, the applicant proposes to direct stormwater runoff from the proposed development to the abutting City parkland to the east. The site topography indicates that this is the natural drainage pattern. The applicant's on-site stormwater management system will include treatment facilities that also provide for some detention. The overflow toward the east property line will be released at pre-development levels, with rip-rap pads to disperse the flows at the discharge points. The applicant also indicates that level spreaders, consistent with the requirements of the City's Stormwater Management Manual, could be utilized, if required.

Public Works staff notes that many of the proposed rip-rap outfalls are located within the public wastewater easement along the east property line. As conditioned previously at EC 9.8320(11)(b), regarding prohibited uses in public easements, the stormwater infrastructure needs to be located outside the public easement. With regard to the acceptability of overflow onto City parklands, Neil Bjorklund, City of Eugene Parks and Open Space Planning Manager, confirms that this would be acceptable, provided the runoff is discharged evenly and not concentrated at one or more points along the shared property line. To meet this requirement, the following condition of approval is necessary:

- The final PUD plans shall note the requirement that, at the time of development, all stormwater discharge points directed toward the City's property shall be designed as level spreaders, consistent with the City's 2008 Stormwater Management Manual. All stormwater facilities shall be located outside the public wastewater easement along the east property line.

In regards to EC 9.6792 Stormwater Pollution Reduction, runoff from the proposed impervious surface areas will primarily be treated in planters (about 15 scattered throughout the development site). To ensure that the treated runoff will be discharged at pre-development levels, the rain gardens (planters) were sized using the City's Stormwater Surface Filtration/Infiltration Facility Sizing Spreadsheet. Runoff from the garage, driveway, and common house will be treated in a vegetated swale (approximately 10 feet wide and 58 feet long) located east of the common house. A proposed berm at the end of the swale will act as a weir to reduce flows to pre-development levels. As noted in the applicant's written statement, the swale was sized using the City's presumptive method.

Public Works staff confirms that the proposed facilities are adequately sized to provide both pollution reduction and destination from the development site. The actual facility sizes and design will be more precisely determined during the building permit process and may be smaller or larger, based on actual impervious surface area and any impervious surface reduction techniques or in-kind facilities that may be provided at the time of development, provided they are consistent with the City's 2008 Stormwater Management Manual, and are not materially inconsistent with the approved final site plan.

EC 9.6793 Stormwater Flow Control is not applicable because the subject property is below 500 feet in elevation and does not discharge to a headwaters stream. However, as discussed above, post-development flows will be limited to pre-development levels, in order to mimic existing drainage conditions. EC 9.6794 Stormwater Oil Control is not applicable because the proposed development will not generate high concentrations of oil and grease. EC 9.6796 Dedication of Stormwater Easements does not apply because the proposed stormwater facilities are to be privately operated and maintained.

EC 9.6797 Stormwater Operation and Maintenance applies to all facilities designed and constructed in accordance with the stormwater development standards. This section also specifies when, and under what conditions, the public will accept function maintenance. Consistent with these standards, the applicant proposes private operation and maintenance of the on-site stormwater management facilities. To ensure compliance with EC 9.6797(3)(c), as proposed, the following condition of approval is necessary:

- The final site plan shall note: "On-site stormwater management facilities will be privately owned and operated. An operation and maintenance plan will be developed consistent with the City's Stormwater Management Manual, and notice of this plan will be recorded, during the building permit process."

With the findings, conditions, and future permit requirements noted above, staff finds that this criterion will be met.

Based on these findings, the development will comply with this criterion.

### ***Opponent Arguments***

As noted in the findings for EC 9.8320(6 & 9) the neighbors raised concerns about discharging the treated stormwater on to the adjacent city open space.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(11)(j) and EC 9.6791-9.6797 and adopts those findings by this reference.

The opponents do not provide any persuasive evidence that the proposed stormwater treatment and discharge methods will be inadequate to properly manage the stormwater anticipated to be generated by the proposed PUD. There is no evidence that the proposed rain gardens, vegetated swales and permeable pavement to be used in the parking area will not work sufficient to comply with the standards discussed above. Again, the neighbors raise questions and made assertions about stormwater but those assertions or arguments of disbelief, particularly with regard to the permeable parking area do not constitute evidence upon which the Hearings Officer can rely.

- (k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.**

Staff took the following approach to reviewing the applicant's various "proposed non-compliance" with certain development standards. The applicable development standards for features explicitly included in the application, which have not already been addressed by other PUD approval criteria and related standards, are as follows: EC 9.2750 Residential Zone Development Standards; EC 9.2795 Solar Setback Standards; EC 9.5500 Multiple-Family Standards; EC 9.6105 Bicycle Parking Space Standards; and EC 9.6410 Motor Vehicle Parking Standards. Staff notes that EC 9.6205 Landscape Standards, EC 9.6730 On-site Pedestrian Circulation, and EC 9.6740 Recycling and Garbage Screening standards are referenced within the multiple-family development standards at EC 9.5500. The development complies with many of these standards, as noted below. Where the development does not comply with these standards, as described in greater detail below, the applicant requests a modification ("proposed non-compliance"), which is allowed through the PUD process, if the following PUD purpose statements are met.

**EC 9.8300 Purpose of Planned Unit Development. The planned unit development (PUD) provisions are designed to provide a high degree of flexibility in the design of the site and the mix of land uses, potential environmental impacts, and are intended to:**

- (1) Create a sustainable environment that includes:**
  - (a) Shared use of services and facilities.**
  - (b) A compatible mix of land uses that encourage alternatives to the use**

- of the automobile.
- (c) A variety of dwelling types that help meet the needs of all income groups in the community.
  - (d) Preservation of existing natural resources and the opportunity to enhance habitat areas.
  - (e) Clustering of residential dwellings to achieve energy and resource conservation while also achieving the planned density for the site.
- (2) Create comprehensive site plans for geographic areas of sufficient size to provide developments at least equal in quality to those that are achieved through the traditional lot by lot development and that are reasonably compatible with the surrounding area.

### ***Staff Findings***

With regard to EC Table 9.2750 Residential Zone Development Standards, the development complies with the following: density (below 14 units per net acre); building height (below 30 feet); interior yard setback (from the east property line only); and the maximum 50 percent lot coverage. The development does not comply with the front yard setback or the interior yard setback (along the south and west property lines).

The substandard front yard setbacks are due to the right-of-way dedications being required; refer to the findings and conditions at EC 9.8320(5), which are incorporated by reference. Following right-of-way dedication, Buildings 1 and 2 will be below the minimum 10-foot front yard setback requirement, being about a half of a foot and eight feet away, respectively. The applicant requests a modification to this setback, stating that "...the dwellings abutting Oakleigh Lane do not exceed massing widths or heights inconsistent with the neighborhood single-family proportions. Along Oakleigh Lane, at the southern side of the street, townhouses address the residential street with covered porches as found in this and other neighborhoods of the River Road area. Internally, the site plan is pedestrian oriented with many places for children to play and residents to sit outside. By clustering the units keeping all the parking to one side of the site, more usable open space, free from vehicle traffic, was able to be conserved with open views to the river and bike path." (See page 26 of the applicant's June 14, 2013 written statement.)

The substandard interior yard setbacks are as follows: the concrete wall, garages and carports abutting the west property line and Tax Lots 10100 and 5700, respectively to the northwest and southwest; the concrete wall at the southwest property corner, abutting Tax Lot 5600; and Building 6, abutting Tax Lot 500. There is no explanation in the applicant's materials for the substandard building setback along the south property line; however, staff notes that the affected property owners (Mr. Adee of Tax Lot 500 and Mr. Campbell of Tax Lot 5600) submitted letters in support of the proposed development.

With regard to the west property line, the applicant explains that the garages and carports are located near the property line because it makes for a better site layout. The applicant claims

that, if there were a setback, it would collect weeds and trash because it would be an unused portion of the site that serves no one. Staff understands that the design attempts to load most of the development on the western portion of the site because the eastern portion is in the floodplain and abuts a natural resource area. Staff's main concern is the potential impacts on the adjacent lands to the west.

In addition to aesthetics (i.e. screening and softening of the bulk and scale of the development along the property boundaries), the setback is intended to provide adequate separation between structures to meet fire code regulations. The setback regulation is five feet from property lines and ten feet between structures, which means that the abutting property would need to setback future structures ten feet from the common property line. The applicant proposes an eight-foot tall concrete wall along the west property line, not only to fulfill the screening function of the setback, but to fire-rate the wall as well, to meet fire code requirements. Staff notes that the appropriate fire rating cannot be determined at this time because the abutting property owners are not proposing to build abutting structures; rating depends on materials and the regulations change over time. Because the wall exceeds six feet, it too is considered a structure subject to setback requirements.

Staff believes the final determination as to acceptability of the concrete wall must include the participation of the affected property owners (Tax Lots 5700, 10100, and 5600). Even if the setback modification is granted, EC 9:2751(7) requires the developer to obtain an easement from the abutting property owners. Staff recommends the easement as a condition of PUD approval, which will ultimately determine whether the wall is acceptable to the abutting property owners. If the applicant is unable to obtain the off-site easements, then staff recommends an alternative condition that the final PUD plans show the structures setback five feet from the west property line. These conditions also apply to Building 6 and Tax Lot 500. The recommended condition of approval is as follows:

- Prior to final PUD approval, the applicant shall obtain from the property owners of Tax Lots 500, 5600, 5700, and 10100, an easement abutting the proposed structures on the subject property that are located less than five feet from the interior property lines (i.e. the garages, carports, and wall along the west property line, and the portion of the wall and Building 6 abutting the south property line). The easement shall establish a 10-foot no-build zone, for fire code purposes, and, for at least the first five feet abutting the common property line, rights for the development to access and maintain the backside of their buildings. Alternatively, if the applicant is unable to obtain these off-site private easements from the adjacent property owners, then the final PUD plans shall show all structures setback at least five feet from the property lines.

Staff notes that a five-foot shift of the development plans to the east should not significantly affect other site features, as there is sufficient area within the common areas and along the east property line to accommodate the adjustment. With regard to the PUD purpose statements, the overall development achieves those; in regards to these specific setback issues, the PUD purpose statements are met, to the degree the proposed design is critical to the

overall success of the development. Here, staff believes that the alternative of requiring compliance with the setback standards is both feasible and would not jeopardize compliance with any other approval criteria or applicable standards.

### ***Opponent Arguments***

As described in prior findings, the neighbors object to the proposed wall on the western boundary for many reasons. Also, the adjacent property owners have submitted statements indicating they will not grant an easement to allow the applicant to avoid the required five foot setback. The neighbors also state that the reduced setback on the south boundary line cannot be justified merely because the adjacent property owner does not oppose the development. The Hearings Official also assumes that opponents' argument relating to proper screening are also pertinent with respect to the applicant's requests to reduce various applicable setbacks.

### ***Hearings Officer Conclusions***

The applicant's final comment addresses the opponents' setback arguments in two ways. First, the applicant notes that the reason that setbacks are proposed to be reduced in several locations is to accommodate clustering of the buildings. Second, the applicant provided an example site plan that shows that the five foot required setback along the western boundary is not needed by shifting the buildings slightly to the east.

As to the proposed wall, the Hearings Officer agrees that the example site plan is sufficient evidence to show that "non-compliance" with the five foot setback will not be necessary. The Hearings Officer incorporates the findings for EC 9.8320(3) for a full discussion of the wall along the western property line.

As to the other reduced setbacks, the primary purpose of the PUD provisions generally is to "provide a high degree of flexibility in the design of the site." Clustering of residential dwellings is anticipated and encouraged under EC 9.8300(1)(e). The applicant testified both orally and in writing that the site design was specifically intended to cluster the residential building to achieve this goal. As to the setback reductions requested for the south and east boundaries, the Hearings Official finds that the proposed non-compliance facilitates clustering of the residential buildings. It is also relevant that the Hearings Official previously found that the applicant needs to provide sufficient screening along those boundaries under EC 9.8320(3). The site plan shows sufficient space to accommodate that screening. In part for those reasons, the Hearings Official concludes that the reduced setbacks do meet the purposes of EC 9.8300.

### ***Staff Findings***

With regard to 9.2795 Solar Setback Standards, EC 9.2795(3) grants an exception to these standards because the buildings abutting the north property line (Buildings 1 and 2) would shade a non-developable area, namely right-of-way for Oakleigh Lane and the bicycle/pedestrian access way required along the north property line. For comparative

purposes, absent the right-of-way, the required solar setback would be 20 feet from the north property line. Both buildings are setback at least 20 feet from the north property line. As such, it does not appear that a formal modification through the PUD process is required; however, one could be supported for the same reasons a modified front line setback, as discussed previously, would be granted.

### ***Opponent Arguments***

The neighbors dispute the applicant's setback calculation submitted on September 17, 2013 and provide alternative calculations attempting to show that the setback for buildings 1 and 2 cannot be met. PT-1.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.2795 and adopts those findings by this reference.

It does not appear that the neighbors were aware of the exemption identified by Staff. The Hearings Officer is not directed to any evidence that indicates the exemption at EC 9.2795(3)(c)(1) does not apply in this instance. A large portion of the northern property line will be subject to dedication for widening of the right-of-way and Oakleigh Lane and will not be developable with structures. In addition, the applicant provided testimony at the October 2, 2013 hearing and presents a schematic showing how the shade point from the relevant buildings would avoid casting shade on each other or adjacent areas. The Hearings Official finds this evidence sufficient to demonstrate compliance with the city's solar setback standards.

### ***Staff Findings***

With regard to EC 9.5500 Multiple-Family Standards, the development complies with all of the applicable standards, as follows:

- Street Frontage: 60 percent of the street frontage, which is 82 linear feet, is occupied by a building;
- Building Orientation and Entrance: only applies to Building 1, abutting the street, which has primary entrances facing the street;
- Building Mass and Façade: only applies to Building 1, abutting the street, which is less than 100 feet in length
- Articulation: the buildings have porches, windows, and offsets;
- Landscaping: the development exceeds the minimum requirement of 4,007 square feet;
- Open Space: the development has more than double the required open space, with 54,727 square feet instead of 20,037 square feet;
- Site Access and Internal Circulation: the proposed driveway is 22 feet wide, which is within the 20-foot minimum and 28-foot maximum;
- Vehicle Parking: is not abutting street frontage;

- On-site Pedestrian Circulation: provided between buildings and shared facilities, consistent with EC 9.6730;
- Recycling and Garbage Areas: not located in the front yard setback and has perimeter screening, consistent with EC 9.6740.

Based on the above findings, the development complies with the applicable multiple-family development standards at EC 9.5500. With regard to EC 9.6105 Bicycle Parking Space Standards, the development appears to exceed these requirements, subject to stall dimensions and security details being determined during the building permit process. EC 9.6105 requires one long-term bicycle parking space per dwelling unit. With 28 units plus the common house, 29 long-term bicycle parking spaces are required. Short-term bicycle parking is not required of residential development.

The applicant indicates that 52 spaces are proposed; the plans show four sheds scattered across the site and a "bike barn" near the southeast property corner. The plans do not provide enough specificity to determine whether the long-term space security requirements are met, but those can be addressed in greater detail during the building permit process. The PUD plans show ample room on the development site to accommodate the required bicycle parking. Additional bicycle parking (more than the 29 long-term spaces required) does not have to meet code standards, with regard to dimensions and security specifications. Based on these findings, the bicycle parking space standards of EC 9.6105 will be met.

#### ***Hearing Official Conclusions***

The Hearings Official is not aware of opposition arguments directed at this criterion. The neighbors did testify generally that the size, height and number of buildings was simply too large for the neighborhood. Those concerns are discussed in the findings for EC 9.8320(12) and 13).

#### ***Staff Findings***

With regard to EC 9.6410 Motor Vehicle Parking Standards, the applicant's plans show 16 covered spaces, as garages and carports along the west property line. The applicant's plans note that there are 31 additional open/surface parking spaces. The plans show approximately 29 gravel parking spaces abutting the paved driveway. The minimum number of vehicle parking spaces required is one per dwelling unit (or 29 in this case). It appears that the minimum requirement is met; there is no limitation on the maximum number of vehicle parking spaces for residential development. The actual number of spaces is difficult to determine because the applicant does not propose to stripe the spaces in accordance with the stall dimension standards of EC 9.6410; however, the scaled plans show sufficient areas to accommodate the required parking. Public Works staff notes that, due to the 22-foot wide drive aisle, all of the parking spaces are considered compact.

The applicant seeks a modification to the striping, surfacing, and landscaping requirements for the vehicle parking spaces. EC 9.6410 requires a durable a dust-free surface, whereas the applicant proposes gravel parking spaces. The applicant proposes filter fabric below the gravel surface to meet the durable and dust-free standard. The applicant also explains that the driveway will be paved, where durability and dust would be of greater concern associated with vehicle movements. To keep gravel in the parking stalls and off the driveway, the applicant states that the planned community can maintain this area and suggests keeping a broom nearby. The abutting concrete wall proposed along the west property line serves as mitigation to additional noise and dust associated with gravel.

The concrete wall is also proposed in lieu of a seven-foot wide landscape bed between the parking stalls and the west property line, which would be required by EC 9.6410, unless modified through the PUD process. The concrete wall appears to meet the intent and function of the high-screen landscaping requirement, as it is eight feet tall with living plant material (espaliered trees). As such, staff recommends approval of the landscape modification. This design also meets the PUD purpose statements, with regard to clustering the development away from the easterly portion of the site.

As discussed previously, the wall is considered a structure subject to setback requirements. As conditioned previously, if the applicant is unable to obtain easements from the abutting property owners, the structures (wall included) will need to be moved five feet from the property line. Either with or without the five-foot setback, the wall meets the intent of the landscaping requirement for vehicle use areas adjacent to interior property lines.

Based on the available information and the findings and condition recommended above, staff believes the requested modifications could be approved as being consistent with the PUD purpose statements. Otherwise, the applicable development standards appear to be met. No signs or exterior lighting is shown on the plans, but staff notes that those features would be subject to the development standards at EC 9.6650 and EC 9.6725 at the time of development. Land Use Management staff recommends the following condition of approval:

- The final site plans shall note that compliance with the following development standards will be determined more precisely at the time of building permit review:
  - Landscape Standards beginning in EC 9.6200
  - Garbage Screening contained in EC 9.6740
  - Bicycle Parking Standards contained in EC 9.6105
  - Outdoor Lighting Standards contained in EC 9.6725

Based on the above findings, approval of the requested modifications and the condition for a more detailed review for compliance at the time of building permit, the PUD will comply with the above approval criterion at EC 9.8320(11)(k).

### ***Hearing Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.6410 and adopts those findings by this reference – consistent with the findings set forth below.

Although the neighbors raised concerns with dust generated from the gravel parking area, there was no evidence submitted that the proposed gravel with filter fabric approach proposed by the applicant would result in obnoxious levels of dust. The Hearings Official cannot locate the requirement in EC 9.6410 identified by Staff that parking surfaces be "dust free." The applicant's approach appears to be calculated to minimize dust impacts. The gravel over fabric filter is more than just dumping gravel over bare ground, and it is reasonable to conclude that it will both filter water through the gravel and keep the underlying dirt from rising up through the fabric to create unacceptable levels of dust.

**EC 9.8320(12): The proposed development shall have minimal off-site impacts, including impacts such as traffic, noise, stormwater runoff and environmental quality.**

### ***Staff Findings***

Traffic – Public Works staff confirm that the development will have minimal off-site traffic impacts, as only 29 additional peak hour trips will be generated by the development. Public Works staff state that Oakleigh Lane currently provides for safe passage of two-way and emergency vehicles. No street improvements are required of the development, although right-of-way dedication and an Irrevocable Petition are being required to enable future public improvements. Pedestrian safety is further addressed at EC 9.8320(5)(b); those findings are incorporated by reference. With regard to public comments about the accident at the intersection of Oakleigh Lane and River Road, this intersection is not on the City's inventory of intersections with high crash ratings that would otherwise warrant analysis to determine patterns that could be mitigated by infrastructure improvements. As such, nothing further is required of the development.

Noise – It is not expected the development would generate noise other than from a typical residential area. The common open space is located at the center of the development. An eight-foot tall concrete wall is proposed along the west property boundary. The design of this development should have minimal off-site impacts in regards to noise.

Stormwater – Off-site impacts of stormwater runoff is addressed as part of the applicant's proposed stormwater collection, conveyance, and treatment system, as discussed previously at criterion (11)(j) and incorporated herein by reference.

Environmental Quality – The subject property is not on any acknowledged Goal 5 natural resource inventory, but it is within the Willamette Greenway boundary. The applicant has submitted a concurrent Willamette Greenway permit application, which is evaluated later in this report; based on those findings, the proposed development is compatible with the

Willamette River, which is located more than 200 feet east of the subject property. As discussed at EC 9.8320(4), the PUD is designed and sited to minimize impacts to the natural environment and includes tree preservation and additional tree planting; those findings are incorporated by reference.

Based on these findings, the proposed PUD will comply with the applicable criterion.

### ***Opponent Arguments***

The neighbors mostly blended arguments under this criterion with compatibility arguments under EC 9.8320(13). However, the following arguments seem to be directed at EC 9.8320(12):

- The proposed PUD more than doubles the amount of traffic on Oakleigh Lane. PT-1, PT-2 and PT-4.
- Up to 47 cars will be leaving the PUD every morning making noise and shining headlights into neighboring homes. PT-2
- Visitors coming to the PUD will bring traffic impacts.
- More than 100 new residents will be living in the PUD. PT-2.
- At the October 2, 2013 hearing some neighbors stated that building the development would reduce wildlife habitat.

In addition, Mr. Conte argues that the word “minimal” is nearly meaningless as a standard and urges the term “insignificant” be used as the standard instead. PT-32.

### ***Hearing Official Conclusions***

The Hearings Official generally concurs with Staff’s findings for EC 9.8320(12) and adopts those findings by this reference – consistent with the findings set forth below.

As an initial matter, the Hearings Official rejects Mr. Conte’s invitation to substitute the term “insignificant” for the term “minimal” in EC 9.8320(12). I agree with the applicant, that if the City Council had intended to impose a different standard it could have done so. ORS 174.010. The Hearings Official agrees that requiring a PUD to have minimal impacts is a very subjective standard that is difficult to implement, but EC 9.8320(12) says what is says.

As to stormwater impacts, the application has already been found to comply with EC 9.8320(6 & 9) which regulate the treatment and discharge of stormwater from the subject property. The findings for those sections is adopted here by this reference. The record shows that the infiltration and treatment of stormwater will allow the applicant to mimic pre-development levels after the PUD is built, which means no net increase in stormwater impacts should be reasonably anticipated for the City open space to the east. That constitutes a minimal impact.

As to noise, although fears were voiced about noise coming from the PUD residents and their cars, no real evidence was submitted that these impacts will be of such volume as to be

significantly different from the same activities occurring in the existing neighborhood. Without some evidence that the residents of the PUD will be violating some noise standard, it is not reasonable to assume they will bring any new, or louder noise impacts than the present residents of the neighborhood already experience.

As to environmental impacts, the PUD contains abundant open space with gardens and water available to urban wildlife. As noted by the applicant, there are no identified rare or threatened species present. The neighbors concerns about loss of habitat do not match the evidence in the record which indicates the off-site impacts on the environment will be minimal.

Traffic is a tougher issue to measure. On the one hand, the record shows that both peak hour vehicle trips and ADT will increase, and even the applicant does not dispute that the increase appears to double ADT over current levels. On the other hand, the applicant argues that the proposal does not seek the highest density possible, and that the low density residential zone anticipates 14 units per acre with the associated traffic impacts.

In attempting to understand what “minimal off-site impacts” means, the Hearings Official is required to seek out the intent of the City Council in adopting those terms. *PGE v. BOLI*, 317 Or 606, 610-612 (1993). I find that the concept of minimal impacts is inherently ambiguous. It is clear that the City Council could have set a higher standard of “no off-site impacts” but chose not to do so. However, the term minimal could be argued to mean that only the minimum density could be sought in the applicable zone through a proposed PUD. That conflicts with the purposes of the residential zones as set forth in both the Metro Plan and the EC, both of which seek to increase residential density in residential areas within the urban area.

The Hearings Official concludes that it is appropriate to look to the context of EC 9.8320(12) to help understand its intent as to traffic. The context for EC 9.8320(12) are the provisions in EC 9.8320(5) and the related standards in EC 9.8650 – 9.8680 which state when a TIA is required. Those standards are discussed above and the findings are incorporated here by reference. As discussed above, EC 9.8670 sets forth three relevant circumstances in which a TIA is needed: 1) the traffic anticipated from the proposed PUD exceeds 100 peak hour trips, 2) accident rates or other “problems” warrant a study, and 3) LOS on the servicing road or nearby intersections is below standard. The City Council appears to have decided that any one of these conditions presents potential traffic system impacts that could warrant mitigation.

In interpreting related statutes or local code provisions, an interpretation must be sought that harmonizes those provisions and does not leave one provision as redundant or meaningless. Reading EC 9.8320(12), as the neighbors do, to impose a different standard for traffic impacts than EC 9.8320(5) and reading the term “minimal” to mean almost no impacts at all, would render EC 9.8320(5) and EC 9.8670 redundant if not completely meaningless. In other words, it makes no sense that the City Council would ask an applicant to go through the analysis in EC 9.8320(5) and potentially complete a TIA if the proposed PUD could be denied for having “some” impacts on the transportation system.

Instead, harmonizing EC 9.8320(12) with EC 9.8320(6) is helpful in understanding when a project might have more than “minimal off-site impacts.” While it is not prudent to theorize too much about whether a project that requires a TIA necessarily has more than minimal off-site impacts, it is certainly reasonable to assume that if any of the three conditions identified in EC 9.8670 are evident in the record, EC 9.8320(12) might be implicated. However, when none of the conditions exist that would trigger a TIA under EC 9.8670, it is reasonable to question whether EC 9.8320(12) is implicated as to traffic.

That is the case for this application and this record. There are no conditions identified in the record which come anywhere close to triggering a TIA. The peak vehicle trip estimates are less than a third of that required to trigger a TIA, and no “problems” or LOS deficiencies are identified. The neighbors’ fear that there will be more cars on Oakleigh Lane than before is not enough to view those new cars as more than a minimal impact, let alone a negative off-site impact. As such, the Hearings Official concludes that the increase in peak vehicle trips from the proposed PUD will result in minimal off-site impacts.

**EC 9.8320(13): The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.**

#### ***Staff Findings***

The proposed development is a low-density residential land use, within a low-density residential area. Given the similar residential uses, there do not appear to be any inherent conflicts that would keep the developments from being at least reasonably compatible and harmonious. The development complies with the low-density (R-1) residential development standards, with regard to density and building height. Although the development proposes attached single-family dwellings, rather than the detached nature of the surrounding neighborhood, the density is dispersed across the development site, with groupings of three to four dwelling units per building.

Further the east boundary of the development site abuts a swath of undeveloped City parkland, which contains Goal 5 riparian area associated with the Willamette River. The applicant’s plans show the development clustered away from the resource area with open space adjacent to the east property line. As such, the development is reasonably compatible and harmonious with the adjacent parkland and nearby Willamette River.

The compatibility and harmony of the development is challenged most along the west property line, where the applicant proposes vehicle use areas and garages. The applicant proposes a concrete wall along the west property line to mitigate these impacts and to provide screening to adjacent lands. As discussed previously, staff recommends the applicant obtain an easement from the affected property owners, which will ultimately test whether the wall is acceptable mitigation. If the applicant is unable to obtain the easements, staff recommends the final PUD plans show the wall setback five feet from the property line. The applicant’s plans show the wall with espaliered vegetation. These findings and conditions are detailed at EC 9.8320(11)(k),

which are incorporated here by reference.

Staff notes that the northwest corner of the development site is the gateway to the neighborhood. The wall proposed along the west property line stops short of the north property line, to enable a landscaped bed with a tree and shrubs, which will help soften the entrance to the development. As noted at EC 9.8320(5)(c) in regards to traffic, EC 9.8320(9) in regards to stormwater runoff, and EC 9.8320(4) in regards to protection of natural features, which are also incorporated here by reference, the proposed development will have minimal off-site impacts related to traffic, noise, stormwater runoff and natural resources. Based on the above findings, the development is reasonably compatible with the nearby land uses.

### ***Opponents Arguments***

The neighbors argue strenuously that the proposed PUD is not compatible or harmonious with the existing neighborhood. In addition to the reasons discussed above in EC 9.8320(12), the neighbors argue that the proposed PUD is simply too big, and that fewer buildings of a more demure size would be more harmonious with the existing neighborhood. PT-1 and PT-2:

### ***Hearing Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(13) and adopts those findings by this reference – consistent with the findings set forth below.

In the *Northgreen Property LLC. V. City of Eugene* discussed above, LUBA also affirmed the prior Hearings Official's approach to EC 9.8320(13).

Although the findings quoted above could be clearer, we understand the hearings officer to have concluded that the proposed tower is reasonably compatible and harmonious with the neighborhood where it meets the objective standards set out in the EC for telecommunications towers, and where the tower will be screened from view while still allowing the tower to function as intended. We cannot say that those findings are inadequate or represent an erroneous interpretation and application of EC 9.8320(13). We also do not think that the evidence cited by petitioner in support of its argument that the tower is not compatible with the neighborhood is so overwhelming that a reasonable person could not find that the tower is compatible, particularly given the inherently subjective nature of the criterion. *Olson v. City of Springfield*, 56 Or LUBA 229, 237 (2008).

The Hearings Official adheres to this approach. Here, a finding that the proposed PUD is incompatible and unharmonious despite having complied with all the applicable provisions of EC 9.8320 would, at least in this case, be logically and legally indefensible.

The Hearings Official is also persuaded that the proposed co-house will be compatible and harmonious for the following reasons: 1) the development will be at the end of the street where comparatively fewer property owners along Oakleigh Lane will be affected visually, 2) the scale of the buildings, as the applicant points out, are within the range of typical single family homes. The applicant states that the common house is similar in size to a large home and the other buildings are similar to smaller single family homes, 3) the proposed density is less than the maximum and the proposed height is less than the maximum height allowed, and 4) the proposed use is residential (as opposed to some conditional use allowed in the zone).

As to arguments about traffic impacts, the Hearing Official adopts the findings for EC 9.8320(12) here by this reference. Evidence of a modest increase in total vehicle trips, where there is no evidence of associated traffic problems, is sufficient to demonstrate that the proposed PUD will be compatible with adjacent and nearby uses.

**EC 9.8320(14): If the tentative PUD application proposes a land division, nothing in the approval of the tentative application exempts future land divisions from compliance with state or local surveying requirements.**

This criterion does not apply because the development does not include a future land division.

**EC 9.8320(15): If the proposed PUD is located within a special area zone, the applicant shall demonstrate that the proposal is consistent with the purpose(s) of the special area zone.**

The subject property is not located within a special area zone. As such, this criterion is not applicable.

### **Willamette Greenway Evaluation**

As required by the Type III land use application procedures beginning at EC 9.7300, the Hearings Official must review any WG permit application and consider pertinent evidence and testimony as to whether the proposal is consistent with the criteria required for approval at EC 9.8815 (shown below in **bold** typeface). In this case, the proposal is being reviewed concurrently with the tentative PUD in accordance with EC 9.8005(2).

**EC 9.8815(1): To the greatest degree possible, the intensification, change of use, or development will provide the maximum possible landscaped area, open space, or vegetation between the activity and the river.**

### ***Staff Findings***

As previously noted, the Willamette River is located more than 200 to the east of the subject property. The land between the river and the subject property is owned by the City, as an undeveloped natural resource area that contains /WR Water Resource (Goal 5) conservation areas. In this area, there is no specific, pre-determined or adopted setback from the river

under the City's implementing provisions of Goal 15 (Willamette Greenway).

While not the focus of the applicable WG permit approval criteria, staff notes that the applicable setbacks along the river in this area are based on the City's Goal 5 Adopted Riparian inventory, which is regulated with the /WR overlay zone (see EC 9.4920). The /WR conservation area at this location is greater than the typical 100-foot setback from top-of-bank along the Willamette River; here, the adopted riparian area boundary extends landward beyond the 100-foot setback from top of bank. For clarity, staff notes that the /WR conservation area does not extend onto the subject property. As shown on Attachment A, the subject property is at least 53 feet from the boundary of the regulated resource area.

Vegetation on the eastern portion of the subject property nearest the river consists of a cover crop of non-native short grasses, weedy forbs, and scattered and isolated fruit and fir trees. The location, species, and size of existing trees are shown on the applicant's topographical survey (see Attachment D-4). The eastern portion of the site, closest to the riparian area to the east, has few trees. The trees closest to the east property line include a row of fruit and filbert trees along the south property boundary, which the applicant proposes to preserve, and a row of cedars along the north property boundary.

Most of the northerly cedars are on adjacent lands to the north; the applicant proposes to preserve these trees, which is further conditioned in the PUD evaluation at EC 9.8320(3) and incorporated by reference. A 26-inch diameter cedar on the subject property, near the north property line, however, is proposed for removal to accommodate the location of Building 1. (The applicant's tree removal and preservation plan is provided on Sheet L3.) The cedar to be removed is about 50 feet from the east property line.

As for proposed landscaping between the development and the river, the applicant's landscape plan (Sheet L2) shows the eastern portion of the site as being planted with drought-tolerant native meadow grasses. The eastern portion of the site will primarily be open space, with the closest building being about 20 feet from the east property line (i.e. Building 2, abutting the north property line). Buildings to the south (i.e. Buildings 4 and 7) have greater setbacks from the east property line, by approximate 30 and 60 feet, respectively. As such, the development will provide the maximum possible open space and vegetation between the activity and the river. Additional landscaping along the east property boundary does not appear to be warranted, given the existing site conditions as an open meadow.

Based on the available information and the preceding findings, the above criterion is met.

### ***Opponent Arguments***

The neighbors argue that the configuration of the proposed PUD does not leave the maximum possible landscaped area between the development and the Willamette River. PT-2, PT-1.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8815(1) and adopts those findings by this reference – consistent with the findings set forth below.

For the purposes of EC 9.8815(1), the Hearings Official agrees with the opponents that the proposed PUD is a change in use and an intensification in use. Those facts make EC 9.8815(1) applicable and raises the question of just how much landscaped area must be provided to comply with the greenway protections. It is relevant that the subject property is over 50 feet from the regulated resource area, and that a large stand of trees exist between the river and the subject property. Nevertheless, those factors do not necessitate denying the proposal or requiring a complete reconfiguration, as opponents suggest, simply because the parking area is proposed for the western portion of the property.

For the most part, the site plan shows the bulk of the interior open space on the east side of the development. That alone is consistent with EC 9.8815(1). The distance to the river, and the fact that persons travelling along the river corridor (mostly on the bike path) will not be able to see the development also militate toward approving the PUD as proposed. That being said, the Hearings Official found under EC 9.8320(3) that additional landscaping and screening is required along the eastern boundary – at least enough to adequately screen Building 2. That condition will also support compliance with EC 9.8815(1). With the condition imposed under EC 9.8320(3), the PUD will provide the maximum possible landscaped area between the development and the river.

**EC 9.8815(2): To the greatest possible degree, necessary and adequate public access will be provided to and along the river by appropriate legal means.**

### ***Staff Findings***

The applicant's plans show pedestrian and bicycle circulation within the development via interconnected paths between the buildings and bicycle parking areas. The applicant notes that there is an existing worn path along the north property line, between the Oakleigh Lane roadway and the east property line, abutting the City parklands. The applicant proposes to keep this path open, but does not explicitly show any dedications to the public to enable continued access. Right-of-way dedication is required over this area, to enable continued public access, pursuant to the concurrent PUD approval criterion EC 9.8320(5), the findings and conditions of which are incorporated by reference.

The applicant also proposes to stub a soft path to the southeast corner of the site. The segment of the internal sidewalk system that is located between the most easterly building (a bike barn) and the east property line is shown as having a graveled, rather than a paved, surface. This unimproved surface is appropriate because there are no plans or funding for construction of a public path on the City property at this location. Residents of the development will naturally want to walk across the City parkland toward the river. Parks staff state no objections or concerns. This proposed path

at least delineates a more confined direction of travel, rather than random wandering through the City's resource area.

This portion of the City property has been cultivated as a filbert orchard, which has been maintained by the former owner of the subject property, as discussed in the applicant's written statement. There appears to be an informal path between the orchard and the subject property that would direct travelers to the southerly McClure Lane right-of-way. Public Works staff confirms that the planned bicycle and pedestrian connection through the City's parkland is from McClure Lane toward the easterly West Bank Bike Path, which is a regional facility that borders the west bank of the Willamette River.

Based on the above findings, and the condition at EC 9.8320(5), public access will be provided to the river by appropriate legal means. Refer to Attachment B and C for visual representations of these findings.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8815(2) and adopts those findings by this reference. The opponents are incorrect in their statement that no right-of-way has been provided for access to the bike path through Oakleigh Lane to the north.

**EC 9.8815(3): The intensification, change of use, or development will conform with applicable Willamette Greenway policies as set forth in the Metro Plan.**

### ***Staff Findings***

Pages III-D-4 and 5 of the Metro Plan contain the Willamette Greenway policies. Of these, several policies provide direction to local governments regarding legislative decision-making and other long range planning efforts, and do not constitute mandatory approval criteria for the application. The following Metro Plan policy is potentially relevant to the proposed development, and is therefore addressed below.

*Policy D.5: New development that locates along river corridors and waterways shall be limited to uses that are compatible with the natural, scenic, and environmental qualities of those water features.*

The proposed use is appropriate in this location, as the Metro Plan designates the subject property for residential uses. The proposed development is an allowed use that requires PUD approval; staff has determined previously in this report that the proposed development is consistent with the PUD approval criteria. To the extent the above policy is applicable, the development is setback more than 200 feet from the river, with City parkland and riparian areas located between the subject property and the river which will not be impacted by the proposed development. Further, the development proposes open space along the eastern portion of the site, abutting the parkland, and has setback buildings by at least 20 feet from the east property

line. As such, the proposed residential use is compatible with the natural, scenic, and environmental qualities of the river corridor.

Based on the above findings, the proposed development is consistent with the applicable Willamette Greenway policies set out in the Metro Plan. The above criterion is met.

### *Opponent Arguments*

Neighbors argue that a number of Metro Plan goals and objectives are not met by the proposal. The neighbors also argue that Metro Plan policies D.5 and D.8 are not met. PT-2.

### *Hearings Official Conclusions*

The Hearings Official generally concurs with Staff's findings for EC 9.8815(3) and adopts those findings by this reference. Staff's analysis of policy D.5 is sufficient to respond to the neighbors' argument concerning policy D.5. As to policy D.8, the language applies to "Willamette River Greenway plans" not to individual development proposals.

**EC 9.8815(4): In areas subject to the Willakenzie Area Plan, the intensification, change of use, or development will conform with that plan's use management considerations.**

This criterion does not apply because the area of request is not within the boundaries of the Willakenzie Area Plan.

**EC 9.8815(5): In areas not covered by subsection (4) of this section, the intensification, change of use, or development shall conform with the following applicable standards:**

- (a) Establishment of adequate setback lines to keep structures separated from the Willamette River to protect, maintain, preserve, and enhance the natural, scenic, historic, and recreational qualities of the Willamette Greenway. Setback lines need not apply to water related or water dependent activities as defined in the Oregon Statewide Planning Goals and Guidelines (OAR 660-15-000 et seq.).

### *Staff Findings*

Outside the Willakenzie Area Refinement Plan (WAP) and the Goal 5 Water Resource (/WR) riparian conservation area (neither of which affect the subject property), there is no regulatory setback from the Willamette River. For context, the WAP establishes a 35-foot setback and the /WR establishes a 100-foot setback from the top of the bank of the Willamette River. In this location, the /WR conservation area exceeds 100 feet from the riverbank, yet is still more than 50 feet from the subject property (see Attachment A).

The existing setback, of more than 200 feet from the ordinary high water line of the Willamette River, afforded by the intervening public park, is adequate to protect and maintain the natural and scenic qualities of the Willamette Greenway. The development plan preserves the natural and scenic qualities of the site by maintaining the existing open prairie conditions along the eastern portion of the site, by setting the buildings back from the east property line by at least 20 feet and by creating common open space that will be vegetated with native grasses.

***Opponent Arguments***

The neighbors argue that there are no setback lines between the river corridor and the proposed PUD. PT-2.

***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8815(5)(a) and adopts those findings by this reference.

- (b) Protection of significant fish and wildlife habitats as identified in the Metropolitan Plan Natural Assets and Constraints Working Paper. Sites subsequently determined to be significant by the Oregon Department of Fish and Wildlife shall also be protected.**

***Staff Findings***

The Metropolitan Plan Natural Assets and Constraints Working Paper does not identify any significant fish and wildlife sites on the subject property. Although the Willamette River Corridor is an Anadromous Fish River that is designated as an essential Salmon Habitat by the Oregon Department of Fish and Wildlife (ODFW), the subject property is located more than 200 feet west of the ordinary high water line. No habitat protection measures appear to be required of the proposed development.

***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8815(5)(b) and adopts those findings by this reference.

- (c) Protection and enhancement of the natural vegetative fringe along the Willamette River to the maximum extent practicable.**

***Staff Findings***

The proposal does not affect the vegetated fringe along the Willamette River, which is located more than 200 feet to the east. The regulated riparian resource conservation area is shown on

Attachment A. The existing vegetation closest to the river will be maintained as an open prairie with native grasses in common open space.

***Opponent Arguments***

The neighbors argue that the lack of landscaping along the eastern boundary violates this provision. PT-2.

***Hearings Official Conclusions***

The term “fringe” must be given some meaning in applying this provision. The neighbors interpret fringe to mean the entire greenway area. As Staff notes in the findings for EC 9.8815(1), the subject property is over 50 feet from the regulated resource area. That places the subject property well beyond the “fringe” of the Willamette River. Staff’s conclusions are correct.

**(d) Preservation of scenic qualities and viewpoints as identified in the Metropolitan Plan Natural Assets and Constraints Working Paper.**

The subject property is not identified as having scenic qualities or viewpoints on the Metropolitan Plan Natural Assets and Constraints Working Paper.

**(e) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass in both rural and urban areas to the maximum extent practicable.**

Staff found, and the Hearings Official agrees, that the applicant indicates that there is an existing dirt path along the north property line, between Oakleigh Lane and the City parkland. This indicates potential public trespass on private property. The applicant proposes to keep this path open, but does not explicitly show any dedications to the public to enable continued access. Right-of-way dedication is being required over this area, to enable continued public access, pursuant to the concurrent PUD approval criterion EC 9. 8320(5), the findings and conditions of which are incorporated here by reference. Overall, development of the subject property with dwelling units would increase public safety by providing more eyes on the City parkland.

**(f) Compatibility of aggregate extraction with the purposes of the Willamette River Greenway and when economically feasible, applicable sections of state law pertaining to Reclamation of Mining Lands (ORS Chapter 517) and Removal of Material; Filling (ORS Chapter 541) designed to minimize adverse effects to water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.**

This standard does not apply because the proposal does not include aggregate extraction.

- (g) **Compatibility with recreational lands currently devoted to metropolitan recreational needs, used for parks or open space and owned and controlled by a general purpose government and regulation of such lands so that their use will not interfere with adjacent uses.**

***Staff Findings***

Referral comments from Public Works staff indicate no concern with the proposed development's compatibility with the City's adjacent public open space.

***Opponent Arguments***

The neighbors argue that the lack of landscaping along the eastern boundary violates this provision. The neighbors also argue that the size of the buildings will interfere with the public's use of the adjacent City owned open space.

***Hearings Official Conclusions***

The findings for EC 9.8320(3) discuss screening and landscaping along the property boundaries adjacent to the City open space. Those findings are incorporated here by reference. The additional landscaping and screening required will also address this criterion. The Hearings Official also finds it to be nearly absurd to suggest that low density residential use is incompatible with recreation along the greenway. The maps of the area in the record and presented at the hearing show that the majority of nearby lands along the greenway and the bike path are residential – and that residential uses is typically much closer to the river. I find no persuasive evidence to suggest that persons currently using the adjacent City open space will not continue to be able to use it for recreation as it is now currently used.

**EC 9.8815(6): When site review approval is required, the proposed development will be consistent with the applicable site review criteria.**

This criterion does not apply because the subject property is not zoned with the /SR Site Review Overlay, nor does the subject development require Site Review approval.

**EC 9.8815(7): The proposal complies with all applicable standards explicitly addressed in the application. An approved adjustment to a standard pursuant to provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard.**

The concurrent PUD application has been evaluated against all applicable development standards. Based on the findings and conditions provided at EC 9.8320(11)(k), which are incorporated by reference, the above criterion will be met.

**Decision**

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant's request for a Planned Unit Development, Tentative Plan approval and Willamette Greenway Permit subject to the following conditions:

1. The final PUD plans shall show Building 2 located outside (moved south) of the required right-of-way dedication along the north property line.
2. Prior to final PUD approval, the applicant shall submit a report from a certified arborist confirming that the row of cedars on adjacent lands to the north can survive the construction impacts of the proposed development (and include any necessary protection measures to ensure survival). The final PUD plans shall show the location of Building 2 and any related protection measures (e.g. construction fencing for protected CRZ areas) consistent with the arborist's recommendations.
3. Prior to final PUD approval, the applicant shall revise the final site plan to show the dedication of 22.5 feet of right-of-way along the northerly boundary of the development, between the westerly boundary of the proposed development and a line that is 50 feet east of the westerly boundary, and also to show the dedication of 13 feet of right-of-way extending from the aforementioned line (the east end of the required 22.5 feet of right-of-way dedication) to a line that is 117 feet beyond (east of) the existing the existing right-of-way (for a total length of 199 feet). Additionally, the revised site plan shall show the dedication of a 13-foot wide Public Accessway along the northerly boundary, which extends from the east end of the aforementioned right-of-way to the easterly property boundary (for a total distance of 24 lineal feet).
4. Prior to final PUD approval, the applicant shall submit for review and approval by City staff and recording at Lane County Deeds and Records, a street deed which reflects the right-of-way as shown on the final site plan.
5. Prior to final PUD approval, the applicant shall dedicate a temporary emergency vehicle access easement over the on-site hammerhead and the access drive from Oakleigh Lane, and show this easement on the final PUD plans.
6. Prior to final PUD approval, the applicant shall provide documentation from EWEB, confirming that water facilities are available for the proposed development.
7. The applicant shall submit an Irrevocable Petition for public improvements in Oakleigh Lane to include paving, curbs and gutters, storm drainage, sidewalks, and street trees.
8. The final site plan shall delineate the Special Flood Hazard Area, identify Base Flood Elevation (for the entire site or for each building), and note that development of the site will be required to comply with the standards at EC 9.6707 through EC 9.6709.

9. The final PUD site plans shall note that construction permits shall conform to the applicant's geotechnical analysis.
10. The final PUD plans shall note that all on-site utilities will be placed underground consistent with EC 9.6775.
11. The final PUD plans shall note the requirement that, at the time of development, all stormwater discharge points directed toward the City's property shall be designed as level spreaders, consistent with the City's 2008 Stormwater Management Manual. All stormwater facilities shall be located outside the public wastewater easement along the east property line.
12. The final site plan shall note: "On-site stormwater management facilities will be privately owned and operated. An operation and maintenance plan will be developed consistent with the City's Stormwater Management Manual, and notice of this plan will be recorded, during the building permit process."
13. Prior to final PUD approval, the applicant shall obtain from the property owners of Tax Lots 500, 5600, 5700, and 10100, an easement abutting the proposed structures on the subject property that are located less than five feet from the interior property lines (i.e. the garages, carports, and wall along the west property line, and the portion of the wall and Building 6 abutting the south property line). The easement shall establish a 10-foot no-build zone, for fire code purposes, and, for at least the first five feet abutting the common property line, rights for the development to access and maintain the backside of their buildings. Alternatively, if the applicant is unable to obtain these off-site private easements from the adjacent property owners, then the final PUD plans shall show all structures setback at least five feet from the property lines.
14. The final site plans shall note that compliance with the following development standards will be determined more precisely at the time of building permit review:
  - a. Landscape Standards beginning in EC 9.6200
  - b. Garbage Screening contained in EC 9.6740
  - c. Bicycle Parking Standards contained in EC 9.6105
  - d. Outdoor Lighting Standards contained in EC 9.6725
15. Prior to final PUD approval, the applicant shall revise the final site plan and landscaping plan compliant with EC 9.6200 to provide landscape screening along the eastern property boundary, and a combination of landscape screening and fencing along the southern property line, to screen the buildings from view from adjacent properties.

Dated this 12<sup>th</sup> day of November, 2013.

Mailed this 12<sup>th</sup> day of November 2013.

*Kenneth D. Helm*

Kenneth D. Helm  
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS

**APPEAL STATEMENT**

**RE DECISION APPROVING PLANNED UNIT DEVELOPMENT**

**OAKLEIGH MEADOWS CO-HOUSING – FILE PDT 13-1**

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The following statement by appellant, who is a member of the **River Road Community Organization**, a City-chartered neighborhood association, lists the specific issues on appeal and identifies where the Hearings Official's Decision is inconsistent with the criteria applicable to the above captioned application for approval of a planned unit development (tentative).

The River Road Community Organization neighborhood association encompasses the subject property, and the River Road Community Organization members voted to file this appeal.

**THE HEARINGS OFFICIAL DECISION**

On November 12, 2013, the Hearings Official approved a planned unit development (tentative) for the subject property. The Decision was mailed on November 12, 2013.

**REFERENCED DOCUMENTS<sup>1</sup>**

- "Staff Report" – Eugene Planning Staff Report, dated September 2013
- "Decision" – Hearings Official Decision (PDT 13-1, WG 13-1), dated November 12, 2013.
- "Conte 10/9" – Testimony by Paul Conte, dated October 9, 2013
- "Conte 10/16" – Supplemental testimony by Paul Conte, dated October 16, 2013

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<sup>1</sup> Note that references to exhibits in the following sections are intended to assist the Planning Commission in understanding the assignments of error and are not intended as exhaustive references to all relevant evidence in the record.

## FIRST ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(1) The PUD is consistent with applicable adopted policies of the Metro Plan.**

The *Metro Plan* "Transportation Element" states:

### F. Transportation Element

The Transportation Element addresses surface and air transportation in the metropolitan area. The *Eugene-Springfield Metropolitan Area Transportation Plan (TransPlan)* provides the basis for the surface transportation portions of this element and the *Eugene Airport Master Plan* provides the basis for the air transportation portions.

...

Goals and policies in *TransPlan* are contained in this Transportation Element and are part of the adopted *Metro Plan*. *TransPlan* project lists and project maps are also adopted as part of the *Metro Plan*. (*Metro Plan* III-F-1)

The following subassignments of error individually and in combination resulted in the erroneous finding that the application was consistent with the *Metro Plan*.

Whether or not the two unexamined policies, discussed below, are mandatory approval criteria, the Hearings Official was required to evaluate and balance relevant plan provisions in his findings and decision, which he failed to do. *Bothman v. City of Eugene*, Or LUBA 701 (2006). He also failed to consider these policies as relevant context for his findings in regards to the specific approval criteria covered below.

See Conte 10/9 pages 3 to 4.

### SUBASSIGNMENT OF ERROR 1.A

The Decision failed to address the following policy at all:

**TransPlan Transportation System Improvements (TSI) Pedestrian Policy #1: Pedestrian Environment (*Metro Plan* Policy F.26)**

Provide for a pedestrian environment that is well integrated with adjacent land uses and is designed to enhance the safety, comfort, and convenience of walking. (*Metro Plan* III-F-9)

Evidence in the record clearly shows that Oakleigh Lane would have to be widened and improved to accommodate the significant increase in vehicular,

bicycle and pedestrian traffic that the PUD would generate and still provide a safe and comfortable environment for pedestrians (including individuals in wheelchairs or with other mobility limitations) using Oakleigh Lane to and from River Road, as well as to and from the public bike/ped path along the river.

The Decision failed to impose adequate condition(s) to ensure there would be sufficient right-of-way, sidewalks and other improvements required for consistency with this policy.

All statements related to pedestrian safety under Subassignments of Error 2.A, 2.B, 3.A, 4.B and 10.A and the Fifth and Sixth Assignments of Error are included herein by reference.

**SUBASSIGNMENT OF ERROR 1.B**

The Decision failed to address the following policy at all:

**TransPlan Finance Policy #4: New Development** (*Metro Plan Policy F.36*)

Require that new development pay for its capacity impact on the transportation system. (*Metro Plan III-F-13*)

Evidence in the record clearly shows that Oakleigh Lane would have to be widened and improved to accommodate the significant increase in vehicular, bicycle and pedestrian traffic that the PUD would generate and still provide a safe and efficient road for vehicles, including emergency response vehicles, bicyclists, pedestrians and individuals in wheelchairs.

The Decision failed to impose adequate conditions to ensure there would be sufficient right-of-way, sidewalks and other improvements in place at the time the proposed development was occupied so as to be consistent with this policy.

Approval of this PUD without such conditions would thereby cause the other property owners along Oakleigh Lane to face potential condemnation and/or large financial assessments to acquire the necessary right-of-way and construct the required improvements.

All statements related to the necessary right-of-way and improvements under Subassignments of Error 10.A, 10.B and 10.C and the Second, Third, Fourth and Fifth Assignments of Error are included herein by reference.

## SECOND ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(5) The PUD provides safe and adequate transportation systems through compliance with the following:**

- (a) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).
- (b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.
- (c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.

The Hearings Official erred in finding that the proposed PUD complied with EC 9.8320(5) and would provide a "safe and adequate transportation system." The proposed PUD required multiple exemptions from street standards under EC 9.6815(2)(g). However, those exemptions were based on a local street connection study that considered only partial buildout of the impacted area. For example, the street connection study assumed no infill and only partial buildout of tax lot 200 to the north with flag lots. The local street connection study should have been required to assume full build out of the surrounding area.

In addition, the Hearings Official did not explain how the exception meets EC 9.6815(1)(a) regarding providing a "safe" street design, as well as (e) requiring the street system to "encourage" walking and bicycling, when the remainder of Oakleigh Lane is inadequate to accommodate the new traffic.

The following subassignments of error individually and in combination resulted in the erroneous finding that the PUD would provide safe and adequate transportation systems.

**SUBASSIGNMENT OF ERROR 2.A**

The Decision erred by finding the application met the following criterion:

- (a) **EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).**

The Decision erroneously found that Oakleigh Lane would meet, or was exempt from, the applicable standards established for a safe and adequate transportation system.

EC 9.6815(2)

The Decision erroneously found that Oakleigh Lane was exempt from the applicable standards established for a safe and adequate transportation system.

“The applicant’s August 6, 2013 connectivity study provides analysis required to comply with EC 9.6815(2)(g)(1)(b) which allows for alternative street designs if it can be shown that “undeveloped or partially developed properties within a quarter mile can be adequately served by alternative street layouts.” (Decision at 25)

The Hearings Official erroneously found that the applicant’s proposed street design would adequately serve Tax Lot 200, despite severely limiting future development of that lot, which is under ownership of opponents of the PUD.

The Hearings Official’s decision is a clear *exaction* from the owner of Tax Lot 200 to the benefit of the applicant. This decision fails to meet the constitutional standards for such exactions.

Further, in considering the requirements of EC 9.6815(2)(g)(1)(b), the Hearings Official failed to consider and properly apply the substantial evidence provided by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

Further, the Decision cites to the purpose in EC 9.6800, which states:

“Sections 9.6800 through 9.6875 establish standards for the dedication, design and location of public ways to address the purpose of this land use code contained in EC 9.0020 Purpose”

However, the Hearings Official failed entirely to actually evaluate EC 9.0020 Purpose, which states:

“The purpose of the land use code is to protect and promote the health, safety, and general welfare of the public ...”

The proper interpretation is that the purpose of 9.6800 through 9.6875 is to establish standards to “protect and promote the health, safety, and general welfare of the public.” Furthermore, these standards must actually be met in an adequate way to satisfy the intended purpose.

The Decision therefore erroneously limited the scope of EC 9.6800 to “dedications” and neglected to evaluate, and impose conditions, as necessary to ensure the safety of vehicles, bicyclists and pedestrians using Oakleigh Lane would be protected and promoted. Similarly, the required analysis and findings with respect to emergency response vehicles wasn’t done, which failed to “protect and promote” the health and safety of the general public.

See Conte 10/9 pages 12 to 14.

EC 9.6820 Cul-de-Sacs and Turnarounds

The Decision erroneously found that Oakleigh Lane was exempt from the applicable standards established for a safe and adequate transportation system. The Hearings Official relied upon the following staff finding without additional analysis:

“The street connectivity exception also warrants an exception to the 400-foot maximum length of a dead-end street, pursuant to EC 9.6820(5)(b).”

An exception may be granted, where applicable, to one of the following EC 9.6820 requirements:

- (1) Except for streets that are less than 150 feet long and streets that will be extended in the future, all streets that terminate shall be designed as a cul-de-sac bulb or an emergency vehicle turnaround.
- (3) There shall be no cul-de-sacs more than 400 feet long from the centerline of the intersecting street to the radius point of the cul-de-sac bulb.
- (4) Public accessways to provide safe circulation for pedestrians, bicyclists and emergency vehicles shall be required from a cul-de-sac or emergency vehicle turnaround longer than 150' in length when measured from the centerline of the intersecting street to the radius point of the cul-de-sac or to the center point of the emergency vehicle turnaround.

The cited exception at EC 9.6820(5)(b) requires:

“Buildings or other existing development on the subject property or adjacent lands, including previously subdivided but vacant lots or parcels, physically preclude a connection now or in the future, considering the potential for redevelopment.”

The Hearings Official erred in granting an exception pursuant to EC 9.6820(5). That provision requires a showing either that (a) "physical conditions preclude development" of the street or (b) "buildings or other existing development . . . physically preclude the street." Neither condition was met in this case.

Furthermore, even if it were the case that there is no feasible alternative connection between the proposed development and River Road, other than Oakleigh Lane, that situation would justify an exemption *only* to EC 9.6820(3), but *not* to EC 9.6820(1) and (4). EC 9.6820(3) prohibits cul-de-sacs that would exceed a certain length, when that's avoidable; but that isn't the situation with Oakleigh Lane. However, EC 9.6820(1) and (4) are clearly meant as requirements that *do* apply to a long, dead-end street, such as Oakleigh Lane, that exceeds the normal length limit.

EC 9.6820(4) makes absolutely clear that the City Council meant to require improvements to long cul-de-sacs in order to "provide safe circulation for pedestrians, bicyclists and emergency vehicles."

The Hearings Official erroneously exempted the application from providing a public accessway that meets the code's standards in order to "provide safe circulation for pedestrians, bicyclists and emergency vehicles."

#### **SUBASSIGNMENT OF ERROR 2.B**

The Decision erred by finding the application met the following criterion:

- (b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.**

The Decision erroneously found that Oakleigh Lane would meet, or was exempt from, the applicable standards established for safe use by pedestrian and bicyclists using Oakleigh Lane to and from nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks on River Road and beyond.

EC 9.8320(5)(b) requires the applicant to demonstrate a safe and adequate transportation system "to adjacent and nearby" areas. As noted elsewhere in the Hearings Official decision, a 45 foot right of way was required and, "the public interest in safe vehicular, pedestrian and bicycle travel and emergency

response will be at risk" if that minimum right of way is not dedicated. If the dedication is required to adequately protect the public interest on site, it should also be required off-site, otherwise, the PUD is imposing unsafe risks in areas outside of the development.

The Hearings Official failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

In particular, the Hearings Official's findings are inconsistent with the PWD analysis found in the Staff Report on page 13.

See Conte 10/9 pages 14 to 16.

Furthermore, in his interpretation of the requirements of EC 9.8320(5)(b), the Hearings Official failed to consider the context that clearly shows Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for pedestrians, bicyclists and emergency vehicles for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

#### **SUBASSIGNMENT OF ERROR 2.C**

The Decision erred by finding the application met the following criterion:

- (c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.**

The Decision erroneously found that no Traffic Impact Analysis was required for the application. The TIA is required under the following code provision:

#### **EC 9.8670 Applicability**

...

- (2) The increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action under the city's traffic calming program, and identified locations where pedestrian and/or bicyclist safety is a concern by the city that is documented. (Emphasis added)**

The Hearings Official failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

In particular, the PWD analysis found in the Staff Report on page 13 documented City concerns over pedestrian safety on Oakleigh Lane.

See Conte 10/9 page 16 and Conte 10/16 pages 2 to 3.

Furthermore, in his interpretation of the requirements of EC 9.8320(5)(c), the Hearings Official failed to consider the context clearly showing Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for pedestrians and bicyclists for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

### THIRD ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(6) The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.**

#### SUBASSIGNMENT OF ERROR 3.A

The Decision erroneously found that the PUD would not be a significant risk to public safety.

The Hearings Official provided no evaluation of PWD's own analysis that "emergency response and access will be at risk" unless Oakleigh Lane's right-of-way was widened and the road improved. Instead he relied entirely on staff findings.

In addition, the errors cited under Subassignments of Error 2.A, 2.B, 4.A, 4.B and 4.C, as they relate to the safety of drivers, bicyclists and pedestrians, demonstrate that the PUD would pose significant risk to public safety unless Oakleigh Lane is widened and improved. The relevant arguments in Subassignments of Error 2.A, 2.B, 4.A, 4.B and 4.C are included here by reference.

The Hearings Official and the staff finding both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 page 16.

**SUBASSIGNMENT OF ERROR 3.B**

The Hearings Official provided no evaluation of PWD's own analysis that Oakleigh Lane would be an impediment to emergency response unless the right-of-way was widened and the road improved. Instead he relied entirely on staff findings.

The Hearings Official and the staff finding both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 page 16.

Furthermore, in his interpretation of the requirements of EC 9.8320(6), the Hearings Official failed to consider the context clearly showing Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for emergency vehicles for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

**FOURTH ASSIGNMENT OF ERROR**

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(11) The PUD complies with all of the following:**

**(b) EC 9.6500 through EC 9.6505 Public Improvement Standards.**

**EC 9.6505 Improvements-Specifications**

**EC 9.6505(3)(b) Streets and Alleys**

**EC 9.6505(4) Sidewalks**

**EC 9.6505(5) Bicycle Paths and Accessways.**

**SUBASSIGNMENT OF ERROR 4.A**

The Decision erroneously found that Oakleigh Lane, which is not only adjacent to, but also serves as the only vehicular access to and from the development site, would be paved to the specifications in EC 9.6870 (or exempt).

EC 9.6505(3)(b) requires:

The developer shall pave streets and alleys adjacent to the development site to the width specified in EC 9.6870 Street Width, unless such streets and alleys are already paved to that width, provided the City makes findings to demonstrate consistency with constitutional requirements. All

paving shall provide for drainage of all such streets and alleys, and construct curbs and gutters, sidewalks, street trees and street lights adjacent to the development site according to the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways and standards and specifications adopted pursuant to Chapter 7 of this code and other adopted plans and policies.

The Hearings Official relied on his findings for EC 9.8320(5), but fails to provide the required *specific* explanation for how those findings demonstrate compliance with EC 9.6505(3)(b). The discussion under the Second Assignment of Error, above, and which are incorporated here by reference, demonstrates that the Decision is erroneous in this reliance.

The Hearings Official and the staff both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 pages 16 to 17.

#### **SUBASSIGNMENT OF ERROR 4.B**

The Decision erroneously found that Oakleigh Lane, which is not only adjacent to, but also is and will be used by pedestrians to and from River Road and to and from the public bike/ped path along the river, would provide sufficient sidewalks that are located, designed and constructed according to the specifications in Eugene Code and referenced standards.

EC 9.6505(4) requires:

Sidewalks shall be located, designed and constructed according to the provisions of this land use code, the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways, construction and design standards adopted pursuant to Chapter 7 of this code, and other adopted plans and policies.

The Hearings Official relied on his findings for EC 9.8320(5), but fails to provide the required *specific* explanation for how those findings demonstrate compliance with EC 9.6505(4). The discussion under the Second Assignment of Error, above, and which are incorporated here by reference, demonstrates that the Decision is erroneous in this reliance.

The Hearings Official and the staff both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

Furthermore, in his interpretation of the requirements of EC 9.6505(4), the Hearings Official failed to consider the context clearly showing Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for pedestrians and bicyclists for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

#### SUBASSIGNMENT OF ERROR 4.C

The Decision erroneously found that Oakleigh Lane, which is not only adjacent to, but also is and will be used by bicyclists to and from River Road and to and from the public bike/ped path along the river, would provide sufficient bike accessways that are located, designed and constructed according to the specifications in Eugene Code and referenced standards.

EC 9.6505(5) requires:

Bicycle Paths and Accessways shall be designed and constructed according to provisions of this land use code, the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways, construction and design standards adopted pursuant to Chapter 7 of this code, and other adopted plans and policies.

The Hearings Official relied on his findings for EC 9.8320(5), but fails to provide the required *specific* explanation for how those findings demonstrate compliance with EC 9.6505(5). The discussion under the Second Assignment of Error, above, and which are incorporated here by reference, demonstrates that the Decision is erroneous in this reliance.

The Hearings Official and the staff both failed to consider and properly apply the substantial evidence provided by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

Furthermore, in his interpretation of the requirements of EC 9.6505(5), the Hearings Official failed to consider the context clearly showing Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for bicyclists for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

## FIFTH ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(12) The proposed development shall have minimal off-site impacts, including impacts such as traffic, noise, stormwater runoff and environmental quality.**

The Decision erroneously found that the PUD would have minimal off-site traffic impacts.

The Hearings Official did not properly interpret the meaning of “minimal off-site impacts.” Among the errors were: not following the proper analysis to interpret “minimal”; not following the proper analysis of “impacts” as set out in *Benjamin v. City of Ashland*, 19 Or LUBA 600 (1990)<sup>2</sup>; and incorrectly narrowing the meaning to impacts on traffic, and failing to evaluate impacts from traffic (safety, noise, etc.).

Further, the Hearings Official’s apparent assumption that “when none of the conditions exist that would trigger a TIA under EC 9.8670, it is reasonable to question whether EC 9.8320(12) is implicated as to traffic” would rob EC 9.8320(12) of any meaning or purpose with respect to impacts from traffic, which is an impermissible interpretation under ORS 174.010.<sup>3</sup> This finding conflicts even with the Hearings Official’s earlier statement that: “In interpreting related statutes or local code provisions, an interpretation must be sought that harmonizes those provisions and does not leave one provision as redundant or meaningless.” (Decision at 52)

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<sup>2</sup> “In this case, if there was testimony in the proceedings below which focused on an issue arguably relevant to the qualities of livability and appropriate development in the neighborhood surrounding the proposed medical office complex, the city is required to address that issue in its findings. In addressing such an issue, the city must either (1) explain why the issue is not relevant to the qualities of livability and appropriate development in the surrounding neighborhood, or (2) identify the issue as relevant to determining the livability and appropriate development in the surrounding neighborhood and assess the impacts of the proposed development with regard to the issue.”

<sup>3</sup> “In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.”

The Hearings Official and the staff findings both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 pages 17 to 20 and Conte 10/16 page 12 (Item #7).

#### SIXTH ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(13) The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.**

The Decision erroneously found that the PUD would be reasonably compatible and harmonious with adjacent and nearby land uses, despite the substantial impacts of traffic and/or street widening and improvements on the nearby residents and single-family home owners.

With respect to traffic, the Hearings Official addressed only the requirement for the development to be "reasonably compatible" and neglected to address the requirement that the development's substantial increase in traffic, which will make numerous round trips out and back along the entire length of Oakleigh Lane, is "harmonious" with the nearby residents. Decision at 55.

ORS 174.10 requires that both terms be given meaning, and the Hearings Official may not "omit what has been inserted" into the criterion by City Council.

The Hearings Official relied on his findings for EC 9.8320(12), but failed to provide the required *specific* explanation for how those findings demonstrate compliance with EC 9.8320(13). The discussion under the Fifth Assignment of Error, above, and which is incorporated here by reference, demonstrates that the Decision is erroneous in this reliance.

The Hearings Official and the staff finding both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 page 20.

Further, the Hearings Official's finding that there was "no evidence" of traffic issues in the record also ignored the evidence of Mr. Simon Trautman regarding a significant accident on River Road at the intersection of Oakleigh Lane. The accident was due to the short windows to get onto River Road.

That issue will only become more likely as the trips increase on Oakleigh Lane.

The Hearings Official also failed to understand the off-site impacts require the proposed PUD to be viewed in context - a development that creates 164 new vehicle trips per day may have minimal impact when access is off of a collector street or arterial, but when the development dumps that traffic onto a low volume residential street, doubling the number of trips, the impacts of that development are not "minimal."

Further, the proposed "screening" is inadequate and does not ensure the development is compatible and harmonious with nearby used. The discussion under the Seventh Assignment of Error is included here by reference.

Further, the proposal pushes building, garages, barns and other structures to the edge of the property, requiring modifications to the setbacks on three of its sides. The proposal uses a concrete wall as its main face to the neighborhood to the west. The proposal pushes its buildings into the setbacks to the north and to the south. The Hearings Official relies on size of buildings, density calculations, height limits and other factors; however, those limitations are already imposed by code, so they provide no basis to find this criterion is met. Moreover, the Hearings Official calculation of size is erroneous and does not understand the context of the neighborhood, which includes smaller homes. This proposal is not harmonious and reasonably compatible with the neighborhood. It will stick out like a sore thumb.

#### SEVENTH ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

- EC 9.8320(3) The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.**

The Hearings Official erred in finding that the proposed PUD would comply with EC 9.8320(3) requiring "adequate screening" from surrounding properties. The Hearings Official appears to have only considered height, but the criterion requires consideration of "building location [and] bulk" as well. In addition, the Hearings Official found the screening to the north adequate based, in part, on cedar trees that are on adjacent property. This is inadequate as that "screening" can be removed by the adjoining property owner. The screening on the northern boundary was also found adequate based on landscaping and planters, but those will be located in the dedicated right-of-way. Moreover, the screening requirement is not met when the

applicant pushes its impacts to the very edge of the property, requiring multiple adjustments to setback requirements for the wall to the west and the buildings on the other sides, while keeping open space in the center. This arrangement does not adequately "screen" the property, nor does it show that the development is "reasonably compatible and harmonious" with adjacent properties as required by EC 9.8320(13).

The Hearings Official also erred in deferring consideration of whether there will be adequate screening to a decision that will be made without public input or opportunity to comment. EC 9.83.20(3) requires the applicant to show that there will be adequate screening as part of the tentative plan. On page 14, the Hearings Official finds that "the applicant's approach is insufficient" and later imposes condition of approval 15, but that condition defers the determination of what will be "adequate" to a later time.

The Hearings Official erred by relying on the following condition for a finding of consistency with EC 9.8320(3):

"Prior to final PUD approval, the applicant shall submit a report from a certified arborist confirming that the row of cedars on adjacent lands to the north can survive the construction impacts of the proposed development (and include any necessary protection measures to ensure survival). The final PUD plans shall show the location of Building 2 and any related protection measures (e.g. construction fencing for protected CRZ areas) consistent with the arborist's recommendations." Decision at 11.

First, as mentioned above, the finding relies on a row of cedars on adjacent lands to the north, which are not under control of the applicant. A finding that these trees can survive the construction impacts of the proposed development in no way ensures that the cedar trees will remain.

Second, for a condition to defer an analysis such as this, there must be the same opportunity at the time the analysis is presented for opponents to provide their own evidence and argument and testify at a hearing, which this condition does not provide.

#### **EIGHTH ASSIGNMENT OF ERROR**

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(11): The PUD complies with all of the following:**

- (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone.

**SUBASSIGNMENT OF ERROR 8.A**

The Hearing Official erred in his calculation of the net density area pursuant to EC 9.2751. For example, on page 35 of the decision, The Hearings Official excludes all easements from that calculation. The net density provisions are intended to determine the amount of land that is available to build; because buildings are not allowed within easements and areas dedicated for water, sewer, street and similar public services, those areas must be excluded from the calculation.

**SUBASSIGNMENT OF ERROR 8.B**

The Hearings Official erred in his understanding of the concept of "clustering" under EC 9.8300(1)(e). As the Hearings Official noted, the code specifically allows for clustering; however, even a cursory review of the site plan demonstrates that what is proposed is not "clustering" of buildings. The buildings and development have been pushed out to the edge of the property requiring modifications to the setbacks on three sides of the property. This is not clustering but imposing the negative impacts of the development onto the adjacent property. True clustering would reduce the need for modifications to setbacks.

**NINTH ASSIGNMENT OF ERROR**

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(11)**

- (k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.**

**9.2795 Solar Setback Standards**

The Hearings Official erred in his interpretation of the solar setbacks pursuant to EC 9.2795. Although the solar setbacks may be modified, the Hearings Official is required to understand the extent of the modification to determine if it is consistent with the purposes of the PUD ordinance. The error made by the Hearings Official was to measure the solar setback from the existing property line rather than the property line established by the required dedications.

## TENTH ASSIGNMENT OF ERROR

The Hearings Official made a decision that was not supported by substantial, probative and reliable evidence in the whole record; and the Decision improperly construed the applicable law.

The following identifies specific errors the Hearings Official made that contributed to the two assignments of error, above.

### SUBASSIGNMENT OF ERROR 10.A

The Hearings Official erred by not adequately considering the preponderance of evidence and analysis in the "Constitutional Findings for Exaction" produced by the Eugene Public Works Department (PWD). See Conte 10/9 pages 6 to 10 for a full discussion of the PWD analysis and conclusions.

In a similar fashion, the Hearings Official erred by not adequately considering the substantial evidence and analysis provided by PWD regarding the necessary improvements to Oakleigh Lane to "separate pedestrians from vehicles and provide a safe public walking surface for the residents of the proposed development." See Staff Report page 13:

*"Public Works staff indicates that the applicant's proposal is sufficient to accommodate the turnaround, but not the area necessary to extend the sidewalk along the south side of the turnaround, to separate pedestrians from vehicles and provide a safe public walking surface for the residents of the proposed development."*

In both cases, the Hearings Official unreasonably concluded that this evidence and analysis had no applicability to safety, convenience, comfort or capacity considerations for *any* part of Oakleigh Lane other than the short segment at the very end of this dead-end access lane, immediately adjacent to the development site.

The Hearings Official erroneously concluded that, because the PWD evidence and analysis was *used* only to justify exactions from the applicant, that the evidence and analysis had no relevance beyond the development site.

This is obviously an error. If the portion of Oakleigh Lane adjacent to the development must be widened and improved to ensure the safe, convenient and/or comfortable accommodation of vehicular, bicycle and pedestrian traffic on Oakleigh Lane after the development is built, then the long stretch of Oakleigh Lane between River Road and the development site would also have to be widened and improved in a corresponding manner to ensure the safe, convenient and/or comfortable accommodation of vehicular, bicycle and pedestrian traffic on Oakleigh Lane.

Whether or not this is “feasible,” how that might be accomplished, and what exactions can be required of the applicant are entirely separate issues from the engineering and safety issues. Either *all* of Oakleigh Lane needs comparable right-of-way width and improvements as those being exacted from the applicant alongside the development site, or it isn’t necessary to require the right-of-way and improvements adjacent to the site. There is nothing in the record that suggests there is something special about the short stretch alongside the development site that makes that section – and *only* that section – the only place widening and improvements are necessary to provide for safe, convenient and comfortable accommodation of all forms of traffic.

See Conte 10/16. Item #6, pages 5 to 9 for LUBA’s handling of this issue.

The specific places where the Hearings Official erred in this analysis include, but are not limited to, the following.

Decision at 24<sup>4</sup>

The Hearings Official reduces the EC 9.8320(5) requirement to “provide[] safe and adequate transportation” to just the dedication of right-of-way immediately adjacent to the development site. But, as explained above, that dedication is not sufficient to “provide[] safe and adequate transportation.” As LUBA covered in *Butte Conservancy v. City of Gresham* (Conte 10/16, page 5), adequate right-of-way and improvements must be feasible *and sufficient*, even if the applicant himself is not required to actually implement all the acquisition and construction that’s necessary.

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<sup>4</sup> “Based on the above interpretation of EC 9.8320(5)(a), the opponents arguments as set forth above are not relevant to whether the applicant has met the requirement to dedicate sufficient land to create a 45 foot right-of-way along Oakleigh Lane. Although eloquently argued, Mr. Conte’s substantial analysis of the Staff findings are well outside the scope of EC 9.8320(5)(a), EC 9.6805 and EC 9.6870. Oakleigh Lane need not have a dedicated 45 foot right-of-way and associated paved surface from River Road to the subject property in order to meet EC 9.8320(5)(a) because that provision is a standard for the “dedication” of land, not a “service” standard akin to level of service – LOS.”

Decision at 27<sup>5</sup>

Here again, the Hearings Official erroneously ignores the fact that – if additional right-of-way and improvements on the south side of the turnaround are necessary “to separate pedestrians from vehicles and provide a safe public walking surface for the residents” – then similar separation and walking surface would be necessary along the rest of Oakleigh Lane to ensure pedestrian safety and comfort. Whether that’s feasible, or how it might be achieved, does not alter the PWD conclusions for what is necessary for pedestrian safety and comfort.

**SUBASSIGNMENT OF ERROR 10.B**

The Hearings Official erroneously found that Oakleigh Lane was not an “access lane.”

“The Hearings Official considers Staff’s categorization [of Oakleigh Lane as a “Low Volume Residential Street] to be more accurate given the increase in ADT moves the lane into the 250-750 ADT range.” (Decision at 25)

The Hearings Official is using the *projected* traffic volume for his conclusion, as is made clear by the phrase “moves the lane into the 250-750 ADT range.”

The *current* classification is, however, as an access lane. The move from a lower- to a higher-volume category of street is evidence that the off-site impacts of traffic would not be “minimal” as the Hearings Official erroneously concluded for EC 9.8320(12).

See Conte 10/9 pages 4 to 5.

**SUBASSIGNMENT OF ERROR 10.C**

The Hearings Official used erroneous data for traffic counts in one or more places, including, but not limited to, the following.

“the Average Daily Traffic (ADT) would be greater than 500 trips per day” (Decision at 19)

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<sup>5</sup> “As to Mr. Conte’s assertion that the Staff’s own findings concede that pedestrian and bicycle traffic will not be assured safe use of Oakleigh Lane, the Hearings Official disagrees. PT-4. The statement Mr. Conte alights on is a finding related to explaining the justification for the dedication required under EC 9.8320(5)(a). Staff’s conclusions are properly understood to require the proposed PUD to dedicate sufficient right-of-way along the subject property’s frontage to allow Oakleigh Lane to be brought up to the low volume residential street standard along that frontage.”

This understates the estimated ADT of 712 for 29 dwellings, almost at the top of the Low Volume Residential Street range of 250-750 ADT.

“The construction of the new (structures will result in an increase of vehicular traffic onto Oakleigh Lane by approximately 164 new vehicular trips per day.” (Decision at 22)

The actual number is 169 new vehicular trips per day for 29 additional residential units.

“Even with the added trips attributable to the co-housing proposal, the ADT for Oakleigh will be closer to 400 ADT at most.” (Decision at 27)

The estimated ADT is 712 for 29 dwellings, almost at the top of the Low Volume Residential Street range of 250-750 ADT. The Hearings Official appears to have confused ITE-ADT (Average Daily Trips), which are *round trips* and City-ADT (Average Daily Traffic), which are *one-way* trips.

See Conte 10/9 pages 5 to 6 and Conte 10/16 pages 1 to 2 and 4.

#### SUBASSIGNMENT OF ERROR 10.D

The Hearings Official erroneously allowed the impermissible new and non-responsive evidence submitted by the applicant’s representatives on October 16, 2013 without providing an opportunity for opponents to respond, despite the timely, written request by Paul Conte.

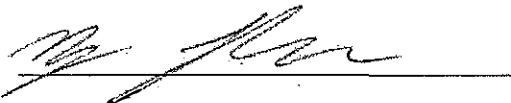
The Planning Commission must exclude this evidence and must not rely upon it in their decision.

#### CONCLUSION

The multiple errors and misinterpretations made by the hearings official require the Planning Commission overturn this decision and deny this planned unit development (tentative) application must be denied.

Respectfully submitted this 22nd day of November, 2013.

FOR APPELLANTS



Bryn Thoms  
River Road Community Organization

## SUMMARY OF APPEAL ISSUES

Ten appeal issues were raised by the appellant, which are summarized below with relevant excerpts from the Hearings Official's (HO) decision and appeal statement, and references to other related evidence or testimony in the record. To assist the Planning Commission (PC) in determining whether to affirm, reverse, or modify the decision, staff has provided some initial suggestions below for how the commission might address each appeal issue, in deciding whether to affirm, reverse or modify the decision.

**1. First Assignment of Error: The Decision erred by finding that the application met EC 9.8320(1) "The PUD is consistent with applicable adopted policies of the Metro Plan."**

**A. Sub-assignment of Error 1.A: the Decision failed to address the following policy at all:**

**TransPlan Transportation System Improvements (TSP) Pedestrian Policy #1:  
Pedestrian Environment (Metro Plan Policy F.26)**

***Provide for a pedestrian environment that is well integrated with adjacent land uses and is designed to enhance the safety, comfort, and convenience of walking (Metro Plan III-F-9)***

**B. Sub-assignment of Error 1.B: the Decision failed to address the following policy at all:**

**TransPlan Finance Policy #4: New Development (Metro Plan Policy F.36)**

***Require that new development pay for its capacity impact on the transportation system. (Metro Plan III-F-13)***

The appellant asserts that the HO failed to consider these policies, and to include adequate conditions of approval for sufficient right-of-way, sidewalks, and other improvements required for consistency (see pages 2 and 3 of the Appeal Statement). Staff confirms that the HO did not explicitly address these policies, but found that the development complied with the applicable Metro Plan policies, as follows:

The findings of the staff report are sufficient to show compliance with EC 9.8320(1) and the Hearings Official adopts them by this reference (HO Decision, Page 8).

In regards to the staff report adopted by the HO, the findings do not explicitly address the relevance of Policies F.26 and F.36. As such, the PC should determine if the policies are relevant, and whether or not to make additional findings addressing them. In doing so, staff recommends that the PC also consider these policies in the context of the appellant's arguments under in Appeal Issues 2, 3, 4, 5, 6, and 10. If the PC determines that additional findings or conditions are necessary regarding right-of-way dedication and improvements for transportation facilities, then the above policies could be used as additional support for those requirements. Alternatively, if the PC determines that other related approval criteria are not met, findings could be crafted as further policy support for a reversal of the HO's decision.

**2. Second Assignment of Error: The Decision erred by finding the application met EC 9.8320(5) "The PUD provides safe and adequate transportation systems through compliance with the following..."**

**A. Sub-assignment of Error 2.A: the Decision erred by finding the application met the following criterion:**

***EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in (11) below).***

**B. Sub-assignment of Error 2.B: the Decision erred by finding the application met the following criterion:**

***Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.***

**C. Sub-assignment of Error 2.C: the Decision erred by finding the application met the following criterion:**

***The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.6880 where applicable.***

With regard to approval criterion EC 9.8320(5), the HO responded as follows:

The opponents have raised numerous "safety" concerns and arguments that go well beyond the fundamental requirement of EC 9.8320(5). The very structure of EC 9.8320(5) does not require an applicant to prove that a proposed development will be safe from any and all asserted and or imagined traffic safety threats. The language of EC 9.8320(5) states: "[t]he PUD provides safe and adequate transportation systems through compliance with the following:" The underlined section demonstrates that the provision is limited by its own words to a requirement showing three things: a) that EC 9.6800 through 9.6875 can be met, b) that pedestrian, bicycle and transit circulation can be achieved, and c) that if necessary a Traffic Impact Analysis has been done and mitigation provided. In other words, the adopted provisions of EC 9.8320(5) assume that if those three criteria can be met, a "safe and adequate transportation system" will result. (HO Decision, Page 24)

The appellant challenges the assumption of "compliance with the following" because the PUD required multiple exemptions from street standards; the appellant further asserts that those exemptions were not supported (see pages 4-9 of the Appeal Statement). Here, the PC should initially determine

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whether the HO correctly interpreted the limited scope of EC 9.8320(5) as it relates to the appellants arguments about each subsection. In other words, did he correctly read the criterion to mean that if the standards are met under each subsection of EC 9.8320(5) that, a "safe and adequate transportation system" will result? This determination will assist the resolution of sub-assignments of error below, relating to street connectivity and cul-de-sac length standards, pedestrian and bicycle circulation, and traffic impact analysis.

The HO's decision granted exceptions to the cul-de-sac and street connectivity standards (see HO Decision, Pages 19-20 and 25), based on the applicant's local street connection study showing how adjacent lands to the north (Tax Lot 200) could be further developed in a flag lot configuration with only partial right-of-way dedication, and ending Oakleigh Lane with an emergency turnaround rather than further extending the street. The appellant asserts that the HO erred in finding that this would adequately serve Tax Lot 200, despite severely limiting future development of that lot, and that the study should have been required to evaluate full build-out potential of the entire area. The appellant further asserts that this is an exaction from the owner of Tax Lot 200 to the benefit of the applicant, without the constitutional standards for such an exaction.

The appellant further asserts that the HO did not adequately explain how the exception meets EC 9.6815(1)(a) and (e). These requirements refer to the purpose and intent statements for the street connectivity standards, which must be met under the requested exception at EC 9.6815(2)(g)1.a. The HO adopted the staff findings on this matter, which included the following:

Public Works staff confirms that the applicant's alternative street plan, along with their narrative that addresses the intent statements at EC 9.6815(1), an exception is warranted pursuant to EC 9.6815(2)(g)(1). (HO Decision, Page 19)

For reference, the applicant's narrative referenced in the Public Works comments above, and therefore relied upon by the HO in granting the exception, including findings that address the purpose and intent statements at EC 9.6815(1)(a) and (e)(see PH-63, Pages 2-3). The PC should also review these findings from the applicant's street connection study in determining whether the HO erred in granting the exception.

The HO also granted an exception to the 400-foot maximum cul-de-sac length, stating that the street connectivity exception warrants it based on EC 9.6820(5)(b). The appellant points out that the exception under (5)(b) relates only to buildings or other physical conditions that preclude a street, which is not the case with extending Oakleigh Lane. The appellant asserts that these conditions are not met, but that even if there were no feasible alternative connection, that situation would only justify an exception to EC 9.6820(3), regarding the 400-foot cul-de-sac length, and not EC 9.6820(1), regarding dead-end streets longer than 150 feet ending in a turnaround, and not EC 9.6820(4), regarding a public accessway at the end of the turnaround. Staff notes that the decision includes conditions for right-of-way dedication for both a future turnaround and public accessway along the entire north property line.

Here, the PC should consider whether the exceptions met the applicable approval criteria. If the PC disagrees with the HO, then the PC may want to consider conditions for extending Oakleigh Lane

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through the PUD to provide Tax Lot 200 with more street frontage and to enable a future connection with East Hillard Lane (to the north) when Tax Lot 200 further develops.

The appellant also claims that the HO failed to consider the evidence provided in the Public Works (PW) referral comments (this is further argued under Appeal Issue 10). Staff notes that the PW comments included constitutional findings to support the right-of-way exaction (see pages 2-4 of Exhibit PH-30). The HO addressed this as follows:

Oakleigh Lane need not have a dedicated 45 foot right-of-way and associated paved surface from River Road to the subject property in order to meet EC 9.8320(5)(a) because that provision is a standard for the "dedication" of land, not a "service" standard akin to level of service – LOS. Neither does EC 9.8320(5)(a) require the neighbors to now dedicate a portion of their property to the widening of the right-of-way or paved surface of Oakleigh Lane. (HO Decision, Page 25)

The appellant asserts that the PW comments are more than justification for the right-of-way exaction; that they are evidence of pedestrian safety concerns on Oakleigh Lane. Regarding pedestrian, bicycle, and transit circulation, the HO states:

The Hearings Official also concurs with the applicant's October 23, 2013 final argument that the queuing effect of having a single travel lane along Oakleigh Lane is likely to result in lower speeds and acceptably safe conditions for pedestrians.

It is reasonable to expect that the queuing effect identified in the ACSP will work to calm speeds and provide reasonably safe passage pedestrians if the co-housing is approved (HO Decision, Page 27).

In determining whether the HO erred, the PC should consider whether additional requirements such as wider right-of-way and street improvements are necessary to meet the approval criteria, and if so, whether it is feasible and legally justified to establish these requirements as conditions of approval. Alternatively, the PC could make findings to explain how the approval criteria have not been met.

The appellant also asserts that PW comments support the requirement for a Traffic Impact Analysis (TIA) (see page 8 of the Appeal Statement). Regarding TIA requirements, the HO states:

EC 9.8320(5)(c) invokes EC 9.8670 on the question of when a TIA may be required to support a PUD application. There are three primary circumstances in which a TIA may be required: 1) when the development will generate more than 100 peak hour vehicle trips, 2) when the increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action, and 3) where approval of the development will result in level-of-service failures of the roadway system in the vicinity. If none of these conditions will result from approval of the PUD, then the code does not require a TIA and the City cannot force an applicant to provide one (HO Decision, Page 28).

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If the PC determines that the HO erred by not requiring a TIA, alternatives include finding that the approval criteria have not been met, or possibly modifying the decision to require a TIA prior to final PUD approval.

**3. Third Assignment of Error: The Decision erred by finding the application met EC 9.8320(6) "The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater and flood hazard, or an impediment to emergency response."**

- A. *Sub-assignment of Error 3.A: the Decision erroneously found that the PUD would not be a significant risk to public safety.***
- B. *Sub-assignment of Error 3.B: the Hearings Official provided no evaluation of PWD's own analysis that Oakleigh Lane would be an impediment to emergency response unless the right-of-way was widened and the road improved.***

The appellant argues that if the portion of Oakleigh Lane adjacent to the development must be widened and improved to ensure the safe, convenient and/or comfortable accommodation of vehicular, bicycle and pedestrian traffic on Oakleigh Lane after the development is built, then the long stretch of Oakleigh Lane between River Road and the development site would also have to be widened and improved in a corresponding manner. The appellant incorporates the arguments in Appeal Issues 2, 4, and 10 to further assert that the HO erred in finding that the PUD would not be a significant risk to public health and safety, or an impediment to emergency response.

The HO responded to EC 9.8320(6) by adopting the staff findings (HO Decision, Pages 29 and 30). The staff findings specific to emergency response were primarily focused on the turnaround within the development site, to serve the PUD, resulting in the condition for a temporary easement. The staff findings noted that the permanent turnaround is anticipated at the end of Oakleigh Lane, when properties to the north further develop. The appellant further asserts that the public accessway requirements for cul-de-sacs at EC 9.6820(4) are not met, by incorporating Appeal Issue 2, and relates this argument to the above approval criterion regarding safe circulation.

If the PC disagrees with the HO, additional requirements could be considered such as wider right-of-way and improvements necessary to meet the approval criteria, and if so, whether it is feasible and legally justified to establish these requirements as conditions of approval. For example, the PC could require the applicant to build the hammerhead turnaround at the end of Oakleigh Lane prior to occupancy; to improve Oakleigh Lane with paving and/or sidewalks to address pedestrian safety; and/or require immediate improvement of the dedicated public accessway along the north property line. Alternatively, the PC could make findings to explain how the approval criteria have not been met, for example, if it is determined that additional right-of-way is necessary but not feasible to require under the approval criteria.

**4. Fourth Assignment of Error: The Decision erred by finding the application met EC 9.8320(11)(b) "The PUD complies with all of the following...EC 9.6505 Improvement-**

**Specifications (3)(b) Streets and Alleys, (4) Sidewalks, and (5) Bicycle Paths and Accessways**

- A. Sub-assignment of Error 4.A: the Decision erroneously found that Oakleigh Lane, which is not only adjacent to, but also serves as the only vehicular access to and from the development site, would be paved to the specifications in EC 9.6870 (or exempt).**
- B. Sub-assignment of Error 4.B: the Decision erroneously found that Oakleigh Lane, which is not only adjacent to, but also is and will be used by pedestrians to and from River road and to and from the public bike/ped path along the river, would provide sufficient sidewalks that are located, designed and constructed according to the specifications in Eugene Code and referenced standards.**
- C. Sub-assignment of Error 4.C: the Decision erroneously found that Oakleigh Lane, which is not only adjacent to, but also is and will be used by bicyclists to and from River Road and to and from the public bike/ped path along the river, would provide sufficient bike accessways that are located, designed and constructed according to the specifications in Eugene Code and referenced standards.**

The appellant states that the HO relied on his findings for EC 9.8320(5), but failed to provide an explanation for how those findings demonstrate compliance with the improvement specifications for streets, sidewalks, and bicycle paths (accessways). The appellant also refers to Appeal Issue 10 to claim that the HO failed to consider and properly apply the evidence provided by PW (i.e. constitutional findings for right-of-way exaction along the frontage of the subject property ) in the context of EC 9.8320(11)(b). The HO responded to EC 9.8320(11)(b), as follows:

The Hearings Official generally concurs with Staff's findings for EC 9.6505(3 & 4) and adopts those findings by this reference. The Hearings Official also incorporates the findings above for EC 9.8320(5) by this reference.

EC 9.6505(3) requires that any streets adjacent to the proposed development be paved by the developer consistent with applicable street width standards. The evidence discussed in the findings for EC 9.8320(5) demonstrates that the applicant will be able to accommodate the necessary right-of-way, street width, and sidewalks if necessary along the portion of Oakleigh Lane adjacent to the subject property.

Public right-of-way dedication is being required along the north property line, overlapping an existing worn path between the terminus of Oakleigh Lane and the easterly City parklands, to enable a future bicycle and pedestrian access way. Refer to the previous findings and condition at EC 9.8320(5), which are incorporated by reference. (HO Decision, Page 38).

The staff findings that the HO adopted to address EC 9.6505(3) and (4) were as follows:

EC 9.6505(3)(b) requires the developer to pave streets adjacent to the development site to

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the width specified in EC 9.6870 Street Width with provision for drainage and construction of curbs and gutters, sidewalks, street trees and street lights adjacent to the development site according to the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways and standards and specifications adopted pursuant to EC Chapter 7 and other adopted plans and policies.

Public Works staff confirms that Oakleigh Lane is not improved to City standards because it lacks curbs and gutters, storm drainage, sidewalks, and street trees. The street does have existing street lights and the 19-foot wide pavement width provides safe passage for two-way traffic. As such, Public Works staff indicates that it is appropriate to defer public improvements via an irrevocable petition, with the following condition of approval:

- The applicant shall submit an Irrevocable Petition for public improvements in Oakleigh Lane to include paving, curbs and gutters, storm drainage, sidewalks, and street trees.

Irrevocable petitions enable the City to initiate a local improvement process and obligate the property owners to pay their proportional share of the street construction costs in the future. The City could construct the street when the majority of benefitting property owners agrees to pay for the improvements. Based on the above findings and condition, the development will comply with the applicable street improvement standards (HO Decision, Pages 37 and 38)

Staff notes that these improvement specifications direct how to design and construct the improvements, not when and where to construct them; however, the specifications for paving and sidewalks do appear to limit the developer's responsibility to just the portion "adjacent to the development site." Although no immediate public improvements were required of the development, compliance with the above was based on the condition for an irrevocable petition, which would enable a future capital project.

As with similar, related appeal issues above, if the PC determines the HO erred, the PC should consider whether additional requirements such as wider right-of-way and improvements are necessary to meet the approval criteria, and if so, whether it is feasible and legally justified to establish these requirements as conditions of approval. Alternatively, the PC could make findings to explain how the approval criteria have not been met, for example, if it is determined that additional right-of-way is necessary but not feasible to require under the approval criteria.

**5. Fifth Assignment of Error: The Decision erred by finding the application met EC 9.8320(12) "The proposed development shall have minimal off-site impacts, including impacts such as traffic, noise, stormwater runoff and environmental quality."**

The appellant asserts that the HO did not properly interpret the meaning of "minimal off-site impacts" and in doing so he robbed EC 9.8320(12) of any meaning or purpose, by assuming that this criterion is not implicated with regard to traffic because EC 9.8670 does not require a TIA. The appellant also

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incorporates the arguments under Appeal Issue 10 regarding PW referral comments. The HO responded to EC 9.8320(12), as follows:

The Hearings Official generally concurs with Staff's findings for EC 9.8320(12) and adopts those findings by this reference – consistent with the findings set forth below.

As an initial matter, the Hearings Official rejects Mr. Conte's invitation to substitute the term "insignificant" for the term "minimal" in EC 9.8320(12). I agree with the applicant, that if the City Council had intended to impose a different standard it could have done so. ORS 174.010. The Hearings Official agrees that requiring a PUD to have minimal impacts is a very subjective standard that is difficult to implement, but EC 9.8320(12) says what it says (HO Decision, Page 51).

The staff findings that the HO adopted to address the traffic component of EC 9.8320(12) were as follows:

Traffic – Public Works staff confirm that the development will have minimal off-site traffic impacts, as only 29 additional peak hour trips will be generated by the development. Public Works staff state that Oakleigh Lane currently provides for safe passage of two-way and emergency vehicles. No street improvements are required of the development, although right-of-way dedication and an Irrevocable Petition are being required to enable future public improvements. Pedestrian safety is further addressed at EC 9.8320(5)(b); those findings are incorporated by reference. With regard to public comments about the accident at the intersection of Oakleigh Lane and River Road, this intersection is not on the City's inventory of intersections with high crash ratings that would otherwise warrant analysis to determine patterns that could be mitigated by infrastructure improvements. As such, nothing further is required of the development (HO Decision, Page 50).

The Hearings Official goes on to explain his rationale for correctly interpreting statutory and local code provisions, as follows:

In interpreting related statutes or local code provisions, an interpretation must be sought that harmonizes those provisions and does not leave one provision as redundant or meaningless. Reading EC 9.8320(12), as the neighbors do, to impose a different standard for traffic impacts than EC 9.8320(5) and reading the term "minimal" to mean almost no impacts at all, would render EC 9.8320(5) and EC 9.8670 redundant if not completely meaningless. In other words, it makes no sense that the City Council would ask an applicant to go through the analysis in EC 9.8320(5) and potentially complete a TIA if the proposed PUD could be denied for having "some" impacts on the transportation system.

Instead, harmonizing EC 9.8320(12) with EC 9.8320(6) is helpful in understanding when a project might have more than "minimal off-site impacts." While it is not prudent to theorize too much about whether a project that requires a TIA necessarily has more than minimal off-site impacts, it is certainly reasonable to assume that if any of the three conditions identified in

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EC 9.8670 are evident in the record, EC 9.8320(12) might be implicated. However, when none of the conditions exist that would trigger a TIA under EC 9.8670, it is reasonable to question whether EC 9.8320(12) is implicated as to traffic.

That is the case for this application and this record. There are no conditions identified in the record which come anywhere close to triggering a TIA. The peak vehicle trip estimates are less than a third of that required to trigger a TIA, and no "problems" or LOS deficiencies are identified. The neighbors' fear that there will be more cars on Oakleigh Lane than before is not enough to view those new cars as more than a minimal impact, let alone a negative off-site impact. As such, the Hearings Official concludes that the increase in peak vehicle trips from the proposed PUD will result in minimal off-site impacts.

If the PC disagrees with the HO's analysis, and agrees with the appellant that the scope of EC 9.8320(12) goes beyond the potential TIA requirements, additional findings or requirements ensuring minimal off-site traffic impacts could also be considered in the absence of a TIA. Alternatively, the PC could make findings to explain how the approval criteria have not been met.

6. **Sixth Assignment of Error: The Decision erred by finding the application met EC 9.8320(13) "The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses."**

The appellant asserts that the HO did not properly consider substantial impacts of traffic and/or street widening and improvements on neighboring properties in the context of the above criterion. The appellant points out that the HO relied on his findings for EC 9.8320(12), but failed to provide specific findings for EC 9.8320(13), and incorporates related arguments here from Appeal Issue 5. The appellant states that the HO ignored the evidence of Mr. Simon Trautman regarding an accident on River Road at the intersection of Oakleigh Lane (see Exhibit PH-49), when the HO found that there was no evidence of traffic issues in the record. The appellant asserts that the development doubles the number of trips on Oakleigh Lane and therefore the impacts of the development are not minimal. Again, the appellant also refers to Appeal Issue 10 regarding PW referral comments, asserting that the HO and staff failed to consider and properly apply the substantial evidence.

The appellant also argues that the proposed screening is inadequate, states that the proposed PUD pushes buildings, garages, barns and other structures to the edge of the property, requiring modifications to the setbacks on three sides. The appellant claims that the HO did not understand the context of the neighborhood, which includes smaller homes, and how the proposal is not harmonious and reasonably compatible with the neighborhood.

Staff notes that the HO did not entirely rely on his findings under EC 9.8320(12) as the appellant asserts. He specifically responded to EC 9.8320(13) with discussion of relevant LUBA case law that notes the inherently subjective nature of this criterion, and his determination as follows:

Here, a finding that the proposed PUD is incompatible and inharmonious despite having complied with all applicable provisions of EC 9.8320 would, at least in this case, be logically

## Attachment D

and legally indefensible.

The Hearings Official is also persuaded that the proposed co-hous[ing] will be compatible and harmonious for the following reasons: 1) the development will be at the end of the street where comparatively fewer property owners along Oakleigh Lane will be affected visually, 2) the scale of the buildings, as the applicant points out, are within the range of typical single family homes. The applicant states that the common house is similar in size to a large home and the other buildings are similar to smaller single family homes, 3) the proposed density is less than the maximum and the proposed height is less than the maximum height allowed, and 4) the proposed use is residential (as opposed to some conditional use allowed in the zone).

As to arguments about traffic impacts, the Hearing Official adopts the findings for EC 9.8320(12) here by this reference. Evidence of a modest increase in total vehicle trips, where there is no evidence of associated traffic problems, is sufficient to demonstrate that the proposed PUD will be compatible with adjacent and nearby uses (HO Decision, Pages 54 and 55).

As with related appeal issues discussed above, if the PC disagrees with the HO's analysis, the PC may want to consider modifying the decision to require additional transportation amenities. The PC could consider requiring compliance with the 10-foot front yard setback and/or the 5-foot interior yard setbacks, and/or additional landscaping along all property lines. Alternatively, the PC could make findings to explain how the approval criteria have not been met.

**7. *Seventh Assignment of Error: The Decision erred by finding the application met EC 9.8320(3) "The PUD will provide adequate screening from surrounding properties including, but not limited to anticipated locations, bulk, and height."***

The appellant states that the HO appears to have only considered height, but not building bulk and location. The appellant also asserts that the HO erred in relying on the cedar trees on adjacent lands to the north as screening for the development because those trees are not within the development's control. The appellant also notes that screening on the north property line will not be provided on the development site because the required right-of-way dedication wipes out the area the applicant had planned on using for landscaping and stormwater planters. For reference, the Hearings Official addresses EC 9.8320(3) on pages 9-14 of his decision.

With regard to the west and south property lines, the appellant notes that, while the setbacks can be modified by meeting the PUD Purpose statements, the above criterion requires the PUD to provide adequate screening. The appellant questions how the development on the exterior property lines meets this criterion, while keeping open space in the center. The appellant also claims that the HO's conditions for additional screening on the east and south property lines are deferring a design consideration that will be made without sufficient public input or opportunity to comment. With regard to these conditions of approval, staff notes that the Final PUD process includes public notice and comment, with appeal provisions.

## Attachment D

If the PC determines that the HO erred, one option could be to require greater setbacks and/or additional landscaping or screening along the north and west boundaries as conditions of approval. Alternatively, the PC could make findings to explain how the approval criteria have not been met.

**8. Eighth Assignment of Error: The Decision erred by finding the application met EC 9.8320(11)(a) "The PUD complies with EC 9.2000 through EC 9.3915 regarding lot dimensions and density requirements for the subject zone."**

- A. Sub-assignment of Error 8.A: the Hearings Official erred in his calculation of the net density area pursuant to EC 9.2751...**
- B. Sub-assignment of Error 8.B: the Hearings Official erred in his understanding of the concept of "clustering" under EC 9.8300(1)(e).**

Under sub-assignment 8.A, the appellant asserts that the HO erred in his calculation of the net density by not excluding all easements. Contrary to the staff findings, the HO determined that the public wastewater easement along the east property line did not need to be deducted to determine the net acreage (HO Decision, pages 34 and 35).

Staff considered the public wastewater system to be a public facility, over which, development is not allowed; accordingly, staff's recommendation was that the easement area should be excluded from the net density calculation. Staff did not exclude the on-site hammerhead turnaround because it is only for the development, not the general public traveling on Oakleigh Lane. It is less clear to staff whether the easement requested by EWEB should be excluded from the calculation, because EWEB has not identified the alignment or scope of this easement (whether it is specifically to serve this development or if the water line to run through the site, within the easement, is a public facility benefiting surrounding properties as well).

If the PC disagrees with the HO's analysis, the PC may want to consider modifying the decision to require exclusion of certain areas for "other public facilities" as that phrase is used in EC 9.2751. In doing so, the PC would need to consider how this would affect net density and if the proposed number of dwelling units need to be reduced. Alternatively, the PC could make findings to explain how the approval criteria have not been met, if additional areas are excluded such that the proposed development does not meet the maximum allowable net density of 14 units per acre for the R-1 zone.

Under sub-assignment 8.B, the appellant asserts that the HO erred in his understanding of the concept of clustering under EC 9.8300(1)(e). Staff notes that EC 9.8300 contains the PUD Purpose statements, which must be addressed specific to any modifications to standards. The appellant notes that the buildings and development have been pushed out to the edge of the property requiring modifications to setbacks on three sides of the property; as such, the appellant asserts that this is not clustering, but imposing negative impacts of the development onto the adjacent lands. Staff notes that EC 9.2000 through EC 9.3915 (the scope of this assignment of error) is specific to lot dimensions and density requirements for the subject zone, but not setbacks.

9. **Ninth Assignment of Error: The Decision erred by finding the application met EC 9.8320(11)(k) "All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development: EC 9.2795 Solar Setback Standards."**

The appellant asserts that the HO erred in his interpretation of the solar setback standard as follows:

Although the solar setbacks may be modified, the Hearings Official is required to understand the extent of the modification to determine if it is consistent with the purposes of the PUD ordinance. The error made by the Hearings Official was to measure the solar setback from the existing property line rather than the property line established by the required dedications (Appeal Statement, page 17).

Staff notes that EC 9.8320(11) requires compliance with applicable development standards, but also enables modifications to those standards if the PUD Purpose statements at EC 9.8300 are met. In the case of solar setbacks, instead of granting a modification to the solar setback standards pursuant to EC 9.8300, the HO granted an exception pursuant to EC 9.2795(3)(c)(1) Exemptions to Solar Setback Requirements, which states that a building is exempt from the solar setback standards when the building will shade a non-developable area, such as designated open space, a public utility easement, street or alley. The HO granted the exception based on the right-of-way being required along the entire north property line (HO Decision, page 47).

If the PC determines that the HO erred, the decision could be modified to require compliance with the solar setback standard. Alternatively, the PC could make findings to explain how the approval criteria have not been met.

10. **Tenth Assignment of Error: The Hearings Official made a decision that was not supported by substantial, probative and reliable evidence in the whole record; and the Decision improperly construed the applicable law."**

- A. ***Sub-assignment of Error 10.A: The HO erred by not adequately considering the preponderance of evidence and analysis in the "Constitutional findings for Exaction" produced by the Eugene Public Works Department (PWD).***
- B. ***Sub-assignment of Error 10.B: the Hearings Official erroneously found that Oakleigh Lane was not an "access lane."***
- C. ***Sub-assignment of Error 10.C: The Hearings Official used erroneous data for traffic counts in on or more places..."***
- D. ***Sub-assignment of Error 10.D: The Hearings Official erroneously allowed the impermissible new and non-responsive evidence submitted by the applicant's***

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***representatives on October 16, 2013, without providing an opportunity for opponents to respond, despite the timely, written request by Paul Conte.***

Under sub-assignment 10.A, the appellant asserts that the HO unreasonably concluded that the constitutional findings included in the staff findings and the PW referral comments (Pages 2-4 of Exhibit PH-30) had no applicability other than the abutting street segment because the findings were used only to justify exactions from the applicant. The appellant argues that if the portion of Oakleigh Lane adjacent to the development must be widened and improved to ensure the safe and convenient accommodation of vehicular, bicycle and pedestrian traffic on Oakleigh Lane after the development is built, then the long stretch of Oakleigh Lane between River Road and the development site would also have to be widened and improved in a corresponding manner. The appellant states that whether or not this is feasible, how that might be accomplished, and what exactions can be required of the applicant are entirely separate issues from engineering and safety issues. The appellant asserts that issue is: either all of Oakleigh Lane needs comparable right-of-way width and improvements as those being exacted from the applicant alongside the development site, or it isn't necessary to require the right-of-way and improvements adjacent to the development site. The appellant notes that there is nothing in the record that suggests that there is something special about the short stretch alongside the development.

The above arguments are repeated in Appeal Issues 1, 2, 3, 4, 5, and 6. If the PC disagrees with the HO and finds that components of the constitutional findings for the right-of-way required from the PUD constitute evidence of a bigger safety issue or that the justification must be applied to the entire length of Oakleigh Lane, then the PC should consider whether additional requirements such as wider right-of-way and improvements are necessary to meet the approval criteria being challenged under Appeal Issues 1 through 6. As noted under those appeal issues, staff believes the PC would need to justify the feasibility and legality of those additional conditions of approval. Alternatively, the PC could make findings to explain how the approval criteria have not been met.

Under sub-assignment 10.B, the appellant claims that the current classification of Oakleigh Lane is an access lane and that moving it to a higher volume classification because of the traffic generated by the development is further evidence that it is not a "minimal" impact under EC 9.8320(12). The HO found this classification distinction to be insignificant, based on the following:

Whether or not Staff have miscategorized Oakleigh Lane as a low volume residential street, and the Hearings Official does not agree that a mistake was made, is of no consequence because Table 9.6870 shows right-of-ways in the range of 40' to 55' for both access lanes and low volume residential streets. The Hearings Official considers Staff's categorization to be more accurate given the increase in ADT moves the lane into the 250-750 ADT range. But, in any case, the record amply demonstrates that the applicant is both willing and able to dedicate land along the northwest corner of the subject property and adjacent to Oakleigh Lane for the purpose of providing sufficient right away and a public accessway... (HO Decision, Page 25).

If the PC disagrees with the HO about the significance of the traffic generated by the development, then the PC would need to make findings to explain how EC 9.8320(12) is not met.

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Under Sub-assignment 10.C, the appellant asserts that the HO used erroneous data for traffic counts in one or more places. The appellant asserts that the estimated ADT is 712 for 29 dwellings, but also says "the actual number is 169 new vehicle trips per day for 29 additional residential units." The appellant claims the HO confused ITE-ADT, as being round trips, with the City-ADT, which are one-way trips. While this appears to relate to arguments above about significant traffic impacts, the relevance of this alleged error is unclear in the appeal statement as it does not identify any related approval criteria to which the argument applies. If the PC agrees that the HO erred in his calculation of ADT, then the PC should determine whether to modify the findings to resolve the error.

Regarding sub-assignment 10.D, the applicant's October 16, 2013 submittals being challenged by the appellant are identified in the record as Exhibits PT.R-4 through PT.R-9, consisting of the following: information submitted by the applicant's surveyor regarding the historical establishment of the Oakleigh Lane right-of-way; information submitted by the co-housing consultant regarding gravel parking spaces; information submitted by the applicant's engineer regarding stormwater; information submitted by the applicant's engineer regarding trip street classification and trip generation; a summary response from the applicant; and the applicant's attorney's submittal of an excerpt of the Arterial and Collector Street Plan. On October 16, 2013, Mr. Conte submitted an objection to this information as being impermissible new evidence, with a request that the HO reject the documents or re-open the record to allow new evidence and an additional rebuttal period, asserting that the record was closed to new evidence on October 9, 2013 (Exhibit PT.R-1).

Staff contacted the HO and the applicant regarding Mr. Conte's request. The HO indicated that the clearest way to resolve this allegation would be to reopen the record, which was his preference, but he was not inclined to reopen the record on his own authority given the time constraints under statutory requirements. The applicant did not wish to re-open the record or to grant a timeline extension to enable an extended record period. On October 23, 2013, the applicant's attorney, Zack Mittge, submitted a letter arguing that the rebuttal deadline of October 16, 2013, allowed the submission of evidence and testimony in response to materials introduced into the record on or before October 9, 2013. On October 25, 2013, Mr. Conte submitted a letter asserting that Mr. Mittge misstates the allowance and provides a partial transcript of the recording meeting with Ken Helm's specific instructions on the open record period.

On November 5, 2013, the HO issued an Order Denying Reopening the Evidentiary Record, which details the above chain of events and clarifies his position on the matter (Exhibit PC-2). The extent to which the HO relied on the contested information is unclear; he states:

While the Hearings Official declined to reopen the record, I made no decision on the question of whether to rely on the six documents that Mr. Conte objected to. That November 5, 2013 order is incorporated into this decision by this reference. Where the Hearings Official has relied on the disputed evidence, I have explained why the evidence is admissible under the rules set for the open record period. (HO Decision, Page 4)

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### **Documents Considered by the Hearings Official**

The Hearings Official has considered all the documents listed above and all the submissions into the record prior to and including the applicant's final comment dated October 23, 2013. (HO Decision, Page 6)

A word-search on the HO Decision regarding references to PT.R exhibits, the HO only references the following in his ruling under the applicable approval criteria:

- PT.R-1 from Paul Conte (HO Decision, page 30)
- PT.R-2 from Paul Conte (HO Decision, pages 24 and 28)
- PT.R-6 from Michael Cox, Applicant's Engineer, regarding stormwater (HO Decision, page 30)
- PT.R-11 from Mark Conley, public comments (HO Decision, page 15)

Hence, it appears that the HO only relied on the stormwater information to make his conclusion. The appeal issues do not pertain to stormwater. As such, it appears that rejecting or allowing the disputed evidence would have no impact on the outcome of this appeal.

**SUMMARY MINUTES**  
**Eugene Planning Commission Public Hearing**  
**Lane County Public Service Bldg. – Harris Hall**  
**6:00 p.m. December 5, 2013**

**PLANNING COMMISSIONERS PRESENT:**

William Randall, Chair  
John Jaworski, Vice Chair  
John Barofsky  
Rick Duncan  
Jeff Mills

**PLANNING COMMISSIONERS NOT PRESENT:**

Stephen Baker  
Jon Belcher (Recused himself from these proceedings)

**CITY STAFF PRESENT:** Becky Taylor, Steve Nystrom, Gabe Flock

---

Meeting called to order by Commissioner Randall, Chair at 6:00 p.m. Introductions and instructions followed.

**PUBLIC HEARING: APPEAL OF HEARINGS OFFICIAL DECISION ON  
OAKLEIGH COHOUSING (PDT 13-1)**

**STAFF REPORT:** Presented by Becky Taylor.

**APPLICANT PRESENTATION:**

Will Dixon, Project Manager of Oakleigh Cohousing  
Zach Mittge, Applicant Attorney

**PUBLIC COMMENT TESTIMONY IN FAVOR OF APPLICATION:**

Lynn Dixon  
Otto Poticha  
Joan Connelly  
Antonio Lewis

**APPELLANT PRESENTATION:**

Bryn Thoms  
Paul Conte.

**PUBLIC COMMENT TESTIMONY OPPOSED TO APPLICATION:**

Anne Love  
Richard Dambrov  
Paul Heintz

**APPLICANT REBUTTAL:** Response by Zach Mittge.

Commissioner Randall closed public hearing at 7:38 p.m. Based on the 120 day time limit ending on December 20<sup>th</sup>, the Planning Commission also closed the record. Deliberations are scheduled for December 9, 2013 at 11:30 a.m. and also December 16, 2013, if needed.

**QUESTIONS TO STAFF:** Planning Commission presented questions to staff so that they could prepare a response to bring to deliberations.

Meeting adjourned at 7:44 p.m.

Meeting notes recorded by: Rhonda Crocker (from webcast)



## Eugene Planning Commission

Phone: 541-682-5481  
www.eugene-or.gov/pc

# AGENDA

**Meeting Location:**  
Harris Hall, Lane County Public Service Building  
125 East 8<sup>th</sup> Avenue  
Eugene, OR 97401

The Eugene Planning Commission welcomes your interest in this agenda item. Feel free to come and go as you please at the meeting. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours' notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hours' notice. To arrange for these services, contact the Planning Department at 541-682-5675.

### THURSDAY, DECEMBER 5, 2013 – 6:00 P.M.

**PUBLIC HEARING: APPEAL OF HEARINGS OFFICIAL DECISION ON OAKLEIGH COHOUSING (PDT 13-1)**

The River Road Community Organization has appealed the Hearings Official's decision for conditional approval of a Tentative Planned Unit Development for Oakleigh Co-housing (PDT 13-1).

Lead City Staff: Becky Taylor, 541-682-5437  
becky.g.taylor@ci.eugene.or.us

**Public Hearing Format:**

The Planning Commission will receive a brief City staff presentation followed by an opportunity for public comment. Time limits on testimony may be imposed. The Planning Commission may seek a response to testimony from City staff. At the end of the hearing, the Planning Commission Chair will announce whether the record is closed, the record will be held open, or the public hearing will be continued.

Commissioners: Steven Baker; John Barofsky; Jonathan Belcher; Rick Duncan; John Jaworski (Vice-Chair); Jeffery Mills; William Randall (Chair)

Rec'd 12/5/13



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A PARTNERSHIP OF LAWYERS AND ACCOUNTANTS

Please reply to WILLIAM K. KABEISEMAN  
billkab@gsblaw.com  
DIRECT DIAL 503 553 3231

December 5, 2013

Eugene Planning Commission  
Eugene Planning Division  
99 West 10th Avenue  
Eugene, OR 97401

Re: Appeal of Oakleigh Meadows Co-Housing Planned Unit Development and Willamette Greenway Review

Dear Chair Randall and Commissioners:

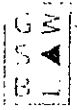
This firm represents Bryn Thoms in this matter; please accept this letter into the record and consider it before making your final decision. Please also provide me with a copy of your final decision.

We urge the Planning Commission to reject the decision of the hearings official. The Planning Commission could reject the decision for any number of reasons, most of which will be detailed for the Commission in its hearing today. This letter will not address all of those issues; instead, it will focus on several fundamental flaws related to the safety of the transportation system. The key issue for the Planning Commission is whether the hearings official's decision is internally consistent and whether the applicant has shown compliance with all required aspects of the code.

The most significant concern is the hearings official's inconsistency regarding the safety of the proposed transportation system. LUBA has held that findings must be internally consistent, *see, e.g., Doob v. Josephine County*, 27 Or LUBA 293 (1994) (inconsistent findings regarding different approval standards undermine a decision's adequacy). In this case, the Hearings Official made directly contrary findings in evaluating the proposed transportation system.

In evaluating the constitutional basis for exacting property for the area that extends Oakleigh Lane, the hearings official specifically found that the City's minimum street standards are required to provide safe access:

*"without the additional right-of-way, Oakleigh Lane cannot be improved to the City's minimum street design standards and the 168 new vehicle trips generated by the proposed development, along with the additional pedestrian and bicycle traffic generated by the proposed development, will not be assured of safe access via Oakleigh Lane."*  
Page 22 of HO's decision (emphasis added).



In other words, the hearings official specifically concluded that the extension of Oakleigh Lane must be improved to the city's minimum street standards in order to provide safe access to the property.

On page 24, the hearings official discussed the testimony of many nearby residents. Those residents expressed their concerns about the safety of the rest of Oakleigh Lane; in particular, that Oakleigh Lane is an undersized local street that is not wide enough to carry the volume of traffic that would be generated by the proposed PUD. There is no dispute that Oakleigh Lane does not have sufficient right of way or paved width to meet the City's minimum street standards – the same condition that the hearings official found unsafe in his review of the street segment on the site of the proposed PUD. Nonetheless, the hearings official dismissed those concerns:

“Oakleigh Lane need not have a dedicated 45 foot right of way and associated paved surface from River Road to the subject property in order to meet EC 9.8320(5).” Page 25 of HO's decision.

The hearings official based his conclusion on his reading of EC 9.8320(5)(a), but that reading is in error.

The hearings official expressed his understanding of the purpose of EC 9.8320(5)(a) to be ensuring “that a proposed development is capable of dedicating sufficient land along the property frontage to meet the right-of-way width requirements for that street dedication.” Page 25 of the HO's Decision. An interesting concept, but one that is not found anywhere in that code provision.

EC 9.9320(5)(a) reads in its entirety as follows:

“(5) The PUD [shall provide] safe and adequate transportation systems through compliance with the following:

“(a) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).

“(b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. ‘Nearby’ means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.

“(c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.”

EC 9.8320(5) requires the applicant to demonstrate that the PUD “provides a safe and adequate transportation system.” Subsection (a) of that provision requires compliance with EC 9.6800 through



EC 9.6875, which are the City's "Standards for Streets, Alleys, and Other Public Ways" and subsection (b) of that provision explicitly requires the City to consider "adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks."

The first thing to note is that the provision nowhere mentions that it applies solely to the requirement for dedication – the purpose of the provision is clear from the opening sentence – to provide "safe and adequate transportation systems." The Planning Commission should also note that EC 9.8320(5)(b) specifically requires the consideration of the transportation system "to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks." So the provision is clearly not designed solely to address dedication requirements. The simple truth is that if, as the hearings official concluded, the minimum right of way and paving width is required to provide "safe access," then that safety requirement must also be applied to the nearby streets pursuant to EC 9.8320(5)(b).

Moreover, the hearings official was plainly wrong in suggesting that EC 9.6800 – 9.6875 apply solely to dedication requirements. EC 9.6800 states the purpose of those sections:

"Sections 9.6800 through 9.6875 establish standards for the dedication, design and location of public ways."

Contrary to the suggestion of the hearings official, those sections are concerned with far more than simply the dedication requirement – they address location and design of public roads, such as Oakleigh Lane.

Ultimately, EC 9.8320(5) is designed to do exactly what it says – ensure that a proposed PUD provides a "safe and adequate transportation system," including a safe and adequate transportation system connecting a proposed PUD to nearby areas. A safe and adequate transportation system does not rely on a small and obviously inadequate local street and dump an additional 164 vehicle trips on it every day. If a PUD of this size wishes to use Oakleigh Lane, then Oakleigh Lane must meet the minimum street standards in order for the proposal to comply with EC 9.8320(5) and the hearings official was wrong to conclude otherwise.

The inadequacy of the transportation system proposed by the applicant is only made more apparent by the various exceptions to other street standards, including the standard for street connectivity and cul-de-sac length. Although the applicant provided a street connectivity study to justify the exception to street connectivity under EC 9.6815(2)(g), that study is wholly inadequate, as explained in the testimony of Paul Conte. Additionally, there is simply no analysis of the exception for cul-de-sacs under EC 9.6820(5). That exception is not justified through the street connectivity study and may be allowed only by showing that one of two conditions have been met. Those conditions must show that physical conditions or existing development preclude potential connections or re-

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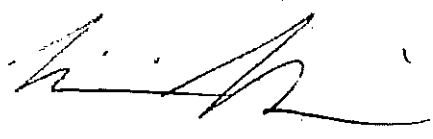
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Eugene Planning Commission  
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development. The record is devoid of such a showing and for good reason – a physical connection can be made through the property to the north, tax lot 200, or the property to the south, tax lot 500. There simply is no basis on which to grant an exception to the cul-de-sac length standard.

This project is an attempt to shoehorn inappropriate development in the wrong place. A co-housing project may well make sense, but not one of this size at this spot. We urge the Planning Commission to look at both the forest and the trees, because both of them support a denial of this proposal.

Very truly yours,



William K. Kabeiseman

WKK:kms

PDX\_DOCS:510369.1



Eugene Planning Commission  
c/o Becky Taylor  
Associate Planner  
99 West 10<sup>th</sup> Avenue  
Eugene, OR 97401

December 5, 2013

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

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Counselors at Law

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Celebrating 42 years  
of Excellence!

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Re: Response to November 22, 2013 Appeal Statement  
Our Client: Oakleigh Meadow Co-Housing, LLC  
Our File No. 10697 / C1343

Dear Commissioner:

On behalf of our clients, Oakleigh Meadow Co-Housing (OMC), we submit this letter in response to the appeal of its Tentative Planned Unit Development Approval (PDT 13-001). In accordance with the appeal process specified at Eugene Code section 9.7655(2), this response is based on the evidence already in the record, and no new evidence in being provided to the Commission.

Please include this letter in the record of these proceedings, and provide us with a copy of the City's final decision in this matter.

For ease of reference, this response will follow the outline of the materials submitted by Mr. Thoms on November 22, 2013.

**1. The Metro Plan Policies Cited By the Appellant Are Not Applicable to the Land Use Application and The Hearings Official Adequately Addressed the Issues Raised by the Appellant.**

The appellant assigns as error the Hearings Official's alleged failure to address Metro Plan policies F.26 and F.36 in his decision. However, neither of these provisions are mandatory approval criteria. Accordingly, failure to address these provisions would provide no basis to reverse or remand the Hearings Official's decision, and, in any case, the Hearings Official addressed the substance of the claims advanced by the applicant in his decision.

Metro Plan policy F.26 states:

"Provide for a pedestrian environment that is well integrated with adjacent land uses and is designed to enhance the safety, comfort, and convenience of walking."

As is clear from the context of this provision it is not a mandatory approval criteria for this Tentative Planned Unit Development application. Rather, the Metro Plan finding 35 ties this provision to a state requirement that local government's adopt *land use regulations* to provide a pedestrian network and not to a particular development proposal:

“OAR 660-012-0045(3) requires local government to adopt land use regulations to provide for a pedestrian environment that is well integrated with adjacent land use and designed to enhance the safety, comfort, and convenience of walking; a continuous pedestrian network with reasonably direct travel routes between destination points; and sidewalks along urban arterial and collector roadways, except freeways.” (Emphasis added)

Metro Plan policy F.26 is a planning requirement for the City to “Provide for a pedestrian environment” in its land use regulations, and not a criteria for an individual development permit. The Hearings Official’s decision cannot be overturned for not addressing an inapplicable policy.

Likewise, Metro Plan policy F.36 is another planning requirement, and not an approval criteria. It states:

“Require that new development pay for its capacity impact on the transportation system.”

The preceding Metro Plan findings address various sources of revenue and alternatives for increasing transportation costs. New development is identified as a potential source of revenue under finding 48, which states:

“Currently, systems development charge (SDC) methodologies charge new development only for the city’s portion of the arterial-collector system, metropolitan area state and county facilities are excluded from the calculation of SDC rates; and assessments only partially fund projects that are improving existing facilities to urban standards.”

It is clear from this context that policy F.36 is intended to provide financial planning guidance to the jurisdictions concerning the use of SDC’s it is not an approval criteria for individual development permits.

Moreover, even if the Hearings Official failed to cite to these policies, he addressed the substance of the arguments that the appellant advances in his decision. The appellant argues that Oakleigh Lane has to be widened to safely accommodate pedestrians, and that this widening would impose an additional burden on adjoining property. However, the only dedication of additional street width is on the subject property itself. No widening of the street is necessary to safely accommodate pedestrians, because as the Hearings Official noted the increase in traffic on Oakleigh Lane will actually improve pedestrian safety by reducing travel speeds.<sup>1</sup> *HO Decision*, p. 27. Likewise, the Hearings Official also found that adjoining neighbors would not be burdened by the street widening,

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<sup>1</sup> In fact, as Hearings Official notes, the Eugene Arterial and Collector Street Plan provides that the queuing effect on local streets “has been found to be an effective and safe method to reduce speeds and non-local traffic.” ACSP, Appendix H, p. 36.

because the decision does not require the neighbors to “dedicate a portion of their property to the widening of the right-of-way or paved surface of Oakleigh Lane.” *HO Decision*, p. 25. The appellant does not acknowledge or challenge this finding in its appeal. In any case, where as here, a Hearings Official addresses the substance of arguments that were advanced by the opponents below, he cannot be faulted for not citing to the policies directly. *Ettro v. City of Warrenton*, 53 Or LUBA 485, 492 (2007).

Accordingly, the appellant has failed to identify any error in the Hearings Official’s decision and this assignment should be denied.

**2. The Appellant Fails to Identify Any Error in Hearings Official’s Findings Under EC 9.8320(5)(a)-(c) Concerning Safe and Adequate Transportation Facilities.**

The appellant assigns as error the Hearings Officials’ findings under Eugene Code section 9.8320(5)(a)-(c), arguing that the OMC’s street connectivity study was inadequate to establish an exemption for an additional street connection, that Oakleigh Lane has to be widened along its entire length in order to avoid increased risks from increased traffic, and that a TIA was required but not performed. The appellant has failed to identify any error in the Hearing’s Official’s decision with regard to these issues and this appeal item should be denied.

**A. Street Connectivity and Turnarounds**

The appellant takes issue with exceptions to street connectivity and to the cul-de-sac requirements approved by the Hearings Official, arguing that Oakleigh Lane cannot adequately serve a single undeveloped property (Tax Lot 200). However, EC 9.6815(2)(g)(1)(b) provides that:

“In the context of a Type II or Type III land use decision, **the city shall grant an exception** to the standards in subsections (2)(b), (c) or (d) if the applicant demonstrates that any proposed exceptions are consistent with either subsection 1. Or 2. below:

\* \* \* \* \*

(1) The applicant has provided to the city, at his or her expense, a local street connection study that demonstrates:

\* \* \* \* \*

b. How undeveloped or partially developed properties within a quarter mile can be adequately served by alternative street layouts.” (Emphasis added)

As the Hearing Official notes, the applicant did provide at its sole expense a connectivity study prepared by a licensed traffic engineer demonstrating how Tax Lot 200 can be adequately served by an alternative street layout. *HO Decision*, p. 25. What’s more, the Eugene Public Works Department concurred in this connectivity study and recommended that the exception be granted. *Id.* at 18-19. Accordingly, the Hearings Official properly approved this exception.

On appeal, the appellant complains that the connectivity study was inadequate because it failed to anticipate some, unspecified, maximum hypothetical development of the undeveloped Tax Lot 200. However, as the Hearings Official notes, EC 9.6815(2)(g)(1)(b) does not “require a showing that nearby properties can be developed to their maximum potential.” In fact, we submit that adding this language into the code would have been error on the part of the Hearings Official. The provision requires “adequate” service, it does not require that one property owner make improvements to accommodate maximum hypothetical development on surrounding properties. Accordingly, there was no error in the Hearings Official’s decision.

The appellant’s concerns with regard to the cul-de-sac exception are more problematic. In particular, the appellant fails to demonstrate that these issues were raised before the Hearings Official as required by EC 9.7655(3). Accordingly, this issue is not properly before the Planning Commission, and cannot be a basis for overturning the Hearings Official’s decision.

Moreover, the basis for the appellant’s challenge concerning this matter is unclear. In accordance with Eugene Public Works staff’s request, OMC agreed to dedicate a portion of its property to construct a future hammerhead turnaround, and the decision included a condition of approval requiring OMC to dedicate an expanded area recommended by Public Works for the turnaround. *HO Decision*, p. 19 & 21. As staff noted, the turnaround will be completed once the northerly property developed, but is not feasible or necessary at this time. *Id.* at 19. The appellant fails to identify any error in this decision.

The appellant appears to argue that the exception to EC 9.6820(3) for cul de sacs longer than 400 feet was improper. However, as staff found, EC 9.6820(5)(b) provides that an exception may be granted where “buildings or other existing development on the subject property or adjacent lands, including previously subdivided but vacant lots or parcels, physically preclude a connection now or in the future, considering the potential for redevelopment.” OMC’s connectivity study clearly established that this was the case by demonstrating that no connection could be made between Oakleigh Lane and McClure Lane to the south because “All properties abutting the site to the south along the existing McClure Lane are fully developed.” This adequately justified the exception, and establishes that there is no basis for this appeal issue.

## B. Dedication

The appellant also argues that a greater dedication is required to provide increased traffic capacity and pedestrian circulation.<sup>2</sup> However, this presupposes that traffic capacity or pedestrian safety is actually risk. Neither is true. With regard to capacity, Oakleigh Lane has the capacity for at least 750 trips per day, and not even the appellant argues that the proposed development would

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<sup>2</sup> The appellant also asserts generally that the Hearings Official erred by failing to evaluate EC 9.0020 under the dedication requirements in EC 9.6820. However, EC 9.0020 does not provide an additional approval criteria. Instead, the applicable standards are set forth in EC 9.6800 et seq. In any case, the applicant fails to demonstrate precisely how the public health, safety and welfare would be adversely impacted by dedicating additional area for Oakleigh Lane.

increase trips over the 750 trip threshold. Moreover, as the Hearings Official found, the increased traffic will actually create a safer environment for pedestrians by reducing vehicle travel speeds, and there is no evidence of any safety risk associated with increased vehicle traffic:

“Although the Hearings Official understands the neighbor’s concerns about increased numbers of vehicles using Oakleigh Lane, the strong assertion that an increase in ADT will result in traffic accidents or actual danger to pedestrians and bicyclists is not supported by evidence in the record. Assertion is not evidence, and neither is an explanation of inductive reasoning. Therefore, the Hearings Official cannot substitute the neighbor’s very strongly held opinions that more cars will necessarily decrease traffic safety for actual evidence. Anecdotal instances of unsafe traffic conditions are also not enough to trigger a TIA.” *HO Decision*, p. 28.

Accordingly, the appellant’s assumption that Oakleigh Lane is inadequate to safely accommodate new trips is without basis in the evidence.

In the absence of this evidence, the appellant attempts to twist staff findings justifying the road and turnaround dedication to argue that “[i]f dedication is required to adequately protect the public interest on site, it should also be required offsite.” However, this fundamentally misconstrues both the findings and the law. As the Hearings Official explained the dedication requirements at EC 9.8320(5) only apply to the property that is subject to the application. *HO Decision*, p. 25. In that light, staff’s findings (and the underlying Public Works comments) justifying the exaction have no applicability to any other portion of Oakleigh Lane, because the findings are only talking about the subject property’s frontage. *Id.* at 27. As such, the appellant has provided no basis for requiring any additional widening or dedication of Oakleigh Lane.

### C. TIA

The appellant also urges that the Hearings Official erred by not requiring a Traffic Impact Analysis. However, as is clearly set forth in the Hearings Official’s decision, none of the triggers for a TIA under EC 9.8670 were applicable to the Tentative PUD. The applicant argues that EC 9.8670(2) provides a basis for a TIA. However, that provision is only triggered where:

“The increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action under the city’s traffic calming program, and identified locations where pedestrian and/or bicyclist safety is a concern by the city that is documented.”

The City has no documented pedestrian or bicycle safety concerns on Oakleigh Lane. The applicant points to staff findings concerning the exaction. However, the referenced findings document no concerns regarding pedestrian safety, but instead state that a larger dedication is required in front of the proposed PUD to bring the street up to current standards. This is not documented concern

regarding pedestrian safety warranting a TIA. Again, the appellant has identified no error in the Hearings Official's decision.

**3. The Appellant Fails to Identify Any Error in Hearings Official's Findings Under EC 9.8320(6) Concerning Public Health and Safety.**

Under its Third Assignment of Error, the appellant reiterates its now familiar argument that Public Works Department findings in support of the City's action means that Oakleigh Lane must be widened along its entire length so as not to be an impediment to emergency response. However, as is set forth above, the applicant has failed to provide evidence establishing that Oakleigh Lane would be at risk without the street being widened, and the comments to which it refers relate solely to the exaction to widen Oakleigh Lane on the subject property. In fact, Public Works acknowledged that "the existing paved surface provides safe passage for two-way vehicular traffic, bicycles, pedestrians and **emergency vehicles.**" *HO Decision*, p. 26 (Emphasis added). Accordingly, the appellant's assignment of error provides no basis for reversal or remand of the Hearings Official's decision.

**4. The Appellant Fails to Identify Any Error in the Hearings Official's Findings Under EC 9.8320(11) Concerning Streets, Sidewalks and Bicycle Paths.**

The appellant's argument under its Fourth Assignment of Error is difficult to follow. It alleges variously that the Hearings Official failed to make "specific" findings under EC 9.6505(3)(b), (4) and (5). These provisions require improvement of public streets and alleys, and that sidewalks, and bicycle paths and accessways be constructed in accordance with Eugene Chapter 7. City staff imposed a condition of approval requiring OMC to submit an Irrevocable Petition for Public Improvements to provide street and alley improvements and sidewalks at a later date, and to dedicate additional property associated with an informal path for a possible future bike path connection. *HO Decision*, p. 37-38; 22-23. The appellant fails to identify any error in the City's decision with regard to these provisions, and its assignment of error should be denied.

**5. The Appellant Fails to Identify Any Error in the Hearings Official's Findings Under EC 9.8320(12) Concerning Off-Site Impacts.**

The appellant assigns error to the Hearings Official's findings with regard to EC 9.8320(12) based on its contention that Hearings Official improperly construed the term "minimal" and "impacts," and argues that the Hearings Official did not properly address impacts from traffic. The appellant has not identified any basis for reversal or remand of the Hearings Official's decision.

The Hearings Official's findings addressing EC 9.8320(12), and specifically the issue of traffic are reasoned and correct. The Hearings Official specifically rejected opponent's contention that "minimal" meant the same things as insignificant. With regard to the appellant's new contention on appeal that the Hearings Official did not correctly evaluate the "impact" standard under

*Benjamin v. City of Ashland*, 20 Or LUBA 265 (1990),<sup>3</sup> the opponents did not raise this issue below and it is not properly before the Planning Commission. In any case, the case law is not relevant as it addresses a separate standard of "livability" that is not contained in EC 9.8320(12).

With regard to the appellant's contention that the Hearings Official failed to address impacts "from traffic (safety, noise, etc.)," the appellant is simply wrong. The Hearings Official found that the opponents had failed to provide any evidence with regard to noise from the PUD residents "and their cars." *HO Decision*, p. 52. Moreover, the Hearings Official had already found that the opponents had failed to identify any traffic safety impacts associated with the proposed development. The appellant argues that the Hearings Official assumed that there were no traffic impacts because the TIA requirement was not triggered. However, it is clear from the decision that the Hearings Official made no such assumption. Instead, after carefully applying the analytical framework established by the Oregon Supreme Court in *PGE v. Bureau of Labor and Industries* the Hearings Official found:

"While it is not prudent to theorize too much about whether a project that requires a TIA necessarily has more than minimal offsite impacts, it is certainly reasonable to assume that if any of the three conditions identified in EC 9.8670 are evident in the record, EC 9.8320(12) might be implicated. However, when none of the conditions exist that would trigger a TIA under EC 9.8670, it is reasonable to question whether EC 9.8320(12) is implicated as to traffic.

That is the case for this application and this record. There are no conditions identified in the record that come anywhere close to triggering a TIA. The peak vehicle trip estimates are less than a third of that required to trigger a TIA, and no "problems" or LOS deficiencies are identified. The neighbors' fear that there will be more cars on Oakleigh Lane than before is not enough to view those new cars as more than a minimal impact let alone a negative off-site impact. As such, the Hearings Official concluded that the increase in peak vehicle trips from the proposed PUD will result in minimal off-site impacts." *HO Decision*, p. 53.

The Hearings Official did not assume that there were no impacts due to the absence of a TIA. Instead, he found that there were minimal off-site impacts from traffic because the proposal would not decrease capacity, adversely impact LOS or safety, and no-one in the neighborhood had provided any evidence of impacts. The Hearings Official merely rejected the opponents' baseless assumption that an increase in trips automatically resulted in an increase in impacts.

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<sup>3</sup> The appellant cites to *Benjamin v. City of Ashland*, 19 Or LUBA 600 (1990), which was a LUBA decision on an order. It actually quotes from LUBA's opinion at *Benjamin v. City of Ashland*, 20 Or LUBA 265, 270 (1990). We address LUBA's opinion rather than the order.

Accordingly, the appellant's Fifth Assignment of Error provides no basis for reversal or remand, and the Planning Commission should affirm the Hearings Official's decision.

**6. The Appellant Fails to Identify Any Error in the Hearings Official's Findings Under EC 9.8320(13) Concerning Reasonably Compatible and Harmonious Development.**

The appellant argues under its Sixth Assignment of Error that the Hearings Official failed to properly evaluate the traffic impacts from the proposed development when determining whether it was "reasonably compatible and harmonious"<sup>4</sup> under EC 9.8320(13), and asserts generally that development is not adequately screened and will "stick out like a sore thumb."

The Hearings Official interpreted EC 9.8320(13) consistently with an approved interpretation of the same provision in the case of *Northgreen Property, LLC v. City of Eugene*, 65 Or LUBA \_\_\_ (LUBA No. 2011-099, March 5, 2012). *HO Decision*, p. 54. In that case, LUBA found that a cell tower was "reasonably compatible and harmonious" when it met the objective standards set out for such towers and was screened from view. The Hearings Official expressly adhered to this approach. With regard to traffic he expressly incorporated findings that the proposal conformed to objective provisions of the Eugene Code.<sup>5</sup> With regard to screening, the Hearings Official had already made detailed findings that established that the proposed development was adequately screened. *HO Decision*, p. 9-14. He determined that the PUD complied with "all the applicable provisions of EC 9.8320" and was further persuaded:

"that the proposed co-house will be compatible and harmonious for the following reasons: 1) the development will be at the end of the street where comparatively fewer property owners along Oakleigh Lane will be affected visually, 2) the scale of the buildings, as the applicant points out, are within the range of typical single family homes. The applicant states that the common house is similar in size to a large home and the other buildings are similar to smaller single family homes, 3) the proposed density is less than the maximum and the proposed height is less than the maximum height allowed, and 4) the proposed use is residential (as opposed to some conditional use allowed in the zone)." *HO Decision*, p. 55.

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<sup>4</sup> The appellant also reiterates its argument concerning the PWD analysis for the exaction. However, as the Hearings Official explained, the PWD analysis provided the basis for an exaction of property to allow the future improvement of Oakleigh Lane to current standards. It did not establish that the street had to be widened along its entire length.

<sup>5</sup> The appellant accuses the Hearings Official of "ignoring the evidence of Mr. Simon Trautman" to find that there was "no evidence" of traffic issues. However, this misstates the Hearings Official's holding. The Hearings Official found that there was no evidence of traffic problems associated with the "modest increase in total vehicle trips." Mr. Trautman's testimony is not evidence of traffic issues associated with the increase in trips.

The appellant argues that objective standards such as size of buildings and density calculations cannot be relied upon, but this is clearly inconsistent with LUBA's holding in *Northgreen*. Accordingly, its Sixth Assignment of Error provides no basis for reversal or remand.

**7. The Appellant Fails to Identify Any Error in the Hearings Official's Findings Under EC 9.8320(3) Concerning Screening.**

The appellant argues under its Seventh Assignment of Error that the PUD does not provide adequate screening, because the Hearings Official did not account for "building location (and] bulk," because screening along the northern property boundary includes landscaping and the preservation of Cedar trees in the public right-of-way in the road dedication areas, and because the western property boundary is screened by a wall. None of these arguments establish any error in the Hearings Official's decision, and the Planning Commission should affirm.

EC 9.8320(3) requires a PUD to "provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk and height." In accordance with LUBA's opinion in *Northgreen Property LLC v. City of Eugene*, the Hearings Official found EC 9.8320(3) "does not require a development to be completely obscured from view, but that it be screened to a reasonable extent considering the proposed use." *HO Decision*, p. 13 (internal quotations omitted). The appellant does not challenge this finding.

Based on this finding, the Hearings Official made detailed findings with regard to screening on each side of the subject property using OMC's site plans. These plans depict the location and bulk of each of the proposed structures, as well as proposed landscaping. *HO Decision*, p. 9-14. Based on this evaluation, the Hearings Official concluded that the screening was adequate with additional screening along and eastern boundary (adjoining undeveloped city parkland) and a higher fence along the southern boundary. The appellant's assignment does not identify any defect in the Hearings Official's analysis of the site plan, or demonstrate that different or additional screening is required.

The appellant argues that some Cedar trees along the northern property boundary cannot be relied upon as screening when they could be removed. However, the OMC landscape plan "shows continuous landscaping" along the northern boundary, except for the driveway entrance which is "flanked by proposed landscape beds with new tree plantings." *HO Decision*, p. 10. The appellant does not argue that this continuous landscape screening is inadequate to conform to EC 9.8320(3) and it clearly is.

The appellant does argue that landscaping within the right-of-way cannot be considered as screening, but fails to acknowledge that right-of-way is not proposed for development at this time, and, even if it were, the entire right-of-way area would not be subject to paving or improvement. Landscaping and street trees in the City of Eugene are generally located within the public right-of-way. Moreover, the Cedar trees which are being proposed for protection, are at least partially located in right-of-way that is being dedicated to preserve an informal bicycle/pedestrian connection. It is unlikely that future improvement within this right-of-way area will disrupt these trees.

The appellant also challenges the use of a green wall<sup>6</sup> on the western boundary of the property, but fails to acknowledge or challenge the Hearings Official's finding that a wall is an acceptable form of screening under EC 9.0500 and would "completely obscure[e] the adjacent parking area, and to some extent the buildings beyond." *HO Decision*, p, 13-14. The appellant complains about an adjustment to an interior yard setback associated with the wall, but does not establish that moving a screening element closer to an adjoining property would impair its screening function.

The appellant also challenges two conditions imposed by the Hearings Official that require OMC to revise its landscape plan to include additional landscaping along the eastern boundary, and to provide an arborist report and detailed plans for preserving the Cedar trees at issue. The appellant alleges that the first condition is an improper deferral of a determination of "adequate" screening under EC 9.8320(3). However, the Hearings Official's determination does not defer the determination of what constitutes adequate screening. Rather, the Hearings Official found that it was feasible for OMC to provide adequate screening along its eastern boundary by providing landscaping to conform to the requirements in EC 9.6200 et seq.<sup>7</sup> It then imposed a condition requiring:

"Prior to final PUD approval, the applicant shall revise the final site plan and landscaping plan compliant with EC 9.6200 to provide landscape screening along the eastern property boundary, and a combination of landscape screening and fencing along the southern property line, to screen the buildings from view from adjacent properties."

It is clearly feasible to modify the landscaping plan. Accordingly, the Hearings Official did not err in imposing this condition.

The appellant also challenge condition 2 which requires OMC to provide a certified arborist report that provides protective measures for the critical root zone (CRZ) of the Cedar trees during construction, and provide a note on the final PUD plans to adhere to the protection recommendations. This condition arose out of the concern over the critical root zone (CRZ) relative to Building 2 in the development. *HO Decision*, p. 11. It is clearly feasible to provide the certified arborist report and modify the plans. Accordingly, the Hearings Official did not err in imposing this condition.

Again, the appellant's Seventh Assignment of Error provides no basis for reversal or remand of the Hearings Official's decision, and the same should be affirmed.

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<sup>6</sup> As noted by the Hearings Official, the green wall utilizes espaliered trees along the side of the wall facing the neighboring properties. The appellant does not allege or contend that this green wall would not adequately screen the development.

<sup>7</sup> EC 9.6205 clearly specifies the "Landscaping Required by this Land Use Code" for each use, and EC 9.6210 clearly defines those standards.

**8. The Appellant Fails to Identify Any Error in Hearings Official's Findings Under 9.8320(11) Concerning Net Density or Clustering of Development.**

The appellant argues under its Eighth Assignment of Error that the Hearings Official's density calculations are inaccurate because they include easements in the net developable area. However, EC 9.2751(1)(c) establishes those areas "that must be excluded from the net density calculation." *HO Decision*, p. 35.

EC 9.2751(1)(c) states:

"For purposes of calculating net density:

1. The acreage of land considered part of the residential use shall exclude public and private streets and alleys, public parks, and other public facilities."

As the Hearings Official found, this does not exclude easements from this calculation. The appellant argues that EC 9.2751(1)(c) should exclude easements, but this does not alter the text of the provision, or provide a basis for reversal or remand of the Hearings Official's decision.

The appellant also urges that the Hearings Official misinterpreted EC 9.8300(1)(e) regarding clustering of residential development, and that it erred in allowing adjustments to the setbacks to cluster residential development away from Oakleigh Meadow and from the adjoining City parkland. However, as the Hearings Official noted 9.8300(1)(e) is intended to provide "a high degree of flexibility in the design of the site" based on "Clustering of residential dwelling to achieve energy and resource conservation while also achieving the planned density for the site." The appellant makes no cognizable argument concerning why the Hearings Official could not allow clustering away from Oakleigh Meadow under this provision, and its assignment should be denied.

**9. The Appellant Fails to Identify Any Error in the Hearings Official's Findings Under EC 9.8320(11) Concerning Solar Setbacks.**

The appellant alleges under its Ninth Assignment of Error that the Hearings Official erred by measuring the solar setbacks under EC 9.8320(11) from "the existing property line rather than the property line established by the required dedications." The Hearings Official properly determined that the subject property was exempt from the solar setback standards under EC 9.2795(3)(c)(1). *HO Decision*, p. 47. Eugene Code section 9.2795(3)(c)(1) provides an exemption from the solar setback standards whenever the setback will have an insignificant benefit because a proposed building will only shade "A non-developable area, such as a designated open space, a public utility easement, street or alley." As the Hearings Official found, the "buildings abutting the north property line (Buildings 1 and 2) would shade a non-developable area, namely right-of-way for Oakleigh Lane and the bicycle/pedestrian access way required along the north property line." *HO Decision*, p. 46. The appellant does not challenge this finding. Accordingly, its alleged incompliance with the solar

setback standards provides no basis to overturn the decision of the Hearings Official.

### **10. The Appellant Fails to Identify Any Error in the Hearings Official's Findings With Regard to Substantial Evidence.**

Finally, the appellant purports to challenge the substantial evidence relied upon by the Hearings Official in rendering its decision of approval. However, in reality the appellant is seeking to substitute its preferred evidence and judgment for that of the Hearings Official. The appellant's dissatisfaction with the Hearings Official's selection of evidence or decision regarding how to weigh that evidence provides no basis to overturn the Hearings Official's decision, and the same should be upheld. *See* EC 9.7680 (noting that reversal must be based on findings "as to how the hearings official...failed to properly evaluate the application or make a decision consistent with applicable criteria.")

#### A. Constitutional Exaction Findings

As noted above, the appellant makes a concerted effort to twist staff's and Public Work's findings in support of the dedication of additional right-of-way for Oakleigh Lane to argue that the street must be widened and improved along its entire length to "ensure the safe, convenient and/or comfortable accommodation of vehicular, bicycle and pedestrian traffic on Oakleigh Lane." However, the appellant is overreaching.

While City staff did provide the required findings to satisfy constitutional requirements to support an exaction of the OMC property (*see HO Decision*, p. 21-23), City staff did not indicate the continued safety or accessibility of Oakleigh Lane was dependent upon the improvement of this area, or the widening of other portions of the street. On the contrary, as noted by City staff:

"Public Works staff states that the existing paved surface provides safe passage for two way vehicular traffic, bicycles, pedestrians and emergency vehicles. As such, Public Works staff indicates that there is nothing to suggest that impacts of the proposed development will result in unsafe conditions in Oakleigh Lane. Public Works staff confirms that it is appropriate to defer public improvements via an irrevocable petition." *HO Decision*, p. 26.

It's clear that the appellant disagrees with these findings. However, it failed to provide evidence to establish that the modest increase in traffic on Oakleigh Lane would create capacity or safety issues. Accordingly, the appellant's attempt to twist the staff's Constitutional Exaction findings into evidence of a deficiency in Oakleigh Lane fails, and provides no basis to overturn the Hearings Official's decision.

#### B. Access Lane

The appellant urges under its subsection 10B, that the Hearings Official erroneously concluded that Oakleigh Lane is not an "access lane."

However, the appellant misstates the Hearings Official's findings. The Hearings Official found that it was irrelevant whether Oakleigh Lane is classified as an access lane or low volume residential because a sufficient amount of land was dedicated in the application to meet the right-of-way requirements for both:

"Staff have properly applied E 9.8320(5)(a) by considering and requiring dedication of land to meet the right-of-way requirements for either an access lane or a low volume residential street – along the frontage of the subject property. Whether or not Staff have miscategorized Oakleigh Lane as a low volume residential street and the Hearings Official does not agree that a mistake was made, is of no consequence because Table 9.6870 shows right-of-ways in the range of 40' to 55' for both access lanes and low volume residential streets." *HO Decision*, p. 25.

The appellant does not challenge this finding, or argue that there is any meaningful consequence to describing the street as either an "access lane" or "low volume residential street."<sup>8</sup> Accordingly, this argument provides no basis for reversal or remand.

#### C. Traffic Counts

The appellant appears to allege under subsection 10C, that the Hearings Official erroneously relied on traffic counts indicating that there would be 164 average daily trips instead of 169 average daily trips. However, the Hearings Official's determination was based on the ITE Trip Generation rate, which specified approximately 164 average daily trips from the proposed development. *HO Decision*, p. 23. The appellant urges that the ADT should actually be 5 trips higher at 169 ADT, but provides no basis for challenging the evidence in the record, and provides no explanation of why the addition of 5 trips would make any material difference. Accordingly, this subsection provides no basis for overturning the Hearings Official's decision.

#### D. Alleged New and Nonresponsive Evidence

The appellant urges under subsection 10D that the Hearings Official erred by accepting "new and nonresponsive evidence" submitted by OMC on October 16, 2013. However, the appellant fails to identify the alleged new or non-responsive evidence at issue, or demonstrate any prejudice arising out of the same in the decision.

Moreover, the appellant fails to acknowledge the fact that any testimony or evidence submitted on October 16, 2013, was pursuant to the open-record

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<sup>8</sup> In fact, the Arterial and Collector Street Plan does not provide criteria for classifying local streets. Instead, it provides a table that summarizes the "typical widths for local street elements such as right-of-way, pavement, sidewalks and plant strip areas, and traffic volume thresholds." ADT is a factor in determining the type of the street under this summary table, but so are right of way, paving widths, sidewalks, parking and planting strips.

sequence specified at the hearing, which specifically allowed responsive testimony and evidence through October 16, 2013. Accordingly, this subsection provides no basis for reversal or remand.

**Conclusion**

As set forth in each of the foregoing responses, the appellant has failed to establish any error in the Hearings Official's decision warranting reversal or remand of the same. Accordingly, the Planning Commission should deny this appeal in its entirety.

Very truly yours,

HUTCHINSON, COX, COONS,  
ORR & SHERLOCK, P. C.



Zack P. Mittge

ZPM:ah  
c: Client

## TAYLOR Becky G

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**From:** John B. Fenn III <johnfenn3@gmail.com>  
**Sent:** Thursday, December 05, 2013 9:06 AM  
**To:** TAYLOR Becky G  
**Cc:** Bryn Thoms; THOMS Bryn  
**Subject:** Planning Commission hearing document

Becky- Please include the following as testimony for today's hearing on the appeal to the OMC PUD. I have copied Bryn Thoms here so that he has access to my statement prior to the hearing this evening, as I am not able to attend due to a work commitment:

Oakleigh Lane is a narrow (1.5 lane) access street less than .25 miles long. As a resident who lives on the far west end of the street, close to the intersection with River Road and the small commercial parking lot on the SE corner of that intersection, I am keenly aware of the flow of traffic (pedestrian, bicycle, and motor vehicle) up and down the street. I am also keenly aware of the safety issues presented to my family (wife and two children) as well as that of the rest of the community. Of primary concern in this regard when it comes to the Hearing Official's decision on the Oakleigh Meadows Cohousing PUD application are the second and third assignment of errors in appeal document filed by neighbors on Oakleigh and McClure.

In the second assignment of errors, it is noted that the HO decision does not account for future development opportunities related to adjacent properties (e.g. Tax Lot 200) with regards to maintaining safety and the protection of "health, safety, and general welfare of the public" (EC 9.0020). More specifically, the HO decision does not adhere to PUD code section EC 9.8670 with regards to the necessity for a Traffic Impact Analysis. Increasing the population of a small street like Oakleigh by over 100% will most certainly increase the range and volume of automobile traffic—from personal vehicles to service vehicles and emergency vehicles—as well as pedestrian and bicycle traffic, and "international standards" related to thresholds of vehicular trips do not sufficiently address the immediate concerns around safety hazards (including increased probability of incidents).

The third assignment of error refers to PUD code EC 9.8320(6), noting overall that the HO's decision does not adhere to elements of the code put in place by the City of Eugene to ensure that all neighborhood residents and community members can be guaranteed sufficient protection of "public health and safety" in a wide range of matters. The second assignment of errors definitely overlaps with this third one, but more specifically the HO appeared to disregard a Public Works Department statement that the PUD did not adequately provide for sufficient space for emergency response and access—a serious risk for all neighbors on Oakleigh and users of adjacent public space.

In general, the HO decision appears to only concern the potential/future residents of the PUD property, not accounting for the vast majority of extant residents on the street (Oakleigh) when it comes to their safety as vehicle users, cyclists, and/or pedestrians; that is, his focus attends only to the boundaries of the PUD property and not down the entire street, which is only 988 feet long, but along which ALL current residents must travel WEST to River Road whether on foot, bicycle, or car in order to utilize existing PUBLIC transportation infrastructure. This extremely narrow focus on the PUD property at the locus of concern in the HO's decision does a great disservice to current residents of the street.

from John B. Fenn III's Gmail account

oooooooooooo

Usually checked, always there...

December 5, 2013

Re: Appeal of Decision Approving Planned Unit Development, Oakleigh Meadows Co-Housing – File PDT-13

To the Planning Commission:

I am writing as party to the appeal of the Hearings Official's Decision on the Oakleigh Meadows Co-Housing PUD (File PDT-13) (hereafter referred to as "OMC").

This letter is meant to support and work together with the arguments being made by Bryn Thoms and Paul Conte. The analysis below concerns unsound reasoning which violates settled law on statutory interpretation by the Hearings Official in his Decision (PDT-13, WG 13-1) of November 12, 2013 in relation to Eugene City Code governing approval of PUDs, specifically EC 9.8320(13), the requirement that "The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses."

I argue that this portion of the Decision should be seen as therefore invalid and void, and that the opponents' arguments that the OMC PUD is *incompatible* and *inharmonious* with adjacent and nearby land uses be reconsidered.

### Reasoning of Hearings Official

On p. 54 of his Decision (hereafter referred to as "Decision"), the Hearings Official finds against the Opponents' arguments that OMC is incompatible and inharmonious with current adjacent and nearby land uses by reasoning that "*a finding that the proposed PUD is incompatible and inharmonious despite having complied with all the applicable provisions of EC 9.8320 would, at least in this case, be logically and legally indefensible.*"

As precedent for his reasoning here, the Hearings Official cites LUBA's affirmation of a prior Hearings Official's approach to EC 9.8320(13) in *Northgreen Property LLC. V. City of Eugene* ("Decision," p. 54), in which a cell tower was found to be "compatible and harmonious" according to EC 9.8320(13) because it had complied with the other elements of EC.

To reason this way is therefore to assume that the requirements of EC 9.8320(13) have been met if the requirements of other subsections of code have been satisfied. That is, it reasons that EC 9.8320(13) is redundant and purposeless when a PUD is compatible with all prior or other subsections of code.

### General Principles of Interpretation of Statute

However, the Hearing Official's reasoning is in violation of established principles of the interpretation of statutory law, as affirmed by United States Supreme Court precedent, which holds that Courts and other bodies must avoid readings of law which render any word or words

redundant. The basic principle here is that if a civic body has enacted laws, each element of the law is presumed to have purpose.

This is known as "The Rule to Avoid Surplusage" (i.e. avoiding the interpretation of some parts of a statute as redundant or irrelevant).

Thus, in *United States v. Menasche*, 348 U.S. 528, 538-39 (1955), the Majority of the Supreme Court of the United States (hereafter referred to as "SCOTUS") invalidated the U.S. Government's attempt to limit the applicability of a subsection of law governing citizenship.

In its decision, the Majority of SCOTUS synthesizes components of two earlier decisions, explaining its reasoning:

**"The Government's contention that § 405 (a) does not apply to any phase in the processing of naturalization petitions would defeat and destroy the plain meaning of that section. "The cardinal principle of statutory construction is to save and not to destroy." *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 30. It is our duty "to give effect, if possible, to every clause and word of a statute," *Montclair v. Ramsdell*, 107 U. S. 147, 152, rather than to emasculate an entire section, as the Government's interpretation requires."**

The SCOTUS Majority's language has thereafter been taken to apply generally to govern interpretation of statutory law. Thus, in *Gustafson v. Alloyd Co.*, 513 U.S. 561, 577-78 (1995), the Majority of SCOTUS affirmed:

"...two rather sensible rules of statutory construction. First, the Court will avoid a reading which renders some words altogether redundant. See *United States v. Menasche*, 348 U.S. 528, 538-39 (1955). If "communication" included every written communication, it would render "notice, circular, advertisement, [and] letter" redundant, since each of these are forms of written communication as well. Congress with ease could have drafted §2(10) to read: "The term 'prospectus' means any communication, written or by radio or television, that offers a security for sale or confirms the sale of a security." Congress did not write the statute that way, however, and we decline to say it included the words "notice, circular, advertisement, [and] letter" for no purpose.

**Argument**

As above, the Hearings Official's reasoning on p. 54 (and of course the decision in *Northgreen Property LLC. V. City of Eugene* on which it is based) would construe subsection 13 as having no distinctive statutory force of its own (in the overly metaphorical words of SCOTUS, it would "emasculate" EC 9.8320(13)). That reasoning would imply that the drafters of the Eugene City Code effectively included that statute "for no purpose" (again quoting SCOTUS) since according to the Hearings Official's reasoning, a PUD applicant could satisfy that subsection by virtue of complying with entirely different subsections of the code.

But the rulings by the SCOTUS cited above invalidate such interpretation of any statute, and enforce "giv[ing] effect, if possible, to every clause and word of a statute" (quoting *Montclair v. Ramsdell*, as above). The reasoning of this part of the Decision thus violates settled law on statutory interpretation.

In making our original arguments that OMC's PUD does not comply with EC 9.8320(13), Opponents of OMC were assuming that EC 9.8320(13) was an *additional* requirement of Eugene City Code, and that it may not be satisfied by meeting separate subsections.

The Supreme Court precedent cited above shows that this is the only acceptable interpretation of EC 9.8320(13): that by requirements of statutory interpretation, "compatible and harmonious with nearby and adjacent land uses" may not refer only to the contents of other subsections of code (which would render it redundant and purposeless). Instead, it must present an additional requirement with which a PUD, including OMC, must comply.

As Bryn Thoms and Paul Conte will argue, OMC is incompatible and inharmonious with the existing land uses of Oakleigh and McClure Lanes. I ask that that evidence be reconsidered in the light of the proper understanding of EC 9.8320(13).

\*

Some LUBA cases that are more relevant than *Northgreen Property LLC. V. City of Eugene* to such reconsideration include the following:

**Relating to building size:**

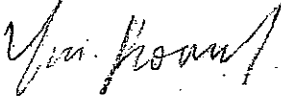
*Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256 (2004). LUBA's headnote offers this interpretation: "A governing body's interpretation of a design review criterion requiring that the "bulk and scale" of a proposed retail supercenter be "compatible" with surrounding buildings as necessitating a comparison of the size of the proposed buildings and surrounding buildings—and not just visual compatibility—is consistent with the text of the criterion and not reversible under ORS 197.829(1)(a)."

**Compatibility as different from permitted uses:**

*Doob v. Josephine County*, 47 Or LUBA 147. LUBA's headnote offers this interpretation: "Findings that proposed residential development is consistent with permitted uses in the zone are inadequate to demonstrate that the proposed development is compatible with the existing land use pattern in the area."

Thank you for your consideration of the above.

yours,

A handwritten signature in cursive script, appearing to read "Lara Bovilsky".

Lara Bovilsky  
Resident, 116 Oakleigh Ln  
Associate Professor of English, University of Oregon

Thursday, December 5, 2013



Eugene City Planning Commission

Re: Oakleigh Meadow Co-Housing PUD application

Dear Planning Commission

This letter is as strong support for the proposed co-housing project being proposed for by the Oakleigh Meadow Community. I have followed this project for a number of years and offer the following comments. I believe that I can offer these comments as a long term resident of Eugene and a proven expert in urban design, land use planning and single family and multifamily housing design. I have practiced architecture for the past 50 years in Eugene and throughout the U.S. and have taught Architectural Design at the University of Oregon for 52 years.

Having watched the progress of this project's development, I can say the planning, programming and design by those active in the process have learned from this long and tedious internal design process. A process that has required the participants to seek consensus, explore and understand a slightly different lifestyle. They have come away with a special understanding and regard for each other, the surrounding neighbors and the land. This is a sustainable project because all involved have had a part in making it together, it is theirs and they will protect it. They have made a working and sharing "urban sub community" connected and within a part of a larger community. They have focused on how "sub communities" are important and what a resource they offer to themselves and to the larger community.

I have reviewed the 21 page Appeal Statement that appeals the hearing officer and planning staff approvals and find most of the items noted on the first 14 pages, as errors address the opinions of the inadequacies of the Public's Way and not the developers designs nor internal site layout. The referenced design and engineering standards refer to the Street and public infrastructure. If the street, sidewalks turnaround, etc. are under designed then that is a neighborhood or public's issue to resolve. There are no infrastructure concerns in the way the developer has addressed the roadways, sidewalks, etc. for the developed site.

To apply these ROW standards for changes as a result of a now to be developed site especially one that is proposed for the zoned density is a serious precedent. Subdivisions that are required to dedicate ROW for streets that will become part of the community's property is different than a private development that has it's own internal access and roadway networks. It is the community's responsibility to improve the public ROW that would serve a new development if it is proven to be inadequate.

The 6th through the 9th "Assignment of Error" are strictly value judgments on the part of the River Road Community Organization. They deal with clustering, compatibility, screening and solar setback. The PUD ordinance requires a design/planning/engineering/landscape team of professionals to design and engineer a development. The concept for this requirement being that if these professional were retained there would be some creditability assigned and given to their expertise and skills as to how they might address, comply and find less prescribed solutions to the project elements. The developers have complied with this requirement and the retained professionals should be given the credibility they have been trained to provide.

The developers have used the PUD process as it is intended and should be encouraged.

The proposed number of units is within the prescriptive land use density for low density housing. It certainly satisfies the intent of the PUD ordinances, which was adopted to encourage and allow for imaginative land uses and site configurations beyond prescriptive ordinances. This proposed development from an urban design standpoint is certainly much better than a string of houses all with

the prescriptive setbacks, like a string of beads along a street or a spaghetti system of developer streets lined with the same houses dropped into place. Rather this is a community with buildings attached to form useable spaces that contribute to the community needs and uses. Not simply something to mow between separated houses. The portions of the site that are common will be maintained and cared for by the members of the community as one would care for the shared spaces and outdoor rooms that are a part of their individual house units.

Assuming the role of land use planning is to protect the past and to examine and support the future, this project is the future and provides for the City an example for others to study, watch and follow. It demonstrates an approach to housing and land use options, at this scale, not currently found in the City.

This is a project that typifies the intent of the PUD ordinance and the goals of the City of Eugene. It is a project and design that should be encouraged and strongly supported.

Sincerely  
Otto P. Poticha FAIA NCARB  
Architect and Adjunct Associate Professor.

Rec'd 12/5/13

December 5, 2013

Eugene Planning Commission  
c/o Becky Taylor, Associate Planner  
City of Eugene  
99 West 10th Avenue,  
Eugene, OR 97401

Re: City File No. PDT 13-1; Oakleigh PUD  
Opposition to Hearings Official Decision

Dear Commissioners:

This letter is in opposition to the Hearings Official decision on November 12, 2013 approving a 29-unit planned unit development on 2.3 acres at the very end of Oakleigh Lane.

#### **Preface**

This letter provides further explanation of errors that are enumerated in the Appeal Statement submitted November 22, 2013 ("Appeal Statement").

Not all assignments of error are addressed in this letter. This letter focuses mostly in traffic-related issues. In most cases, the Appeal Statement provides an adequate explanation of the assignments of error not covered in this letter. The fact that an assignment of error is not covered in this letter doesn't indicate that it is unimportant.

#### **Introduction**

The Hearings Official made multiple substantive errors, as described in the Appeal Statement. Many of these errors arise from the Hearings Official's failure to properly evaluate the impacts of increased traffic that would be generated by the PUD and the Hearings Official's failure to properly evaluate the inadequacy of Oakleigh Lane to safely and adequately handle the resulting traffic volume.

At the heart of the traffic-related issues, the Hearings Official made a fundamental error in his findings. Distilled down to their essentials, the Hearings Official made the following findings:

- According to an extensive evaluation by the Eugene Public Works Department (PWD), Oakleigh Lane would be *unsafe* in its current configuration after the PUD was built.
- However, Oakleigh Lane would be made sufficiently safe just by widening the right-of-way for the last 50 feet of this approximately 1,000 foot long, dead-end street, and

obtaining a promise from the applicant to pay for paving and sidewalks along only that final, short segment, sometime in the indefinite future.

A majority of Planning Commissioners would have to agree with these apparently conflicting conclusions by the Hearings Official in order to affirm the decision.

What this testimony will show is that, despite ample “hand-waving” around this issue, the Hearings Official never adequately squared these conclusions, which on their face appear to be inconsistent.

Instead, the Hearings Official attempted to “compartmentalize” the PWD’s lengthy findings that were provided as justification for “exacting” a 50-foot right-of-way from the development site’s northern side (“Conditions 3 and 4” on page 63 of the Decision) and requiring an irrevocable petition for improvements to Oakleigh Lane adjacent to the development site (“Condition 7” on the same page). Relying on this compartmentalization, the Hearings Official then explicitly declined to even consider the PWD analysis and conclusions for any of the other approval criteria cited in the Appeal Statement.

To begin with, the Hearings Official, with no reservations, accepted and incorporated PWD findings that “[w]ithout the additional right-of-way, Oakleigh Lane cannot be improved to the City’s minimum street design standards<sup>1</sup> and the 164<sup>2</sup> new vehicle trips per day generated by the proposed development, along with the additional pedestrian and bicycle traffic generated by the proposed development, will not be assured of safe access via Oakleigh Lane.”<sup>3</sup>

But throughout the Decision, the Hearings Official *completely ignored* these PWD findings. He explained his justification for ignoring the PWD findings most clearly in the following statement:

*“As to Mr. Conte’s assertion that the Staff’s own findings concede that pedestrian and bicycle traffic will not be assured safe use of Oakleigh Lane, the Hearings Official disagrees. PT-4. The statement Mr. Conte alights on is a finding related to explaining the justification for the dedication required under EC 9.8320(5)(a). Staff’s conclusions are properly understood to require the proposed PUD to dedicate sufficient right-of-way along the subject property’s frontage to allow Oakleigh Lane to be brought up to the low volume residential street standard along that frontage. That is consistent with requiring the proposed PUD to meet current street design standards rather than allowing the development to access Oakleigh Lane in its current form. The Hearings Official agrees with the applicant’s conclusion that there is no inconsistency in the Staff’s findings.”*  
(Decision at 27)

<sup>1</sup> Which are specified in Eugene Code Table 9.6870, and which require a minimum 45-foot right-of-way and 20-foot paving width for a “Low Volume Residential Street.”

<sup>2</sup> The correct number of projected new round trips is 168 or 169, not 164. The Hearings Official erroneously relied upon the applicant’s use of 28 dwelling units, despite having found that the development comprises 29 dwelling units. (Decision at 35) The correct calculation is 29 units x 5.81 round trips per unit = 168.49.

<sup>3</sup> “The Hearings Official generally concurs with Staff’s findings for EC 9.8320(5) and adopts those findings by this reference – consistent with the findings below.” (Decision at 24)

Commissioners should read this paragraph closely because it is at the heart of many of the Hearings Official's errors regarding the specific approval criteria for which the impacts of traffic are critical.

Note first that the Hearings Official never disputes, here or elsewhere in the Decision, the validity of the PWD staff's findings that Oakleigh Lane will be *unsafe* in its current configuration.<sup>4</sup>

Taken in its entirety, his statement does nothing more than observe what is not disputed: These PWD staff findings were presented as the justification for requiring the right-of-way dedication, and the staff used these findings (only) to require sufficient right-of-way along the subject property's frontage. Although the PWD findings are sufficient for those purposes, there is no evidence or argument in the staff report or the Hearings Official's findings that the two conditions of approval, which are limited to the fifty feet along the development site, are adequate to ensure Oakleigh Lane will be safe once the 29 dwellings are built.

It is inarguable that, if Oakleigh Lane would be unsafe without the conditions imposed on the final fifty feet of this 1,000 foot, narrow, substandard, dead-end road, then Oakleigh Lane would remain unsafe unless the right-of-way is widened and improvements made for all, or at least most, of the rest of Oakleigh Lane out to River Road. No reasonable person could conclude otherwise, based on the evidence in the record, most particularly the uncontested analysis by the City's professional traffic engineers.

The only other possibility that would support the Hearings Official's ignoring the PWD findings would be some legal obstacle to imposing adequate conditions. The Hearings Official didn't cite any such legal basis, and there is none. In fact, as explained in more detail below, LUBA<sup>5</sup> has laid out what the City can and can't do, which in this case boils down to two legal principles:

1. The City can require that before development can occur, there must be sufficient right-of-way dedications and improvements to bring all of Oakleigh Lane up to the appropriate City standards; and
2. The City cannot require that the applicants themselves acquire the necessary dedications or pay for improvements beyond the *proportional* burden that can be justified.

The Hearings Official (as well as Planning Division staff) appears to have misunderstood that the constitutional limits on *exactions* do not necessarily place the same limits on *conditions of approval* that require sufficient right-of-way and improvements to ensure safety before development can occur.

Commissioners should make sure that they have a solid grasp on the principles that LUBA laid down before making a decision in this case.

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<sup>4</sup> The PWD findings stated this conclusion very clearly, and with no qualifications. The PWD staff analysis didn't just "concede" the risks to bicyclists and pedestrians, as the Hearings Official states.

<sup>5</sup> *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006), LUBA.

With that underlying understanding, the commissioners have two defensible alternatives:

- A. Deny the application; or
- B. Approve the application with the following additional Conditions of Approval,<sup>6</sup> requiring that the applicant submit as part of final plat documents:
  1. A 45-foot wide right of way or easement along the entire length of Oakleigh Lane, dedicated to the City and/or County;
  2. Construction plans for improvements to the road, as required by City and/or County standards; and
  3. County and/or City street construction permit(s) for the plans in item 2, above.

### **Substantial evidence that Oakleigh Lane is unsafe unless widened and improved**

There is no dispute that the projected cumulative traffic after the PUD would be built would nearly double the Average Daily Traffic (ADT) on Oakleigh Lane and put Oakleigh Lane at the higher end of the City's ADT range for a "Low Volume Residential Street."<sup>7</sup>

There is also no dispute that Oakleigh lane is an unimproved, dead-end road, approximately 1,000 feet long from River Road to its current terminus. The road is partially under City of Eugene control and partially under Lane County control. According to a statement from Lane County Public Works, the County is not required, and doesn't intend, to keep their portion of the road in repair.

The Eugene portion is not an "adopted right-of-way" (PWD Referral Response, dated September 17, 2013 at 10), which also means the City is not required, and doesn't intend, to maintain their portion of the road because "the City does not maintain unimproved streets." (Staff Report, dated September 2013, at 17)

Oakleigh Lane currently has a 20-foot right-of-way north of the official centerline, dedicated by the adjacent property owners, but the right-of-way has not been adopted by either the City or County. (Staff Report at 12 and PWD Response at 10) The 20-foot northern right-of-way is exactly *one half* of the 40-foot right of way that is the City of Eugene standard for an "Access Lane." (Eugene Code Table 9.6870 and 1999 Eugene Arterial and Collector Street Plan, "ACSP"

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<sup>6</sup> These necessary conditions are taken directly from the LUBA decision in *Butte Conservancy v. City of Gresham*, See page 3 of the attached LUBA decision.

<sup>7</sup> The Hearings Official, however, relies directly on an erroneous figure for Average Daily Traffic:

*"Even with the added trips attributable to the co-housing proposal, the ADT for Oakleigh will be closer to 400 ADT at most."* (Decision at 27)

The correct figure is Average Daily Traffic of 700. See Footnote 8, page 13 in the October 9, 2013 Testimony ("Conte 10/9"). It's quite clear, that despite the careful explanation in my October 9 testimony, the Hearings Official confused the ITE "Average Daily Trip" volume (350 round trips) with the city standards "Average Daily Traffic" volume (700 one-way trips). The Hearings Official's "400 ADT" reference was in relation to an Average Daily Traffic number found on page 36 of the Design Standards and Guidelines For Eugene Streets, Sidewalks, Bikeways and Accessways, November 1999 document. In other words, the Hearings Official relied on an estimated traffic volume that was at least 40 percent less than the actual, undisputed projections.

Table 2.) The existing 20-foot right-of-way is even *less* than half the 45-foot right of way that is the City of Eugene standard for a "Low Volume Residential Street." (*Ibid.*)

The road has an oil mat surface, 18 to 20 feet wide. (Applicant's letter from Access Engineering, dated August 6, 2013; Staff Report at 12; and Lane County Referral Response dated August 29, 2013) This width is less than the City standard for any street type other than an alley, as specified in EC Table 9.6870 and ACSP Table 2.

There is no dispute that Oakleigh Lane is far below the Eugene Code standard for a Low Volume Residential Street, which requires a minimum 45-foot right-of-way and 20-foot wide paving. Consistent with the Public Works Department Referral Response dated September 17, 2013 ("PWD"), the Hearings Official found:

*"EC 9.6870 Street Width confirms that the required right-of-way width for Oakleigh Lane is 45 feet, based on the street functioning as a Low-Volume Residential Street."* (Decision at 19<sup>8</sup>)

Neither the Hearings Official, nor the applicant nor any supporter of the application disputed the following conclusion by the Public Works Department professional staff that Oakleigh Lane in its current configuration would not be safe after the increase in traffic that would arise if the PUD were approved.

*"It is in the public's interest to have Oakleigh Lane consist of 45 feet of right-of way through the development site's entry drive aisle and to consist of 33 feet beyond the drive aisle to the terminus of the street in order to ensure: safety for pedestrians, bicyclists and motorists traveling on Oakleigh Lane (a low-volume street); the efficient provision of emergency services; and that the proposed development and adjacent properties are accessible via Oakleigh Lane."* (Decision at 21)

Note that this conclusion correctly identifies that the projected traffic volume on Oakleigh Lane will fall into the Low Volume Residential Street category after the PUD is developed; however, the road won't come close to meeting the corresponding standards:<sup>9</sup>

The PWD findings go on to emphasize this requirement in no uncertain terms:

*"Because 45 feet of right-of-way is the minimum amount of right-of-way necessary to construct Oakleigh Lane in this manner as a low-volume street, ... the public interest in*

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<sup>8</sup> Despite getting the standard right here, under his findings for approval criterion EC 9.8320(5), the Hearings Official relies directly on an *erroneous* right-of-way minimum width:

*"Whether or not Staff have miscategorized Oakleigh Lane as a low volume residential street, and the Hearings Official does not agree that a mistake was made, is of no consequence because Table 9.6870 shows right-of-ways in the range of 40' to 55' for both access lanes and low volume residential streets."* (Decision at 25)

EC Table 9.6870 clearly shows the required right-of-way as 40' to 55' for an "Access Lane" and 45' to 55' for a "Low Volume Residential" street. Thus, there is a "consequence" to how Oakleigh Lane would be categorized after the PUD was built – specifically, a five foot greater right-of-way is required for a Low Volume Residential Street.

<sup>9</sup> Although there is disagreement about which category Oakleigh Lane currently falls into, the current classification isn't the critical factor, and opponents' arguments do not depend on whether the current classification is "Access Lane" or "Low Volume Residential Street."

*safe vehicular, pedestrian and bicycle travel and emergency response and access will be at risk if the 22.5 and 13 foot strips of right-of-way are not dedicated.” (Ibid. Emphasis added.)*

And again:

*“Without the additional right-of-way, Oakleigh Lane cannot be improved to the City’s minimum street design standards and the 164<sup>10</sup> new vehicle trips per day generated by the proposed development, along with the additional pedestrian and bicycle traffic generated by the proposed development, will not be assured of safe access via Oakleigh Lane.” (Decision at 22. Emphasis added.)*

The PWD staff analysis and findings provide an unmistakably clear conclusion that Oakleigh Lane must be improved to Low Volume Residential Street standards to safely and adequately handle the additional PUD resident vehicle trips, emergency vehicles and the current and additional motorists, pedestrians and bicyclists.

All of these findings were adopted by the Hearings Officer. (Decision at pages, 21, 22 and 24)

While these findings were presented to justify requiring the applicant to dedicate a section of the development site as part of the Oakleigh Lane right-of-way, the conclusion that a 45’ right-of-way and street improvements (such as sidewalks) are necessary for the safety of pedestrians, bicyclists and motorists applies to the right-of-way for the *entire* 1,000-foot length of Oakleigh Lane.

No reasonable person could conclude that the PWD analysis means that the *entire* reason Oakleigh Lane would be unsafe if the PUD were built is because the short segment at the very end of the road wasn’t wide enough and improved.

The PWD Referral Response included additional conclusions, which were also adopted by the Hearings Official, and these documented the City’s specific concerns about bicycle and pedestrian safety on Oakleigh Lane:

*“Public Works staff indicates that the applicant’s proposal is sufficient to accommodate the turnaround, but not the area necessary to extend the sidewalk along the south side of the turnaround, to separate pedestrians from vehicles and provide a safe public walking surface for the residents of the proposed development.” (Decision at 19. Emphasis added.)*

And:

*“Improving Oakleigh Lane to these [City] standards will allow for two-way vehicular and bicycle traffic, will provide separation between vehicular traffic and pedestrians ....” (Decision at 21. Emphasis added.)*

These statements by PWD traffic engineers make clear that an essential reason the City standard requires a 45-foot right-of-way for Low Volume Residential Streets is to allow room for sidewalks that are safe and well-separated from vehicular traffic.

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<sup>10</sup> The correct number of trips is 168 or 169 additional round trips; see Footnote 2, above.

Obviously, if the sidewalk were to comprise only 50 feet along the proposed development's northern property line, residents from the development would have to walk in the street for the remaining 1,000 feet to River Road. Current residents would obviously still have to walk in the street, as well.

### **Hearings Official findings are in error**

As noted above, the Hearings Official made an erroneous, overarching attempt to "compartmentalize" the PWD analysis and conclusions. This attempt to compartmentalize the analysis does not meet the tests of "reasonableness" or "consistency," as discussed above.

In addition, the Hearings Official made multiple errors in other findings regarding the future safety of Oakleigh Lane, which are all rebutted below.

#### Under EC 9.8320(5)

EC 9.8320(5) requires that "[t]he PUD provides safe and adequate transportation systems ..."

The Hearings Official stated:

*"The opponents have raised numerous 'safety' concerns and arguments that go well beyond the fundamental requirement of EC 9.8320(5). The very structure of EC 9.8320(5) does not require an applicant to prove that a proposed development will be safe from any and all asserted and or imagined traffic safety threats. The language of EC 9.8320(5) states: '[t]he PUD provides safe and adequate transportation systems through compliance with the following.' The underlined section demonstrates that the provision is limited by its own words to a requirement showing three things: a) that EC 9.6800 through 9.6875 can be met, b) that pedestrian, bicycle and transit circulation can be achieved, and c) that if necessary a Traffic Impact Analysis has been done and mitigation provided. In other words, the adopted provisions of EC 9.8320(5) assume that if those three criteria can be met, a 'safe and adequate transportation system' will result." (Decision at 24.)*

First off, the Hearings Official inaccurately implies opposition arguments claim that EC 9.8320(5) "require[s] an applicant to prove that a proposed development will be safe from any and all asserted and or imagined traffic safety threats." This would be a ridiculous claim, and opponents never made any such argument.

The other part of the Hearings Official's finding is that compliance with the three subelements of EC 9.8320(5) is sufficient to demonstrate compliance with EC 9.8320(5). This is true – *as long as the evaluation of the three subelements reflects the EC 9.8320(5) requirement that "[t]he PUD provides safe and adequate transportation systems."*

The Hearings Official, however, failed to apply the three subelements of EC 9.8320(5) in the correct manner, as described below.

#### Under EC 9.8320(5)(a)

The Hearings Official explains his understanding of EC 9.8320(5) as follows:

*"The purpose of those sections of the code are set forth in EC 9.6800 and states: '[s]ections 9.6800 through 9.6875 establish standards for the dedication, design and location of public ways to address the purpose of this land use code contained in EC 9.0020 Purpose.'*

...

*"The opponents [sic] arguments fundamentally misconstrue the requirement of EC 9.8320(5)(a) which is to ensure that a proposed development is capable of dedicating sufficient land along the property frontage to meet the right-of-way width requirements for that street designation.*

...

*But, in any case, the record amply demonstrates that the applicant is both willing and able to dedicate land along the northwest corner of the subject property and adjacent to Oakleigh Lane for the purpose of providing sufficient right away and a public accessway. Nothing more is required by EC 9.8320(5)(a).*

...

*Oakleigh Lane need not have a dedicated 45 foot right-of-way and associated paved surface from River Road to the subject property in order to meet EC 9.8320(5)(a) [sic] because that provision is a standard for the "dedication" of land, not a "service" standard akin to level of service – LOS. Neither does EC 9.8320(5)(a) require the neighbors to now dedicate a portion of their property to the widening of the right-of-way or paved surface of Oakleigh Lane." (Decision at 24-25, emphasis added)*

Although, the Decision cites to the purpose in EC 9.6800, the Hearings Official failed entirely to cite or evaluate EC 9.0020 Purpose, which states:

*"The purpose of the land use code is to protect and promote the health, safety, and general welfare of the public ..."* (Emphasis added)

The proper interpretation that the Hearings Official should have applied is that the purpose of EC 9.6800 through 9.6875 is to establish standards for the dedication and design and location of public ways to "protect and promote the health, safety, and general welfare of the public."

Furthermore, a valid decision must ensure these standards are or will be met in an adequate way to satisfy their intended purpose.

The Hearings Official also erred when he set up a false dichotomy in presenting EC 9.8320(5)(a) as a "standard for the 'dedication' of land, not a 'service' standard akin to level of service – LOS." As is explicitly stated in both EC 9.8320(5), as well as by EC 9.6800 and EC 9.0020 – the applicable standards are to ensure the "PUD provides safe and adequate transportation systems" and "protects and promotes the ... safety ... of the public." *Safety* is the core purpose of the standards, not "dedication" or "LOS."

The Decision therefore erroneously limited the scope of EC 9.6800 through EC 9.6875, to "dedications" *solely by the applicant*, and the Hearings Official neglected to evaluate, and impose conditions, as necessary to ensure that the safety of vehicles, bicyclists and pedestrians using Oakleigh Lane would be protected and promoted.

In particular, EC 9.6805 states:

**“EC 9.6805 Dedication of Public Ways.** As a condition of any development, the city may require dedication of public ways for bicycle and/or pedestrian use as well as for streets and alleys, provided the city makes findings to demonstrate consistency with constitutional requirements. Public ways for pedestrian and bicycle accessways, streets and alleys to be dedicated to the public by the applicant shall conform with the adopted Street Right of way Map, and EC Table 9.6870.”

While the second sentence addresses “streets ... dedicated to the public by the applicant,” *the first sentence contains no such qualification.* As described above, I.U.B.A. has made perfectly clear that the City can require dedication of adequate right-of-way for the entire length of Oakleigh Lane as a condition of development, even though the City may not be allowed to require that the applicant provide dedications beyond their own property.

In addition to erroneously limiting the scope, the Hearings Official neglected entirely to provide the required analysis and findings with respect to emergency response vehicles, and thus the Decision failed to ensure approval of the PUD would “protect and promote” the health and safety of the general public, including current residents on Oakleigh Lane, as well as the additional residents of the 29-unit PUD at the end of the road.

By limiting the evaluation solely to a 50-foot dedication along the development site, the Decision clearly did not demonstrate that the result of the applicant’s proposal and the added conditions of approval would satisfy the requirement of EC 9.8320(5) that the PUD provide safe and adequate transportation systems for its PUD residents, as well as residents that would be impacted by the development’s additional traffic.

Commissioners should be aware that the City has not always complied in this regard on past decisions, but the LUBA decision in *Butte Conservancy v. City of Gresham*, and the only reasonable reading of the relevant city code, require that any approval of this PUD ensure Oakleigh Lane is safe for vehicles, pedestrians and bicyclists.

This requirement is directly supported by *Metro Plan* Policy F.26, which requires the City to:

*“Provide for a pedestrian environment that is well integrated with adjacent land uses and is designed to enhance the safety, comfort, and convenience of walking.” (Metro Plan at III-F-9)*

In another error, the Hearings Official failed entirely to consider and evaluate this plan policy, despite its direct relevance to the proposed PUD’s impacts.

The closely related standard in EC 9.6820(4) also provides compelling context as to the Council’s intent for long, dead-end roads, such as Oakleigh Lane. This provision requires:

*“Public accessways to provide safe circulation for pedestrians, bicyclists and emergency vehicles shall be required from a cul-de-sac or emergency vehicle turnaround longer than 150’ in length when measured from the centerline of the intersecting street to the radius point of the cul-de-sac or to the center point of the emergency vehicle turnaround.”*

Oakleigh Lane is approximately 1,000 feet long and EC 9.6820(4) makes absolutely clear that the City Council intended to *require* improvements to such long cul-de-sacs in order to “provide safe circulation for pedestrians, bicyclists and emergency vehicles.”

Not only does EC 9.6820(4) provide context, it’s also one of the required standards. However, the Hearings Official erroneously exempted the application from this standard altogether, as explained under “Subassignment of error 2.A – EC 9.6820 Cul-de-Sacs and Turnarounds” on pages 6 and 7 of the Appeal Statement (which see).

In summary, the Decision erroneously found the application, with Conditions of Approval 3, 4 and 7 was consistent with EC 9.6800, EC 9.6805, EC 9.6820(4,) and therefor EC 9.8320(5)(a), by not requiring that Oakleigh Lane have adequate right-of-way and improvements between River Road and the PUD development site.

Under EC 9.8320(5)(b)

This subelement of EC 9.8320(5) requires that the PUD provide safe and adequate transportation systems for pedestrian and bicycle circulation to residential areas, transit stops, neighborhood activity centers and office parks within 1/4 mile that can reasonably be expected to be used by pedestrians and/or within 2 miles that can reasonably be expected to be used by bicyclists.

River Road is less than 1/4 mile from the development site, and Oakleigh Lane provides the only direct route to River Road for pedestrians and bicyclists from the PUD and other residences along Oakleigh Lane.

Here again, the Hearings Official erroneously “compartmentalized” the PWD assessment, which made perfectly clear that without widening and improving Oakleigh Lane, “pedestrian and bicycle traffic generated by the proposed development, will not be assured of safe access via Oakleigh Lane.” Based on his ignoring the PWD analysis, the Hearings Official erroneously claimed:

*“Once again, the Hearings Official has not been directed to evidence that shows that pedestrian safety will necessarily be decreased to unacceptable levels simply because 164<sup>11</sup> ADT are added to Oakleigh Lane.” (Decision at 27)*

The PWD analysis provides substantial and reliable evidence that contradicts the Hearings Official in no uncertain terms:

*“[w]ithout the additional right-of-way, Oakleigh Lane cannot be improved to the City’s minimum street design standards<sup>12</sup> and the 164<sup>13</sup> new vehicle trips per day generated by the proposed development, along with the additional pedestrian and bicycle traffic generated by the proposed development, will not be assured of safe access via Oakleigh Lane” (Cited above)*

The PWD analysis further made clear that a 45 feet of right-of-way was necessary in order to ensure safety for pedestrians and bicyclists traveling on Oakleigh Lane.

<sup>11</sup> The PWD analysis used an incorrect ADT value that was lower than the correct value of 168 or 169. See Footnote 2.

<sup>12</sup> Which are specified in Eugene Code Table 9.6870 as a 45 foot right-of-way and 20 foot paving width.

<sup>13</sup> The correct number of projected new round trips is 168 or 169, not 164. See Footnote 2.

In addition, the Hearings Official adopted the following staff findings:

*"With regard to bicycles and pedestrians traveling westward on Oakleigh Lane toward transit services on River Road, referral comments from Public Works staff state that, for unimproved local streets in the River Road area (i.e., streets that lack sidewalks and have not been striped to identify dedicated travel lanes), the expectation is that pedestrians and bicyclists will share the paved surface with vehicles. Additionally, there is a tendency on dead end streets such as Oakleigh Lane, for motorists to travel at slower, more cautious speeds, because of the perceived narrowness of the street.*

*Public Works staff confirm that, until such time that property owners elect to improve Oakleigh Lane to full City standards (including sidewalks), the existing paved surface of Oakleigh Lane will continue to adequately provide for vehicle and pedestrian traffic, as well as for emergency vehicles and delivery services, provided the paved surface is not blocked by parked vehicles. With regard to public comments received about vehicle parking occurring on the shoulders of the roadway, Public Works staff notes that, technically, such parking is not allowed. The street could be signed for no parking as part of improving the street, but not before, because the City does not maintain unimproved streets." (Decision at 26 and 27)*

Notwithstanding the Hearings Official's attempt to "compartmentalize" statements in the PWD Referral Response, this staff statement directly conflicts with the more specific and thorough evaluation provided by PWD traffic engineers as the justification for the exaction of right-of-way and future improvements on and adjacent to the northern area of the development site. Inescapably therefore, if the conclusory statements in this staff finding were true, then the City would have no justification for imposing Conditions of Approval 3, 4 and 7.

However, although the above statement is lengthy, it doesn't provide a shred of evidence that supports the conclusion. In fact, the few bits of evidence in this statement support the PWD's more thorough assessment. For example, when the "expectation is that pedestrians and bicyclists will share the paved surface with vehicles" and when there is illegal parking on the right-of-way and when the City cannot even post "No Parking" signs, there are going to be unavoidable conflicts *in the roadway*; and in some of those situations, the pedestrian won't be able to step off the roadway due to car parked on the roadside.

The fact that motorists may travel at slower speeds on dead-end streets may or may not be true; however, no evidence or analysis is provided specific to Oakleigh Lane under current or future configurations. Furthermore, this staff statement cites no actual evidence that under the current Oakleigh Lane configuration, this phenomenon would actually provide for "safe and adequate transportation systems for pedestrian and bicycle" users after the PUD is built at the end of the road, as required by EC 9.8320(5)(b). If the PUD's consistency with EC 9.8320(5)(b) were justified, based on this phenomenon, then the justification for Conditions of Approval 3, 4 and 7 would therefore be *invalid*.

Most importantly, the staff statement depends entirely on the condition – "*provided the paved surface is not blocked by parked vehicles*" – for the conclusion that the existing paved surface of Oakleigh Lane would continue to adequately provide for vehicle and pedestrian traffic, as well as for emergency vehicles and delivery services. Yet in the very same paragraph, the staff statement

makes clear that the condition cannot be ensured. Thus, this statement is in no way “reliable, probative and substantial,” as required for valid findings.

The Hearings Official also relied upon the applicant’s claim<sup>14</sup> that:

*“the queuing effect of having a single travel lane along Oakleigh Lane is likely to result in lower speeds and acceptably safe conditions for pedestrians.”* (Decision at 27)

This assertion came from the applicant’s attorney, not a traffic engineer or anyone with any relevant expertise on this issue. Moreover, it was not based on any evidence or analysis specific to Oakleigh Lane and doesn’t even claim anything stronger than that it is “likely” to result in safe conditions. To satisfy EC 9.8320(5)(b), the applicant would have to provide substantial evidence that the “queuing effect” would ensure safe conditions.

Furthermore, if the “queuing effect” were adequate to create safe conditions, the PWD traffic engineers would presumably have relied on that same effect and would *not* have found that Oakleigh Lane needed widening and improvements to ensure safety. In fact, the citation for the “queuing effect” does not claim that it “results in ... acceptable safe conditions for pedestrians” in any way shape or form. All the Eugene Local Street Design Standard states is the following:

*“This queuing effect has been found to be an effective and safe method to reduce speeds and non-local traffic.”*

Reduce speeds and non-local traffic. Period. Not a word about pedestrian or bicyclist’s safety *when they must use the same roadway as vehicles.*

In addition, the cited standard makes clear that the street *must be designed and striped* for a single traffic lane and at least one parking lane:

*“The single traffic lane is intended to create a ‘queuing street’, such that when opposing vehicles meet, one of the vehicles must yield by pulling into a vacant portion of the adjacent parking lane.”*

The cited standard also says nothing about a “queuing street” that *does not have sidewalks* and therefore forces pedestrians to walk in the street

Oakleigh Lane clearly does not meet the standards for a “queuing street,” and thus the “queuing effect” cannot be relevant to this case unless the Planning Commission imposes adequate conditions of approval for the entirety of Oakleigh Lane to have the necessary right-of-way, striped lanes and sidewalks to meet the standards for a safe and adequate “queuing street.”

In sum, the Hearings Official ignored evidence that Oakleigh Lane requires widening and improvements to meet the requirements of C 9.8320(5)(b) and relied on invalid and irrelevant “evidence” as the basis for his findings.

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<sup>14</sup> Letter from Zach Mittge, dated October 23, 2013, pages 4-5.

Under EC 9.8320(5)(c)

The Hearings Official erred by finding that a Traffic Impact Analysis (TIA) was not required under the following code provision:

**EC 9.8670 Applicability.**

- ...
- (2) The increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action under the city's traffic calming program, and identified locations where pedestrian and/or bicyclist safety is a concern by the city that is documented.  
(Emphasis added)

As mentioned above, the PWD Referral Response included extensive conclusions, which were adopted by the Hearings Official. Among these are findings documenting the City's specific concerns about bicycle and pedestrian safety on Oakleigh Lane:

*"Public Works staff indicates that the applicant's proposal is sufficient to accommodate the turnaround, but not the area necessary to extend the sidewalk along the south side of the turnaround, to separate pedestrians from vehicles and provide a safe public walking surface for the residents of the proposed development."* (Decision at 19. Emphasis added.)

And:

*"Improving Oakleigh Lane to these [City] standards will allow for two-way vehicular and bicycle traffic [and] will provide separation between vehicular traffic and pedestrians ...."*  
(Emphasis added. Decision at 21)

Thus, the condition of EC 9.8670(2) is met and a TIA is required.

The Hearings Official's findings on this point include patently incorrect statements, including:

*"... the strong assertion that an increase in ADT will result in traffic accidents or actual danger to pedestrians and bicyclists is not supported by evidence in the record.*

...

*Contrary to Mr. Conte's assertion, Staff's position that there are no traffic safety concerns associated with the proposal or Oakleigh Lane is some evidence that a TIA under EC 9.8670(2) is not necessary. Public Works did a lengthy and thorough analysis of traffic conditions that is largely repeated in the Staff report. Neither Mr. Conte nor any other party submitted evidence to the contrary, and that is what is required in order for Staff or the Hearings Official to determine that EC 9.8670(2) might be implicated by this application. "* (Decision at 28 and 29)

The PWD conclusions, which were cited in opposition testimony, provide substantial, reliable and probative evidence. The "thorough analysis of traffic conditions" relied upon as the primary evidence for the Hearings Official's findings, in fact, concluded exactly the opposite of what the Hearings Official implies – the PWD's thorough analysis identified serious safety concerns with the current configuration of Oakleigh Lane. The Hearings Official, however, ignored this evidence, as explained above.

In addition, the Hearings Official made the following erroneous finding:

*“Those implicit assumptions are that under EC 9.8670(1), a proposal will not potentially create unsafe traffic conditions unless the development will increase peak vehicle trips by more than 100 trips.” (Ibid.)*

Neither the code nor the most basic comprehension of logic would justify this assumption. The correct assumption under EC 9.8670(1) is exactly the reverse: A proposal will potentially create unsafe traffic conditions when the development would increase peak vehicle trips by more than 100 trips – that’s one of the reasons a TIA is required for developments that meet this condition.

Obviously, if the Hearings Official’s interpretation of EC 9.8670(1) were correct, the triggering conditions of EC 9.8670(2) and (3) would be entirely unnecessary. However, that interpretation would conflict with the ORS 174.010 requirement that: “where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.”

In dismissing EC 9.8670(2), the Hearings Official provides an incomplete statement of the provisions in this code section:

*“Under EC 9.8670(2), it is implied that a TIA and associated mitigation measures do not need to be considered unless there is evidence of “problems” caused by accident rates, traffic volumes or speed.” (Ibid.)*

The Hearings Official completely neglected to consider the last part of the EC 9.8670(2) text, which also triggers a TIA: “... identified locations where pedestrian and/or bicyclist safety is a concern by the city that is documented.” The Hearings Official’s omission was also impermissible under the ORS 174.010 requirement to not “omit what has been inserted” by the City Council into the code.

In summary, the Hearings Official never even evaluated the relevant TIA-triggering condition in EC 9.8670(2), and he ignored the relevant evidence. As a result the Decision erroneously failed to require the necessary TIA.

It bears noting that a TIA would have provided *location-specific* data and analysis, including current and projected volumes of vehicle, pedestrian and bicycle traffic, and the interactions among these modes of travel. Thus, a TIA analysis – which *should* have been required – would have provided the concrete evidence to conclude whether or not widening of, and/or improvements to, Oakleigh Lane were necessary to be consistent with the traffic and safety-related approval criteria. The Hearings Official erred by not requiring the TIA, and then he relied on erroneous findings to conclude no widening or improvements were necessary.

#### Under EC 9.8320(6)

EC 9.8320(6) requires that the “PUD will not be a significant risk to public ... safety, including but not limited to ... an impediment to emergency response.”

The Hearings Official relied entirely on staff findings with respect to emergency response and traffic safety. (Decision at 30)

The staff findings (Decision at 29 and 30) provide no analysis at all of the configuration of Oakleigh Lane with respect to either public safety or emergency response. Instead, the staff

findings (and therefore the Hearings Official's decision) rely on staff findings for EC 9.8320(5)(b) and (11)(b).

When findings for one criterion rely on findings for a separate criterion, the decision *must* identify the *specific* findings for the referenced criterion that are being relied upon and *must* explain how those findings ensure consistency with the subject criterion. In this instance, neither the Hearings Official nor the staff provided the required information for a sufficient finding.

The Hearings Official specifically erred in not explaining how the current configuration of Oakleigh Lane would not be an impediment to emergency response when the PWD's analysis explicitly found that "emergency response and access will be at risk" unless Oakleigh Lane's right-of-way was widened and the road improved. Nothing in the staff findings for EC 9.8320(5)(b) and (11)(b) could reasonably be construed as adequately addressing this issue.

As explained above, staff cites to a PWD statement that "the existing paved surface of Oakleigh Lane will continue to adequately provide for ... emergency vehicles and delivery services, provided the paved surface is not blocked by parked vehicles." But the same statement acknowledges that nothing ensures the paved surface is not blocked by parked vehicles. Thus, the PWD statement does not provide an adequate finding. There is also no explanation in the referenced findings of how such the conclusory statement related to EC 9.8320(5)(b) squares with the more extensive analysis provided in the PWD justification of the exactions.

Furthermore, in interpreting the requirements of EC 9.8320(6), both the Hearings Official and staff failed to consider the context that clearly shows Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for emergency vehicles for a cul-de-sac longer than 150' in length. (The statements related to EC 9.6820(4), above, are incorporated here by reference.)

In addition, the errors cited under Subassignments of Error 2.A, 2.B, 4.A, 4.B and 4.C in the Appeal Statement, as they relate to the safety of drivers, bicyclists and pedestrians, demonstrate that the PUD would pose significant risk to public safety unless Oakleigh Lane is widened and improved.

Under EC 9.8320(11)

For EC 9.6505(3)(b) Streets and Alleys, (4) Sidewalks, and (5) Bicycle Paths and Accessways, the Hearings Official relied on his findings for EC 9.8320(5), but failed to provide the required specific explanation for how those findings demonstrate compliance with EC 9.6505(3)(b). The discussion under EC 9.8320(5), above, demonstrates that the Decision is erroneous in this reliance.

As discussed above, in order for the City to find that approval of the proposed PUD would be consistent with EC 9.8320(5) and other traffic-related criteria, Oakleigh Lane must be widened and improved. While the City may not be able to require the applicant to *pay* for improvements to the entire length of Oakleigh Lane, that doesn't negate the need for improving the entire road so that it will be safe and adequate.

Under EC 9.8320(12)

EC 9.8320(12) requires that "[t]he proposed development shall have minimal off-site impacts, including impacts such as traffic ..."

In his attempt to interpret what constitutes more than “minimal off-site impacts” on, and from, traffic, the Hearings Official cooks up an approach that has no foundation in the code and doesn’t follow the ORS 174.010 and “PGE” rules for interpretation. The core of his interpretation is based on the following assumption:

*“[I]t makes no sense that the City Council would ask an applicant to go through the analysis in EC 9.8320(5) and potentially complete a TIA if the proposed PUD could be denied for having “some” impacts on the transportation system.” (Decision at 52)*

Obviously, if Council had intended that a proposed development that satisfied EC 9.8320(5) and/or a TIA was therefore a development that had minimal offsite impacts from and on traffic, then Council could have written that into the code. But they didn’t, and the Hearings Official cannot render EC 9.8320(12) meaningless because of the EC 9.8320(5) or TIA requirements.

Furthermore, the Hearings Official statement that it “makes no sense” is mere hand-waving and cannot substitute for the legally required explanation of *how* satisfying a TIA would necessarily satisfy the “minimal impacts” requirement. Even a casual examination of the TIA requirements would have proven the Hearings Official’s assumption wrong. A development can have huge traffic impacts and still be considered safe, as well as meeting the TIA Level-Of-Service requirements by providing adequate infrastructure improvements to accommodate the increased traffic.

Following the above erroneous assumption, the Hearings Official makes a complete logical *non sequitur* and concludes that:

*“[W]hen none of the conditions exist that would trigger a TIA under EC 9.8670, it is reasonable to question whether EC 9.8320(12) is implicated as to traffic.*

...

*That is the case for this application and this record. There are no conditions identified in the record which come anywhere close to triggering a TIA. The peak vehicle trip estimates are less than a third of that required to trigger a TIA, and no “problems” or LOS deficiencies are identified. The neighbors’ fear that there will be more cars on Oakleigh Lane than before is not enough to view those new cars as more than a minimal impact, let alone a negative off-site impact. As such, the Hearings Official concludes that the increase in peak vehicle trips from the proposed PUD will result in minimal off-site impacts.” (Decision at 53)*

Again, the Hearings Official runs afoul of ORS 174.010. There is nothing at all in the code that says the thresholds that trigger a TIA can serve as a universal standard for “minimal offsite impacts,” and the Hearings Official provided no explanation at all for why this would be so. For one thing, “minimal offsite impacts” is substantially dependent on what uses are actually “offsite,” so no single standard would be reasonable in all contexts where a PUD might be developed.

Thus, the Hearings Official erred by failing to apply an even marginally defensible analysis for the EC 9.8320(12) criterion.

The Hearings Official’s condescending dismissal of “neighbors’ fear that there will be more cars on Oakleigh Lane” is no excuse for his failure to actually deal with the evidence in front of him. In particular, he shirked his obligation to consider PWD’s conclusion that “safe vehicular, pedestrian

and bicycle travel and emergency response and access will be at risk” with the additional traffic, if Oakleigh Lane is not widened and improved. The Hearings Official also failed to explain how *tripling* the number of instances where a car traveling along this narrow road passes by the front of one of the single-family residences is a “minimal” impact. (See Conte 10/9, pages 5 and 6.)

In summary, the Hearings Official utterly failed to explain a reasonable standard for “minimal offsite impact,” with respect to traffic and failed completely to address the substantial evidence in the record that the traffic generated by PUD residents would have greater than minimal offsite impacts. As such, his finding that the PUD is consistent with EC 9.8320(12) is not sufficient.

Under EC 9.8320(13)

EC 9.8320(13) requires “[t]he proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.”

Once again, the Hearings Official leaps to an untenable conclusion:

*“Here, a finding that the proposed PUD is incompatible and unharmonious despite having complied with all the applicable provisions of EC 9.8320 would, at least in this case, be logically and legally indefensible.”* (Decision at 54)

This interpretation would make EC 9.8320(13) superfluous and once again conflicts with the ORS 174.010 requirement that: “where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.”

The Hearings Official’s entire evaluation of whether the traffic that would arise from 29 dwellings at the end of the road would be reasonably compatible and harmonious was as follows:

*“As to arguments about traffic impacts, the Hearing Official adopts the findings for EC 9.8320(12) here by this reference. Evidence of a modest increase in total vehicle trips, where there is no evidence of associated traffic problems, is sufficient to demonstrate that the proposed PUD will be compatible with adjacent and nearby uses.”* (Decision at 55.)

The Hearings Official also adopted the staff findings for this criterion, but the staff findings did nothing more than equate “minimal off-site impacts” with “reasonably compatible,” with no further explanation:

*“As noted at EC 9.8320(5)(c) in regards to traffic, ... the proposed development will have minimal off-site impacts related to traffic .... Based on the above findings, the development is reasonably compatible with the nearby land uses.”* (Decision at 54)

The referenced staff findings at EC 9.8320(5)(c) don’t even address “minimal off-site impacts.” Thus, the staff findings provide no actual evidence, analysis or explanations that have any relevance to the application’s consistency with EC 9.8320(13) and are thus not sufficient as findings.

The Hearings Official’s reliance on his findings for EC 9.8320(12) are inadequate as explained above, under that criterion. Furthermore, by ORS 174.010, “compatibility” and “harmony” must be given separate meaning than “minimal offsite impacts,” which the Hearings Official and staff utterly failed to do.

The doubling of traffic, which the PWD analysis concludes would create unsafe conditions on Oakleigh Lane cannot reasonably be considered "compatible" or "harmonious" and a PUD of the proposed scale at the end of a substandard, narrow, dead-end road lined on both sides with modest single-family homes falls far short of any reasonable application of EC 9.8320(13).

**Impermissible evidence must be excluded**

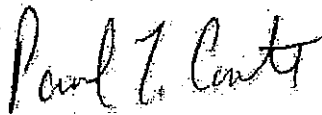
As explained in the attached letter to the Hearings Official, dated November 8, 2013, the Hearings Official erroneously allowed the impermissible new and non-responsive evidence submitted by the applicant's representatives on October 16, 2013 without providing an opportunity for opponents to respond, despite my timely, written request.

The Planning Commission must exclude this evidence and must not rely upon it in their decision.

**Conclusion**

For the reasons cited above, the Hearings Official's decision must be reversed and the PUD application denied.

Sincerely,

A handwritten signature in black ink that reads "Paul T. Conte". The signature is written in a cursive, slightly slanted style.

Paul T. Conte  
1461 W. 10th Ave.  
Eugene, OR 97402

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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

BUTTE CONSERVANCY and ERIK NIELSEN,  
*Petitioners,*

vs.

CITY OF GRESHAM,  
*Respondent,*

and

PERSIMMON DEVELOPMENT,  
*Intervenor-Respondent.*

LUBA No. 2006-084

FINAL OPINION  
AND ORDER

Appeal from City of Gresham.

Gary P. Shepherd, Portland, filed the petition for review and argued on behalf of petitioners.

David R. Ris, Senior Assistant City Attorney, Gresham, filed a response brief and argued on behalf of respondent.

John M. Junkin, Portland, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief were Krista N. Hardwick and Bullivant Houser Bailey, PC.

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

AFFIRMED

09/15/2006

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

1  
2 **NATURE OF THE DECISION**

3       Petitioners appeal a city council decision on remand from LUBA approving an 86-lot  
4 planned unit development (PUD)

5 **MOTION TO INTERVENE**

6       Persimmon Development (intervenor), the applicant below, moves to intervene on the  
7 side of respondent. There is no opposition to the motion, and it is allowed.

8 **FACTS**

9       The challenged decision approves an 86-lot PUD on a 69.5-acre parcel in the City of  
10 Gresham near unincorporated areas of Clackamas County. The subject property is steeply  
11 sloped and wooded, and within the city's Hillside Physical Constraint Overlay District  
12 (HPCD). The proposed development required a variance to allow two cul-de-sacs over 200  
13 feet in length, a tree removal permit to log approximately 1800 trees in areas where streets  
14 and utilities are proposed, and construction of a secondary road access for emergency  
15 vehicles through an existing residential lot in an adjoining subdivision within unincorporated  
16 Clackamas County.

17       The city's initial approval was appealed to this Board, which sustained three  
18 assignments of error, and remanded the decision to the city to address, among other things,  
19 whether (1) providing the emergency vehicle access is feasible, and (2) removing 1800 trees  
20 constitutes "clear cutting" that is prohibited under city code.

21       On remand, the city conducted a public hearing and adopted additional findings  
22 concluding in relevant part that it is feasible to obtain the required emergency access and that  
23 the proposed tree removal did not constitute "clear-cutting" that is prohibited under city  
24 code. This appeal followed.

1 **FIRST ASSIGNMENT OF ERROR**

2 In order to gain approval of the requested variance for culs-de-sac longer than 200  
3 feet, intervenor proposed and the city approved a secondary access point that would extend  
4 south of the PUD through a residential lot in the adjoining Kingswood Heights subdivision,  
5 which is within unincorporated Clackamas County, and connect to SE Yellowhammer Road.

6 ~~Accordingly, the city imposed Condition of Approval 7 requiring that the applicant submit as~~  
7 ~~part of final plat documents: (1) a 20-foot wide right of way or easement across the~~  
8 ~~residential lot within the Kingswood Heights subdivision, dedicated to the county; (2)~~  
9 ~~construction plans for the access, and (3) a county street construction permit.~~

10 Before LUBA, petitioners argued that there was no evidence in the record that it was  
11 “feasible” to construct the proposed secondary access, given that Covenants, Conditions, and  
12 Restrictions (CC&Rs) governing the Kingswood Heights subdivision restrict all use of  
13 residential lots to single-family dwellings and accessory buildings.<sup>1</sup> According to  
14 petitioners, it is clear under the Kingswood Heights CC&Rs that use of a residential lot to  
15 construct a street or other access for a neighboring subdivision is prohibited. We remanded  
16 the city’s initial decision to address this issue.

17 On remand, the city adopted findings concluding in relevant part that it is “feasible”  
18 to construct the access road either because (1) the CC&Rs can be reasonably interpreted to  
19 allow roads that provide access to residential uses and (2) in any case, the city has the legal  
20 authority to condemn the right-of-way to provide secondary access notwithstanding the  
21 CC&Rs. Petitioners challenge those conclusions, arguing that the CC&Rs are unambiguous

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<sup>1</sup> The Kingswood Heights subdivision restrictions include the following:

“No building or structure or land shall be used and no building or structure shall hereafter be erected, altered or enlarged in the subdivision except for single-family dwellings and accessory buildings consisting of garages, carports, private green houses, swimming pools or other type of home recreational facilities and temporary structures for uses incidental to construction work which shall be removed upon completion or abandonment of the construction.” Petition for Review App. 30.

1 and clearly would prohibit the proposed access road, and that the city lacks the legal  
2 authority to condemn the right-of-way necessary to construct the road.

3 **A. Feasibility**

4 As an initial matter, the city argues that the legal requirement that local governments  
5 address the feasibility of compliance with approval criteria should be applied differently  
6 where, as here, the issue raised regarding the feasibility of compliance largely involves a  
7 legal question and the courts, not the city, have jurisdiction in the final analysis to resolve  
8 that question. The city recognizes that, in a line of cases based on *Meyer v. City of Portland*,  
9 67 Or App 274, 678 P2d 741 (1984) and *Rhyme v. Multnomah County*, 23 Or LUBA 442  
10 (1992), the Court and LUBA have held that, in a two-stage approval process such as  
11 subdivision approval, where a problem is identified that raises concerns whether proposed  
12 development can comply with applicable approval criteria, the local government may, among  
13 other options, adopt findings demonstrating that solutions to the identified problem are  
14 "feasible," *i.e.*, "possible, likely and reasonably certain to succeed." *Meyer*, 67 Or App at  
15 280, n 5. In *Rhyme*, we explained that:

16 "Assuming a local government finds compliance, or feasibility of compliance,  
17 with all approval criteria during a first stage (where statutory notice and  
18 public hearing requirements are observed), it is entirely appropriate to impose  
19 conditions of approval to assure those criteria are met and defer responsibility  
20 for assuring compliance with those conditions to planning and engineering  
21 staff as part of a second stage. \* \* \*

22 "Where the evidence presented during the first stage approval proceedings  
23 raises questions concerning whether a particular approval criterion is satisfied,  
24 a local government essentially has three options potentially available. First, it  
25 may find that although the evidence is conflicting, the evidence nevertheless  
26 is sufficient to support a finding that the standard is satisfied or that feasible  
27 solutions to identified problems exist, and impose conditions if necessary.  
28 Second, if the local government determines there is insufficient evidence to  
29 determine the feasibility of compliance with the standard, it could on that  
30 basis deny the application. Third, \* \* \* instead of finding that the standard is  
31 not met, it may defer a determination concerning compliance with the  
32 standard to the second stage. In selecting this third option, the local  
33 government is not finding all applicable approval standards are complied

1 with, or that it is feasible to do so, as part of the first stage approval (as it does  
2 under the first option described above). Therefore, the local government must  
3 assure that the second stage approval process to which the decision making is  
4 deferred provides the statutorily required notice and hearing \* \* \*” 23 Or  
5 LUBA at 447-48 (footnotes omitted).

6 Where the local government takes the first approach—finding that the approval  
7 criterion is met or that feasible solutions to identified problems exist, and imposing necessary  
8 conditions—those findings and conditions may be challenged as inadequate or not supported  
9 by substantial evidence. *Salo v. City of Oregon City*, 36 Or LUBA 415, 428-29 (1999).

10 The city argues that the above framework is typically applied when the identified  
11 “problem” involves a fact-specific technical or physical issue posed by the development,  
12 such as the ability to construct public facilities or avoid hazardous conditions. According to  
13 the city, that framework is more problematic when the identified “problem” involves an  
14 alleged *legal* impediment that is beyond the local government’s jurisdiction or authority to  
15 resolve. The city argues that the meaning of the Kingswood Heights CC&Rs, specifically  
16 whether the CC&Rs prohibit the proposed secondary access, is a question of law or a mixed  
17 question of law and fact that is within the jurisdiction of the circuit court, and will be  
18 definitively resolved only if residents of the Kingswood subdivision invoke the circuit  
19 court’s jurisdiction seeking to stop the proposed secondary access.<sup>2</sup> The city argues that its  
20 interpretation of the CC&Rs will have no binding legal effect in any circuit court action, and  
21 that it makes little sense to require the city to interpret the CC&Rs in the first instance.

22 Rather than require the local government to engage in a non-binding legal analysis to  
23 resolve a question of law that the city has no authority to determine, the city recommends  
24 that the obligation to evaluate “feasibility” should proceed differently than when the city is  
25 evaluating technical or physical feasibility. According to the city, the local government

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<sup>2</sup> The city notes that petitioners are not residents of Kingswood Heights subdivision, and do not have the ability to enforce the terms of the CC&Rs.

1 should only be required to “determine that the legal position is warranted by existing law or  
2 is a nonfrivolous argument based on existing law.” City of Gresham’s Response Brief 10-11.  
3 The city argues that such a test would be similar to the test that LUBA has applied when  
4 local land use standards expressly require compliance with state agency requirements or that  
5 the applicant secure a state agency permit. In those cases, the city argues, LUBA has held  
6 that the local government is not required to establish that the state agency requirements can  
7 in fact be satisfied. Instead, the local government need only determine that the necessary  
8 agency permit is “available” and that the applicant is not precluded from obtaining such  
9 agency permits as a matter of law. *Wetherell v. Douglas County*, 44 Or LUBA 745, 755-56  
10 (2003); *Sam Miller v. City of Joseph*, 31 Or LUBA 472, 478 (1996); *Bouman v. Jackson*  
11 *County*, 23 Or LUBA 628, 646-47 (1992).

12 We generally agree with the city that the *Meyer* and *Rhyme* feasibility analysis must  
13 be applied somewhat differently when the “problem” identified at the first stage of a two-step  
14 approval process is an alleged legal impediment to fulfilling a condition of approval  
15 requiring facilities necessary for the proposed development, rather than a technical,  
16 engineering or similar issue. In such circumstances, where neither the local government nor  
17 LUBA have jurisdiction to resolve the legal question, and that legal question must be  
18 resolved in a particular way to allow the condition to be fulfilled so that an applicable  
19 approval standard will be satisfied, neither the local government nor LUBA need engage in a  
20 detailed or definitive legal analysis. ~~In our view, it is sufficient for the local government in~~  
21 ~~such circumstances to (1) adopt findings that establish that fulfillment of the condition of~~  
22 ~~approval is not precluded as a matter of law, and (2) ensure in imposing the condition of~~  
23 ~~approval that the condition will be fulfilled prior to final development approvals or actual~~  
24 ~~development.~~

25 Although we did not couch it in those terms, we applied a similar approach in a  
26 recent case with very similar facts. In *Stoloff v. City of Portland*, 51 Or LUBA 560 (2006),

1 the city approved a residential subdivision based in relevant part on a finding that sanitary  
2 sewer facilities were “available.” The petitioner argued that the proposed sewer facilities  
3 required access to a sewer line on his property, and that the service provider did not own an  
4 easement over petitioner’s property for that purpose. The hearings officer disagreed, finding  
5 that the service provider’s easement over petitioner’s property allowed service to the  
6 proposed development. In the alternative, the hearings officer found that the service provider  
7 had the legal authority and ability to condemn easements necessary to serve the subject  
8 property. On appeal to LUBA, the petitioner disputed both findings, arguing in relevant part  
9 that the outcome of any condemnation proceeding was doubtful, because the petitioner  
10 intended to challenge any such proceeding. We declined to review the merits of the parties’  
11 dispute over the meaning and extent of the existing easement, because we affirmed the  
12 hearings officer’s alternative disposition that even if the existing easement did not authorize  
13 service, the service provider had the authority to condemn an easement:

14 “The parties argue at great length whether the existing easements and  
15 applicable property law establish that the district has an easement over  
16 petitioner’s property; however, that is not the issue before us. The issue is  
17 whether PZC [Portland Zoning Code] 33.652.020A.1 is satisfied. It is well  
18 established that, where there is conflicting evidence over whether an approval  
19 criterion is satisfied or can be satisfied, a local government may either (1) find  
20 that the approval criterion is satisfied, or (2) find that it is feasible to satisfy  
21 the approval criterion and impose conditions necessary to ensure that the  
22 criterion will be satisfied. *Rhyne v. Multnomah County*, 23 Or LUBA 442,  
23 447 (1992). In this case, the hearings officer apparently did both—he found  
24 that the district had an easement over petitioner’s property and also imposed a  
25 condition that the district obtain an easement to provide sanitary service to the  
26 subdivision. Thus, even if petitioner is correct that the existing easements do  
27 not grant the district the ability to connect the proposed subdivision to the  
28 existing line on petitioner’s property, the finding that the district will condemn  
29 the easement if necessary is sufficient to demonstrate that it is feasible to  
30 satisfy PZC 33.652.020A.1. If intervenors ultimately cannot satisfy the  
31 condition of approval then they will not be able to develop the subdivision.”  
32 50 Or LUBA at 565-66

33 We then distinguished our initial decision in the present appeal:

1            “It is true that, in [*Butte Conservancy*], we held that a condition of approval to  
2            construct necessary access through an adjoining subdivision lot in itself did  
3            not establish that such access was feasible when the legal right to construct  
4            such access was disputed. However, unlike *Butte Conservancy*, the hearings  
5            officer in the present case adopted findings and conditions of approval  
6            sufficient to demonstrate that sanitary sewer service is feasible. Although  
7            petitioner argues that he will challenge any condemnation proceeding, *Rhyme*  
8            does not require absolute certainty, only a finding that compliance with  
9            applicable criteria is feasible, and imposition of conditions necessary to  
10           ensure compliance. The decision properly finds that PZC 33.652.020A.1 is  
11           satisfied or can feasibly be satisfied through the imposition of conditions.” *Id.*  
12           at 566.

13           Turning back to the present case, the city on remand took essentially the same  
14           approach as the hearings officer in *Stoloff*. As in that case, we see no point in addressing the  
15           parties’ arguments regarding the meaning of the Kingswood Heights CC&Rs, because for the  
16           reasons set out below the city’s findings adequately demonstrate that it is feasible for the city  
17           to condemn the disputed right-of-way, even if it is ultimately determined that the CC&Rs  
18           prohibit use of the residential lot for that purpose.<sup>3</sup> In other words, couched in the analysis  
19           set out above, the city’s findings adequately establish that fulfillment of the condition of  
20           approval is not precluded as a matter of law, and the city adequately ensured that the  
21           condition will be fulfilled prior to final development approval.

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<sup>3</sup> Petitioners do not dispute the city’s finding that following a lawful condemnation the use of the property for an access road would not be subject to the CC&R restrictions. At oral argument, petitioners questioned whether condemnation is even theoretically possible, since intervenor owns the lot and presumably would dedicate (in fact is required to dedicate) the right-of-way to the local government with jurisdiction, in this case the county. We understand petitioners to suggest that condemnation is a last resort that is reached only if voluntary dedication or conveyance is not possible, and here, it is clear that intervenor is willing and indeed is required to dedicate or convey the right-of-way. We further understand petitioners to argue that if the right-of-way is dedicated or conveyed in some manner rather than via eminent domain, then the CC&R restrictions would continue to apply to dedicated property. Because condemnation will likely never occur, we understand petitioners to argue, the theoretical possibility of employing eminent domain to avoid the CC&R restriction fails to establish that it is “feasible” to fulfill the condition of approval.

Petitioners are probably correct that the city’s exercise of eminent domain is unlikely. However, the city has adequately demonstrated that it has the legal authority to condemn the disputed right-of-way and thus avoid the legal impediment identified by petitioners. That demonstration is sufficient to satisfy the feasibility requirement of *Meyer* and *Rhyme*, as construed here, even if the city is unlikely in fact to ever exercise that condemnation authority.

1           **B.     Condemnation Authority**

2           Petitioners concede that ORS 223.930 grants the city the authority to condemn  
3 property outside city limits to acquire a street right-of-way.<sup>4</sup> However, petitioners argue that  
4 the city's authority under ORS 223.930 is subject to two express limitations. First,  
5 petitioners argue that ORS 223.930(1) requires that the city, and not the land use applicant,  
6 must construct the street. The city cannot rely on ORS 223.930 in the present case,  
7 petitioners contend, because it is clear that intervenor and not the city will construct the  
8 "roadway."

9           Second, petitioners argue, that ORS 223.930(1) limits the city's right to condemn  
10 under that statute to "roadways" as defined by the Oregon Vehicle Code. According to  
11 petitioners, the Oregon Vehicle Code definition of "roadway" and related definitions specify  
12 that the right-of-way must be used or intended for use by the "general public." See  
13 ORS 801.450 (defining "roadway" as the "portion of a highway that is improved, designed or  
14 ordinarily used for vehicular traffic"; and ORS 801.305 (defining "highway" in turn as a  
15 public way, road, street, etc. that is "used or intended for use of the general public for  
16 vehicles or vehicular traffic"). Because the emergency vehicle access can be accessed only  
17 by emergency vehicles, petitioners argue, it is not open for "use of the general public" and  
18 thus not a "highway" or "roadway."

19           The city responds that it is common to require developers to construct public roads  
20 necessary to serve the proposed development, and that ORS 223.930(1) does not limit the  
21 city's condemnation powers to public streets that the city directly constructs, improves,

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<sup>4</sup> ORS 223.930(1) provides, in relevant part:

"Any city may construct, improve, maintain and repair any street the roadway of which, as defined in the Oregon Vehicle Code, is along or along and partly without, or partly within and partly without the boundaries of the city and may acquire, within and without the boundaries of such city, such rights of way as may be required for such street by donation or purchase or by condemnation in the same manner as provided in ORS 223.005 to 223.105 \* \*

1 maintains or repairs. We agree. ORS 223.930(1) does not explicitly require that the city  
2 itself construct, improve, maintain or repair the roadway, in order to exercise the  
3 condemnation authority.

4 With respect to public use of the proposed access road, the city explains that the  
5 city's Future Street Plan contemplates a public local street between the subject property and  
6 SE Yellowhammer, constructed to local street standards. The city chose not to require that  
7 the access street be constructed to local street standards in this decision and opened to  
8 general traffic, because it determined that streets within the Kingswood Heights subdivision  
9 cannot handle the additional traffic from development on the subject property, and the  
10 number of trips generated from the subject development could not justify requiring  
11 intervenor to upgrade the Kingswood Heights streets. Consequently, the city argues, the city  
12 required dedication of right-of-way necessary to construct code-required access for  
13 emergency vehicles, with a condition requiring dedication of additional right-of-way upon  
14 improvement to the streets within the Kingswood Heights subdivision.

15 According to the city, requiring such limited access does not mean that the access  
16 street is not a "roadway" or "highway" as those terms are defined in the Oregon Vehicle  
17 Code. The city contends that nothing in the relevant statutes or the Oregon Vehicle Code  
18 requires unrestricted public access in order for the street to constitute a "roadway" as that  
19 term is used in ORS 223.930(1). Once a right-of-way is acquired by a public entity with  
20 road jurisdiction, the city argues, that entity has the broad authority to impose restrictions on  
21 its use to protect the interests and safety of general public, including closing a public street to  
22 travel except as needed for emergency access. The city argues that such a restricted public  
23 street is as much a "roadway" for purposes of the relevant statutes as are unrestricted public  
24 streets.

25 Finally, the city argues that even if ORS 223.930(1) does not authorize condemnation  
26 in the present case, other statutes may. The city first cites to ORS 225.320 and 225.330,

1 which authorize condemnation of property within or without the city for “fire protection”  
2 facilities. According to the city, the access road is intended to provide access for fire trucks  
3 and alternative public evacuation routes in case of wildland fires, and thus would qualify as a  
4 “fire protection” facility. Finally, the city cites to ORS 223.005, which grants the city broad  
5 authority to appropriate any private real estate within or without city limits for “any public or  
6 municipal use or for the general benefit and use of the people of the city[.]”

7 We agree with the city that under one statute or another the city likely has the  
8 authority to condemn the disputed right-of-way, if that becomes necessary. Certainly,  
9 petitioners have not demonstrated that any uncertainty with respect to the city’s  
10 condemnation authority is such that it can be said that fulfillment of the condition of  
11 approval requiring dedication and construction of the access road is precluded as a matter of  
12 law. ~~The city appropriately drafted that condition in a manner that is sufficient to ensure that~~  
13 ~~fulfillment of the condition will occur prior to final development approval.~~ If for one reason  
14 or another the condition is unsatisfied, intervenor will not be able to obtain final subdivision  
15 approval. We do not understand *Meyer*, *Rhyn*e or *Stoloff* to require more, under the present  
16 circumstances.

17 The first assignment of error is denied.

## 18 **SECOND ASSIGNMENT OF ERROR**

19 City of Gresham Community Development Code (CDC) 5.0232 provides that “[a]ny  
20 removal of trees which would result in clear cutting is prohibited on land within the  
21 [HPCD].”<sup>5</sup> Similarly, CDC 9.1010(F) provides that “[a]ll tree removal that would result in  
22 clear cutting on slopes in excess of 15% is prohibited.” CDC 3.0010 defines “clear cutting”  
23 as:

24 “Any tree removal which leaves fewer than an average of one tree per 1,000 square  
25 feet of lot area, well-distributed throughout the entirety of the site. \* \* \*”

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<sup>5</sup> CDC 5.0232 has since been amended or deleted.

1 CDC 9.1011 requires the applicant for tree removal to submit a tree survey of regulated  
2 and/or significant trees on site. Further, the code defines “tree survey” as a “drawing that  
3 provides the location of all trees” of a prescribed diameter. Intervenor initially presented a  
4 tree survey based on a one-acre sample of the subject property, and the city accepted that  
5 survey. We remanded the city’s initial decision, however, concluding that under the above  
6 code definitions and provisions the county erred in determining that proposed development  
7 did not involve “clear-cutting” based on a one-acre sample rather than a survey of all trees on  
8 the property.

9 On remand, intervenor submitted a survey depicting all trees on the subject property,  
10 and an analysis indicating that removal of the proposed 1800 trees for roads and utilities  
11 would leave approximately 1.07 trees per 1,000 square feet of gross site area. The city  
12 accepted that survey and analysis. Petitioners argued below, and argue on appeal, that  
13 intervenor’s analysis erroneously considers only trees removed for roads and utilities, and  
14 fails to consider trees that will be removed in the buildable area of individual lots for  
15 dwellings. The city adopted findings responding that (1) petitioners could have but failed to  
16 raise this issue in the previous appeal, and therefore the issue is waived, and (2), in any case,  
17 the CDC requires consideration only of trees that must be removed for the development  
18 proposed, not subsequent development authorized under individual building permits, which  
19 are separately governed by CDC 9.1010(B).<sup>6</sup> Petitioners challenge both findings.

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<sup>6</sup> The city’s findings state, in relevant part:

“\* \* \* The removal of any trees for purposes of building specific homes within the proposed subdivision is not to be included in determining whether the Applicant’s development will result in a ‘clear cutting.’ The removal of any trees for a home is not authorized by approval of this Application and is subject to CDC 9.1010(B) when a building permit is sought. \* \* \*

“\* \* \* The Appellants did not raise the issue of including tree removal from individual homes sites at LUBA. The LUBA remand required a tree survey of the entire site. The tree survey of the entire site establishes that more trees will remain after the tree removal than was estimated by the original sample tree survey. The tree survey of the entire site supports the original decision that approval of this Application does not result in clear cutting. Not having

1 We need not resolve the issue of waiver, because we agree with the city and  
2 intervenor that the CDC does not require intervenor to consider trees that will not be  
3 removed under the proposed development—the PUD—but may be removed under  
4 subsequent individual building permits for lots created by that PUD.

5 As the city and intervenor point out, nothing in the CDC requires a PUD applicant to  
6 identify specific building pads or envelopes for lots created by the PUD approval. Under  
7 petitioners' reading of the code, the PUD applicant and city would be required to guess  
8 where building pads and envelopes would be proposed on individual lots, in order to  
9 determine which and how many trees are likely to be removed pursuant to future, individual  
10 building permits. Instead, CDC 9.1010(B)(2) appears to contemplate that such tree removals  
11 are evaluated at or following the time when individual building permits are applied for.<sup>7</sup>

12 Petitioners argue that the city misconstrues CDC 9.1010(B)(2) to allow tree removal  
13 for individual building sites to be evaluated at the time a building permit is sought. While  
14 that construction of CDC 9.1010(B)(2) may be the rule outside the HPCD, petitioners argue  
15 that CDC 9.1010(B) clarifies that where the HPCD applies, removal of regulated trees  
16 requires a Type II development permit, and cannot be approved as part of a mere building

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raised the issue of tree removal from individual home sites at LUBA, Appellants have waived any opportunity to raise the issue now." Record 15 (underline in original; footnote omitted).

<sup>7</sup> CDC 9.1010(B) provides, in relevant part:

"Removal of Regulated Trees: Removal of Regulated Trees as defined in Section 3.0010 shall be reviewed under Type II procedures for compliance with the standards of Sections 9.1010-9.1012,

"\* \* \* \* \*

"(2) Regulated trees located within 10 feet of the outer edge of the outline of a proposed single family residence or related site improvements may be removed without a separate or additional development permit after issuance of the building permit for the proposed residence. When additional trees are to be protected on the site outside the building envelope, a tree protection plan as approved by the City shall accompany the building plans and shall be enforced during all construction activities on the site. Mitigation in accordance with an approved mitigation plan for lost perimeter trees shall be completed or guaranteed prior to Final Inspection."

1 permit.<sup>8</sup> Thus, petitioners argue, outside HPCD zones tree removal may be authorized under  
2 CDC 9.1010(B)(2) at the time of building permit approval, without obtaining a Type II  
3 development permit, but within HPCD zones such tree removal requires a Type II  
4 development permit.<sup>9</sup>

5 Petitioners may be correct that CDC 9.1010(E) would require a Type II development  
6 permit for tree removal to site dwellings on individual lots within the HPCD zone, but  
7 petitioners do not explain why CDC 9.1010(E) or any other code provision compels that such  
8 future tree removals be evaluated as part of a PUD application seeking a tree removal permit  
9 that does not propose removing any trees to site dwellings on individual lots. Petitioners  
10 may also be correct that the city's interpretation of CDC 9.1010 to effectively allow  
11 piecemeal cutting of regulated trees over a series of applications may undercut the  
12 prohibition on "clear cutting."<sup>10</sup> However, that there may be loopholes that undercut the  
13 "clear-cutting" prohibition does not mean that the city's interpretation is subject to reversal

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<sup>8</sup> CDC 9.1010(E) provides:

"Tree Removal in Overlay Districts: Except as provided below, no removal of regulated trees shall be permitted within a Hillside Physical Constraint, Flood Plain, or Natural Resource Overlay District without a Type II Development Permit."

<sup>9</sup> The city points out that CDC 9.1010(E) has since been amended to provide an exception for removal of regulated trees within 10 feet of the outer edge of the outline of a proposed single family residence or related site improvements, so that such tree removals no longer require a Type II Development Permit. The city argues that any building permit/tree removal applications for individual lots within the subdivision will be governed by the amended CDC 9.1010(E), and therefore petitioners' arguments under former CDC 9.1010(E) are essentially moot. It seems unlikely to us that if the CDC in effect at the time of the challenged PUD/tree removal permit required evaluation of trees to be removed for dwellings, subsequent amendments to the CDC would moot a challenge that the city failed to conduct that required evaluation. However, we need not address that argument, because we agree with the city that nothing in CDC 9.1010 or elsewhere cited to us requires that the city determine *in this decision* which and how many trees will be removed for dwellings.

<sup>10</sup> The city also points out that Condition of Approval 6(c), a condition imposed in the city's initial decision and not challenged by petitioners, requires that the CC&Rs for the subdivision include a restriction against removing regulated trees on individual lots where the result would leave fewer than one tree per 1,000 square foot of lot area. We understand the city to argue that that condition effectively ensures that development of individual lots will not run afoul the prohibition on "clear-cutting," as that prohibition is applied to applications to develop individual residential lots in the PUD.

1 under the deferential scope of review we must apply to a governing body's code  
2 interpretation under ORS 197.829(1).<sup>11</sup>

3 The fact remains that nothing in CDC 9.1010 compels the applicant for a tree removal  
4 permit necessary to site roads and utilities for a proposed PUD or subdivision to take into  
5 account trees that may have to be removed in subsequent development applications to site  
6 and build houses on individual lots on that same property. Because it is difficult if not  
7 impossible in the context of PUD approval to determine which trees and how many trees will  
8 be removed when individual PUD lots are developed, such a requirement would be  
9 unworkable, even if there were a basis in the code for an implicit requirement to that effect.  
10 The city's code interpretation declining to infer such a code requirement is well within the  
11 city's interpretative discretion under ORS 197.829(1).

12 The second assignment of error is denied.

13 The city's decision is affirmed.

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<sup>11</sup> ORS 197.829(1) provides, in relevant part:

"[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

- "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]"

November 8, 2013

Mr. Ken Helm  
City of Eugene Hearings Officer  
c/o Becky Taylor, Associate Planner  
City of Eugene  
99 West 10<sup>th</sup> Avenue,  
Eugene, OR 97401

Re: City File No. PDT 13-1; Oakleigh PUD  
Objection to impermissible evidence

Dear Mr. Helm:

On October 16, 2013, I submitted an objection to impermissible evidence that the applicant's representatives submitted earlier on the same day.

On October 23, 2013, the applicant's attorney, Zack Mittge, submitted a letter asserting the evidence in question was permissible.

On October 25, 2013 I submitted a letter further explaining why the evidence was impermissible, particularly the over 100 pages of copies of legal documents and property reports purporting to show right-of-way dedications on Oakleigh Lane that had heretofore never been submitted to the record or even mentioned in any testimony.

On November 5, 2013, Becky Taylor provided me the Hearings Official's order, dated the same day, denying my request to exclude the applicant's new evidence or re-open the record.

On November 6, 2013, Becky Taylor provided me a scanned copy of a letter from Mr. Mittge, dated October 31, 2013, further arguing his position. Although the letter stated that it was delivered "Via E-mail becky.g.taylor@ci.eugene.or.us and First Class Mail," Ms. Taylor states that she never received an e-mail copy, and she received the printed letter only on November 6.

\* \* \* \* \*

My present letter cites concrete evidence in the record to refute false claims by Mr. Mittge, and challenges the Hearings Official's misinterpretation of the statutory requirements.

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There is no dispute that ORS 197.763(6) governs the present issue.<sup>1</sup>

ORS 197.763(6)(c) states:

If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

ORS 197.763(6)(e) states:

Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicants [sic] final submittal shall be considered part of the record, but shall not include any new evidence.

ORS 197.763(6)(c) and (d) clearly establish three periods during which additional material may be submitted to the record following the close of the public hearing.

- During the first period, the record is "left open for additional written evidence, arguments or testimony." This initial period must be at least seven days.<sup>2</sup>
- The second period requires a participant to make a written request "for an opportunity to respond to new evidence submitted during the period the record was left open," upon which "the hearings authority shall reopen the record" for an unspecified time to allow response(s).
- During the third period, the applicant has the option to submit written arguments but no evidence. This final period must be at least seven days, unless waived by the applicant.

There is no dispute that at the end of the public hearing on October 2, the Hearings Official established three, one-week periods for additional submissions into the record, and that the first week (October 3rd to 9th) and third week (October 17th to 23rd) corresponded to the first and third periods (above) as established in ORS 197.763(6)(c) and (d).

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<sup>1</sup> "During the hearing, the Hearings Official received a request to leave the written record open which triggered the requirements of ORS 197.763(6)(c)." November 5, 2013 "Order Denying Reopening Evidentiary Record," ("Order") on page 1.

<sup>2</sup> Various LUBA decisions dealing with ORS 197.763(6)(c) refer to this as the "open record period."

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**ORS 197.763(6)(c) requirements for evidence submitted in the second week**

The sole issue in this case is the statutory basis for the Hearings Official's second week and, accordingly, what kind of testimony was allowed during that week.

The Hearings Official's second week clearly was not based on ORS 197.763(6)(d). The question then is whether the Hearings Official's second week was a lengthening of the initial ORS 197.763(6)(c) period or was instead a substitute for the ORS 197.763(6)(c) second (i.e., response) period.

LUBA has allowed that a "7-7-7" approach<sup>3</sup> is acceptable, and that a written request is not required to trigger reopening the record for responsive testimony. Presumably, the Hearings Official was attempting to follow such an approach by which the second week (October 10th to 16th) would correspond to the response period established by ORS 197.763(6)(c).<sup>4</sup>

The Hearings Official's description of the second week was somewhat ambiguous<sup>5</sup> and the rules he stated didn't clearly correspond to the provisions in ORS 197.763(6)(c). In any case, the Hearings Official does not have the authority to override statutes, and the second week in this case must conform to the statutory provisions upon which it's based.<sup>6</sup>

<sup>3</sup> The "7-7-7" is a shorthand for three one-week periods in which the first and second weeks correspond to the first and third periods (above) as established in ORS 197.763(6)(c) and (d), and the second week *anticipates* a written request for response to new evidence in the first week and dispenses with the requirement that such a request actually be filed.

<sup>4</sup> On the other hand, if the Hearings Official's second week was intended to lengthen the initial ORS 197.763(6)(c) period, then the applicant's new evidence was permissible, but the Hearings Official was required to grant my timely written request to reopen the record for a response. However, the Hearings Official has appeared to make clear this wasn't his intent:

"In addition, the Hearings Official did not close or reopen the record on October 9, 2013 as Mr. Conte appears to believe and argue. Therefore, ORS 197.763(7) is not independently applicable and does not represent a requirement to reopen the record pursuant to Mr. Conte's request." *ibid.* page 2.

Although it is probably immaterial in this case because of the above, it should be noted that in citing *Wetherell v. Douglas County*, Mr. Mittge conveniently left out the part of LUBA's decision that would apply in the present case:

"While we generally agree with intervenor that petitioner had no right under *Fasano* to rebut intervenor's rebuttal evidence, we would resolve the question differently if, during intervenor's rebuttal testimony at the hearing or during the period that the record was left open, intervenor had introduced evidence that was not limited to rebuttal of the evidence that petitioner submitted at the February 15, 2007 public hearing. In that circumstance, petitioner would almost certainly have a right to respond to such new (non-rebuttal) evidence."

<sup>5</sup> "Then I'll leave the record open until October 16th for responsive argument and evidence only. OK. That means no new issues out of the blue that didn't come up in that first open record period, which ended the 9th."  
— Hearings Official statement at approximately at 21:30 in the audio recording of the hearing.

<sup>6</sup> LUBA has found that the Legislature drafted ORS 197.763(6)(c) and (7) "to allow 'any participant' to submit 'new evidence, arguments or testimony,' to 'respond' to any new evidence that was submitted during the ORS 197.763(6)(c) seven-day open record period." *Friends of the Hood River Waterfront v. City of Hood River* (LUBA No. 2012-050)

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Accordingly, testimony during the second week was limited by statute to testimony that "respond[s] to new evidence submitted during the period the record was left open."

The period the record was "left open," was the first week, October 2nd to 9th.<sup>7</sup> Mr. Mittge's attempt to interpret "during the period the record was left open" as encompassing time *prior* to the first period established by ORS 197.763(6)(c) would rewrite the statutory language and is without merit.<sup>8</sup> Such an interpretation would for practical purposes eliminate the distinction between the initial and response periods established by ORS 197.763(6)(c).

Thus, the threshold question is whether or not the applicant's new evidence of purported right-of-way dedications, submitted during the second week, was in response to new evidence submitted in the first week.

In this regard, both the Hearings Official and Mr. Mittge misstate the statutory requirement. The Hearings Official asserts that evidence that "respond[s] to issues, argument and evidence submitted by the opponents"<sup>9</sup> can be submitted during the second week.

Mr. Mittge asserts:

"the testimony and evidence that Mr. Conte complains of is responsive to testimony and evidence that he and other opponents submitted \* \* \*. Both Mr. Conte and Ms. Regan's written submissions first introduced the issue of the classification of Oakleigh Lane on October 9, 2013."

The statute allows evidence to be introduced during the second period only in response to "new evidence," not in response to new "issues," "arguments" or any other form of "testimony" other than evidence, as defined by ORS 197.763(9)(b). Both the Hearings Official

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(Footnote 7 continued) Mr. Mittge's comment that "No-one objected to [the Hearings Official's] open-record sequence at the public hearing \* \* \*" has no legal bearing. The Hearings Official must follow the statutes, and a party does not waive his right to challenge impermissible evidence just because he wasn't present at the public hearing. Furthermore, even an explicit agreement between the applicant and some opponents regarding the additional time for submitting evidence into the record does not constitute any form of waiver by a participant who was not a party to such agreement. I raised this issue within hours of its occurrence and have adequately preserved the issue for appeal.

<sup>7</sup> At the public hearing, the Hearings Official allowed: "an additional seven days (until October 16, 2013) for the specific purpose of allowing responsive comment to issues raised during the initial seven-day period ending October 9, 2013." – Order on pages 1 and 2.

<sup>8</sup> Mr. Mittge actually used the term "during the open record period," which LUBA has used in numerous decisions to refer to the first period established by ORS 197.763(6)(c).

"Second, the Hearings Official's schedule and the applicable statutes do not limit responsive testimony to evidence submitted during the 'first week' in any case. Consistent with state law, all participants were afforded the opportunity to submit evidence and testimony that was responsive to issues that were raised during the open record period that ended on October 9, 2013." Page 2 of Mittge letter dated October 31, 2013.

<sup>9</sup> Order on page 2.

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and Mr. Mittge are relying on the impermissible insertion of terms into the language of ORS 197.763(6)(c). (ORS 174.010)

**Applicant's evidence was not responsive to a new issue**

In any case, however, the issue of the "classification of Oakleigh Lane" was introduced long before the first week the record was left open, and Mr. Mittge's claim is patently false. The "Applicant's Written Statement," dated June 14, 2013 states:

"Currently, Oakleigh Lane is classified as a Low-Volume Residential Street per Eugene's adopted street standards." (Page 43. Italics in original, underline added.)

Further, in an e-mail, dated August 29, 2013, from Daniel Ingram, a Senior Engineering Associate for Lane County, to Becky Taylor, the Eugene planner handling this application, Mr. Ingram described the classification of Oakleigh Lane as a "Local Access Road":

"West of the City of Eugene portion of Oakleigh Lane, Oakleigh Lane is a Local Access Road (LAR) within the Eugene Urban Growth Boundary."

Further, the Eugene Public Works Referral Response, dated September 17, 2013, cites the applicant's June 14 statement:

"Staff concurs with the applicant's assessment on page 43 of the written statement that Oakleigh Lane is a low-volume local street." (Page 10.)

Further, the Eugene Planning Staff Report, dated September 2013, on page 15 refers to Oakleigh Lane's classification: "motorists traveling on Oakleigh Lane (a low-volume street)."

Thus, there is an abundance of direct discussion of Oakleigh Lane's classification by the applicant himself and in numerous reports in the record before the first week that the record was left open.

My October 25, 2013 letter also demonstrated, although it was not necessary, that the issue of Oakleigh Lane's right-of-way was also introduced in the applicant's own written statement and referred to in many instances in the record prior to the public hearing.

**Applicant's evidence was not responsive to new evidence**

The applicant's evidence submitted during the second week was not responsive to any new evidence submitted in the first week. Leaving aside the other documents submitted by the applicants on October 16, the two letters from Access Engineering and Poage Engineering<sup>10</sup> submitted evidence of only one sort – documents purporting to show right-of-way dedications that would demonstrate that portions of the Oakleigh Lane right-of-way are wider than twenty feet.<sup>11</sup>

<sup>10</sup> OMC\_PDT 13-1\_Access Engineering Letter2.pdf and OMC\_PDT 13-1\_Poage Engineering Letter w Files.pdf.

<sup>11</sup> The applicant's new evidence, even if it were permissible and valid, would still mean Oakleigh Lane lacks adequate right-of-way for safe and efficient handling of the projected traffic and pedestrian and bicycle use.

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The only place either letter identified an issue or evidence to which the new right-of-way documents were a response was the following in the Access Engineering letter:

"Mr. Conte asserts that Oakleigh Lane is classified as an 'access lane' because the right-of-way is 20 feet north of the centerline implying that the total right-of-way was planned to be 40 feet in width."

As demonstrated above, the "issues" of Oakleigh Lane's classification and existing right-of-way were not new.

The only evidence pointed to is "the right-of-way is 20 feet north of the centerline." The evidence in the two letters was clearly in response to and directed at challenging this particular fact.

However, as demonstrated in my October 25, 2013 letter this fact was introduced at least as early as the "Applicant's Written Statement," dated June 14, 2013. The issue was also addressed extensively in the Eugene Planning Staff Report, dated September 2013 (pages 7, 8, 12, 13, 14, 15, 18, 31 and 38) and the report called out the applicant's own prior evidence related to this issue. The issue was also addressed extensively in the Eugene Public Works Referral Response, dated September 17, 2013 (pages 2, 3, 5, 7, 10, 17 and 20). The report confirmed the current Oakleigh Lane right-of-way: "The existing right-of-way in Oakleigh Lane is 20' ..."

The applicant's last-minute submission of documents related to Oakleigh Lane's right-of-way were not in response to any new evidence in my October 9, 2013 testimony – the applicant's evidence was actually in response to *his own prior evidence* about Oakleigh Lane's right-of-way, which I had merely referenced in my arguments.<sup>12</sup>

Subsequent to October 9, 2013, the applicant was entitled to present further argument in response to my arguments regarding Oakleigh Lane, but not new evidence of right-of-way dedications. It's important to note that the evidence I relied upon was clearly available to the applicant for weeks prior to the October 9 deadline for any new evidence; and thus, the applicant had every opportunity to introduce additional evidence regarding other right-of-way dedications up through October 9. Instead, the applicant chose not to introduce new evidence regarding right-of-way dedications until the last day on which opponents could submit testimony, thus depriving opponents of any opportunity to evaluate and respond to the new evidence.

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<sup>12</sup> In his order, the Hearings Official did not identify any new evidence to which the applicant's testimony was responsive, relying instead entirely on generalities, such as "Mr. Conte's submission, Exhibit PT-4, and Ms. Lauren Regan's comment at Exhibit PT-2 are long, detailed, and extensive comments touching almost all criteria applicable through EC9.8320" and "opponents took the opportunity to comment on a multitude of issues including traffic, stormwater, screening, setbacks, the designation of Oakleigh Lane, the proposed right-of-way and dedications, and Willamette River Greenway issues." Being "long," "detailed," "extensive" and commenting on a "multitude of issues" have no bearing at all on the statutory requirement that the applicant's testimony was required to be in response to "new evidence."

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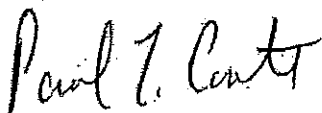
It is the applicant's obligation to adequately identify the alleged new evidence in testimony submitted when the record was left open and demonstrate that it constitutes new evidence not in the record.<sup>13</sup> Applicant has not met that obligation.

Oakleigh Lane's current right-of-way width has a direct bearing on the road's capacity to handle the projected vehicular, pedestrian and bicycle use. The possibility that the current right-of-way may be required to be widened because of the projected impacts from the proposed PUD has a direct bearing on the off-site impacts on other residents who live on Oakleigh Lane. Thus, the applicant's new evidence, if allowed, would potentially affect findings regarding approval criteria at: EC 9.8320(1), EC 9.8320(5)(a) and (b), EC 9.8320(6), EC 9.8320(11)(b), EC 9.8320(12) and EC 9.8320(13).

The fact that the Hearings Official has incorrectly interpreted the requirements of ORS 197.763(6)(c) and allowed the applicant to submit hundreds of pages of legal documents as impermissible new evidence, which I and others have no ability to review for authenticity or relevance, seriously prejudices opponents' substantial rights.

The Hearings Official must vacate or amend his previous order and strike the applicant's impermissible evidence from the record. If he does not do so, and relies at all upon this evidence for approval of the PUD application, the decision will be subject to remand on appeal, based on procedural error. ORS 197.835(9)(a)(B) (LUBA may remand for procedural error that prejudices the substantial rights of the petitioner.)

Sincerely,



Paul T. Conte  
1461 W. 10th Ave.  
Eugene, OR 97402

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<sup>13</sup> "[I]t is petitioners' obligation to adequately identify the alleged new evidence in the petition for review, demonstrate that it constitutes new evidence not in the record \* \* \*." *City of Damascus v. Metro*, 51 Or LUBA 210, 228 (2006).

Rec'd 12/5/13

Hello, my name is Rich Dambrov and I am a resident of Oakleigh Lane. I am speaking on behalf of my family (my wife and 2 children) in opposition to the proposal. Specifically, I am addressing the impacts related to safe and adequate transportation that will result from the proposed Oakleigh Meadow Cohousing development on the local neighborhood.

A Traffic Impact Analysis is required, however, in his decision, the HO failed to do so. According to EC 9.8320(5), "the PUD provides safe and adequate transportation systems", specifically related to pedestrian and bicycle circulation to "adjacent and nearby residential areas." In reality, however, the safety of Oakleigh Lane as a whole is compromised by this decision that fails to even consider the traffic impacts that 28 new units at the end of our street will have on its residents. Despite the fact that Oakleigh Ln is documented by the city as "a location where pedestrian and/or bicycle safety is a concern" as stated in EC 9.8670, the HO found that no Traffic Impact Analysis was required. The public works department analysis in the staff report documents City concerns over pedestrian safety on Oakleigh Ln which, according to the code previously quoted, would require a Traffic Impact Analysis. The required analysis of Oakleigh Lane would supply evidence needed for this important piece of the PUD and information related to the major traffic safety concerns being raised by those opposed to the proposal.

The Traffic Impact Analysis of Oakleigh Lane, required of the PUD and limited specifically to impacts on neighboring residential units, would reveal a staggering impact. For example, I live halfway down Oakleigh Ln. There are 10 residential units between my house and the end of the street. If the development is approved and constructed as proposed, I will see traffic from an additional 28 plus units. Basing traffic volume on number of total housing units, this would be an almost 300 percent increase in traffic volume in front of my house and well over 100 percent increase to the Oakleigh Lane residents as a whole. Without road improvements, the PUD proposal poses a significant risk to myself, my family, the many pedestrians and bicyclists that currently use Oakleigh Lane, as well as the movement of vehicles that would be impeded by the increased traffic flow on our narrow lane.

If the PUD is accepted, Oakleigh Lane would become a traffic thruway for the many residents of and countless visitors to the development. Oakleigh Lane residents should not have to pay for improvements to the road for safety when, after construction, traffic safety impacts and incidents make it clear that the PUD did not fully account for safe and adequate transportation adjacent to and nearby the site. Eugene code 9.8320(5)(b) requires the applicant to provide a safe and adequate transportation system specifically "to adjacent and nearby" areas. In the HO decision, a 45 ft. right of way was required onsite of the applicant due to "public interest in safe vehicular, pedestrian, and bicycle travel and emergency response" being at risk. No similar conditions were required, however, for the rest of the street adjacent to and nearby the site. If this right of way is required onsite, then it should also be required off site to mitigate the same risks to my family and I as well as my neighbors on Oakleigh Ln that will be similarly impacted. Therefore, to fully meet the intended criteria of this code, safe and adequate

transportation should be provided *by the applicant from the development site and to River Road*. The required right of way in this case should be required of the applicant for the entire stretch of Oakleigh Lane as this is the true transportation impact that the development will have on adjacent and nearby areas.

One hundred percent of existing local residents voiced opposition to this development proposal so I was very disappointed to hear that the City approved of it. Those of us who are to be directly impacted by this proposed development have very real concerns, and none more significant than safety. The HO's decision and staff report leave many essential questions unanswered in regards to this issue. By failing to fully investigate the traffic impacts with the required Traffic Impact Analysis or ensuring the safety to all by requiring the right of way to include all of Oakleigh Ln, assumptions are being made in regards to traffic safety. The consequences to poor planning in this case would prove to be detrimental to all involved. I urge the planning commission to take a hard look at this issue and reject the development as proposed due to, among the many other issues, insufficient traffic safety measures.

Rec'd 12/5/13

Eugene Planning Commission  
Eugene Planning Division  
99 West 10<sup>th</sup> Avenue  
Eugene, OR 97401

December 4, 2013

Re: Appeal of Oakleigh Meadows Co-Housing Planned Unit Development and Willamette Greenway Review

Dear Chair Randall and Planning Commissioners:

I, Sandy Thoms, urge the Planning Commission to reject the decision of the hearings official for several reasons. I urge you to take very seriously all of the evidence presented to you by our attorney, Bill Kabeisman, Bryn Thoms, Paul Conte, Lauren Regan and the residents of Oakleigh and McClure lanes.

Bill Kabeisman, Bryn Thoms, and Paul Conte will go into technical detail about why the hearings official erred on many issues, but I wanted to submit a summary of my own opinions on the matter.

1. As a home owner, driver, biker and pedestrian on Oakleigh Lane, with 2 children and a husband who do the same daily, I find a huge error in the idea that Oakleigh Lane will somehow be safe purely by the dedication of additional ROW on the short section of Oakleigh Lane along the development's property line. All logic tells me that makes no sense whatsoever! The public works department makes it very clear that Oakleigh Lane will be unsafe if it is not improved to a 45 foot ROW. Yet, somehow the dedication will make it safe? Following that same logic, if we dedicate enough ROW on the entire length of Oakleigh Lane for a 4 lane highway, we can put thousands of cars on it, and it will be safe? Currently, Oakleigh Lane does not even meet the minimum standards set forth by the City of Eugene as an access lane, yet you are going to let this development happen which will move it up into the category of low density residential road without requiring actual improvements to the entire street. This is a huge error in logic!

By saying that Oakleigh Meadow Cohousing (OMC) will be required to dedicate a portion of the their property to make transportation safe, then it should hold true that the same thing should be required the entire length of Oakleigh Lane, where the cars, pedestrians, and bikers will actually be traveling. The Hearings Official contradicts himself in saying it is required along the OMC property line, but not along the entire length of Oakleigh.

I also find that if a 45 foot ROW is necessary for safe travel then the pure dedication of the land does nothing to make safety a reality. OMC should be required to actually make the expanded ROW a reality, not just a dedication for the future. When? 50 years from now?

Along this same logic, if the City says it needs to have a 45 foot ROW then the entire length of Oakleigh should have to be improved to meet those standards. This would be a huge impact on the neighbors and the cost of improvements to the city would be enormous. Therefore, this PUD should be fully denied!

2. The hearings official erred in saying that the neighbors to the North must not have understood the landscape plan and that OMC made it very clear that they have selected the row of cedar trees for preservation. This is a gross error. The neighbors to the north, MYSELF AND MY HUSBAND, know full well what OMC's landscape plans are and we made it very clear in our letters. Either the HO was being sarcastic and rude or he did not read any of our letters. As the owners of Tax Lot 200, and the owners of the large row of cedar trees, we made it very clear that OMC does not have the authority to "select the cedar trees for preservation". Wording it as if the cedar trees belong to them! You cannot select something that does not belong to you! Those trees are on my property, and at any time, I may need to, or choose to, remove those cedar trees. Or the future property owner of tax lot 200 could remove those trees. That will leave OMC's property with no screening on the north property line, whatsoever. Please keep in mind that the setback back from Building 1 to the proposed new ROW of Oakleigh will be 0.5 feet and there is no screening proposed for the north side of OMC's development along Oakleigh Lane.

We currently plan to remove several of those cedar trees due to them leaning toward the proposed OMC buildings, should this development move forward. We are already debating the removal of additional trees due to our fear of them falling from damage during construction and our fear of liability of damage of falling trees or branches on building 2, which that is being built very close to them.

So, once again, the HO erred in his statement. Yes, the neighbors to the north are well aware of the landscape plan of OMC, NO, OMC should not be able to use OUR trees for their screening, and NO, those cedar trees are not guaranteed to remain.

3. OMC did a good job of tricking the HO into thinking that the building size and mass are compatible with the existing neighborhood. OMC likes to talk about how their "units" are comparable in size to the existing homes in the surrounding neighborhood. Once again,

OMC likes to be selective in how they word things. While the size of the individual OMC units might be similar in square footage to the surrounding homes, what they don't like to talk about is how those are combined into buildings that contain up to FIVE of those units, making the buildings 5 times the size of anything nearby. Bryn Thoms presented a depiction of how big the buildings are in comparison to the surrounding homes. The mass of these buildings will be bigger and taller than any other homes in the surrounding neighborhoods. The hearings official went purely on building height and units per acre in making his decision on this topic. If you are going to throw out all of the R1 standards for this development then you need to look at more than just the height of a building and the square footage of the individual units to decide if it is compatible with the surrounding neighborhood. This is not compatible or harmonious (PUD section 13), and the HO erred in declaring that it is.

4. The hearings official erred on what needs to be removed for net density. It appears in his report that he and the City can't agree on what should and should not be considered subtracted. If the hearings official and the City of Eugene can't even figure out what is to be subtracted, then that obviously needs to be cleared up before this development can be approved to move forward. From the calculations presented by Bryn Thoms after research of the City code requirements, we find that OMC has gone over the allowed number of units for the R1 zone. If all parties cannot agree on what should be subtracted, then this should be denied until they can!

Based on the facts stated above, and all of the evidence presented by the opposition to the Oakleigh Meadow Condominium development, I urge you to deny this Planned Unit Development due to the many errors by the Hearing's Official.

Sincerely,  
Sandy Thoms  
Homeowner of 135 Oakleigh Lane and Tax Lot 200

## TAYLOR Becky G

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**From:** Jon Belcher <jbelcher@efn.org>  
**Sent:** Thursday, December 05, 2013 3:35 PM  
**To:** TAYLOR Becky G  
**Cc:** 'Bryn Thoms'; 'Will Dixon'; Bev Barr; REILLY Carleen (SMTP); BELCHER Jon (SMTP); Karrie Walters-Warren; Kate Kelly; Kendall Blake; Kira Lehman; Michael Lambros; Steve Lehman  
**Subject:** River Road Community Organization's role in Appeal of Hearings Official Decision for Oakleigh Cohousing (PDT 13-1 & WG 13-1)

As co-chair of the River Road Community Organization I want to state for the record of the Appeal of Hearings Official Decision for Oakleigh Cohousing (PDT 13-1 & WG 13-1) the specific motion that RRCO voted to approve at our 11/11/2013 Meeting.

The specific language of that motion is: " River Road Community Organization supports an appeal by either the proponents of Oakleigh Community Cohousing or the opponents of Oakleigh Community Cohousing to lessen the fee for an appeal. "

There was no vote taken to either specifically support or specifically oppose the project.

*Jon Belcher (jbelcher@efn.org)*

December 5, 2013

Eugene Planning Commission  
c/o Becky Taylor, Associate Planner  
City of Eugene  
99 West 10th Avenue,  
Eugene, OR 97401

Re: City File No. PDT 13-1; Oakleigh PUD  
Opposition to Hearings Official Decision

Dear Eugene Planning Commission:

The following letter presents testimony supporting several of the assignments and subassignments of error presented in the Appeal Statement regarding the tentative PUD approval for Oakleigh Meadows Co-Housing (PDT 13-1). I am presenting information in a less formal and more plain language style as a means to show the Planning Commission (PC) how the Hearings Official, and some in some cases the City of Eugene, clearly erred in tentatively approving this PUD.

If you are not fully up to speed on the record thus far, I would like to provide some detail about my background and who I represent so that my presentation in this letter and my oral presentation at the Hearing on the evening of December 5<sup>th</sup> can be correlated and so that you understand that I and the local neighborhood has put quite a bit of energy into this appeal and opposition prior to the City appeals stage.

I represent the views of nearly 100% of the residents that live on Oakleigh Lane and about 70% of the residents that live on McClure Lane. I am a Registered Geologist with the State of Oregon and I work for the Oregon Department of Environmental Quality in the Environmental Cleanup Program. The specifics of my background do not directly relate to PUD code or detailed land use issues, but I take both my professional registration and my position as a public servant very seriously. Both of those commitments rely on my impartial review of evidence to make determinations that can have significant affect on the citizens of Oregon. That's why I take my job and professional certification very seriously, much like the expectation the citizens have on municipal engineers and planners, land use Hearings Officials, and Planning Commissions.

Specifically, regarding the Hearings Official for this PUD (Mr. Ken Helm), I would like to provide some feedback to the City of Eugene and the PC. This topic may have no bearing on the judicial intricacies of the appeal, but I still think this is an important issue for future land use decisions. In Mr. Helm's decision document he adds quite a few colorful and partial adjectives to his summaries of the opposition's arguments which present the local neighbors as not being educated or experienced enough to fully understand PUD code or land use. There is an overly dismissive tone towards the neighbors in his report. I can understand that type of tone coming from the applicant, which we actually saw at the Public Hearing on October 2<sup>nd</sup>, but coming from a professional representing the City, seems inappropriate. It also suggests to the public that their

comments are not given as much merit as the City's recommendations or the applicant's, "strenuous assertions" of how their application meets code.

I think it's important for the PC to understand that the opposing neighbors of the proposed PUD are not viewed as simply anti-development neighbors and that respect is given to them as reasonable and understanding citizens that live in the Urban Growth Boundary. They are fully aware of infill and agree with the premise of infill and they understand the Metro Plan's goals. What they do not agree with, is maximized development with no compromise for the local neighbors, which is exactly the situation with this particular PUD. They also need to understand that the local neighbors of infill development generally do not have the resources to compete with developers, nor do they have the time, or level of experience. That does not mean that their arguments should be dismissive purely because they didn't directly tie them to code or because they appear to not have the same level of education or experience in land use as the professionals.

The errors that I chose to provide additional narrative on in this letter do not touch on traffic or safe ROW widths because much of that is covered in other testimony.

### **Errors with Supporting Narrative**

#### Subassignment of Error 2.A

*The Hearings Official erroneously found that the applicant's proposed street design would adequately serve Tax Lot 200, despite severely limiting future development of that lot, which is under ownership of opponents of the PUD.*

*The Hearings Official's decision is a clear exaction from the owner of Tax Lot 200 to the benefit of the applicant. This decision fails to meet the constitutional standards for such exactions.*

The City Staff report states that the proposed street connectivity plan is adequate and that Eugene Code (EC) says that the street connectivity exemption only needs to show how an undeveloped lot could be developed, not that it needs to be developed to the max extent possible. This goes against the whole infill motive that is driving the 14 units/acre density and the approved PUD of OMC. Shouldn't the assumption be that the undeveloped lot will be infilled to 14 units per acre or as close to it as possible, which could only be done using the PUD code and not the R-1 standards as suggested by the three flag lots proposed in the applicant's street connectivity exemption. In addition, the only way to develop TL 200 at PUD type densities, would require a larger ROW both in width at the end of Oakleigh and a length extended beyond the east end of Oakleigh. In addition to that, the safety issue comes up and the traffic argument presented in the second assignment of error suggest that even if Oakleigh were a low density road and the development occurred at the proposed density, this would disallow PUD type developments of the remaining undeveloped lots on Oakleigh Lane. Because the ADT on Oakleigh would be limited to 750 and the proposed development is pushing 400 to 500 cumulative ADT on Oakleigh lane.

6<sup>th</sup> Assignment of Error

*Further, the proposal pushes building, garages, barns and other structures to the edge of the property, requiring modifications to the setbacks on three of its sides. The proposal uses a concrete wall as its main face to the neighborhood to the west. The proposal pushes its buildings into the setbacks to the north and to the south. The Hearings Official relies on size of buildings, density calculations, height limits and other factors; however, those limitations are already imposed by code, so they provide no basis to find this criterion is met. Moreover, the Hearings Official calculation of size is erroneous and does not understand the context of the neighborhood, which includes smaller homes. This proposal is not harmonious and reasonably compatible with the neighborhood. It will stick out like a sore thumb.*

The following narrative gets at the erroneous calculation of building mass and bulk. The applicant uses the square footage of the individual units to compare to the surrounding neighborhood, which appears to show that the buildings of the proposed PUD are compatible with the surrounding neighborhood, because they are similar in size to the single family detached homes on Oakleigh and McClure Lanes. When looking at building bulk and mass the total cumulative square footage of the whole townhouse should be used for the comparison. When that is done, you see that the smallest building in the proposed PUD is about 4000 square feet, which larger than any of the homes on Oakleigh and McClure by 1000 to 2000 square feet. Most of the townhouses are actually in the 6000 square foot range. That is not compatible nor harmonious with the existing neighborhood. The Hearings Official ignores the opposition's presentation on this matter and simply relies on the applicant's findings. In addition the City allowed this inaccurate comparison to be "approved" in their staff report. This is a major flaw by both the City and the Hearings Official.

7<sup>th</sup> Assignment of Error

*The Hearings Official erred in finding that the proposed PUD would comply with EC 9.8320(3) requiring "adequate screening" from surrounding properties. The Hearings Official appears to have only considered height, but the criterion requires consideration of "building location [and] bulk" as well. In addition, the Hearings Official found the screening to the north adequate based, in part, on cedar trees that are on adjacent property. This is inadequate as that "screening" can be removed by the adjoining property owner. The screening on the northern boundary was also found adequate based on landscaping and planters, but those will be located in the dedicated right-of-way. Moreover, the screening requirement is not met when the applicant pushes its impacts to the very edge of the property, requiring multiple adjustments to setback requirements for the wall to the west and the buildings on the other sides, while keeping open space in the center. This arrangement does*

*not adequately “screen” the property, nor does it show that the development is “reasonably compatible and harmonious” with adjacent properties as required by EC 9.8320(13).*

I believe this error was adequately covered Sandy Thoms’ letter of testimony December 5<sup>th</sup>. However, I will add that not only could the “selected” cedars trees on the neighboring property (Tax Lot 200) be removed by the owners of TL 200, the remaining north property line abutting Oakleigh will not have adequate room between Building 1 and the new proposed property line (south edge of the ROW), to provide adequate screening. The setback will be 0.5 feet. Essentially there would be no screening along the north property line if the cedar trees were removed. This argument would similarly apply to the east side of the property, where there was no screening on the proposed PUD property and the applicant references large cottonwood trees along the bike path on public property as screening, in their application. The Hearings Official conditioned the approval of the PUD with the requirement to add screening to the east side of the property, because the cottonwoods were not adequate. The same level of scrutiny should be applied to the screening on the north. The Hearings Official erred in not providing the same level of scrutiny to the north property line and by not conditioning the approval with the requirement to provide screening on the applicant’s property along the north property line.

#### Subassignment of Error 8.A

*The Hearing Official erred in his calculation of the net density area pursuant to EC 9.2751.. For example, on page 35 of the decision, The Hearings Official excludes all easements from that calculation. The net density provisions are intended to determine the amount of land that is available to build; because buildings are not allowed within easements and areas dedicated for water, sewer, street and similar public services, those areas must be excluded from the calculation.*

The EC regarding net density, specifically states the City may include public facilities and public easements. The Hearings Official erred by removing public easements in the net density calculations with no basis for doing so. The Hearings Official dismisses all the easements on the property because code does not explicitly say easements (public) should be removed from the net density calculation. However, the term “Public Facilities” is used in code and the Hearings Official even states there the term is not defined EC 9.05. The Hearings Official then goes on to say “public facility” is defined in the Metro Plan. I thought the Metro Plan was not directly applicable to the PUD code as stated by the Hearing Official early in the decision document. The Hearing’s Official erred in not only conflicting himself with what plan or code should or shouldn’t apply, but he also dismisses the easements with no solid evidence to say that they are not considered public facilities. The proposed EWEB water line which will carry public water and that will need public services to repair (14 ft easement) should be considered a public facility. This also goes for the 6 foot diameter Sewer Main with 10 feet of OMC property pulled into easement along the east property line.

9th Assignment of Error

*The Decision erred by finding the application met the following approval criterion:*

**EC 9.8320(11)**

***(k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.***

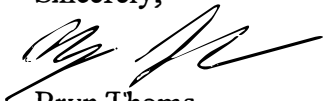
***9.2795 Solar Setback Standards***

*The Hearings Official erred in his interpretation of the solar setbacks pursuant to EC 9.2795. Although the solar setbacks may be modified, the Hearings Official is required to understand the extent of the modification to determine if it is consistent with the purposes of the PUD ordinance. The error made by the Hearings Official was to measure the solar setback from the existing property line rather than the property line established by the required dedications.*

There is likely other testimony regarding this issue. The Hearing's Official's argument is not very strong. He simply uses the rest of the PUD code and relies on the fact that all the other PUD Code is met therefore this one must be met. It seems to me, that the City would not have put this code in, if it didn't stand on its own. Why bother having it in here if everything else meets code. It's not met with this PUD project and that is why the Hearing's Official is having a hard time denying it with real evidence. The incompatibility of the proposed PUD is further explained in the narrative for the 6<sup>th</sup> assignment of error, presented above.

Based on these errors and similar testimony regarding the errors made by the City and the Hearing's Official, I urge the PC to deny the tentative approval of this PUD.

Sincerely,



Bryn Thoms  
135 Oakleigh Lane

## TAYLOR Becky G

---

**From:** Zack Mittge <ZMittge@eugenelaw.com>  
**Sent:** Monday, December 02, 2013 4:29 PM  
**To:** TAYLOR Becky G  
**Subject:** Extension request

Becky,

I have shared the extension request with my clients. Unfortunately, a 30+ extension is simply going to be too long. Accordingly, we respectfully decline the invitation to extend the hearing to January 6th. I hope the weather on Thursday night is cooperative.

Very truly yours,

Zack P. Mittge

Zack P. Mittge | Attorney at Law | Hutchinson, Cox, Coons, Orr & Sherlock, P.C. | 400 Woolworth Building, 940 Willamette Street, Suite 400, Eugene, OR 97440 | 541-686-9160 | 541-343-8693 (fax)

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**TAYLOR Becky G**

---

**From:** butoh@efn.org  
**Sent:** Saturday, November 30, 2013 2:42 PM  
**To:** TAYLOR Becky G  
**Subject:** Permit For Oakleigh Meadows Cohousing

Dear Commissioners Bozievich, Leiken, Sorenson, Farr, Stewart, Ms. Becky Taylor and all concerned citizens,

Since I will be unable to attend the public hearing on Thursday, December 5, 2013, I would like to submit the following:

I originally sent an email to Becky Taylor at the beginning of October, 2013, which read:

"In the 21st century, we will have to learn to cherish all creatures in the commonwealth of sentient beings if we are going to preserve our fragile environment." ~ Sam Keen

I'm all in favor of cohousing in the Eugene area, but the Oakleigh Meadow Cohousing project will actually do more damage and long-term destruction to the area. I don't see this project as being environmentally beneficial to the area or to the people who live there. Developments (of any kind) that destroy the essence of having a greenway space for all beings and living things to enjoy are not appropriate for the area.

I urge our planning commissioners to not grant a permit for the Oakleigh Meadows Cohousing project so our precious habitat can remain for everyone to enjoy.

Thank you for your time and consideration.

Sincerely,  
Planet Glassberg

P.O. Box 11011  
Eugene 97440-3211  
(541) 461-2695

## TAYLOR Becky G

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**From:** Susan Hyne <susanhyne@gmail.com>  
**Sent:** Saturday, November 30, 2013 11:12 AM  
**To:** TAYLOR Becky G  
**Subject:** Letter of support for Oakleigh Meadow Cohousing

I am writing in support of Oakleigh Meadow Cohousing.

More neighbors means more traffic. It also means more opportunities to use less resource-intensive transportation options.

Based on my experience at CoHo Ecovillage in Corvallis, Oregon, I've seen lots of positive steps:

- Neighbors regularly carpooling for school, work, and activities
- Neighbors riding bikes (for some, bikes are their main transportation)
- Neighbors walking to/from a nearby bus stop (keeping more vehicles off the road)
- Neighbors sharing errands, which reduces extra trips ("I'm going to the store/library/market--does anyone need anything?")
- Neighbors walking kids to school
- Neighbors selling a second family vehicle because there are so many options they don't need it anymore

The best part--these options are open to cohousers AND their neighbors along the street. It's a great way to get to know each other.

--  
Susan Hyne

## TAYLOR Becky G

---

**From:** Jon Belcher <jbelcher@efn.org>  
**Sent:** Monday, November 25, 2013 1:14 PM  
**To:** RANDALL William (SMTP); NYSTROM Steven A  
**Cc:** DUNCAN Rick (SMTP); TAYLOR Becky G; \*Eugene Planning Commissioners  
**Subject:** RE: Oakleigh PUD Appeal

I co-signed the appeal of the Hearing Official's decision on PDT-13-0001 as co-chair of River Road Community Organization after a nearly unanimous vote at our November general meeting to support either party should they appeal. My signature could create the impression that I have a de-facto bias in this appeal. More importantly I have worked with both parties on this issue as RRCO Co-Chair and it would take quite a bit of time for me to share the information I have heard through those ex-parte contacts as well as from attending General and Board meetings where Oakleigh Meadow Cohousing has been discussed, assuming I could remember all that I have heard on this matter over the past two years. Additionally I am familiar with the site of the application. For these reasons, I request time before the Commission to seek your advice on the appearance of partiality as required by Article III, Section 6 and will then state my decision and the reasons therefore regarding abstaining from this hearing and deliberation. I request that this occur at a Planning Commission meeting prior to the hearing or at the beginning of the hearing, whichever is more appropriate.

Thank you,  
Jon Belcher

---

**From:** williamRANDALL [<mailto:bill@arborsouth.com>]  
**Sent:** Monday, November 25, 2013 11:47 AM  
**To:** NYSTROM Steven A  
**Cc:** DUNCAN Rick (SMTP); TAYLOR Becky G; \*Eugene Planning Commissioners  
**Subject:** Re: Oakleigh PUD Appeal

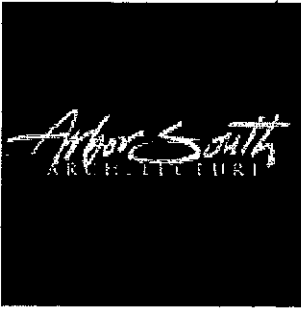
Sounds like a good idea.

Technically, Jon can abstain solely on his own, but he does need to seek the Commission's advice. (Article III, Section 6).

I'll save time for that on Dec 2.

**billRANDALL**  
*architect/senior principal/csba/leed ap bd+c*  
*p: 541-344-3332*  
*380 Lincoln Street*  
*Eugene, Oregon 97401*

*please consider the environment before printing this email*



On Nov 25, 2013, at 11:36 AM, NYSTROM Steven A <[Steven.A.Nystrom@ci.eugene.or.us](mailto:Steven.A.Nystrom@ci.eugene.or.us)> wrote:

Yes, you could take this issue up at your regular meeting next Monday, Dec. 2. Jon, I'd suggest you raise this under Commission items at the end of the Dec. 2 meeting. Steve

---

**From:** Rick Duncan [<mailto:rick@duncanbrown.com>]  
**Sent:** Monday, November 25, 2013 11:34 AM  
**To:** TAYLOR Becky G; \*Eugene Planning Commissioners  
**Subject:** RE: Oakleigh PUD Appeal

I believe our By-Laws require the PC to take action on Jon request. Could that be done ahead of the PH?

**Rick Duncan**  
(541) 687-1938  
[www.duncanbrown.com](http://www.duncanbrown.com)  
<image002.jpg>

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**From:** TAYLOR Becky G [<mailto:Becky.G.Taylor@ci.eugene.or.us>]  
**Sent:** Monday, November 25, 2013 11:28 AM  
**To:** \*Eugene Planning Commissioners  
**Subject:** Oakleigh PUD Appeal

Dear Planning Commissioners,

We received an appeal of the Hearings Official's decision on the Oakleigh Co-housing PUD. Like the Laurel Ridge case, the time available for Planning Commission's appeal hearing and a final local decision on appeal is limited under the statutory 120-day rule. As such, no staff report will be provided in advance of the appeal hearing, which is set for Thursday, December 5<sup>th</sup> at 6:00 p.m. in Harris Hall. Deliberations and final action are scheduled for Monday December 9<sup>th</sup> and 16<sup>th</sup>.

In an effort to get as much information to you as possible, as quickly as possible, I am attaching the appeal statement and the Hearings Official's decision. I will get the entire record to you by Wednesday.

We received 6 confirmations for these dates (Commissioner Baker will be absent), but it's likely Commissioner Belcher will be recusing himself from these proceedings as well. Unless we hear otherwise, we will assume the rest of you can attend.

Thanks!  
Becky

Becky Taylor, Associate Planner



**NOTICE OF APPEAL HEARING:  
OAKLEIGH COHOUSING PUD (PDT 13-1)**

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**NOTICE OF PLANNING COMMISSION PUBLIC HEARING  
6:00pm Thursday December 5, 2013  
Harris Hall  
125 East 8th Ave, Eugene OR 97401**

On Thursday, December 5, 2013, the Eugene Planning Commission will hold a public hearing to consider an appeal on the following land use application which was approved by the Hearings Official:

**File Name (#):** Oakleigh Cohousing PUD (PDT 13-1)

**Location:** Located at the east end of Oakleigh Lane.

**Application:** Tentative Planned Unit Development for a 29-unit cohousing development.

**Applicant:** Will Dixon, Oakleigh Meadow LLC

**Lead City Staff:** Becky Taylor, Associate Planner, (541) 682-5437

All documents and evidence submitted on these applications will be available for free inspection at the Atrium Building, 99 West 10<sup>th</sup> Avenue, between 9:00 a.m. and 5:00 p.m. Monday through Friday. Copies may also be obtained at cost. The Planning Division staff report to the Planning Commission on appeals is normally, but not required to be, provided at least 7 days in advance of the public hearing (available for inspection free of charge or copies provided at a reasonable cost). In this case, the time available for Planning Commission's appeal hearing and a final local decision on appeal is limited under the statutory 120-day rule; as such, no staff report will be provided in advance of the appeal hearing. However, the full public record and the Hearings Official's decision are currently available. Any written appeal statement that may be received will be made available as soon as it is received.

**How to Submit Testimony**

Send a written statement to the Planning Commission, c/o Becky Taylor, via e-mail: [becky.g.taylor@ci.eugene.or.us](mailto:becky.g.taylor@ci.eugene.or.us), or hand delivered to: Becky Taylor, City of Eugene Planning Division, 99 West 10<sup>th</sup> Avenue, Eugene, Oregon 97401 prior to the hearing. Or attend the public hearing and state your concerns. You are encouraged to submit written testimony if you have detailed comments you wish to make.

Please note that failure to raise an issue at the hearing, in person or by letter, or failure to provide statements or evidence with sufficient specificity to enable the decision maker to respond to the issue, precludes further appeal based on that issue.

*Mailed 11-25-13*

*AT*

### Conduct of Public Hearing

This hearing is not the first evidentiary hearing; the order of procedure is as follows:

1. Planning Commission Chair will commence public hearing.
2. Planning Commission chair will ask commissioners to disclose any conflicts of interest, ex parte contacts, and biases, abstentions or challenges to impartiality submitted pursuant to EC 9.7065.
3. Planning Commission will receive the City staff report.
4. Testimony from proponent/applicant.
5. Comments or questions from interested people who are neither proponents nor opponents.
6. Testimony from opponents.
7. Staff response to testimony.
8. Questions from the Planning Commission.
9. Rebuttal by the proponent/applicant.
10. Planning Commission Chair will announce whether the record is closed; record will be held open; or the public hearing will be continued.

The decision of the Eugene Planning Commission will be final at the local level. Persons who appeared before the local government orally or in writing may appeal the decision to the Oregon Land Use Board of Appeals within 21 days of the Planning Commission's decision. Appeals to the Oregon Land Use Board of Appeals are governed by ORS 197.805 to 197.860 and OAR Chapter 661, Division 10.

If you have questions, or would like more information, please contact City staff at the address or phone number listed below.

**Becky Taylor, Associate Planner**

City of Eugene Planning Division

99 West 10<sup>th</sup> Avenue, Eugene, OR 97401

Phone: (541) 682-5437 E-mail: [becky.g.taylor@ci.eugene.or.us](mailto:becky.g.taylor@ci.eugene.or.us)

IN, JULIE GOEHRING, MARK 100 REDUBUD WY NEVADA CITY CA 95959	(PDT13-1)	GOLDMAN, STEVE 1495 W HILLIARD LN EUGENE OR 97404	(PDT13-1)	GRANT, BETTY PO BOX 40656 EUGENE OR 97404	(PDT13-1)
GREENLEE, DALE 108 OAKLEIGH LN EUGENE OR 97404	(PDT13-1)	HEINTZ, CECELIA & PAUL 118 MCCLURE LN EUGENE OR 97404	(PDT13-1)	HENNER MARTIN E 984 LINCOLN STREET EUGENE, OR 97401	(PDT13-1)
HENNER, MARTIN 990 LINCOLN #17 EUGENE OR 97401	(PDT13-1)	HOLTZ, PATRICIA 130 MCCLURE EUGENE OR 97404	(PDT13-1)	HUTCHINSON, MAJ 114 OAKLEIGH LN EUGENE OR 97404	(PDT13-1)
Jennifer Holst JENNIFER HOLST 1582 HACKAMORE WAY EUGENE, OR 97401	(PDT13-1)	JIM O'CONNOR & PEN SAND 1430 WILLAMETTE ST #240 EUGENE OR 97401	(PDT13-1)	JOHNSON, SHAWN 113 OAKLEIGH LN EUGENE OR 97404	(PDT13-1)
TICE, DANEEN 100 MCCLURE LN EUGENE OR 97404	(PDT13-1)	KAHLE, DON 400 E 32ND AVE EUGENE OR 97405	(PDT13-1)	KILLIAN, TERRENCE 116 OAKLEIGH LN EUGENE OR 97404	(PDT13-1)
LAURA FISCHRUP 1755 EAST 23RD EUGENE OR 97403	(PDT13-1)	LEWIS, ANTONIA 2744 SUNNYVIEW LN EUGENE OR 97404	(PDT13-1)	LOVE, ANNE 133 OAKLEIGH LANE EUGENE OR 97404	(PDT13-1)
LOVINGER, NENA 0 HOPSBRAN@AOL.COM	(PDT13-1)	MACRHODES, SHANE 1920 GARFIELD ST EUGENE OR 97405	(PDT13-1)	MCCAULEY, MAUREEN 1755 E 23RD AVE EUGENE OR 97405	(PDT13-1)
NUSSBAUM, DEAN 128 MCCLURE LN EUGENE OR 97404	(PDT13-1)	PATTON, KATY 3406 WATERMARK DR SPRINGFIELD OR 97477	(PDT13-1)	OTTO POTICHA POTICHAARCHITECTS 1820 KONA ST EUGENE OR 97403	(PDT13-1)
REGAN, LAUREN 27 E 5TH #300A EUGENE OR 97401	(PDT13-1)	RUBIN, RICK 107 HANSEN LN EUGENE OR 97404	(PDT13-1)	RICK SATRE SCHIRMER SATRE GROUP 375 W 4TH AVE #201 EUGENE OR 97401	(PDT13-1)
SCOTT, JUDY 105 MCCLURE LN EUGENE OR 97404	(PDT13-1)	CHARLES CHISHOLM SIERRA NEVADA GROUP PO BOX 1042 NEVADA CITY CA 95949	(PDT13-1)	STEDMAN, RACHELAND SCOTT 131 OAKLEIGH LN EUGENE OR 97404	315

	(PDT13-1)		(PDT13-1)
Interested Parties: Oakleigh Cohousing (PDT 13-1)		*OAKLEIGH MEADOW LL 300 BLAIR BLVD EUGENE OR 97402	ADEE DAVID & CONNOLLY JOAN 131 MCCLURE LN EUGENE, OR 97404
	(PDT13-1)		(PDT13-1)
ANITA VAN ASPERDT 1754 MOONSHADOW LANE EUGENE, OR 97405		WILLARD DIXON WILLARD DIXON ARCHITECT 300 BLAIR BLVD EUGENE OR 97402	ZACK MITTGE PO BOX 10886 EUGENE OR 97440
	(PDT13-1)		(PDT13-1)
CARLEEN REILLY RIVER ROAD COMMUNITY ORGANIZ 395 MARION LANE EUGENE, OR 97404		JON H BELCHER RIVER ROAD COMMUNITY ORGANIZ 1243 ROME LANE EUGENE OR 97404	ADEE, AVIS, DAVID & EILEEN 131 MCCLURE EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
ADKINSON, SARAH 0 SARAH@CAMASCOUNTRYMILL.COI		BORG, ADRIENNE 945 FAIRWAY DR EUGENE OR 97404	BOVLISKY, LARA 116 OAKLEIGH LN EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
BRYAN, PAT 250 N POLK ST EUGENE OR 97402		BUSCHELMAN, JILL 113 MCCLURE LN EUGENE OR 97404	CAMPBELL, DAVID 125 MCCLURE LN EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
CARNIGLIA, JERRY 5510 DOYLE ST EMERYVILLE CA 94608		CARROLL JEN B 4980 FOX HOLLOW RD EUGENE, OR 97405	CHARLOTTE MALONEY 4391 SHADOW WOOD DR EUGENE OR 97405
	(PDT13-1)		(PDT13-1)
NORA DAVIS CITY OF EMERYVILLE 1333 PARK AVE EMERYVILLE, CA 94608		CLARK, DENNIS 1975 SE CRYSTAL LAKE DR #161 CORVALLIS OR 97333	SUSAN HYNE COHO ECOVILLAGE 1975 SE CRYSTAL LAKE DR #111 CORVALLIS OR 97333
	(PDT13-1)		(PDT13-1)
CRAFTON, TAMMY 117 OAKLEIGH LN EUGENE OR 97404		CROSS, FRANNIE & RC 2457 NIXON ST EUGENE OR 97403	CUTTING, DAVID 125 MCCLURE LN EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
DAMBROV, RICH 119 OAKLEIGH LN EUGENE OR 97404		DIXON, LYNN 115 E HILLIARD LN EUGENE OR 97404	DON MCLEAN ELIZABET MARSHALL 109 E HILLCREST DR EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
FENN, JOHN 111 OAKLEIGH LN EUGENE OR 97404		FLEENER-GOULD, KAREN 123 OAKLEIGH LN EUGENE OR 97404	GLASSBERG, PLANT PO BOX 11011 EUGENE OR 97440

(PDT13-1)

STEIN, SHEILA  
610 CHIEF KELLY DR  
NEVADA CITY CA 95959

STRAWN, CLARE  
465 HORN LN  
EUGENE OR 97404

(PDT13-1)

TEMPLE, PHYLLIS  
244 LORETTA WAY  
EUGENE OR 97404

(PDT13-1)

(PDT13-1)

THOMS, BRYN & SANDY  
135 OAKLEIGH LANE  
EUGENE OR 97404

WILDE, MARSHALL  
2290 POTTER ST  
EUGENE OR 97405

(PDT13-1)

(PDT13-1)

Interested Parties From:  
Oakleigh Cohousing (WG 13-1)

HEINZ, WILLIAM  
0  
SAGE@CRUZIO.COM

RECEIVED

NOV 22 2013



Planning & Development  
Planning

CITY OF EUGENE  
BUILDING & PERMIT SVCS

City of Eugene  
99 West 10<sup>th</sup> Avenue  
Eugene, Oregon 97401  
(541) 682-5377  
(541) 682-5572 FAX  
www.eugene-or.gov

**APPEAL OF INITIAL HEARINGS OFFICIAL  
OR HISTORIC REVIEW BOARD DECISION**

The appeal of an initial Hearings Official or Historic Review Board decision provides for a review of a quasi-judicial decision by a higher review authority specified in the Land Use Code. In general, the appeal procedures allow for a review of the original application, the Hearings Official or Historic Review Board decision, the appeal application, and any facts or testimony relating to issues and materials that were submitted before or during the initial quasi-judicial public hearing process. The Hearings Official or Historic Review Board decision may be affirmed, reversed, modified, or remanded by the Planning Commission.

**Please check one of the following:**

- Adjustment Review, Major
- Conditional Use Permit
- Historic Landmark Designation
- Planned Unit Development, Tentative Plan
- Willamette Greenway Permit
- Zone Change\*

*\*This appeal form is not applicable for zone changes processed concurrently with a Metro Plan amendment, the adoption or amendment of a refinement plan, a Land Use Code amendment, or the application of the ND Nodal Development overlay zone.*

**City File Name:** Oakleigh Meadows Co-Housing

**City File Number:** PDT 13-1

**Date of Hearings Official or Historic Review Board decision:** November 12, 2013

**Date Appeal Filed:** November 22, 2013

(This date must be within 12 days of the date of the mailing of the Hearings Official or Historic Review Board decision.)

- Attach a written appeal statement. The appeal statement shall include a written statement of issues on appeal, be based on the record, and be limited to the issues raised in the record that are set out in the filed statement of issues. The appeal statement shall explain specifically how the Hearings Official or Historic Review Board failed to properly evaluate the application or make a decision consistent with applicable criteria. The basis of the appeal is limited to the issues raised during the review of the original application. Please contact Planning staff at the Permit and Information Center, 99 West 10<sup>th</sup> Avenue, (541) 682-5377, for further information on the appeal process.

CEVBOER

A filing fee must accompany all Hearing's Official and Historic Review Board appeals. The fee varies depending upon the type of application and is adjusted periodically by the City Manager. Check with Planning staff at the Permit and Information Center to determine the required fee or check on the web at: [www.eugeneplanning.org](http://www.eugeneplanning.org)

**Acknowledgment**

I (we), the undersigned, hereby acknowledge that I (we) have read the above appeal form, understand the requirements for filing an appeal of a Hearings Official or Historic Review Board decision, and state that the information supplied is as complete and detailed as is currently possible, to the best of my (our) knowledge.

**APPELLANT**

Name (print): Byrn Thomas Phone: 541-461-6343

Address: 135 Oakleigh Lane

City/State/Zip: Eugene OR 97404

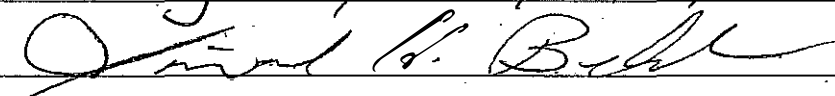
Signature: 

**APPELLANT**

Name (print): Jonathan Belcher for River Road Community org Phone: 541-343-6695

Address: 1243 Rome Lane

City/State/Zip: Eugene, OR 97404

Signature: 

IF this appeal is being filed by the affected recognized neighborhood association, complete the following:

Name of Association: River Road Community Organization

## APPEAL STATEMENT

### RE DECISION APPROVING PLANNED UNIT DEVELOPMENT

OAKLEIGH MEADOWS CO-HOUSING – FILE PDT 13-1

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The following statement by appellant, who is a member of the **River Road Community Organization**, a City-chartered neighborhood association, lists the specific issues on appeal and identifies where the Hearings Official's Decision is inconsistent with the criteria applicable to the above captioned application for approval of a planned unit development (tentative).

The River Road Community Organization neighborhood association encompasses the subject property, and the River Road Community Organization members voted to file this appeal.

#### THE HEARINGS OFFICIAL DECISION

On November 12, 2013, the Hearings Official approved a planned unit development (tentative) for the subject property. The Decision was mailed on November 12, 2013.

#### REFERENCED DOCUMENTS<sup>1</sup>

- "Staff Report" – Eugene Planning Staff Report, dated September 2013
- "Decision" – Hearings Official Decision (PDT 13-1, WG 13-1), dated November 12, 2013.
- "Conte 10/9" – Testimony by Paul Conte, dated October 9, 2013
- "Conte 10/16" – Supplemental testimony by Paul Conte, dated October 16, 2013

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<sup>1</sup> Note that references to exhibits in the following sections are intended to assist the Planning Commission in understanding the assignments of error and are not intended as exhaustive references to all relevant evidence in the record.

## FIRST ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(1) The PUD is consistent with applicable adopted policies of the Metro Plan.**

The *Metro Plan* "Transportation Element" states:

### F. Transportation Element

The Transportation Element addresses surface and air transportation in the metropolitan area. The *Eugene-Springfield Metropolitan Area Transportation Plan (TransPlan)* provides the basis for the surface transportation portions of this element and the *Eugene Airport Master Plan* provides the basis for the air transportation portions.

...

Goals and policies in *TransPlan* are contained in this Transportation Element and are part of the adopted *Metro Plan*. *TransPlan* project lists and project maps are also adopted as part of the *Metro Plan*. (*Metro Plan* III-F-1)

The following subassignments of error individually and in combination resulted in the erroneous finding that the application was consistent with the *Metro Plan*.

Whether or not the two unexamined policies, discussed below, are mandatory approval criteria, the Hearings Official was required to evaluate and balance relevant plan provisions in his findings and decision, which he failed to do. *Bothman v. City of Eugene, Or* LUBA 701 (2006). He also failed to consider these policies as relevant context for his findings in regards to the specific approval criteria covered below.

See Conte 10/9 pages 3 to 4.

### SUBASSIGNMENT OF ERROR 1.A

The Decision failed to address the following policy at all:

#### **TransPlan Transportation System Improvements (TSI) Pedestrian Policy #1: Pedestrian Environment (*Metro Plan* Policy F.26)**

Provide for a pedestrian environment that is well integrated with adjacent land uses and is designed to enhance the safety, comfort, and convenience of walking. (*Metro Plan* III-F-9)

Evidence in the record clearly shows that Oakleigh Lane would have to be widened and improved to accommodate the significant increase in vehicular,

bicycle and pedestrian traffic that the PUD would generate and still provide a safe and comfortable environment for pedestrians (including individuals in wheelchairs or with other mobility limitations) using Oakleigh Lane to and from River Road, as well as to and from the public bike/ped path along the river.

The Decision failed to impose adequate condition(s) to ensure there would be sufficient right-of-way, sidewalks and other improvements required for consistency with this policy.

All statements related to pedestrian safety under Subassignments of Error 2.A, 2.B, 3.A, 4.B and 10.A and the Fifth and Sixth Assignments of Error are included herein by reference.

#### **SUBASSIGNMENT OF ERROR 1.B**

The Decision failed to address the following policy at all:

##### **TransPlan Finance Policy #4: New Development** (*Metro Plan* Policy F.36)

Require that new development pay for its capacity impact on the transportation system. (*Metro Plan* III-F-13)

Evidence in the record clearly shows that Oakleigh Lane would have to be widened and improved to accommodate the significant increase in vehicular, bicycle and pedestrian traffic that the PUD would generate and still provide a safe and efficient road for vehicles, including emergency response vehicles, bicyclists, pedestrians and individuals in wheelchairs.

The Decision failed to impose adequate conditions to ensure there would be sufficient right-of-way, sidewalks and other improvements in place at the time the proposed development was occupied so as to be consistent with this policy.

Approval of this PUD without such conditions would thereby cause the other property owners along Oakleigh Lane to face potential condemnation and/or large financial assessments to acquire the necessary right-of-way and construct the required improvements.

All statements related to the necessary right-of-way and improvements under Subassignments of Error 10.A, 10.B and 10.C and the Second, Third, Fourth and Fifth Assignments of Error are included herein by reference.

## SECOND ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

- EC 9.8320(5) The PUD provides safe and adequate transportation systems through compliance with the following:**
- (a) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).**
  - (b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.**
  - (c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.**

The Hearings Official erred in finding that the proposed PUD complied with EC 9.8320(5) and would provide a "safe and adequate transportation system." The proposed PUD required multiple exemptions from street standards under EC 9.6815(2)(g). However, those exemptions were based on a local street connection study that considered only partial buildout of the impacted area. For example, the street connection study assumed no infill and only partial buildout of tax lot 200 to the north with flag lots. The local street connection study should have been required to assume full build out of the surrounding area.

In addition, the Hearings Official did not explain how the exception meets EC 9.6815(1)(a) regarding providing a "safe" street design, as well as (e) requiring the street system to "encourage" walking and bicycling, when the remainder of Oakleigh Lane is inadequate to accommodate the new traffic.

The following subassignments of error individually and in combination resulted in the erroneous finding that the PUD would provide safe and adequate transportation systems.

**SUBASSIGNMENT OF ERROR 2.A**

The Decision erred by finding the application met the following criterion:

- (a) **EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).**

The Decision erroneously found that Oakleigh Lane would meet, or was exempt from, the applicable standards established for a safe and adequate transportation system.

EC 9.6815(2)

The Decision erroneously found that Oakleigh Lane was exempt from the applicable standards established for a safe and adequate transportation system.

“The applicant’s August 6, 2013 connectivity study provides analysis required to comply with EC 9.6815(2)(g)(1)(b) which allows for alternative street designs if it can be shown that “undeveloped or partially developed properties within a quarter mile can be adequately served by alternative street layouts.” (Decision at 25)

The Hearings Official erroneously found that the applicant’s proposed street design would adequately serve Tax Lot 200, despite severely limiting future development of that lot, which is under ownership of opponents of the PUD.

The Hearings Official’s decision is a clear *exaction* from the owner of Tax Lot 200 to the benefit of the applicant. This decision fails to meet the constitutional standards for such exactions.

Further, in considering the requirements of EC 9.6815(2)(g)(1)(b), the Hearings Official failed to consider and properly apply the substantial evidence provided by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

Further, the Decision cites to the purpose in EC 9.6800, which states:

“Sections 9.6800 through 9.6875 establish standards for the dedication, design and location of public ways to address the purpose of this land use code contained in EC 9.0020 Purpose”

However, the Hearings Official failed entirely to actually evaluate EC 9.0020 Purpose, which states:

“The purpose of the land use code is to protect and promote the health, safety, and general welfare of the public ...”

The proper interpretation is that the purpose of 9.6800 through 9.6875 is to establish standards to "protect and promote the health, safety, and general welfare of the public." Furthermore, these standards must actually be met in an adequate way to satisfy the intended purpose.

The Decision therefore erroneously limited the scope of EC 9.6800 to "dedications" and neglected to evaluate, and impose conditions, as necessary to ensure the safety of vehicles, bicyclists and pedestrians using Oakleigh Lane would be protected and promoted. Similarly, the required analysis and findings with respect to emergency response vehicles wasn't done, which failed to "protect and promote" the health and safety of the general public.

See Conte 10/9 pages 12 to 14.

EC 9.6820 Cul-de-Sacs and Turnarounds

The Decision erroneously found that Oakleigh Lane was exempt from the applicable standards established for a safe and adequate transportation system. The Hearings Official relied upon the following staff finding without additional analysis:

"The street connectivity exception also warrants an exception to the 400-foot maximum length of a dead-end street, pursuant to EC 9.6820(5)(b)."

An exception may be granted, where applicable, to one of the following EC 9.6820 requirements:

- (1) Except for streets that are less than 150 feet long and streets that will be extended in the future, all streets that terminate shall be designed as a cul-de-sac bulb or an emergency vehicle turnaround.
- (3) There shall be no cul-de-sacs more than 400 feet long from the centerline of the intersecting street to the radius point of the cul-de-sac bulb.
- (4) Public accessways to provide safe circulation for pedestrians, bicyclists and emergency vehicles shall be required from a cul-de-sac or emergency vehicle turnaround longer than 150' in length when measured from the centerline of the intersecting street to the radius point of the cul-de-sac or to the center point of the emergency vehicle turnaround.

The cited exception at EC 9.6820(5)(b) requires:

"Buildings or other existing development on the subject property or adjacent lands, including previously subdivided but vacant lots or parcels, physically preclude a connection now or in the future, considering the potential for redevelopment."

The Hearings Official erred in granting an exception pursuant to EC 9.6820(5). That provision requires a showing either that (a) “physical conditions preclude development” of the street or (b) “buildings or other existing development . . . physically preclude the street.” Neither condition was met in this case.

Furthermore, even if it were the case that there is no feasible alternative connection between the proposed development and River Road, other than Oakleigh Lane, that situation would justify an exemption *only* to EC 9.6820(3), but *not* to EC 9.6820(1) and (4). EC 9.6820(3) prohibits cul-de-sacs that would exceed a certain length, when that’s avoidable; but that isn’t the situation with Oakleigh Lane. However, EC 9.6820(1) and (4) are clearly meant as requirements that *do* apply to a long, dead-end street, such as Oakleigh Lane, that exceeds the normal length limit.

EC 9.6820(4) makes absolutely clear that the City Council meant to require improvements to long cul-de-sacs in order to “provide safe circulation for pedestrians, bicyclists and emergency vehicles.”

The Hearings Official erroneously exempted the application from providing a public accessway that meets the code’s standards in order to “provide safe circulation for pedestrians, bicyclists and emergency vehicles.”

#### **SUBASSIGNMENT OF ERROR 2.B**

The Decision erred by finding the application met the following criterion:

- (b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. “Nearby” means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.**

The Decision erroneously found that Oakleigh Lane would meet, or was exempt from, the applicable standards established for safe use by pedestrian and bicyclists using Oakleigh Lane to and from nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks on River Road and beyond.

EC 9.8320(5)(b) requires the applicant to demonstrate a safe and adequate transportation system “to adjacent and nearby” areas. As noted elsewhere in the Hearings Official decision, a 45 foot right of way was required and, “the public interest in safe vehicular, pedestrian and bicycle travel and emergency

response will be at risk" if that minimum right of way is not dedicated. If the dedication is required to adequately protect the public interest on site, it should also be required off-site, otherwise, the PUD is imposing unsafe risks in areas outside of the development.

The Hearings Official failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

In particular, the Hearings Official's findings are inconsistent with the PWD analysis found in the Staff Report on page 13.

See Conte 10/9 pages 14 to 16.

Furthermore, in his interpretation of the requirements of EC 9.8320(5)(b), the Hearings Official failed to consider the context that clearly shows Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for pedestrians, bicyclists and emergency vehicles for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

#### **SUBASSIGNMENT OF ERROR 2.C**

The Decision erred by finding the application met the following criterion:

- (c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.**

The Decision erroneously found that no Traffic Impact Analysis was required for the application. The TIA is required under the following code provision:

#### **EC 9.8670 Applicability**

...

- (2) The increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action under the city's traffic calming program, and identified locations where pedestrian and/or bicyclist safety is a concern by the city that is documented. (Emphasis added)**

The Hearings Official failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

In particular, the PWD analysis found in the Staff Report on page 13 documented City concerns over pedestrian safety on Oakleigh Lane.

See Conte 10/9 page 16 and Conte 10/16 pages 2 to 3.

Furthermore, in his interpretation of the requirements of EC 9.8320(5)(c), the Hearings Official failed to consider the context clearly showing Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for pedestrians and bicyclists for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

### THIRD ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(6) The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.**

#### SUBASSIGNMENT OF ERROR 3.A

The Decision erroneously found that the PUD would not be a significant risk to public safety.

The Hearings Official provided no evaluation of PWD's own analysis that "emergency response and access will be at risk" unless Oakleigh Lane's right-of-way was widened and the road improved. Instead he relied entirely on staff findings.

In addition, the errors cited under Subassignments of Error 2.A, 2.B, 4.A, 4.B and 4.C, as they relate to the safety of drivers, bicyclists and pedestrians, demonstrate that the PUD would pose significant risk to public safety unless Oakleigh Lane is widened and improved. The relevant arguments in Subassignments of Error 2.A, 2.B, 4.A, 4.B and 4.C are included here by reference.

The Hearings Official and the staff finding both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 page 16.

### **SUBASSIGNMENT OF ERROR 3.B**

The Hearings Official provided no evaluation of PWD's own analysis that Oakleigh Lane would be an impediment to emergency response unless the right-of-way was widened and the road improved. Instead he relied entirely on staff findings.

The Hearings Official and the staff finding both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 page 16.

Furthermore, in his interpretation of the requirements of EC 9.8320(6), the Hearings Official failed to consider the context clearly showing Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for emergency vehicles for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

### **FOURTH ASSIGNMENT OF ERROR**

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(11) The PUD complies with all of the following:**

**(b) EC 9.6500 through EC 9.6505 Public Improvement Standards.**

**EC 9.6505 Improvements--Specifications**

**EC 9.6505(3)(b) Streets and Alleys**

**EC 9.6505(4) Sidewalks**

**EC 9.6505(5) Bicycle Paths and Accessways.**

### **SUBASSIGNMENT OF ERROR 4.A**

The Decision erroneously found that Oakleigh Lane, which is not only adjacent to, but also serves as the only vehicular access to and from the development site, would be paved to the specifications in EC 9.6870 (or exempt).

EC 9.6505(3)(b) requires:

The developer shall pave streets and alleys adjacent to the development site to the width specified in EC 9.6870 Street Width, unless such streets and alleys are already paved to that width, provided the City makes findings to demonstrate consistency with constitutional requirements. All

paving shall provide for drainage of all such streets and alleys, and construct curbs and gutters, sidewalks, street trees and street lights adjacent to the development site according to the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways and standards and specifications adopted pursuant to Chapter 7 of this code and other adopted plans and policies.

The Hearings Official relied on his findings for EC 9.8320(5), but fails to provide the required *specific* explanation for how those findings demonstrate compliance with EC 9.6505(3)(b). The discussion under the Second Assignment of Error, above, and which are incorporated here by reference, demonstrates that the Decision is erroneous in this reliance.

The Hearings Official and the staff both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 pages 16 to 17.

#### **SUBASSIGNMENT OF ERROR 4.B**

The Decision erroneously found that Oakleigh Lane, which is not only adjacent to, but also is and will be used by pedestrians to and from River Road and to and from the public bike/ped path along the river, would provide sufficient sidewalks that are located, designed and constructed according to the specifications in Eugene Code and referenced standards.

EC 9.6505(4) requires:

Sidewalks shall be located, designed and constructed according to the provisions of this land use code, the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways, construction and design standards adopted pursuant to Chapter 7 of this code, and other adopted plans and policies.

The Hearings Official relied on his findings for EC 9.8320(5), but fails to provide the required *specific* explanation for how those findings demonstrate compliance with EC 9.6505(4). The discussion under the Second Assignment of Error, above, and which are incorporated here by reference, demonstrates that the Decision is erroneous in this reliance.

The Hearings Official and the staff both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

Furthermore, in his interpretation of the requirements of EC 9.6505(4), the Hearings Official failed to consider the context clearly showing Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for pedestrians and bicyclists for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

#### **SUBASSIGNMENT OF ERROR 4.C**

The Decision erroneously found that Oakleigh Lane, which is not only adjacent to, but also is and will be used by bicyclists to and from River Road and to and from the public bike/ped path along the river, would provide sufficient bike accessways that are located, designed and constructed according to the specifications in Eugene Code and referenced standards.

EC 9.6505(5) requires:

Bicycle Paths and Accessways shall be designed and constructed according to provisions of this land use code, the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways, construction and design standards adopted pursuant to Chapter 7 of this code, and other adopted plans and policies.

The Hearings Official relied on his findings for EC 9.8320(5), but fails to provide the required *specific* explanation for how those findings demonstrate compliance with EC 9.6505(5). The discussion under the Second Assignment of Error, above, and which are incorporated here by reference, demonstrates that the Decision is erroneous in this reliance.

The Hearings Official and the staff both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

Furthermore, in his interpretation of the requirements of EC 9.6505(5), the Hearings Official failed to consider the context clearly showing Council's intent, specifically the provisions of EC 9.6820(4) that require public accessways to provide safe circulation for bicyclists for a cul-de-sac longer than 150' in length. The statements related to EC 9.6820 under Subassignment of Error 2.A are incorporated here by reference.

## FIFTH ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(12) The proposed development shall have minimal off-site impacts, including impacts such as traffic, noise, stormwater runoff and environmental quality.**

The Decision erroneously found that the PUD would have minimal off-site traffic impacts.

The Hearings Official did not properly interpret the meaning of “minimal off-site impacts.” Among the errors were: not following the proper analysis to interpret “minimal”; not following the proper analysis of “impacts” as set out in *Benjamin v. City of Ashland*, 19 Or LUBA 600 (1990)<sup>2</sup>; and incorrectly narrowing the meaning to impacts on traffic, and failing to evaluate impacts from traffic (safety, noise, etc.).

Further, the Hearings Official’s apparent assumption that “when none of the conditions exist that would trigger a TIA under EC 9.8670, it is reasonable to question whether EC 9.8320(12) is implicated as to traffic” would rob EC 9.8320(12) of any meaning or purpose with respect to impacts from traffic, which is an impermissible interpretation under ORS 174.010.<sup>3</sup> This finding conflicts even with the Hearings Official’s earlier statement that: “In interpreting related statutes or local code provisions, an interpretation must be sought that harmonizes those provisions and does not leave one provision as redundant or meaningless.” (Decision at 52)

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<sup>2</sup> “In this case, if there was testimony in the proceedings below which focused on an issue arguably relevant to the qualities of livability and appropriate development in the neighborhood surrounding the proposed medical office complex, the city is required to address that issue in its findings. In addressing such an issue, the city must either (1) explain why the issue is not relevant to the qualities of livability and appropriate development in the surrounding neighborhood, or (2) identify the issue as relevant to determining the livability and appropriate development in the surrounding neighborhood and assess the impacts of the proposed development with regard to the issue.”

<sup>3</sup> “In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.”

The Hearings Official and the staff findings both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 pages 17 to 20 and Conte 10/16 page 12 (Item #7).

## SIXTH ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(13) The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.**

The Decision erroneously found that the PUD would be reasonably compatible and harmonious with adjacent and nearby land uses, despite the substantial impacts of traffic and/or street widening and improvements on the nearby residents and single-family home owners.

With respect to traffic, the Hearings Official addressed only the requirement for the development to be "reasonably compatible" and neglected to address the requirement that the development's substantial increase in traffic, which will make numerous round trips out and back along the entire length of Oakleigh Lane, is "harmonious" with the nearby residents. Decision at 55.

ORS 174.10 requires that both terms be given meaning, and the Hearings Official may not "omit what has been inserted" into the criterion by City Council.

The Hearings Official relied on his findings for EC 9.8320(12), but failed to provide the required *specific* explanation for how those findings demonstrate compliance with EC 9.8320(13). The discussion under the Fifth Assignment of Error, above, and which is incorporated here by reference, demonstrates that the Decision is erroneous in this reliance.

The Hearings Official and the staff finding both failed to consider and properly apply the substantial evidence provide by the Public Works Department (PWD) analysis. (See the discussion under Subassignment of Error 10.A, which is incorporated here by reference.)

See Conte 10/9 page 20.

Further, the Hearings Official's finding that there was "no evidence" of traffic issues in the record also ignored the evidence of Mr. Simon Trautman regarding a significant accident on River Road at the intersection of Oakleigh Lane. The accident was due to the short windows to get onto River Road.

That issue will only become more likely as the trips increase on Oakleigh Lane.

The Hearings Official also failed to understand the off-site impacts require the proposed PUD to be viewed in context - a development that creates 164 new vehicle trips per day may have minimal impact when access is off of a collector street or arterial, but when the development dumps that traffic onto a low volume residential street, doubling the number of trips, the impacts of that development are not "minimal."

Further, the proposed "screening" is inadequate and does not ensure the development is compatible and harmonious with nearby used. The discussion under the Seventh Assignment of Error is included here by reference.

Further, the proposal pushes building, garages, barns and other structures to the edge of the property, requiring modifications to the setbacks on three of its sides. The proposal uses a concrete wall as its main face to the neighborhood to the west. The proposal pushes its buildings into the setbacks to the north and to the south. The Hearings Official relies on size of buildings, density calculations, height limits and other factors; however, those limitations are already imposed by code, so they provide no basis to find this criterion is met. Moreover, the Hearings Official calculation of size is erroneous and does not understand the context of the neighborhood, which includes smaller homes. This proposal is not harmonious and reasonably compatible with the neighborhood. It will stick out like a sore thumb.

## SEVENTH ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(3) The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.**

The Hearings Official erred in finding that the proposed PUD would comply with EC 9.8320(3) requiring "adequate screening" from surrounding properties. The Hearings Official appears to have only considered height, but the criterion requires consideration of "building location [and] bulk" as well. In addition, the Hearings Official found the screening to the north adequate based, in part, on cedar trees that are on adjacent property. This is inadequate as that "screening" can be removed by the adjoining property owner. The screening on the northern boundary was also found adequate based on landscaping and planters, but those will be located in the dedicated right-of-way. Moreover, the screening requirement is not met when the

applicant pushes its impacts to the very edge of the property, requiring multiple adjustments to setback requirements for the wall to the west and the buildings on the other sides, while keeping open space in the center. This arrangement does not adequately "screen" the property, nor does it show that the development is "reasonably compatible and harmonious" with adjacent properties as required by EC 9.8320(13).

The Hearings Official also erred in deferring consideration of whether there will be adequate screening to a decision that will be made without public input or opportunity to comment. EC 9.83.20(3) requires the applicant to show that there will be adequate screening as part of the tentative plan. On page 14, the Hearings Official finds that "the applicant's approach is insufficient" and later imposes condition of approval 15, but that condition defers the determination of what will be "adequate" to a later time.

The Hearings Official erred by relying on the following condition for a finding of consistency with EC 9.8320(3):

"Prior to final PUD approval, the applicant shall submit a report from a certified arborist confirming that the row of cedars on adjacent lands to the north can survive the construction impacts of the proposed development (and include any necessary protection measures to ensure survival). The final PUD plans shall show the location of Building 2 and any related protection measures (e.g. construction fencing for protected CRZ areas) consistent with the arborist's recommendations." Decision at 11.

First, as mentioned above, the finding relies on a row of cedars on adjacent lands to the north, which are not under control of the applicant. A finding that these trees can survive the construction impacts of the proposed development in no way ensures that the cedar trees will remain.

Second, for a condition to defer an analysis such as this, there must be the same opportunity at the time the analysis is presented for opponents to provide their own evidence and argument and testify at a hearing, which this condition does not provide.

#### **EIGHTH ASSIGNMENT OF ERROR**

The Decision erred by finding the application met the following approval criterion:

**EC 9.8320(11): The PUD complies with all of the following:**

- (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone.

#### SUBASSIGNMENT OF ERROR 8.A

The Hearing Official erred in his calculation of the net density area pursuant to EC 9.2751. For example, on page 35 of the decision, The Hearings Official excludes all easements from that calculation. The net density provisions are intended to determine the amount of land that is available to build; because buildings are not allowed within easements and areas dedicated for water, sewer, street and similar public services, those areas must be excluded from the calculation.

#### SUBASSIGNMENT OF ERROR 8.B

The Hearings Official erred in his understanding of the concept of "clustering" under EC 9.8300(1)(e). As the Hearings Official noted, the code specifically allows for clustering; however, even a cursory review of the site plan demonstrates that what is proposed is not "clustering" of buildings. The buildings and development have been pushed out to the edge of the property requiring modifications to the setbacks on three sides of the property. This is not clustering but imposing the negative impacts of the development onto the adjacent property. True clustering would reduce the need for modifications to setbacks.

#### NINTH ASSIGNMENT OF ERROR

The Decision erred by finding the application met the following approval criterion:

##### EC 9.8320(11)

**(k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.**

##### **9.2795 Solar Setback Standards**

The Hearings Official erred in his interpretation of the solar setbacks pursuant to EC 9.2795. Although the solar setbacks may be modified, the Hearings Official is required to understand the extent of the modification to determine if it is consistent with the purposes of the PUD ordinance. The error made by the Hearings Official was to measure the solar setback from the existing property line rather than the property line established by the required dedications.

## TENTH ASSIGNMENT OF ERROR

The Hearings Official made a decision that was not supported by substantial, probative and reliable evidence in the whole record; and the Decision improperly construed the applicable law.

The following identifies specific errors the Hearings Official made that contributed to the two assignments of error, above.

### SUBASSIGNMENT OF ERROR 10.A

The Hearings Official erred by not adequately considering the preponderance of evidence and analysis in the "Constitutional Findings for Exaction" produced by the Eugene Public Works Department (PWD). See Conte 10/9 pages 6 to 10 for a full discussion of the PWD analysis and conclusions.

In a similar fashion, the Hearings Official erred by not adequately considering the substantial evidence and analysis provided by PWD regarding the necessary improvements to Oakleigh Lane to "separate pedestrians from vehicles and provide a safe public walking surface for the residents of the proposed development." See Staff Report page 13:

*"Public Works staff indicates that the applicant's proposal is sufficient to accommodate the turnaround, but not the area necessary to extend the sidewalk along the south side of the turnaround, to separate pedestrians from vehicles and provide a safe public walking surface for the residents of the proposed development."*

In both cases, the Hearings Official unreasonably concluded that this evidence and analysis had no applicability to safety, convenience, comfort or capacity considerations for *any* part of Oakleigh Lane other than the short segment at the very end of this dead-end access lane, immediately adjacent to the development site.

The Hearings Official erroneously concluded that, because the PWD evidence and analysis was *used* only to justify exactions from the applicant, that the evidence and analysis had no relevance beyond the development site.

This is obviously an error. If the portion of Oakleigh Lane adjacent to the development must be widened and improved to ensure the safe, convenient and/or comfortable accommodation of vehicular, bicycle and pedestrian traffic on Oakleigh Lane after the development is built, then the long stretch of Oakleigh Lane between River Road and the development site would also have to be widened and improved in a corresponding manner to ensure the safe, convenient and/or comfortable accommodation of vehicular, bicycle and pedestrian traffic on Oakleigh Lane.

Whether or not this is “feasible,” how that might be accomplished, and what exactions can be required of the applicant are entirely separate issues from the engineering and safety issues. Either *all* of Oakleigh Lane needs comparable right-of-way width and improvements as those being exacted from the applicant alongside the development site, or it isn’t necessary to require the right-of-way and improvements adjacent to the site. There is nothing in the record that suggests there is something special about the short stretch alongside the development site that makes that section – and *only* that section – the only place widening and improvements are necessary to provide for safe, convenient and comfortable accommodation of all forms of traffic.

See Conte 10/16. Item #6, pages 5 to 9 for LUBA’s handling of this issue.

The specific places where the Hearings Official erred in this analysis include, but are not limited to, the following.

Decision at 24<sup>4</sup>

The Hearings Official reduces the EC 9.8320(5) requirement to “provide[] safe and adequate transportation” to just the dedication of right-of-way immediately adjacent to the development site. But, as explained above, that dedication is not sufficient to “provide[] safe and adequate transportation.” As LUBA covered in *Butte Conservancy v. City of Gresham* (Conte 10/16, page 5), adequate right-of-way and improvements must be feasible *and sufficient*, even if the applicant himself is not required to actually implement all the acquisition and construction that’s necessary.

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<sup>4</sup> “Based on the above interpretation of EC 9.8320(5)(a), the opponents arguments as set forth above are not relevant to whether the applicant has met the requirement to dedicate sufficient land to create a 45 foot right-of-way along Oakleigh Lane. Although eloquently argued, Mr. Conte’s substantial analysis of the Staff findings are well outside the scope of EC 9.8320(5)(a), EC 9.6805 and EC 9.6870. Oakleigh Lane need not have a dedicated 45 foot right-of-way and associated paved surface from River Road to the subject property in order to meet EC 9.8320(5)(a) because that provision is a standard for the “dedication” of land, not a “service” standard akin to level of service – LOS.”

Decision at 27<sup>5</sup>

Here again, the Hearings Official erroneously ignores the fact that – if additional right-of-way and improvements on the south side of the turnaround are necessary “to separate pedestrians from vehicles and provide a safe public walking surface for the residents” – then similar separation and walking surface would be necessary along the rest of Oakleigh Lane to ensure pedestrian safety and comfort. Whether that’s feasible, or how it might be achieved, does not alter the PWD conclusions for what is necessary for pedestrian safety and comfort.

**SUBASSIGNMENT OF ERROR 10.B**

The Hearings Official erroneously found that Oakleigh Lane was not an “access lane.”

“The Hearings Official considers Staff’s categorization [of Oakleigh Lane as a “Low Volume Residential Street] to be more accurate given the increase in ADT moves the lane into the 250-750 ADT range.” (Decision at 25)

The Hearings Official is using the *projected* traffic volume for his conclusion, as is made clear by the phrase “moves the lane into the 250-750 ADT range.”

The *current* classification is, however, as an access lane. The move from a lower- to a higher-volume category of street is evidence that the off-site impacts of traffic would not be “minimal” as the Hearings Official erroneously concluded for EC 9.8320(12).

See Conte 10/9 pages 4 to 5.

**SUBASSIGNMENT OF ERROR 10.C**

The Hearings Official used erroneous data for traffic counts in one or more places, including, but not limited to, the following.

“the Average Daily Traffic (ADT) would be greater than 500 trips per day” (Decision at 19)

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<sup>5</sup> “As to Mr. Conte’s assertion that the Staff’s own findings concede that pedestrian and bicycle traffic will not be assured safe use of Oakleigh Lane, the Hearings Official disagrees. PT-4. The statement Mr. Conte alights on is a finding related to explaining the justification for the dedication required under EC 9.8320(5)(a). Staff’s conclusions are properly understood to require the proposed PUD to dedicate sufficient right-of-way along the subject property’s frontage to allow Oakleigh Lane to be brought up to the low volume residential street standard along that frontage.”

This understates the estimated ADT of 712 for 29 dwellings, almost at the top of the Low Volume Residential Street range of 250-750 ADT.

“The construction of the new (structures will result in an increase of vehicular traffic onto Oakleigh Lane by approximately 164 new vehicular trips per day.” (Decision at 22)

The actual number is 169 new vehicular trips per day for 29 additional residential units.

“Even with the added trips attributable to the co-housing proposal, the ADT for Oakleigh will be closer to 400 ADT at most.” (Decision at 27)

The estimated ADT is 712 for 29 dwellings, almost at the top of the Low Volume Residential Street range of 250-750 ADT. The Hearings Official appears to have confused ITE-ADT (Average Daily Trips), which are *round trips* and City-ADT (Average Daily Traffic), which are *one-way* trips.

See Conte 10/9 pages 5 to 6 and Conte 10/16 pages 1 to 2 and 4.

#### **SUBASSIGNMENT OF ERROR 10.D**

The Hearings Official erroneously allowed the impermissible new and non-responsive evidence submitted by the applicant’s representatives on October 16, 2013 without providing an opportunity for opponents to respond, despite the timely, written request by Paul Conte.

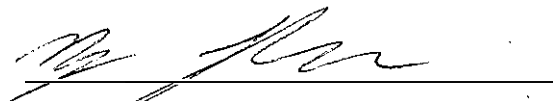
The Planning Commission must exclude this evidence and must not rely upon it in their decision.

#### **CONCLUSION**

The multiple errors and misinterpretations made by the hearings official require the Planning Commission overturn this decision and deny this planned unit development (tentative) application must be denied.

Respectfully submitted this 22nd day of November, 2013.

**FOR APPELLANTS**



Bryn Thoms  
**River Road Community Organization**

**Planning  
Receipt**



Planning & Development  
Planning Division  
99 West 10th Avenue  
Eugene, OR 97401  
(541) 682-5377

Date: 11/22/13

Received From: Bryn Thoms  
Address: 135 Oakleigh Ln  
Eugene, OR 97404

Method of Payment:

- Cash RGT
- Check # 3094
- Visa/MC

Amount Received

\$ 4,437.66

Phone: ( ) \_\_\_\_\_

Project: Oakleigh PUD  
No Appeal

Enter amount:

Annexation	\$	Subdivision, Tentative	\$
Appeal	\$ <u>4,437.66</u>	Subdivision, Final	\$
Conditional Use Permit	\$	Traffic Impact Analysis	\$
Legal Lot Verification	\$	Vacations (all)	\$
Lot Validation	\$	Willamette Greenway	\$
Partition, Tentative	\$	Zone Change	\$
Partition, Final	\$	Other	\$
Property Line Adjustment	\$	Fire Review Fee	\$
PUD Tentative	\$	<b>Subtotal</b>	\$
PUD Final	\$	<b>Administrative Fee (except appeals)</b>	\$
Site Review	\$	<b>TOTAL</b>	\$ <u>4,437.66</u>

Staff Initials RGT

CITY OF EUGENE  
BUILDING & PERMIT SERVICE  
99 WEST 10TH AVE 682-5086  
REG-RECEIPT:3-0010471 Nov 22 2013  
CASHIER: RMW

OTHER Planning Applicatio \$4,437.66  
Hearings Offcl Decision on PDT13-1  
Admin Fee-Auto Calc \$399.39  
Admin Fee-Manual Calc \$-399.39  
negating 9% admin fee

TOTAL DUE: \$4,437.66  
RECEIVED FROM:  
BRYN THOMS

Check: \$4,437.66  
Total tendered: \$4,437.66  
Change due: \$0.00

www.eugene-or.gov/bldgpermtracking  
Please take our customer survey at:  
www.surveymonkey.com/s/COEPermitSurvey



D-1

**NOTICE OF DECISION:  
OAKLEIGH COHOUSEING PUD (PDT 13-1 and WG 13-1)**

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On November 12, 2013, the Eugene Hearings Official conditionally approved the concurrent land use applications for Oakleigh Cohousing PUD noted above.

A copy of the decision and the record materials for the applications are available for review at the Planning Division and may be obtained at a reasonable cost. This notice and the Hearings Official's decision may also be viewed by visiting [www.eugene-or.gov/luplanning](http://www.eugene-or.gov/luplanning).

Unless appealed pursuant to Eugene Code Sections 9.7650 through 9.7685, Hearings Official's decision will be effective when the appeal period has expired. In this case, the appeal deadline is 5 p.m. November 25, 2013. Appeal procedures, forms, and fee information are available at the City's Planning Division or on our web site. In accordance with Section 9.7655 of the Eugene Code, the Eugene Planning Commission will consider any appeals of this land use application.

If you have questions, or would like more information, please contact City staff at the address or phone number listed below.

**Becky Taylor, Associate Planner**  
City of Eugene Planning Division  
99 West 10<sup>th</sup> Avenue, Eugene, OR 97401  
Phone: (541) 682-5437 E-mail: [becky.g.taylor@ci.eugene.or.us](mailto:becky.g.taylor@ci.eugene.or.us)

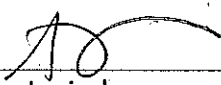
*Mailed  
11-12-13  
AT*

D-2

**CERTIFICATE OF MAILING**

I hereby certify that I served the decision and/or notice of decision of the Hearings Official of the **tentative planned unit development and Willamette greenway** request for **Oakleigh Cohousing (PDT 13-1 and WG 13-1)** by mailing a true copy to the names on the attached list.

11-12-13  
Dated:

  
\_\_\_\_\_  
Amy Janisch

	(PDT13-1)		(PDT13-1)
Interested Parties: Oakleigh Cohousing (PDT 13-1)		*OAKLEIGH MEADOW LL 300 BLAIR BLVD EUGENE OR 97402	ADEE DAVID & CONNOLLY JOAN 131 MCCLURE LN EUGENE, OR 97404
	(PDT13-1)		(PDT13-1)
ANITA VAN ASPERDT 1754 MOONSHADOW LANE EUGENE, OR 97405		WILLARD DIXON WILLARD DIXON ARCHITECT 300 BLAIR BLVD EUGENE OR 97402	ZACK MITTGE PO BOX 10886 EUGENE OR 97440
	(PDT13-1)		(PDT13-1)
CARLEEN REILLY RIVER ROAD COMMUNITY ORGANIZ 395 MARION LANE EUGENE, OR 97404		JON H BELCHER RIVER ROAD COMMUNITY ORGANIZ 1243 ROME LANE EUGENE OR 97404	ADEE, AVIS, DAVID & EILEEN 131 MCCLURE EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
ADKINSON, SARAH 0 SARAHA@CAMASCOUNTRYMILL.CO		BORG, ADRIENNE 945 FAIRWAY DR EUGENE OR 97404	BOVLISKY, LARA 116 OAKLEIGH LN EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
BRYAN, PAT 250 N POLK ST EUGENE OR 97402		BUSCHELMAN, JILL 113 MCCLURE LN EUGENE OR 97404	CAMPBELL, DAVID 125 MCCLURE LN EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
CARNIGLIA, JERRY 5510 DOYLE ST EMERYVILLE CA 94608		CARROLL JEN B 4980 FOX HOLLOW RD EUGENE, OR 97405	CHARLOTTE MALONEY 4391 SHADOW WOOD DR EUGENE OR 97405
	(PDT13-1)		(PDT13-1)
NORA DAVIS CITY OF EMERYVILLE 1333 PARK AVE EMERYVILLE, CA 94608		CLARK, DENNIS 1975 SE CRYSTAL LAKE DR #161 CORVALLIS OR 97333	SUSAN HYNE COHO ECOVILLAGE 1975 SE CRYSTAL LAKE DR #111 CORVALLIS OR 97333
	(PDT13-1)		(PDT13-1)
CRAFTON, TAMMY 117 OAKLEIGH LN EUGENE OR 97404		CROSS, FRANNIE & RC 2457 NIXON ST EUGENE OR 97403	CUTTING, DAVID 125 MCCLURE LN EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
DAMBROV, RICH 119 OAKLEIGH LN EUGENE OR 97404		DIXON, LYNN 115 E HILLIARD LN EUGENE OR 97404	DON MCLEAN ELIZABET MARSHALL 109 E HILLCREST DR EUGENE OR 97404
	(PDT13-1)		(PDT13-1)
FENN, JOHN 111 OAKLEIGH LN EUGENE OR 97404		FLEENER-GOULD, KAREN 123 OAKLEIGH LN EUGENE OR 97404	GLASSBERG, PLANT PO BOX 11011 EUGENE OR 97440

HUNN, JULIE GOEHRING, MARK REDUBUD WY NEVADA CITY CA 95959	(PDT13-1)	GOLDMAN, STEVE 1495 W HILLIARD LN EUGENE OR 97404	(PDT13-1)	GRANT, BETTY PO BOX 40656 EUGENE OR 97404	(PDT13-1)
	(PDT13-1)		(PDT13-1)		(PDT13-1)
GREENLEE, DALE 108 OAKLEIGH LN EUGENE OR 97404	(PDT13-1)	HEINTZ, CECELIA & PAUL 118 MCCLURE LN EUGENE OR 97404	(PDT13-1)	HENNER MARTIN E 984 LINCOLN STREET EUGENE, OR 97401	(PDT13-1)
	(PDT13-1)		(PDT13-1)		(PDT13-1)
HENNER, MARTIN 990 LINCOLN #17 EUGENE OR 97401	(PDT13-1)	HOLTZ, PATRICIA 130 MCCLURE EUGENE OR 97404	(PDT13-1)	HUTCHINSON, MAJ 114 OAKLEIGH LN EUGENE OR 97404	(PDT13-1)
	(PDT13-1)		(PDT13-1)		(PDT13-1)
Jennifer Holst JENNIFER HOLST 1582 HACKAMORE WAY EUGENE, OR 97401	(PDT13-1)	JIM O'CONNOR & PEN SAND 1430 WILLAMETTE ST #240 EUGENE OR 97401	(PDT13-1)	JOHNSON, SHAWN 113 OAKLEIGH LN EUGENE OR 97404	(PDT13-1)
	(PDT13-1)		(PDT13-1)		(PDT13-1)
JUSTICE, DANEEN 103 MCCLURE LN ENE OR 97404	(PDT13-1)	KAHLE, DON 400 E 32ND AVE EUGENE OR 97405	(PDT13-1)	KILLIAN, TERRENCE 116 OAKLEIGH LN EUGENE OR 97404	(PDT13-1)
	(PDT13-1)		(PDT13-1)		(PDT13-1)
LAURA FISCHRUP 1755 EAST 23RD EUGENE OR 97403	(PDT13-1)	LEWIS, ANTONIA 2744 SUNNYVIEW LN EUGENE OR 97404	(PDT13-1)	LOVE, ANNE 133 OAKLEIGH LANE EUGENE OR 97404	(PDT13-1)
	(PDT13-1)		(PDT13-1)		(PDT13-1)
LOVINGER, NENA 0 HOPSBRAN@AOL.COM	(PDT13-1)	MACRHODES, SHANE 1920 GARFIELD ST EUGENE OR 97405	(PDT13-1)	MCCAULEY, MAUREEN 1755 E 23RD AVE EUGENE OR 97405	(PDT13-1)
	(PDT13-1)		(PDT13-1)		(PDT13-1)
NUSSBAUM, DEAN 128 MCCLURE LN EUGENE OR 97404	(PDT13-1)	PATTON, KATY 3406 WATERMARK DR SPRINGFIELD OR 97477	(PDT13-1)	OTTO POTICHA POTICHAARCHITECTS 1820 KONAST EUGENE OR 97403	(PDT13-1)
	(PDT13-1)		(PDT13-1)		(PDT13-1)
REGAN, LAUREN 259 E 5TH #300A EUGENE OR 97401	(PDT13-1)	RUBIN, RICK 107 HANSEN LN EUGENE OR 97404	(PDT13-1)	RICK SATRE SCHIRMER SATRE GROUP 375 W 4TH AVE #20.1 EUGENE OR 97401	(PDT13-1)
	(PDT13-1)		(PDT13-1)		(PDT13-1)
SCOTT, JUDY 105 MCCLURE LN EUGENE OR 97404	(PDT13-1)	CHARLES CHISHOLM SIERRA NEVADA GROUP PO BOX 1042 NEVADA CITY CA 95949	(PDT13-1)	STEDMAN, RACHELAND SCOTT 131 OAKLEIGH LN EUGENE OR 97404	(PDT13-1)

STEIN, SHEILA  
610 CHIEF KELLY DR  
NEVADA CITY CA 95959

(PDT13-1)

STRAWN, CLARE  
465 HORN LN  
EUGENE OR 97404

(PDT13-1)

TEMPLE, PHYLLIS  
244 LORETTA WAY  
EUGENE OR 97404

THOMS, BRYN & SANDY  
135 OAKLEIGH LANE  
EUGENE OR 97404

WILDE, MARSHALL  
2290 POTTER ST  
EUGENE OR 97405

(PDT13-1)

Interested Parties From:  
Oakleigh Cohousing (WG 13-1)

HEINZ, WILLIAM  
0  
SAGE@CRUZIO.COM

D-3

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

**Planned Unit Development and Willamette Greenway Request**

**Application File Name (Numbers):**

Oakleigh Meadows Co-Housing PDT 13-1, WG 13-1

**Applicant's Request:**

Tentative Planned Unit Development and Willamette Greenway Permit approval for a 29-unit cohousing development.

**Subject Property/Location:**

Tax Lot 5500 of Assessor's Map 17-04-24-24 and Tax Lot 400 of Assessor's Map 17-04-24-13; Located at the east terminus of Oakleigh Lane.

**Relevant Dates:**

Applications submitted on June 18, 2013; supplemental application materials submitted on August 12, 2013; application deemed complete on August 12, 2013; public hearing held on October 2, 2013, record closed on October 23, 2013.

**Applicant's Representatives:**

Will Dixon, AIA  
Zack Mittge, Attorney

**Lead City Staff:**

Becky Taylor, Associate Planner, Eugene Planning Division, Phone: (541) 682-5437

**Summary of the Public Hearings and Open Record**

The Hearings Official held a public hearing on this application on October 2, 2013. At the hearing the Hearings Official stated he had no conflicts of interest or *ex parte* communications to disclose, and made all the required statements under ORS 197.763. No person objected to the Hearings Official conducting the hearing. The following is a summary of testimony and evidence submitted at the hearing and subsequent open record period and is not intended to be a complete list of evidence in the record.

**October 2, 2013 Public Hearing**

At the October 2, 2013, public hearing staff provided an overview of the staff report and highlighted certain aspects of the application.

Mr. Will Dixon testified on behalf of the applicant. He agreed with the findings of the staff report and to the recommended conditions of approval. He noted that the subject property is located in the Willamette River Greenway, but not within the protected buffer immediately adjacent to the river. He stated that the location of the proposed wall along the west boundary of the property could be perfected at the time of final PUD approval. He identified a September 27, 2013 letter from the applicant's traffic consultant that showed peak hour vehicle trips estimated between 15-29 trips, which did not warrant a traffic impact study.

Numerous persons testified in support of the application. Many in support are "members" of the co-housing project and expressed their aspirations for the quality of life they desired from the co-housing development. At least one proponent stated that the flexibility of design provided by the PUD provisions was well suited to the co-housing design. Another proponent suggested that the proposal met the density and design goals set forth in the Metro Plan and Envision Eugene.

Numerous neighbors testified in opposition to the application. Attorney Lauren Regan spoke on behalf of many of those neighbors. She stated that the residents of 21 homes on Oakleigh Lane were opposed to the application. The wall proposed for the western boundary was identified as particularly offensive to neighbors. She stated that the Metro Plan requires density such as that proposed to be located closer to River Road, not at a dead end of a small lane.

She asserted that the Willamette Greenway (statewide planning goal) was not met, and the proposal would also violate Goal 5. She also testified that the proposal did not provide sufficient screening from neighboring properties or the Willamette Greenway and associated bike path.

Other neighbors testified that the density and size of the proposed buildings were simply too large for a lane predominated by single family residences. Many neighbors were alarmed that a significant amount of fill would be needed to bring the eastern portion of the property above the floodplain level in order to allow development. Fears were expressed that the filled area would adversely impact the underlying sewer and would shunt stormwater onto the open space area between the subject property and the bike path.

Several neighbors suggested that a TIA should be required because even by the applicant's calculation of 168 new daily vehicles trips, the increase represents a 145% increase in traffic over existing levels. Opponents also asserted that the safety of pedestrians, children and bicyclists would be threatened by the increased number of cars. At least one opponent asserted that a traffic analysis should also look at impacts on the commercial zoned lands along River Road near the intersection with Oakleigh.

Several neighbors objected to the decreased setbacks proposed for several buildings. They felt that such setbacks are so much smaller than what is typical in the neighborhood that they would be incompatible with the look and feel of the existing lane. Similarly, the neighbors felt

that visual screening along every boundary line was insufficient. This view was particularly strong for the eastern boundary line. Other neighbors were worried about the proposed right-of-way dedication and thought that the dedication might be imposed from the subject property all the way to River Road.

Rick Rubin argued that the site is only 10 feet above the groundwater level which varies with the level of the Willamette River. He stated that this would make stormwater management difficult – causing the stormwater to be discharged on the adjacent City owned open space.

Several neighbors argued that the co-housing proposal would be incompatible with the surrounding lands because it would invite strangers into the neighborhood and be disruptive to wildlife.

The applicant's team made several observations during their rebuttal. First was that the proposed density for the co-housing project was lower than what the Low Density Residential zoning would ordinarily allow. They also noted that the project would not be visible from the bike path along the river because large numbers of trees already screened the river from the subject property.

Attorney Zack Mittge identified several rules, goals and plans which were identified by the opponents which he stated did not apply to the application. These included:

- Statewide Planning Goals generally, and specifically Goals 5 and 15,
- Metro Plan goals and objectives,
- Lane County code provisions argued by opponents,
- Lower River Road Concept Plan – which he argued had not been adopted

He stated that no additional on-street parking would result from the project, and that Oakleigh Lane is designed for up to 750 vehicle trips per day. On the topic of stormwater, he distinguished between "treatment" which would occur on site, and "discharge" of treated water which would be evenly spread along the eastern boundary of the site.

#### **Open Record Period**

At the end of the October 2, 2013 hearing, the Hearings Official set an open record period at the request of several parties. The record was left open for: 1) argument and evidence on any topic by any party until October 9, 2013, 2) then until October 16, 2013 for responsive testimony and evidence to information submitted before October 9, 2013, and 3) the applicant's final comment was due October 23, 2013.

Numerous parties submitted written testimony and evidence prior to the October 9, 2013 deadline. Those documents are indexed as Exhibits PT-1 through PT-34. More comments were received by the October 16, 2013 deadline. Those documents are indexed as PT.R-01 through PT.R-13.

On October 16, 2013, Mr. Paul Conte submitted an objection to some documents submitted by the applicant. He asked that the record be reopened at that time. Exhibit PT.R-01. He made another request to have the record reopened on October 25, 2013. On November 5, 2013, the Hearings Official denied those requests in an order entitled "Order Denying Request to Reopen Evidentiary Record." While the Hearings Official declined to reopen the record, I made no decision on the question of whether to rely on the six documents that Mr. Conte objected to. That November 5, 2013 order is incorporated into this decision by this reference. Where the Hearings Official has relied on the disputed evidence, I have explained why the evidence is admissible under the rules set for the open record period.

After the November 5, 2013 Order was sent, Staff forwarded an October 31, 2013 letter from the applicant's attorney that apparently had just arrived in the Planning Staff's mail. The Hearings Official was unable to review that letter prior to issuing November 5, 2013 Order, and therefore, the order does not respond to the applicant's arguments.

On November 8, 2013, Mr. Conte attempted to submit a letter to the Hearings Official. The letter was forwarded via e-mail by Staff. Upon opening the e-mail and seeing it contained further argument about reopening the record, the Hearings Official made a determination not to read or consider the letter. That letter is excluded from this record.

### Site Characteristics

The subject property consists of 2.3 acres in two tax lots that are considered one development site under the current ownership. The property was recently annexed (see City File A 13-1) and is zoned R-1 Low-Density Residential. The east boundary of the subject property abuts undeveloped City parkland that contains Goal 5 Water Resources associated with the Willamette River, which borders the City property farther to the east. Otherwise, the surrounding properties primarily consist of single-family dwellings on individual lots or undeveloped lots that have potential for future residential development (i.e. at the north end of Oakleigh Lane and abutting the west boundary of the subject property.) Refer to Attachment A for a vicinity map.

Oakleigh Lane terminates near the midpoint of the northern boundary of the subject property, which will provide sole access to the development. Instead of extending the street along the entire length of the property, the applicant requests an exception to the street connectivity standards. To support the exception, the applicant has submitted a conceptual development plan for the undeveloped property to the north, to show how it could be further divided without necessitating an extension of Oakleigh Lane. Issues regarding Oakleigh Lane are addressed under approval criterion EC 9.8320(5).

Regarding the undeveloped property to the west, the applicant proposes a "green wall" as a buffer between the garages, recycling structure, vehicle use and parking areas abutting the west property boundary. EC 9.6420 requires vehicle uses areas to be setback seven feet from

property lines with a landscape buffer. EC 9.2750 requires structures to be setback five feet from interior property lines or ten feet between buildings. The applicant seeks modifications to these code standards through the PUD process. Staff notes that if the Hearings Official approves the applicant's request, EC 9.2751(7) still requires the applicant to obtain an easement from the abutting property owner. Staff's recommendations are provided under approval criterion EC 9.8320(11)(k), in the following evaluation.

### **Summary of Land Use Applications**

**Tentative PUD** – The applicant requests tentative Planned Unit Development (PUD) approval for the creation of a co-housing residential facility, with 28 dwelling units within seven buildings arranged around a community building. Staff found that the community building includes bedrooms and a kitchen; therefore, it is also considered a dwelling unit included in the residential density of the subject property. The applicant indicates that the dwelling units will be divided as condominiums for private ownership, whereas the land and community building will be commonly owned and managed by a homeowners association.

EC 9.2740 Residential Zone Land Use and Permit Requirements confirm that PUD approval is required for multiple-family (three or more dwellings on the same lot) development in the R-1 zone. The PUD process allows for a review of the specific location, design and intensity of a proposed multiple-family development in the R-1 zone to determine, among other things, whether the development is reasonably compatible with adjacent and nearby land uses. Multiple-family development is also required to meet specific development standards at EC 9.5500, which establish design regulations, such as building mass, orientation, and articulation.

At the same time, the PUD process allows for design flexibility, if the design meets the PUD purpose statements at EC 9.8300, which are intended to achieve flexibility in architectural design, clustering of buildings, and providing for economy of shared services and facilities. Accordingly, the applicant seeks several modifications to development code standards through the PUD process. The PUD approval criteria at EC 9.8030 are evaluated in the following staff analysis.

**Willamette Greenway Permit** – The property is within the City's adopted Willamette Greenway boundary, which requires Willamette Greenway (WG) permit approval prior to development. (Refer to Attachments A and B for a depiction of the adopted Willamette Greenway boundary – the area in which WG permit approval is required for intensification, change of use or development according to EC 9.8805.)

The Willamette River is located about 243 feet to the east of the subject property, according to the applicant's topographical survey prepared by Poage Engineering & Surveying, Inc. (See Attachment D-1.) The land between the river and the subject property is owned by the City, as an undeveloped natural resource area that contains /WR Water Resource (Goal 5) conservation areas. In this area (outside Willakenzie Area Refinement Plan which has an adopted WG setback distance from the river of 35 feet), and in accordance the WG permit approval criteria

EC 9.8815(4) and (5), there is no specific, pre-determined or adopted setback from the river under the City's implementing provisions of Goal 15 (Willamette Greenway).

The /WR conservation area at this location is greater than the typical 100-foot setback from top-of-bank along the Willamette River; here, the adopted riparian area boundary extends landward beyond the 100-foot setback from top of bank. Staff found that the /WR conservation area does not extend onto the subject property. As shown on Attachment A, the subject property is at least 53 feet from the boundary of the regulated resource area.

#### **Documents Considered by the Hearings Official**

The Hearings Official has considered all the documents listed above and all the submissions into the record prior to and including the applicant's final comment dated October 23, 2013.

#### **Rules not Considered by the Hearings Official**

Prior to discussing the applicable criteria under EC 9.8320 and 9.8800 the Hearings Official considers it important to identify various state and local rules that do not apply to this application.

The Statewide Planning Goals adopted by the Land Conservation and Development Commission do not apply directly to this application. The Metro Plan and the city's zoning and development provisions in Eugene Code, Chapter 9 have been acknowledged as complying with the Statewide Planning Goals under LCDC's rules, and therefore, those goals no longer apply directly.

The Lane County Code is a separate and discrete set of rules that do not apply within the City of Eugene. See PT-22.

The Metro Plan goals and objectives do not apply directly to this application. However, applicable Metro Plan "policies" are relevant and applicable through EC 9.8320(1) and EC 9.8815(3). Metro Plan goals and objectives may be used as context for understanding Metro Plan policies, but those goals and objectives did not apply directly.

Generally, the "purpose statements" set forth in EC 9.8300 are not approval criteria applicable to PUD Tentative Plans. Typically, purpose statements are not considered approval criteria. *Watts v. Clackamas County*, 51 Or LUBA 166, 172 (2006). The one exception is when an applicable approval criterion explicitly requires consistency with the purpose statement. That is the case with respect to EC 9.8320(11)(k).

The Lower River Road Concept Plan does not contain applicable approval criteria. Although the plan might be considered as context for understanding other related planning provisions, it is not intended to apply directly to individual land-use applications. EC 9.8010.

The "Needed Housing" provisions of EC 9.8325 do not apply to this application. The proposed co-housing buildings take a physical form similar to apartments or multifamily dwellings and will be

individually owned presumably in fee simple form – condominiums. This form meets both the EC definition of “multifamily dwelling” and the State definition of “needed housing.” ORS 197.303(1)(a). However, the provisions of EC 9.8325 only become applicable if the applicant elects to proceed under those provisions. EC 9.8325 allows an applicant to choose the general PUD criteria at EC 9.8320 which is the case for this application.

### **Issues Not Relevant to the Applicable Approval Criteria**

At both the October 2, 2013 public hearing and in written submissions, there was a significant amount of testimony that the Hearings Official cannot deem relevant, and therefore, cannot consider as part of this review. This evidence and argument includes:

- Generalized statements of support. See Exhibits HE-22 and 26 for examples.
- Generalized statements of opposition. See Exhibits HE-5 and 18 for examples.
- Comparison of the proposal to other co-housing developments elsewhere. PT-1.
- The relative cost of the proposed condominiums and assertions that the co-housing development will not be financially solvent.
- The results of meetings between the applicant and neighbors, and allegations that plans changed when out-of-state co-housing proponents became involved.
- Perceived fear of strangers visiting the neighborhood and asserted negative impacts.

### **Evaluation of Tentative PUD Request**

**EC 9.8320(1): The PUD is consistent with applicable adopted policies of the Metro Plan.**

#### ***Staff Findings:***

The applicant has addressed several Metro Plan policies (pages 12 through 22 of the applicant’s June 14, 2013 written statement), and to the extent that those additional findings and policies of the Metro Plan are also relevant here, staff generally concurs with the applicant’s statements. Staff also notes that the proposal for clustered dwellings, which will be divided into condominiums, is consistent with Metro Plan Residential Policies A.17 and A.20, which encourage a range of housing types and home ownership. With regard to Environmental Policies, the subject property is within the floodplain and Willamette Greenway. Policy C.31 calls for development regulations within the floodway fringe to minimize damage to life and property; accordingly, the City has adopted special flood hazard development standards, beginning at EC 9.6706, which will apply at the time of development and are further discussed at approval criterion EC 9.8030(10)(c). With regard to the Willamette Greenway, Policies D.2 and D.3 require land use regulations and limit new development to uses that are compatible with the natural, scenic, and environmental qualities. The applicant has applied for concurrent WG permit approval, which is evaluated below, following the PUD evaluation.

Staff also notes that the City's R-1, Low-Density Residential Zone implements, and is consistent with, the low-density residential land use designation for the subject property in the Metro Plan. The subject property is zoned R-1, and the proposed PUD is therefore subject to the applicable R-1 zoning provisions as discussed throughout the following approval criteria and related standards. To the extent that the PUD is found to be consistent with those applicable zoning provisions and the PUD approval criteria, as is the case here, it is also consistent with the more general policies of the Metro Plan and the approval criterion here at EC 9.8320(1).

### ***Opponents' Arguments***

Opponents argue that the applicant should have addressed two Metro Plan policies concerned with allocation of residential densities - A.12 and A.13. PT-4. Generally, many neighbors argued that the proposed co-housing is too dense compared to the existing individual single family homes on Oakleigh Lane. PT-2, PT-9.

### ***Hearings Official Conclusions***

The findings of the staff report are sufficient to show compliance with EC 9.8320(1) and the Hearings Official adopts them by this reference. The opponents assert that policies A.12 and A.13 apply, but do not effectively explain why that must be the case. The Hearings Official is unconvinced that Metro Plan policies A.12 and A.13 apply. The subject property is zoned Low Density Residential which is the same zone that the majority of the neighborhood is zoned. No increase in density is sought. The proposal does not implicate the "higher density residential development" identified in policy A.12 and the proposal does not represent an "increase" in residential density which is the focus of policy A.13. Even if the two policies do apply, the proposal is consistent with them because the density proposed is within the range allowed by the Low Density Residential zoning designation.<sup>1</sup>

**EC 9.8320(2): The PUD is consistent with applicable adopted refinement plan policies.**

### ***Staff Findings***

The River Road / Santa Clara Urban Facilities Plan (RR/SC UFP) serves as the applicable adopted refinement plan for the area included in this tentative PUD proposal. The property is designated Low-Density Residential on the Land Use Diagram in the refinement plan. Based on the prior findings at EC 9.8320(1), which are incorporated here by reference, the proposed development complies with the applicable plan designation as implemented through the R-1 zone. The applicant has also addressed several RR/SC UFP policies (pages 23 through 25 of the applicant's June 14, 2013 written statement). To the extent those policies are applicable or relevant to this request, staff generally concurs with the applicant's findings.

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<sup>1</sup>The opponents' arguments concerning the density calculations are discussed below.

Further, the Residential Land Use Element Policy 2.0 provides for a diversity of housing types; the related action suggested by the RR/SC UFP at 2.1 calls for innovative residential development, such as planned unit developments, for new residential development on larger parcels (page 2-14). Based on the above findings, the PUD is consistent with the applicable criterion here, at EC 9.8320(2).

### ***Hearings Official Conclusions***

The record does not appear to contain argument that the application does not comply with the applicable refinement plan. However, at both the October 2, 2103 public hearing and in some of the written submission, there does seem to be a misunderstanding that the Lower River Road Concept Plan is the applicable refinement plan. That is not the case, and as explained above, the Lower River Road Concept Plan does not contain approval criteria applicable to this application, nor is it implicated by EC 9.8320(2).

**EC 9.8320(3): The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.**

### ***Staff Findings***

Surrounding properties are primarily developed with single-family dwellings on individual lots. The abutting lands to the west and north are vacant lots designated for low-density residential use. City parkland abuts the east property boundary, which is zoned with the /WR Water Resource overlay that establishes a conservation area abutting the Willamette River, farther to the east.

**West Property Line** – With regard to building locations and screening along the west property line, the applicant's plans show a row of garages abutting the west property line, interrupted toward the midpoint of the property with a recycling building, and flanked to the north and south by gravel parking spaces. The residential development standards at EC 9.2750 require structures to be setback five feet from property lines and 10 feet between structures. The parking area standards at EC 9.6420 require vehicle parking spaces to be on a durable, dust-free surface, with a seven-foot wide landscape strip abutting the property line.

The applicant states that their proposed gravel parking spaces will be durable and dust-free because the gravel will be placed over drainage fabric, rather than dirt. Instead of a building setback and landscape strip, the applicant proposes a "green wall," a continuous eight-foot tall concrete wall with espaliered trees every ten feet, along the west property line. Since the proposed wall is over six feet in height, it is also considered a structure that is subject to the setback requirement. The proposed design requires a modification to code standards, which is allowed by approval criterion EC 9.8320(11)(k) ("proposed non-compliance"); based on those subsequent findings and conditions, which are incorporated here by reference, the PUD will provide adequate screening along the west property boundary. Staff notes that, if the Hearings Official approves the modification, the applicant is still required by EC 9.2741(7) to obtain an

easement from the abutting property owners (Tax Lots 100 and 5700).

**North Property Line** – With regard to the north property line, the applicant's landscape plan (Sheet L2) shows continuous landscaping, except for the driveway entrance, which is flanked by proposed landscape beds with new tree plantings. As shown on Sheet A1.1 of the applicant's plans (see Attachment D-2), Oakleigh Lane abuts the western portion of the north property line with 20 feet of right-of-way width. South of the existing 20-foot right-of-way, along the north property line, the applicant's plans show an additional 20 feet of special setback area to enable future right-of-way acquisition, should Oakleigh Lane need to be widened in the future.

The applicant's plans show private landscaping and stormwater facilities within the special setback, which is typically not allowed. The proposed buildings are just south of the special setback, which means that those buildings would not have sufficient setbacks from the street if it is widened in the future. Public Works staff indicates that the special setback is not necessary, which resolves the above concerns presented by the applicant's plans. Instead, Public Works staff recommends just enough right-of-way dedication to: (a) meet the minimum right-of-way width to enable future improvement of Oakleigh Lane, with an additional 22.5 feet of right-of-way along the north property line, between the west property line and the east margin of the proposed driveway (50 feet of lineal frontage); (b) provide right-of-way for a future hammerhead turnaround and sidewalk to enable further development of adjacent lands to the north (Tax Lot 200), for an area that is 13 feet wide and 199 feet in length, along the north property boundary; and (c) reserve an area for a future bicycle and pedestrian connection from the future hammerhead to the east property boundary, abutting the City parklands, for an area that is 13 feet wide and 24 feet long. (Refer to Attachment B.) The street right-of-way is evaluated in greater detail under approval criterion EC 9.8320(5).

Building 1, abutting the portion of Oakleigh Lane that is east of the proposed driveway, is setback by a minimum of 21 feet. (Refer to Attachment D-3 for a detail of the north line building setbacks.)

The northwest corner of Building 1 is setback 23 feet from the existing north property line, which is just outside the 22.5-foot right-of-way dedication being required. Following the 22.5-foot wide and 50-foot long right-of-way dedication at the northwest property corner, the abutting portion of Building 1 would have a front yard setback of about half a foot. The required front yard setback is 10 feet. The northeast corner of Building 1 is setback from the existing northern property line by 21 feet, which is outside the abutting area of right-of-way dedication being required. The right-of-way requirement along the northeast portion of Building 1 is 13 feet; hence, the building setback would be about eight feet, which is also less than the 10-foot front yard setback requirement. The applicant requests a modification to the front yard setback requirements, in accordance with the PUD purpose statements. This issue is evaluated later in this report, under approval criterion EC 9.8320(11)(k).

The easterly portion of the north property line is bordered by a row of existing large cedars, which are primarily located on the property to the north. Three attached dwelling units (Building 2) are proposed to be located south of these trees, with the closest part of the

building being setback 12 feet from the north property line. With the 13 feet of additional right-of-way being required along this portion of the north property line, the northwest corner of Building 2 would be within the right-of-way, which is not acceptable. As such, the following condition of approval is necessary:

- The final PUD plans shall show Building 2 located outside (moved south) of the required right-of-way dedication along the north property line.

The above condition protects the right-of-way. Following right-of-way dedication, the required setback would be 10 feet; however, the building would have no setback if it were just moved south of the right-of-way, as conditioned above. Again, the applicant requests a modification to the setback standards, which is evaluated under approval criterion EC 9.8320(11)(k).

Another consideration for the north property line is the row of cedar trees on the abutting lands to the north. Although the applicant's plans (Sheet L3) show preservation of the trees (refer to Attachment D-4), the critical root zone (CRZ) of the cedars projects into more than half of Building 2. It is unclear whether this is an acceptable level of disturbance. As such, the following condition of approval is necessary:

- Prior to final PUD approval, the applicant shall submit a report from a certified arborist confirming that the row of cedars on adjacent lands to the north can survive the construction impacts of the proposed development (and include any necessary protection measures to ensure survival). The final PUD plans shall show the location of Building 2 and any related protection measures (e.g. construction fencing for protected CRZ areas) consistent with the arborist's recommendations.

Based on the above findings, conditions, and the subsequent findings provided at EC 9.8320(11)(k), which are incorporated here by reference, the PUD will provide adequate screening along the north property line.

**East Property Line** – The east property line abuts City parkland, which is an undeveloped natural resource area bordered by the Willamette River farther to the east. The distance between the subject property and the ordinary high water line of the Willamette River ranges between 200 and 243 feet, according to the applicant's topographical survey. The applicant's topographical survey also shows the approximate boundaries of the special flood hazard area, notes that the base flood elevation is about 401 feet, and indicates that about 100 feet of the eastern portion of the property is below the base flood elevation. Between the 401-foot contour and the east property boundary, the applicant's survey shows a 26-inch diameter cedar, to the north, and a filbert cluster to the south.

The applicant's tree removal and preservation plan (Sheet L3, Attachment D-4) indicates that the 26-inch cedar will be removed to accommodate three dwelling units abutting the north property line. This building is approximately 10 feet from the east property line. Buildings to the south are located farther from the east property line, with the closest building being a bike

storage shed, which is about 20 feet from the east property line, near the southern property boundary. The applicant's tree removal and preservation plan shows that the filbert cluster, and a row of fruit trees along the southern property boundary, will be preserved. Based on these findings, the PUD will provide adequate screening along the east property line.

**South Property Line** – As noted above, a row of fruit trees along the eastern portion of the southern property line will be preserved. The applicant's removal and preservation plans indicate that a 24-inch fir and a 22-inch hemlock need to be removed to accommodate three dwelling units near the western portion of the south property line. Sheet A1.1 of the applicant's plans (see Attachment D-2) show Building 5 and 6 setback seven and five feet from the southern property line, respectively, with the exception of the southeast corner of Building 6, which appears to be within a foot of the property line. It is noted that the affected property owner to the south submitted a letter in support of the proposed development (Mr. Adee). Further, as recommended at EC 9.8320(11)(k), the applicant will be required to obtain an easement from the abutting property owner for the substandard building setback. Sheet L2 of the applicant's plans shows a 30-inch fence along the south property line, abutting Building 6. As such, staff assumes there is sufficient screening along the south property line abutting Buildings 5 and 6.

The southwest corner of the site has a paved vehicle use area and gravel parking areas. The applicant proposes landscape planter beds between the parking spaces and the southern property line and an eight-foot tall concrete wall on the southern property line, abutting the vehicle use area. As discussed previously, the concrete wall is a structure subject to interior yard setback requirements, which is five feet. With the wall located on the property line, the applicant will be required to obtain an easement from the affected property owner (Tax Lot 5600), as conditioned at EC 9.8320(11)(k). It is noted that the owner of Tax Lot 5600, Mr. Campbell, submitted a letter in support of the proposed development. Based on these findings, the PUD will provide adequate screening along the south property line.

With regard to the overall bulk and height of the proposed buildings, the largest building is the common house, which is located toward the center of the site. None of the buildings exceed the maximum building height of 30 feet, established by the R-1 zone at EC 9.2750. The building dimensions are also within the maximums of the multiple-family development standards at EC 9.5500. Based on these findings, building bulk and height does not appear to necessitate further screening mitigation.

Based on the available information and the above findings and conditions, the PUD will comply with approval criterion EC 9.8320(3).

### ***Opponents' Arguments***

The neighbors are generally dissatisfied with the proposed screening along all four property boundaries.

**West Boundary** – The neighbors argue that the proposed eight-foot wall is too tall, unsightly, out of scale with the surrounding neighborhood and violates the required 5 foot setback under EC 9.2750. PT-1, PT-2. The neighbors, including the adjacent property owner to the west, state that the applicant will not be granted an easement to allow the screening wall to be placed on or near the property line. HE-65, HE 66, PT-2.

**North Boundary** - The neighbors argue that insufficient screening is proposed along the north property boundary primarily because setback standards will not be met in that area. They are concerned about a row of mature cedar trees that could be adversely affected by the development. Neighbors argue that the setbacks along the north property line and the screening should be similar to that of residences along Oakleigh Lane - since the north property line fronts on the lane. PT-1, PT-2. The neighbors also argue that the development will not be sufficiently screened from the “public path/bike path” that traverses the north property line and leads to the Willamette River bike path further to the east.

**East Boundary** - The neighbors argue that the applicant has provided no screening along the eastern boundary which is adjacent to city owned open space. The neighbors argue that the row of trees between the Willamette River bike path and the subject property are not sufficient to screen the development from the intervening public open space. PT-1, PT-2.

**South Boundary** - The neighbors expressed the same concerns about the south property line as expressed toward the eastern property boundary. PT-1.

#### ***Hearings Official Conclusions***

In a relatively recent decision, the Land Use Board of Appeals affirmed the former Hearings Official's interpretation of the terms “adequate” and “screening” as used in EC 9.8320(3). *Northgreen Property LLC. V. City of Eugene*, \_\_ Or LUBA \_\_, (LUBA No. 2011-099, March 5, 2012). That interpretation concluded that EC 9.8320(3) does not require a development to be completely obscured from view, but that it be screened “to a reasonable extent” considering the proposed use. The Hearings Official adheres to that interpretation here.

**West Boundary** - The Hearings Official generally concurs with Staff's findings for the screening along the western boundary and adopts those findings by this reference. In addition, the applicant's final comment responds to the argument that the proposed wall fails to provide adequate screening. The applicant notes that the definition of “screening” in EC 9.0500 includes “walls.” At the October 2, 2013 hearing the applicant testified that a “green wall” was being proposed - which would plant espaliered trees along the outside of the wall facing neighboring properties. The applicant also submitted an example site plan which shows that the overall design of the PUD can be maintained even if the neighboring property owner does not grant an easement allowing the wall to be located very close to the west property

boundary. PT 18.<sup>2</sup> Although the proposed wall is not the type of screening that the neighbors would prefer, it will have the quality of completely obscuring the adjacent parking area, and to some extent the buildings beyond. The example site plan shows that the development as proposed can accommodate a 5 foot setback for the wall even if the adjacent property owners do not grant an easement.

**Northern Boundary** - The Hearings Official generally concurs with Staff's findings for the screening along the northern boundary and adopts those findings by this reference. Based on the neighbors' arguments, it does not appear that they were aware of the applicant's landscape plan and intention to preserve the cedar trees along the northern boundary. Even with the reduced setbacks, those plans certainly meet the standard of screening adjacent properties to a reasonable extent.

**Eastern Boundary** - Both the Staff findings and the applicant rely on trees and intervening vegetation that already exists between the subject property and the Willamette River bike path to meet the requirements of EC 9.8320(3) for the eastern boundary. The Hearings Official agrees with the neighbors, that the applicant's approach is insufficient. The record is clear that the open space immediately adjacent to the eastern boundary is owned by the City and open for public access and use. Although the proposed development will be very unlikely to be visible from users of the bike path, the development will be completely unscreened from view from the perspective of users of the immediately adjacent public open space. Thus, the application does not comply with EC 9.8320(3) for the eastern boundary.

However, based on the submitted site plans, there appears to be sufficient space to accommodate landscaping or other screening elements near the eastern boundary of the proposal without causing the PUD to fall out of compliance with other applicable provisions. Therefore, the application can be approved with a condition requiring sufficient screening, or landscaping consistent with city standards for the eastern boundary. The Hearings Official has added a condition with such a requirement below.

**Southern Boundary** - Part of the southern boundary is screened by the adjacent filbert orchard, and the balance of the boundary is proposed to be screened by a 30 inch fence. Although the Hearings Officer generally agrees with the Staff findings for the southern boundary, in this instance a 30 inch high fence is unlikely to screen the development from property owners to the south to a reasonable extent. As part of the condition noted above, the Hearings Official will require the applicant to revise the landscape plan or provide a taller fence along the southern boundary.

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<sup>2</sup> The Hearings Official considers the example site plan in PT-18 to directly respond to comments made in PT-1 and PT-2 (submitted on October 9, 2013) and, therefore, it does not constitute new evidence being entered into the record.

**EC 9.8320(4):** The PUD is designed and sited to minimize impacts to the natural environment by addressing the following:

(a) **Protection of Natural Features.**

1. For areas not included on the City's acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:
  - a. Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under State or Federal law), and native plant communities.
  - b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under State or Federal law).
  - c. Prominent topographic features, such as ridgelines and rock outcrops.
  - d. Wetlands, intermittent and perennial stream corridors, and riparian areas.
  - e. Natural resource areas designated in the Metro Plan diagram as "Natural Resource" and areas identified in any city-adopted natural resource inventory.

***Staff Findings***

The subject property is within the Willamette Greenway boundary, and as noted previously, an adopted Goal 5 water resource conservation area is located east of the subject property, on the City parklands. (Refer to Attachment A.) There is no natural resource area designated in the Metro Plan or any other adopted natural resource inventory that includes protected resources on the subject property. The available information indicates that the subject property does not contain any rare plant or animal species, prominent topographical features, wetlands, streams, or riparian areas. With regard to significant natural features, the applicant states that the site is primarily a meadow, consisting of a cover crop of short grass with scattered fruit and fir trees. Tree preservation is evaluated below.

***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(4)(a) and adopts those findings by this reference. The record does not appear to contain any argument that rare plant or animal species exist on the subject property. Mr. Mark Conley submitted several plant lists and letters which show a great deal of thought and time expenditure attempting to catalog the plant and animal species that are on the subject property. PT-5, PT-6, PT.R-11. However, the Hearings Official cannot find an argument that the species listed are rare plants or animal species which might trigger protection under EC 9.8320(4)(a).

- (b) **Tree Preservation.** The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:

1. **Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;**
2. **Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;**
3. **Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;**
4. **Trees that provide a buffer between potentially incompatible land uses;**
5. **Trees located along the perimeter of the lot(s) and within building setback areas;**
6. **Trees and stands of trees located along ridgelines and within view corridors;**
7. **Trees with significant habitat value;**
8. **Trees adjacent to public parks, open space and streets;**
9. **Trees located along a water feature;**
10. **Heritage trees.**

### ***Staff Findings***

The applicant states that there are approximately 135 existing trees on the subject property (see page 28 of the applicant's June 14, 2013 written statement). The applicant's tree removal and preservation plan is shown on sheet L3 (Attachment D-4). The applicant states that only four "significant" trees will be removed, according to the following definition:

EC 9.0500 Significant Tree: A living, standing tree having a trunk with a minimum cumulative diameter breast height of 8 inches, or, when there are multiple trunks, having a minimum cumulative diameter breast height of 8 inches, considering the 2 largest trunks measured at 4.5 feet above mean ground level at the base of the trunk or trunks.

The location, species, and size of the trees on the subject property are also shown in the applicant's topographical survey, which confirms that most of the trees are fruit and filbert trees that are less than eight-inches in diameter. Most of those trees are proposed for removal. The larger fruit trees along the southeast property line are proposed for preservation, which complies with the above approval criterion as these trees provide screening and buffering functions. The applicant also proposes to preserve a group of ash trees, west of Building 7, and a cluster of young cedar trees between Buildings 3 and 4. Preservation of these trees complies with the above criterion because they are stands of trees, rather than isolated individuals. The most significant tree being preserved on the subject property is a 14-inch fir located in the southwest portion of the property. The applicant's plans delineate the critical root zone (CRZ) of the tree to show that it can survive construction impacts, which are primarily the surrounding vehicle use areas, rather than buildings.

The applicant's plans also show the CRZ of three fir trees on the adjacent property to the west to show that the proposed parking garages and concrete wall will not require their removal. As

discussed previously at EC 9.8320(3), the applicant has not delineated the CRZ for the row of cedars abutting the north property line. Under the screening criterion at EC 9.8320(3), staff recommended a condition for the final PUD plans to show the CRZ of the row of cedars abutting the north property line, with either supporting documentation from a certified arborist that the trees could survive construction impacts or moving Building 2 farther to the south, outside the CRZ. Based on the condition established at EC 9.8320(3), which is incorporated by reference, approval criterion EC 9.8320(4) is also satisfied.

### ***Opponents Arguments***

At least one comment claims that the application does not meet this provision. PT-1. However, that argument is nearly incomprehensible. The opponent identifies several larger trees on the subject property, but the comment does not appear to respond to the applicant's tree preservation plan.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(4)(b) and adopts those findings by this reference. Certainly several significant trees will be removed. However, that is allowed under EC 9.8320(4)(b) as some significant trees can be removed with provided mitigation. There is no evidence showing that applicant is unwilling or unable to provide that mitigation. The applicant's information also shows that measures will be taken that are reasonably calculated to protect the root zone of the cedars to the north.

#### **(c) Restoration or Replacement.**

1. For areas not included on the city's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:

- a. Planting of replacement trees within common areas; or
- b. Re-vegetation of slopes, ridgelines, and stream corridors; or
- c. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.

To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320.

The Hearings Official concurs with Staff's finding that the area is not included on the City's acknowledged Goal 5 inventory. The applicant proposes to mitigate the removal of four trees by planting approximately 26 new trees within the common areas. Based on these findings, this criterion is met.

#### **(d) Street Trees. If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to**

the process at EC 6.305.

Staff found that no street trees are proposed for removal. The Hearings Official finds this provision is not applicable.

**EC 9.8320(5): The PUD provides safe and adequate transportation systems through compliance with the following:**

- (a) **EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).**

***Staff Findings***

Oakleigh Lane abuts the west half of the north boundary of the subject property. The applicant's survey shows that the portion of Oakleigh Lane abutting the subject property has 20 feet of right-of-way width, with approximately 19 feet of pavement width that partially overlaps the north boundary of the subject property, outside the public right-of-way. Instead of dedicating additional right-of-way to widen the roadway, the applicant proposes a 20-foot special setback from the north property boundary (which coincides with the official right-of-way centerline).

East of the roadway is a row of cedar trees, which are primarily on adjacent lands to the north. Hence, extending Oakleigh Lane to the east would necessitate right-of-way dedication from the northerly property owner and, potentially removal of the cedar trees. Instead of extending Oakleigh Lane to the east, the applicant submitted a street connectivity study prepared by Access Engineering, LLC, which shows how the adjacent lands to the north could be further divided with flag lot access off the existing 20 feet of right-of-way, with just an additional five-foot right-of-way dedication (as multiple flag lots require 25 feet of street frontage). (Refer to Attachment D-5.)

Referral comments from Public Works confirm that the proposed street layout provides a safe and adequate transportation system, subject to additional findings and conditions for compliance with EC 9.6805 through EC 9.6875 Street Standards, as provided below. With regard to EC 9.6805 Dedication of Public Ways, Public Works staff recommends right-of-way dedication west of the development's driveway, so that the abutting street, Oakleigh Lane, will comply with EC 9.6870 Street Width. Public Works staff also recommends right-of-way dedication, east of the driveway, to enable the construction of a hammerhead turnaround, consistent with EC 9.6820 Cul-de-Sacs and Turnarounds. Public Works staff confirms that no additional right-of-way or special setback is required based on the acceptability of the applicant's street connectivity study; Public Works staff recommends the exception to EC 9.6815 Street Connectivity be approved. Details of these findings, with the recommended conditions of approval, are provided below.

Pursuant to EC 9.6850 Dedication of Public Ways, as a condition of any development, the City may require dedication of public ways for bicycle and/or pedestrian use as well as for streets and alleys, provided the City makes findings to demonstrate consistency with constitutional requirements. The public ways for streets to be dedicated to the public by the applicant shall conform to the adopted

right-of-way map and EC Table 9.6870. EC 9.6870 Street Width confirms that the required right-of-way width for Oakleigh Lane is 45 feet, based on the street functioning as a Low-Volume Residential Street. Public Works staff confirms that there are currently 25 residential tax lots along Oakleigh Lane, and with the addition of 29 dwelling units proposed by the subject development, the Average Daily Traffic (ADT) would be greater than 500 trips per day, which is within the expected 250-750 ADT range for low-volume streets.

The existing right-of-way width abutting the subject property is 20 feet, which was dedicated by properties to the north, per the Plat of Oakleigh in 1927. The southerly margin of this 1927 dedication is the official right-of-way centerline for Oakleigh Lane. Any additional dedications required of the subject development would be based on this centerline. Based on the right-of-way requirement of 45 feet for a low-volume street, and the existing 20 feet of right-of-way width located north of centerline, an additional 22.5 feet of right-of-way dedication (half of 45 feet) from the subject property is necessary, for the portion of the street being impacted by the subject development (i.e. from the site driveway to the west property boundary, which is about 50 lineal feet).

Oakleigh Lane currently terminates near the proposed driveway. As noted above, the right-of-way width needs to be expanded by an additional 22.5 feet in width for a length of 50 feet, between the northwest property corner, over the proposed site entrance, and five feet east of the proposed driveway to accommodate the approach apron and sidewalk. Beyond that point, Public Works staff confirms that right-of-way is needed to enable further development of adjacent lands to the north, and to provide a future hammerhead turnaround and sidewalk at the east end of the street. The acceptability of not extending the street, further to the east, is based on an exception to EC 9.6815 Street Connectivity. Public Works staff confirms that the applicant's alternative street plan, along with their narrative that addresses the intent statements at EC 9.6815(1), an exception is warranted pursuant to EC 9.6815(2)(g)(1).

The applicant's alternate street study (Figure 1, Attachment D-5) identifies the amount of right-of-way necessary to construct an emergency vehicle turnaround at the end of Oakleigh Lane, and to provide the necessary frontage for flag lot development of undeveloped adjacent lands to the north (Tax Lot 200). Public Works staff indicates that the applicant's proposal is sufficient to accommodate the turnaround, but not the area necessary to extend the sidewalk along the south side of the turnaround, to separate pedestrians from vehicles and provide a safe public walking surface for the residents of the proposed development. The amount of right-of-way necessary to allow for the construction of the proposed turnaround and adjacent sidewalk would be a strip that is 13 feet wide by 199 feet in length. These dimensions assume that the turnaround would be 21 feet wide and that the north edge of the turnaround would match the existing edge-of-pavement in Oakleigh Lane, which is shown on the tentative plans as being six feet south of the existing right-of-way. The addition of a six-inch curb, five-foot sidewalk, and six inches behind the sidewalk, as necessary for construction purposes, results in the need for a total of 33 feet of right-of-way (for the future hammerhead turnaround at the east end of Oakleigh Lane), 13 feet of which is within the bounds of the proposed development (with the balance coming from the northerly property, whenever that property decides to develop).

Construction of the hammerhead turnaround is not necessary or feasible at this time; the need will be based on further development of adjacent lands to the north. The right-of-way secured with this development will enable future development of that northerly property.

EC 9.6820 Cul-de-Sacs and Turnarounds require streets that are longer than 150 feet to terminate with a cul-de-sac bulb or an emergency vehicle turnaround (or hammerhead). The street connectivity exception also warrants an exception to the 400-foot maximum length of a dead-end street, pursuant to EC 9.6820(5)(b).

With regard to EC 9.6835 Public Accessways, Public Works staff notes that the nearest public accessway is located farther to the north, between the east terminus of East Hilliard Lane and the public bike path that runs along the west bank of the Willamette River. The Pedestrian and Bicycle Master Plan identifies a future connector from the east end of McClure Lane to the riverfront path, farther to the south of the subject property. The development proposes an internal sidewalk system that terminates at the southeast property corner, which would enable a future connection through the abutting City parkland to the McClure system to the south. (Refer to Attachment C.)

The segment of the internal sidewalk system that is located between the most easterly building (a bike barn) and the east property line is shown as having a graveled, rather than a paved, surface. This unimproved surface is appropriate because there are no plans or funding for construction of a public path on the City property at this location. Residents of the development will naturally want to walk across the City parkland toward the river. Parks staff state no objections or concerns. This proposed path at least delineates a more confined direction of travel, rather than random wandering through the City's resource area. This portion of the City property has been cultivated as a filbert orchard, which has been maintained by the former owner of the subject property, as discussed in the applicant's written statement. There appears to be an informal path between the orchard and the subject property that would direct travelers to the southerly McClure Lane right-of-way. Public Works staff confirms that the planned bicycle and pedestrian connection through the City's parkland is from McClure Lane toward the easterly West Bank Bike Path, which is a regional facility that borders the west bank of the Willamette River.

The applicant's plans also show an informal path, along the north property line, from the existing end of Oakleigh Lane to the riverfront path system. On page 31 of the written statement, the applicant indicates that the path "will be improved and maintained by Oakleigh Meadow, LLC." The applicant does not propose to improve the path with pavement, but rather to keep its current conditions open to the public. The right-of-way dedication being required for Oakleigh Lane covers most of this informal path. Between this right-of-way and the east property line (24 lineal feet), a 13-foot wide public access way is necessary to provide for a future bike path connection from the approved turnaround and sidewalk in the direction of the West Bank Bike Path.

In order to ensure compliance with the standards of EC 9.6835 Public Accessways, EC 9.6820 Cul-de-Sacs and Turnarounds, and to implement the applicant's alternative street study, as required for an exception to EC 9.6815 Street Connectivity, the following conditions of approval are necessary:

- Prior to final PUD approval, the applicant shall revise the final site plan to show the dedication of 22.5 feet of right-of-way along the northerly boundary of the development, between the westerly boundary of the proposed development and a line that is 50 feet east of the westerly boundary, and also to show the dedication of 13 feet of right-of-way extending from the aforementioned line (the east end of the required 22.5 feet of right-of-way dedication) to a line that is 117 feet beyond (east of) the existing the existing right-of-way (for a total length of 199 feet). Additionally, the revised site plan shall show the dedication of a 13-foot wide Public Accessway along the northerly boundary, which extends from the east end of the aforementioned right-of-way to the easterly property boundary (for a total distance of 24 lineal feet).
- Prior to final PUD approval, the applicant shall submit for review and approval by City staff and recording at Lane County Deeds and Records, a street deed which reflects the right-of-way as shown on the final site plan.

(Refer to Attachment B for a depiction of the required dedication areas.)

Constitutional Findings for Exaction:

It is in the public's interest to have Oakleigh Lane consist of 45 feet of right-of-way through the development site's entry drive aisle and to consist of 33 feet beyond the drive aisle to the terminus of the street in order to ensure: safety for pedestrians, bicyclists and motorists traveling on Oakleigh Lane (a low-volume street); the efficient provision of emergency services; and that the proposed development and adjacent properties are accessible via Oakleigh Lane.

There is a nexus between the requirement to dedicate 22.5 feet of right-of-way west of the drive aisle and 13 feet east of the drive aisle and the public interest at issue. The 22.5 feet of right-of-way will result in one-half of the 45 feet of right-of-way which is necessary to construct Oakleigh Lane to the City's minimum street design standards which have been established for a low-volume street. The 13 feet of right-of-way will provide sufficient right-of-way on the south side of the centerline to construct emergency vehicle turnaround with adjacent sidewalks to City standards. Improving Oakleigh Lane to these standards will: allow for two-way vehicular and bicycle traffic; provide separation between vehicular traffic and pedestrians; and provide for emergency response and access to adjacent lots. Because 45 feet of right-of-way is the minimum amount of right-of-way necessary to construct Oakleigh Lane in this manner as a low-volume street, and because 33 feet of right-of-way is the minimum amount of right-of-way necessary to construct the turnaround at this location, the public interest in safe vehicular, pedestrian and bicycle travel and emergency response and access will be at risk if the 22.5 and 13 foot strips of right-of-way are not dedicated.

The requirement to dedicate 22.5 feet of right-of-way from the westerly boundary of the proposed development primary drive aisle and 13 feet from the drive aisle to a line that is 117 feet in length, as measured from east of the existing terminus of the right-of-way is roughly proportional to the impact that the proposed development will have on the City's transportation facilities. The proposed development will result in a 29 new residential units.

These residential units will be accessible only from Oakleigh Lane. Currently, 25 lots, consisting of a mix of residential, general office and commercial zoning have structures that take access onto Oakleigh Lane; thus, the additional 29 residential units will increase the number of structures that access this Oakleigh Lane by over 100 percent. The construction of the new (structures will result in an increase of vehicular traffic onto Oakleigh Lane by approximately 164 new vehicular trips per day. See Trip Generation Manual from the Institute of Transportation Engineers (ITE) for Residential Condo / Townhouses (Category 230).

Without the additional right-of-way, Oakleigh Lane cannot be improved to the City's minimum street design standards and the 164 new vehicle trips per day generated by the proposed development, along with the additional pedestrian and bicycle traffic generated by the proposed development, will not be assured of safe access via Oakleigh Lane. This is the last opportunity that the City will have to require the dedication of the right-of-way prior to the City needing the right-of-way for street construction.

It is also in the public interest to have a connected street and bike path system that allows pedestrians and bicyclists to safely and efficiently use the public system as a means of travelling throughout the City and to use alternative modes of transportation when traveling between the commercial, residential and recreational areas of the City.

There is a nexus between the requirement to dedicate a 13 foot public accessway and the public interest at issue. The dedication of a 13 foot public accessway will allow for the construction of a 12 foot wide bike path connecting Oakleigh Lane to the West Bank Bike Path. The 13 foot public access way will also allow for the south edge of the bike path to be aligned with the south edge of the future Oakleigh sidewalk and provide an additional six inches on each side of the bike path for constructability purposes. Because 13 feet is needed to construct a bike path connector in this manner as a standard 12 foot wide bike path, the public interest in safe pedestrian and bicycle travel between Oakleigh Lane and the West Bank Bike Path and throughout the City will be at risk if the 13 foot public access way is not dedicated.

Dedication of the 13 foot public access way is roughly proportional to the impact that the proposed development will have on the City's transportation facilities. The proposed development will result in 29 residential units. By creating new residential units, the proposed development will increase the number pedestrians and bicyclists using the bike path system. Using LCOG's Metro Trans Model "EMME 2" to determine vehicular and non-vehicular components for the street system, projections for bike/pedestrian trips generated by a proposed residential development of 29 units would generate five percent of the estimated 168 Average Daily Vehicular Trips from the development, or approximately eight bike/pedestrian trips per day. However, based on the applicant's written statement and because of the proximity of this development to the West Bank Bike Path, it is safe to assume that the number of daily bike/pedestrian trips from this proposed development would be significantly greater than the projected eight trips. Regarding the size of the dedication in comparison to the size of the proposed development site, the total area of the public access way is approximately 312 square feet, or approximately 0.3 percent of the total development site. This development

application is the last opportunity that the City will have to require the dedication of the public access way prior to the City needing the public access way for bike path construction.

The above findings and conditions demonstrate compliance with: EC 9.6805 Dedication of Public Ways; EC 9.6835 Public Accessways; EC 9.6870 Street Width; EC 9.6815 Street Connectivity; and EC 9.6820 Cul-de-Sacs and Turnarounds. Based on compliance with EC 9.6870, the street standards at EC 9.6850 Street Classification Map are also met. Public Works staff confirms that the following street standards do not apply: EC 9.6830 Intersections of Streets and Alleys, because no intersections are being created; EC 9.6810 Block Length, because no new local streets are proposed or required; EC 9.6840 Reserve Strips because, given the location of the required right-of-way, a reserve strip would not prevent access to adjacent properties, which would be the only purpose of a reserve strip in this case; EC 9.6845 Special Safety Requirements because the street is a dead-end and, therefore, discourages use by non-local motor vehicle traffic; EC 9.6855 Street Names, because no new streets are being created; EC 9.6860 Street Right-of-Way Map, because the proposal does not amend the adopted map; and EC 9.6875 Private Street Design Standards because the internal access is a driveway, rather than a private street.

Based on the above findings and conditions, the development will comply with the applicable street standards at EC 9.6800 through EC 9.6875.

### ***Opponent Arguments***

Numerous neighbors argued that the anticipated increase in vehicle trips would make Oakleigh lane unsafe. Many of these comments raised this concern in general terms raising the fear that the existing neighbors would be put in danger as they walked, biked, played and drove along the lane. These type comments are represented well by Exhibits PT-9 and HE-12. Others commented in more detail about alleged errors in the designation of Oakleigh Lane as a low volume residential street, and the associated right-of-way needs. The following is a summary of those more detailed comments:

- Oakleigh Lane is an “access lane” not a “low volume residential street” – and this misclassification caused the Staff to erroneously not require a traffic study. PT-1, PT-2, and PT-4.
- The Lower River Road Concept Plan states that conditions for pedestrians and bicyclists in the vicinity are worsening. PT-1 and PT-2.
- Treating the access lane designation as a standard, opponents argue that the aggregate of existing average daily trips (about 200) combined with the ADT produced by the co-housing proposal (164) would greatly exceed the 250 maximum daily trips for which access lanes are designed. PT-1 and PT-2.
- The increase of 164 ADT is a 145% increase in the number of current vehicle trips experienced by the neighborhood. That is deemed significant, and alleged to

inherently create unsafe conditions for children, bicyclists, pedestrians and drivers along Oakleigh Lane. PT-1 and PT-2.

- The existing right-of-way of Oakleigh Lane is insufficient for safe travel of the newly generated vehicle trips. PT-1.
- The Staff's conclusion that a dedication of land for the necessary right-of-way along the subject property's frontage on Oakleigh Lane is proof that the development will cause unsafe conditions for the length of Oakleigh Lane. PT-4.
- Safe conditions cannot be assured on Oakleigh Lane unless the right-of-way along the entire lane is increased to 45 feet and the paved surface increased. That cannot occur because the local residents have not agreed to it and structures might need to be removed in order to widen the street. PT-4 and PT.R-2.
- The Hearings Official cannot rely on Staff's conclusory opinion that the proposal will create no new adverse traffic safety conditions. PT.R-2.
- The applicant's street connectivity study is flawed and does not demonstrate that nearby properties can be developed to their maximum potential. PT-1 and PT-4.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(5) and adopts those findings by this reference – consistent with the findings below.

The opponents have raised numerous "safety" concerns and arguments that go well beyond the fundamental requirement of EC 9.8320(5). The very structure of EC 9.8320(5) does not require an applicant to prove that a proposed development will be safe from any and all asserted and or imagined traffic safety threats. The language of EC 9.8320(5) states: "[t]he PUD provides safe and adequate transportation systems through compliance with the following:" The underlined section demonstrates that the provision is limited by its own words to a requirement showing three things: a) that EC 9.6800 through 9.6875 can be met, b) that pedestrian, bicycle and transit circulation can be achieved, and c) that if necessary a Traffic Impact Analysis has been done and mitigation provided. In other words, the adopted provisions of EC 9.8320(5) assume that if those three criteria can be met, a "safe and adequate transportation system" will result.

EC-9.8320(5)(a) requires an applicant to demonstrate that it is possible, when necessary, for the applicant to "dedicate" sufficient land to accommodate public ways, including right-of-way for streets under EC 9.6800-8675. The purpose of those sections of the code are set forth in EC 9.6800 and states: "[s]ections 9.6800 through 9.6875 establish standards for the dedication, design and location of public ways to address the purpose of this land use code contained in EC 9.0020 Purpose." The pertinent sections of EC 9.6800 are EC 9.6805 and EC 9.6870. Importantly, EC 9.6805 allows the city to "require dedication of public ways for bicycle and/or pedestrian use as

well as for streets and alleys \* \* \*." EC 9.6870 sets forth the "width" of the right-of-way and paved service to be "dedicated" in order to conform to the standards set forth in Table 9.6870.

The opponents arguments fundamentally misconstrue the requirement of EC 9.8320(5)(a) which is to ensure that a proposed development is capable of dedicating sufficient land along the property frontage to meet the right-of-way width requirements for that street designation. A "dedication" is a form of legal "taking" of property for public use that is intended to provide for public safety and offset impacts imposed by development. Because EC 9.8320(5)(a) is concerned with the dedication of land for a street, neither that provision nor EC 9.6800-9.6875 set forth standards that an existing street must meet in order to serve a proposed development. By its nature, a dedication only applies to the land that is subject to the given land-use application. Therefore, Staff have properly applied EC 9.8320(5)(a) by considering and requiring sufficient dedication of land to meet the right-of-way requirements for either an access lane or a low volume residential street - along the frontage of the subject property. Whether or not Staff have miscategorized Oakleigh Lane as a low volume residential street, and the Hearings Official does not agree that a mistake was made, is of no consequence because Table 9.6870 shows right-of-ways in the range of 40' to 55' for both access lanes and low volume residential streets. The Hearings Official considers Staff's categorization to be more accurate given the increase in ADT moves the lane into the 250-750 ADT range. But, in any case, the record amply demonstrates that the applicant is both willing and able to dedicate land along the northwest corner of the subject property and adjacent to Oakleigh Lane for the purpose of providing sufficient right away and a public accessway. Nothing more is required by EC 9.8320(5)(a).

Based on the above interpretation of EC 9.8320(5)(a), the opponents arguments as set forth above are not relevant to whether the applicant has met the requirement to dedicate sufficient land to create a 45 foot right-of-way along Oakleigh Lane. Although eloquently argued, Mr. Conte's substantial analysis of the Staff findings are well outside the scope of EC 9.8320(5)(a), EC 9.6805 and EC 9.6870. Oakleigh Lane need not have a dedicated 45 foot right-of-way and associated paved surface from River Road to the subject property in order to meet EC 9.8320(5)(a) because that provision is a standard for the "dedication" of land, not a "service" standard akin to level of service - LOS. Neither does EC 9.8320(5)(a) require the neighbors to now dedicate a portion of their property to the widening of the right-of-way or paved surface of Oakleigh Lane.

As to the applicant's street connectivity study, the Hearings Official agrees with Staff's analysis. The applicant's August 6, 2013 connectivity study provides analysis required to comply with EC 9.6815(2)(g)(1)(b) which allows for alternative street designs if it can be shown that "undeveloped or partially developed properties within a quarter mile can be adequately served by alternative street layouts." The opponents are incorrect that the standard for allowing the exemption is a showing that nearby properties can be developed to their maximum potential. The applicant's study identifies only one property in the vicinity that remains undeveloped and adequately shows that it can be served by the alternative street lay out proposed. That is enough to qualify for the exemption.

- (b) **Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.**

### ***Staff Findings***

The applicant's plans show pedestrian and bicycle circulation within the development via interconnected paths between the buildings and bicycle parking areas. The applicant notes that there is an existing worn path along the north property line, between the Oakleigh Lane roadway and the east property line, abutting the City parklands. The applicant proposes to keep this path open, but does not explicitly show any dedications to the public to enable continued access. The previous requirement for additional right-of-way dedication (13 feet wide and 24 feet long) will address this issue and satisfy the above criterion.

With regard to bicycles and pedestrians traveling westward on Oakleigh Lane toward transit services on River Road, referral comments from Public Works staff state that, for unimproved local streets in the River Road area (i.e., streets that lack sidewalks and have not been striped to identify dedicated travel lanes), the expectation is that pedestrians and bicyclists will share the paved surface with vehicles. Additionally, there is a tendency on dead end streets such as Oakleigh Lane, for motorists to travel at slower, more cautious speeds, because of the perceived narrowness of the street.

Public Works staff confirm that, until such time that property owners elect to improve Oakleigh Lane to full City standards (including sidewalks), the existing paved surface of Oakleigh Lane will continue to adequately provide for vehicle and pedestrian traffic, as well as for emergency vehicles and delivery services, provided the paved surface is not blocked by parked vehicles. With regard to public comments received about vehicle parking occurring on the shoulders of the roadway, Public Works staff notes that, technically, such parking is not allowed. The street could be signed for no parking as part of improving the street, but not before, because the City does not maintain unimproved streets.

Public Works staff states that the existing paved surface provides safe passage for two-way vehicular traffic, bicycles, pedestrians and emergency vehicles. As such, Public Works staff indicates that there is nothing to suggest that the impacts of the proposed development will result in unsafe conditions in Oakleigh Lane. Public Works staff confirms that it is appropriate to defer public improvements via an irrevocable petition.

Referral comments from Lane Transit District (LTD) staff also confirm that transit service is provided from River Road (i.e. 51 *Santa Clara* and 52 *Irving* routes), to the west. LTD staff states no objection to the proposed development.

### ***Opponent Arguments***

The Hearings Official views most of the arguments identified above in the findings for EC 9.8320(5)(a) to be equally directed at EC 9.8320(5)(b). Again, the strenuous assertion made by neighbors is that the increase in ADT will necessarily decrease the safety of pedestrians, children, and bicyclists traveling along Oakleigh Lane.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(5)(b) and adopts those findings by this reference.

The Hearings Official also concurs with the applicant's October 23, 2013 final argument that the queuing effect of having a single travel lane along Oakleigh Lane is likely to result in lower speeds and acceptably safe conditions for pedestrians. The applicant provided evidence in support of this position from the city's Arterial and Collector Street Plan. The neighbors submitted this very same information in Exhibit PT-1. The queuing effect is deemed effective for streets that have less than 750 ADT. Even with the added trips attributable to the co-housing proposal, the ADT for Oakleigh will be closer to 400 ADT at most. It is reasonable to expect that the queuing effect identified in the ACSP will work to calm speeds and provide reasonably safe passage pedestrians if the co-housing is approved. Once again, the Hearings Official has not been directed to evidence that shows that pedestrian safety will necessarily be decreased to unacceptable levels simply because 164 ADT are added to Oakleigh Lane.

As to Mr. Conte's assertion that the Staff's own findings concede that pedestrian and bicycle traffic will not be assured safe use of Oakleigh Lane, the Hearings Official disagrees. PT-4. The statement Mr. Conte alights on is a finding related to explaining the justification for the dedication required under EC 9.8320(5)(a). Staff's conclusions are properly understood to require the proposed PUD to dedicate sufficient right-of-way along the subject property's frontage to allow Oakleigh Lane to be brought up to the low volume residential street standard along that frontage. That is consistent with requiring the proposed PUD to meet current street design standards rather than allowing the development to access Oakleigh Lane in its current form. The Hearings Official agrees with the applicant's conclusion that there is no inconsistency in the Staff's findings.

- (c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.**

### ***Staff Findings***

The proposed development does not meet any of the thresholds established in EC 9.8650 through 9.8680. The creation of 29 dwelling units is estimated to generate an additional 29 peak hour trips, which is well below the 100-trip threshold for requiring a Traffic Impact Analysis. Referral comments from Public Works staff indicate no concerns related to traffic

safety issues or poor service levels which will result from this development. Based on these findings, the above criterion does not apply.

### ***Opponent Arguments***

The neighbors strenuously argue that a TIA is needed because of the increase in ADT the proposed co-housing will produce. As noted above under the findings for EC 9.8320(5)(a), they argue that a 145% increase in the ADT should trigger a review, and that in any case the increase in traffic will bring safety risks that are unacceptable. Mr. Conte argues that in addition to the increase in ADT, an incredible increase of over 5,000 pass-by trips will be generated, and that should be sufficient reason to trigger a TIA. Mr. Conte also argues that the Staff's conclusion that there are no concerns with the safe operation of Oakleigh Lane has been rebutted by his analysis and cannot be viewed as sufficient substantial evidence of compliance. PT-4, PT.R-2.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(5)(c) and adopts those findings by this reference.

EC 9.8320(5)(c) invokes EC 9.8670 on the question of when a TIA may be required to support a PUD application. There are three primary circumstances in which a TIA may be required: 1) when the development will generate more than 100 peak hour vehicle trips, 2) when "the increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action, and 3) where approval of the development will result in level-of-service failures of the roadway system in the vicinity. If none of these conditions will result from approval of the PUD, then the code does not require a TIA and the City cannot force an applicant to provide one.

Although the Hearings Official understands the neighbors' concerns about increased numbers of vehicles using Oakleigh Lane, the strong assertion that an increase in ADT will result in traffic accidents or actual danger to pedestrians and bicyclists is not supported by evidence in the record. Assertion is not evidence, and neither is an explanation of inductive reasoning. Therefore, the Hearings Official cannot substitute the neighbors' very strongly held opinions that more cars will necessarily decrease traffic safety for actual evidence. Anecdotal instances of unsafe traffic conditions are also not enough to trigger a TIA.

Moreover, EC 9.8320(5)(c) and EC 9.8670 contemplate certain types of evidence concerning traffic conditions and makes implicit decisions about when mitigation measures might be needed. Those implicit assumptions are that under EC 9.8670(1), a proposal will not potentially create unsafe traffic conditions unless the development will increase peak vehicle trips by more than 100 trips. Under EC 9.8670(2), it is implied that a TIA and associated mitigation measures do not need to be considered unless there is evidence of "problems" caused by accident rates, traffic volumes or speeds. The third implied safety concern is that a TIA is needed if LOS is not sufficient in for the roads and intersections in the immediate vicinity.

This record contains uncontroverted evidence that the proposed development will come nowhere close to producing the 100 peak hour trips necessary to trigger a TIA. That standard does not discuss or contain a requirement to provide a TIA simply because ADT will rise by a certain percentage, or a certain number of pass-by trips will be generated. To interpret EC 9.8320(5)(c) and EC 9.8670(1) otherwise would be to add language and concepts to the provision that do not exist. That would violate ORS 174.010. The Hearings Official has not been directed to evidence in the record that shows accident rates for Oakleigh Lane or at the intersection with River Road are a problem. Nor have other documented "problems" with traffic volumes or speeds been submitted by any party. Contrary to Mr. Conte's assertion, Staff's position that there are no traffic safety concerns associated with the proposal or Oakleigh Lane is some evidence that a TIA under EC 9.8670(2) is not necessary. Public Works did a lengthy and thorough analysis of traffic conditions that is largely repeated in the Staff report. Neither Mr. Conte nor any other party submitted evidence to the contrary, and that is what is required in order for Staff or the Hearings Official to determine that EC 9.8670(2) might be implicated by this application. Finally, LOS at the intersection of Oakleigh Lane and River Road appears to be adequate and there is no evidence in the record showing that the proposal will reduce the LOS to an unacceptable or failing service level. Therefore, there is no evidentiary basis for requiring a TIA or assuming that the increase in ADT will necessarily lead to unsafe conditions along the lane.

**EC 9.8320(6):** The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.

### ***Staff Findings***

Regarding soil erosion and slope failure, the applicant's geotechnical analysis confirms that the site is geologically stable and adequate for development. The analysis provides construction techniques consistent with industry standards, none of which indicate the existence of unsafe sub-surface conditions. Public Works staff confirms that the analysis indicates no soil conditions that would otherwise require extensive construction to mitigate any significant geological hazards or soil drainage issues. Due to the size of the development, an erosion prevention permit will be required prior to any ground-disturbing activities.

With regard to flood hazard, the subject property is within a special flood hazard area; as such, development of the subject property is subject to the special flood hazard area development standards at EC 9.6706 through EC 9.6709, which is addressed in greater detail at EC 9.8320(11) and is incorporated here by reference. The development itself will not result in unreasonable risk of flood, per the stormwater management evaluation at EC 9.8320(11)(j).

With respect to the provision of emergency vehicle response, the applicant states the proposed access on Oakleigh Lane and the hammerhead turnaround within the development site is sufficient for the proposed development. Referral comments from Public Works staff indicate

that this on-site turnaround must provide for emergency vehicle access by being within a temporary emergency access easement. The proposed turnaround area meets the dimension requirements for a hammerhead. Referral comments from the Fire Marshal state no concern with the turnaround. The permanent turnaround is anticipated at the end of Oakleigh Lane, when properties to the north further develop. As recommended previously at EC 9.8320(5)(a), the applicant is required to dedicate right-of-way for the portion of the future turnaround that would overlap the subject property. Based on these findings, the following condition of approval is necessary:

- Prior to final PUD approval, the applicant shall dedicate a temporary emergency vehicle access easement over the on-site hammerhead and the access drive from Oakleigh Lane, and show this easement on the final PUD plans.

Other public health concerns and necessary infrastructure improvements are otherwise addressed with respect to approval criteria at EC 9.8320(5)(b) and (11)(b). Given the available information, and based on the findings as set forth above, it is concluded that the proposed development will comply with this criterion.

### ***Opponent Arguments***

The neighbors raised concerns about stormwater quantity and quality both during the October 2, 2013 hearing and in written comments during the open record period. PT-15. While not expressly directed at compliance with EC 9.8320(6), some of the arguments could be construed to invoke that section. The primary concerns were that untreated stormwater might be discharged and that the quantity of stormwater likely to be generated could not be adequately managed on-site. Rick Rubin submitted information on precipitation and calculations on the size of a theoretical cistern that might be needed to accommodate that volume of water. PT-15.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(6) and adopts those findings by this reference.

The applicant submitted an October 15, 2013 letter from SSW Engineers which appears to be intended to respond to both public comment at the October 2, 2013 hearing, and Mr. Rubin's calculations. PT.R-6. Mr. Conte objects to this letter as new evidence. PT.R-1. The Hearings Officer finds that to the SSW Engineers letter appears to be calculated to respond to Mr. Rubin's October 9, 2013 letter and complies with the Hearings Official's open record schedule set at the October 2, 2013 hearing.

More importantly, the SSW Engineers letter does not add new information so much as explain the stormwater analysis that was already in the record on July 30, 2013, and which was attached to the letter. It does not appear that Mr. Rubin was aware of the prior stormwater

analysis in the record. There is no argument that the applicant's stormwater analysis is in error, or does not conform to the city's Stormwater Manual.

The applicant's stormwater analysis is substantial evidence showing that the anticipated amount of stormwater generated by the development can be adequately treated and discharged in compliance with EC 9.8320(6). Mr. Rubin's comments do not contradict or undermine the applicant's report sufficient to conclude that the applicant's information is unreliable. *Walmart Stores Inc. v. City of Bend*, 52 Or LUBA 261, 272 (2006).

**EC 9.8320(7): Adequate public facilities and services are available to the site, or if public services and facilities are not presently available, the applicant demonstrates that the services and facilities will be available prior to need. Demonstration of future availability requires evidence of at least one of the following:**

- (a) Prior written commitment of public funds by the appropriate public agencies.
- (b) Prior acceptance by the appropriate public agency of a written commitment by the applicant or other party to provide private services and facilities.
- (c) A written commitment by the applicant or other party to provide for offsetting all added public costs or early commitment of public funds made necessary by development, submitted on a form acceptable to the city manager.

Staff relied on the Public Works staff findings that adequate public utilities and services, including wastewater service, are presently available to the site as indicated on the applicant's plans. Further findings at EC 9.8320(11)(b) and (j), regarding public improvements and stormwater respectively, are incorporated herein by reference as further evidence that these services are available to or can be retained on-site. The provision of water and electric services and other utilities is subject to review by the Eugene Water and Electric Board (EWEB) or other utility providers. Referral comments from EWEB staff confirm that the water system needs to be upgraded within Oakleigh Lane and looped through the subject property for a connection with the system in McClure Lane. Approval conditions related to water service are included below, at EC 9.8320(11)(b). The applicant's written statement also confirms their commitment to provide funds necessary for development. The Hearings Official agrees with these findings and adopts them by this reference.

**EC 9.8320(8): Residents of the PUD will have sufficient usable recreation area and open space that is convenient and safely accessible.**

Staff concluded, and the Hearings Official agrees, that the applicant's site plan shows common open space provided at the center of the development that is convenient and safely accessible by all residents. Further, there is ample open space as part of the abutting City parkland, which abuts the east boundary of the subject property and includes regional bicycle facilities (i.e. the West Bank Bike Path). This criterion is met.

**EC 9.8320(9): Stormwater runoff from the PUD will not create significant negative impacts on natural drainage courses either on-site or downstream, including, but not limited to,**

**erosion, scouring, turbidity, or transport of sediment due to increased peak flows or velocity.**

### ***Staff Findings***

The site contours indicate that the subject property currently sheet drains to the east. The applicant proposes to maintain the existing drainage patterns by directing overflow from the proposed on-site stormwater management facilities toward the east property line, abutting the City parkland. The on-site stormwater management facilities consist of piped collection and conveyance systems that are interspersed with pollution-reduction facilities, which include filtration rain gardens abutting the dwellings and a vegetated swale in the common open space. The overflow to the parkland will be dispersed evenly toward the east property boundary with four outfalls that are designed to reduce flow volumes and velocities.

Referral comments from Public Works staff confirm that the overflow to the parkland is acceptable, provided the flow is not concentrated or otherwise cause damage to the City's property. The preliminary design information provided by SSW Engineers confirms that the development will meet this expectation, as well as the stormwater development standards at EC 9.6791 through EC 9.6797, which is addressed in detail at EC 9.8320(11)(j) and is incorporated here by reference.

Based on these findings, the development will comply with this criterion.

### ***Opponent Arguments***

As noted above, in the findings for EC 9.8320(6) the neighbors raised concerns about the quantity of stormwater and how it will be treated and discharged. Questions were raised about how the discharge onto the adjacent open space to the east would be modulated to mimic pre-development levels.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(9) and adopts those findings by this reference. The findings supporting EC 9.8320(6) are also incorporated here by this reference.

The application materials and Staff's findings explain that treated stormwater will be discharged onto the adjacent City open space to the east of the proposed PUD. The record shows that the city agreed to allow this discharge. There are no "natural drainage courses" in that area, and neither the record nor any evidence submitted by the neighbors indicates that erosion is anticipated to result from the discharge of treated stormwater.

**EC 9.8320(10): Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 Solar Lot Standards or as modified according to subsection (11) below.**

Staff found, and the Hearings Official agrees that this criterion does not apply because the development does not include one-family detached dwellings. Further, EC 9.2790 applies to the creation of lots in the R-1 zone, whereas the subject development is not creating any new lots. Nevertheless, the solar setback standards of EC 9.2795 apply to all structures on R-1 zoned lots, 4,000 square feet or greater, with a north-south dimension of at least 75 feet. The applicable solar setback standards are evaluated at EC 9.8320(11)(k).

**EC 9.8320(11): The PUD complies with all of the following:**

- (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
  2. The /WQ Management Area.

***Staff Findings***

The development is not creating residential lots; as such, EC 9.2760 Residential Zone Lot Standards do not apply. The subject property is not within a /WR or WQ area. With regard to density, based on the R-1 Low-Density Residential zoning and EC 9.2750 Residential Zone Development Standards, the subject property is permitted to have a maximum net density of 14 units per acre. EC 9.2751(1)(b) explains that net density is the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of residents in the development, such as common open space or recreational facilities. EC 9.2751(1)(c) states that, for calculating net density, the acreage of land considered part of the residential use shall exclude public and private streets and alleys, public parks, and other public facilities.

The subject property is 102,808 square feet (2.3 acres). The right-of-way dedications being required total 4,024 square feet:  $(22.5 \times 50) + (13 \times 199) + (13 \times 24)$ . Additionally, there is an existing public wastewater easement along the east property line that affects 3,230 square feet of the subject property (10 feet wide and 323 long). These areas  $(4,024 + 3230)$  need to be subtracted from the gross density to establish the allowable density of 14 units per net acre  $(102,808 - 7,254)$ . With 95,554 square feet (2.19 acres) of net area, the allowable density is 30 units. The development includes 29 units (including the common house), which is within the allowed net density. The proposed 29 units on 2.19 net acres translate to a density of 13 units per acre.

EC 9.8310(4)(a) Tentative PUD General Application Requirements confirm that easements benefiting the residents of the PUD may be included in the residential density calculations. As such, the proposed driveway is not excluded from this calculation. It is further noted that the shared driveway is not a private street, which is typically necessary to provide frontage for the creation of lots; the development is not creating additional lots. The on-site turnaround is also

not a public facility in that it is not open to the general public (for those traveling on Oakleigh Lane), but only to provide emergency vehicle access to the development. Eugene Water and Electric Board (EWEB) staff has indicated that an off-site easement is needed to provide a looped water system prior to development of the subject property, but has not indicated that any easements are needed through the subject property.

Based on the above findings, the PUD complies with EC 9.8320(11).

### ***Opponent Arguments***

The neighbors make two fundamental arguments. First, that the common house contains four hotel type rooms and should be counted as four dwellings. PT-2. Second, that areas that will be encumbered by a utility easement must be removed from the calculation of net density. PT-1. The easements the neighbors say must be taken out of the calculations are:

- The 20 foot sanitary sewer easement on the east property line.
- The EWEB water line easement and an associated access road width.
- The fire and garbage turnaround.
- The right-of-way to be dedicated to the city along the north property line.
- Pending property line adjustment must be removed.
- The bike path right-of-way along the north property line.

Based on the exclusions asserted by the opponents, the proposed co-housing development is not entitled to 29 dwelling units.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(11)(a) and adopts those findings by this reference consistent with the findings set forth below.

EC 9.2751 sets forth the rules for calculating "net density." EC 9.2751(1)(b) explains what must be considered a "dwelling unit" for the purpose of those calculations:

For the purposes of this section "net density" is the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of the residents in the development, such as common space or recreation facilities.

The Hearings Official concurs with Staff's treatment of the common house as one dwelling unit. The common house appears to include kitchen facilities, bathroom and four rooms that can be utilized for guests. There is no indication in the record that the four rooms will be permanently occupied by residents or guests. The common house closely fits the definitions applicable to dwellings in EC 9.0500. The common house does not meet the definition of "hotel/motel" as

defined in EC 9.0500. The Hearings Official concludes that Staff's decision to count the common house as one dwelling is consistent with EC 9.2751.

EC 9.2751(1)(c) sets forth areas that must be excluded from the net density calculation. Those exclusions include, "public and private streets and alleys, public parks, and other public facilities." The neighbors assert that easements that might accommodate public facilities like water and sewer lines must be excluded. The applicant argues that easements are not the same as "public facilities" and are not required to be excluded.

The Hearings Official agrees with the applicant. EC 9.2751(1)(c)(1) uses the specific language "public facilities." The provision does not include the word "easements." If the provision was intended to exclude easements it would so state. Adding that concept to the provision would violate ORS 174.010. Public facilities are not defined in EC 9.0500. However, "public facility projects" are defined in the Metro Plan. Those definitions contemplate above ground physical structures such as water reservoirs, pump stations, and drainage or detention ponds. The Hearings Official has not been directed to information in the record that would necessitate removing the land area associated with easements where the infrastructure that utilizes the easement is below ground. Therefore, none of the easements identified by the opponents must be excluded from the net density calculation – including the sewer easement on the eastern boundary.

Similarly, the garbage and emergency turn around does not become a public facility simply because it might be used by public entities periodically. Those areas do not reasonably fall into the category of "public facilities."

As to the areas that the neighbors argue should be excluded due to pending property line adjustments, it appears that the area along the northern property line has already been excluded due to the required dedications. It is unclear whether the property line adjustment on the southeast corner was taken into account. However, even if that area is excluded (2706 square feet) with the addition back of the land Staff removed for the sewer line easement (3230 square feet) the proposed density of 29 units still meets the density restrictions for the low density residential zone.

**(b) EC 9.6500 through EC 9.6505 Public Improvement Standards.**

**EC 9.6500 Easements**

The Staff report found, and the Hearings Official agrees that this section authorizes the City to require dedication of easements for wastewater sewers and other public utilities and access under certain circumstances. This section also prohibits obstructions within public easements. The applicant's survey and engineering plans indicate that there are no existing or proposed easements, other than the 20-foot wide public sewer easement that overlaps the east boundary of the subject property and an underground 72-inch wastewater trunk line. The

applicant's plans show no encroachments within this public easement, other than the paths along the north and south property boundaries for bicycles and pedestrians.

Public Works staff notes that the applicant's title report identifies the following three easements, which are not shown on the tentative plans: (1) an easement recorded on August 6, 1947 at Book 353, Page 146 in favor of the United States for power lines and appurtenances; (2) an easement reserved in a deed recorded March 6, 1942 at Book 229, Page 60 from Nellie McClure, a single person, to H.H. Harris and Gladys M. Harris for a roadway; and (3) an easement recorded October 11, 1949 at Book 403, Page 285 in favor of the United States of America. The applicant's surveyor has confirmed that all these easements are shown on the survey map and do not impact the applicant's proposed development.

In regards to additional public easements, Public Works staff only identify the need for a temporary emergency vehicle access easement; see the prior findings and condition at EC 9.8320(5)(a), which are incorporated here by reference. Referral comments from the Eugene Water and Electric Board (EWEB) also indicate the potential need for additional easements, which will be more precisely determined when the service design is approved by EWEB; refer the findings and condition at EC 9.8320(11)(b) and the referenced water standards at EC 9.6505(1), which are incorporated by reference.

Based on the above findings, the proposed development will comply with EC 9.6500.

#### **EC 9.6505 Improvements-Specifications**

This section requires all public improvements to be designed and constructed in accordance with adopted plans and policies, the procedures specified in EC Chapter 7, and standards and specifications adopted pursuant to EC Chapter 7. Additionally, all developments are required to be served by and implement infrastructure improvements including water, sewage, streets, street trees, street lights, sidewalks, access ways, and stormwater drainage.

#### **EC 9.6505(1) Water Supply**

Staff found, and the Hearings Official agrees, that water service for the proposed development must be provided in accordance with Eugene Water and Electric Board (EWEB) policies and procedures. Referral comments from EWEB staff are as follows:

The existing water infrastructure in Oakleigh Lane and McClure Lane is inadequate to serve any additional development or provide the necessary fire flows along Oakleigh Lane. Therefore, prior to any development of the site, significant upgrades of the water facilities in Oakleigh Lane and McClure Lane along with a loop connection between these streets through the project site will be required to serve the property. Easements will be required across private property to make the loop connection to McClure Lane to the south. The developer will need to fill out EWEB's standard design agreement prior to EWEB proceeding with design of the upgrades.

To ensure compliance with the water supply standards of EC 9.6505(1), the following conditions of approval are also necessary:

- Prior to final PUD approval, the applicant shall provide documentation from EWEB, confirming that water facilities are available for the proposed development.

As conditioned above, the PUD will comply with EC 9.6505(1).

#### **EC 9.6505(2) Sewage**

Staff found, and the Hearings Official agrees that this standard requires all developments to be served by wastewater sewage systems of the City, in compliance with the provisions of EC Chapter 6. The applicant proposes to connect to the existing eight-inch public wastewater system within Oakleigh Lane, abutting the northwest property boundary. Public Works staff confirms that an eight-inch lateral was stubbed (under City Contract File No. 1992-0011) to the subject property from the manhole (structure number 49033) to the subject property. Public Works staff notes that there is a pending assessment for this wastewater infrastructure, which will become due at the time of development. Based on these findings, the applicant's proposed wastewater system conceptually complies with applicable sewage specifications, subject to a more detailed review during the subsequent site development and building permit processes.

#### **EC 9.6505(3) Streets and Alleys and (4) Sidewalks**

##### ***Staff Findings***

EC 9.6505(3)(b) requires the developer to pave streets adjacent to the development site to the width specified in EC 9.6870 Street Width with provision for drainage and construction of curbs and gutters, sidewalks, street trees and street lights adjacent to the development site according to the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways and standards and specifications adopted pursuant to EC Chapter 7 and other adopted plans and policies.

Public Works staff confirms that Oakleigh Lane is not improved to City standards because it lacks curbs and gutters, storm drainage, sidewalks, and street trees. The street does have existing street lights and the 19-foot wide pavement width provides safe passage for two-way traffic. As such, Public Works staff indicates that it is appropriate to defer public improvements via an irrevocable petition, with the following condition of approval:

- The applicant shall submit an Irrevocable Petition for public improvements in Oakleigh Lane to include paving, curbs and gutters, storm drainage, sidewalks, and street trees.

Irrevocable petitions enable the City to initiate a local improvement process and obligate the property owners to pay their proportional share of the street construction costs in the future. The City could construct the street when the majority of benefitting property owners agrees to pay for the improvements. Based on the above findings and condition, the development will comply with the applicable street improvement standards.

### ***Opponent Arguments***

As discussed above, the neighbors raised numerous arguments related to the right-of-way requirements for Oakleigh Lane and asserted that the categories of "access lane" and "low volume residential street" constitute design standards that Oakleigh Lane must be brought up to in order to support the proposed PUD. It is unclear to the Hearings Official whether those arguments are also directed at compliance with EC 9.6505(3 & 4).

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.6505(3 & 4) and adopts those findings by this reference. The Hearings Official also incorporates the findings above for EC 9.8320(5) by this reference.

EC 9.6505(3) requires that any streets adjacent to the proposed development be paved by the developer consistent with applicable street width standards. The evidence discussed in the findings for EC 9.8320(5) demonstrates that the applicant will be able to accommodate the necessary right-of-way, street width, and sidewalks if necessary along the portion of Oakleigh Lane adjacent to the subject property.

### **EC 9.6505(5) Bicycle Paths and Accessways.**

Public right-of-way dedication is being required along the north property line, overlapping an existing worn path between the terminus of Oakleigh Lane and the easterly City parklands, to enable a future bicycle and pedestrian access way. Refer to the previous findings and condition at EC 9.8320(5), which are incorporated by reference.

### **(c) EC 9.6706 Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas – Standards.**

### ***Staff Findings***

The subject property is within a Special Flood Hazard Area (SFHA), per the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) 41039C-1128-F, dated June 2, 1999. The applicant's topographical survey prepared by Poage Engineering and Surveying, Inc. delineates the SFHA boundaries and notes that the Base Flood Elevation (BFE) is 401.2 feet.

Development is allowed to occur within the SFHA, subject to review and approval for compliance with applicable development standards during the building permit process. These standards generally require structures to be located at least one foot above the BFE, among other requirements. At the time of development, these standards may be addressed through several alternatives, including elevated building foundations or, typically, placing fill on the building site. Specific measures for compliance with SFHA standards will be subject to further City review and approval at the time of building permits.

Public Works staff does not concur with the applicant's floodplain delineation, but finds that it is relatively accurate. Buildings 1, 2, 4, the northernmost garage, the northernmost bike shed, and the bike barn are located entirely within the SFHA, whereas Buildings 3 and 7 are located partially within the SFHA. Staff notes that the highest BFE shall be used for the entire development site, unless each structure (including the bike barn) has a specific BFE determination that has been approved by City staff. To ensure compliance with the applicable SFHA standards, the following condition of approval is necessary:

- The final site plan shall delineate the Special Flood Hazard Area, identify Base Flood Elevation (for the entire site or for each building), and note that development of the site will be required to comply with the standards at EC 9.6707 through EC 9.6709.

As conditioned, the development will comply with the applicable SFHA standards.

#### ***Opponent Arguments***

The neighbors raised concerns about the amount of fill that will need to be placed on the subject property – they estimate 2500 cubic yards. They argue that perhaps part of the eastern sewer easement will be at least partially covered with fill. They wonder if retaining walls will be necessary to bring the BFE up to required height. They also wonder who will be responsible for repairs to Oakleigh Lane if the dump trucks that will presumably be needed to haul that fill onto the site damage the road. PT-1.

#### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.6706 and EC 9.6709 and adopts those findings by this reference.

While the neighbors' concerns are understandable, they do not raise issues that are relevant under EC 9.6706 and EC 9.6709. Those provisions are concerned with how the elevated areas and structures will be constructed. Fill in the SFHA is allowed subject to a development permit under EC 9.6707. The same is true of structures in the SFHA under EC 9.6709. There is no evidence in the record which demonstrates those standards cannot be met.

**(d) EC 9.6710 Geological and Geotechnical Analysis.**

Staff found, and the Hearings Official agrees that the geotechnical analyses requirements beginning at EC 9.6710 apply because the proposed development is a PUD that has slopes in excess of five percent. The applicant submitted a geotechnical analysis prepared by Foundation Engineering, Inc. Public Works staff confirms that the applicant's analysis meets the Level Three Analysis requirements of EC 9.6710(4)(c) and Administrative Order AO-58-02-25-F. The analysis includes the results of sub-surface investigation and testing, to establish soil types and distribution, and the characteristics of the site and soils, in relation to the proposed development. The analysis includes design recommendations for construction and inspection.

Public Works staff confirms that the analysis confirms the suitability of the site for the proposed development and notes that the geotechnical recommendations are industry standards. Nevertheless, to ensure compliance as proposed, the following condition of approval is necessary:

- The final PUD site plans shall note that construction permits shall conform to the applicant's geotechnical analysis.

Based on the above findings and condition, the geotechnical standards at EC 9.6710 will be met.

**(e) EC 9.6730 Pedestrian Circulation On-Site.**

Staff found and the Hearings Official agrees, that the development meets these standards by providing pedestrian connections between the dwelling units and common facilities. The findings for EC 9.8320(5)(b) are also incorporated here by this reference.

**(f) EC 9.6735 Public Access Required.**

Staff found, and the Hearings Official agrees, that the development will have access onto a public street, Oakleigh Lane, consistent with this standard. Referral comments from Public Works staff confirm that the other requirements of this standard are also met.

**(g) EC 9.6750 Special Setback Standards.**

Staff found, and the Hearings Official agrees, that the applicant's plans show a 20-foot special setback from the north property line for future right-of-way for Oakleigh Lane. Public Works staff confirms that a special setback is not needed, based on the right-of-way needs being exacted as a condition of development. The required dedication to provide needed right of way obviates the need for a special setback along the northern property line. The findings and conditions at EC 9.8320(5)(a) are incorporated here by this reference.

**(h) EC 9.6775 Underground Utilities.**

To ensure compliance with this standard, the following condition of approval is necessary:

- The final PUD plans shall note that all on-site utilities will be placed underground consistent with EC 9.6775.

As conditioned, the development will comply with this standard.

**(i) EC 9.6780 Vision Clearance Area.**

This standard does not apply because the subject property is not located at a street intersection.

**(j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.**

***Staff Findings***

In regards to EC 9.6791 Stormwater Destination, Public Works staff confirms that on-site management of stormwater runoff from the development is required because there is no public stormwater system available to serve the property. At the same time, the applicant's geotechnical analysis concludes that the site is not suitable for infiltration. Therefore, the applicant proposes to direct stormwater runoff from the proposed development to the abutting City parkland to the east. The site topography indicates that this is the natural drainage pattern. The applicant's on-site stormwater management system will include treatment facilities that also provide for some detention. The overflow toward the east property line will be released at pre-development levels, with rip-rap pads to disperse the flows at the discharge points. The applicant also indicates that level spreaders, consistent with the requirements of the City's Stormwater Management Manual, could be utilized, if required.

Public Works staff notes that many of the proposed rip-rap outfalls are located within the public wastewater easement along the east property line. As conditioned previously at EC 9.8320(11)(b), regarding prohibited uses in public easements, the stormwater infrastructure needs to be located outside the public easement. With regard to the acceptability of overflow onto City parklands, Neil Bjorklund, City of Eugene Parks and Open Space Planning Manager, confirms that this would be acceptable, provided the runoff is discharged evenly and not concentrated at one or more points along the shared property line. To meet this requirement, the following condition of approval is necessary:

- The final PUD plans shall note the requirement that, at the time of development, all stormwater discharge points directed toward the City's property shall be designed as level spreaders, consistent with the City's 2008 Stormwater Management Manual. All stormwater facilities shall be located outside the public wastewater easement along the east property line.

In regards to EC 9.6792 Stormwater Pollution Reduction, runoff from the proposed impervious surface areas will primarily be treated in planters (about 15 scattered throughout the development site). To ensure that the treated runoff will be discharged at pre-development levels, the rain gardens (planters) were sized using the City's Stormwater Surface Filtration/Infiltration Facility Sizing Spreadsheet. Runoff from the garage, driveway, and common house will be treated in a vegetated swale (approximately 10 feet wide and 58 feet long) located east of the common house. A proposed berm at the end of the swale will act as a weir to reduce flows to pre-development levels. As noted in the applicant's written statement, the swale was sized using the City's presumptive method.

Public Works staff confirms that the proposed facilities are adequately sized to provide both pollution reduction and destination from the development site. The actual facility sizes and design will be more precisely determined during the building permit process and may be smaller or larger, based on actual impervious surface area and any impervious surface reduction techniques or in-kind facilities that may be provided at the time of development, provided they are consistent with the City's 2008 Stormwater Management Manual, and are not materially inconsistent with the approved final site plan.

EC 9.6793 Stormwater Flow Control is not applicable because the subject property is below 500 feet in elevation and does not discharge to a headwaters stream. However, as discussed above, post-development flows will be limited to pre-development levels, in order to mimic existing drainage conditions. EC 9.6794 Stormwater Oil Control is not applicable because the proposed development will not generate high concentrations of oil and grease. EC 9.6796 Dedication of Stormwater Easements does not apply because the proposed stormwater facilities are to be privately operated and maintained.

EC 9.6797 Stormwater Operation and Maintenance applies to all facilities designed and constructed in accordance with the stormwater development standards. This section also specifies when, and under what conditions, the public will accept function maintenance. Consistent with these standards, the applicant proposes private operation and maintenance of the on-site stormwater management facilities. To ensure compliance with EC 9.6797(3)(c), as proposed, the following condition of approval is necessary:

- The final site plan shall note: "On-site stormwater management facilities will be privately owned and operated. An operation and maintenance plan will be developed consistent with the City's Stormwater Management Manual, and notice of this plan will be recorded, during the building permit process."

With the findings, conditions, and future permit requirements noted above, staff finds that this criterion will be met.

Based on these findings, the development will comply with this criterion.

### ***Opponent Arguments***

As noted in the findings for EC 9.8320(6 & 9) the neighbors raised concerns about discharging the treated stormwater on to the adjacent city open space.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(11)(j) and EC 9.6791-9.6797 and adopts those findings by this reference.

The opponents do not provide any persuasive evidence that the proposed stormwater treatment and discharge methods will be inadequate to properly manage the stormwater anticipated to be generated by the proposed PUD. There is no evidence that the proposed rain gardens, vegetated swales and permeable pavement to be used in the parking area will not work sufficient to comply with the standards discussed above. Again, the neighbors raise questions and made assertions about stormwater but those assertions or arguments of disbelief, particularly with regard to the permeable parking area do not constitute evidence upon which the Hearings Officer can rely.

- (k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.**

Staff took the following approach to reviewing the applicant's various "proposed non-compliance" with certain development standards. The applicable development standards for features explicitly included in the application, which have not already been addressed by other PUD approval criteria and related standards, are as follows: EC 9.2750 Residential Zone Development Standards; EC 9.2795 Solar Setback Standards; EC 9.5500 Multiple-Family Standards; EC 9.6105 Bicycle Parking Space Standards; and EC 9.6410 Motor Vehicle Parking Standards. Staff notes that EC 9.6205 Landscape Standards, EC 9.6730 On-site Pedestrian Circulation, and EC 9.6740 Recycling and Garbage Screening standards are referenced within the multiple-family development standards at EC 9.5500. The development complies with many of these standards, as noted below. Where the development does not comply with these standards, as described in greater detail below, the applicant requests a modification ("proposed non-compliance"), which is allowed through the PUD process, if the following PUD purpose statements are met.

**EC 9.8300 Purpose of Planned Unit Development. The planned unit development (PUD) provisions are designed to provide a high degree of flexibility in the design of the site and the mix of land uses, potential environmental impacts, and are intended to:**

- (1) Create a sustainable environment that includes:**
  - (a) Shared use of services and facilities.**
  - (b) A compatible mix of land uses that encourage alternatives to the use**

- of the automobile:
- (c) A variety of dwelling types that help meet the needs of all income groups in the community.
  - (d) Preservation of existing natural resources and the opportunity to enhance habitat areas.
  - (e) Clustering of residential dwellings to achieve energy and resource conservation while also achieving the planned density for the site.
- (2) Create comprehensive site plans for geographic areas of sufficient size to provide developments at least equal in quality to those that are achieved through the traditional lot by lot development and that are reasonably compatible with the surrounding area.

### ***Staff Findings***

With regard to EC Table 9.2750 Residential Zone Development Standards, the development complies with the following: density (below 14 units per net acre); building height (below 30 feet); interior yard setback (from the east property line only); and the maximum 50 percent lot coverage. The development does not comply with the front yard setback or the interior yard setback (along the south and west property lines).

The substandard front yard setbacks are due to the right-of-way dedications being required; refer to the findings and conditions at EC 9.8320(5), which are incorporated by reference. Following right-of-way dedication, Buildings 1 and 2 will be below the minimum 10-foot front yard setback requirement, being about a half of a foot and eight feet away, respectively. The applicant requests a modification to this setback, stating that "...the dwellings abutting Oakleigh Lane do not exceed massing widths or heights inconsistent with the neighborhood single-family proportions. Along Oakleigh Lane, at the southern side of the street, townhouses address the residential street with covered porches as found in this and other neighborhoods of the River Road area. Internally, the site plan is pedestrian oriented with many places for children to play and residents to sit outside. By clustering the units keeping all the parking to one side of the site, more usable open space, free from vehicle traffic, was able to be conserved with open views to the river and bike path." (See page 26 of the applicant's June 14, 2013 written statement.)

The substandard interior yard setbacks are as follows: the concrete wall, garages and carports abutting the west property line and Tax Lots 10100 and 5700, respectively to the northwest and southwest; the concrete wall at the southwest property corner, abutting Tax Lot 5600; and Building 6, abutting Tax Lot 500. There is no explanation in the applicant's materials for the substandard building setback along the south property line; however, staff notes that the affected property owners (Mr. Adee of Tax Lot 500 and Mr. Campbell of Tax Lot 5600) submitted letters in support of the proposed development.

With regard to the west property line, the applicant explains that the garages and carports are located near the property line because it makes for a better site layout. The applicant claims

that, if there were a setback, it would collect weeds and trash because it would be an unused portion of the site that serves no one. Staff understands that the design attempts to load most of the development on the western portion of the site because the eastern portion is in the floodplain and abuts a natural resource area. Staff's main concern is the potential impacts on the adjacent lands to the west.

In addition to aesthetics (i.e. screening and softening of the bulk and scale of the development along the property boundaries), the setback is intended to provide adequate separation between structures to meet fire code regulations. The setback regulation is five feet from property lines and ten feet between structures, which means that the abutting property would need to setback future structures ten feet from the common property line. The applicant proposes an eight-foot tall concrete wall along the west property line, not only to fulfill the screening function of the setback, but to fire-rate the wall as well, to meet fire code requirements. Staff notes that the appropriate fire rating cannot be determined at this time because the abutting property owners are not proposing to build abutting structures; rating depends on materials and the regulations change over time. Because the wall exceeds six feet, it too is considered a structure subject to setback requirements.

Staff believes the final determination as to acceptability of the concrete wall must include the participation of the affected property owners (Tax Lots 5700, 10100, and 5600). Even if the setback modification is granted, EC 9.2751(7) requires the developer to obtain an easement from the abutting property owners. Staff recommends the easement as a condition of PUD approval, which will ultimately determine whether the wall is acceptable to the abutting property owners. If the applicant is unable to obtain the off-site easements, then staff recommends an alternative condition that the final PUD plans show the structures setback five feet from the west property line. These conditions also apply to Building 6 and Tax Lot 500. The recommended condition of approval is as follows:

- Prior to final PUD approval, the applicant shall obtain from the property owners of Tax Lots 500, 5600, 5700, and 10100, an easement abutting the proposed structures on the subject property that are located less than five feet from the interior property lines (i.e. the garages, carports, and wall along the west property line, and the portion of the wall and Building 6 abutting the south property line). The easement shall establish a 10-foot no-build zone, for fire code purposes, and, for at least the first five feet abutting the common property line, rights for the development to access and maintain the backside of their buildings. Alternatively, if the applicant is unable to obtain these off-site private easements from the adjacent property owners, then the final PUD plans shall show all structures setback at least five feet from the property lines.

Staff notes that a five-foot shift of the development plans to the east should not significantly affect other site features, as there is sufficient area within the common areas and along the east property line to accommodate the adjustment. With regard to the PUD purpose statements, the overall development achieves those; in regards to these specific setback issues, the PUD purpose statements are met, to the degree the proposed design is critical to the

overall success of the development. Here, staff believes that the alternative of requiring compliance with the setback standards is both feasible and would not jeopardize compliance with any other approval criteria or applicable standards.

### ***Opponent Arguments***

As described in prior findings, the neighbors object to the proposed wall on the western boundary for many reasons. Also, the adjacent property owners have submitted statements indicating they will not grant an easement to allow the applicant to avoid the required five foot setback. The neighbors also state that the reduced setback on the south boundary line cannot be justified merely because the adjacent property owner does not oppose the development. The Hearings Official also assumes that opponents' argument relating to proper screening are also pertinent with respect to the applicant's requests to reduce various applicable setbacks.

### ***Hearings Officer Conclusions***

The applicant's final comment addresses the opponents' setback arguments in two ways. First, the applicant notes that the reason that setbacks are proposed to be reduced in several locations is to accommodate clustering of the buildings. Second, the applicant provided an example site plan that shows that the five foot required setback along the western boundary is not needed by shifting the buildings slightly to the east.

As to the proposed wall, the Hearings Officer agrees that the example site plan is sufficient evidence to show that "non-compliance" with the five foot setback will not be necessary. The Hearings Officer incorporates the findings for EC 9.8320(3) for a full discussion of the wall along the western property line.

As to the other reduced setbacks, the primary purpose of the PUD provisions generally is to "provide a high degree of flexibility in the design of the site." Clustering of residential dwellings is anticipated and encouraged under EC 9.8300(1)(e). The applicant testified both orally and in writing that the site design was specifically intended to cluster the residential building to achieve this goal. As to the setback reductions requested for the south and east boundaries, the Hearings Official finds that the proposed non-compliance facilitates clustering of the residential buildings. It is also relevant that the Hearings Official previously found that the applicant needs to provide sufficient screening along those boundaries under EC 9.8320(3). The site plan shows sufficient space to accommodate that screening. In part for those reasons, the Hearings Official concludes that the reduced setbacks do meet the purposes of EC 9.8300.

### ***Staff Findings***

With regard to 9.2795 Solar Setback Standards, EC 9.2795(3) grants an exception to these standards because the buildings abutting the north property line (Buildings 1 and 2) would shade a non-developable area, namely right-of-way for Oakleigh Lane and the bicycle/pedestrian access way required along the north property line. For comparative

purposes, absent the right-of-way, the required solar setback would be 20 feet from the north property line. Both buildings are setback at least 20 feet from the north property line. As such, it does not appear that a formal modification through the PUD process is required; however, one could be supported for the same reasons a modified front line setback, as discussed previously, would be granted.

### ***Opponent Arguments***

The neighbors dispute the applicant's setback calculation submitted on September 17, 2013 and provide alternative calculations attempting to show that the setback for buildings 1 and 2 cannot be met. PT-1.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.2795 and adopts those findings by this reference.

It does not appear that the neighbors were aware of the exemption identified by Staff. The Hearings Officer is not directed to any evidence that indicates the exemption at EC 9.2795(3)(c)(1) does not apply in this instance. A large portion of the northern property line will subject to dedication for widening of the right-of-way and Oakleigh Lane and will not be developable with structures. In addition, the applicant provided testimony at the October 2, 2013 hearing and presents a schematic showing how the shade point from the relevant buildings would avoid casting shade on each other or adjacent areas. The Hearings Official finds this evidence sufficient to demonstrate compliance with the city's solar setback standards.

### ***Staff Findings***

With regard to EC 9.5500 Multiple-Family Standards, the development complies with all of the applicable standards, as follows:

- Street Frontage: 60 percent of the street frontage, which is 82 linear feet, is occupied by a building;
- Building Orientation and Entrance: only applies to Building 1, abutting the street, which has primary entrances facing the street;
- Building Mass and Façade: only applies to Building 1, abutting the street, which is less than 100 feet in length
- Articulation: the buildings have porches, windows, and offsets;
- Landscaping: the development exceeds the minimum requirement of 4,007 square feet;
- Open Space: the development has more than double the required open space, with 54,727 square feet instead of 20,037 square feet;
- Site Access and Internal Circulation: the proposed driveway is 22 feet wide, which is within the 20-foot minimum and 28-foot maximum;
- Vehicle Parking: is not abutting street frontage;

- On-site Pedestrian Circulation: provided between buildings and shared facilities, consistent with EC 9.6730;
- Recycling and Garbage Areas: not located in the front yard setback and has perimeter screening, consistent with EC 9.6740.

Based on the above findings, the development complies with the applicable multiple-family development standards at EC 9.5500. With regard to EC 9.6105 Bicycle Parking Space Standards, the development appears to exceed these requirements, subject to stall dimensions and security details being determined during the building permit process. EC 9.6105 requires one long-term bicycle parking space per dwelling unit. With 28 units plus the common house, 29 long-term bicycle parking spaces are required. Short-term bicycle parking is not required of residential development.

The applicant indicates that 52 spaces are proposed; the plans show four sheds scattered across the site and a "bike barn" near the southeast property corner. The plans do not provide enough specificity to determine whether the long-term space security requirements are met, but those can be addressed in greater detail during the building permit process. The PUD plans show ample room on the development site to accommodate the required bicycle parking. Additional bicycle parking (more than the 29 long-term spaces required) does not have to meet code standards, with regard to dimensions and security specifications. Based on these findings, the bicycle parking space standards of EC 9.6105 will be met.

### ***Hearing Official Conclusions***

The Hearings Official is not aware of opposition arguments directed at this criterion. The neighbors did testify generally that the size, height and number of buildings was simply too large for the neighborhood. Those concerns are discussed in the findings for EC 9.8320(12) and 13).

### ***Staff Findings***

With regard to EC 9.6410 Motor Vehicle Parking Standards, the applicant's plans show 16 covered spaces, as garages and carports along the west property line. The applicant's plans note that there are 31 additional open/surface parking spaces. The plans show approximately 29 gravel parking spaces abutting the paved driveway. The minimum number of vehicle parking spaces required is one per dwelling unit (or 29 in this case). It appears that the minimum requirement is met; there is no limitation on the maximum number of vehicle parking spaces for residential development. The actual number of spaces is difficult to determine because the applicant does not propose to stripe the spaces in accordance with the stall dimension standards of EC 9.6410; however, the scaled plans show sufficient areas to accommodate the required parking. Public Works staff notes that, due to the 22-foot wide drive aisle, all of the parking spaces are considered compact.

The applicant seeks a modification to the striping, surfacing, and landscaping requirements for the vehicle parking spaces. EC 9.6410 requires a durable a-dust-free surface, whereas the applicant proposes gravel parking spaces. The applicant proposes filter fabric below the gravel surface to meet the durable and dust-free standard. The applicant also explains that the driveway will be paved, where durability and dust would be of greater concern associated with vehicle movements. To keep gravel in the parking stalls and off the driveway, the applicant states that the planned community can maintain this area and suggests keeping a broom nearby. The abutting concrete wall proposed along the west property line serves as mitigation to additional noise and dust associated with gravel.

The concrete wall is also proposed in lieu of a seven-foot wide landscape bed between the parking stalls and the west property line, which would be required by EC 9.6410, unless modified through the PUD process. The concrete wall appears to meet the intent and function of the high-screen landscaping requirement, as it is eight feet tall with living plant material (espaliered trees). As such, staff recommends approval of the landscape modification. This design also meets the PUD purpose statements, with regard to clustering the development away from the easterly portion of the site.

As discussed previously, the wall is considered a structure subject to setback requirements. As conditioned previously, if the applicant is unable to obtain easements from the abutting property owners, the structures (wall included) will need to be moved five feet from the property line. Either with or without the five-foot setback, the wall meets the intent of the landscaping requirement for vehicle use areas adjacent to interior property lines.

Based on the available information and the findings and condition recommended above, staff believes the requested modifications could be approved as being consistent with the PUD purpose statements. Otherwise, the applicable development standards appear to be met. No signs or exterior lighting is shown on the plans, but staff notes that those features would be subject to the development standards at EC 9.6650 and EC 9.6725 at the time of development. Land Use Management staff recommends the following condition of approval:

- The final site plans shall note that compliance with the following development standards will be determined more precisely at the time of building permit review:
  - Landscape Standards beginning in EC 9.6200
  - Garbage Screening contained in EC 9.6740
  - Bicycle Parking Standards contained in EC 9.6105
  - Outdoor Lighting Standards contained in EC 9.6725

Based on the above findings, approval of the requested modifications and the condition for a more detailed review for compliance at the time of building permit, the PUD will comply with the above approval criterion at EC 9.8320(11)(k).

### ***Hearing Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.6410 and adopts those findings by this reference – consistent with the findings set forth below.

Although the neighbors raised concerns with dust generated from the gravel parking area, there was no evidence submitted that the proposed gravel with filter fabric approach proposed by the applicant would result in obnoxious levels of dust. The Hearings Official cannot locate the requirement in EC 9.6410 identified by Staff that parking surfaces be "dust free." The applicant's approach appears to be calculated to minimize dust impacts. The gravel over fabric filter is more than just dumping gravel over bare ground, and it is reasonable to conclude that it will both filter water through the gravel and keep the underlying dirt from rising up through the fabric to create unacceptable levels of dust.

**EC 9.8320(12): The proposed development shall have minimal off-site impacts, including impacts such as traffic, noise, stormwater runoff and environmental quality.**

### ***Staff Findings***

**Traffic**— Public Works staff confirm that the development will have minimal off-site traffic impacts, as only 29 additional peak hour trips will be generated by the development. Public Works staff state that Oakleigh Lane currently provides for safe passage of two-way and emergency vehicles. No street improvements are required of the development, although right-of-way dedication and an Irrevocable Petition are being required to enable future public improvements. Pedestrian safety is further addressed at EC 9.8320(5)(b); those findings are incorporated by reference. With regard to public comments about the accident at the intersection of Oakleigh Lane and River Road, this intersection is not on the City's inventory of intersections with high crash ratings that would otherwise warrant analysis to determine patterns that could be mitigated by infrastructure improvements. As such, nothing further is required of the development.

**Noise** – It is not expected the development would generate noise other than from a typical residential area. The common open space is located at the center of the development. An eight-foot tall concrete wall is proposed along the west property boundary. The design of this development should have minimal off-site impacts in regards to noise.

**Stormwater** – Off-site impacts of stormwater runoff is addressed as part of the applicant's proposed stormwater collection, conveyance, and treatment system, as discussed previously at criterion (11)(j) and incorporated herein by reference.

**Environmental Quality** – The subject property is not on any acknowledged Goal 5 natural resource inventory, but it is within the Willamette Greenway boundary. The applicant has submitted a concurrent Willamette Greenway permit application, which is evaluated later in this report; based on those findings, the proposed development is compatible with the

Willamette River, which is located more than 200 feet east of the subject property. As discussed at EC 9.8320(4), the PUD is designed and sited to minimize impacts to the natural environment and includes tree preservation and additional tree planting; those findings are incorporated by reference.

Based on these findings, the proposed PUD will comply with the applicable criterion.

### ***Opponent Arguments***

The neighbors mostly blended arguments under this criterion with compatibility arguments under EC 9.8320(13). However, the following arguments seem to be directed at EC 9.8320(12):

- The proposed PUD more than doubles the amount of traffic on Oakleigh Lane. PT-1, PT-2 and PT-4.
- Up to 47 cars will be leaving the PUD every morning making noise and shining headlights into neighboring homes. PT-2
- Visitors coming to the PUD will bring traffic impacts.
- More than 100 new residents will be living in the PUD. PT-2.
- At the October 2, 2013 hearing some neighbors stated that building the development would reduce wildlife habitat.

In addition, Mr. Conte argues that the word "minimal" is nearly meaningless as a standard and urges the term "insignificant" be used as the standard instead. PT-32.

### ***Hearing Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(12) and adopts those findings by this reference – consistent with the findings set forth below.

As an initial matter, the Hearings Official rejects Mr. Conte's invitation to substitute the term "insignificant" for the term "minimal" in EC 9.8320(12). I agree with the applicant, that if the City Council had intended to impose a different standard it could have done so. ORS 174.010. The Hearings Official agrees that requiring a PUD to have minimal impacts is a very subjective standard that is difficult to implement, but EC 9.8320(12) says what it says.

As to stormwater impacts, the application has already been found to comply with EC 9.8320(6 & 9) which regulate the treatment and discharge of stormwater from the subject property. The findings for those sections is adopted here by this reference. The record shows that the infiltration and treatment of stormwater will allow the applicant to mimic pre-development levels after the PUD is built, which means no net increase in stormwater impacts should be reasonably anticipated for the City open space to the east. That constitutes a minimal impact.

As to noise, although fears were voiced about noise coming from the PUD residents and their cars, no real evidence was submitted that these impacts will be of such volume as to be

significantly different from the same activities occurring in the existing neighborhood. Without some evidence that the residents of the PUD will be violating some noise standard, it is not reasonable to assume they will bring any new, or louder noise impacts than the present residents of the neighborhood already experience.

As to environmental impacts, the PUD contains abundant open space with gardens and water available to urban wildlife. As noted by the applicant, there are no identified rare or threatened species present. The neighbors' concerns about loss of habitat do not match the evidence in the record which indicates the off-site impacts on the environment will be minimal.

Traffic is a tougher issue to measure. On the one hand, the record shows that both peak hour vehicle trips and ADT will increase, and even the applicant does not dispute that the increase appears to double ADT over current levels. On the other hand, the applicant argues that the proposal does not seek the highest density possible, and that the low density residential zone anticipates 14 units per acre with the associated traffic impacts.

In attempting to understand what "minimal off-site impacts" means, the Hearings Official is required to seek out the intent of the City Council in adopting those terms. *PGE v. BOLI*, 317 Or 606, 610-612 (1993). I find that the concept of minimal impacts is inherently ambiguous. It is clear that the City Council could have set a higher standard of "no off-site impacts" but chose not to do so. However, the term minimal could be argued to mean that only the minimum density could be sought in the applicable zone through a proposed PUD. That conflicts with the purposes of the residential zones as set forth in both the Metro Plan and the EC, both of which seek to increase residential density in residential areas within the urban area.

The Hearings Official concludes that it is appropriate to look to the context of EC 9.8320(12) to help understand its intent as to traffic. The context for EC 9.8320(12) are the provisions in EC 9.8320(5) and the related standards in EC 9.8650 – 9.8680 which state when a TIA is required. Those standards are discussed above and the findings are incorporated here by reference. As discussed above, EC 9.8670 sets forth three relevant circumstances in which a TIA is needed: 1) the traffic anticipated from the proposed PUD exceeds 100 peak hour trips, 2) accident rates or other "problems" warrant a study, and 3) LOS on the servicing road or nearby intersections is below standard. The City Council appears to have decided that any one of these conditions presents potential traffic system impacts that could warrant mitigation.

In interpreting related statutes or local code provisions, an interpretation must be sought that harmonizes those provisions and does not leave one provision as redundant or meaningless. Reading EC 9.8320(12), as the neighbors do, to impose a different standard for traffic impacts than EC 9.8320(5) and reading the term "minimal" to mean almost no impacts at all, would render EC 9.8320(5) and EC 9.8670 redundant if not completely meaningless. In other words, it makes no sense that the City Council would ask an applicant to go through the analysis in EC 9.8320(5) and potentially complete a TIA if the proposed PUD could be denied for having "some" impacts on the transportation system.

Instead, harmonizing EC 9.8320(12) with EC 9.8320(6) is helpful in understanding when a project might have more than "minimal off-site impacts." While it is not prudent to theorize too much about whether a project that requires a TIA necessarily has more than minimal off-site impacts, it is certainly reasonable to assume that if any of the three conditions identified in EC 9.8670 are evident in the record, EC 9.8320(12) might be implicated. However, when none of the conditions exist that would trigger a TIA under EC 9.8670, it is reasonable to question whether EC 9.8320(12) is implicated as to traffic.

That is the case for this application and this record. There are no conditions identified in the record which come anywhere close to triggering a TIA. The peak vehicle trip estimates are less than a third of that required to trigger a TIA, and no "problems" or LOS deficiencies are identified. The neighbors' fear that there will be more cars on Oakleigh Lane than before is not enough to view those new cars as more than a minimal impact, let alone a negative off-site impact. As such, the Hearings Official concludes that the increase in peak vehicle trips from the proposed PUD will result in minimal off-site impacts.

**EC 9.8320(13): The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.**

#### ***Staff Findings***

The proposed development is a low-density residential land use, within a low-density residential area. Given the similar residential uses, there do not appear to be any inherent conflicts that would keep the developments from being at least reasonably compatible and harmonious. The development complies with the low-density (R-1) residential development standards, with regard to density and building height. Although the development proposes attached single-family dwellings, rather than the detached nature of the surrounding neighborhood, the density is dispersed across the development site, with groupings of three to four dwelling units per building.

Further the east boundary of the development site abuts a swath of undeveloped City parkland, which contains Goal 5 riparian area associated with the Willamette River. The applicant's plans show the development clustered away from the resource area with open space adjacent to the east property line. As such, the development is reasonably compatible and harmonious with the adjacent parkland and nearby Willamette River.

The compatibility and harmony of the development is challenged most along the west property line, where the applicant proposes vehicle use areas and garages. The applicant proposes a concrete wall along the west property line to mitigate these impacts and to provide screening to adjacent lands. As discussed previously, staff recommends the applicant obtain an easement from the affected property owners, which will ultimately test whether the wall is acceptable mitigation. If the applicant is unable to obtain the easements, staff recommends the final PUD plans show the wall setback five feet from the property line. The applicant's plans show the wall with espaliered vegetation. These findings and conditions are detailed at EC 9.8320(11)(k),

which are incorporated here by reference.

Staff notes that the northwest corner of the development site is the gateway to the neighborhood. The wall proposed along the west property line stops short of the north property line, to enable a landscaped bed with a tree and shrubs, which will help soften the entrance to the development. As noted at EC 9.8320(5)(c) in regards to traffic, EC 9.8320(9) in regards to stormwater runoff, and EC 9.8320(4) in regards to protection of natural features, which are also incorporated here by reference, the proposed development will have minimal off-site impacts related to traffic, noise, stormwater runoff and natural resources. Based on the above findings, the development is reasonably compatible with the nearby land uses.

### ***Opponents Arguments***

The neighbors argue strenuously that the proposed PUD is not compatible or harmonious with the existing neighborhood. In addition to the reasons discussed above in EC 9.8320(12), the neighbors argue that the proposed PUD is simply too big, and that fewer buildings of a more demure size would be more harmonious with the existing neighborhood. PT-1 and PT-2.

### ***Hearing Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8320(13) and adopts those findings by this reference – consistent with the findings set forth below.

In the *Northgreen Property LLC. v. City of Eugene* discussed above, LUBA also affirmed the prior Hearings Official's approach to EC 9.8320(13).

Although the findings quoted above could be clearer, we understand the hearings officer to have concluded that the proposed tower is reasonably compatible and harmonious with the neighborhood where it meets the objective standards set out in the EC for telecommunications towers, and where the tower will be screened from view while still allowing the tower to function as intended. We cannot say that those findings are inadequate or represent an erroneous interpretation and application of EC 9.8320(13). We also do not think that the evidence cited by petitioner in support of its argument that the tower is not compatible with the neighborhood is so overwhelming that a reasonable person could not find that the tower is compatible, particularly given the inherently subjective nature of the criterion. *Olson v. City of Springfield*, 56 Or LUBA 229, 237 (2008).

The Hearings Official adheres to this approach. Here, a finding that the proposed PUD is incompatible and unharmonious despite having complied with all the applicable provisions of EC 9.8320 would, at least in this case, be logically and legally indefensible.

The Hearings Official is also persuaded that the proposed co-house will be compatible and harmonious for the following reasons: 1) the development will be at the end of the street where comparatively fewer property owners along Oakleigh Lane will be affected visually, 2) the scale of the buildings, as the applicant points out, are within the range of typical single family homes. The applicant states that the common house is similar in size to a large home and the other buildings are similar to smaller single family homes, 3) the proposed density is less than the maximum and the proposed height is less than the maximum height allowed, and 4) the proposed use is residential (as opposed to some conditional use allowed in the zone).

As to arguments about traffic impacts, the Hearing Official adopts the findings for EC 9.8320(12) here by this reference. Evidence of a modest increase in total vehicle trips, where there is no evidence of associated traffic problems, is sufficient to demonstrate that the proposed PUD will be compatible with adjacent and nearby uses.

**EC 9.8320(14): If the tentative PUD application proposes a land division, nothing in the approval of the tentative application exempts future land divisions from compliance with state or local surveying requirements.**

This criterion does not apply because the development does not include a future land division.

**EC 9.8320(15): If the proposed PUD is located within a special area zone, the applicant shall demonstrate that the proposal is consistent with the purpose(s) of the special area zone.**

The subject property is not located within a special area zone. As such, this criterion is not applicable.

#### **Willamette Greenway Evaluation**

As required by the Type III land use application procedures beginning at EC 9.7300, the Hearings Official must review any WG permit application and consider pertinent evidence and testimony as to whether the proposal is consistent with the criteria required for approval at EC 9.8815 (shown below in **bold** typeface). In this case, the proposal is being reviewed concurrently with the tentative PUD in accordance with EC 9.8005(2).

**EC 9.8815(1): To the greatest degree possible, the intensification, change of use, or development will provide the maximum possible landscaped area, open space, or vegetation between the activity and the river.**

#### ***Staff Findings***

As previously noted, the Willamette River is located more than 200 to the east of the subject property. The land between the river and the subject property is owned by the City, as an undeveloped natural resource area that contains /WR Water Resource (Goal 5) conservation areas. In this area, there is no specific, pre-determined or adopted setback from the river

under the City's implementing provisions of Goal 15 (Willamette Greenway).

While not the focus of the applicable WG permit approval criteria, staff notes that the applicable setbacks along the river in this area are based on the City's Goal 5 Adopted Riparian inventory, which is regulated with the /WR overlay zone (see EC 9.4920). The /WR conservation area at this location is greater than the typical 100-foot setback from top-of-bank along the Willamette River; here, the adopted riparian area boundary extends landward beyond the 100-foot setback from top of bank. For clarity, staff notes that the /WR conservation area does not extend onto the subject property. As shown on Attachment A, the subject property is at least 53 feet from the boundary of the regulated resource area.

Vegetation on the eastern portion of the subject property nearest the river consists of a cover crop of non-native short grasses, weedy forbs, and scattered and isolated fruit and fir trees. The location, species, and size of existing trees are shown on the applicant's topographical survey (see Attachment D-4). The eastern portion of the site, closest to the riparian area to the east, has few trees. The trees closest to the east property line include a row of fruit and filbert trees along the south property boundary, which the applicant proposes to preserve, and a row of cedars along the north property boundary.

Most of the northerly cedars are on adjacent lands to the north; the applicant proposes to preserve these trees, which is further conditioned in the PUD evaluation at EC 9.8320(3) and incorporated by reference. A 26-inch diameter cedar on the subject property, near the north property line, however, is proposed for removal to accommodate the location of Building 1. (The applicant's tree removal and preservation plan is provided on Sheet L3.) The cedar to be removed is about 50 feet from the east property line.

As for proposed landscaping between the development and the river, the applicant's landscape plan (Sheet L2) shows the eastern portion of the site as being planted with drought-tolerant native meadow grasses. The eastern portion of the site will primarily be open space, with the closest building being about 20 feet from the east property line (i.e. Building 2, abutting the north property line). Buildings to the south (i.e. Buildings 4 and 7) have greater setbacks from the east property line, by approximate 30 and 60 feet, respectively. As such, the development will provide the maximum possible open space and vegetation between the activity and the river. Additional landscaping along the east property boundary does not appear to be warranted, given the existing site conditions as an open meadow.

Based on the available information and the preceding findings, the above criterion is met.

### ***Opponent Arguments***

The neighbors argue that the configuration of the proposed PUD does not leave the maximum possible landscaped area between the development and the Willamette River. PT-2, PT-1.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8815(1) and adopts those findings by this reference – consistent with the findings set forth below.

For the purposes of EC 9.8815(1), the Hearings Official agrees with the opponents that the proposed PUD is a change in use and an intensification in use. Those facts make EC 9.8815(1) applicable and raises the question of just how much landscaped area must be provided to comply with the greenway protections. It is relevant that the subject property is over 50 feet from the regulated resource area, and that a large stand of trees exist between the river and the subject property. Nevertheless, those factors do not necessitate denying the proposal or requiring a complete reconfiguration, as opponents suggest, simply because the parking area is proposed for the western portion of the property.

For the most part, the site plan shows the bulk of the interior open space on the east side of the development. That alone is consistent with EC 9.8815(1). The distance to the river, and the fact that persons travelling along the river corridor (mostly on the bike path) will not be able to see the development also militate toward approving the PUD as proposed. That being said, the Hearings Official found under EC 9.8320(3) that additional landscaping and screening is required along the eastern boundary – at least enough to adequately screen Building 2. That condition will also support compliance with EC 9.8815(1). With the condition imposed under EC 9.8320(3), the PUD will provide the maximum possible landscaped area between the development and the river.

**EC 9.8815(2): To the greatest possible degree, necessary and adequate public access will be provided to and along the river by appropriate legal means.**

### ***Staff Findings***

The applicant's plans show pedestrian and bicycle circulation within the development via interconnected paths between the buildings and bicycle parking areas. The applicant notes that there is an existing worn path along the north property line, between the Oakleigh Lane roadway and the east property line, abutting the City parklands. The applicant proposes to keep this path open, but does not explicitly show any dedications to the public to enable continued access. Right-of-way dedication is required over this area, to enable continued public access, pursuant to the concurrent PUD approval criterion EC 9.8320(5), the findings and conditions of which are incorporated by reference.

The applicant also proposes to stub a soft path to the southeast corner of the site. The segment of the internal sidewalk system that is located between the most easterly building (a bike barn) and the east property line is shown as having a graveled, rather than a paved, surface. This unimproved surface is appropriate because there are no plans or funding for construction of a public path on the City property at this location. Residents of the development will naturally want to walk across the City parkland toward the river. Parks staff state no objections or concerns. This proposed path

at least delineates a more confined direction of travel, rather than random wandering through the City's resource area.

This portion of the City property has been cultivated as a filbert orchard, which has been maintained by the former owner of the subject property, as discussed in the applicant's written statement. There appears to be an informal path between the orchard and the subject property that would direct travelers to the southerly McClure Lane right-of-way. Public Works staff confirms that the planned bicycle and pedestrian connection through the City's parkland is from McClure Lane toward the easterly West Bank Bike Path, which is a regional facility that borders the west bank of the Willamette River.

Based on the above findings, and the condition at EC 9.8320(5), public access will be provided to the river by appropriate legal means. Refer to Attachment B and C for visual representations of these findings.

#### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8815(2) and adopts those findings by this reference. The opponents are incorrect in their statement that no right-of-way has been provided for access to the bike path through Oakleigh Lane to the north.

**EC 9.8815(3): The intensification, change of use, or development will conform with applicable Willamette Greenway policies as set forth in the Metro Plan.**

#### ***Staff Findings***

Pages III-D-4 and 5 of the Metro Plan contain the Willamette Greenway policies. Of these, several policies provide direction to local governments regarding legislative decision-making and other long range planning efforts, and do not constitute mandatory approval criteria for the application. The following Metro Plan policy is potentially relevant to the proposed development, and is therefore addressed below.

*Policy D.5: New development that locates along river corridors and waterways shall be limited to uses that are compatible with the natural, scenic, and environmental qualities of those water features.*

The proposed use is appropriate in this location, as the Metro Plan designates the subject property for residential uses. The proposed development is an allowed use that requires PUD approval; staff has determined previously in this report that the proposed development is consistent with the PUD approval criteria. To the extent the above policy is applicable, the development is setback more than 200 feet from the river, with City parkland and riparian areas located between the subject property and the river which will not be impacted by the proposed development. Further, the development proposes open space along the eastern portion of the site, abutting the parkland, and has setback buildings by at least 20 feet from the east property

line. As such, the proposed residential use is compatible with the natural, scenic, and environmental qualities of the river corridor.

Based on the above findings, the proposed development is consistent with the applicable Willamette Greenway policies set out in the Metro Plan. The above criterion is met.

### ***Opponent Arguments***

Neighbors argue that a number of Metro Plan goals and objectives are not met by the proposal. The neighbors also argue that Metro Plan policies D.5 and D.8 are not met. PT-2.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8815(3) and adopts those findings by this reference. Staff's analysis of policy D.5 is sufficient to respond to the neighbors' argument concerning policy D.5. As to policy D.8, the language applies to "Willamette River Greenway plans" not to individual development proposals.

**EC 9.8815(4): In areas subject to the Willakenzie Area Plan, the intensification, change of use, or development will conform with that plan's use management considerations.**

This criterion does not apply because the area of request is not within the boundaries of the Willakenzie Area Plan.

**EC 9.8815(5): In areas not covered by subsection (4) of this section, the intensification, change of use, or development shall conform with the following applicable standards:**

- (a) Establishment of adequate setback lines to keep structures separated from the Willamette River to protect, maintain, preserve, and enhance the natural, scenic, historic, and recreational qualities of the Willamette Greenway. Setback lines need not apply to water related or water dependent activities as defined in the Oregon Statewide Planning Goals and Guidelines (OAR 660-15-000 et seq.).

### ***Staff Findings***

Outside the Willakenzie Area Refinement Plan (WAP) and the Goal 5 Water Resource (/WR) riparian conservation area (neither of which affect the subject property), there is no regulatory setback from the Willamette River. For context, the WAP establishes a 35-foot setback and the /WR establishes a 100-foot setback from the top of the bank of the Willamette River. In this location, the /WR conservation area exceeds 100 feet from the riverbank, yet is still more than 50 feet from the subject property (see Attachment A).

The existing setback, of more than 200 feet from the ordinary high water line of the Willamette River, afforded by the intervening public park, is adequate to protect and maintain the natural and scenic qualities of the Willamette Greenway. The development plan preserves the natural and scenic qualities of the site by maintaining the existing open prairie conditions along the eastern portion of the site, by setting the buildings back from the east property line by at least 20 feet and by creating common open space that will be vegetated with native grasses.

### ***Opponent Arguments***

The neighbors argue that there are no setback lines between the river corridor and the proposed PUD. PT-2.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8815(5)(a) and adopts those findings by this reference.

- (b) Protection of significant fish and wildlife habitats as identified in the Metropolitan Plan Natural Assets and Constraints Working Paper. Sites subsequently determined to be significant by the Oregon Department of Fish and Wildlife shall also be protected.**

### ***Staff Findings***

The Metropolitan Plan Natural Assets and Constraints Working Paper does not identify any significant fish and wildlife sites on the subject property. Although the Willamette River Corridor is an Anadromous Fish River that is designated as an essential Salmon Habitat by the Oregon Department of Fish and Wildlife (ODFW), the subject property is located more than 200 feet west of the ordinary high water line. No habitat protection measures appear to be required of the proposed development.

### ***Hearings Official Conclusions***

The Hearings Official generally concurs with Staff's findings for EC 9.8815(5)(b) and adopts those findings by this reference.

- (c) Protection and enhancement of the natural vegetative fringe along the Willamette River to the maximum extent practicable.**

### ***Staff Findings***

The proposal does not affect the vegetated fringe along the Willamette River, which is located more than 200 feet to the east. The regulated riparian resource conservation area is shown on

Attachment A. The existing vegetation closest to the river will be maintained as an open prairie with native grasses in common open space.

***Opponent Arguments***

The neighbors argue that the lack of landscaping along the eastern boundary violates this provision. PT-2.

***Hearings Official Conclusions***

The term "fringe" must be given some meaning in applying this provision. The neighbors interpret fringe to mean the entire greenway area. As Staff notes in the findings for EC 9.8815(1), the subject property is over 50 feet from the regulated resource area. That places the subject property well beyond the "fringe" of the Willamette River. Staff's conclusions are correct.

**(d) Preservation of scenic qualities and viewpoints as identified in the Metropolitan Plan Natural Assets and Constraints Working Paper.**

The subject property is not identified as having scenic qualities or viewpoints on the Metropolitan Plan Natural Assets and Constraints Working Paper.

**(e) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass in both rural and urban areas to the maximum extent practicable.**

Staff found, and the Hearings Official agrees, that the applicant indicates that there is an existing dirt path along the north property line, between Oakleigh Lane and the City parkland. This indicates potential public trespass on private property. The applicant proposes to keep this path open, but does not explicitly show any dedications to the public to enable continued access. Right-of-way dedication is being required over this area, to enable continued public access, pursuant to the concurrent PUD approval criterion EC 9. 8320(5), the findings and conditions of which are incorporated here by reference. Overall, development of the subject property with dwelling units would increase public safety by providing more eyes on the City parkland.

**(f) Compatibility of aggregate extraction with the purposes of the Willamette River Greenway and when economically feasible, applicable sections of state law pertaining to Reclamation of Mining Lands (ORS Chapter 517) and Removal of Material; Filling (ORS Chapter 541) designed to minimize adverse effects to water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.**

This standard does not apply because the proposal does not include aggregate extraction.

- (g) **Compatibility with recreational lands currently devoted to metropolitan recreational needs, used for parks or open space and owned and controlled by a general purpose government and regulation of such lands so that their use will not interfere with adjacent uses.**

### ***Staff Findings***

Referral comments from Public Works staff indicate no concern with the proposed development's compatibility with the City's adjacent public open space.

### ***Opponent Arguments***

The neighbors argue that the lack of landscaping along the eastern boundary violates this provision. The neighbors also argue that the size of the buildings will interfere with the public's use of the adjacent City owned open space.

### ***Hearings Official Conclusions***

The findings for EC 9.8320(3) discuss screening and landscaping along the property boundaries adjacent to the City open space. Those findings are incorporated here by reference. The additional landscaping and screening required will also address this criterion. The Hearings Official also finds it to be nearly absurd to suggest that low density residential use is incompatible with recreation along the greenway. The maps of the area in the record and presented at the hearing show that the majority of nearby lands along the greenway and the bike path are residential – and that residential uses is typically much closer to the river. I find no persuasive evidence to suggest that persons currently using the adjacent City open space will not continue to be able to use it for recreation as it is now currently used.

**EC 9.8815(6): When site review approval is required, the proposed development will be consistent with the applicable site review criteria.**

This criterion does not apply because the subject property is not zoned with the /SR Site Review Overlay, nor does the subject development require Site Review approval.

**EC 9.8815(7): The proposal complies with all applicable standards explicitly addressed in the application. An approved adjustment to a standard pursuant to provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard.**

The concurrent PUD application has been evaluated against all applicable development standards. Based on the findings and conditions provided at EC 9.8320(11)(k), which are incorporated by reference, the above criterion will be met.

## Decision

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant's request for a Planned Unit Development, Tentative Plan approval and Willamette Greenway Permit subject to the following conditions:

1. The final PUD plans shall show Building 2 located outside (moved south) of the required right-of-way dedication along the north property line.
2. Prior to final PUD approval, the applicant shall submit a report from a certified arborist confirming that the row of cedars on adjacent lands to the north can survive the construction impacts of the proposed development (and include any necessary protection measures to ensure survival). The final PUD plans shall show the location of Building 2 and any related protection measures (e.g. construction fencing for protected CRZ areas) consistent with the arborist's recommendations.
3. Prior to final PUD approval, the applicant shall revise the final site plan to show the dedication of 22.5 feet of right-of-way along the northerly boundary of the development, between the westerly boundary of the proposed development and a line that is 50 feet east of the westerly boundary, and also to show the dedication of 13 feet of right-of-way extending from the aforementioned line (the east end of the required 22.5 feet of right-of-way dedication) to a line that is 117 feet beyond (east of) the existing the existing right-of-way (for a total length of 199 feet). Additionally, the revised site plan shall show the dedication of a 13-foot wide Public Accessway along the northerly boundary, which extends from the east end of the aforementioned right-of-way to the easterly property boundary (for a total distance of 24 lineal feet).
4. Prior to final PUD approval, the applicant shall submit for review and approval by City staff and recording at Lane County Deeds and Records, a street deed which reflects the right-of-way as shown on the final site plan.
5. Prior to final PUD approval, the applicant shall dedicate a temporary emergency vehicle access easement over the on-site hammerhead and the access drive from Oakleigh Lane, and show this easement on the final PUD plans.
6. Prior to final PUD approval, the applicant shall provide documentation from EWEB, confirming that water facilities are available for the proposed development.
7. The applicant shall submit an Irrevocable Petition for public improvements in Oakleigh Lane to include paving, curbs and gutters, storm drainage, sidewalks, and street trees.
8. The final site plan shall delineate the Special Flood Hazard Area, identify Base Flood Elevation (for the entire site or for each building), and note that development of the site will be required to comply with the standards at EC 9.6707 through EC 9.6709.