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The Eugene Hearings Official 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. To arrange for these services, contact the Planning Division at (541) 682-5481.

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**WEDNESDAY, MARCH 8, 2017**  
**(5:00 p.m.)**

**I. PUBLIC HEARING ON APPEAL OF PLANNING DIRECTOR'S DECISION**

**EAST RIDGE VILLAGE PUD (MDA 16-5)**

**Decision:** Appeal of Planning Director approval to modify an approved Planned Unit Development, amending the timeline schedule for Phase 4 of East Ridge Village PUD.

**Location:** Southern terminus of Moon Mountain Drive and Laurel Hill Drive  
(Assessor's Map/Tax Lot: 18-03-03-32-01100/03100)

**Appellant:** Mary Benafel

**Lead City Staff:** Nick Gioello, Associate Planner  
Telephone: (541) 682-5453  
E-mail: [nick.r.gioello@ci.eugene.or.us](mailto:nick.r.gioello@ci.eugene.or.us)

**II. PUBLIC HEARING FOR ZONE CHANGE**

**FURTICK, DON (Z 16-5)**

**Request:** Zone change from AG Agricultural to R-1 Low Density Residential

**Location:** North of East 30<sup>th</sup> Avenue and Spring Boulevard  
(Assessor's Map/Tax Lot: 18-03-09-20-00500)

**Applicant:** Don Furtick

**Representative:** Renee Clough, Branch Engineering

**Lead City Staff:** Nick Gioello, Associate Planner  
Telephone: (541) 682-5453  
E-mail: [nick.r.gioello@ci.eugene.or.us](mailto:nick.r.gioello@ci.eugene.or.us)

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**Public Hearing Format:**

1. Staff introduction/presentation.
2. Public testimony from applicant and others in support of application.
3. Comments or questions from neutral parties.
4. Testimony from opponents.
5. Staff response to testimony.
6. Questions from Hearings Official.
7. Rebuttal testimony from applicant.
8. Closing of public hearing.

The Hearings Official will not make a decision at this hearing. The Eugene Code requires that a written decision must be made within 15 days of close of the public comment period. To be notified of the Hearings Official's decision, fill out a request form at the public hearing or contact the lead City staff as noted above. The decision will also be posted at [www.eugene-or.us/hearingsofficial](http://www.eugene-or.us/hearingsofficial)



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# Memorandum

**Date:** February 28, 2017  
**To:** Virginia Gustafason Lucker, Eugene Hearings Official  
**From:** Nicholas R. Gioello, Associate Planner, City of Eugene Planning Division  
**Subject:** Appeal of Modification East Ridge Village PUD (City File MDA 16-5)

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## **ACTION REQUESTED:**

To hold a public hearing and take action on an appeal of the Eugene Planning Director's approval for Modification of East Ridge Village PUD (MDA 16-5).

## **BACKGROUND:**

On January 10, 2017, the Planning Director approved the Modification of East Ridge Village PUD application (MDA 16-5). On January 24, 2017, Mary Benafel filed an appeal of the Director's decision. Public notice of the March 8, 2017 appeal hearing was mailed on February 16, 2017. No written public testimony has been received to date. If testimony is received after the publishing of this memo, it will be added to the record and made available to the Hearings Official.

Background information on this appeal is included in the full record of materials provided separately. For ease of reference, a vicinity map is included as Attachment A. The Modification application (MDA 16-5) is based on the Tentative PUD (Son Blaze Village PD 99-4) and Final PUD (East Ridge Village PDF 02-2) for a nine phase development, including 285 residential dwelling units. Since final PUD approval, five modifications to the PUD have been approved. In March 2014, MDA 14-1 was approved that extended the tentative subdivision applications for each remaining undeveloped phase as follows:

- Phase 6: Tentative Subdivision Application - by January 2014 with infrastructure completion in accordance with subdivision approval (Final Subdivision completion is required within 3 years of the effective date of a tentative subdivision approval).
- Phase 9: Tentative Subdivision Application - by January 2018 with infrastructure completion in accordance with subdivision approval.

- Phase 7: Tentative Subdivision Application - by April 2018 with infrastructure completion in accordance with subdivision approval.
- Phases 2, 3, 4, 8: Tentative Subdivision Application - by November 2018 with infrastructure completion in accordance with subdivision approval.

With Modification MDA 16-5, the applicant requested to modify this approved phasing schedule to extend the timeline for only Phase 4 from November 2018 to January 2020. The Planning Director concluded that the proposed planned unit development modification complied with the Eugene Code approval criteria at EC 9.8370(1) and (2), and thus granted approval of the applicant's requested timeline extension. The Director's decision is included as Attachment A.

**APPEAL ISSUES AND STAFF RESPONSE:**

To assist in determining whether to affirm, reverse, or modify the Planning Director's decision, staff has included the appellant's statement of "issues to be resolved" (*in bold italics*) below. Also see the appellant's full written statement and supporting materials included as Attachment B (also note that the references to attachments in the excerpts below are for materials included with the appellant's written statement):

- 1. Does the City of Eugene and other third parties authorized by the City of Eugene have any rights to prescriptive easements over property where such State sovereign rights have been extinguished by the Land Patents? Does the City of Eugene and other third parties authorized by the City of Eugene owe Appellant [compensation] patent royalties and indemnification from personal liability for the taking of her property through such prescriptive easements? [See Attachment A]***
- 2. Does the City of Eugene have any jurisdictional authority over Appellant's property since the affected property portion of two land patents perfected under an act of Congress in 1850 proceeded before when Eugene incorporated as a City in 1862? The controversy in this case surrounds Appellant's title to a percentage of patent grant by United States to the Appellant as one of those designated on the patent as one of the "assigns forever" under the a title by United States patent under the Oregon Donation Land Law, so called, being the act of Congress, September 27, 1850 that extinguished any prescriptive easements by the City of Eugene or other third parties on Appellant's property located at 2696 Moon Mountain Drive in the City of Eugene Oregon forever. [See Attachment B]***
- 3. The controversy in this case infringement on a title traceable to a United States patent under the Oregon Donation Land Law, being the act of Congress, September 27, 1850, before the City of Eugene incorporated. Does the City of Eugene subdivision maps comport with the requirements of the September 27, 1850 act of Congress? Are the property lines clearly defined as required by that act so that the City of Eugene can certify that Appellant's property are not being infringed on by the City or other incidental third parties?***

- 4. Appellant is in the understanding and belief that only the laws of the United States apply to her land due to the United States land patent to which title can be traced. Does the City of Eugene have to comport with the laws of the United States; including the Endanger Species Act to protect the habitat of rare threatened and endangered species e.g. the Oregon Spotted frog as listed by the United States Fish and Wildlife Services? [See Attachment C].**

The Eugene Land Use Code describes the specific process for filing an appeal in EC 9.7600 Appeal of Planning Director's Decision. As relevant here, staff emphasizes subsection (3) below:

**EC9.7605 Filing of Appeal of Planning Director's Decision.**

- (3) The appeal shall include a statement of issues on appeal and be limited to the issues raised in the appeal. The appeal statement shall explain specifically how the planning director's decision is inconsistent with applicable criteria.**

The appellant's statement raises four issues that are either related to the appellant's asserted property rights or involve legal questions about Federal regulations which are not relevant to the applicant's request for a timeline extension. Regarding EC 9.7605(3), in assessing all of the issues raised in the appeal statement, staff can find no direct references to the Director's decision for MDA 16-5, or how the Director's decision is inconsistent with the applicable criteria in EC 9.8370. As such, staff recommends that the Director's approval of the applicant's timeline request be affirmed.

**ATTACHMENTS**

- A. Vicinity Map
- B. Planning Director's Decision – MDA 16-4
- C. Written Appeal Statement and Attachments

The complete record is provided separately, and is also available on the City's website at:

<http://pdd.eugene-or.gov/LandUse/SearchApplicationDocuments?file=PDF-15-0002>

A hardcopy of the complete record can also be made 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 a reasonable cost.

**FOR MORE INFORMATION:**

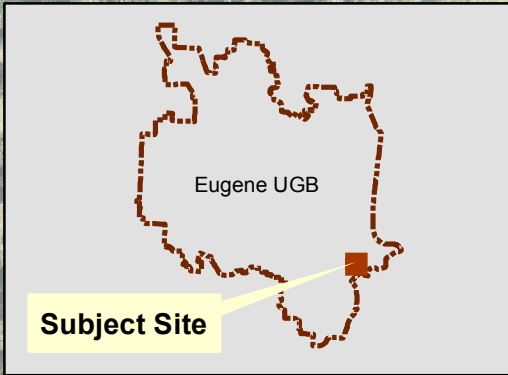
Please contact Nicholas Gioello, Associate Planner, City of Eugene Planning Division, at 541-682-5453 or via email at [nick.r.gioello@ci.eugene.or.us](mailto:nick.r.gioello@ci.eugene.or.us)






# MDA 16-5 East Ridge Village PUD - Appeal



**Phase 4 Boundary**



-  Subject Property
-  Streets
-  Taxlots



Caution:  
This map is based on imprecise  
source data, subject to change,  
and for general reference only.



2/28/2017







Atrium Building  
 99 West 10<sup>th</sup> Avenue  
 Eugene, Oregon 97401  
 Phone: 541-682-5377  
 Fax: 541-682-5572  
 www.eugene-or.gov/planning

## **FINDINGS AND DECISION OF THE PLANNING DIRECTOR:**

### APPROVAL OF A PLANNED UNIT DEVELOPMENT MODIFICATION FOR EAST RIDGE VILLAGE (MDA 16-5)

**Application Summary:**

Approval to modify a planned unit development, amending the timeline schedule for Phase 4 of East Ridge Village PUD.

**Applicant:**

Holt Group, Inc

**Applicant's Representative:**

J. Michael Poissant. (AKS Engineering & Forestry) 503-400-6028

**Lead City Staff:**

Nicholas Gioello, Associate Planner, Eugene Planning Division, (541) 682-5453

**Subject Properties/Zoning/Location:**

Tax Lots 1100 and 3100 of Assessor's Map 18-03-03-32; Tax Lot 1100 zoned GO/R-1/R-2/PD; Tax Lot 3100 zoned R-1/PD/WR/WQ; Located south of the terminus of Brackenfern Road.

**Relevant Dates:**

Application submitted on October 24, 2016; application was deemed complete on November 23, 2016; decision granting approval issued on January 10, 2017.

**Background and Present Request:**

Previously, a Tentative PUD (PD 99-4) and Final PUD (PDF 02-2) for a nine phase development, including 285 residential dwelling units with common open space, a park and commercial land, was granted in September of 2002. Since then, five modifications to the PUD have been approved. MDA 04-5 modified Phase 5 and MDA 06-7 modified Phase 7 and approved a new timeline schedule. In 2009, the Eugene City Council passed an ordinance (Ord. 20440) which extended the approved timeline by an additional 3 years. In June 2011, an additional modification was approved (MDA 11-6) which set a phased timeline schedule for subdivision application deadlines as an exhibit to the performance agreement. In March 2014, a fourth modification was approved (MDA 14-1) that extended the tentative subdivision applications for each phase. In September 2016 a fifth modification was approved (MDA 15-3) to eliminate one

road, extend one road and the reconfiguration of various lot lines and the reconfiguration of the phase boundaries associated with the modified lot lines.

With this current modification, the applicant is requesting to modify the approved phasing schedule to extend the timeline of Phase 4 from November 2018 to January 2020:

Given the minor alteration to the timeline for Phase 4, the proposal qualifies for a modification, rather than requiring a new planned unit development, as evaluated in greater detail relative to the applicable approval criteria below.

**Public Notice and Referrals:**

Public notice of the modification application was mailed on November 23, 2016, in accordance with procedural requirements of the Eugene Code (EC). No public comments were received in response to the public notice for a Modification to the timeline for Phase 4.

Since the modification is only intended to extend the timeline for the subdivision application of phase 4 of the development, referral comments were not requested since there would be no effect on various service providers and City departments with the approval of the modification. The following evaluation includes findings of compliance with the applicable criteria as provided in EC 9.8370.

**Evaluation:**

The relevant procedures for this Type II land use application are addressed at EC 9.7200 through EC 9.7230. In accordance with those application procedures, the following evaluation summarizes the City's review of the applicant's proposed modification in the context of the relevant approval criteria at EC 9.8370. The applicable approval criteria are included below in **bold**, with findings addressing the justification for the decision based upon those criteria:

**EC 9.8370(1): The proposed modification is consistent with the conditions of the original approval.**

The PUD was originally approved for Tentative PUD (PD 99-4) with 23 conditions of approval. The Final PUD for East Ridge Village (PDF 02-2) established the initial time schedule in 2003. Subsequently, two modifications, MDA 04-5, Phase 5 and MDA 06-7, Phase 7 established additional conditions of approval and an updated timeline schedule was approved as part of MDA 06-7. This timeline schedule was modified by MDA 11-6 in September 2011, and again by MDA 14-1 in March 2014, which set forth the following timeline schedule which currently governs the development of the project:

- Phase 6: Tentative Subdivision Application – by November 2015 with infrastructure completion in accordance with subdivision approval (Final Subdivision completion is required within 3 years of the effective date of a tentative subdivision approval).
- Phase 9: Tentative Subdivision Application – by January 2018 with infrastructure completion in accordance with subdivision approval.

- Phase 7: Tentative Subdivision Application – by April 2018 with infrastructure completion in accordance with subdivision approval.
- Phases 2, 3, 4, 8: Tentative Subdivision Application – by November 2018 with infrastructure completion in accordance with subdivision approval.

The applicant in this instance is asking to modify the Phase 4 submittal date from November 2018 to January 2020. No other changes to the timeline are requested.

Since the proposal is to extend the timeline expiration, no changes to the approved site plans or applicable conditions of approval are proposed. Since the applicable conditions of the original PUD approval and subsequent modifications are to be complied with at the time of development, the proposed timeline modification is consistent with the conditions of approval.

Based on these findings, this criterion is met.

**EC 9.8370(2): The proposed modification will result in insignificant changes in the physical appearance of the development, the use of the site, and impact on the surrounding properties.**

The proposed modification does not involve any changes to the physical appearance of the development, use of the site, or impact on surrounding properties. The proposed modification will only extend the timeline as established within the executed performance agreement for the original approval. Accordingly, no further analysis or additional findings of compliance with the applicable criteria are necessary.

Based on these findings, the proposed modification will result in no changes in the physical appearance of the development, the use of the site, and impact on the surrounding properties.

**Decision:**

Based upon the findings set forth above, it is concluded that the proposed planned unit development modification (MDA 16-5) complies with the applicable approval criteria set forth at **EC 9.8370**. Approval of the applicant's requested modification is therefore granted. As approved, the phasing schedule timeline will be amended as follows:

- Phase 6: Tentative Subdivision Application – by November 2015 with infrastructure completion in accordance with subdivision approval (Final Subdivision completion is required within 3 years of the effective date of a tentative subdivision approval).
- Phase 9: Tentative Subdivision Application – by January 2018 with infrastructure completion in accordance with subdivision approval.
- Phase 7: Tentative Subdivision Application – by April 2018 with infrastructure completion in accordance with subdivision approval.
- Phases 2, 3 and 8: Tentative Subdivision Application – by November 2018 with

infrastructure completion in accordance with subdivision approval.

- Phase 4: Tentative Subdivision Application – by January 2020 with infrastructure completion in accordance with subdivision approval.

**Post-Approval:**

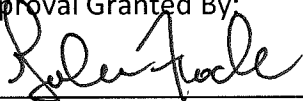
Pursuant to EC 9.7220(4), the Planning Director’s decision regarding this Type II application is effective on the 13<sup>th</sup> day after notice of this decision is mailed, unless appealed according to the procedures in EC 9.7605. Once the decision becomes effective, pursuant to EC 9.7230, the Planning Director’s approval of this planned unit development modification shall remain effective for 36 months. Within that time, the applicant shall execute an updated performance agreement reflecting this approved modification, in accordance with EC 9.7025 Performance Agreements.

As stated in EC 9.7230(5), prior to the expiration date, the applicant may submit another modification application requesting a change to the commencement or expiration time period. It is also noted that this approval does not relieve the applicant of complying with other applicable provisions of the Eugene Code or Oregon Revised Statutes which may govern the development of the subject property.

Approval Date:

1/10/17

Approval Granted By:



Gabriel Flock, Senior Planner  
For the Eugene Planning Director



## APPEAL OF PLANNING DIRECTOR DECISION

This appeal form applies to appeals of interpretation of this Land Use Code made according to EC 9.0040(1) and to appeals to all Type II land use applications. The appeal of the Planning Director's decision provides for a review of an administrative decision by a higher review authority specified in this Land Use Code. The Planning Director's decision may be affirmed, reversed, or modified.

**Please check one of the following:**

- |   |   |
|---|---|
| <input type="checkbox"/> Adjustment Review, Minor                   | <input type="checkbox"/> Modification of a Willamette Greenway      |
| <input type="checkbox"/> Adjustment Review, Major                   | <input type="checkbox"/> Partition Tentative                        |
| <input type="checkbox"/> Code Interpretation                        | <input type="checkbox"/> Partition Final                            |
| <input type="checkbox"/> Hazardous Materials Review                 | <input type="checkbox"/> PUD Final                                  |
| <input type="checkbox"/> Historic Property Alteration               | <input type="checkbox"/> Site Review                                |
| <input type="checkbox"/> Historic Property Demolition               | <input type="checkbox"/> Standards Review                           |
| <input type="checkbox"/> Historic Property Move                     | <input type="checkbox"/> Subdivision Tentative                      |
| <input type="checkbox"/> Modification of a Conditional Use Permit   | <input type="checkbox"/> Subdivision Final                          |
| <input checked="" type="checkbox"/> Modification of a PUD Tentative | <input type="checkbox"/> Traffic Impact Analysis                    |
| <input type="checkbox"/> Modification of a PUD Final                | <input type="checkbox"/> Vacation Improved Public R-O-W             |
| <input type="checkbox"/> Modification of a Site Review              | <input type="checkbox"/> Vacation Improved Public Easement          |
| <input type="checkbox"/> Modification of a Standards Review         | <input type="checkbox"/> Unimproved Public R-O-W with Re-dedication |
| <input type="checkbox"/> Modification of a Subdivision Plan         | <input type="checkbox"/> Variance                                   |

**City File Name:** File Name: East Ridge Village

**City File Number:** Number: PUD (MDA 16-5)

**Date of Planning Director Decision:** January 12, 2017

**Date Appeal Filed:** January 23, 2017

(This date must be within 12 days of the date of the mailing of the Planning Director's decision.)

- Attach a written appeal statement. The appeal statement shall include a written statement of issues on appeal and be limited to the issues raised in the appeal. The appeal statement shall explain specifically how the Planning Director's decision is inconsistent with applicable criteria. 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.
- A filing fee must accompany an appeal of a Planning Director decision, with some exceptions for neighborhood groups. 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)

[www.eugene-or.gov/planning](http://www.eugene-or.gov/planning)

Planning & Development  
 Planning Division  
 99 W. 10<sup>th</sup> Avenue, Eugene, OR 97401  
 P 541.682.5377 \* F 541.685.5572

Updated: October, 2012

Page 1 of 2

**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 planning director decision, and state that the information supplied is as complete and detailed as is currently possible, to the best of my (our) knowledge.

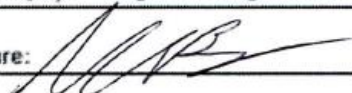
**APPELLANT:**

Name (print): Mary Benafel Phone: ecr963@gmail.com

Company/Organization: \_\_\_\_\_

Address: 2696 Moon Mountain Drive

City/State/Zip: Eugene Oregon 97403

Signature: 

**APPELLANT'S REPRESENTATIVE:**

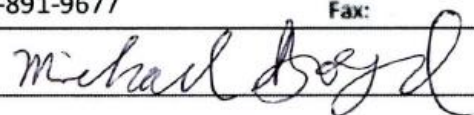
Name (print): Michael E. Boyd *President CARE*

Company/Organization: CALifornians for Renewable Energy, Inc. (CARE)

Address: 5439 Soquel Drive

City/State/Zip: Soquel/CA/95073 E-mail (if applicable): boyd.michaele@gmail.com

Phone: 408-891-9677 Fax: \_\_\_\_\_

Signature: 

IF this appeal is being filed by the affected recognized neighborhood association, complete the following:

Name of Association: CALifornians for Renewable Energy, Inc. (CARE)

See Attachment D - Bylaws of CARE

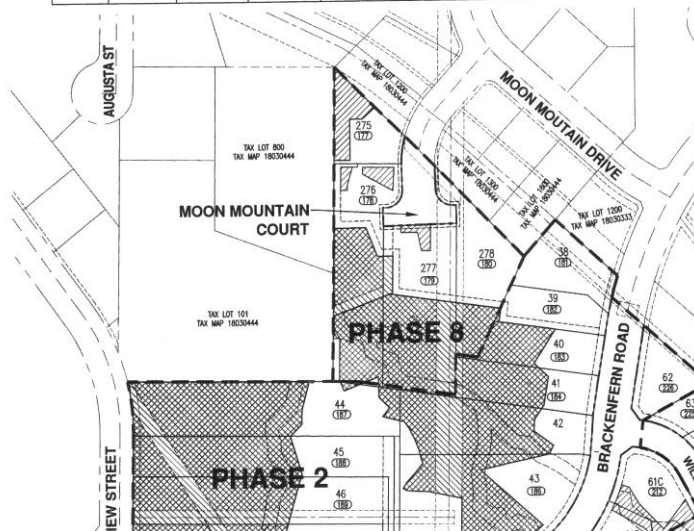
Mary C. Benafel  
 2696 Moon Mountain Drive  
 Eugene OR, 97401  
 Phone: (541) 343-1600  
 E-mail: ecr963@gmail.com

**Appeal of Planning Director’s Decision approving a modification to an approved planned unit development which amends the timeline schedule for Phase 4 of East Ridge Village File Name/Number: East Ridge Village PUD (MDA 16-5)**

On January 10, 2017, the Eugene Planning Director approved a modification to an approved planned unit development which amends the timeline schedule for Phase 4 of East Ridge Village.

An excerpted plot map showing Phase 8 adjacent to Appellants property is shown below.

EAST RIDGE PUD MODIFICATION				
PHASE	APPROVED BUILDING LOTS	MODIFIED BUILDING LOTS	LOT QUANTITY CHANGES	NOTES:
2	26	33	7	REVISED LOT CONFIGURATION, ADDED SEVEN BUILDING LOTS, REMOVED WOODRUSH LANE
3	15	13	-2	MOVED FIVE BUILDING LOTS (74-78) TO PHASE 4, REVISED LOT CONFIGURATION, LENGTHEN WILLOWROCK ROAD, ADDED THREE BUILDING LOTS
4	25	23	-2	ADDED EIGHT BUILDING LOTS (74-78) AND (249-251), ADDED THE COMPLETION OF PINEROCK DRIVE, ADDED THE EXTENSION OF ROCKROSE LANE, REDUCED THE NUMBER OF BUILDING LOTS BY TEN
7	39	36	-3	MOVED THREE BUILDING LOTS (249-251) TO PHASE 4
8	4	4	0	REVISED LOT CONFIGURATION
Total	109	109	0	



Phases 2, 3,4, 7, & 8 Modified PUD Phasing Plan  
 [Excerpted] East Ridge PUD Modification  
 Eugene Tax Lot 3100 Oregon Lane County Tax Map 18-03-03-33

Pursuant to Eugene Code Section 9.7605 for Filing of Appeal of Planning Director’s Decision (1) Within 12 days of the date of the mailing of the planning director’s decision, the decision may be appealed to the hearings

official or historic review board according to the appeal review authority specified in Table 9.7055 Applications and Review Authorities by the following (f) A person adversely affected or aggrieved by the initial decision, can file an appeal (2) The appeal shall be submitted on a form approved by the city manager and accompanied by a fee established pursuant to EC Chapter 2. The appeal of a Type II decision shall be a de novo review at which new evidence may be presented. (3) The appeal shall include a statement of issues on appeal and be limited to the issues raised in the appeal. The appeal statement shall explain specifically how the planning director's decision is inconsistent with applicable criteria. (Section 9.7605, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

### Statement of Issues

This appeal relates to the Phases 2, 3,4, 7, & 8 Modified PUD Phasing Plan [Excerpted] East Ridge PUD Modification Eugene Tax Lot 3100 Oregon Lane County Tax Map 18-03-03-33.

Appellant has a pending appeal against the City of Eugene and the siting council members individually before the United State Court of Appeal for the Ninth Circuit, in Case 16-35827 Mary Benafel v. United States at al. pending before court. Pursuant to EC 9.7605 (1)(f) Any person who is adversely affected or aggrieved by this decision, or who is mailed this written notice, may appeal the decision. Additionally, Appellant's pending appeal against the City of Eugene constituted notice in this project's original application.

Issues to be resolved:

1. Does the City of Eugene and other third parties authorized by the City of Eugene have any rights to *prescriptive easements* over property where such State sovereign rights have been extinguished by the Land Patents? Does the City of Eugene and other third parties authorized by the City of Eugene owe Appellant [compensation] patent royalties and indemnification from personal liability for the taking of her property through such prescriptive easements? [See attachment A]
2. Does the City of Eugene have any jurisdictional authority over Appellant's property since the affected property portion of two land patents perfected under an act of Congress in 1850 proceeded before when Eugene incorporated as a City in 1862? The controversy in this case surrounds Appellant's title to a percentage of patent grant by United States to the Appellant as one of those designated on the patent as one of the "*assigns forever*" under the a title by United States patent under the Oregon Donation Land Law, so called, being the act of Congress, September 27, 1850 that extinguished any prescriptive easements by the City of Eugene or other third parties on Appellant's property located at 2696 Moon Mountain Drive in the City of Eugene Oregon forever. [See Attachment B]
3. The controversy in this case infringement on a title traceable to a United States patent under the Oregon Donation Land Law, being the act of Congress, September 27, 1850, before the City of Eugene incorporated. Does the City of Eugene subdivision maps comport with the requirements of the September 27, 1850 act of Congress? Are the property lines clearly defined as required by that act so that the City of Eugene can certify that Appellant's property are not being infringed on by the City or other incidental third parties?
4. Appellant is in the understanding and belief that only the laws of the United States apply to her land due to the United States land patent to which title can be traced. Does the City of Eugene have to comport with the laws of the United States; including the Endanger Species Act to protect the habitat of rare threatened and endangered species e.g. the Oregon Spotted frog as listed by the United States Fish and Wildlife Services? [See Attachment C].

Appellant respectfully request the City of Eugene grant a fee waiver for this appeal based on Appellant's long term membership in a community group known as Californians for Renewable Energy, Inc. (CARE). Under CARE's Articles of Incorporation as a 501 (c)(3) non-profit corporation it is established for the purposes of appearing before administrative bodies in behalf of its members and community groups specifically. A copy of CARE's Bylaws is included. [See attachment D]

On Issue 1 the photos in Attachment A shows [in order of the pictures] the purported property line marker for Appellant's property as taken from the City's prescriptive easement on Appellant's property know as Moon Mountain Court. The second photo shows the City's prescriptive easement on Appellant's property in concert with Williams NW for a pig launcher and natural gas pipeline without indemnification nor compensation or royalties paid by either party to the Appellant. The third photo shows Appellant's residence. The fourth photo



shows the street and sidewalk which are two different prescriptive easements on the front of Appellant's property. Without established compliance with the requirements of the act of Congress, September 27, 1850 that the properties be surveyed; what evidence does the City have for those shown on the plot plan are the true property lines for Appellant's property?

On Issue 2 there are two certified copies of United States land patents that show they can be traced back to Appellant's title as shown on the land maps of the BLM office that lists the transfer of title as to the "assigns forever" like the Appellant here, as specifically stated in the text of the land patents as shown in Attachment B.

On Issue 3 Appellant is of the understanding and belief that the City of Eugene current plan is not in compliance with the act of Congress known as the Endangered Species Act, nor has the City of Eugene purported to provide any listed schedule of compliance for the act. Attachment C shows the entire City of Eugene is an area of habitat for the threatened Oregon Spotted Frog. Appellant asks the City provide any evidence of compliance with that act of Congress in advance of any hearing on this matter.



Michael E. Boyd President, CARE  
Californians for Renewable Energy, Inc. (CARE)  
5439 Soquel Drive  
Soquel, CA 95073  
Phone: (408) 891-9677  
E-mail: boyd.michaele@gmail.com

January 23, 2017

**Attachment A**









**Attachment B**

Accession	Names	Date	Doc #	State	Meridian	Twp - Rng	Aliquots	Sec. #	County
ORRAA 008272	SWEET, SARAH M, SWEET, ZARA	5/20/1874	1798	OR	Willamette	017S - 003W		33	Lane
						017S - 003W		34	Lane
						018S - 003W		3	Lane
						018S - 003W		4	Lane
						018S - 003W		9	Lane
						018S - 003W		10	Lane



Book 10 p. 100 July 25 1874

# THE UNITED STATES OF AMERICA,

To all to whom these Presents shall come, Greeting:

**Whereas**, There has been deposited in the General Land Office of the United States a Certificate numbered one thousand seven hundred and ninety-eight of the Register and Receiver at Roseburg, Oregon, whereby it appears that under the provisions of the Act of Congress approved the 27th day of September, 1850, entitled "An Act to create the office of Surveyor General of the Public Lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands," and the legislation supplemental thereto, the claim of **Zeura Sweet and his wife Sarah M. Sweet of Lane County, Oregon, Settlement No. 3234** has been established to a donation of **one acre, or six hundred and forty-one** of land, and the same has been surveyed and designated as claim number sixty-eight having parts of sections thirty-three and thirty-four in Township seventh North of Range three West and Township eighth South of Range three West being part of section according to the Official Plat of Survey returned to the General Land Office by the Surveyor General, being bounded and described as follows to wit: Beginning at a point two chains and fifty-six links South and nineteen chains and sixty-six links East of the corner to sections three, four, seven and ten in Township eighth South of Range three West and seven-seventy chains West sixty-four chains and forty-one links; thence North one hundred and six chains and five links; thence North seventy-eight degrees and thirty minutes East fifteen chains and fifty links; thence South sixty-two degrees East eighteen degrees and sixty links; thence North seventy-three degrees and thirty minutes East twenty-eight chains and fifty links; thence South seventy chains and fifty links; thence East five chains and thence North thirty-eight chains to the place of beginning in the district of land surveyed in 1854 at Roseburg, Oregon, containing one hundred and forty-two acres and thirty-five hundredths of an acre.

**Now know ye**, That the United States of America, in consideration of the premises, and in conformity with the provisions of the act aforesaid, have given and granted, and by these presents do give and grant, unto the said Zeura Sweet and to his heirs the **Seventy** and unto his wife the said Sarah M. Sweet and to her heirs the **thirty** parts of the tract of land above described

**To have and to hold** the said tract, with the appurtenances, unto the said Zeura Sweet and his wife Sarah M. Sweet and to their heirs and assigns forever their respective

**In testimony whereof**, **J. Mysses J. Grant** President of the United States, have caused these Letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

**Given** under my hand, at the City of Washington, this **twentieth** day of **July**, in the year of our Lord one thousand eight hundred and **seventy-four**, and of the Independence of the United States the **thirty-ninth**

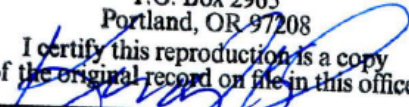
By the President: **U. S. Grant**  
By **L. D. Williamson** Secretary.  
**L. C. Sippincott**, Recorder of the General Land Office.

423119



Bureau of Land Management  
Oregon State Office  
P.O. Box 2965  
Portland, OR 97208

I certify this reproduction is a copy  
of the original record on file in this office.

  
\_\_\_\_\_  
Authorize Signature  
PAGE 1 OF 1 DATE 1/13/17



## Search Results - BLM GLO Records

Page 1 of 1

Accession	Names	Date	Doc #	State	Meridian	Twp - Rng	Aliquots	Sec. #	County
<b>OROCIA 008122</b>	SMITH, NANCY A, SMITH, WILLIAM	3/8/1866	1341	OR	Willamette	017S - 003W		32	Lane
						017S - 003W		33	Lane
						018S - 003W		4	Lane
						018S - 003W		5	Lane
						018S - 003W		8	Lane
						018S - 003W		9	Lane

[https://glorerecords.blm.gov/results/default\\_pf.aspx?searchCriteria=type=patent|bsn=OROC...](https://glorerecords.blm.gov/results/default_pf.aspx?searchCriteria=type=patent|bsn=OROC...) 1/13/2017

THE UNITED STATES OF AMERICA

*William Jackson*

To all to whom these presents shall come, Greeting.

Whereas, There has been deposited in the GENERAL LAND OFFICE of the UNITED STATES a Certificate numbered Three hundred and fifty one of the Register and Receiver at Oregon City, Oregon, whereby it appears that under the provisions of the act of Congress approved the 9th day of September 1850, entitled "An act to amend the office of Surveyor General of the Public Lands in Oregon and to provide for the survey and to make donations to settlers of the said public lands," and the legislative supplemental thereto, the said William Jackson and his wife Elizabeth Lady, of Donkey, Oregon, had obtained to a donation of *two* sections, of *sixty-one* and *forty* acres of land, and that the same has been surveyed and designated by number fifty two being part of section *one* Township *one* North Range *one* East, of Range One East,

according to the Official Plat of Survey returned to the GENERAL LAND OFFICE by the SURVEYOR GENERAL, being bounded and divided as follows, to wit: Beginning at the South-East corner of said section *one* and running thence North *thirty* degrees and *thirty* minutes and *thirty* seconds to a chain and fifty seven links, thence North *thirty* degrees and *thirty* minutes and *thirty* seconds to a chain and fifty seven links, thence North *thirty* degrees and *thirty* minutes and *thirty* seconds to a chain and fifty seven links, thence North *thirty* degrees and *thirty* minutes and *thirty* seconds to a chain and fifty seven links, thence North *thirty* degrees and *thirty* minutes and *thirty* seconds to a chain and fifty seven links, and thence South *thirty* degrees and *thirty* minutes and *thirty* seconds to the place of beginning in the district of *Donkey*, Oregon, containing *two* hundred and *seventy* seven acres.

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the provisions of the act aforesaid, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT, unto the said William Jackson and to his heirs the South half and *one* fourth part of the East half of section *one*, the North half of the tract of land above described. To have and to hold the said tract, with the appurtenances, unto the said William Jackson and to his heirs forever, their heirs and assigns forever, their respective portions as aforesaid.

In testimony whereof, I, Andrew Johnson, PRESIDENT OF THE UNITED STATES, have caused these Letters to be made Patent, and the SEAL of the GENERAL LAND OFFICE to be hereunto affixed.

GIVEN under my hand, at the CITY OF WASHINGTON, this nineteenth day of March, in the year of our Lord one thousand eight hundred and fifty six, and of the INDEPENDENCE OF THE UNITED STATES the nineteenth.

BY THE PRESIDENT: Andrew Johnson  
By Edwin D. Neill, Secretary  
J. B. Granger, Recorder of the General Land Office

Bureau of Land Management  
Oregon State Office  
P.O. Box 2965  
Portland, OR 97208

I certify this reproduction is a copy  
of the original record on file in this office.

Authorize Signature

PAGE 1 OF 1 DATE

1/13/17



To all to whom these presents shall come; GREETING.

Whereas, there has been deposited in the GENERAL LAND OFFICE of the UNITED STATES a certain... (The rest of the text in this block is extremely faint and illegible due to fading and bleed-through from the reverse side of the document.)

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the provisions of the act aforesaid, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT, unto the said... (The names and details in this block are mostly illegible.)

In testimony whereof, I, Andrew Johnson, PRESIDENT OF THE UNITED STATES, have caused these Letters to be made Patent, and the SEAL of the GENERAL LAND OFFICE to be hereunto affixed.

GIVEN under my hand, at the CITY OF WASHINGTON, this 20th day of March, in the year of our Lord one thousand eight hundred and seven, and of the INDEPENDENCE OF THE UNITED STATES the seventh.

BY THE PRESIDENT, Andrew Johnson  
By [Signature] Secretary,  
By [Signature] Register of the General Land Office.

(L.S.)

Bureau of Land Management  
Oregon State Office  
P.O. Box 2965  
Portland, OR 97208

I certify this reproduction is a copy  
of the original record on file in this office.

  
\_\_\_\_\_  
Authorize Signature

PAGE 1 OF 1 DATE 1/13/17



**Attachment C**



[ECOS](#) / Species Profile for Oregon Spotted frog (*Rana pretiosa*)

# Oregon Spotted frog (*Rana pretiosa*)

[Federal Register](#) | [Recovery](#) | [Critical Habitat](#) | [Conservation Plans](#) | [Petitions](#) | [Life History](#)

Taxonomy: [View taxonomy in ITIS](#)

**Listing Status:** Threatened



**Where Listed: WHEREVER FOUND**

- **States/US Territories** in which the Oregon Spotted frog, Wherever found is known to or is believed to occur: [California](#) , [Oregon](#) , [Washington](#)
- **US Counties** in which the Oregon Spotted frog, Wherever found is known to or is believed to occur: [View All](#)
- **USFWS Refuges** in which the Oregon Spotted frog, Wherever found is known to occur: Billy Frank Jr. Nisqually National Wildlife Refuge, Conboy Lake National Wildlife Refuge, Klamath Marsh National Wildlife Refuge
- **Countries** in which the the Oregon Spotted frog, Wherever found is known to occur: Canada

**Current Listing Status Summary**

Status	Date Listed	Lead Region	Where Listed
<span style="background-color: #FFD700; padding: 2px;">Threatened</span>	09/29/2014	<a href="#">Pacific Region (Region 1)</a>	Wherever found

**Species Occurrence**

Population(s)

*Wherever found*

**Attachment D**

**BYLAWS OF**  
**Californians for Renewable Energy**  
 (Adopted August 29, 1999)  
 (Amended April 26, 2001)

**ARTICLE I - NAME, PURPOSE**

Section 1: The name of the organization shall be **Californians for Renewable Energy**.

Section 2: **Californians for Renewable Energy** is organized exclusively for charitable, scientific and educational purposes. The specific purposes of the corporation are:

1. To supply on a nonprofit basis both nonprofessional and professional legal assistance to planning, conservation groups, small business customers, residential customers, small business and residential renewable energy self suppliers, and neighborhood groups, in regards to new energy projects in the state of California
2. To engage on a nonprofit basis in research and information dissemination with respect to legal rights in a healthy environment by giving legal advice, appearing before administrative bodies, and enforcing environmental laws through court actions.
3. To employ legal counsel, technical experts, and associated staffing on a professional or contractual basis to carry out these purposes.

**ARTICLE II - MEMBERSHIP**

Section 1: Membership shall consist of the members of the board of directors, contributors, and/or other person as approved by a majority vote of the board of directors. [As amended 4/26/01 Member dues are a one-time charge of \$5 per residential or small business ratepayer, or self-supplier. Group member dues are a one-time charge of \$50.]

**ARTICLE III - ANNUAL MEETING**

Section 1: Annual Meeting. The date of the regular annual meeting of the board and membership shall be set by the Board of Directors who shall also set the time and place.

Section 2: Quorum of Annual Meeting. To obtain a quorum at least ten percent of the membership, and fifty percent of the Board members, must attend before business can begin to be transacted or motions made or passed.

Section 3: Regular Meeting. The date of the regular meeting of the board shall be set by the Board of Directors who shall also set the time and place.

Section 4: Special Meetings. The President or the Executive Committee may call special meetings.

Section 5: Notice. Notice of each meeting shall be given to each voting member, by mail, not less than ten days before the meeting.

**ARTICLE IV - BOARD OF DIRECTORS**

Section 1: Board Role, Size, and Compensation. The Board is responsible for overall policy and direction of the Legal Counsel, and delegate's responsibility for day-to-day operations to the staff, Director and committees. The Board shall have up to nine and not fewer than five members. The board receives no compensation other than reasonable expenses. Officers may be compensated if funding is available.

Section 2: Meetings. The Board shall normally meet at least every three months, at an agreed upon time and place, but at least once per year at the annual membership meeting.

Section 3: Board Elections. Election of new directors or election of current directors to a second term will occur as the first item of business at the annual meeting of the corporation. Directors will be elected by a majority vote of the current membership present at the annual meeting or casting a mail in ballot.

Section 4: Terms. All Board members shall serve two-year terms, but are eligible for re-election.

Section 5: Quorum. A quorum must be attended by at least fifty percent of the Board members before business can be transacted or motions made or passed.

Section 6: Notice. An official Board meeting requires that each Board member have written notice two weeks in advance.

Section 7. Officers and Duties. There shall be four officers of the Board consisting of a President, Vice President, Secretary and Treasurer. Their duties are as follows:

1. The President shall convene regularly scheduled Board meetings, shall preside or arrange for other members of the executive committee to preside at each meeting in the following order: Vice-President, Secretary and Treasurer.
2. The Vice-President will Chair committees on special subjects as designated by the board.
3. The Secretary shall be responsible for keeping records of Board actions, including overseeing the taking of minutes at all board meetings, sending out meeting announcements, distributing copies of minutes and the agenda to each Board member, and assuring that corporate records are maintained.
4. The Treasurer shall make a report at each Board meeting. Treasurer shall President the finance committee, assist in the preparation of the budget, help develop fundraising plans, and make financial information available to Board members and the public.

Section 8: Vacancies. When a vacancy on the Board exists, the Secretary two weeks in advance of a Board meeting may receive nominations for new members from present Board members, or a petition of five percent of the membership. These nominations shall be sent out to Board members, and the membership, with the regular Board meeting announcement, to be voted upon at the next Board meeting. These vacancies will be filled only to the end of the particular Board member's term.

Section 9: Resignation, Termination and Absences. Resignation from the Board must be in writing and received by the Secretary. A Board member shall be dropped for excess absences from the Board if s/he has three unexcused absences from Board meetings in a year. A Board member may be removed for other reasons by a three-fourths vote of the remaining directors.

Section 10: Special Meetings. Special meetings of the Board shall be called upon the request of the President or one-third of the Board. The Secretary shall send out notices of special meetings to each Board member postmarked two weeks in advance.

#### ARTICLE V - COMMITTEES

Section 1: The Board may create committees as needed, such as fundraising, project review, etc. The Board President appoints all committee Chairs.

Section 2: The four officers serve as the members of the Executive Committee. Except for the power to amend the Articles of Incorporation and Bylaws, the Executive Committee shall have all of the powers and authority of the Board of Directors in the intervals between meetings of the Board of Directors, subject to the direction and control of the Board of Directors.

Section 3: Finance Committee. The Treasurer is Chair of the Finance Committee, which includes three other Board members and other members as appointed by a majority of the board. The Finance Committee is responsible for developing and reviewing fiscal procedures, a fundraising plan, and annual budget with staff and other Board members. The Board must approve the budget, and all expenditures must be within the budget. The Board or the Executive Committee must approve any major change in the budget. The fiscal year shall be the calendar year. Annual reports are required to be submitted to the Board showing income, expenditures and pending income. The financial records of the organization are public information and shall be made available to the membership, Board members and the public.

#### ARTICLE VI – AMENDMENTS

Section 1: These Bylaws may be amended when necessary by a two-thirds majority of the Board of Directors. Proposed amendments must be submitted to the Secretary to be sent out with regular Board announcements.

These Bylaws were approved at a meeting of the Board of Directors of **Californians for Renewable Energy** on August 29, 1999.



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## **ZONE CHANGE STAFF REPORT**

### **Applicant/File Name (Number):**

Don Furtick (Z 16-5)

### **Applicant's Representative:**

Renee Clough; Branch Engineering, Inc., Phone: 541-746-0637

### **Applicant's Request:**

Rezone subject property from AG Agricultural to R-1 Low-Density Residential

### **Subject Property:**

Tax Lot 500 of Assessor's Map 18-03-09-20; Located north of the intersection of East 30<sup>th</sup> Avenue and Spring Boulevard

### **Relevant Dates:**

Application submitted on November 30, 2016; application deemed complete on February 2, 2017; public hearing scheduled for March 8, 2017.

### **Lead City Staff:**

Nicholas R. Gioello, Associate Planner, Eugene Planning Division, Phone: (541) 682-5453

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### **Purpose of Staff Report**

Staff reports provide community members an opportunity to learn more about the land use request and to review staff analysis of the application. Staff reports are available seven days prior to the public hearing (see EC 9.7320). The staff report provides only preliminary information and recommendations. The Hearings Official will also consider additional public testimony and other materials presented at the public hearing before making a decision on the application. The Hearings Official's written decision on the application is generally made within 15 days following close of the public record, following the public hearing (see EC 9.7330). For reference, the quasi-judicial hearing procedures applicable to this request are described at EC 9.7065 through EC 9.7095.

### **Background and Present Request**

The subject property is approximately 1.65 acres in size and is located north of the intersection of East 30<sup>th</sup> Avenue and Spring Boulevard. A vicinity map is included as Attachment A. In 2016, the applicant proposed to annex the subject property into the City of Eugene. The annexation of the property was approved by City Council and became effective on January 23, 2017 (see A 16-10).

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The present request is for zone change approval from the current Agricultural (AG) zone to Low-Density Residential (R-1). The Agricultural (AG) zoning of the property is a placeholder zone, allowing interim uses until a time at which land is converted to urban development (see EC 9.2000 Purpose of AG Agricultural Zone). The applicant's request to rezone the property to Low-Density Residential (R-1) would provide zoning to allow for urban development.

As discussed in the following evaluation, the Metro Plan diagram designates the subject property for Low Density Residential uses. The proposed R-1 zoning implements this plan designation.

### **Referrals/Public Notice**

On February 2, 2017, staff provided information concerning the application to other appropriate City departments, public agencies, and the affected neighborhood group. Referral comments were received from the City's Public Works Department; these comments are incorporated into this report and are also available in the application file for reference.

Staff mailed notice of the proposed zone change to the Oregon Department of Land Conservation and Development (DLCD) on February 3, 2017. On February 6, 2017, staff mailed public notice of the proposed zone change and the hearing date to owners and occupants within 500 feet of the subject property. Four public notices were also posted as required on the subject property and within 500 feet of the subject property.

One adjacent property owner (Patrick Holleran) has submitted written testimony regarding the proposal (see Attachment B). Mr. Holleran expressed concern with the lack of time from the public notice for preparation of testimony for a public hearing. Staff notes that EC 9.7315 Type III Application Procedures requires public notice mailed 30 days prior to the public hearing. Public notice was mailed on February 6, 2017 which is 30 days prior to the March 8<sup>th</sup> public hearing. Mr. Holleran also expressed concern that the Northeast Neighbors neighborhood association was listed on the public notice as the affected neighborhood instead of the Laurel Hill Valley Citizens. Staff has confirmed that although the public notice did list the incorrect neighborhood association, the notice was mailed to the Laurel Hill Valley Citizens 30 days prior to the public hearing. If additional comments are received after the publishing of this report, the comments will be forwarded to the Hearings Official. In addition, any participant may request that the record be held open for additional testimony following the public hearing.

### **Zone Change Evaluation**

EC 9.7330 and EC 9.8865 require the Hearings Official to review an application for a zone change and consider pertinent evidence and testimony as to whether the proposed change is consistent with the criteria required for approval, shown below in **bold** typeface. Staff's findings in response to each of the criteria are provided below, to assist the Hearings Official in making a decision on the zone change request.

**EC 9.8865(1): The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.**

The Metro Plan designates the subject property as Low Density Residential, and the proposed R-1 zoning is consistent with this designation. The applicant's written statement responds to several relevant Metro Plan policies, although staff finds none to be mandatory approval criteria. However, the following policy appears to be relevant:

- Policy A.2: Residentially designated land within the UGB should be zoned consistent with the *Metro Plan* and applicable plans and policies; however, existing agricultural zoning may be continued within the area between the city limits and the UGB until rezoned for urban uses.

While this policy does not serve as a mandatory approval criterion, it does highlight the intention of the AG zone to act as a placeholder until land is rezoned for urban uses. The applicant's request for a change in zoning from AG to R-1 fulfills the intent of this policy.

Based on these findings, the criterion is met.

**EC 9.8865(2): The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.**

The Laurel Hill Plan and the South Hills Study are the adopted refinement plans for the subject property. Staff finds that neither plan includes policies that would serve as approval criteria for the proposed zone change.

Based on these findings, this criterion is met.

**EC 9.8865(3): The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.**

Key urban facilities and services are defined in the Metro Plan as: wastewater service, stormwater service, transportation, water service, fire and emergency medical services, police protection, City-wide parks and recreation programs, electric service, land use controls, communication facilities, and public schools on a district-wide basis (see Metro Plan page V-3).

Referral comments from the Public Works Department dated December 13, 2016, which are included in the application file, confirm that the uses and density allowed by the R-1 zone on the subject property can be serviced through the orderly extension of key urban facilities and services. Public Works staff note that public stormwater systems are not immediately available to serve this property; however, on-site retention may be possible if infiltration test results and facility designs submitted at the time of development can demonstrate feasibility and are in accordance with the applicable standards and adopted plans and policies. Compliance with applicable stormwater development standards will be ensured at the time of development.

The applicant's engineer has stated it is possible to address the stormwater that would be

created by future development on the site as follows:

The site slopes towards the east and all stormwater exits the site by sheet flow onto the adjacent property to the east. The public system in the general neighborhood consists of roadside ditches and open channels. Few public pipes exist in the area and those that do serve as short connections between ditches and channels but are not a primary means of conveyance. Since Oregon law allows a landowner to continue existing drainage patterns, any development will need to detain and treat stormwater before releasing it in a way that mimics pre-development conditions. There are a number of ways this could occur and, until a development application is prepared, it is not possible to state how it will occur. A wide variety of detention options exist, many of which also accomplish treatment, examples include swales, pervious pavement and planters. A level spreader is the most common method for dispersing water into sheet flow that mimics pre-development conditions.

In regards to wastewater, there is an 8-inch line within Central Boulevard approximately 450-foot north of the subject property. The public system can feasibly be extended by the property owner/developer to serve the subject property. As an informational item, there are no capital improvements planned to install public wastewater in this area at this time, and therefore, extension of public wastewater would be reviewed through the privately engineered public improvement (PEPI) process, and financial surety would be the responsibility of the private developer.

During the public process for annexation of this parcel (A 16-10), Mr. Holleran submitted testimony expressing concern with the provision of necessary utilities such as wastewater service, water, power and access for emergency response. In response, staff requested additional information from the City's Public Works Department and from the applicant regarding the issue of availability of key urban services. Public Works staff confirmed that the lack of an easement across Mr. Holleran's property did not preclude the development of the Furtick property, since there was a feasible alternative to provide key urban services to the subject property in an orderly, efficient and timely manner within the adjacent City owned area of land consistent with EC 9.7825(3). The applicant's engineer also supplied supplemental information that indicated the applicant will no longer seek any utility service access through Mr. Holleran's property, and submitted a revised map showing all utility line connections located within City owned area of land from Central Boulevard to the subject site (see Attachment C – Utility Connection Plan).

The subject property has frontage on existing right-of-way, identified as City owned Tax Lot 301, Assessor's map 18-03-09-20; this right-of-way is expected to be the future extension of Spring Boulevard. During the annexation process, the applicant indicated access to the property will connect to the south at Spring Avenue and 30<sup>th</sup> Avenue. Consistency with public improvement and street standards will be evaluated and ensured at the time of development.

All documents associated with the annexation application (A 16-10 Furtick, Don) have been made available to the Hearings Official and are also available for public review at the Eugene Planning Division offices.



Based on these findings, this criterion is met.

**EC 9.8865(4): The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in:**

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

This criterion does not apply as there are no specific siting requirements for the R-1 zone. This criterion is met.

**EC 9.8865(5): In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the City to ensure the area is maintained as a natural resource area for a minimum of 50 years.**

This criterion does not apply as the proposed zone change does not include the NR zone.

#### **Transportation Planning Rule Evaluation**

Staff finds that Goal 12 Transportation of the Statewide Planning Goals, adopted by the Land Conservation and Development Commission (LCDC), must be specifically addressed as part of the requested zone change and in the context of Oregon Administrative Rules, as follows.

As adopted, OAR 660-012-0060(1) states:

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

Staff finds that the proposed zone change is subject to subsection (9), which reads as follows:

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

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

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

**(c) *The area subject to the amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-220(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.***

Staff confirms that the proposed R-1 zoning for the subject property is consistent with the existing comprehensive plan designation of Low Density Residential. This designation was in effect at the time the acknowledged Transportation System Plan (TransPlan 2002) was adopted, and the subject property was not exempt from TSP at the time of an urban growth boundary amendment.

Based on these findings, the proposed zone change complies with TPR.

### **Staff Recommendation**

Based on all the available evidence, and consistent with the preceding findings of compliance with the zone change criteria at EC 9.8865, staff recommends the Hearings Official approve the requested zone change to R-1 Low-Density Residential.

Consistent with EC 9.7330, unless the applicant agrees to a longer time period, within 15 days following close of the public record, the Eugene Hearings Official shall approve, approve with conditions, or deny this application. The decision shall be based upon and be accompanied by findings that explain the criteria and standards considered relevant to the decision, stating the facts relied upon in rendering a decision and explaining the justification for the decision based upon the criteria, standards, and facts set forth. Notice of the written decision will be mailed in accordance with EC 9.7335. Within 12 days of the date the decision is mailed, it may be appealed to the Eugene Planning Commission as set forth in EC 9.7650 through EC 9.7685.

### **Attachments**

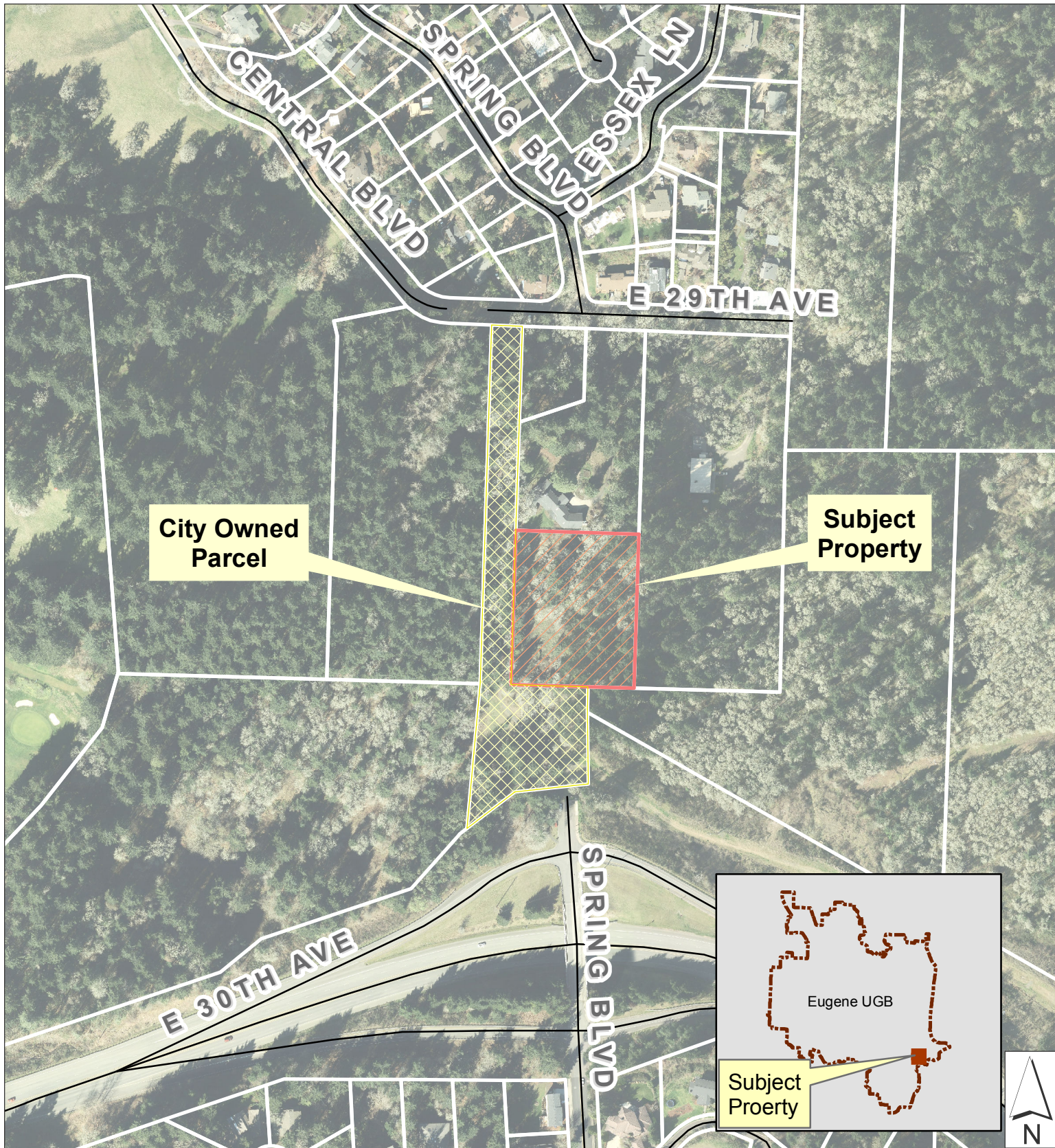
- A. Vicinity Map
- B. Public Testimony - Patrick Holleran
- C. Preliminary Utility Connection Plan





The entire application file is available for review at the Eugene Planning Division offices. The Hearings Official will receive a full set of application materials for review prior to the public hearing. These materials will also be made available for review at the public hearing.

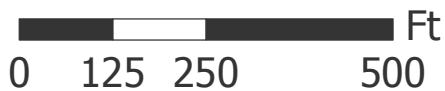
### **For More Information**

Please contact Nicholas R. Gioello, Associate Planner, City of Eugene Planning Division, at: (541) 682-5453; or by e-mail, at: [nick.r.gioello@ci.eugene.or.us](mailto:nick.r.gioello@ci.eugene.or.us)

# Z 16-5 Furtick, Don



-  City Owned Parcel
-  Subject Property
-  Streets
-  Taxlots



Caution:  
This map is based on imprecise  
source data, subject to change,  
and for general reference only.

2-28-2017





**JANISCH Amy C**

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**From:** Pat Holleran <holleran@shannontech.com>  
**Sent:** Tuesday, February 21, 2017 7:00 PM  
**To:** GIOELLO Nick R  
**Subject:** Zone Change Hearing

Mr. Gioello:

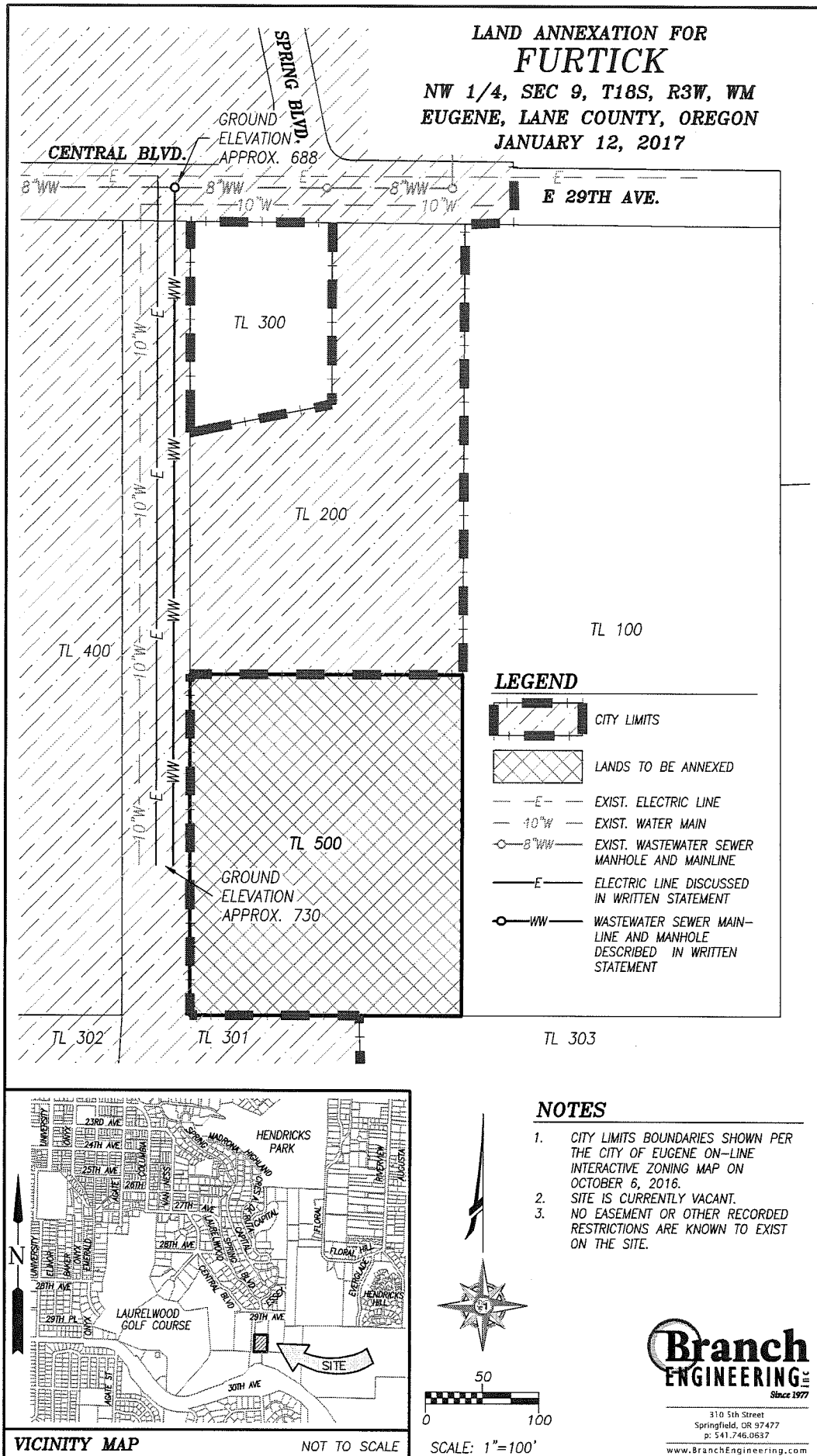
I returned from a trip to find that the zone change hearing for the plot of land adjacent to my property is scheduled for March 8. This provides very little time for any kind of preparation of testimony for a hearing. A zone change which would alter the existing allowance of a single house on the property to 6 or more is a pretty major change, and in this particular case the developer in question has also expressed intent to use my property for a road, and for the delivery of basic utility services. So a decision on this rezoning request obviously has a major effect on my property values, livability of my residence, etc., and it would also result in a significant alteration of a neighborhood which has changed little in 70 years and affect its many residents.

A few weeks might seem adequate to a developer spending hundreds of thousands of dollars on a property and plan, with legal and land use experts on staff, or for a city employee working every day on this and related issues. But for ordinary citizens with normal daily activities, this does not provide nearly enough time to study the documents and issues, access necessary expertise, meet to determine a reasonable course of action, etc. I note also that in the letter I received that the "Northeast Neighbors" group is incorrectly identified as the relevant neighborhood association, and I believe the correct group, the Laurel Hill Valley Citizens, are just now notifying their members.

It is only fair to give affected citizens enough time to put together a reasonable response to a plan for significant change.

-Patrick Holleran

Attachment C - Preliminary Utility Connection Plan



ASSESSOR'S MAP(S) TAX MAP 18-03-09-20, TL 500