



Eugene Planning Commission

FINAL ORDER OF THE EUGENE PLANNING COMMISSION ON APPEAL OF A ZONE CHANGE APPROVAL FOR BENSON, AMBER (Z 13-2)

I. INTRODUCTION

This Final Order concerns an appeal of the decision by the Eugene Hearings Official (HO) to approve a zone change request for Benson, Amber (Z 13-2). The application requests approval of a zone change from R-1 Low-Density Residential to the R-2 Medium-Density Residential zone. The subject site is located on the west side of Coburg Road immediately south of Tandy Turn.

The initial staff report found the application was consistent with the applicable Eugene Code (EC) zone change criteria at EC 9.8865, and recommended that the HO approve the request. On May 30, 2013, the HO issued his decision finding that the zone change request was consistent with the applicable approval criteria. However, he declined staff's recommendation to apply the Site Review (/SR) Overlay.

On June 11, 2013, on behalf of the Harlow Neighbors Association, Jennifer Yeh filed an official Appeal Statement that totaled three primary assignments of error and 26 subassignments. The appeal asserted that the HO erred in finding the zone change request consistent with the Metro Plan and the Willakenzie Area Plan, a local refinement plan. The Planning Commission (PC) held a public hearing on the appeal on July 9, 2013. The PC subsequently entered into deliberations on September 16 and 23, 2013.

As required by the Eugene Code, the appeals are based on the record and limited to the assignments of error contained in the appeal statements submitted. As described below in *Section III. Findings of Fact and Conclusions of Law*, the PC resolves the assignments of error through affirmation of the HO decision and adoption of supplemental findings regarding the Willakenzie Area Plan and /SR Overlay.

II. RECORD BEFORE THE PLANNING COMMISSION

The record before the PC consists of all the items that were physically before, and not rejected by, the PC prior to its final decision. EC 9.7655(2) limits the nature of evidence that the PC can consider on appeal as follows: "The record from the proceeding of the Hearings Official ... shall be forwarded to the appeal review authority. No new evidence pertaining to the appeal issues shall be accepted." The PC's decision on the appeal is based upon consideration of all relevant evidence and argument within the official record.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The PC findings and conclusion regarding the official appeal statement are provided below and attached hereto. Pursuant to EC 9.7680, the PC may reverse a decision of the HO only if it can demonstrate that he failed to properly evaluate the application or make a decision consistent with applicable approval criteria. Those approval criteria are found in EC 9.8865 and discussed below.

EC 9.8865(1) Provides: 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 HO summarized the history of the relevant ordinances related to adoption of the Willakenzie Area Plan in 1992 and more recent relevant amendments to the Metro Plan. In determining that the subject site was designated Medium Density Residential (MDR), the HO explored the relevant legislative history regarding the WAP adoption. HO decision, page 10-12. The HO specifically focused on Ordinance No. 20319, adopted by the Eugene City Council in 2004, which adopted a new Metro Plan diagram. That is the Metro Plan diagram that exists today, and controls in this case. Based on the Metro Plan Diagram, which designated the subject property MDR, the HO concluded that the requested zone change complies with this approval criterion. The Planning Commission finds that the extensive legislative history confirms the City's Council's intent to maintain the MDR designation for the subject parcel, as adopted in Ordinance No. 19856, and as currently depicted in the Metro Plan diagram adopted by Ordinance No 20319. Therefore, on this criterion, the PC affirms the HO's decision in its entirety, thereby finding the site is designated Medium Density Residential and is appropriate for the zone change from R-1 Low Density Residential to R-2 Medium Density Residential. The HO's decision is adopted by reference and attached here as Attachment A. With this affirmation, the PC has resolved the issues in sub-assignments of error 1.A, 2.A, and the whole of assignment of error 3.

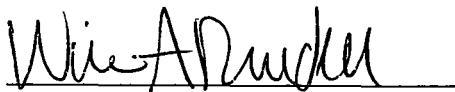
However, the PC finds that the HO erred in his decision to not address the approval criterion at EC 9.8865(2). While the HO refused application of the /SR Overlay, that is due to his decision to not address Willakenzie Area Plan policies. The Willakenzie Area Plan provides policy support for the application of the /SR Overlay. On this criterion, the PC modifies the HO decision and adopts supplemental findings (Attachment B). With this modified decision, the PC dispenses with the question of the Site Review Overlay and resolves sub-assignments of error 1.B, 1.C, 2.B, and 2.C.

To properly dispense with all remaining subassignments of error in the official Appeal Statement and resolve all issues raised by the PC in deliberations, supplemental findings have been made on Willakenzie Area Plan, Harlow Subarea Policy 4 and potential conditions of approval applied at the time of a zone change application. The resolution of these issues addresses subassignments of error 2.B, 2.C, 2.D, and 2.E.

IV. CONCLUSION

After consideration of the applicable law and all argument and evidence in the record, the Eugene Planning Commission finds that the subject zone change application for Benson, Amber (Z 13-2) meets all applicable zone change criteria from EC 9.8865, with supplemental findings as provided in Attachment B. All Assignments of Error in the official Appeal Statement have been resolved. The HO's decision to approve the zone change is affirmed, and his decision is modified to apply the Site Review Overlay, thereby resulting in an approval of the zone change to the Medium-Density Residential zone with the Site Review Overlay (R-2/SR).

In the event of any conflict between the HO's decision and this Final Order, this Final Order shall prevail. The foregoing findings and conclusions are adopted as the Final Order of the Eugene Planning Commission on appeal of the zone change approval for Benson, Amber (Z 13-2), on this 30th day of September, 2013.



William Randall, Chair
Eugene Planning Commission

Attachments:

- A – Decision of the Hearings Official
- B – Supplemental Findings

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

ZONE CHANGE REQUEST

Application File Name (Numbers):

Benson (Z 13-2)

Applicant's Request:

Zone change from R-1 Low-Density Residential to R-2 Medium-Density Residential.

Subject Property/Location:

Tax Lot 00101 of Lane County Assessor's Map 17-03-20-44; Located on Coburg Road immediately south of Tandy Turn.

Relevant Dates:

Zone Change application submitted on January 18, 2013; application deemed complete on February 15, 2013; public hearings held on April 10, 2013 and April 24, 2013.

Applicant's Representatives:

Anne DeLaney, Bergsund Delaney Architecture & Planning
Michael Reeder, Arnold Gallagher, PC

Lead City Staff:

Zach Galloway, Associate Planner, Eugene Planning Division, Phone: (541) 682-545485.

Summary of the Public Hearing

The Hearings Official held a public hearing on this application on April 10, 2013, and a continued hearing on April 24, 2013. The Hearings Official stated he had no conflicts of interests and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing.

Zach Galloway, Associate Planner, and Gabe Flock, Senior Planner, were present for both hearings. Mr. Galloway presented the staff report at the April 10, 2013 hearing. Mr. Galloway also submitted into the record legislative history of the Willakenzie Area Plan ("WAP") and associated Metro Plan amendments. Exhibit NN. The 11 x 17 version of the Metro Plan Diagram was also submitted (Exhibit OO) as was a memorandum from the city attorney (Exhibit QQ). In response to a question, Mr. Galloway explained that the relationship between the Metro Plan and the various refinement plans is that they are intended to work together to inform future planning. If an inconsistency between the Metro Plan and a refinement plan

were discovered, the Metro Plan would prevail. Staff concluded that applicant's proposal was consistent with both the Metro Plan and the WAP, and recommended approval.

The applicant's representative Anne DeLaney provided a brief overview of the subject property, and agreed with the conclusions of the staff report as to the applicable Metro Plan policies. She suggested that as to Policy 4 of the Harlow subarea of the WAP ("Policy 4"), the language was aspirational rather than binding on the question of whether the subject property must remain in low density residential zoning.

The applicant's attorney Michael Reeder testified that the question of whether the subject property can be rezoned to medium density residential was controlled by the Metro Plan and generally agreed with the city attorney's memo in Exhibit QQ. He argued that the Metro Plan Diagram is controlling this instance and is parcel specific with regard to the subject property. He further argued that the Harlow subarea map in the WAP currently shows the subject property as appropriate for medium density residential zoning. Mr. Reeder further identified Ordinance no. 19856 as the historical source for identifying the subject property for future medium density residential zoning. He argued that the companion ordinance adopting the WAP, Ordinance no. 19855, did not contain any specific treatment of the subject property, and therefore, concluded there was no conflict between the ordinances.

Multiple individuals testified in opposition to the application at the April 10, 2013 hearing. Jennifer Yeh testified that the Harlow Neighbors Executive Committee had concluded that Policy 4 required the subject property to remain in low density residential zoning. Exhibits P and TT. She also requested that the written record remain open or that the hearing be continued to allow review of the documents submitted in Exhibit NN. The Hearings Official acknowledged that request and referred the question to the end of the hearing. Mr. Jon Young also testified that his family had moved to the area to get away from higher density residential use, and that even the site review process recommended by staff could not ameliorate the perceived impacts on the neighborhood. Exhibit UU.

Mr. Paul Conte objected to the perceived late submission of Exhibit NN and argued, consistent with his letter of April 8, 2013, that the public deserved more time to review the exhibit. Exhibit II. The applicant later agreed to and requested that the hearing be continued in part to address Mr. Conte's concerns. Mr. Conte explained his understanding of the connection between the Metro Plan and the city's refinement plans. It was his position that the 2004 revisions to the Metro Plan did not change the relationship between plan and the various refinement plans including the WAP. He argued that the applicable Metro Plan Diagram and associated policy II.G.2 was not sufficient to identify the subject property is a medium density residential because the map was insufficient to enable a reviewer to determine property lines between lots. He further argued that the map associated with the Harlow subarea of the WAP was meant just to be explanatory, and therefore, according to the WAP, reference to Policy 4 was necessary to determine appropriate zoning for the subject property. In his opinion, Policy 4 intentionally excluded the subject property from the potential to be rezoned to medium density residential. He argued that the current version of the Harlow subarea map, which

shows the subject property as medium density residential, was the result of a mapping error that occurred sometime after the adoption of the WAP in 1992.

Attorney Zack Mittge, representing Jennifer Haugen and Richard Hansen, testified primarily on transportation related issues consistent with the letter he submitted in Exhibit XX. He asserted that the application failed to adequately assess traffic impacts because the applicant had not submitted a traffic impact analysis. Without a more detailed analysis, he argued, the transportation components of the Metro Plan could not be adequately addressed. In particular, he argued that baseline conditions needed to be established to determine whether adequate capacity is available on nearby roads and intersections. He disputed the applicant's position that a zone change qualifies for an exception under the Transportation Planning Rule – OAR 660-012-0060(9). He argued that the exception does not automatically apply to all requested zoning changes, and therefore, the applicant must show consistency with the city's Transportation System Plan as well as the Comprehensive Plan.

During the applicant's rebuttal time, the applicant agreed to continue the hearing to April 24, 2013, and to toll the 120 day statutory deadline by 14 days. Mr. Reeder argued that the WAP is parcel specific as to future zoning as demonstrated in the Land Use Board of Appeals decision *Knutsen v. City of Eugene*, and that the Harlow subarea map showed the subject property as medium density residential. He asserted that the Metro Plan Diagram and WAP maps were not required to be boundary line specific because lot lines frequently change, but zoning designations could be determined by reference to a map.

At the conclusion of the April 10, 2013 public hearing, the Hearings Official continued the hearing to April 24, 2013, and did not impose any restrictions on submissions of argument or evidence for the period between the two hearings.

At the April 24, 2013 continued hearing, planning staff again gave a brief overview of the application, and submitted a memorandum summarizing additional information submitted into the record by the planning staff. Exhibit PPP.

Again, Anne DeLaney provided a brief introduction to the application and explained that the applicant had decided to submit a traffic impact analysis (Exhibit KKK) although the city's zone change criteria did not require one.

Mr. Reeder provided a letter with attachments dated April 24, 2013, and provided testimony related to that letter. Exhibit RRR. He argued that the 2004 Metro Plan amendments added policy II.G.2 which clarified the circumstances in which the Metro Plan Diagram was to be parcel specific as to zoning designation. He argued that the Metro Plan had been amended several times since the WAP was approved in 1992, and in each instance the amendments were considered to be consistent with the refinement plans including the WAP. Any inconsistencies between the amendments and the refinement plan, he argued, had to be taken up at the time of the amendment, not at the present time. The end result, he argued, was that Metro Plan policy II.G.2 currently controlled the zoning designation of the subject property, and that

Harlow subarea Policy 4 was no longer applicable. Mr. Reeder then suggested an alternative finding, that even if Policy 4 were to be deemed applicable, harmonizing Policy 4 and the WAP mapping, which depicts the subject property as medium density residential, strongly suggests that the mapping error alleged by Mr. Conte was incorrect.

On the issue of traffic impacts, Mr. Reeder argued that OAR 660-012-0060(9) applies in this instance and that so long as a jurisdiction has and acknowledge comprehensive plan and transportation system plan, that the TPR is satisfied for a proposed zoning change. He testified that the applicant had decided to go beyond the strict requirements for zone changes and present additional information in the form of a TIA to further demonstrate that traffic impacts would not be so severe that existing facilities could not accommodate the change. The applicant's traffic engineer provided testimony explaining the TIA. As a final matter Mr. Reeder objected to the staff recommendation that the Site Review Overlay provisions be applied as part of approving the zone change. He argued that those provisions are not required under the current circumstances and that the applicant did not agree with staff's recommendation.

Several neighbors testified in opposition to the application. In general, the testimony focused on existing traffic conditions in the area. The neighbors questioned whether the TIA included impacts from buildings that were in construction currently. The testimony also provided anecdotal instances of problems with the proposed access to the property and crossing traffic on this busy section of Coburg Road.

Mr. Mittge again testified on traffic issues. His response to the applicant's TIA was that it demonstrated a "significant impact" on a transportation facility. His reason for asserting that conclusion was that the TIA showed certain turning movements at nearby intersections being below the LOS required by the city. He continued to argue that OAR 660-012-0060(9) did not exempt the proposed zoning change from compliance with the TPR because the proposal was not consistent with the city's Comprehensive Plan or Transportation System Plan. He also criticized the TIA for not considering queuing or center lane impacts caused by additional left turn movements at nearby intersections, and objected that pedestrian impacts were not taken into account.

Mr. Conte provided testimony by phone. He provided a summary of his testimony in Exhibit WWW. The bulk of his testimony was directed at explaining why, in his opinion, the September 1992 version of the WAP was not the plan adopted by the City Council. He argued strenuously that a June 1991 version of the WAP was actually the document adopted, and that the 1991 Draft WAP did not approve medium residential zoning for the subject property. He also explained his theory as to why the mapping mistake had carried through to the 1992 WAP currently utilized by planning staff. He argued that this mapping mistake carried through to a 2000 amendment to the Metro Plan Diagram, which shows the property as a medium density residential. His conclusion was that the Metro Plan Diagram inherited the mapping error that was alleged in the adoption of the WAP in 1992. He also alleged that Ordinance no. 19855 (and possibly ordinance no. 19856) were not properly adopted because Lane County never ratified

the ordinances as required by the Metro Plan. He suggested that if the zone change were approved that the Site Review Overlay could be required as a condition of approval.

The applicant's traffic engineer provided a brief rebuttal on traffic issues. He disputed the assertion that an intersection must be considered as falling below the required LOS if even one turning movement did not meet the applicable standard. He explained that the TIA did account for future traffic generation from other potential developments along Coburg Road. He stated that the TIA assessed impacts to Tandy Turn based on specific counts taken in 2010 and projected forward to 2013.

Mr. Reeder reiterated the applicant's position that OAR 660-012-0060(9) provided an exception for zone changes, and that the traffic policies in the WAP did not apply to the application. He once again clarified that applying the Site Review Overlay to any approval was not mandatory and that the applicant objected to any such condition.

In response to requests made during the hearing, the Hearings Official left the written record open on the following schedule: 1) argument and evidence on any topic could be submitted by 5 PM May 1, 2013, 2) responsive argument only would be accepted until 5 PM May 8, 2013, and 3) the applicant's final comment was due by 5 PM May 15, 2013.

With the exception of one alleged procedural error, which is discussed below, argument and evidence was submitted during the open record period without objection. The applicant submitted a final comment on May 15, 2013, and thereafter the record closed. Exhibit IIIII.

Site Characteristics and Present Request:

The applicant is requesting approval to change the zoning of the subject property (Tax Lot 00101 of Assessor's Map 17-03-20-44), located along Coburg Road between Tandy Turn to the north and Tomahawk Lane to the south. The total area of request is approximately 0.99 acres in size. Adjacent lands to the north, east, south, and west are developed with low-density, single-family residences. The subject property is in close proximity to numerous services and amenities via Coburg Road, a major arterial, and the interconnected local residential street network. Both Sheldon Plaza and the Oakway Center are within ½ mile, and several neighborhood schools are less than 1 mile away.

Documents Considered by the Hearings Official

The Hearings Official has considered all the documents listed in the "Hearings Official Exhibit List for Benson, Amber (Z 13-2)" which is included in the record.

Procedural Issues

Before addressing the substantive zone change criteria identified below, the Hearings Official deems it important to respond to several procedural objections and certain testimony submitted prior to the close of the record.

Timeliness of the Staff Report - The day before the scheduled public hearing on April 10, 2013, planning staff submitted numerous documents into the record which mostly consisted of legislative history for adoption of the WAP and amendments to the Metro Plan made in 1992.¹ Several members of the public including Mr. Conte objected to the timing of these submissions, arguing that due to the number and length of the documents, it was unreasonable to expect the public to formulate a sufficient response before the hearing took place. Mr. Conte argued that any use of these documents as a source for statements or conclusions in the staff report made those documents part of the staff report itself, which therefore, violated the rule requiring staff reports to be available seven days before the initial public hearing. This issue was discussed at some length during the April 10, 2013 hearing.

The Hearings Official does not agree that background documentation upon which a staff report relies necessarily becomes a part of the report for purposes of state statute. Even if that were the case, no procedural error could result here because the Hearings Official, the applicant, and participating parties agreed to continue the public hearing 14 days in part to allow response to the newly submitted information. That allowance for additional time to respond, and the allowance for the additional open record period after the April 24, 2013 public hearing, provided sufficient time for all participants to make their case either at a public hearing or in written testimony contained in the record. Therefore, the Hearings Official concludes that no prejudice to the participants' substantial rights occurred during the hearing process. *Emmert v. Clackamas County, Or LUBA* (LUBA No. 2011-052, January 4, 2011).

Notice - During the public hearings, two different arguments were made regarding sufficient "notice" of the hearing process. The first type of argument involved various participants alleging that they believed they had not been provided sufficient written notice of the application or time to respond. However, those objections were made either in writing prior to the initial public hearing or at that initial public hearing itself. As such, those objecting had the opportunity to testify at the April 10, 2013 hearing or the continued hearing on April 24, 2013. Even if the allegations that proper notice had not been provided were found to be valid, the opportunity to testify at both public hearings and submit written testimony into the record cured any potential procedural error connected with the required notice of this application.

The second notice argument emerged late in the written record. Several letters were submitted alleging that individual neighbors did not remember receiving notice of the year 2004 Metro Plan amendments. Exhibits PPPP, SSSS, UUUU, XXXX, BBBB. While these letters may be intended for some other purpose, to the extent they are intended to demonstrate procedural errors invalidating the City Council's legislative amendments to the Metro Plan made in 2004, they are of no legal significance as the time to appeal alleged errors associated with those amendments has long since passed. In addition, it is questionable that individual notice would have been required in 2004 in any case since the nature of the amendments to the Metro Plan was legislative rather than quasi-judicial. Notice in a newspaper of general circulation would have been sufficient to inform the public of proposed changes to the Metro Plan at that time.

¹ Exhibits EE, FF, NN, OO, PP, QQ, RR.

Traffic Impact Analysis - As described above, the applicant decided to submit a traffic impact analysis in support of the application. The TIA states that the protocols used to undertake the analysis are the same as those required by the state Transportation Planning Rule. Exhibit KKK. In response to the TIA, Mr. Conte made several objections. Exhibit NNN. The Hearings Official has reviewed the alleged errors and rejects all of them. The criteria that apply to zone changes do not require a TIA to be submitted as part of the application, and therefore, the application was complete prior to the submission of the TIA as determined by staff. The TIA represents additional evidence which the applicant was entitled to submit in support of the application and does not represent a substantive change in the application. The addition of the TIA to the record does not warrant an additional or revised notice to property owners within the notice area. Participants at both hearings had the opportunity to respond to the TIA, both at the April 24, 2013 hearing, and during the open record period, and many individuals did so.

Petition – The Harlow Neighborhood Residents submitted a petition signed by numerous neighbors objecting to the zone change. Exhibit AAAA. The petition essentially states that the individuals oppose the proposed zone change because the subject property is only appropriate for low density residential use as opposed to medium density residential use. While the Hearings Official wishes to acknowledge the well over 100 signatures on the petition, it is not possible or appropriate to give the petitioners' argument any greater weight simply due to the number of individuals that agree with the stated position. Such a consideration might be appropriate for a legislative process, but this is a quasi-judicial proceeding in which the determining factor is whether the application meets the applicable code criteria for zone changes. To that extent, the Hearings Official did not give additional weight to the argument set forth in the petition.

Exhibit TTTT – During the open record period, Mr. Conte attempted to have a particular version of the 2004 Metro Plan Diagram submitted into the record. Apparently a miscommunication with staff, and the time needed to print the map from city records resulted in Mr. Conte's inability to submit the version of the map he desired into the record before May 1, 2013 at 5 PM. For this reason, it is the Hearings Official's understanding that Exhibit TTTT is not the version of the map that Mr. Conti desired to have printed and placed in the record. Exhibit HHHHH. As a result, Mr. Conte requested that a corrected version of the map, which was "referred to by Ordinance 20319" either be placed in the record or that the Hearings Official take "official notice" of that map. In response to this request, to the extent that it is necessary to rely on the map identified by Mr. Conte in Exhibit HHHHH, the Hearings Official will take official notice of that map. I have also reviewed the record and believe that the portion of that map with which Mr. Conte is concerned is also attached to Exhibit GGGG, and therefore, already part of the record. More importantly, at the Hearings Official's request, planning staff placed the full version of Ordinance no. 20319, which adopted the 2004 amendments to the Metro Plan, into the record with all its exhibits, including Exhibit C which was the adopted Metro Plan Diagram identified in the ordinance. The Hearings Official views that version of the Metro Plan Diagram as being the definitive and adopted version of the Metro Plan Diagram associated with Ordinance no. 20319.

Evaluation of Zone Change Request

The Eugene Code, EC 9.7330 and 9.8865, requires 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.

EC 9.8865(1): The proposed zone 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.

Determining consistency with EC 9.8865(1 & 2) depends primarily on whether the proposed zone change is consistent with the text of the Metro Plan and the Metro Plan Diagram. In determining the meaning of a statute, the method set forth in *PGE v. BOLI*, 317 Or 606 (1993) requires an examination of the text and context of the given provision. The same analysis applies to the construction of local ordinances. *Ramirez v. Hawaii T & S Enterprises, Inc.*, 179 Or App 416, 425 (2002). The methodology has been modified slightly by the Oregon Supreme Court's ruling in *State v. Gaines*, 346 Or 160 (2009) which found that while the correct analysis still begins with the text and context of the given provision, legislative history can also be relied upon even where the text itself does not on its face appear to be ambiguous. The goal of this analysis is to ascertain and apply the City Council's intent regarding the code provisions or planning documents in question.

After reviewing the record, and considering the bewildering amount of discussion concerning the history and adoption of the WAP in 1992, it is the Hearings Officials conclusion that the text of Metro Plan regarding the application of the Metro Plan Diagram is sufficient to resolve the question of whether the application is "consistent with" the Metro Plan and the WAP. Based on the record, it appears that the last substantive amendment to the Metro Plan occurred in 2004. By Ordinance no. 20319, the City Council adopted a new Metro Plan Diagram, replacing the prior version in its entirety, and provided additional guidance on the question of when and where the Metro Plan Diagram should be considered parcel specific.² The version of Ordinance no. 20319 in the record at Exhibit FFF is a strikeout version which shows newly adopted language as well as prior language which was either retained or deleted from the Metro Plan. The Hearings Official will rely on this version because it sets forth both the current text of the Metro Plan and shows language changes which to some extent represent legislative history which may be helpful in understanding the intent behind the amendments.

In the Metro Plan section entitled "Use of the Metro Plan" there are several statements that help illustrate the intent of the drafters.

"The Metro Plan Diagram is a graphic depiction of: (a) the broad allocation of projected land use needs in the metropolitan area, and (b) goals, objectives, and policies embodied in the text of the Metro Plan. Some of the information shown on tThe Metro Plan Diagram depicts includes land use **designations** categories *

² Section 3 of the adopting ordinance itself states: "Section 3. The Metro Plan Diagram is removed, superseded and replaced by the Metro Plan Diagram, as amended and set forth in Exhibit C attached and incorporated herein, which is hereby adopted as an amendment of the Metro Plan."

* ** Ordinance no. 20319 p. I-4.³

The text and the textual changes identified in this passage strongly suggest that the City Council intended that the Metro Plan Diagram move from a generalized map of land use categories to a depiction of actual land use designations. In particular, the substitution of the word "designations" for the word "categories" shows an intent that in some circumstances individual parcels would have a clear land use designation for future use. At the same time, the city Council retained the following language unchanged from previous versions of the Metro Plan.

“In addition, it is important to recognize that the written text of the Metro Plan takes precedence over the Metro Plan Diagram where apparent conflicts and inconsistencies exist. The Metro Plan Diagram is a generalized map which is intended to graphically reflect the broad goals, objectives, and policies. As such, it cannot be used independently from or take precedence over the written portion of the Metro Plan. Ordinance no. 20319 p. I-5.

The opponents argue that this language demonstrates that in all instances the Metro Plan requires a consideration of both the text, the Metro Plan Diagram, and any associated refinement plans for a proposed zone change. However, that argument ignores the important qualification to the first sentence - "where apparent conflicts and inconsistencies exist." The opponents' reading does not harmonize this provision with the passage identified above as required by ORS 174.020. Their interpretation would require the Metro Plan text and text of the WAP to take precedence over the Metro Plan Diagram even where no inconsistencies or conflicts were apparent. That is incorrect.

The balance of the above passage identifying the Metro Plan Diagram as a generalized map must also be harmonized with yet another amendment made in Ordinance no. 20319 which added information and guidance on how to use the Metro Plan Diagram itself. That new language states:

Since its initial adoption in 1982, the Metro Plan Diagram designations have been transitioning to a parcel-specific diagram. As part of this transition, the boundaries of Plan designation areas in the Metropolitan UGB are determined on a case-by-case basis, where no parcel-specific designation has been adopted.

* * *

The Plan designation of parcels in the Metro Plan Diagram is parcel specific in the following cases:

- 1. Parcels shown on the Metro Plan Diagram within a clearly defined Plan designation, i.e. parcels that do not boarder more than one Plan designation. Ordinance no. 20319, p. II-G-2.**

³ Text in **bold** is newly added language. Underlined text was deleted.

The plain reading of this new section is that where the Metro Plan Diagram is clear enough to determine the plan designation for an individual parcel, then the Metro Plan Diagram illustrates the City Council's planning intent for that parcel. The city attorney's office provided a memorandum which analyzed this provision and concluded that the circumstance described in subsection 1 above appeared to apply to the subject property. Exhibit QQ. The Hearings Official agrees with that analysis and incorporates it here by reference. The location and shape of the subject property (lot 101) is easily recognizable in the official version of the Metro Plan Diagram as being "designated" as medium density residential. A reasonable person viewing the Metro Plan Diagram⁴ would conclude that the subject property is designated medium density residential. This constitutes substantial evidence demonstrating that the Metro Plan Diagram is clear enough to show that the subject property is an identifiable parcel "within a clearly defined plan designation" that borders only one other plan designation, that being low density residential. Therefore, the Metro Plan Diagram is parcel specific for the subject property, and the designation is clearly medium density residential.

Mr. Conte made two arguments disputing the clarity or accuracy of the Metro Plan Diagram. The first was that at least for the subject property the Metro Plan Diagram was not property line specific enough to determine whether all or just part of the property was intended to be within a certain land use designation. Second, that with respect to the subject property, the Metro Plan Diagram is in error due to a mapping mistake brought forward from the adoption of the WAP in 1992. The Hearings Official rejects both arguments.

I can find no requirement in the Metro Plan or the applicable provisions of the city code that require the Metro Plan Diagram to be accurate down to the inch regarding property boundaries. According to the text of the Metro Plan identified above, a parcel's designation can be determined so long as it is within a clearly defined plan designation. Again, the subject property is clearly discernible in both location and plan designation. The Hearings Official can find no credible evidence in the record that would substantiate Mr. Conte's suggestion that the subject property might be some type of split zone designation, and for the reasons discussed below that possibility is a nil set.

As to Mr. Conte's second argument, I conclude that there is no merit in the notion that the subject property's designation in the Metro Plan Diagram is a result of a mapping error. Leaving aside for the moment the very complex argument regarding the WAP mapping set forth by Mr. Conte and Mr. Kabeiseman in Exhibits W, WWW, XXX and GGGGG, the record contains convincing evidence that the origin of the subject property's designation in the Metro Plan Diagram is Ordinance no. 19856 which amended the Metro Plan Diagram to specifically designate the subject property medium density residential.

In 1992, the City Council adopted the WAP (Ordinance no. 19855) and associated amendments to the Metro Plan Diagram (Ordinance no. 19856). Exhibit FF. Since the Metro Plan is the primary planning document at issue in this application, it is Ordinance no. 19856 that is mostly if not solely

⁴ As shown on Exhibit C of Ordinance 20319 and the 11 x 17 Metro Plan Diagram in Exhibit RR.

significant to this application. Before discussing the amendments adopted in Ordinance no. 19856, it is important to note Section 3 of the adopting ordinance itself which reads:

" The Plan Diagram amendments outlined above take precedence over any other inconsistent textual provisions of the Metropolitan Area General Plan."

This language can only be read to make the Metro Plan Diagram itself the predominate if not sole source of the land use designations identified for the individual parcels identified in the ordinance. Section 2 of Ordinance no. 19856 sets forth changes to the Metro Plan Diagram in the Willakenzie planning area - "as revised in Exhibit B, to provide as follows and as shown graphically in Exhibit C." Amendment number 5 in Section 2 states:

"Change designation from Medium Density Residential to Low Density Residential for a 6 acre site on the east side of Coburg Road between Harlow Road and Tandy Turn."

The revision for this 6 acre site in Exhibit B, which at the time included the subject property (lot 101) specifically takes the subject property out of the amendment identified in Section 2, number 5. That revision states:

"Amendment # 5 - proposed area reduced by approximately 1 acre. Remove Tax Lot 101, Assessor's map 17-03-20-44 (McHolick); change acreage, number of tax lots and text."

As stated in Section 2, that change was made and illustrated graphically in Exhibit C in a map associated with "Amendment 5." That map shows the subject property just to the north of the mapped lots labeled as "Area Affected by Proposed Metro Plan Amendment." In addition, text associated with the map states: "Current Metro Plan Designation: Medium Density Residential."

The amendments to the Metro Plan Diagram made in Ordinance no. 19856 contain two important pieces of information that illustrate the City Council's intent. First, the subject property was initially proposed to be included in a group of properties that were to change from medium density residential designation to low density residential. That means, at the time Ordinance no. 19856 was adopted, the Metro Plan Diagram already designated, in some fashion, the subject property as medium density residential. Second, the subject property was specifically removed from the group of properties proposed to be redesignated from medium density residential to low-density residential. That planning designation has traveled with the subject property since Ordinance no. 19856 was adopted in 1992. Thus, that the property is identified in a parcel specific way on the current Metro Plan Diagram cannot possibly be construed as a mistake or a mapping error brought forward by the WAP planning and mapping process. That much is illustrated by reference to the text of Ordinance no. 19856. To the extent that legislative history is relevant, the applicant has identified discussion regarding the subject property (McHolick) in the Planning Commission work session which led up to the

recommendations made to the City Council which were acted upon in Ordinance no. 19856. That legislative history is contained in the November 12, 1991 summary minutes of the Planning Commission's work session at pages 8-9. Exhibit NN. Those minutes show that the former owner, Mr. McHolick, requested that with regard to Metro Plan "Amendment 5" identified above, that his property remain medium density residential. The Planning Commission agreed to Mr. McHolick's request by a vote of 5:0. Exhibit NN. This legislative history supports the text of Ordinance no. 19856 and demonstrates amply that the subject property has been intentionally designated medium density residential in the Metro Plan Diagram since 1992.⁵

For all the reasons set forth above, the Hearings Official finds that the application is consistent with the Metro Plan and the Metro Plan Diagram. The portions of the staff report entitled "Residential Land Use and Housing Element, Transportation Element and Energy Element" are adopted by the Hearings Official by this reference to the extent they are consistent with the findings set forth above and the balance of this decision. The application of the Site Review Overlay to this application is discussed below.

EC 9.8865(2): The proposed 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 staff report analyzes the application's consistency with both the WAP and the Harlow subarea map and policies. Staff concluded because the Harlow subarea map shows the subject property as medium density residential, and the potentially applicable policies could be construed to not foreclose the rezoning of the subject property to medium density residential, that the proposal is consistent with the WAP.

Mr. Conte and numerous neighbors argued strenuously that Harlow subarea Policy 4 specifically forecloses the subject property from becoming medium density residential, and that the Harlow subarea map is the subject of a mapping error.⁶ Based on the assertion that the Harlow subarea map is in error, these opponents argued that Policy 4 must control, and by its own terms excludes the subject property from medium density residential designation.

The city attorney, apparently out of an abundance of caution, urges the Hearings Official to consider Harlow subarea Policy 4, even though the city attorney concludes that the Metro Plan and the Metro Plan Diagram are definitive with respect to the medium density residential designation of the subject property. Exhibit QQ. The city attorney suggests that considering Policy

⁵ Mr. Conte and his attorney argue that Ordinance no. 19856 cannot be deemed fully adopted because it was not ratified by the City of Springfield and Lane County. This appears to be incorrect. Exhibit NN contains City of Springfield Ordinance 5654 and Lane County Ordinance PA 1020, both of which adopt the same treatment of Mr. McHolick's property retaining its medium density residential status. The Hearings Official also considers this argument to represent an impermissible collateral attack on the validity of Ordinance no. 20319. See Exhibit WWW.

⁶ See Exhibits P, U, V, W, X, Y, Z, GG, HH, KK, LL, TT, , JJJ, WWW for example.

4 would be wise in light of the two LUBA cases in *Bothman v. City of Eugene*.

Although the Hearings Official understands the city attorney's call for caution, for the reasons set forth below it is difficult to understand how considering Policy 4 substantively could change the legislative decision made in 1992 by the City Council and carried forward in the most recent update of the Metro Plan in 2004. The reason for my hesitance is in consideration of the following policy set forth in the Metro Plan:

“In all cases the Metro Plan is the guiding document and refinement plans and policies must be consistent with the Metro Plan. Should inconsistencies occur the Metro Plan is the prevailing policy document.” Ordinance no. 20319 p. 1-5&6.

The Hearings Official views the City Council's legislative decisions adopting Ordinance no. 19856, and the subsequent wholesale replacement of the Metro Plan Diagram in 2004 which retained the medium density residential status of the subject property to be the preeminent statement on the zoning designation of the subject property. If the above identified policy statement is to be meaningfully adhered to, it is not possible, at least given the facts of this quasi-judicial application, to interpret the WAP, including Harlow subarea Policy 4, to disallow the proposed medium density residential use.

The key facts of this quasi-judicial application are that the applicant seeks a zone change that conforms to the land use designation already adopted for that property in the Metro Plan. This is a significant difference from the facts at issue in the *Bothman* cases where the applicant sought to rezone the property at issue away from the Metro Plan medium density residential designation to a different designation – Commercial. Here, the applicant is merely asking that the zoning be made to conform to the land use designation already allowed by the Metro Plan. The City Council made a specific decision about the planning designation of the subject property in Ordinance no. 19856. It simply does not follow that the City Council would make that decision with the intention that future application of WAP could contradict that specific planning designation. Even if the WAP policies and mapping were determined to be inconsistent with the current Metro Plan designation for the subject property, the Metro Plan designation must prevail in order to adhere to the clear intent of the City Council in Ordinance no. 19856.

For these reasons, the Hearings Official deems it imprudent to set forth any findings responding to Mr. Conte's extensive theory that the subject property was incorrectly mapped in the 1992 WAP adoption, and that as a result the policies set forth in the WAP must be considered – leading in his view to a denial of the application. Exhibit W, WWW, XXX, and GGGG. To do so, would be to participate in a “but for” form of legal analysis which represents the danger of becoming an advisory opinion. If this decision is appealed, and the Hearings Official's analysis under EC 9.8865(1) is found to be in error, then the WAP policies might become relevant and applicable. Until that time, speculating on what version of the WAP mapping was adopted in 1992 and how the subject property came to be mapped medium density residential on the

Harlow subarea map serves no meaningful purpose. To be clear, the Hearings Official is not taking any position on the whether Mr. Conte's mapping error theory is correct or incorrect.

It is worth noting that the case *Knutson Family LLC v. City of Eugene*, 48 Or LUBA 399 (2005), which several participants cite to demonstrate the interaction between the city's refinement plans and the Metro Plan, was decided based on the rules and regulations in place in 2003 when that application was deemed complete. The case does not, and cannot, circumscribe how the 2004 amendments to the Metro Plan, specifically the provisions which allowed identification of parcel specific designations, are to be applied. To the extent that opponents of the application have argued that somehow the 2004 amendments to the Metro Plan could be invalidated or undone by reference back to older (1992) refinement plans, *Knutson* does not support that proposition. The Hearings Official agrees with the applicant that each subsequent amendment to the Metro Plan after 1992 implicitly assumed that the refinement plans would be interpreted to be consistent with any new amendments to the Metro Plan, not the other way around.

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). As confirmed by referral comments from Public Works staff, the minimum level of key urban facilities and services are currently available.

As noted above, multiple participants at the hearings and others submitting written comments were concerned about perceived traffic impacts resulting from residential development that could occur on the subject property. Much of this testimony was anecdotal, communicating frustration with existing levels of traffic, concerns about the safety of ingress and egress into the subject property, and queuing and pass-through movements at the nearby intersections. Exhibits MM, UU, FFFF, LLLL, QQQQ. Mr. Mittge submitted two letters questioning the application's ability to comply with the Metro Plan, the transportation policies of the WAP, and the Transportation Planning Rule. Exhibit XX and VVV.

The requirements of the TPR are discussed below. At least partially in response to Mr. Mittge's comments, the applicant submitted the TIA discussed above. The TIA shows that the increase in density allowed by the zone change would result in 52 additional daily trips, and 8 peak hour trips. Exhibits KKK and RRR. By any measure, this is not a significant increase. The applicant also submitted rebuttal comments from her traffic consultant responding to Mr. Mittge's arguments concerning: the LOS for surrounding intersections, safe access to the subject property, potential impact on Tandy Turn, potential impact on pedestrians, and how the TIA accounted for traffic caused by future development in the area. Exhibit OOOO.

The Hearings Official finds that the TIA constitutes substantial evidence that the surrounding road system and intersections will operate at sufficient capacity and level of service. Both the TIA and the applicant's traffic engineer's rebuttal sufficiently address the arguments raised in Mr. Mittge's two letters and oral testimony at both hearings. Furthermore, no evidence was submitted which in any way directly contradicted or undercut the conclusions in the TIA to the extent that the information could not be considered reliable. The Hearings Official is sympathetic to the neighbors' frustration with existing traffic conditions and fears that those conditions could worsen. However, the anecdotal experiences related during the hearing and in the written testimony represent opinion, and are not sufficient to contradict the evidence submitted in the TIA which shows that the surrounding road system will continue to function adequately through the planning horizon if the zone changes allowed.

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.**

The residential zone siting requirements contain specific restrictions on the location of the R-1.5 rowhouse zoning district, and therefore, it is not applicable to the proposed zone change.

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.

The proposed zone change does not include the NR zone; this criterion does not apply.

Transportation Planning Rule

The staff report includes a thorough consideration of the application's compliance with the TPR. The Hearings Official adopts that analysis here by this reference and concludes that the application complies with the TPR. The analysis below is simply meant to supplement the findings in the staff report with respect to Mr. Mittge's arguments about the applicability of OAR 660-012-0060(9).

Mr. Mittge argues that because the application does not "comply" with various Metro Plan policies (F.15 and F.36 for example), and WAP policies, that the exception in OAR 660-012-0060(9) is unavailable. Exhibit VVV. As explained above, the applicant's TIA and additional testimony in Exhibit OOOO demonstrate that the proposed zone change can comply with all applicable Metro Plan and WAP transportation policies. Nevertheless, a zone change application's compliance with the Metro Plan, and the city's TSP – the TransPlan is not what is required to qualify for the exception allowed in OAR 660-012-0060(9). The language of OAR 660-012-0060(9) is 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 comprehensive plan map;

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

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

The “notwithstanding” language refers to the TPR’s overarching requirement that a zoning map amendment that would “significantly impact” a transportation facility will require some type of mitigation or “remedies” identified in the rule. This notwithstanding language makes clear that OAR 660-012-0060(9) is intended to be a substitute for OAR 660-012-0060(1) where a zone change is requested and the proposal meets the criteria set forth in OAR 660-012-0060(9)(a-c).

The plain meaning of the words in OAR 660-012-0060(9)(a) demonstrates that Mr. Mittge’s assertion that an applicant for zone change us demonstrate compliance with Metro Plan policies is incorrect. That provision only requires that the proposed zoning is consistent with the existing comprehensive plan map “designation” and no concurrent amendment of the comprehensive plan map is sought. As discussed in the findings for EC 9.8865(1) above, the application is consistent with the existing Metro Plan and Metro Plan Diagram “designation” for the subject property. Thus, no examination of underlying transportation policies in the Metro Plan is necessary to satisfy OAR 660-012-0060(9)(a).

As for compliance with OAR 660-012-0060(9)(b), Exhibit LLL explains the interaction between the TransPlan and the Metro Plan. That document explains that the TransPlan’s planned transportation facilities were developed based on the Metro Plan’s land-use designations. Consistent with the explanation given in the staff report, the city attorney’s explanation in Exhibit LLL states:

"Accordingly, without something to the contrary in TransPlan, if a subject property held its current designation in 2001 when TransPlan was adopted and the proposed zone is consistent with the current designation, the proposed zone is consistent with TransPlan. Put another way, if a subject property held its current designation in 2001, TransPlan’s transportation facility planning would have been based on the current designation; a zone consistent with the current

designation is supported by, and consistent with, TransPlan's planned transportation facilities."

As explained above, this record shows that the subject property did indeed hold its current Metro Plan designation in 2001. The Hearings Official agrees with the city attorney's conclusions in Exhibit LLL, and finds that the application complies with OAR 660-012-0060(9)(b). Furthermore, the Hearings Official has not been directed to any information that would indicate that allowing the proposed rezoning would in some way be inconsistent with TransPlan.

Site Review Overlay

Staff recommended that the Site Review Overlay be imposed essentially as a condition of approving the zone change to allow further review and comment on any future multi-unit development on the subject property. Staff rely on Metro Plan policies A.23 and A.13 as justification for the recommendation.

The applicant objects to imposition of the SR overlay and argues that neither A.23 nor A.13 provide mandatory language requiring the SR overlay to be imposed. Exhibit RRR and WWWW. Instead, the applicant suggests that the Multiple Family Design Standards of EC 9.5500 will apply to the any future multi-unit development proposal, and will serve the purposes of A.23 and A.13 just as well. The applicant suggests that a prior Hearings Official zone change decision in Z-10-05, where the subject property was located in the Willakenzie Plan Area and proposed for R-2 zoning, did not impose the SR overlay because EC 9.5500 would accomplish the same objectives.

The Hearings Official agrees with the applicant. The subject property is not subject to the SR overlay by virtue of being within the designated SR overlay zone under EC 9.4400, and the language in Metro Plan policies A.23 and A.13 represents planning directives rather than mandatory approval criteria. Certainly if those policies were intended to require that zone change approvals be subject to site plan review, then the language would so state. ORS 174.010. I am not directed toward any other language in the city code which would provide authority to impose the SR overlay as a condition of approval in this instance.

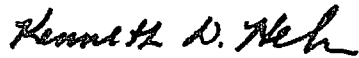
Although it would be preferable for the applicant to voluntarily accept the SR overlay procedures, that is not the case. Given the similarity between this application and the application at issue in Z-10-05, I adhere to the reasoning set forth in that decision and decline to impose the SR overlay here.

Decision

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant's request for a zone change from R-1 to R-2 medium density residential zoning.

Dated this 30th day of May, 2013.

Mailed this 30th day of May 2013.



Kenneth D. Helm
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS

SUPPLEMENTAL FINDINGS

The Hearings Official did not adopt the staff findings that address relevant refinement plan policies. The Hearings Official ended his analysis under EC 9.8865(2) by addressing the designation issue. The Planning Commission believes that findings that address applicable policies are relevant, even though it determines that the property is designated medium density residential. Accordingly, the Planning Commission adopts the following supplemental findings.

On the question of the Willakenzie Area Plan and, more specifically, the application of /SR Site Review Overlay, the Planning Commission finds it necessary to modify the Hearings Official's decision and adopt supplemental findings.

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

Eugene Code 9.4410 states that the /SR Overlay review process is applicable where "required by a refinement plan." The Planning Commission finds that the Willakenzie Area Plan provides policy direction to apply the /SR Overlay to the subject site at the time of zone change. Residential Policy 8 provides general direction and intended outcome, while the Proposed Action 8.1 offers means to achieve the intent.

8. Promote compatibility between low-density residential land uses and medium- to high-density residential land uses.

8.1 Apply the site review /SR suffix to all parcels designated medium- or high-density residential land use which directly abut low-density residential land uses.

Although Proposed Actions are not city council adopted policy, they are recommended actions that are available to achieve the stated policy—here, promoting compatibility between low-density and medium density residential uses. Proposed Action 8.1 is stated very forcefully. The Planning Commission finds that the Proposed Action anticipated that the imposition of the /SR suffix would be appropriate at the time of specific zone changes, at which time the decision making body could specifically analyze the subject property and surrounding land uses. Given the strong language in Proposed Action 8.1, along with the additional policy directives outlined below, the planning commission finds that imposition of the /SR Overlay is required by the applicable refinement plan.

Further, the Willakenzie Area Plan Land Use Policy 5 indicates Council's intent to apply the /SR Overlay. That policy states that "site review procedures ... shall be considered for properties which abut or face one another, when the uses permitted ... are potentially incompatible." The Planning Commission finds that the current Eugene Code provisions lack development

standards to ensure adequate transitions between low- and medium-density residential uses; therefore, those uses are potentially incompatible and the /SR Overlay is considered appropriate in this context where properties zoned low-density residential abut the subject site.

The Planning Commission finds that local context distinguishes the subject site from past precedents where the /SR Overlay was not applied. The official record includes two cases where application of the /SR Overlay was denied by a local Hearings Official. However, two significant factors are different here. First, the subject site is bound on all sides by properties zoned low-density residential, whereas the past precedents were primarily bound by properties zoned R-2 Medium Density Residential. Also, the Hearings Official in both past cases asserted that the City's adopted Multi-Family development standards effectively replaced and negated the need for application of the /SR Overlay. The Planning Commission disagrees with this reading of the past legislative action, and can find no indication of the City Council intent on which to base such assertions. Furthermore, the Planning Commission finds that the Multi-Family development standards are limited in their scope, primarily addressing the design and orientation of buildings. The site review standards, on the other hand, address a much wider range of development issues, including natural resource protection, tree preservation and impacts on adjacent transportation systems. Therefore, the policy direction in favor of applying the /SR Overlay to address compatibility remains in effect in the Willakenzie Area Plan, and it should be applied to the subject site.

In this case, the relevant Metro Plan policies (A.13 and A.23) are not mandatory approval criteria for the zone change. However, Policies A.13 and A.23 direct that attention is given to the transitions between higher density residential development and existing low density residential uses. Each is supportive of, not contradictory to, the application of the /SR Overlay.

Lastly, while Willakenzie Area Plan Land Use Policies 3 and 6 are not mandatory approval criteria for the zone change request, each lends further support for the application of the /SR Overlay. Policy 3 calls for the retention of "existing significant vegetation...to provide buffering between ... low-density and higher density residential uses." Policy 6 is a general policy to "minimize land use conflicts by promoting compatibility." The /SR Overlay is the most appropriate local tool to advance this policy direction.

Based on the supplemental findings stated here, the Planning Commission modifies the Hearings Official's decision (Attachment A) by replacing in whole the final four paragraphs of page 17 under the heading *Site Review Overlay* with the findings stated herein.

Harlow Subarea, Policy 4.

The Hearings Official declined to adopt any findings regarding Willakenzie Area Plan, Harlow Subarea Policy 4. According to the decision, he deemed it "imprudent" to set forth findings addressing possibly irrelevant WAP policies. The Planning Commission disagrees with the HO's position, and instead, finds it appropriate to address Willakenzie Area Plan, Harlow Subarea

Policy 4. The official record includes a thorough analysis of the legislative history concerning the subject site and adoption of the WAP. Based on that analysis, the Planning Commission finds that Policy 4 was included in the WAP at the time of plan adoption, which was concurrent with the City Council's legislative act to retain the Metro Plan designation as MDR on the subject site. The policy directs the city to "consider" properties within a certain area as appropriate for low-density residential uses. The legislative history is clear that the city did consider the subject property's appropriate designation, and decided it should be retained as MDR. Thus, the Planning Commission resolves this question with its affirmation of the Hearings Official's decision to find the site designated MDR.

Conditions of Approval

On the question of conditions of approval (e.g., maximum height, density caps), as articulated in Sub-assignment of Error 2.B, the Planning Commission rejects this argument and finds the /SR Overlay an appropriate tool to address the question of compatibility between different uses. Without a proposed development to review, applying such conditions is premature.