

"Oriented to the day-to-day needs of the neighborhood served, these facilities are usually centered on a supermarket as the principle tenant. They are also characterized by convenience goods outlets (small grocery, variety, and hardware stores); personal service (medical and dental offices, barber shops); laundromats; drycleaners (not plants); and taverns and small restaurants."

As indicated by the applicant, the locational standards and site criteria are positively addressed by this application. The area proposed for rezoning to C-1 contains 2.02 acres, well within the maximum size limitation of 5 acres specified in the Metropolitan Area General Plan. The area of the proposed rezoning is adjacent to an existing community commercial center, but the text of the Plan specifically recognizes that possibility. The Plan also states:

"Neighborhood commercial facilities may include community commercial centers when the latter meets the applicable location and site criteria as listed above, even though community commercial centers are generally larger than five acres in size."

The applicant has submitted information demonstrating that there is an adequate support population within a convenient walking or bicycling distance from this property. The property contains adequate area to accommodate the required off-street parking, loading needs and landscaping. The frontage for the property, some 400-feet, is sufficient to ensure safe and efficient automobile, pedestrian and bicycle access without conflicting with moving traffic at intersections and along adjacent streets.

The C-1 District is consistent with the Neighborhood Commercial designation. Section 9.406 describes this zone:

"The C-1 Neighborhood Commercial District is intended to create, preserve and enhance areas of retail establishments serving frequently recurring needs in convenient locations, and typically appropriate to small shopping clusters or integrated shopping centers located within residential neighborhoods."

As indicated by the information submitted by the applicant, over 6,800 persons in the area provides a more than sufficient support population for this neighborhood commercial center. Two policies in the economic element in the Metropolitan Area General Plan (Page III-3-6) are applicable to the request:

666 055

"25. Recognize the role of neighborhood commercial facilities in providing services and goods to a particular neighborhood.

26. Encourage the expansion or redevelopment of existing neighborhood commercial facilities as surrounding residential densities increase or as the characteristics of the support population change."

There are no areas currently zoned for Neighborhood Commercial use within the nearby area and the amount of areas zoned C-1 in the entire Willakenzie area is extremely limited.

Section 9.678(2)(c): The proposed zone change is consistent with applicable adopted neighborhood refinement plans, special area studies, and functional plans. In the event of inconsistencies between these plans or studies and the Metropolitan Area General Plan, the latter is the prevailing document.

The proposed zone change is consistent with applicable adopted refinement plans, special area studies and functional plans.

There are no adopted neighborhood refinement plans or special area studies governing this portion of the City. Further, there are no functional plans relevant to this request.

The criteria for a change in Sign District boundary are addressed as follows:

"Section 8.830(2)(a): The change will result in fair and equal treatment of businesses in the area that are dependent on similar kinds of traffic."

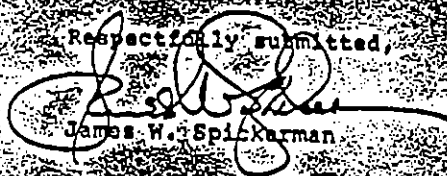
Given the traffic speed on Coburg Road and the Sign Code designation for other properties, a less restrictive district could be considered for this application. The applicant has chosen the Integrated Shopping District and the rezoning certainly will not be in a greater signing privilege for the property then contiguous properties.

"Section 8.830(2)(b): The changes consistent with the purpose and description of the requested Sign District."

The description and purpose section of the various Sign Districts typically addresses two primary factors: (a)

travel speed on the primary access streets; and (b) the nature or character on site development. Under the Integrated Shopping District designation, the subject site will be allowed a single shopping center identity sign, large enough to be readily visible to motorists approaching at speeds of approximately 25 m.p.h. and the remainder of the signs identifying individual shops will be wall signs scaled to pedestrian needs. While traffic speed on Coburg Road maybe somewhat in excess of 25 m.p.h., the applicant's choice to have more restrictive signing is not inconsistent with the purposes of the Sign Code. It is consistent with the intent to have a small shopping center integrated under one management.

Respectfully submitted,

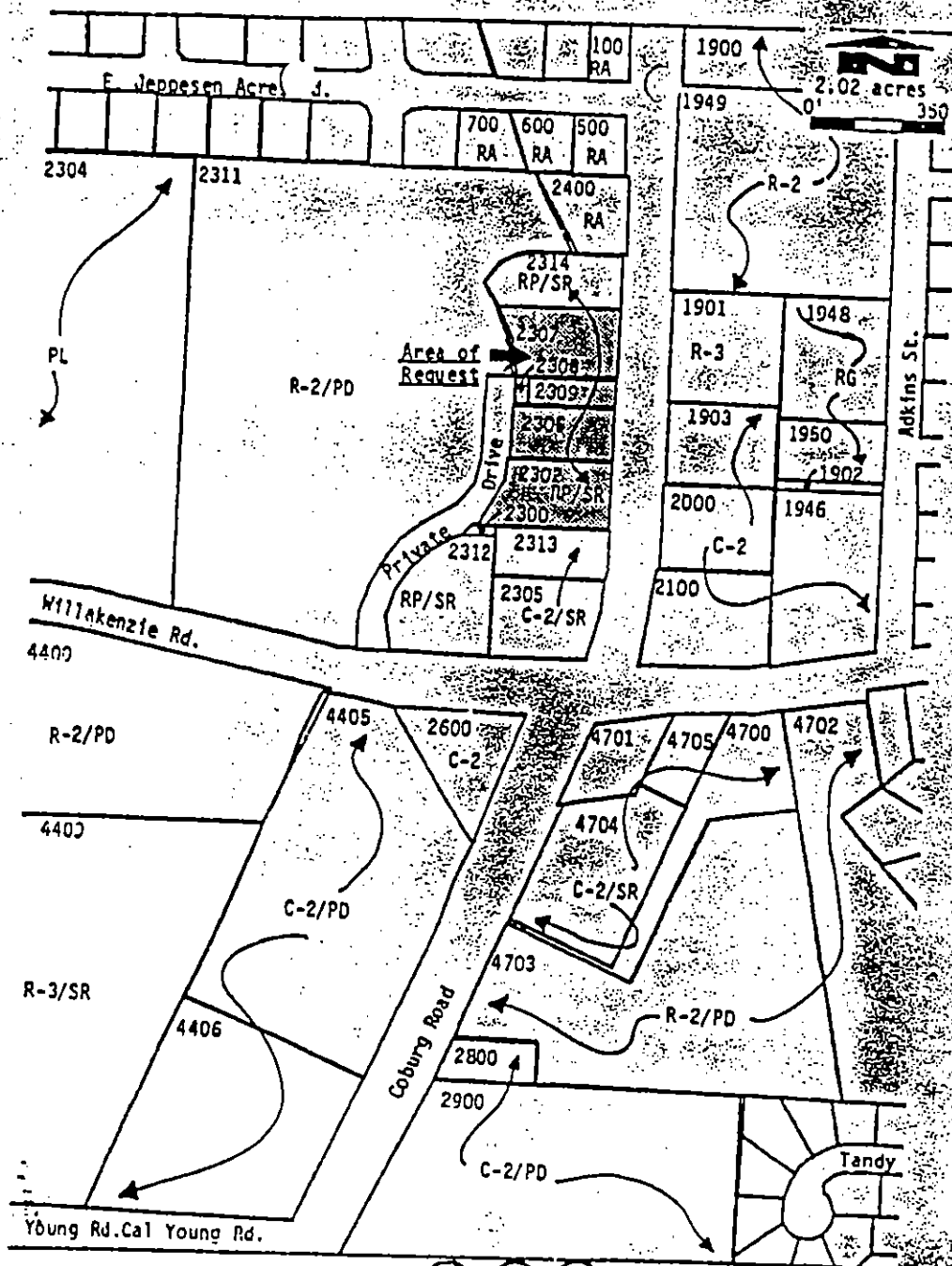
  
James W. Spickerman

JWS:cjs

666 057

JAMES W. SPICKERMAN, P.C.  
ATTORNEY AT LAW  
100 NORTH PARK BUILDING  
100 EAST BROADWAY  
EVANSTON, ILLINOIS 60201  
(708) 847-0000

19-59-86



666 060





## EXHIBIT J

June 9, 1977

Mr. Harold Brazier  
85330 Lorane Highway  
Eugene OR 97405

RE: BRAZIER-KNUTSEN SITE REVIEW (SR 77-8)--Initial Staff Review

Dear Mr. Brazier:

The Site Review Committee has completed initial review of the proposed professional office development. Our review has taken into account specific site review concerns attached by the City Council when this property was rezoned to RP-SR. These include the following:

1. Compatibility with the surroundings, particularly when residential in character.
2. Efficient, safe, and workable interrelationships among building, parking, circulation, open space, and landscaped areas, as well as related areas and uses.
3. Safe and efficient ingress, egress, and on-site traffic circulation.
4. Signs and illumination in scale and harmony with the site and area.

Generally, the proposed site plan appears to address these concerns but the city does request the following additions and modifications:

1. The curb-cut onto Willakenzie Road should be 35 feet in width.
2. The fence along the east property line should be reduced in height to 30 inches within 15 feet of the back of the sidewalk to provide adequate vision clearance for the driveway.
3. The landscaping plan is somewhat unclear. Would you please better identify the various plant materials as well as the quantity to be planted in the various locations.
4. The last specific concern included in the zone change ordinance pertained to signs and illumination. Would you please submit information regarding these features.

067 016

4-99

I-B-62 163

Mr. Harold Brazier  
June 9, 1977  
page 2

When the above modifications and additions have been completed, please resubmit three copies of all revised materials to our office. Upon a finding that all our concerns have been addressed, the Site Review Committee will be in a position to grant site review approval.

If you have any questions about our review, please do not hesitate to call the Planning Department.

Cordially yours,

Jim Croteau  
Planner

cc: Morris, Redden & Associates

JC/jpTha10

067 017

9-100

I-B-63

June 30, 1977

Mr. Harold Brazier  
85330 Lorene Highway  
Eugene OR 97405

RE: BRAZIER--KNUTSON SITE REVIEW (SP 77-8)--SITE REVIEW APPROVAL

The Site Review Committee has reviewed the revised plans submitted to our office. It appears that our earlier concerns as outlined in our letter to you dated June 9, 1977, have been fulfilled and on that basis the Site Review Committee grants site review approval. A copy of the approved site review plans are attached and a copy will be forwarded to the Building Division for their records.

Upon completion of all site and landscaping, the City will conduct a landscape inspection to assure conformance with the landscape plan and the viability of all plantings. If this inspection shows that maintenance and/or replacement is necessary, the owner shall take remedial measures upon notification by the City as to the landscape deficiencies.

If you have any questions about the above action or condition of approval, please contact the Planning Department.

Cordially yours,

Jim Croteau  
Planner

JC:er/THa24

Encl.

cc: Building Division  
Morris Redden and Associates

067 018

9-101  
I-B-64 9-647



## FINDINGS

Public Hearing - September 12, 1978

Case No. 3312 - Assessor's Map No. 0322

Parcel No. 2312 - Assessor's Map No. 0322

General West of the intersection of Bond Road and  
Willamette Road, north of Willamette Road

Requests a conditional use permit to allow development of  
a branch office for the Viking Travel Agency within  
1468 square feet of an 11,500 square foot office  
development. The development is to be located in an  
RP/SR Residential Professional District with Site  
Review Procedures.

The following findings and conclusions are based upon a view  
of the site, testimony presented at the public hearing of  
September 12, 1978, and the Staff Notes.

### CONCLUSIONS:

A conditional use permit to allow development of general  
offices in an RP/SR Residential Professional District with  
Site Review Procedures is granted on the condition that  
requirements of the previous site review (Case No. 7748) and the  
approved final plans, dated April 1977, be adhered to.

### FINDINGS:

#### Section 7.702(a):

The location, size, design and operating characteristics  
of the proposed development are such that it will be reasonably  
compatible with and have minimal impact on the availability and  
appropriate development of adjoining property and the surrounding  
neighborhood.

As indicated in the Staff Notes, the site plan for this  
development has already been reviewed by the Site Review Committee  
to ensure compatibility of the building, lighting, parking and  
other external aspects of this development. The only question  
that remains for this review is the suitability of the travel  
pattern type use, rather than one of the uses allowable outright  
in the RP District. Compared to the outright uses in the RP  
District, the operating characteristics of this general office  
use will be very similar. It can be anticipated that the flow  
of traffic will be similar to that normally generated by uses  
in the RP District. Other than the possibility of traffic  
generation, there are no other operating characteristics of this  
use that would be conceivably distinguishable from outright RP  
uses.

1-Findings

365 032

JAMES W. SPICKERMAN  
ATTORNEY AT LAW  
201 SOUTH PARK BUILDING  
30 EAST BROADWAY  
EUGENE, OREGON 97401

I-B-6

940

Section 9.702(b):

The location, design, and siting of the proposed development will provide a convenient and functional working environment, and will be as attractive as the nature of the use and its location and setting warrant.

The previous site review has dealt with the external aspects of this office building. The particular location for this general office use will be convenient and functional in relationship to surrounding commercial uses and for intended patrons of this travel agency.

Section 9.702(c):

The proposed development will be consistent with the objectives of the Zoning Ordinance, General Plan, and other applicable plan, policies, and resolutions as adopted by the City.

The proposed use complies with the General Plan and the Zoning Ordinance, in that the basic characteristics of this use are virtually indistinguishable from professional office uses.

September 21, 1978

Respectfully submitted,

*James W. Spickernan*  
James W. Spickernan  
Hearings Official

JWS/cbe

2-Findings

365 033

9-103  
JAMES W. SPICKERNAN  
ATTORNEY AT LAW  
102 SOUTH PARK BUILDING  
401 EAST BROADWAY  
EUGENE, OREGON 97401  
(503) 687-9331

Viking Travel Agency (CU 78-28)

Lot 2312--Assessor's Map 17-03-20-18

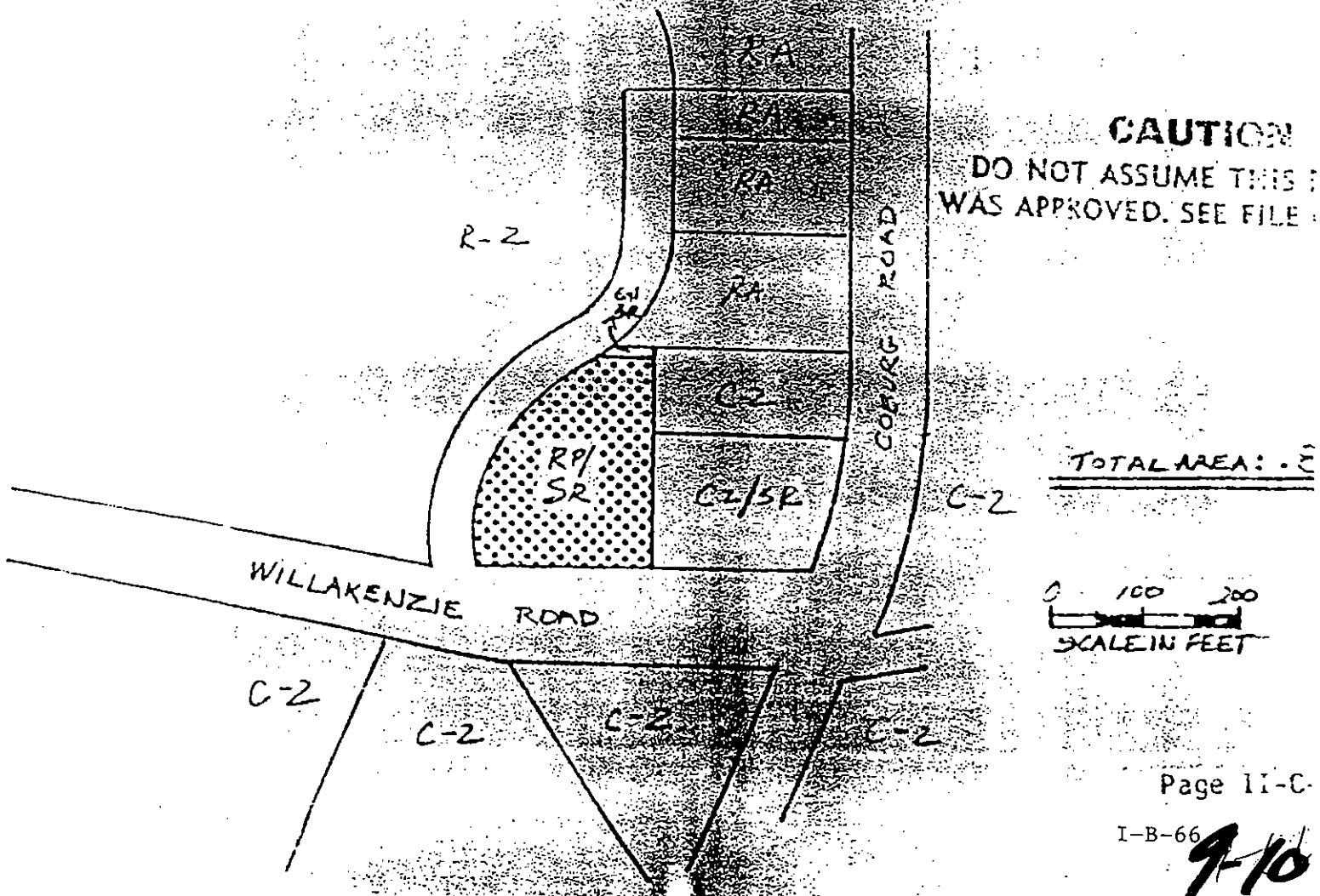
Located west of the intersection of Coburg Road and Willakenzie Road, north of Willakenzie Road.

Requests a conditional use permit to allow development of a branch office for the Viking Travel Agency within 1,468 square feet of an 11,500 square foot office development. The development is to be located in an RP/SR Residential Professional District with Site Review Procedures.

THE LOCATION OF THIS REQUEST IS NOTED IN SHADING ON THE VICINITY MAP, BELOW.

THIS APPLICATION IS LOCATED WITHIN THE BOUNDARIES OF THE WILLAKENZIE NEIGHBORHOOD ASSOCIATION, WHICH HAS ALSO RECEIVED A COPY OF THE APPLICATION.

FOR FURTHER INFORMATION PERTAINING TO THIS REQUEST, YOU MAY CONTACT THE CITY OF EUGENE PLANNING DEPARTMENT, ROOM 1063 CITY HALL, OR PHONE 687-5271. THE WRITING STAFF EVALUATION OF THIS REQUEST WILL BE AVAILABLE SEVEN DAYS PRIOR TO THE PUBLIC HEARING DATE NOTED ABOVE.



# LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

APPLICATION DEEMED COMPLETE  JAN - 7 2004  CITY OF EUGENE PLANNING DEPARTMENT December 29, 2003	576 OLIVE STREET, SUITE 300 EUGENE, OR 97401 PO BOX 11906 EUGENE, OR 97440 TEL (541) 343-8596 FAX (541) 343-8702 E-MAIL BILLKLOOS@LANDUSEOREGON.COM
RECEIVED  DEC 30 2003  CITY OF EUGENE PLANNING DEPARTMENT	

Ms. Teresa Bishow, Senior Planner  
Eugene Planning and Development  
Atrium Building  
99 West 10th Ave.  
Eugene, OR 97401

Re: Zone Change Application for Knutson Family, LLC (Z 03-19)

Dear Teresa:

This letter responds to your completeness review letter dated December 16, 2003.

In "General Comments" on the completeness review form, you suggest including TL 4500 in the application. This is the narrow easement strip that may be shown on some versions of the tax map as being adjacent to the south of TL 4400. Our research at Lane County suggested to us that TL 4500 has been absorbed into TL 4400. Hence, we did not call it out separately in the application. This strip is intended to be a part of the application. Similarly, it is our understanding that TL 4200, which is shown on some tax maps as being adjacent to the west of TL 4100, has been absorbed into TL 4100; hence, it was not called out separately in the application. We want to be clear that TL 4200 is intended to be included in the application.

The one substantive deficiency noted in your completeness review letter is the lack of a traffic study. We were surprised to see this request in your letter. A traffic study is not needed for completeness. Doing one would be an exercise in fiction. Your letter cites no provision of the code that requires a traffic study. There is none. The City may not require for completeness information that is not required by the code. This City has litigated and lost this issue before. See *Doumani v. City of Eugene*, 35 Or LUBA 388 (1999).

It is also true, as your letter says, that, aside from the code's explicit requirements for completeness, the applicant has the burden of demonstrating compliance with all the applicable standards. But even the standards for a zone change do not require a showing that the existing transportation system is fully adequate for a particular commercial use of the property. The comments made by Mr. Nordgaard, on behalf of the transportation department, are off base and conflict with a recent rezoning decision by the Eugene Hearings Official. His comments want a development plan to be submitted with the rezoning request and to be accompanied by a traffic study. Apparently he would have the City evaluate the rezoning request based on the workability of the development plan in terms of traffic impacts.

This approach was rejected by the Hearings Official in her rezoning of the city's 16.5 acres of R-1 land on Royal Avenue west of Danebo in December of 2002. I am enclosing a copy of the decision, Final Order in Z 02-21 (Dec. 19, 2002). The decision rezoned the property from R-1 to R-2/PD. The relevant discussion is pages 4-6 of the decision under the standard in 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."

A neighbor of the city's proposed rezoning suggested that this standard required proving the adequacy of the facilities to accommodate the increment of development allowed by the rezoning. The applicant, who happened to be the City, contended that the adequacy or availability of services was not relevant under the standard, and no future development had to be hypothesized. The hearings official agreed with the City, as follows:

"The criterion does not require either a showing of 'adequacy' or of 'availability' of key urban facilities. Rather, it requires that the uses and density that will be allowed by the proposed zoning 'can be served' through the orderly extension of key urban facilities. As the attorney [for the neighbor] correctly states, this criterion requires a review of whether the urban facilities can be extended to serve the uses and density that will be allowed under the requested zone. It does not, however, require hypothesizing about layout or potential impacts that could occur under future development. As the applicant [the City] correctly states, 'a presentation of hypotheses about what could be built on the site at some point in the future does not provide any concrete evidence upon which to base findings of fact.' A zone change may facilitate future development of the property. However, under this zone change request, no specific development is proposed. Until development is proposed through a future proceeding, the evaluation of the adequacy of potential facilities to accommodate that future use is premature and not required under this section."

So, if the Hearings Official has determined that accommodating specific future development is irrelevant under this rezoning criteria, a traffic study related to future development cannot be an element of completeness review. I trust the Hearings Official's discussion of this issue under in the case quoted above will resolve the completeness review issue in your letter.

The applicant would hope, too, that city transportation staff will not be raising this issue again during the merits of its review of the rezoning proposal – that is, once the formal review of the proposal begins at the staff level. The meaning of the facilities standard in EC 9.8865(3) is the same for this application as it was for the city's own rezoning application. The City took a position on the meaning of the standard in connection with its own rezoning application, and the Hearings Official agreed with it. The City has a statutory obligation to be consistent in its interpretation of what standards are applicable to permit and what they mean. See ORS 227.178(3); *Holland v. City of Cannon Beach*, 154 Or App 450, 457-58, 962 P2d 701 (1998).

I-B-68  
9-106

Ms. Teresa Bishow  
December 29, 2003  
Page 3 of 3

That should resolve the merits of the completeness issue. I'd also like to comment on some fundamentally erroneous assumptions reflected in the written comments of Mr. Nordgaard. His comments assume that the site is a candidate for a Walgreens and recite that the representatives of the owners discussed with staff constructing a Walgreens on the site. This application has been submitted by the owners. No one has the site under contract or option, written or otherwise, for development of a Walgreens. There was, some time ago, a limited consultation with city staff about development of a Walgreens on the site. That meeting was at the request of a would be developer, not at the request of the owners. The owners have no development plans for the site at this time. Speculation about future development would be just that.

The applicant looks forward to working with staff during the balance of the processing of this application.

Sincerely,

Bill Kloos

Encl.     Final Order, Z 02-21  
cc:        Clients

I-B-69

9-10



**BEFORE THE HEARINGS OFFICIAL OF THE CITY OF EUGENE, OREGON**

**Final Order in Z 02-21**

The Hearings Official of the City of Eugene finds as follows:

1. The following application for a zone change was submitted:  
  
Assessor's Map 17-04-28-21; Tax Lot 203  
  
Located at the south side of Royal Avenue, west of Danebo Road  
  
Request for a change in zone from R-1 (Low Density Residential) to R-2/PD (Medium Density Residential with a Planned Unit Development overlay)  
  
Applicant: City of Eugene, Facilities Management Division
2. The application was initiated and submitted in accordance with EC Section 9.7010 et seq. Timely and sufficient notice of the zone change request hearing under EC Section 9.7315 has been provided.
3. On November 20, 2002, a public hearing on the zone change request was held. The Planning Department staff notes and recommendation, together with the written materials submitted into the record and testimony of persons testifying at the public hearing and through the close of the record on December 4, 2002, have been considered and are a part of the record of this proceeding.
4. Further consideration has been given to and administrative notice taken of the provisions of the Eugene-Springfield Metropolitan Area General Plan and all applicable special purpose/functional plans, planning-related policies, neighborhood refinement plans, and community plans as set forth in the Metro Plan.
5. On the basis of this record, the requested zone change is consistent with the criteria set forth at Eugene Code Section 9.8865. This general finding is supported by the specific findings of fact and conclusions of law contained in Exhibit A to this Final Order.

NOW, THEREFORE, based upon the above findings and the record in this proceeding, IT IS HEREBY ORDERED THAT:

The application for zone change is APPROVED.

Approval dated December 19, 2002.

9-10  
I-B-70  
9-10

The action will become final and effective on the 13<sup>th</sup> day following the date of mailing, unless appealed.



Anne C. Davies  
Eugene Hearings Official

**NOTICE OF APPEAL RIGHTS:** This decision may be appealed to the Eugene Planning Commission. Any appeal must be filed on a Planning Department form within twelve (12) days from the date of mailing of this decision. Appeals are governed by the provisions of EC Section 9.7655. Unless appealed, this decision will become effective on the 13<sup>th</sup> day following mailing.

I-B-71

9-109

EXHIBIT A

**FINDINGS AND DECISION OF  
THE CITY OF EUGENE HEARINGS OFFICIAL**

**ROYAL/DANEBO ZONE CHANGE (Z 02-21)**

**Location:** South side of Royal Avenue, west of Danebo Road  
Map 17-04-28-21, tax lot 203

**Request:** The applicant requests a change in zoning district on a 16.5 acre vacant parcel from R-1 (Low Density Residential) to R-2/PD (Medium-Density Residential with a Planned Unit Development overlay zone)

**Applicant:** City of Eugene, Facilities Management Division

**Representative:** Josh Bruce, Satre Associates PC

The following findings of fact and conclusions of law are based upon testimony presented at the public hearing November 20, 2002 and materials and documents submitted and made part of the planning department file through the close of the record on December 4, 2002.

**CONCLUSION:** Zone change request for the subject property from R-1 (Low Density Residential) to R-2/PD (Medium-Density Residential with a Planned Unit Development overlay zone) is approved.

**DISCUSSION AND FINDINGS:**

**Site Characteristics**

The subject property is a vacant parcel, approximately 16.5 acres, located on the south side of Royal Avenue and to the west of Danebo Road. Property directly to the east, adjacent to Royal Avenue, is zoned C-2/SR, Community Commercial with a site review overlay, and is developed with a recently constructed supermarket and retail stores. Property to the southeast of the subject parcel is zoned R-1, Low Density Residential, and is owned by the Church of Latter Day Saints. The remaining parcels to the south and west are zoned R-1, Low Density Residential, and are currently developed with single-family residences and a manufactured dwelling park.

Other development in the area includes a convenience store and gas station on the southeast corner of Royal and Danebo Avenues. The remainder of the general area surrounding the site is developed with existing residential development, or remains vacant.

Access to the subject property is available via Royal Avenue to the north. A drainage channel traverses the northern portion of the site parallel to Royal Avenue. An existing street has been stubbed to the site just south of the existing drainage canal. The applicant notes that additional street access to Danebo

I-B-72

9-11

Avenue is expected as part of future improvements of tax lot 100 (also owned by the City of Eugene), which lies between the subject property and Danebo Road to the east. Due to existing development on the remaining parcels to the west, south, and east, no other access to the site is currently available.

### **Prior Related Land Use Decisions**

The subject property was annexed to the City of Eugene in 1964. In 1997, a two-lot partition (M 97-41) was approved, creating tax lot 203.

### **Evaluation**

The Eugene Code requires review and evaluation of all zone change applications for compliance with the following criteria:

**Section 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.**

**Finding:** The Metro Plan Land Use Diagram designates the subject property as Medium Density Residential. Therefore, the proposed change in base zoning of tax lot 203 from R-1 to R-2, Medium Density Residential, is consistent with this designation. The application of the /PD overlay zone will not affect the underlying base zone designation, as it primarily addresses procedural requirements and development standards for future land use proposals. As will be discussed below, the application of the /PD overlay zone is specifically supported in the applicable refinement plan. Therefore, the proposed zone change to R-2/PD is in compliance with the Metro Plan Land Use Diagram.

The following statements from the Metropolitan Area General Plan (Metro Plan) are also applicable to this zone change:

Metro Plan Element A, Policy A.11 specifically states:

*Generally locate higher density residential development near employment or commercial services, in proximity to major transportation systems or within transportation-efficient nodes (Page III-A, as amended 1999).*

The proposed zone change would allow a higher density of residential use on the subject property, which is directly adjacent to existing commercial services. The subject property is also approximately one-half mile west of Beltline Road. The increase in density on the subject property in such close proximity to a major transportation system implements the above policy. Accordingly, the proposed zone change complies with Metro Plan Element A, Policy A.11.

I-B-73

9-111

Metro Plan Element A, Policy A.17 specifically states:

*Provide opportunities for a full range of choice in housing type, density, size, cost and location (Page III-A-9, as amended 1999):*

The establishment of the /PD overlay zone will provide additional implementation tools which promote development patterns offering a variety of housing types and development patterns. The PD/ overlay enables more flexibility in the actual design and layout of future development to achieve the development objectives expressed in this policy.

Metro Plan Element G, Policy 7 specifically states:

*Facility and program planning in the metropolitan area shall use the General Plan as a basis for decisions to ensure that the needs of the metropolitan area are met in an orderly and efficient manner (Page III-G-5).*

The subject property is surrounded by existing development (with the exception of tax lot 100) and is one of the last remaining vacant parcels on the south side of Royal, in the vicinity of the Royal/Danebo intersection. Because most of the surrounding parcels are already developed, facilities and programmatic elements needed to facilitate development of the subject property are already in place. The area is currently served by water, electric, wastewater, stormwater, and transportation facilities. See discussion below under findings for EC 9.8865(3) of stormwater services. Lane Transit District (LTD) provides transit service along Royal Avenue (existing bus stops are located at the northwest corner of the parcel and approximately 250 feet east of the parcel on Royal Avenue) and on Danebo Avenue. Educational services are provided by Bethel School District 52, which is currently proposing a new school to serve future growth in the area. Fire, EMS and police services are all provided by the City of Eugene. As all needed facilities are available or can be extended to the subject property, and as decisions related to the specific on-site design of the extension of said facilities can be accommodated through the development process, the subject proposal complies with Metro Plan Element G, Policy 7.

**Section 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.**

**Finding:**

The Bethel-Danebo Refinement Plan is the applicable refinement plan for this area. The plan identifies three nodal development areas within the plan boundaries. The subject property falls within the "Royal-Danebo Development Node." The Plan provides a land use diagram for the Royal-Danebo Development Node. Bethel-Danebo Refinement Plan, p.15. This diagram depicts the general layout of the commercial and medium density residential designations. The subject parcel is located within that area

I-B-74

9-71

designated on this diagram as medium-density residential.

In addition to the diagram, specific policy language related to the node states:

*A residential node shall be developed at the southwest corner of Royal Avenue and Danebo Avenue to accommodate 10 acres of neighborhood commercial development and 30 acres of medium-density residential development (Page 13, Bethel-Danebo Refinement Plan).*

The proposed zone change to allow medium-density residential uses on the subject property complies with the above policy.

The Bethel-Danebo Plan also contains a list of "proposals" which describe desired actions for the Royal-Danebo Development Node. Although these "proposals" are merely advisory, and are not mandatory approval criteria, the proposal does comply with them.

Proposal 1 states:

*Site Review procedures should be required for the commercial portion of the development node and planned unit development procedures required for the residential portion of the node.*

The applicant has proposed the /PD, Planned Unit Development Overlay Zone for the subject property. This request is consistent with the above provision of the Bethel-Danebo Refinement Plan.

Based on these findings, the proposed base zone and overlay zone designations are consistent with the Bethel-Danebo Refinement Plan.

**Section 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.**

**Finding:** As previously stated, the subject property is one of the last in the area to be developed. Key urban facilities are, therefore, already generally extended to the area. All utility services (water, sewer and electricity) are currently available to the subject property. Wastewater service is currently available to serve the property via a 12" line in Royal Avenue. Water and electrical service, telephone and other utilities are also provided along Royal Avenue. The site has frontage on Royal Avenue which is classified as a minor arterial on the Arterial and Collector Street Plan (ASCP). With the /PD overlay zone, future development under a planned unit development application will enable sufficient review to ensure safe and efficient vehicle, pedestrian and bicycle access to this property and abutting properties. The City owns a 12-acre park site directly across Royal Avenue from the subject property, providing future recreational services to the area. Lane Transit District (LTD) provides transit service along Royal Avenue (existing bus stops are located at the northwest corner of the parcel and approximately 250 feet east of the parcel on Royal Avenue). Educational services are currently provided by Bethel School



District 52, which has constructed a new school to the west to serve future growth in the area. Fire, EMS and police services are all provided by the City of Eugene.

The subject property contains a drainage channel running parallel to Royal Avenue and a 21" stormwater system exists along Royal Avenue. These channels flow north across Royal Avenue and continue across another city-owned property and a privately owned parcel to the north. The stormwater system downstream from the subject property and these other parcels is insufficient to handle additional runoff. The City is currently in the process of obtaining a state permit to widen and enhance the downstream system.

A neighboring property owner has questioned the "availability" or "adequacy" of stormwater service to the subject property. The neighbor's attorney, while asserting that his client is not opposed to the proposed zone change, contends that this criterion requires a showing that key facilities are "adequate," and that, based on this interpretation, the proposed zone change does not comply with the criterion. He appears to consider the terms "available" and "adequate" as synonymous in this context. Specifically, the attorney argues that the rezoning approval must establish that, following any potential development allowed under the proposed zoning, there will be no increase in the "peak discharge" to the public drainageway during the "design storm" as compared to the current, predevelopment conditions.

The criterion does not require either a showing of "adequacy" or of current "availability" of key urban facilities. Rather, it requires that the uses and density that will be allowed by the proposed zoning "can be served" through the orderly extension of key urban facilities. As the attorney correctly states, this criterion requires a review of whether the urban facilities can be extended to serve the uses and density that will be allowed under the requested zone. It does not, however, require hypothesizing about layout or potential impacts that could occur under future development. As the applicant correctly states, "a presentation of hypotheses about what could be built on the site at some point in the future does not provide any concrete evidence upon which to base findings of fact." A zone change may facilitate future development of the property. However, under this zone change request, no specific development is proposed. Until development is proposed through a future proceeding, the evaluation of the adequacy of potential facilities to accommodate that future use is premature and not required under this criterion.

The table located at EC 9.2740 spells out the allowable uses in the R-1 and R-2 zones.<sup>1</sup> Many of the residential uses found in the R-2 zone are also permitted in the R-1 zone, either outright or with additional review requirements. It cannot be said, therefore, that the zone change to R-2 will necessarily increase the impervious surface and, thus, the stormwater runoff, over what would likely be constructed under the current R-1 zoning.

The state's approval of the permit to widen the existing facility is just one possible way in which the stormwater facility can be extended to serve development that may be proposed under the R-2 zone. Stormwater facilities are currently located on the subject property and connect to the city's stormwater system off-site to the north. The adequacy of the system downstream is not an issue that can or should be reached under the zone change criterion. The /PD overlay provides the specific criteria addressing

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<sup>1</sup> Although neither party submitted nor discussed the language of EC 9.2740, the hearings official takes judicial notice of that section of the code.

adequacy of the facilities under a proposed development plan. Stormwater facilities are currently available on and to the site, and the allowable uses can be served through the orderly extension of those facilities.

**Section 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. \* \* \*

**Section 9.2735:** In addition to the approval criteria of EC 9.8865 Zone Change Approval Criteria, a property proposed for the R-1.5 zone shall not exceed the area needed to accommodate up to 8 rowhouse lots and shall be located at least 500 feet as measured along existing street public right-of-way, from any other property zoned R-1.5.

**Finding:** Because this proposal does not involve a change to the R-1.5 zone, this criterion does not apply.

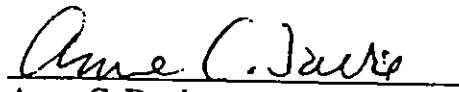
**Section 9.8865(5):** In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the city to ensure the area is maintained as a natural resource area for a minimum of 50 years.

**Finding:** Because the applicant is not proposing application of the NR zone to the subject property, this criterion does not apply.

### **Conclusion**

Based on the findings above that the requested zone change satisfies each of the applicable approval criteria, the requested zone change from R-1 to R-2/PD is approved.

DATED: December 19, 2002.

  
Anne C. Davies  
HEARINGS OFFICIAL

**NOTICE OF APPEAL RIGHTS:** This decision may be appealed to the Eugene Planning Commission. Any appeal must be filed on a Planning Department form within twelve (12) days from the date of mailing of this decision. Appeals are governed by the provisions of EC 9.7655. Unless appealed, this decision will become effective on the 13<sup>th</sup> day following mailing.

9-115  
I-E-7

## CERTIFICATE OF MAILING

I hereby certify that I served the Decision and Order of the Hearings Official on the Royal/Danebo Zone Change (Z 02-21) by mailing a true copy thereof contained in a sealed envelope with postage prepaid addressed to the following:

Active Bethel Citizens  
c/o Linda Swisher  
3285 Bell Ave.  
Eugene, OR 97402

David Nichols  
Pacific West Engineering  
3610 Goodpasture Loop  
Eugene, OR 97401

Emmy Jenson  
City of Eugene Facilities  
210 Cheshire  
Eugene, OR 97402

Ross Murry  
3610 Goodpasture Loop  
Eugene, OR 97401

Josh Bruce  
Satre Associates  
132 E. Broadway #536  
Eugene, OR 97401

Bill Kloos  
576 Olive St. Suite 300  
Eugene, OR 97401

Dated this 19<sup>th</sup> day of December, 2002.



Anne C. Davies  
Hearings Official

**LAW OFFICE OF BILL KLOOS, PC**

OREGON LAND USE LAW

576 OLIVE STREET, SUITE 300  
EUGENE, OR 97401  
PO BOX 11906  
EUGENE, OR 97440  
TEL (541) 343-2674  
FAX (541) 343-8702  
E-MAIL DANTERRELL@LANDUSEOREGON.COM

February 9, 2004

Teresa Bishow, Senior Planner  
Eugene Planning Division  
99 West 10th Avenue  
Eugene, OR 97401

Re: Easement Information for Knutson Application, Z 03-19

Dear Teresa:

Enclosed, please find copies of the access easement for the Z 03-19 parcels to use the Sheldon Parkside drive way for ingress and egress and a Planning Director's Code Interpretation saying that such use is a permitted use under the current land use code.

The easement materials include a copy of the easement, property descriptions of the affected parcels and a map of the parcels. The copy is unsigned. The original, signed copy was recorded at the County Recorder's Office on October 4, 1974, Reel 710, Reception Number 74-43035.

We read the easement to pose no limitations on easement uses for the parcels currently owned by the Knutson Family, LLC. The easement granted is described as "a perpetual, non-exclusive easement and right-of-way for ingress and egress" for use by the property owners, "including its tenants, their families and guests, and its business invitees and permittees, for use in connection with all or any portion of the lands presently served" by the easement. In short, there is no limitation on the ingress and egress uses by the Knutson Family, LLC. The only obligation that is placed upon the properties presently under the Knutson Family, LLC, ownership is that they shall share ratably in the cost of maintaining and repair of the street and curbs in the easement.

Also included is an April 18, 2003 Planning Director's Code Interpretation Regarding Access Across R-1 Zoned Land to Serve C-2 Zoned Land (CI 03-1). That interpretation addresses two scenarios. In one scenario the use is prohibited and in the other is permitted. We understand the present application, Z 03-19, to involve a situation similar to the Scenario # 2 described in the interpretation, which is a permitted use. That interpretation states:

"In essence, the code permits joint use of driveways and parking spaces by different uses on the same or different development sites, regardless of zoning. Parking areas, including driveways, are permitted as an accessory use to a primary use on the residential lot. These parking areas can be shared, in whole or in part."  
(Emphasis in original.)

Teresa Bishow  
February 9, 2004  
Page 2

The use of the easement property would not be to exclusively provide off-street parking on the commercial zoned lots or otherwise not be connected to off-street parking on the residential zoned lots. That is the situation described in Scenario # 1, which is a prohibited use. Under the present proposal, the easement property would be used to serve both the commercial uses that would be allowed and the existing residential uses.

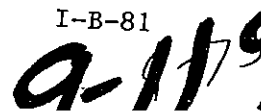
If you have any further questions, please give me a call.

Sincerely,

  
Dan Terrell

encl.

cc: Clients







Planning & Development  
Planning Division

April 18, 2003

Bill Kloos  
Law Office of Bill Kloos, PC  
P.O. Box 11906  
Eugene, OR 97440

City of Eugene  
99 West 10<sup>th</sup> Avenue  
Eugene, Oregon 97401  
(541) 682-5377  
(541) 682-5572 FAX  
www.ci.eugene.or.us

RE: Code Interpretation Regarding Access Across R-1 Zoned Land to Serve C-2 Zoned Land  
(CI 03-1)

Summary of Request:

On March 24, 2003, you submitted a request for a Planning Director interpretation on whether a driveway located on R-1 zoned property could be used to access C-2 zoned property, even where the C-2 property otherwise has direct street access.

Background:

The information you provided includes a hypothetical situation to illustrate the question. The situation described contemplates that the owner of the commercial lot has an easement across the residential lot. The easement would be limited in use to access and would not be used for parking or other commercial activities.

Interpretation:

In general, if a driveway connects to parking stalls it is considered part of a "parking area". The code includes the following definition:

Parking Area: Any area which can be used by motor vehicles, recreational vehicles, trailers, and boats for parking, including driveways and access aisles providing access to the parking stalls.

Parking areas are not listed as a permitted use in the R-1 zone in the "Motor Vehicle Related Uses" category and thus can not be the primary use on a lot zoned R-1. Parking areas in R-1 are only permitted as accessory to a principle use on the development site. Parking areas, including driveways, that exclusively serve an adjacent commercial zoned lot are prohibited.

The code encourages safe and efficient circulation within and between development sites. (For example, refer to EC 9.6815 Street Connectivity.) The code also encourages the use of shared off-street parking. (Refer to EC 9.6430 Shared Off-Street Parking.) The question now raised, is whether the city permits joint access to parking spaces on two different development sites without the creation of a street or alley.

For purposes of this interpretation, two scenarios are described below:

Scenario #1: Driveway Proposed on a Residential Lot Exclusively to Serve an Adjacent Commercial Use - Prohibited

In Scenario #1, a driveway is proposed on a residential lot that is not connected to an off-street parking area (nor serve any other use permitted) on the residential zoned lot. An example might be a case where a single-family dwelling has a driveway leading to a garage. In a separate location on the lot, a driveway is proposed to exclusively serve access to an adjacent commercial use. In this case, the adjacent property

owner of the commercial lot would have exclusive use of the driveway for access to a parking area on commercially zoned property. The driveway would put a portion of the commercial off-street parking area on residential zoned land and would not be "shared" by a permitted use on the residential lot. The driveway to serve the commercial use would be prohibited on the R-1 lot.

Scenario #2: Driveway on Residential Lot Serves A Permitted Parking Area on the Residential Zoned Lot - Joint Use of Driveway by Adjacent Commercial Lot - Permitted

In Scenario #2, the driveway is part of the off-street parking area that serves a permitted use on the residentially zoned lot. If the driveway connects to parking stalls on the residential lot, it is part of the "parking area" on the residential lot. According to EC 9.6430 Shared Off-Street Parking, the code allows parking (including driveways) to be shared, regardless of zoning. Furthermore, the driveway itself is a component of a permitted off-street parking area on the residential zoned lot. Providing joint use is an efficient use of land, reduces impervious surfaces, and can reduce the number of curb cuts (driveway connections) needed on the adjacent public street.

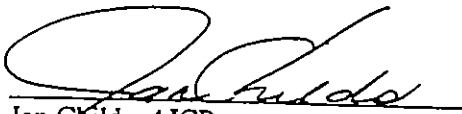
In essence, the code permits joint use of driveways and parking spaces by different uses on the same or different development sites, regardless of zoning. Parking areas, including driveways, are permitted as an accessory use to a primary use on the residential lot. These parking areas can be shared, in whole or in part.

In summary, if the driveway is exclusively providing access to off-street parking on the commercial zoned lot and is not connected to off-street parking on the residential zoned lot, it would not be permitted. If a driveway on a residential zoned lot also provides joint access to off-street parking on both the residential zoned lot and the commercial zoned lot, it is functioning as a shared facility and is permitted. The fundamental difference is whether the driveway is a permitted activity on the residential zoned lot. If it is, then joint use is permitted.

For More Info: Contact either Teresa Bishow, 682-5452, or me at 682-5208.

Date of Interpretation and Date Mailed: April 17, 2003

Appeal: According to Eugene Code Section 9.0040, appeals of a Planning Director interpretation of the Land Use Code shall be heard by a hearings official in the manner set out in EC 9.7600 - 9.7635. The decision may be appealed within 12 days of the date the interpretation was mailed and shall be submitted on a form approved by the city manager and accompanied by a fee.

  
Jan Childs, AICP  
Eugene Planning Director

To: <b>KIM O'DEA</b>	No. of Pages: <b>1</b>	Today's Date: <b>7/26/02</b>	Time: <b>3:50</b>
Country:	From: <b>SHERYL LOCKHART</b>		
Location:	City: <b>CITY OF EUGENE</b>		
Fax #: <b>343-8702</b>	Telephone:	Ext.:	Telephone: <b>682-8828</b>
Comments:	Original Deposit:	<input type="checkbox"/> Destroy	<input type="checkbox"/> Return <input type="checkbox"/> Call for pickup
<b>FEE: \$35/HZ (MINIMUM OF \$20.00)</b>			



Planning & Development  
Planning Division

City of Eugene  
99 West 10<sup>th</sup> Avenue  
Eugene, Oregon 97401  
(541) 682-5377  
(541) 682-5572 FAX  
[www.ci.eugene.or.us](http://www.ci.eugene.or.us)

COPY

## LAND USE CODE AND DECISION INTERPRETATION REQUEST

Please complete the following form and provide the required information. If you have questions about filling out this application, please contact staff at the Permit and Information Center, 99 West 10<sup>th</sup> Avenue, Eugene, OR 97401, phone 682-5377.

Code Section(s) to be Interpreted:  
(List specific code section(s) where an interpretation is being requested.)

9.6240 and 16.090

Does this interpretation request pertain to a specific land use application or building permit: Yes ☐ No ☒ Proposed Development.

If so, provide application or permit number: \_\_\_\_\_

### Filing Fee

☒ A filing fee must accompany all applications. The fee varies depending on the type of application and is adjusted periodically by the City Manager. Check with the Planning staff at the Permit and Information Center to determine the required fee or check the City web site at [www.ci.eugene.or.us/PDD/Planning/PERMITS.htm](http://www.ci.eugene.or.us/PDD/Planning/PERMITS.htm)

### Written Statement

☒ Submit a written statement describing why the code or land use decision interpretation is being requested. If applicable, include a site plan and map and tax lot number for subject property.

NAME:

Signature: [Signature]

Name (print): Bill Kloos, Attorney for Applicant

Address: PO Box 11906

City/State/Zip Code: Eugene OR 97440

Phone: 541 343 8596 E-mail: BillKloos@landuseoregon.com

P:\Land Use Permits Section\2002 Applications\Code Interpretation.wpd

Land Use Code and Decision  
Interpretation Request

Date last revised: 6/18/02

Attachment A

9-122  
9-7

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

576 OLIVE STREET, SUITE 300  
EUGENE, OR 97401  
PO BOX 11906  
EUGENE, OR 97440  
TEL (541) 343-0323  
FAX (541) 343-8702  
E-MAIL [KIMODEA@CONTINET.COM](mailto:KIMODEA@CONTINET.COM)  
E-MAIL [BILLKLOOS@CONTINET.COM](mailto:BILLKLOOS@CONTINET.COM)

March 24, 2003

Jan Childs, Director  
Eugene Planning Department  
99 West 10<sup>th</sup> Avenue  
Eugene, OR 97401

Re: Access across R-1 zoned land to serve C-2 zoned land.

Dear Ms. Childs:

Please accept the following as a statement in support of the attached formal interpretation request. See Attachment A. A check for \$35.00 is enclosed for the first hour of review, per planning staff. The applicant understands that if the review requires more than an hour, additional fees will be assessed.

I. INTERPRETATION AUTHORIZATION

EC 9.8187 and EC 9.0040 provide for formal Code interpretations. EC 9.0040 states,

*"The planning director is authorized to interpret this land use code and decisions issued pursuant to this land use code. Requests for interpretations must be submitted on a written form approved by the city manager and accompanied by a fee established pursuant to EC Chapter 2. Within 10 days of receipt of the written request, the planning director shall make a written interpretation and mail or deliver a copy to the party requesting the interpretation. Appeals of these interpretations shall be heard by a hearings official in the manner set out in EC 9.7600 - 9.7635."*

II. QUESTION

May a driveway located on Residentially zoned property be used to access C-2 property, even where the C-2 property otherwise has direct street access?

The following is a hypothetical situation that can be used to illustrate the question. The subject property zoned C-2 sets on the corner of two city streets, A Street and B Street. The subject property has multiple access points directly onto A Street and one access point to B street. An adjacent lot is zoned Residential. To access the subject property, the owner would like to use the driveway of the residential lot via an easement. No parking or other use of the easement is contemplated. The easement across the Residential property would be for additional access only.

CONVEYANCE OF ROADWAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of Ten and Other Dollars, receipt of which is hereby acknowledged, SERVICE DEVELOPERS CORPORATION, an Oregon Corporation, Vestee of the following described Servient Estate, and THE TRAVELERS INSURANCE COMPANY, a Connecticut Corporation, Mortgagee of the Servient Estate under a Mortgage dated November 13, 1970, recorded February 2, 1971, Reception No. 35667, Reel 513, Lane County Oregon Official Records, and also under a Mortgage dated December 9, 1971, recorded December 10, 1971, Reception No. 77386, Reel 562, Lane County Oregon Official Records, who joins in this conveyance for the purpose of subordinating its Mortgages to this Easement, hereby grants, bargains, sells, and conveys unto HAROLD G. OLSON and WYNETTA R. OLSON, Husband and Wife, a perpetual, non-exclusive easement and right-of-way for ingress and egress, to be used in common with SERVICE DEVELOPERS CORPORATION, as Grantor, its successors and assigns, including its tenants, their families and guests, and its business invitees and permittees, for use in connection with all or any portion of the lands presently served by the aforesaid easement, over and across the following described Servient Estate:

Lot A, Sheldon Parkside, as platted  
and recorded in Book 59, Page 16,  
Lane County Oregon Plat Records,  
Lane County, Oregon.

This Easement is granted for the full use and purposes above stated by the Grantees, their licensees and permittees, for the benefit of the following described Dominant Estates, to which this Easement is and shall be appurtenant and shall run with the titles thereto:

Parcels I, II, III, IV, and V are  
particularly described upon Exhibit  
A, attached hereto, identified at the  
foot thereof by Grantors' signatures,  
and by this reference incorporated herein.

Grantees covenant and agree to share ratably with Grantor Service Developers Corporation in the cost of maintenance and repair of the street and curbs now or hereafter installed upon Lot A, aforesaid, according to the area of the land owned by each which is served by said Lot A as an easement of ingress and egress. Any curbs, street improvements, public or private utility company pipes, wires and lines, or storm sewers in said Lot A, which are damaged or destroyed by Grantees, their heirs or assigns, shall immediately be repaired, restored or replaced, as may be necessary, without cost to Grantor, its successors or assigns.

Further, Grantees covenant and agree that they will not park motor vehicles upon or otherwise obstruct said Lot A, nor permit tenants or contract purchasers of the dominant tenements hereinabove described, or others in privity with Grantees, or under their control, to do so.

The grant of the easement hereby made, as well as the covenants and agreements herein contained, shall inure to the benefit of and be binding upon Grantor, its successor and assigns, and upon Grantees, their heirs, devisees, personal representatives or assigns of said Grantees; or the survivor as between them.

TO HAVE AND TO HOLD this Easement unto the Grantees, their heirs and assigns forever.

Roadway Easement - 1

9-79  
9-124

to  
CONVEYANCE OF ROADWAY EASEMENT  
Service Developers Corp. - Olsons

PARCEL I (Property West of Miniature Golf Course)

Beginning at a point being South 878.82 feet and East 1632.30 feet from the Southeast corner of the Sarah E. Benson Donation Land Claim No. 42 in Section 20, Township 17 South, Range 3 West of the Willamette Meridian, said point also being on the Northerly margin of Willakenzie Road; thence along said margin South 89° 31' 00" West 204.24 feet; thence leaving said margin North 0° 29' 00" West 40.00 feet; thence along the arc of a 179.63 foot radius curve right (the chord of which curve bears North 28° 29' 33" East 174.04 feet) a distance of 181.69 feet; thence North 57° 28' 05" East 59.61 feet; thence along the arc of a 161.42 foot radius curve left (the chord of which curve bears North 28° 40' 47" East 155.47 feet) a distance of 162.21 feet; thence South 0° 06' 30" East 135.00 feet; thence South 89° 53' 30" West 4.00 feet; thence South 0° 06' 30" East 224.69 feet to the point of beginning, in Lane County, Oregon.

PARCEL II (South Parcel)

Beginning at a point being South 518.77 feet and East 1846.08 feet from the Southeast corner of the Sarah E. Benson Donation Land Claim No. 42 in Section 20, Township 17 South, Range 3 West of the Willamette Meridian, said beginning point also being on the Westerly margin of Coburg Road; thence along said margin South 1° 18' 55" East 91.81 feet; thence along the arc of a 676.20 foot radius curve right (the chord of which curve bears South 0° 31' 00" West 43.23 feet) a distance of 43.23 feet; thence leaving said margin South 89° 53' 30" West 211.91 feet; thence North 0° 06' 30" West 135.00 feet; thence North 89° 53' 30" East 210.45 feet to the point of beginning, in Lane County, Oregon.

PARCEL III (Home Parcel)

Beginning at a point being South 418.80 feet and East 1843.78 feet from the Southeast corner of the Sarah E. Benson Donation Land Claim No. 42 in Section 20, Township 17 South, Range 3 West of the Willamette Meridian, said beginning point also being on the Westerly margin of Coburg Road; thence along said margin South 1° 18' 55" East 100.00 feet; thence leaving said margin South 89° 53' 30" West 210.45 feet; thence North 0° 06' 30" West 100.00 feet; thence North 89° 53' 30" East 208.35 feet to the point of beginning, in Lane County, Oregon.

PARCEL IV (North Parcel)

Beginning at a point being South 136.96 feet and East 1837.31 feet from the Southeast corner of the Sarah E. Benson Donation Land Claim No. 42, in Section 20, Township 17 South, Range 3 West of the Willamette Meridian, said beginning point also being on the Westerly margin of Coburg Road; thence along said margin South 1° 18' 55" East 231.89 feet; thence leaving said margin South 89° 53' 30" West 207.29 feet; thence North 0° 06' 30" West 25.00 feet; thence along the arc of a 215.99 foot radius curve left (the chord of which curve bears North 22° 06' 30" West 161.82 feet) a distance of 165.87 feet; thence North 45° 53' 30" East 52.13 feet; thence along the arc of a 70.49 foot radius curve right (the chord of which curve bears North 67° 45' 38" West 52.51 feet) a distance of 53.81 feet; thence North 89° 37' 45" East 176.89 feet to the point of beginning, in Lane County, Oregon.

PARCEL V (Sheldon Parkside)

Lot B and Lot C, Sheldon Parkside, as platted and recorded in Book 59, page 16, Lane County Oregon Plat Records, Lane County, Oregon.

Grantor's Signature

Grantor's Signature

EXHIBIT A



Grantors covenant and warrant that they are lawfully seized and possessed of the Servient Estate and have the full right, power and authority to execute this conveyance and that they will defend the title to the Easement conveyed herein and quiet enjoyment thereof against all claims and demands of all persons whomsoever, except liens and encumbrances of record upon the date hereof.

SUBSCRIBED this \_\_\_\_\_ day of \_\_\_\_\_, 1973.

MORTGAGEE:

THE TRAVELERS INSURANCE COMPANY

BY \_\_\_\_\_

Title \_\_\_\_\_

BY \_\_\_\_\_

Title \_\_\_\_\_

VESTEE:

SERVICE DEVELOPERS CORPORATION

BY \_\_\_\_\_  
Henry Blairy President

BY \_\_\_\_\_  
Lee C. Mortimore, Secretary-Treasurer

STATE OF \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss:

STATE OF OREGON }  
County of Lane } ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 1973, personally appeared

and \_\_\_\_\_,  
who, being sworn, each for himself and not one for the other, stated that the former is the \_\_\_\_\_ and that the latter is the \_\_\_\_\_ of THE TRAVELERS INSURANCE COMPANY, and that the seal affixed hereto is its seal and that this instrument was voluntarily signed and sealed in behalf of the Corporation by authority of its Board of Directors.

On this \_\_\_\_\_ day of \_\_\_\_\_, 1973, personally appeared HENRY BLAIR and LEE C. MORTIMORE, who, being sworn, each for himself and not one for the other, stated that the former is the President and that the latter is the Secretary of SERVICE DEVELOPERS CORPORATION, that the seal affixed hereto is its seal and that this instrument was voluntarily signed and sealed in behalf of the Corporation by authority of its Board of Directors.

BEFORE ME: \_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

BEFORE ME: \_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

9-126

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

576 OLIVE STREET, SUITE 300  
EUGENE, OR 97401  
PO BOX 11906  
EUGENE, OR 97440  
TEL (541) 343-2674  
FAX (541) 343-8702  
E-MAIL DANTERRELL@LANDUSEOREGON.COM

February 11, 2004

Teresa Bishow, Senior Planner  
Eugene Planning Division  
99 West 10th Avenue  
Eugene, OR 97401

Re: Corrections to Knutson Zone Change Application, Z 03-19

Dear Teresa:

In response to your phone call to Bill inquiring about some of the MetroPlan policies I addressed in the Knutson application for a zone change, Z 03-19, we realized that our office did not have the latest updates to the MetroPlan. This letter is to note corrections that should be made to the application after reviewing a copy of the Metroplan dated February 2002, which I picked up from LCOG today.

On the application Page 6, the policy citation should read "(Policy 6, page III-B-5)."

On the application Page 7, the citation for the top policy on the page ("Utilize processes and local controls . . .") should read, "(Policy 16, page III-B-5) (emphasis added)."

On the application Page 7, the middle policy on the page ("Promote compatibility . . ."), findings and conclusions should be deleted. That policy is no longer part of the MetroPlan.

On the application Page 7, the bottom provision, Objective 3 ("Maximize the efficiency and safety . . ."), should be deleted because that policy is no longer part of the MetroPlan. However, the text for the findings and conclusion should remain. There is a current MetroPlan policy that is similar in many respects to the objective that should be deleted. Transportation Element Policy F.3 provides:

*"Provide for transit-supportive land use patterns and development, including higher intensity, transit-oriented development along major transit corridors and near transit stations; medium- and high-density residential development within ¼ mile of transit stations, major transit corridors, employment centers, and downtown areas; and development and redevelopment in designated areas that are or could be well served by existing or planned transit." (Policy F.3, page III-F-5) (emphasis added).*

I believe that the findings and conclusions for the former Objective 3 are appropriate for the

9-127  
1-1-99  
86

Teresa Bishow  
February 11, 2004  
Page 2

current Policy F.3. Consequently, I would request that the Policy F.3 replace the text of the former Objective 3 language, with the findings and conclusion (application Page 7 and 8) in the application remaining to support Policy F.3.

I believe the above corrections should resolve any discrepancies between the application references and the current MetroPlan.

If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in cursive script that reads "Dan Terrell".

Dan Terrell

9-128

1/18/90

February 2, 2004

Hearings Official  
c/o Teresa Bishow  
Eugene Planning Division  
99 West 10th Avenue  
Eugene, OR 97401

Dear Ms. Bishow:

This is my first experience living in a neighborhood which might be impacted by a requested zone change.

In my naivete, I called the Planning Department to ask what the Knutson family proposed to do with these tax lots should the zone change be approved. The answer: They do not know and would not know until the zone change HAD been approved.

What kind of sense does that make? How can one express an opinion or attend an open hearing on the requested change, unless one knows what the result will be if the request is granted?

I then asked what would be POSSIBLE if the zone change were approved. The answer: a drive-through restaurant (Wendy's, Carl's Junior?), a drive-through drugstore, small department store.

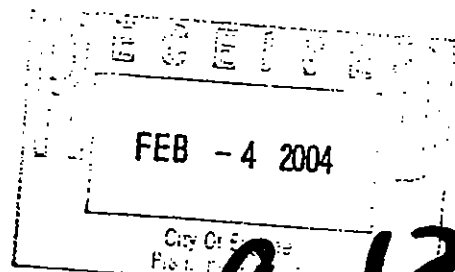
I was also told the family had been approached by Walgreen's, which is primarily a DRUGstore. We already have, in the next block south, Bi-Mart, Rite-Aide, and Safeway, all of which have pharmacies, and the privately owned pharmacy across the street from these properties, Everett's Villa Pharmacy, which probably would be driven out of business by this choice. I see no need for a fifth. In our economic times I think we should be supporting small businesses, not eliminating them.

Traffic would be a HUGE consideration, since all tracts, except the one on Willakenzie, 4900, are on Coburg Road. Already Coburg Road is approaching overload, with no relief in sight. To add to this the necessity for ingress and egress to a drive-through establishment would be a gross misjudgment.

I am not in favor of approving a pig in a poke. According to the possibilities suggested, I think a zone change would be a serious mistake in this location with Coburg Road traffic, the on- and off-ramps from Beltline adding to the congestion, and the possibility of harming existing businesses.

Sincerely,

*June Shamel*  
June Shamel  
1620 Adkins Street, Apt. 7  
Eugene, OR 97401-8245



## BISHOW Teresa A

---

From: charles biggs [charles\_biggs@hotmail.com]  
Sent: Wednesday, February 11, 2004 4:34 PM  
To: teresa.a.bishow@ci.eugene.or.us  
Cc: ahultberg@netzero.net; RBeers2606@aol.com  
Subject: Testimony on File Z 03-19



Rezoning.doc (50  
KB)

To: teresa.a.bishow@ci.eugene.or.us

Subject: Written Testimony on File Z 03-19: Knutson property Rezoning proposal from C-1/SR to C-2/SR

February 11, 2004

Dear, Eugene Hearings Official and Eugene Planning Staff,

The Cal Young Neighborhood Association (CYNA) respectfully submits this testimony regarding the File Z 03-19: Knutson property rezoning proposal from C-1/SR to C-2/SR, on behalf of the CYNA Executive Committee. The CYNA did not hold a general meeting on this rezoning issue due to financial and time constraints.

Compatibility based concerns by neighbors have been relayed to the CYNA. The potential rezoning impacts such as size and scale are two areas of concern. Accompanying these concerns are the resulting transportation related impacts. This would bring into question whether or not there is an inconsistency with the 9.8865 Zone Change Approval Criteria subsection (3), which states in part " can be served through the orderly extension of key urban facilities and services".

Existing congestion on Coburg Road and accessibility issues to Willakenzie Road via the Heritage Village access-drive are at issue with this rezoning request. A worst-case traffic impact analysis has not been provided by the applicant, which could resolve in part the compatibility and traffic concerns. Trip rate comparison of the two differing zoning types has not been provided to demonstrate that the site can be served through orderly extension of key urban facilities and services. The development site is located on Coburg Road, which is an access limited arterial. This would have significant impacts to Coburg Road traffic. In addition, this would compound residential compatibility regarding the Heritage Village's access-drive.

To multiply many times over the potential trip rate due to a rezoning would be irresponsible to the residents who live and work in the area.

This rezoning is inconsistent with the Willakenzie Area Refinement Plan (WAP) and the Eugene Land Use Code purpose statements for commercial property designation.

The Sheldon Subarea: Policies and Proposed Actions, numbers 4 and 5 page 26 of the WAP indicates a clear plan for the area, which discourages rezoning and maintains a transition of general office shall occur between residential and commercial land uses.

Since this is part of 9.8865 Zone Change Approval Criteria subsection (2), and it is inconsistent with applicable refinement plans, the request should

9-130  
1-8-92

be denied in its entirety

(It should be noted that the color red is used to indicate the broad category of commercial land uses which may include C-1, C-2, and G0 as seen on the Inset Map A on page 26 of the WAP). This does not mean that the commercial land uses are interchangeable only that they have similar development impacts.

The Eugene Land Use Code (EC) 9.2110 and 9.2100 purpose of C-1 and C-2 is quite clear when it states that C-1 land is "usually 0-5 acres in size", and C-2 is "usually 5-40 acres in size". The applicants land if consolidated would only total 2.93 acres.

Indirectly this is related to EC 9.2150, and it is inconsistent with applicable siting requirements, the request should be denied in its entirety.

Zone Change Approval Criteria 9.8865 requires that approval of a zone change application shall not be approved unless it meets ALL of the following criteria. That means if just one portion or aspect is not met, the zone change shall not occur. I have shown two criteria where the applicant has not met the zone change requirements.

Cordially,

Chares Biggs

CYNA Executive Committee:

Charles Biggs - CYNA Chairperson

Dick Beers- CYNA Co-Chairperson

Arnold Hultberg

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Click here for a FREE online computer virus scan from McAfee.  
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**HEINKEL Carol A**

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**From:** les maguire [lesmaguire@hotmail.com]  
**Sent:** Thursday, February 19, 2004 7:21 PM  
**To:** cheinkel@lane.cog.or.us  
**Subject:** Metro Plan: Addition of Air Quality Monitoring Stations

Dear Metro Plan Decision Makers;

LRAPA provides an invaluable service to the Springfield Eugene communities. Air quality is important for livability as well as maintaining the national reputation of a clean and beautiful place to visit and recreate. When crafting changes to the Metro Plan, please consider adding more air quality monitoring stations within the Metro Plan Boundary. For more effective monitoring of carbon monoxide levels, more (and better placed) air monitoring stations are needed. The one current station is surrounded by the forested residential neighborhood and parkland of South Eugene and as such is inadequate for monitoring what is in our airshed.

Thank you,

Leslie Maguire  
420 Goodyear St.  
Eugene, OR 97402

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<http://click.atdmt.com/AVE/go/onm00200361ave/direct/01/>



Evan David Arkin will be called to the Torah as a Bar Mitzvah on Saturday, January 10, 2004. Evan has been involved in Jewish learning since his days at the TBI Preschool. He is a 7th grade student at Spencer Butte Middle School, where he has participated in the jazz band and Destination Imagination. He is active



Rachel Wolfe-Goldsmith brings much joy and caring to the world around her. Whether she is hip hop dancing or at the free throw line with either of her two basketball teams, "Oregon Magic" or the "Rough Riders," she brings Her spirituality manifests itself in her anti war activism. Rachel's deep love for socializing with her friends and family demonstrates her commitment to building community. *STUDENT ACTIVIST*



Molly Cram will be called to the Torah at a Bat Mitzvah on January 31, 2004. Molly's proud parents are Pat Friedl and Stan Cram.

Molly is in the seventh grade at Roosevelt Middle School where she enjoys most of her classes and all of her friends. She is in the student government and has served on the site council. She

THE "UNIVERSITY OF OREGON" DESPERATELY NEEDS PEOPLE THAT REALLY CARE ABOUT THE SCHOOL LIKE NIKE CEO-PHILIP KNIGHT MAJOR CONTRIBUTOR CHUCK LILLIS OREGON FOUNDATION MEMBERS LIKE JIM BERNARD OF WASHINGTON STATE, ETC. TO DEMAND THAT VERY TOP UNIVERSITY EXAMINERS LIKE LARRY SUMMERS-PRESIDENT OF HARVARD UNIVERSITY BE HEAD OF AN UNBIASED STUDY TEAM TO FIND OUT THE REAL QUALITY OF PARTS OF THE UNIVERSITY AND HELP FIND TOP QUALITY PEOPLE TO BE IN CHARGE OF THOSE PARTS AND GET THE UNIVERSITY ON AN HONEST PATH TOWARD QUALITY!!!

I'VE ENCLOSED PICTURES OF THREE RECENT EUGENE BAR-BAT MITZVAH STUDENTS THAT RECENTLY COMPLETED A ~~2-3~~ <sup>2-3</sup> HOUR BAR MITZVAH CEREMONY IN EUGENE BEFORE 100-150 PEOPLE THAT REQUIRED 12-18 MONTHS OF EXTRA TRAINING AND AT LEAST 2 ~~OF~~ <sup>NE</sup> THES YOUNG STUDENTS SHOWED

1. SELF CONFIDENCE
2. ABILITY TO VERBALLY EXPRESS THEMSELVES
3. ENTHUSIASM
4. A WORK ETHIC
5. INTELLECTUAL ACHIEVEMENT--THEIR WRITTEN SPEECH AND COMMENTS
6. RAPPORT WITH THEIR FRIENDS AND FAMILY
7. COMMUNITY SERVICE ACTIVISM-EVEN PUBLISHED LETTERS TO THE PAPER

IN CONTRAST- AT THE UNIV. OF OREGON--I've ATTENDED DOZENS OF STUDENT MEETINGS SINCE OCT. THAT INCLUDED STUDENTS ELECTED AND APPOINTED BY THEIR PEERS TO ANALYZE AND VOTE ON STUDENT FUND BUDGETS-CONSISTING OF OVER \$8,000,000 IN FUNDS--DIRECTLY OUT OF THE POCKETS OF ABOUT 16,000 OF 20,000 UNIV. OF OREGON STUDENTS.

I'VE SEEN ABOUT 50 SEPERATE OF THESE "LEADERS" AND ALL BUT ABOUT SEVEN OF THEM WERE BELOW THE LEVEL OF AT LEAST TWO OF THE PICT ~~...~~ PICTURED 13 YEAR OLDS!!!

ABOUT 43 STUDENTS INCLUDING THE PRESIDENT OF THE WHOLE UO FRATERNITY SYSTEM AND PRESIDENT OF THE UO SORORITY-PANHELLENIC SYSTEM AND A SECOND YEAR LAW STUDENT HAD SERIOUS DEFICIENCIES--

1. THEY SERIOUSLY LACKED INTELLECTUAL CURIOSITY!!
2. THE STUDENT SENATE OF 18-19 STUDENTS INCLUDING 2 LAW STUDENTS LETS 3 STUDENTS DO ABOUT 90% OF THE PARTICIPATION!!
3. THE THREE STUDENTS THAT DO PARTICIPATE SHOW ZERO CREATIVE PROBLEM SOLVING SKILLS AND I'M INCLUDING THE PRESIDENT FROM THE STATE OF MISSOURI-BEN STRAWN--WHO SURE ISN'T A HARRY TRUMAN!!



720  
1. HE EXAGGERATES ABOUT HIS OWN ACCOMPLISHMENTS AND TALKS BIG AND IS A HUGE SELF PROMOTER AND SOME PEOPLE HAVE TO DO THIS TO GET AHEAD--BUT MAY BE A 22 YEAR OLD CAN DO IT--BUT AS YOU GET A LITTLE OLDER--IT BECOMES A NEGATIVE TO CONTINUALLY TRY TO VERBALLY IMPRESS PEOPLE. I REALLY FEEL IT SHOWS A LOT OF INSECURITY.D

I DON'T BELIEVE ANYTHING HE SAYS AND I WOULD WANT CONFIRMATION FROM 2-3 PEOPLE OF EXACTLY ANYTHING RANDY DERRICK SAID HE DID AND EXACTLY WHAT DID HE DO??

IF HE HELPED IN THE PETER DE FAZIO CAMPAIGN--

EXACTLY HOW MANY PHONE CALLS, OR HOW MANY DOORS KNOCKED, OR HOW MANY ENVELOPES STUFFED OR EXACTLY WHAT DID HE DO??

I WANT TO CONTRAST THAT CHARLOTTE NISSER IS A RELATIVELY RESERVED PERSON--YET HAS REALLY DONE A LOT.

d LETS NOTE THAT THE ONLY ~~bb~~ CAMPUS TITLE RANDY HAS HAD IN 3-4 YEARS IS CO chair of UO DEMOCRATS WHICH IS CLOSE TO THE BOTTOM WITH THE YOUNG REPUBLICANS OF REALLY ACCOMPLISHING ANYTHING!!!

I HAVE AND STILL WILL URGE RANDY T TO ATTEND STUDENT EMU BOARD MEETINGS--HELP ASK QUESTIONS RELATED TO THEIR \$4,000,000 BUDGET.

I FEEL THAT RANDY DERRICK IS LESS QUALIFIED TO CONTINUALLY BE ON ANY ONE -TWO-THREE YEAR TERM OF OFFICE BECAUSE HE SHOWS A PATTERN OF HYPER BURSTS OF ACTIVITY FOR A FEW WEEKS AND THEN HE GETS BORED, OR SEES SOMETHING MORE IMPORTANT AND STARTS TO PUT LESS EFFORT IN PROJECT ONE AND HE DOESN'T PERFORM AS WELL THEIR, OR MAYBE NOT SHOW UP AND HE DOES NOT COMMUNICATE TO PEOPLE WHERE HIS PRIORITIES ARE AND THIS CAUSE PROBLEMS AND CREATES THE IMAGE THAT HE IS UNDEPENDABLE.

FROM MY VERY FIRST COMMENTS--RANDY HAS A LOT OF ROOM FOR IMPROVEMENT--BUT MOST OF HIS FELLOW STUDENTS INVOLVED IN STUDENT GOVT. HAVE SUCH SERIOUS FAULTS THAT RANDY LOOKS GOOD.

THE PUBLIC SCHOOLS NEED TO THROW OUT THE MYTH OF HOW GREAT IT IS FOR STUDENTS AT ANY AGE OR AS YOUNG AS 6 TO START LEARNING SPANISH OR FRENCH AND THROW THIS FOREIGN LANGUAGE MYTH OUT!!!

LETS GO TO ALL THE STUDENTS AT SOUTH EUGENE HIGH AND THE INTERNATIONAL SCHOOL CONNECTED WITH SOUTH EUGENE HIGH AND SEE HOW MANY THAT HAVE TAKEN FRENCH OR SPANISH KNOW ALL THE INS AND OUTS ABOUT MEASURE 30.. THERE IS 100% LACK OF KNOWLEDGE OF ALL THE TAXES CONNECTED WITH MEASURE 30 AND WHY VARIOUS AGES, INCOMES, OWN A HOUSE, SENIORS WITH VARIOUS INCOMES AND MEDICAL SITUATIONS-- THERE ARE A LOT OF VARIABLES!!! THERE ARE A LOT OF OPINIONS ON HOW EDUCATION AT UNIVERSITIES SPEND MONEY!! AT THE UNIV. AOF ORE AT THE UNIVERSITY OF OREGON THERE IS GREAT WASTE IN HOW INSTRUCTORS ARE ASSIGNED CLASSES, THESE PROJECTS, SEMINARS AND HOW MUCH IS PAID

THE UNIVERSITY OF OREGON HAS ABOUT 60 SPANISH CLASSES A QUARTER AND ONE LOCAL GOVT. CLASS WITH ABOUT 60 STUDENTS--TAUGHT BY JERRY JERRY MEDLER WHO I'VE BEEN TOLD IS BY FAR THE WORSE OF STEVE CANDEE AT LCC OR BILL LUNCH AT OSU-

I DOUBT IF ANY UO UNDERGRADUATES INCLUDING RANDY DERRICK REALLY UNDERSTAND MEASURE 30 WELL!

TO ALL OF YOU, THERE ARE POSSIBLY 30,000 RENTERS IN EUGENE ALONE AND ITS GOOD FOR BUSINESS TO KEEP AND ATTRACT PEOPLE TO HAVE LOCAL, ENFORCEABLE RENTERS RIGHTS!!!

LETS Have Renters Rights!

STATE BOARD OF HIGHER EDUCATION MEETING ON FEB. 20, 2004  
AT THE UNIVERSITY OF OREGON BALLROOM--

I URGE ALL OF YOU OR A CLOSE FRIEND OR RELATIVE TO ATTEND--  
THIS STARTS A LITTLE AFTER 8:00 a.m. AND LASTS TILL ABOUT 4-5.

ITS A RARE CHANCE TO SEE THE MAJOR UNIVERSITY PRESIDENTS FROM  
CORVALLIS, ASHLAND, PORTLAND, EASTERN OREGON, ~~AND~~ POSSIBLY BEND,  
MONMOUTH, KLAMATH FALLS AND POSSIBLY EVEN UO PRESIDENT  
DAVID FROHNMAYER WILL SHOW UP ON TIME.

I HAVE A PICTURE OF HIM WITH THE CAPTION 'MAKING DREAMS  
COME TRUE'

HE IS A SUCCESS AT MAKING ELOQUENT SPEECHES AND RAISING MONEY  
BUT HIS EFFORTS AT RAISING THE ACADEMIC LEVEL AND INTELLECTUAL LE  
LEVEL AT THE UNIVERSITY OF OREGON ARE HORRIBLE.

MOST OF THE STUDENTS I WATCH AT MEETINGS FOR 2-3 HOURS AT A TIME

1. DON'T KEEP UP WITH EVENTS IN ANY KIND OF NEWSPAPERS
2. NO IDEAS
- #. NO ORIGINAL IDEAS
4. AFRAID TO OPEN THEIR MOUTH
5. WARM A SEAT
6. DON'T HAVE THE ENERGY OR DRIVE OR SELF DISCIPLINE TO GET A  
"REAL JOB" OUT OF STUDENT GOVT.
7. THEIR IS A LAX STUDENT GOVT. SYSTEM AT THE UO AND STUDENTS  
TAKE ADVANTAGE ADVANTAGE OF IT.

JAN OLIVER--~~ALSO~~ TO ADMINISTRATION VICE ~~PRESIDENT~~  
PRESIDENT-DAN WILLIAMS--JAN OLIVER-FORMER EUGENE 4-J SCHOOL  
BOARD MEMBER DOESN'T WANT EUGENE OR SPRINGFIELD SCHOOL SUPER-  
INTENDENTS OR PRINCIPALS OR SCHOOL COUNSELORS OR HIGH SCHOOL  
JOURNALISM ADVISORS OR HIGH SCHOOLS NEWS A PAPER REPORTER TO  
COME!!!

IT IS A PUBLIC MEETING!!!  
TO GO TO THESE SCHOOLS for 5 YEARS IS GOING TO COST \$\$20,000-  
\$40,000!!!

TELL JAN OLIVER TO GET OUT OF your WAY!!!!

I WENT TO THE DEC. 2003 MEETING IN PORTLAND- I PAID \$30 FOR  
A ROUND TRIP BUS TICKET. IT WAS WORTH IT!!!!

FINALLY- PRES. FROHNMAYER THRU HIS AND OTHER ADMINISTRATORS\_  
AND ACSAD ACADEMIC DEPT. CHAIR PERSONS --

PREVENT TOO MANY DREAMS FROM HAPPENING!!!)

HE WAS NOT TRAINED FOR MOST OF HIS DUTIES!! HE HAS NO ROLE MODEL

HE AND OTHER UO ADMINISTRATORS RUN THE UNIVERSITY IN SECRET AN  
ARE AFRAID AFRAID TO HAVE PUBLIC MEETINGS!!!!°

**HEINKEL Carol A**

---

**From:** Full Circle Community Farm [fccf@efn.org]

**Sent:** Friday, February 20, 2004 4:45 PM

**To:** cheinkel@lane.cog.or.us

**Subject:** metro plan housekeeping inconsistencies

I have reviewed the material presented to you by Lauri Segel and am in concurrence that these issues need immediate attention. Deliberate planning for land use is the most critical issue facing our community. The local and state guidelines must all be in accord with eachother to be able to face this issue in a reasonable way. Please do not delay in addressing these issues.

Sincerely,

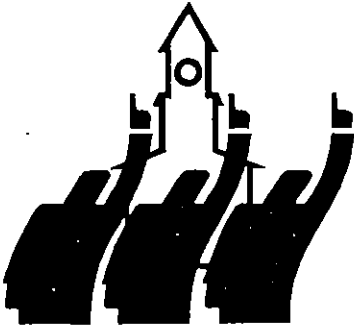
Kate Perle

4740 Wendover St.

Eugene, OR 97404

2/23/2004

12



# Oregon Communities For A Voice In Annexations

Promoting & Protecting Citizen Involvement in Land Use Issues

P.O. Box 1388  
North Plains, OR 97133-1388

<http://www.ocva.org>  
e-mail: [info@ocva.org](mailto:info@ocva.org)

tel: 541-747-3144

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February 10, 2004

Re: Metro Plan Draft Amendments

Ladies & Gentlemen:

Thank you for providing the opportunity to comment on the latest draft of the revised Metro Plan. OCVA has provided input throughout the Periodic Review process – although none of our requested revisions made it into this or any previous draft. I will therefore focus primarily on issues regarding the plan and its proposed revisions where we have not previously commented.

**III-A-5:** “SDCs could be increased in some cases...” We strongly support this idea. Current SDCs do not begin to cover the true cost of growth. The draft notes that attempts to liberalize SDC laws have failed. OCVA has been at the forefront of the SDC reform effort and will continue to try.

**III-F-14 # F.36:** Require that “new development pay for its capacity impact on the transportation system.” Again, strongly support for the same reason.

**II-F-1:** “Eugene will reconsider the policy of providing urban services to River Road/Santa Clara only after annexation of both areas has occurred,” and **II-F-2 & 4:** “In every case, Eugene will make every reasonable effort to provide for annexation only on a voluntary basis...” We have a problem with this language because it specifically applies only to the River Road/Santa Clara area. As such, we believe it may constitute a violation of the Oregon Constitution, Article 1, Section 20 – the “equal protection clause.” Oregon’s highest courts have held that a government agency cannot afford special privileges to one class of citizens while denying the same to others (see, e.g., *Oregon v. Clark*, 291 Or. 231, 239, 630 P.2d 810, 815 (Or. 1981)).

The “equal protection” extends not only to Legislative actions, but to government entities delegated to administer the law (*ibid.*). Local officials clearly view the Metro Plan as the law of the land. As such, it should provide the same privileges to all whom it regulates. We appreciate the “voluntary” provision. The resolution we propose is to make the foregoing language applicable to all unincorporated areas within the UGB.

We are well aware that no city covered under the plan is obligated to pursue annexation on a voluntary basis. But we do not believe you have constitutionally-acceptable grounds for granting special annexation privileges in the plan for certain areas while denying the same to others.

**II-C-5 #10; II-C-6:** We’ve repeatedly made our views known on these sections and asked to have them removed. Let me reiterate: the North Springfield UGB is no more interested in annexing to the city today than it was when LCOG and Springfield tried to do that in 1994. However, if Springfield chooses, as Klamath Falls recently did, to pursue annexation via a “double majority vote,” you would not catch the grief from us that you did with the SCUSA plan. We will continue to oppose by all means possible any other method of annexation.

13-1 (Over)

**Citizen Involvement Element**

Here, I feel it necessary to remind you of our previous testimony on this topic.

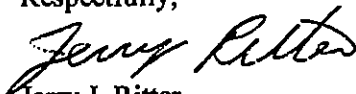
First, we appreciate any and all efforts to increase citizen involvement. I pay very close attention to the announcements of such meetings. The one notice I saw was in the *Register Guard* on 2/9 and it was so small I was lucky to have noticed it. There needs to be more and better notice for meetings such as this.

That having been said, I know you get frustrated that so few people show up at these meetings. Which leads to my final comment:

The Metro Plan was developed primarily by public officials. There was, to be sure, some private sector input – but little of that became public policy. I seriously doubt that more than 1% of the private sector citizens covered under the plan participated in its creation and subsequent amendment. **AS SUCH, IT IN NO WAY, SHAPE or FORM CAN BE CONSTRUED AS HAVING THE PUBLIC'S BUYOFF.**

People are very angry at government right now. We continue to urge all of our elected officials to respect the public's wishes in matters of annexation and that you hold appointed officials accountable for doing the same. Let's continue to have peace in the UGB.

Respectfully,



Jerry J. Ritter  
Secretary, OCVA



534 SW Third Avenue, Suite 300, Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org  
Southern Oregon Office • P.O. Box 2442 • Grants Pass, OR 97528 • phone/fax (541) 474-1155  
Willamette Valley Office • 388 State Street, Suite 604 • Salem, OR 97301 • (503) 371-7261 • fax (503) 371-7596  
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Central Oregon Office • P.O. Box 8813 • Bend, OR 97708 • (541) 382-7557 • fax (541) 382-7552

February 10, 2004

TO: SPRINGFIELD CITY COUNCIL  
EUGENE CITY COUNCIL  
LANE COUNTY COMMISSIONERS

SUBJECT: PERIODIC REVIEW METRO PLAN PROPOSALS

Tonight I will speak specifically to the Goal 3 and 4 findings and policies being proposed for inclusion in Chapter III, section C, of the Environmental Resources element of the Metro Plan. In addition to comments on Goal 3 and 4, 1000 Friends of Oregon has comments concerning Goals 5, 6, and 15 that I will put on the written record.

As you are aware, this Periodic Review program was established in 1995, and is a little more than 50% complete. Much of the delay in completing the Periodic Review program has had to do with issues related to Goal 5 implementation by Eugene, Springfield, and Lane County. Tonight we are not specifically addressing Goal 5, but the role of Goal 5 implementation in addressing a balanced Metropolitan Plan cannot be overstated. Policy language that is being proposed to address Goal 5 implementation Metro-wide avoids the issue of noncompliance.

For example, in Chapter IIIC, Finding #11 states:

"11. Springfield and Eugene are required to complete Goal 5 requirements for wetlands, riparian corridors, and wildlife habitat within their respective urban growth boundaries for adoption by the applicable jurisdictional land use authorities."

What this finding does not include is that compliance with this requirement is overdue. This finding also does not establish or identify a timeframe within which this work will be completed. More appropriate language would be:

'Springfield and Eugene are WORKING ON COMPLETING Goal 5 requirements for wetlands, riparian corridors, and wildlife habitat within their respective urban growth boundaries. Adoption by the applicable jurisdictional land use authorities IS SCHEDULED FOR COMPLETION WITHIN THE 2003 - 2005 BIENNIUM.

In the interest of time, I will speak briefly to Goals 3 and 4.

(GOAL 3 AND 4 COMMENTS ATTACHED.) Chapter III-C, open-proposed, 15

Thank you again for your time tonight.

David Segal

14-1

Policy C.1 is inconsistent with Goal 3.

### Agricultural Lands (Goal 3)

## **GOAL 3**

### **Policies**

#### Current Policy Language

C.1 Where agricultural land is being considered for inclusion in future amendments to the UGB, least productive agricultural land shall be considered first. Factors other than agricultural soil ratings shall be considered when determining the productivity of agricultural land. Relevant factors include suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation, ~~existing land use patterns, proximity to agricultural soils or current farm uses, other adjacent land uses, agricultural history,~~ technological and energy inputs required, accepted farming practices, ~~and farm-related facilities.~~

#### Comment:

It is true that whether or not land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. These factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B):

660-033-0020(1)(a) "Agricultural Land" as defined in Goal 3 includes:

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices.

#### Identified Inconsistencies:

- The inclusion of five additional factors - ~~existing land use patterns, proximity to agricultural soils or current farm uses, other adjacent land uses, agricultural history, and farm-related facilities~~ are inconsistent with both OAR 660-033-0020(1)(a)(B) and OAR 660-033-0030(3) and (5)
  - 660-033-0020(1)(a)(B): Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices
- 660-033-0030 Identifying Agricultural Land:
  - (3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel

- (5) Notwithstanding the definition of "farm use" in ORS 215.203(2)(a), profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3, "Agricultural Land," is applicable.

#### Current Policy Language

"C.3 During the next *Metro Plan* update, a study should be initiated to examine ways of buffering and protecting agricultural lands on the urban fringe from the effects of urban development. The study should also evaluate approaches to use in order to maintain physical separation between the Eugene-Springfield metropolitan area and smaller outlying communities."

#### COMMENT:

THIS POLICY HAS BEEN 'ON THE BOOKS' SINCE 1982. REMOVE THIS POLICY OR GIVE IT SOME MEANING-

EXAMPLE: LC, SPRINGFIELD AND EUGENE HAVE AN INTEREST IN EXAMINING WAYS OF BUFFERING AND PROTECTING AGRICULTURAL LANDS ON THE URBAN FRINGE FROM THE EFFECTS OF URBAN DEVELOPMENT. THERE IS A NEED TO STUDY AND EVALUATE APPROACHES THAT CAN MAINTAIN PHYSICAL SEPARATION BETWEEN THE E-S METRO AREA AND SMALLER OUTLYING RURAL COMMUNITIES IS OVERDUE.

#### C.4 (d)

Proposed:

d. To ensure that zoning districts applied to agricultural lands encourage valid agricultural practices in a realistic manner emphasis shall be placed on minimum parcel sizes which are based upon a countywide inventory and which are adequate for the continuation of commercial agriculture.

By minimum parcel sizes designed to accommodate an agricultural unit or potential activities, the burden of proof upon the applicant shall be placed on the applicant to show the proposed agricultural activity and restrictions that may be developed on the residence on the unit are in the best interest.

Deviation from minimum parcel sizes of the Exclusive Farm Use (EFU/RCP) land for the creation of a parcel not smaller than 20 acres may be allowed when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm operation consisting of one or more of the following: berries, grapes, or horticultural specialties.

#### Comments:

There is not a statutory or rule provision that establishes "increased burden of proof" or "increased restrictions" criteria that would be applied to agricultural land in order to obtain a dwelling "when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm operation consisting of one or more of the following: berries, grapes, or horticultural specialties." Although Lane County's Rural Comprehensive Plan Goal 3 Policy #4, includes this policy language, there does not appear to be an applicable state law or rule upon which this policy is based.

There is no statutory or rule provision allowing a residence on a commercial farm unit. LC 212 (9)(b) allows a "division of land down to 20 acres for horticultural specialties, berries and

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grapes", and identifies factors that "shall" be addressed to "establish the suitability of the land for the intended use."

212(7), "Allowable Residential Uses On Land That Is Not High Value Farmland" subsection (c): "A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot is allowed subject to compliance with the following requirements:

- (i) The farm operation or woodlot:
  - (aa) Consists of 20 or more acres; and
  - (bb) Is not smaller than the average farm or woodlot in Lane County producing at least \$2500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

As written, Policy C.4 is inconsistent with provisions of agricultural lands rules and statutes, as specifically indicated above.

Proposed:

C.4.(o) Lane County recognizes ORS 215.253 shall apply on land-zoned EFU.

Comment:

**215.253 Restrictive local ordinances affecting farm use zones prohibited; exception.**

- (1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated ~~within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 (1991 Edition)~~ in a manner that would restrict or regulate farm structures or that would restrict or regulate farming practices if conditions from such practices do not extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary. "Farming practice" as used in this subsection shall have the meaning set out in ORS 30.930.

Inconsistency:

ORS 215.253 applies both to EFU zone established under ORS 215.203 and "areas designated as marginal land under ORS 197.247(1991 Edition)"

Existing Finding #4 from the Forest Lands section of the Environmental Resources Element of the Metro Plan is inconsistent with Goal 4.

#### Forest Lands (Goal 4)

#### Findings

#### CURRENT POLICY LANGUAGE:

4. The statewide goal definition for forest is based upon: (a) U.S. Department of Agriculture soils information translated into a potential forest growth productivity rating and (b) existing forest cover. Many soils in the metropolitan area have forest growth potential. Existing forest cover consists of coniferous and deciduous hardwood forests located primarily in the hills south of Eugene and Springfield and of riparian (streamside) forests along rivers, streams, ponds, and sloughs.

#### COMMENT:

The Goals (Rules, and Statutes) do not define "forest". Rather, Goal 4 states:

"Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources."

OAR 660-006-0005, Definitions states:

"(6) "Forest Operation" means any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620 (6)."

#### SUGGESTION:

Finding #4 could reiterate the Goal 4 characterization of 'forest lands'.

#### Policies

C.5 Metropolitan goals relating to scenic quality, water quality, vegetation and wildlife, open space, and recreational potential shall be given a higher priority than timber harvest within the UGB.

#### COMMENT:

Vague - which Goals? COULD BE STATED AS: ALL GOALS RELATING TO PRESERVATION/PROTECTION AND ENHANCEMENT OF SCENIC QUALITY (INCLUDING OPEN SPACE), WATER QUALITY, WILDLIFE AND WILDLIFE HABITAT, AND RECREATION OPPORTUNITIES (BOTH PASSIVE AND ACTIVE)

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