



**SCAPPOOSE**  
*Oregon*

**MONDAY, SEPTEMBER 30, 2024**

**6:00 PM**

**LAND USE PUBLIC HEARING AGENDA**

**HEARINGS OFFICER DANIEL KEARNS PRESIDING**

**SCAPPOOSE COUNCIL CHAMBERS**

**33568 EAST COLUMBIA AVENUE**

**SCAPPOOSE, OREGON 97056**

**&**

**ONLINE VIA MICROSOFT TEAMS ([click this link](#) or visit the City's calendar for link)**

## **ITEM AGENDA TOPIC**

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### **Call to Order**

### **New Business**

#### **1. Public Hearing - Buxton Ranch Planned Development and Subdivision Remand (LUBA Case No. 2023-01) (Local File # SB1-22, ZC1-22, CU1-22, SLDP (1-22, 2-22, 3-22, 4-22))**

**Regarding:** David Weekley Homes has requested approval for Tentative Subdivision Plat Approval (SB1-22) to subdivide Columbia County Assessor Map No. 3212-CB-00401 into 44 single family residential lots in the Low Density Residential (R-1) zone. (David Weekley Homes initially requested approval for a 48-lot subdivision; however, the City authorized no more than 44 lots with a minimum square footage of 4,000 square feet as a condition of approval in its final decision). The applicant also requests approval for a Planned Development Overlay Zone Change (ZC1-22), Conditional Use Permit (since Planned Developments are listed as a Conditional Use in the R-1 zone), and Sensitive Lands Development Permits for the sensitive lands on site, including Floodplain (SLDP1-22), Wetlands (SLDP2-22), Slope Hazard (SLDP3-22) and Fish and Riparian Corridor (SLDP4-22). The site is 17.3 acres and is located south of the Captain Roger Kucera Way and SW JP West Road intersection.

**Scope of Remand:** *This remand hearing results from LUBA Case No. 2023-001, which requires the City to consider four specific assignments of error (each of which are stated below). The remand hearing is limited in scope to only the four assignments of error and the City will not accept any evidence, arguments, or testimony beyond the scope that is stated below. Written and verbal arguments (defined as assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision, not including facts) may be made with regard to any of the assignments of error using information already in the record. Written and verbal evidence (defined as facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the offeror to be relevant to the decision, that do not already exist in the record) shall be limited to the second assignment of error, as stated below. Any evidence not related to the second assignment of error will be rejected and will not be considered by the decision-maker.*

*The four assignments of error are:*

Scappoose does not discriminate on the basis of disability in its programs and activities. Council Chambers is an ADA accessible room and can be accessed through automated door openers, available during public meetings. If special accommodations are necessary to attend the meeting, please contact the City Recorder at City Hall, (503) 543-7146 or TTY (503) 378-5938 at least 24 hours in advance.

Please call (503) 543-7184 as soon as possible if you have any questions regarding the meeting.



**SCAPPOOSE**  
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- Second assignment of error: The City must allow interested parties to respond to the applicant's statement that "44 was the number of lots the applicant could make 'pencil' while protecting the creek and providing a minimum lot size of 4,000 square feet";
- Third assignment of error: The City must adopt written findings concerning whether a reduction in lots from 48 to 44 and requiring a minimum lot size of 4,000 square feet would make the project non-compliant with the applicable criteria for approval;
- Fourth assignment of error: The City must adopt written findings that address whether the construction of stormwater ponds are a permitted use within the floodplain;
- Seventh assignment of error: The City must adopt written findings to adequately explain how the evidence in the record leads to the conclusion that the City Planner and City Engineer approved an exemption from the City's block length standards in Scappoose Development Code (SDC) Section 17.154.040 and to explain why the street is not a cul-de-sac, or if it is a cul-de-sac, adequately address the cul-de-sac standards.

**Public Testimony:** Both verbal and written testimony may be provided at this remand hearing. Time limitations (3 – 5 minutes) may be placed on verbal testimony during the hearing so that adequate time is provided for anyone who wishes to speak. The City Council has elected to appoint a Hearings Officer to facilitate the public hearing on this matter. Interested parties may submit written comments and new evidence (only as described above) to the City of Scappoose, Community Development Director, 33568 E. Columbia Avenue, Scappoose, Oregon, 97056 or email comments to [loliver@scappoose.gov](mailto:loliver@scappoose.gov) by **3:00 p.m. Thursday, September 26, 2024**. Failure to raise an issue in person, by letter, or email prior to the close of the public comment period, or failure to provide sufficient specificity to afford the decision-maker an opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals based on that issue.

## **Adjournment**

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Please call (503) 543-7184 as soon as possible if you have any questions regarding the meeting.

## CITY OF SCAPPOOSE REMAND STAFF REPORT

**Request:** To affirm City Council's decision for approval of a 44-lot Subdivision (SB1-22), Planned Development (ZC1-22), Conditional Use (CU1-22), and Sensitive Lands Development Permits for Floodplain, Wetlands, Slope Hazard, and Fish & Riparian Corridor (SLDP 1-22, 2-22, 3-22, and 4-22, respectively), only with regard to those items remanded by LUBA Case No. 2023-001. (David Weekley Homes initially requested approval for a 48-lot subdivision; however, the City authorized no more than 44 lots with a minimum square footage of 4,000 square feet as a condition of approval in its final decision in 2022).

**Location:** South of SW JP West Road and Captain Roger Kucera Way (Columbia County Assessor Tax Lot 3212-CB-00401)

**Applicant:** David Weekley Homes

**Owner:** Buxton Family Investments LLC

### EXHIBITS:

- A. Applicant's Remand Narrative<sup>1</sup>, submitted by Garrett Stephenson, on behalf of David Weekley Homes, dated August 8, 2024
- B. Department and Agency comments received
  - 1. Building Official comment, dated September 10, 2024
  - 2. Public Works Director comment, dated September 12, 2024
  - 3. Superintendent, Scappoose School District comment, dated September 16, 2024
  - 4. Columbia County Public Works comment, dated September 17, 2024

### INTRODUCTION AND BACKGROUND

The Buxton Ranch consolidated land use application, consisting of 7 individual applications (Subdivision SB1-22, Planned Development ZC1-22, Conditional Use CU1-22, Sensitive Lands Development Permits for Floodplain, Wetlands, Slope Hazard, and Fish & Riparian Corridor SLDP 1-22, 2-22, 3-22, and 4-22, respectively) was submitted to the City on February 22, 2022, and was deemed complete on August 10, 2022.

The Planning Commission held a public hearing on the consolidated application on October 27, 2022, and voted to; 1) leave the record open for 10 days to accept additional written testimony, 2) allow the applicant 7 days after the 10-day period closed to submit a rebuttal statement, and 3) to continue the hearing on November 17, 2022. At the conclusion of the continued November 17<sup>th</sup> hearing, the Planning

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<sup>1</sup> The Applicant's Narrative contains **Exhibit 1** (LUBA Final Opinion and Order No. 2023-001, dated 9/5/2023), **Exhibit 2** (LUBA Final Opinion and Order No. 2023-001, dated 4/30/2024) and **Exhibit 3** (City of Scappoose Planning Commission Staff Report, dated October 20, 2022, for Buxton Ranch Planned Development and Subdivision – SB1-22, ZC1-22, CU1-22, SLDP1-22, 2-22, 3-22 and 4-22). These Exhibits are contained on the City's website at <https://www.scappoose.gov/citycouncil/page/remand-public-hearing-luba-case-no-2023-001-buxton-ranch-planned-development-and>

Commissioners in attendance unanimously voted to forward a recommendation of approval of the consolidated application to City Council, adopting the findings and conditions of approval in the October 20, 2022 Planning Commission staff report (**Exhibit 3 of Applicant's Narrative**).

The City Council held a public hearing on the consolidated application on December 5<sup>th</sup>. After hearing the staff report presentation, verbal testimony, the applicant's rebuttal, and staff response, City Council decided to continue the hearing (with the record remaining closed) to December 12, 2022, due to the late hour. At the conclusion of the continued hearing on December 12, 2022, Council made a motion to approve the application with one added condition of approval, to limit the development to 44 lots with a 4,000 square foot minimum lot size and read Ordinance 909 for the first time. The second reading of the Ordinance, and Council approval of the consolidated application, occurred on December 19, 2022.

### **ISSUES ON REMAND**

The Council's Decision was appealed to the Oregon Land Use Board of Appeals (LUBA), alleging seven assignments of error and 15 sub-assignments of error (see **Exhibits 1 and 2** of Applicant's Remand Narrative). LUBA denied five assignments of error and 13 sub-assignments of error but remanded the Decision to the City to address two assignments of error. LUBA's Final Opinion and Order was appealed to the Oregon Court of Appeals, which sustained two additional assignments of error. On remand, LUBA sustained the two additional assignments of error from the Court of Appeals, and again remanded the Decision to the City.

This staff report is narrowly focused on addressing the four distinct issues remanded by LUBA (Case No. 2023-001) to the City to address. No new evidence is being presented by the Applicant's Remand Narrative (**Exhibit A**) or by this staff report.

The four issues on remand:

Second assignment of error: The City must allow interested parties to respond to the applicant's statement that "44 was the number of lots the applicant could make "pencil" while protecting the creek and providing a minimum lot size of 4,000 square feet";

Third assignment of error: The City must adopt written findings concerning whether a reduction in lots from 48 to 44 and requiring a minimum lot size of 4,000 square feet would make the project non-compliant with the applicable criteria for approval;

Fourth assignment of error: The City must adopt written findings that address whether the construction of stormwater ponds are a permitted use within the floodplain;

Seventh assignment of error: The City must adopt written findings to adequately explain how the evidence in the record leads to the conclusion that the City Planner and City Engineer approved an exemption from the City's block length standards in Scappoose Development Code (SDC) Section 17.154.040 and to explain why the street is not a cul-de-sac, or if it is a cul-de-sac, adequately address the cul-de-sac standards.



The third, fourth and seventh assignments of error do not require the City to open the record for new evidence<sup>2</sup>, only to adopt adequate findings demonstrating compliance with the applicable approval criteria related to those issues, which is already contained within the previous record. For that reason, the City will only consider new evidence related to the second assignment of error. Verbal or written arguments<sup>3</sup> may be made regarding any of the assignments of error using information already in the record.

## **PUBLIC & PRIVATE AGENCIES AND PUBLIC NOTICE**

- The City of Scappoose Engineering, Public Works, Police Department, Building Department and City Manager, Scappoose School District Superintendent, Scappoose Rural Fire District, Columbia County Public Works, Columbia River People's Utility District, Scappoose Bay Watershed Council, and Oregon Department of Fish and Wildlife (ODFW) have been provided an opportunity to review the proposal. Agency and department comments that were received by the City are included as **Exhibits B (1 – 4)**.
- Notice of the Remand Public Hearing was mailed to property owners located within 300 feet of the subject site and to those who provided prior comments during the previous land use hearings in 2022 on September 10, 2024 (some notices were sent via email if the original public comment was also submitted by email). Notice was also posted on the property on September 17, 2024 and published in the local newspaper on September 20, 2024. As of 1 pm on the date of this report, no comments had been received by the public.

## **FINDINGS FOR APPROVAL**

1. For clarity's sake, staff adopts **Exhibit 3** of the Applicant's Remand Narrative (City of Scappoose Planning Commission Staff Report, dated October 20, 2022, for Buxton Ranch Planned Development and Subdivision – SB1-22, ZC1-22, CU1-22, SLDP1-22, 2-22, 3-22 and 4-22) in its entirety (including all findings and conditions of approval), as solely supplemented by the below findings.
2. The Applicant's Remand Narrative (**Exhibit A**) addresses the third, fourth and seventh assignments of error, pointing to existing evidence in the record, and incorporates in written form verbal testimony of the Community Development Director<sup>4</sup> and the City Engineer from the Buxton Ranch Planning Commission and City Council hearings.

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<sup>2</sup> Evidence is defined as facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the offeror to be relevant to the decision, that do not already exist in the record.

<sup>3</sup> Argument is defined as assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. Argument does not include facts.

<sup>4</sup> Within the context of the prior record and the Applicant's Narrative, this title is used interchangeably with "Planning Director" and "City Planner".

3. City staff, namely the Community Development Director and City Engineer, concur with the revised conditions of approval and findings related to removing references to specific lot numbers<sup>5</sup>, 44 lots vs. 48 lots, a 4,000 square foot minimum lot size and to all findings related to the disposition of the third, fourth and seventh assignments of error, as stated in **Exhibit A**, and adopt these findings and revised conditions of approval by reference. Any findings or conditions of approval within the October 20, 2022, Planning Commission Staff Report not proposed to be amended to address the reduction in lots from 48 to 44, minimum lot size of 4,000 square feet, and to remove reference to specific lot numbers are deemed to be in conformance with the applicable approval criteria and are adopted by reference.
4. In addition to adopting **Exhibit A** as findings, the below additional findings are entered into the record:
  - a. Within the Applicant's Remand Narrative regarding the disposition of the seventh assignment of error, the following original Planning Commission Staff Report finding is cited for SDC 17.154.040(C): *The project site has both topographical and natural resource constraints to the west and natural resource constraints to the east which prohibit street connections that would otherwise satisfy the block length requirements of Subsection B. Therefore, **staff** supports the applicant's exemption request under this Subsection.* Since both the City Planner and the City Engineer draft the staff report together, this plainly means that City Planner and City Engineer supported/approved an exemption from the City's block length standards in Scappoose Development Code (SDC) Section 17.154.040. This is already clearly stated in the prior record, as included in italics and bolded above.

#### **STAFF RECOMMENDATION**

Based on the findings and conditions of approval as stated above, staff recommends approval of SB1-22, ZC1-022, CU1-22, SLDP 1-22, 2-22, 3-22 and 4-22.

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<sup>5</sup> Lot numbering will change as a result of the reduction from 48 to 44 lots, so any references to specific lot numbers are proposed to be removed and instead to describe the location within the subdivision that those specific lot numbers are referencing. It is not unusual for lot numbering to change slightly between preliminary plat approval and final plat approval for any subdivision (e.g., numbering starting at the south end of a project vs the north end).

August 8, 2024

**Garrett H. Stephenson**  
Admitted in Oregon  
D: 503-796-2893  
C: 503-320-3715  
[gstephenson@schwabe.com](mailto:gstephenson@schwabe.com)

VIA E-MAIL

Scappoose City Hearings Officer  
City of Scappoose  
33568 E. Columbia Avenue  
Scappoose, OR 97056

RE: David Weekley Homes  
Remand of LUBA No. 2023-001  
Our File No.: 130442-252635

Dear Hearings Officer:

This firm represents David Weekley Homes (the “Applicant”) in the above-referenced casefile (the “Application”). On April 30, 2024, LUBA issued its Final Opinion and Order in *Haugen v. City of Scappoose*, \_\_ Or LUBA \_\_ (LUBA No. 2023-001, slip op), remanding the City Council’s Approval of the Application. On June 14, 2024, the Applicant timely initiated remand of the same. This letter outlines the Applicant’s legal arguments on remand, and is based on the substantial evidence already in the record. The Applicant reserves its rights under ORS 197.797 to supplement this testimony and evidence prior to the close of the record, and specifically reserves its rights to final written argument under ORS 197.797(6)(e). For the following reasons, the Applicant respectfully requests the Hearings Officer address LUBA’s assignments of error as outlined below, and approve the Application.

**A. Factual background.**

The Applicant submitted the revised Application in August 2022, seeking City approval of a phased residential development project including 48 single-family residential lots ranging from 3,410 square feet to 13,083 square feet in size and seven open space tracts. The Planned Development application was submitted to allow all homes to be built on the upland portion of the Property, above the proposed flood elevation and away from Scappoose Creek. This process allows for reservation of nearly 57 percent of the Property as open space. At this point, the sole proposed deviation from standard code requirements consists solely of relief from standard block length limits to allow for the preservation of the existing wetlands directly south and east of the Property.

A portion of the Property is within a mapped flood-hazard zone (i.e. 100-year floodplain), and is subject to the City's Sensitive Lands-Flooding regulations in SMC 17.84. However, the Federal Emergency Management Agency ("FEMA") has approved a Conditional Letter of Map Revision ("CLOMR"), which explains that all developed portions of the property will be located outside of the flood-hazard zone under post-development conditions.<sup>1</sup> Exhibit 1.

Consequently, the Application proposes two phases. Phase 1, which would be located on the upland portion of the Property, proposes homes outside of the existing flood-hazard area. Within this Phase, portions of the proposed Eggleston Lane extension and the stormwater detention and treatment facilities that will serve Eggleston Lane (Tracts C and G) are located within the current flood-hazard zone. These areas will be out of the post-development flood-hazard zone after grading is completed and FEMA issues its final Letter of Map Revision ("LOMR"). Phase 2 will not be constructed until FEMA issues the LOMR.

The Application's primary opponent, Joel Haugen, challenged the Application's conformance with the City flood-hazard regulations and a number of other zoning standards. During the Council's deliberations on the Application, certain councilors raised concerns regarding the number of lots and average minimum lot size. In response, the Applicant proposed to reduce the number of lots from 48 to 44 and to increase the minimum lot size for all lots to 4,000 square feet. The Council proceeded to approve the applications subject to a condition of approval limiting the number of lots to 44 and requiring a minimum lot size of 4,000 square feet.

Mr. Haugen appealed the Council's Decision to the Oregon Land Use Board of Appeals ("LUBA"), alleging seven assignments of error and 15 sub-assignments of error. LUBA denied five assignments of error and 13 sub-assignments of error, but remanded the Decision to address two assignments of error. Haugen sought review in the Oregon Court of Appeals, which sustained two assignments of error, but notably upheld LUBA's conclusion that the City was not required to provide Haugen an additional *de-novo* hearing. On remand, LUBA sustained the two

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<sup>1</sup> The CLOMR states, in essence, that if the project is constructed as proposed, the official FEMA Flood Insurance Rate Map ("FIRM") will change as anticipated. FEMA's CLOMR issued on June 17, 2022 and indicates that certain areas on the property will be raised by .01 to .07 feet above the existing flood elevation. FEMA's approval explains that a final Letter of Map Revision will be issued if the Project is constructed as proposed: "If the project is built as proposed and the data below are received, a revision to the FIRM and FIS report would be warranted." After grading on the property is complete, the Applicant will be required to provide FEMA, among other things, a hydraulic analysis for as-built conditions and as-built plans certified by a civil engineer.

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additional assignments of error from the Court of Appeals, and again remanded the Decision to the City.

The Applicant timely initiated remand proceedings for the four outstanding assignments of error. This letter explains the Applicant's legal arguments on remand and includes no new evidence. For the following reasons, the Applicant respectfully requests the Hearings Officer address the assignments of error and approve the Application.

## **B. Issues on Remand.**

Initially, LUBA sustained the fourth and seventh assignments of error. Exhibit 1. The fourth assignment of error held that the City Council made inadequate conclusions of law when it held stormwater detention ponds serving Eggleston Lane are permitted under SMC 17.84.040(B). Although there was extensive testimony given by the City Planning Director and Public Works Director during both the Planning Commission and City Council meetings explaining why stormwater detention/treatment facilities are permitted within flood-hazard areas, LUBA concluded that the City Council's findings did not adequately incorporate this testimony.

In sustaining LUBA's seventh assignment of error, LUBA concluded that the City's findings did not adequately explain how the Applicant's project was exempt from the block length standards in SMC 17.154.040.

Mr. Haugen appealed LUBA's decision to the Oregon Court of Appeals, contending that LUBA erred in its rejection of three of his assignments of error. The Court upheld LUBA's denial of Mr. Haugen's first assignment of error, and concluded that Mr. Haugen was not entitled to a new *de-novo* hearing.

However, the Court reversed LUBA's denial of portions of the second and third assignments of error.

"In sum, we reject petitioner's first assignment of error. On his second and third assignments, we conclude that LUBA erred in declining to address petitioner's contention that the new information presented by intervenor during the period in which the city council reopened the record under ORS 197.522(3) (2021) was "evidence" within the meaning of ORS 197.797(9)(b), and in concluding that the council approved the original 48-lot proposal without accounting for the council's reliance on ORS 197.522(3) (2021) and the resulting imposition of the condition decreasing the number of and increasing the minimum size of the lots. Accordingly, we remand for LUBA to consider the merits of those issues and

determine whether petitioner was entitled to an opportunity to rebut any new evidence and whether the council's approval of the application is supported by adequate findings and substantial evidence."

On remand from the Court, LUBA issued its Final Opinion and Order addressing the Court of Appeals Decision and remanding its further assignments of error back to the City. Exhibit 2.

**C. Issues addressed and procedures on remand.**

**1. Issues addressed.**

Mr. Haugen raised 15 distinct sub-assignments of error to LUBA and three more to the Court of Appeals. After nearly a year of appellate review between LUBA and the Court of Appeals, the issues boil down to three: whether the City can allow construction of stormwater detention/treatment facilities within mapped flood-hazard zones, whether the Application still meets the applicable criteria with 44 lots as opposed to 48, and finally, whether the City Planner and City Engineer properly exempted the Application from the block length standards of SMC 17.154.040. The scope of remand should be restricted to these three issues, and the Hearings Officer should not accept any testimony on issues other than these.

**2. Procedures on remand.**

For the reasons explained below, the record should remain closed to new evidence except for evidence concerning the ability of the Application to satisfy the criteria with 44 lots instead of 48 lots. This is because the Application received more than adequate public review at both the Planning Commission and City Council levels.

The City issued public notice of the initial evidentiary hearing on October 6, 2022. Starting on October 19, 2022, Mr. Haugen participated in writing prior to, during, and after the initial evidentiary hearing. At the October 27 Planning Commission meeting, thirteen individuals testified in opposition to the Application, including Mr. Haugen. One of them noted that he had retained Hathaway Larson, LLP, whose attorneys were apparently provided all relevant materials prior to the hearing and whose "review is ongoing." A request was made to keep the record open and continue the hearing, and the City attorney and Weekley's legal counsel specifically requested a longer open record period than is required by law in order to allow Petitioner's attorneys sufficient time to review the case and prepare written testimony. Accordingly, the Planning Commission held the written record open for an additional ten days to accept new

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evidence and argument and seven days for the applicant to submit rebuttal, and voted to continue the hearing to Nov. 17, 2022. The Planning Commission allowed Weekley to postpone its oral rebuttal until the November 17<sup>th</sup> continued hearing, after which the Planning Commission closed the record, received testimony from City staff, deliberated, and unanimously voted to approve the Application.

The City Council held a duly-noticed public hearing on December 5, 2022, during which it took oral testimony but not additional written testimony. Sixteen project opponents testified, including Petitioner and Petitioner's legal counsel. Throughout the Planning Commission and City Council hearings, project opponents testified for a total of 1 hour 56 minutes, while Weekley and its team presented for approximately 2 hours 43 minutes. In fact, much of Weekley's time was spent responding to Planning Commission, City Council, and opponents' questions. SMC 17.162.130.C.1.

Stated plainly, with the exception of not being able to address the City's condition requiring a reduction in lot count, Mr. Haugen and the public have had every opportunity to make their case. Given this, and the thoroughness of the City's Decision and appellate review, the Hearings Officer should restrict submittal of new evidence to the single evidentiary issue on remand: whether the reduction in lots from 48 to 44 would make the project non-compliant with the applicable criteria. The Hearings Officer should be careful to explain that this is not an opportunity to challenge the Application's compliance with the criteria as a general matter, but only in terms of the lot count and minimum lot size.

Given the technical nature of any such evidence, the Hearings Officer should convene a brief public meeting to instruct the parties on the scope of review, and reopen the written record for the following purposes and timeframes:

1. One week for any party to offer new evidence and argument concerning the proposed reduction in lot count from 48 to 44 and increase in average lot size to 4,000 sq. ft.
2. One week for any party to offer responsive evidence and/or argument addressing evidence and argument in the first open record hearing.
3. One week for the Applicant to submit final written argument.

After these three open record periods, the Hearings Officer should deliberate and issue an amended Decision addressing the assignments of error.

**D. Proposed disposition of the assignments of error.**

The Applicant proposes the following findings and explanation addressing the assignments of error.

- 1. Second Assignment of Error:** The City should allow the public to respond in writing to the Applicant's reasons for supporting the Council's decision to require a reduction in the number of lots from 48 to 44.

Consistent with LUBA's Final Opinion and Order, in order to resolve the Second Assignment of Error on remand, the public shall be given the opportunity to address via a written submission into the record the "evidence" provided in the form of the Applicant's statements that "44 was the number of lots intervenor [Applicant] could make 'pencil' while protecting the creek and providing a minimum lot size of 4,000 square feet."

- 2. Third Assignment of Error:** The City should find that the Application still meets applicable approval criteria with 44 lots, as it does with 48.

There is substantial evidence in the record to demonstrate that the Application will meet applicable approval criteria, even with the Council's requirement to reduce the number of lots from 48 to 44. This is for several reasons.

First, the differences between the initial 48-lot application and the eventual conditional approval of 44 lots, with a minimum square footage of 4,000 square feet, are very minimal. Indeed, the Hearings Officer should incorporate the following Land Distribution Chart from the Staff Report's findings into its findings:

Land Use Distribution		
Land Use	Square Feet	Percentage
Single Family Residential Lots	236,037	31.30%
Street Rights-of-way	71,288	9.45%
Park Tracts	309,559	41.09%
Open Space/Resource Tracts	118,910	15.76%
Storm Water Quality Tract	18,156	2.40%
Total	753,950	100%



The land use allocations will not change with the project's limitation to 44 lots. The percentage of the site for single-family residential lots will remain 31.30% but will include 44 lots instead of 48, each at least 4,000 sq. ft. in size. The physical layout of the site and areas devoted to each of the above listed land uses are also not changing. The reduction in lot number does not require, and the Applicant does not propose, any changes to the grading plans, utility plans, or any other element of the submitted tentative plat except the lot lines, and by extension, the locations of individual service utility laterals.<sup>2</sup> The City approved the Application with a number of conditions and adopted the findings contained in the October 20, 2022, Planning Commission Staff Report (the "Staff Report"). Very few findings or conditions are affected by the change from 48 lots to 44 lots of 4,000 square feet. Thus, most of the City's initial findings remain usable and can be incorporated into the Hearings Officer's findings.

As both LUBA and the Court of Appeals specifically denied Mr. Haugen's first assignment of error requesting a new *de-novo* hearing, the applicant is not required to submit any new substantive plans into the record at this time and the remand must be resolved using the materials in the existing record. Therefore, we identify the conditions and findings that may be affected by a reduction in lot count from 48 to 44 and the imposition of a minimum 4,000 sq. ft. lot size. For clarity, each of these conditions or findings are analyzed as (1) original finding; (2) factual difference in that finding or condition resulting from a reduction in lot count (if any); and (3) the proposed finding. As we explain, the Hearings Officer should still find that the project satisfies all applicable standards.

a) Condition of Approval 11:

(1) Original Condition: "The applicant shall enter into a development agreement with the City regarding replacement and redirection of the existing sanitary sewer line in Tract B and through lots 7-9. The applicant is required to obtain all permits required by local, state, and federal agencies, as necessary."

(2) Factual Difference: Specific reference to "lots 7-9" may be affected by the reduction in total number of lots from 48 to 44.

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<sup>2</sup> Note that modifications of the lot lines may require an adjustment of the phase lines. However, as explained above, these phase lines are intended to allow early construction of a portion of the project in areas already outside of the designated flood plain. Should any of the phase lines move, the Applicant would not include any additional lots in Phase 1. If lots shifted into Phase 2, they could not be constructed until FEMA issues its final CLOMR.

Crucially, the actual location of the replacement and redirection of the existing sanitary sewer line in Tract B is NOT changing.

(3) Proposed Condition: The Hearings Officer approves the Application on remand with this condition revised to remove specific reference to “lots 7-9” and instead require that “[t]he applicant shall enter into a development agreement with the City regarding replacement and redirection of the existing sanitary sewer line in Tract B and through *any affected lots*.”

b) Condition of Approval 24:

(1) Original Condition: “Turnarounds and signage shall be provided as follows: Address signage placed at driveway entrance for lots where residences are behind other properties (Lots 7-9 and 46-48).”

(2) Factual Difference: Specific reference to “Lots 7-9” may be affected and reference to “Lots 46-48” is affected by the reduction in total number of lots from 48 to 44.

(3) Proposed Condition: The Hearings Officer approves the application on remand with this condition revised to remove specific references to “Lots 7-9” and “Lots 46-48” so the condition simply reads that “Turnarounds and signage shall be provided as follows: Address signage placed at driveway entrance for lots where residences are behind other properties.”

c) Condition of Approval 29:

(1) Original Condition: “The applicant shall plant native plantings in all disturbed riparian/wetland buffers, within the disturbed area of Wetland A, and within the riparian buffer east and south of Lots 18-25. Species, size, and spacing shall be as recommended by WEST Consultants and approved by the City Planner and City Engineer prior to installation. Applicant shall submit evidence of compliance with DSL permit for the duration of the compliance period, as applicable.”

(2) Factual Difference: Specific reference to “Lots 18-25” may be affected by the reduction in total number of lots from 48 to 44. Again, the actual location of where the applicant is to plant native plantings is NOT changing.

(3) Proposed Condition: The Hearings Officer approves the Application on remand with this condition revised to remove specific reference to “Lots 18-25” and instead require that “[t]he applicant shall plant native plantings in all disturbed riparian/wetland buffers, within the disturbed area of Wetland A, and within the riparian buffer east and south of *the proposed lots off the southeastern portion of Eagleston Lane.*”

d) Condition of Approval 32:

(1) Original Condition: The Dimensional Standards Table provided in this condition originally had 3,410 square feet as the minimum lot area.

(2) Factual Difference: With the condition added, the minimum lot size is 4,000 square feet.

(3) Proposed Condition: This condition should be revised to provide that the minimum lot area is 4,000 square feet.

e) Condition of Approval 45:

(1) Original Condition: “Site-specific geotechnical recommendations shall be provided for houses on Lots 7-9, 17-19, and 47-48 prior to issuance of building permits. Recommendations shall address foundation design, surface and subsurface drainage, structural fill, and other relevant parameters based on the geotechnical engineer’s professional judgment.”

(2) Factual Difference: Specific reference to “Lots 7-9, 17-19” may be affected and reference to lots “47-48” is affected by the reduction in total number of lots from 48 to 44.

(3) Proposed Condition: The Hearings Officer approves the Application on remand with this condition revised to identify the appropriate lots needing site specific geotechnical recommendations prior to issuance of building permits.

f) Condition of Approval 53:

(1) Original: “The approval authorizes no more than 44 lots, with a minimum square footage of 4,000 square feet (condition of approval added by Council decision made on 12/19/2022).”

(2) Factual Difference: This condition is added to clarify that the approval authorizes no more than 44 lots, with a minimum square footage of 4,000 square feet to incorporate the condition of approval added by Council decision made on 12/19/2022.

(3) Proposed Condition: The Hearings Officer should include this condition as stated in the City’s original Decision.

g) Finding 1(L): “Transportation (Goal 12) Objective: To provide and encourage a safe, convenient and economic transportation system.”

(1) Original Finding: Goal 12 is met.

(2) Factual Difference: The finding in the Staff Report was based in part, off the Applicant’s transportation engineer’s estimated traffic impacts using standard trip generation ratios published by the Institute of Transportation Engineers for a 48-lot project. Under this analysis, a 48-lot project was anticipated to generate 514 daily trips, with 38 total trips during the weekday AM peak hour and 50 trips during the weekday PM peak hour. Based on the applicant’s traffic analysis, the City does not anticipate that this level of development would have a significant effect on the operations of the local street network. However, now, the project will be limited to 44 lots.

(3) Proposed Finding: Given the fact that the trip generation estimate is based on a higher number of lots than what the City eventually approved, the Hearings Officer should find that the Application still satisfies Goal 12.

h) Finding 2: General Goals for Land Uses 1) “The growth of the City should be orderly and in accordance with the public health, safety and welfare, while preserving individual choice and recognizing existing patterns of development.”

(1) Original Finding: “The proposed subdivision will be orderly and in accordance with the public’s health, safety, and welfare, by: Adding to the City’s mixture of housing by providing single-family detached homes on a range of lot sizes to accommodate 48 residences as shown in the enclosed Preliminary Plat.”

(2) Factual Difference: Again, the only difference is there are now only 44 residential lots proposed.

(3) Proposed Finding: Changing the number of residences from 48 to 44 in the above finding is *de minimus*, if anything it is more in keeping with the public health, safety and welfare, and still achieves the goal of adding to the City’s mixture of housing by providing single-family detached homes on a range of lot sizes. The Hearings Officer should find that this goal continues to be met.

i) Finding 2: Suburban Residential Land Use Designation Policies 3) “Promote the development of homesites at a density and standard consistent with: the level of services that can reasonably be provided, and the characteristics of the natural environment.”

(1) Original Finding: “As detailed in the response to Section 17.81.050(C)(1), the R-1 zone would typically permit 46 dwelling units at this location. The applicant is requesting an increase of 2 units (a 4% increase) in accordance with the Planned Development

density increase allowance under Section 17.81.050(C)(3), if authorized by the Planning Commission.”

(2) Factual Difference: This Finding was required due to the original proposal having 48 lots where the R-1 zone would typically permit 46 lots. The Application is now limited to 44 lots. A density increase is no longer required.

(3) Proposed Finding: This finding is no longer needed because the project is now limited to a lot number that is less than the maximum 46 lots allowed by the density limits in the underlying zone.

j) Finding related to consistency with Section 17.22.050  
Transportation Planning Rule compliance.

(1) Original Finding: “Consistency with Section 17.22.050 is demonstrated below [in the Staff Report]. Section 17.22.040(E) is satisfied.”

(2) Factual Difference: Whereas the Staff Report extensively discusses the Applicant’s traffic study which focused on the traffic impacts of a 48-lot project and finds that it demonstrated consistency with the transportation planning rule (“TPR”), it also discusses the expected impacts of a 46-lot project and notes that this lesser 46-lot project would have lesser impacts which is in keeping with Transportation planning rule compliance. Here, there is now a 44-lot project proposed.

(3) Proposed Finding: The City already concluded that the TPR would be satisfied with a 48- or 46-lot project. Therefore, the Hearings Officer should conclude that the project continues to comply with the TPR with the restriction to 44 lots.

k) Dimensional Requirements Finding:

(1) Original Finding: a dimensional table in the Staff Report that shows a proposed minimum lot size of 3,410 sq. ft.

(2) Factual Difference: This minimum lot size figure is now 4,000 square feet for the 44-lot project.

(3) Proposed Finding: The Hearings Officer should update this table in the findings to note that the minimum permitted lot size is now 4000 sq. ft.

1) Findings related to Chapter 17.81, the “Planned Development Overlay.” There are multiple findings related to Chapter 17.81 that may change between the 48-lot project and the 44-lot project:

(1) Original Finding: Related to the dimensional standards, the former 48-lot proposal with a 3,410 square foot minimum lot size was found to be eligible for a reduction in the applicable dimensional standards.

(2) Factual Difference: Again, the present proposal is 44 lots with 4,000 square foot minimum lot sizes.

(3) Proposed finding: Given that City found that the denser, 3,410 square foot minimum, 48-lot project was allowed under the Planned Development Overlay, the Hearings Officer should now find that the 4,000 sq. ft. minimum, 44-lot project can also be allowed as a Planned Development Overlay.

(1) Original Finding “That streets are adequate to support anticipated traffic, and the project will not overload the streets outside the planned area (as supported, when necessary, by a formal traffic impact analysis)” Section 17.81.070 (E) is satisfied.

(2) Factual Difference: Again, the Staff Report’s finding is concerning the traffic impact analysis for the 48-lot project where the proposal on remand is for 44 lots.

(3) Proposed Finding: Given the internal street design is the same for both the 48-lot and 44-lot proposals and that 44 lots will

produce less traffic impacts than 48 lots, the Hearings Officer should find that Section 17.81.070 (E) is satisfied.

- m) Finding related to Chapter 17.130 “Conditional Use.”
  - (1) Original Finding: That “all required public facilities are available and adequate to service the proposed 48-lot development.”
  - (2) Factual Difference: Again, the “48-lot development” is now limited to 44 lots.
  - (3) Proposed Finding: Objectively, a project with fewer units will have less impact on public facilities. The Hearings Officer should now find that the 44-lot project has all required public facilities available and adequate to service it.
- n) Finding Related to the Traffic Impact Study (“TIS”):
  - (1) Original Finding: “The applicant has submitted a Traffic Impact Study and Seasonal Adjustment Factor Letter...to analyze traffic impacts. The 48 proposed lots would generate approximately 514 daily trips including 38 AM weekday Peak Hour trips and 50 PM weekday Peak Hour trips, using Institute of Transportation Engineers standard trip generation ratios for single-family detached housing...The traffic analyses also addressed Transportation Planning Rule requirements for the zone change, which are detailed in the response to Section 17.22.050. Section 17.154.030(S) is satisfied.”
  - (2) Factual Difference: The TIS and associated materials were prepared for a 48-lot proposal.
  - (3) Proposed Finding: The Hearings Officer should find that Section 17.154.030(S) remains satisfied. Even though the TIS was based on a 48-lot project, the fact that the project now is limited to 44 lots that it will continue to meet the applicable requirements. Further, the Staff Report findings clearly indicated that a 46-lot project would have less traffic impacts than a 48-lot project,



therefore it logically follows that a 44-lot project would also have less impact.

o) The Staff Report also contains a finding mentioning that Lot 44 on the 48-lot plan did not meet the City's standard for rear setback requirements. **Exhibit 3.** However, it included a condition of approval to correct this by requiring peripheral yards on all lots to "match minimum setback of abutting parcel[s] per Section 17.81.050(A)(2)." *Id.* This condition confirms that all lots will meet SMC 17.81.050(A)(2) regardless of whether there are 48 or 44 total lots proposed.

**3. Fourth Assignment of Error:** The Hearings Officer should find that stormwater infrastructure is permissible in flood-hazard areas under SMC chapter 17.84 (Sensitive Lands – Flooding).

SMC 17.84.040(B) specifies which uses are allowed in special flood-hazard areas with a flood-hazard development permit. This includes "installation, reconstruction or improvement of underground utilities or roadway improvements" (3) and "Public works projects" (8). During both the Planning Commission and City Council hearings, the Community Development Director explained how staff had applied SMC 17.84.040 to conclude that the Phase 1 stormwater facilities are permitted within a flood-hazard area:

"Next point she wanted to make, we heard Mr. Koback state that the City could not have stormwater facilities in the flood plain. This is incorrect. 17.84.040 B3 allows for installation reconstruction or improvement of underground utilities or roadway improvements in the existing floodplain. The grading plan is necessary to construct the proposed extension of Eggleston Lane and the two storm water detention ponds are necessary to treat stormwater runoff from the roads and are interrelated to the proposed roads that are permitted in the existing floodplain. The applicant's preliminary stormwater report clearly explains why the proposed catch basins are necessary to treat runoff from roadways regardless of whether they treat some stormwater from homes. Additionally, 17.84.040 B8 allows Public Works projects to be constructed in the flood plain which are defined as projects that are necessary to enhance or maintain General Public Welfare. Such projects may include but are not limited to flood control structures, public buildings, City infrastructure, utilities, parks and projects associated with resource protection. This definition does not state that Public Works projects must be completed by a public agency. The work associated with the stormwater ponds requires plans meeting the requirements of

the Public Works design standards and a public works permit to demonstrate compliance with the public works design standards and [SMC]. So these facilities are considered public since they'll maintain the General Public Welfare by protecting the public from flooding conditions by capturing detaining and trading runoff from public streets.” Rec. 734 (emphasis added), ER 4–6.

The Planning Director also referenced to the Planning Commission and Council other examples of private detention facilities located within SFHAs, explaining that “the City does not have a public storm system in this region of the city and these facilities act as public infrastructure.” Rec. 734, 1402–03. However, concerning this testimony, LUBA held that the City Council did not incorporate “the planning director’s testimony before the Commission.”

The Planning Director’s testimony establishes that the Applicant’s project is a public works project within the meaning of SMC 17.84.040.B.8 or underground utilities or roadway improvements in an existing floodplain within the meaning of SMC 17.84.040.B.3. The testimony notes the project involves such flood control structures and resource protection, among other eligible types of projects. It also establishes that, consistent with City policy, stormwater ponds such as those proposed by the Applicant are required to meet the Public Works design standards and receive a public works permit. They are directly regulated by the City’s public works department and fulfill a public purpose as they protect the public from flooding conditions by capturing, detaining, and treating runoff from public streets.

Additionally, staff’s testimony explains that other private detention facilities exist within floodplains, and because the City has no publicly-owned stormwater system in the part of the City in which the project is located, it has consistently been the position of City staff that stormwater ponds such as those proposed by the Applicant are effectively public infrastructure and permissible under SMC 17.84.040.B. This fact is reflected in the City Engineer Chris Negelspace’s oral testimony before the City Council on December 5, 2022, in which he explained that the Applicant will be required to grant the City rights to enforce its maintenance obligations for the stormwater tracts and allow the City to maintain those facilities, if necessary.

The text of SMC 17.84.040 itself supports the Planning Director’s interpretation. SMC 17.84.040.B.8 allows Public Works projects, such as what is proposed by the Applicant, to be constructed in the floodplain as they are necessary to enhance or maintain General Public Welfare. Further, SMC 17.84.040.B.3 allows for installation,

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reconstruction, or improvement of underground utilities or roadway improvements in an existing floodplain.

Lastly, as a practical matter, such an interpretation by City Planning Staff is necessary because it is needed for a consistent interpretation from project to project where there is development in or near floodplains.

Therefore, the Hearings Officer should adopt the above testimony of the Planning Director, including both oral presentations to the City Council and Planning Commission, of the interpretation of SMC 17.84.040.

Additionally, the Hearings Officer should conclude the project conforms with other standards in SMC 17.84.140(A) and (B). Because the property is in the FEMA AE Zone, these standards apply. The Applicant will satisfy both standards.

SMC 17.84.140(A) requires “1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure” and 2. All manufactured homes shall likewise be anchored to prevent flotation, collapse and lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).” The Applicant agrees to develop the project consistent with this standard.

SMC 17.84.140(B) requires “1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage. 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage. 3. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during condition of flooding.” The Applicant agrees to develop the project consistent with this standard.

**4. Seventh Assignment of Error:** The Hearings Officer should conclude that the record reflects that staff correctly granted the Application an exemption to the city’s block standards in SMC 17.84.040.B.

LUBA sustained the Seventh Assignment of Error because, in its view, the City's findings did not adequately explain how the evidence leads to the conclusion that the City Planner and City Engineer would approve an exemption from the City's block standards in SMC 17.154.040. LUBA also concluded that the findings do not explain why the street is not a cul-de-sac or, if it is a cul-de-sac, address the cul-de-sac standards.

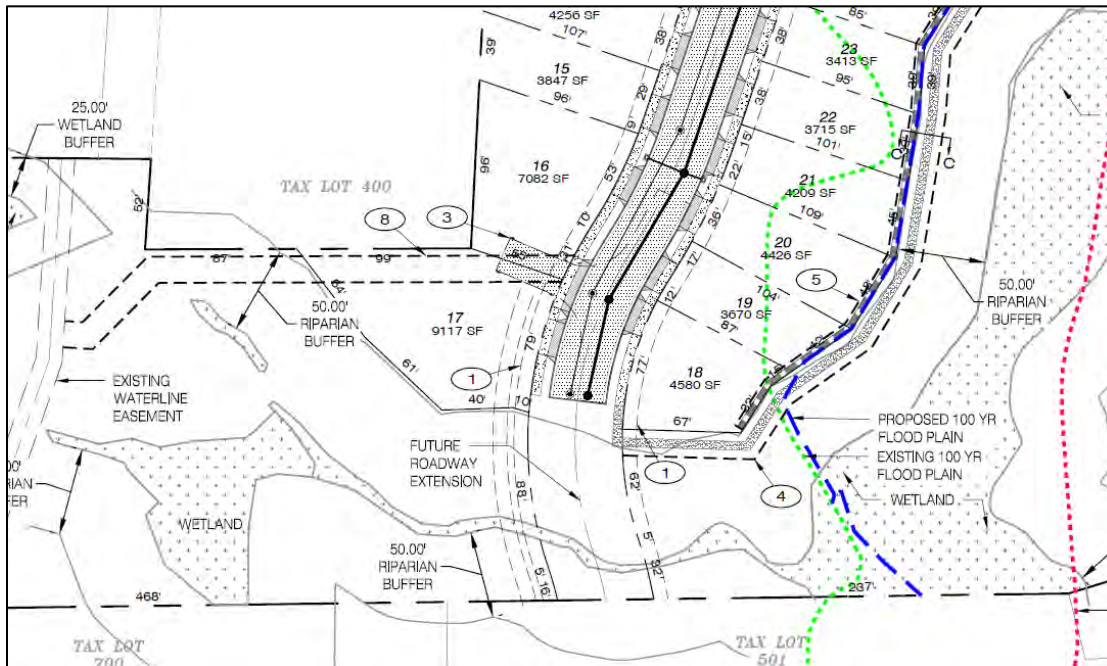
As to the first issue, there is sufficient evidence in the record allowing the Hearings Officer to find that the both the City Planner and City Engineer agree that the exemption from City Block Standards is appropriate. The Staff Report contains just such a specific finding:

"There is a relatively narrow band of developable land between the South Scappoose Creek Floodplain on the east and steep slopes and some steep drainage ways rising above the valley floor to the west. The block length for Eggleston Lane could exceed 2,000 feet due to these natural conditions which do not permit City design standards (namely, maximum street grades) to be met. Through the project site, the valley floor area outside of floodplain is not wide enough to create a block or have 2 parallel streets to help create a block. These natural conditions do not permit development on the site to comply strictly with the block length criterion; however, those criteria are met to the degree practicable. These limitations, associated with topography which prevent street connections to the east or west, are consistent with the provisions of criterion (A). Section 17.154.040(A) is satisfied."

"There are limitations associated with topography which prevent street connections to the east or west as additionally described in Subsection C below addressing permitted exemptions. With the approval of these exceptions, Section 17.154.040(B) is satisfied." (Emphasis added).

With respect to SMC 17.154.040(C), which allows exemptions from the block standards in subsection (B), the Planning Director concluded as follows: "The project site has both topographical and natural resource constraints to the west and natural resource constraints to the east which prohibit street connections that would otherwise satisfy the block length requirements of Subsection B. Therefore, staff supports the applicant's exemption request under this Subsection." (Emphasis added). *Id.*

Concerning the second issue of whether the proposed street is a cul-de-sac, the Application plainly does not propose a cul-de-sac. Rather, a "hammerhead" type turnaround is proposed at the terminus of Eggleston Lane in anticipation of a future extension of that road, as reflected in the site plan excerpt, below:



Further, the Hearings Officer should also formally adopt the Planning Director's Testimony to the City Planning Commission during its November 17, 2022, as part of the City's findings. The minutes of Ms. Oliver-Joseph's testimony provide as follows:

"Her response was that SDC 17.15[4].040 C3 states that a cul-de-sac shall only<sup>3</sup> be used where the city engineer and planner have determined that environmental or topographical constraints, existing development patterns, or compliance with other applicable city requirements preclude a street extension. And stated that the applicant is dedicating [a] right of way to the southern property boundary, which is in conformance with the transportation system plan which shows the future

<sup>3</sup> The plain language of the code is "A cul-de-sac street shall only be used where the city engineer and planner determine that environmental or topographical constraints, existing development patterns, or compliance with other applicable City requirements preclude a street extension. Where the City determines that a cul-de-sac is allowed, all of the following standards shall be met". SDC 17.154.040.C. "Shall only" does not mean a cul-de-sac must be used *every* time the city engineer and planner make certain determinations, rather, it is an option that is only available if they make certain determinations. Here, they did not make these determinations.

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extension of Eggleston Lane to the south, therefore, the applicant did not provide a cul-de-sac in this subdivision, nor would the city have requested or allowed it at this time, since it is anticipated that the road can extend to the south in the future. Adding that Mr. Koback [a member of the public who spoke in opposition to the project] suggests that the applicant must show that Eggleston Lane is reasonably likely to extend to the south, however, the city code clearly states that the city engineer and planner are the ones to make the call on cul de-sac construction.” (Emphasis added).

Additional clarity on the block standards exemption and cul-de-sac could be further observed when the City Planner and City Engineer were also present at the December 5, 2022, City Council hearing to answer questions from the City Council. Rec at 686. At one point in the proceedings, City Council President Greisen asked the City Engineer “so that still leaves room, [City Engineer] Chris [Negelspace], to meet two-way traffic and the turnaround is at the cul-de-sac at the end? City Engineer Chris Negelspace replied there’s a designated turnaround. He doesn’t know what the tract is but it’s specific for the fire truck right so that it’ll be maintained as an easement on a lot, but it’ll be the HOA who will maintain that tract and enforce that it’s left open and there’s appropriate signage there.”

From this, the Hearings Officer should conclude that the City Engineer appropriately granted the Application an exemption from the block standards.

#### **E. CONCLUSION**

For the above reasons, the Hearings Officer should make adequate findings needed to resolve all assignments of error on remand. As a result, the Applicant respectfully requests the Hearings Officer to approve the Application.

Best regards,

SCHWABE, WILLIAMSON & WYATT, P.C.



Garrett H. Stephenson

GST:jmhi  
Enclosures



1                   BEFORE THE LAND USE BOARD OF APPEALS  
2                   OF THE STATE OF OREGON

3  
4                   JOEL HAUGEN,  
5                   *Petitioner,*

6  
7                   vs.

8  
9                   CITY OF SCAPPOOSE,  
10                  *Respondent,*

11  
12                  and

13  
14                  DAVID WEEKLEY HOMES,  
15                  *Intervenor-Respondent.*

16  
17                  LUBA No. 2023-001

18  
19                  FINAL OPINION  
20                  AND ORDER

21  
22                  Appeal from City of Scappoose.

23  
24                  E. Michael Connors filed the petition for review and reply brief and argued  
25                  on behalf of petitioner. Also on the briefs was Christopher P. Koback and  
26                  Hathaway Larson LLP.

27  
28                  Peter O. Watts filed the joint respondent's brief and argued on behalf of  
29                  respondent.

30  
31                  Garrett H. Stephenson filed the joint respondent's brief and argued on  
32                  behalf of intervenor-respondent. Also on the brief was Bailey M. Oswald and  
33                  Schwabe, Williamson & Wyatt, P.C.

34  
35                  RUDD, Board Member; RYAN, Board Chair; ZAMUDIO, Board  
36                  Member, participated in the decision.

37  
38                  REMANDED

09/05/2023

1        You are entitled to judicial review of this Order. Judicial review is  
2    governed by the provisions of ORS 197.850.



**NATURE OF THE DECISION**

Petitioner appeals a city council decision approving a planned development overlay zone designation and a conditional use permit in conjunction with the planned development, a tentative subdivision plat, and a sensitive lands development permit required to subdivide the subject property and develop 44 single-family residential lots.<sup>1</sup>

**FACTS**

The 17-acre subject property is located south of SW JP West Road near Captain Roger Kucera Way. South Scappoose Creek and SW 4th Street are located to the east and SW Jobin Road is located to the west of the subject property.

The subject property and the property to its west and south are zoned Low Density Residential (R-1). The property to its east is zoned Moderate Density Residential (R-4), High Density Residential (A-1), and Public Lands Utility (PL-U). The property to the north is zoned Public Lands Recreation (PL-R).

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<sup>1</sup> The subject property contains “floodplain, wetlands, fish and riparian corridor and slope hazard areas[.]” Record 29. The sensitive lands development permits are required for development within a floodplain, as well as where there are wetlands, a slope hazard, and a fish and riparian corridor. The conditional use permit is required for a planned development in the Low Density Residential (R-1) zone.

1 Intervenor-respondent (intervenor) sought city approval of a phased  
2 development including 48 single-family residential lots ranging from 3,410  
3 square feet to 13,083 square feet in size and seven open space tracts. Intervenor  
4 submitted seven separate applications, with city approval of all seven requests  
5 required for intervenor “to be permitted to construct the proposed, phased  
6 residential subdivision.” Record 29. The seven applications were designated  
7 ZC1-22 (Planned Development), CU1-22 (Conditional Use Permit), SB1-22 (48-  
8 lot Subdivision), SLDP 1-22 (Floodplain Sensitive Lands Permit), SLDP 2-22  
9 (Wetlands Sensitive Lands Permit), SLDP 3-22 (Slope Hazard Sensitive Lands  
10 Permit), and SLDP 4-22 (Fish and Riparian Corridor Sensitive Lands Permit.)

11 On October 6, 2022, the city published notice that the planning  
12 commission would hold a public hearing on intervenor’s applications on October  
13 27, 2022. On October 20, 2022, the city issued a staff report evaluating the  
14 applications. The staff report included the following “observation”:

15 “The applicant is requesting approval of seven separate applications.  
16 Planning Commission provides a recommendation to City Council  
17 for the Planned Development application and Council is the decision  
18 authority. While the Planning Commission would normally be the  
19 approval authority for the proposed subdivision, conditional use and  
20 associated sensitive lands permits, due to consolidation of  
21 proceedings, the City Council will decide the entire application  
22 package (based on Planning Commission’s recommendation).”  
23 Record 29.

24 On October 27, 2022, the planning commission conducted a public hearing  
25 on the applications. At the hearing, the planning commission (1) voted to leave

1 the record open for 10 days to accept additional written testimony and to allow  
2 intervenor seven days after the 10-day period closed to submit a rebuttal  
3 statement; and (2) continued the hearing to November 17, 2022. Record 24. On  
4 November 17, 2022, the planning commission voted to recommend to the city  
5 council that it approve the applications.

6 On December 5, 2022, the city council held an on the record public hearing  
7 on the applications. On December 12, 2022, the city council conducted  
8 deliberations on the applications. During the December 12, 2022, deliberations,  
9 members of the city council expressed concerns related to the proposed lot sizes.  
10 The city attorney advised the city council to reopen the record to allow the  
11 intervenor to address the identified concerns by either amending its application  
12 or proposing conditions of approval. The city council reopened the record for the  
13 sole purpose of discussing the applications with intervenor. In response to city  
14 councilor concerns expressed, intervenor proposed to reduce the number of lots  
15 from 48 to 44 and to increase the minimum lot size for all lots to 4,000 square  
16 feet. The city council proceeded to approve the applications subject to a condition  
17 of approval limiting the number of lots to 44 and requiring a minimum lot size of  
18 4,000 square feet. Record 24-25. This appeal followed.

#### 19 **FIRST ASSIGNMENT OF ERROR**

20 Petitioner argues that the city council committed procedural errors  
21 prejudicing their substantial rights. We will reverse or remand a local government  
22 decision if we find that the local government “[f]ailed to follow the procedures

1 applicable to the matter before it in a manner that prejudiced the substantial rights  
2 of the petitioner[.]” ORS 197.835(9)(a)(B).

3       **A.     Ability to Comment on Subdivision Application**

4       Petitioner argues in their first subassignment of error that they were  
5 improperly precluded from submitting testimony to the city council on  
6 intervenor’s subdivision application.<sup>2</sup> Petition for Review 16. The city and  
7 intervenor (collectively, respondents) maintain that petitioner did not preserve  
8 their argument. Joint Respondent’s Brief 7-8.

9       ORS 197.835(3) provides that “[i]ssues shall be limited to those raised by  
10 any participant before the local hearings body as provided by ORS 197.195 or  
11 197.797, whichever is applicable.” ORS 197.797(1) provides:

12       “An issue which may be the basis for an appeal to [LUBA] shall be  
13 raised not later than the close of the record at or following the final  
14 evidentiary hearing on the proposal before the local government.  
15 Such issues shall be raised and accompanied by statements or  
16 evidence sufficient to afford the governing body, planning  
17 commission, hearings body or hearings officer, and the parties an  
18 adequate opportunity to respond to each issue.”

19       The notice for the initial evidentiary hearing before the planning  
20 commission stated, in part, that the meeting is scheduled

21       “for Thursday, October 27, 2022, at 7:00 p.m. in the Scappoose City  
22 Hall Council Chambers \* \* \* and a subsequent hearing by City  
23 Council is scheduled for November 21, 2022[.]

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<sup>2</sup> The numbering of petitioner’s subassignments of error in this opinion are our own and selected for organizational purposes.

1           “\* \* \* \* \*

2           “*Subdivisions are processed as a Limited Land Use Decision and do*  
3           *not require a public hearing (there will be no opportunity to provide*  
4           *verbal testimony regarding the subdivision specifically).* Sensitive  
5           Lands Development Permits, Conditional Use Permits, and the  
6           Planned Development Overlay Zone Change are processed as a  
7           Quasi-Judicial decision which does require a Public Hearing (both  
8           verbal and written testimony may be provided).” Record 2227  
9           (emphasis added).

10       We agree with respondents that petitioner did not preserve the issue raised in this  
11       subassignment of error. Respondents point out that “[s]tarting on October 19,  
12       2022, [p]etitioner participated in writing prior to, during, and after the initial  
13       evidentiary hearing.” Joint Respondent’s Brief 5 (citing Record 2197). Petitioner  
14       did not object to the city’s process for evaluating the subdivision application and  
15       may not do so for the first time at LUBA. *Pliska v. Umatilla County*, 61 Or LUBA  
16       429, 438 (2010), *aff’d* 240 Or App 238, 246 P3d 1146 (2010), *rev den*, 350 Or  
17       408 (2011) (state that an issue is waived where it was not raised below and the  
18       petitioner did not dispute that there was an opportunity to raise the procedural  
19       assignment of error below).

20       The first subassignment of error is denied.

21       **B.     On the Record Review**

22       Petitioner next argues that the city council utilized the wrong procedure  
23       when it evaluated intervenor’s applications, resulting in prejudice to petitioner’s  
24       substantial rights. The order of quasi-judicial hearings, set out in Scappoose  
25       Municipal Code (SMC) 17.162.130(B)(2), is:



- 1       “a.   Recognize parties;
- 2       “b.   Request the planner to present the staff report, to explain any  
3       graphic or pictorial displays which are a part of the report,  
4       summarize the findings, recommendations and conditions, if  
5       any, and to provide such other information as may be  
6       requested by the approval authority;
- 7       “c.   Allow the applicant or a representative of the applicant to be  
8       heard;
- 9       “d.   Allow parties or witnesses in favor of the applicant’s proposal  
10      to be heard;
- 11      “e.   Allow parties or witnesses in opposition to the applicant’s  
12      proposal to be heard;
- 13      “f.   Upon failure of any party to appear, the approval authority  
14      shall take into consideration written material submitted by  
15      such party;
- 16      “g.   Allow the parties in favor of the proposal to offer rebuttal  
17      evidence and testimony limited to rebuttal of points raised.
- 18      “h.   Make a decision pursuant to Section 17.162.140 or take the  
19      matter under advisement pursuant to Section 17.162.180.”

20   Petitioner maintains that the city council was required to conduct a *de novo*  
21   hearing on the applications consistent with SMC 17.162.130. Petition for Review  
22   7. Petitioner does not identify a specific subsection of SMC 17.162.130  
23   identifying a requirement for a *de novo* hearing.

24       In order to establish a procedural error, a petitioner must identify the  
25   procedure allegedly violated. *Stoloff v. City of Portland*, 51 Or LUBA 560, 563  
26   (2006). SMC 17.81.060 provides:

27       “*An application for a planned development overlay shall be heard*

1       and approved under the public hearing procedures set forth in  
2       Chapter 17.162 of Title 17 of the [SMC]. A planned development,  
3       quasi-judicial zone change, and as necessary, a quasi-judicial  
4       comprehensive plan map amendment, may be processed  
5       concurrently. The fee charged for initiating a planned development  
6       overlay shall be equal to that charged for zone changes.” (Emphasis  
7       added.)

8       The city council found intervenor’s “*request for a Planned Development Overlay*  
9       *will be heard and approved under the public hearing procedures in Chapter*  
10      *17.162. \* \* \* Section 17.81.060 is satisfied.*” Record 35 (emphasis added,  
11      underscoring omitted). Petitioner argues that instead of providing a *de novo*  
12      review consistent with the process in SMC 17.162.130, the city council used the  
13      “on the record” appeal procedures set out in SMC 17.62.300.<sup>3</sup>

14       It is undisputed that evidence was accepted by the planning commission.  
15      Petitioner cites the provision in SMC 17.162.090(D) that “[u]pon appeal or  
16      recommendation, the city council shall conduct a public hearing in the manner  
17      prescribed by this chapter[,]” for the proposition that following receipt of a

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<sup>3</sup> SMC 17.162.300(B) provides:

“The appeal of a decision of the planning commission to the council shall be:

- “1. Confined to the record of the proceedings unless council determines the admission of additional evidence is appropriate;
- “2. Limited to the grounds relied upon in the notice of appeal and the hearing shall be conducted in accordance with the provisions of this chapter.”

1 planning commission recommendation, the city council was required to use the  
2 same hearing process as the planning commission. Petition for Review 10.  
3 Petitioner argues that because the planning commission only made a  
4 recommendation of approval of the applications, the city council was the initial  
5 (and only) decision maker and was required to conduct a *de novo* hearing. *Id.*  
6 (citing SMC 17.162.090(D)(2)).

7 SMC 17.81.060 states that the procedures will be those set out in chapter  
8 17.162, but respondents point out that the term “*de novo*” is not found anywhere  
9 in SMC 17.162. Joint Respondent’s Brief 10. Respondents answer that SMC  
10 17.22.030 governs the proceedings and specifically provides for the process the  
11 city council utilized. SMC 17.22.030 provides:

12 “Quasi-judicial amendments shall be in accordance with the  
13 procedures set forth in Chapter 17.162 and the following:

14 “A. The commission shall make a recommendation to the Council  
15 to approve, approve with conditions or deny an application  
16 for a quasi-judicial comprehensive plan amendment or zone  
17 changes.

18 “B. *The council shall decide the applications on the record.*

19 “C. A quasi-judicial application may be approved, approved with  
20 conditions or denied.” (Emphasis added.)

21 SMC 17.22.030(B) provides that quasi-judicial amendments will be  
22 decided by the city council on the record. Petitioner acknowledges that “[a]  
23 planned development is an overlay zone and is processed the same as a quasi-  
24 judicial map amendment.” Petition for Review 10 (citing SMC 17.81.060,



1 Record 756). SMC 17.81.010 provides that “[a] planned development shall be  
2 considered as an overlay to an existing zone[.]” The city council decision  
3 approving intervenor’s applications expressly states that intervenor applied “to  
4 *amend the Zoning Map* in order to apply a Planned Development Overlay  
5 designation” and approves “[t]he Planned Development Overlay Zone  
6 Change[.]” Record 24 (emphasis added). The decision also directs the city  
7 planner “to conform the City Zoning Map to [its] provisions [.]” *Id.* The Planned  
8 Development is a quasi-judicial zone change.

9 In their reply, petitioner responds that the city council never identified  
10 SMC 17.22.030 below. This is incorrect. The city council adopted the findings in  
11 the October 20, 2022, staff report attached as Exhibit B to the ordinance  
12 approving intervenor’s applications. Record 24. The findings in Exhibit B set out  
13 the text of SMC 17.22.030 and conclude that “[t]he Planned Development  
14 Overlay is a quasi-judicial review, which requires Planning Commission  
15 recommendation and a City Council decision. *Section 17.22.030 is satisfied.*”  
16 Record 47 (emphasis added, underscoring omitted). Petitioner does not address  
17 this finding and we conclude that SMC 17.22.030 applies. *Delmonico v.*  
18 *Washington County*, \_\_\_ Or LUBA \_\_\_, \_\_\_ (LUBA No 2022-072, Nov 21,  
19 2022) (where petitioner does not challenge a finding on criterion applicability,  
20 we assume that the finding is correct) (slip op at 10). Accordingly, petitioner’s  
21 argument that *de novo* review was required does not provide a basis for reversal  
22 or remand. Because petitioner has not identified a procedure violated by the city

1 council, we will not consider petitioner's arguments that they were prejudiced by  
2 the city council's decision to limit its review to the record.

3 The second subassignment of error is denied.

4 **C. Denial of Request to Keep the Record Open After City Council**  
5 **Hearing**

6 Petitioner's third subassignment of error is that the city council erred by  
7 denying petitioner's request that the city council leave the record open after its  
8 December 5, 2022, hearing as required by SMC 17.162.160. Petition for Review  
9 17. SMC 17.162.160 provides:

10 "A. Unless there is a continuance, the record shall remain open  
11 for new evidence for at least seven days at the request of any  
12 participant in the initial evidentiary hearing before the  
13 planning commission or the city council, if the request is  
14 made prior to the conclusion of the hearing.

15 "B. When the record is left open to admit new evidence,  
16 testimony, or criteria for decision-making, any person may  
17 raise new issues which relate to that new material."

18 Petitioner argues that "[u]nlike ORS 197.797(6), which limits the right to request  
19 an open record to the 'initial evidentiary hearing' period, SMC 17.162.160(A)  
20 provides for this request at the initial evidentiary hearing before the city  
21 council."<sup>4</sup> Petition for Review 17. Petitioner argues that the December 5, 2022,

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<sup>4</sup> ORS 197.797(6) states:

"(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional

1 hearing “was the initial evidentiary hearing before the city council. Therefore,  
2 the City’s refusal to grant Petitioner’s request to leave the record open violated  
3 SMC 17.162.160(A).” Petition for Review 17.

4 Respondents maintain that the city council was not required to keep the  
5 record open because the hearing before the city council was on the record. Joint  
6 Respondent’s Brief 6. Respondents state repeatedly that the city council hearing  
7 was not the first evidentiary hearing, and that the city council hearing was on the  
8 record. We understand this to be an argument that SMC 17.162.160(A) did not  
9 apply to the city council hearing.<sup>5</sup> For the reasons set out in our resolution of the  
10 second subassignment of error, we agree that the hearing before the city council

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evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

“(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.”

<sup>5</sup> In their reply, we understand petitioner to argue that respondents did not respond to this argument in the Joint Respondent’s Brief and should be deemed to have waived the opportunity to respond. Petitioner’s Reply Brief 3.

1 was properly on the record. The city council was not required to open the record  
2 before its hearing and therefore was not required by the code to keep the record  
3 open following the conclusion of its hearing.

4 Furthermore, even if respondents waived their ability to respond to the  
5 substance of this subassignment, by failing to include a response referencing  
6 SMC 17.162.160(A) in their responsive briefing, we agree with respondents that  
7 petitioner has not established prejudice to its substantial rights as a result of the  
8 city council closing the hearing to the public after its on the record hearing. Joint  
9 Respondent's Brief 12-13. Petitioner had notice before the local proceedings  
10 began that the city council would conduct an on-the-record hearing. At the  
11 conclusion of the planning commission hearing, "the City attorney and  
12 [intervenor] requested that the record be left open for more than the required  
13 seven days specifically so that Petitioner's attorney(s) could be given more time  
14 to submit written testimony." Joint Respondent's Brief 15. The record was then  
15 left open for submissions from petitioner for 10 days after the initial evidentiary  
16 hearing before the planning commission. Petitioner has not established prejudice  
17 to their substantial rights.

18 The third subassignment of error is denied.

1           **D     Inability of Petitioner to Submit Written Testimony at City**  
2                   **Council and Limitation on Time Petitioner Allowed to Testify**  
3                   **Before City Council**

4           Petitioner argues that the city council erred in not accepting written  
5     testimony from petitioner or other parties and in limiting the amount of time  
6     petitioner was allowed to present oral testimony.

7           SMC 17.162.130 sets out the order in which a quasi-judicial hearing is  
8     conducted. Petitioner argues that there is “nothing in SMC 17.162.130 that limits  
9     or prohibits the submission of written comments[,]” that it is common practice  
10    for parties to submit written comments at hearings, and that the city council erred  
11    in not accepting written testimony. Petition for Review 15. Petitioner also argues  
12    that the city council improperly limited each “project opponent” to five minutes  
13    of oral testimony while intervenor was given unrestricted time to testify.  
14    Petitioner argues that an unequal distribution of time can create procedural error  
15    if there is not adequate justification and it creates a significant disadvantage for  
16    a party.<sup>6</sup> Petition for Review 16.

17           To the extent an unidentified “project opponent” is not petitioner,  
18     petitioner may not assert substantial prejudice on behalf of others. *Bauer v. City*  
19     *of Portland*, 38 Or LUBA 432, 436 (2000) (“[T]he alleged procedural error must

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6 Petitioner argues that although opponents were allowed five minutes of testimony, intervenor testified for 56 minutes during its initial presentation and 35 minutes during its rebuttal. Petition for Review 15. Respondents maintain that opponents testified for a total of 1 hour 56 minutes and intervenor’s team testified for approximately 2 hours, 43 minutes. Joint Respondent’s Brief 13.



1 affect *petitioner's* rights, not the rights of others. Petitioner's complaint about an  
2 alleged failure to notify a third party (who is not a party to this appeal) fails to  
3 state a claim upon which we may grant relief." (Emphasis in original, footnote  
4 omitted.)).

5 Petitioner argues that there was substantial prejudice to their rights  
6 because:

7 "The issues involved in this case were numerous, complicated, and  
8 technical. Intervenor was allowed to submit a detailed final written  
9 argument at the end of the planning commission process and was  
10 granted unlimited time to make its case before the city council.  
11 Rec[ord] 1422-1435. Petitioner's substantial rights were prejudiced  
12 because he was forced to make his entire case with a limited amount  
13 of time for oral testimony while Intervenor had the luxury of a  
14 detailed written argument and unlimited time to testify before the  
15 city council." Pctition for Review 19-20.

16 Respondents answer, and we agree, that petitioner has not identified a basis  
17 for reversal or remand. As respondents point out, SMC 17.162.130(A)(1)(e)  
18 provides that unless otherwise provided in the SMC or other ordinance adopted  
19 by the city council, the presiding officer of the planning commission and of the  
20 city council shall have the authority to "[r]egulate the course, sequence and  
21 decorum of the hearing[.]" and "[t]ake such other action appropriate for conduct  
22 commensurate with the nature of the hearing[.]" SMC 17.162.130(A)(1)(b), (f).  
23 Petitioner has not identified any provision limiting the ability of the presiding  
24 officer to set limits on the proceedings. More importantly, intervenor had *seven*  
25 applications before the city council. "An applicant has the burden of proof

1 throughout a quasi-judicial process to demonstrate that all applicable approval  
2 criteria have been satisfied.” *Friends of Yamhill County v. Yamhill County*, 44 Or  
3 LUBA 777, 780 (2003) (citing *Rochlin v. Multnomah County*, 35 Or LUBA 333,  
4 348 (1998), *aff’d*, 159 Or App 681, 981 P2d 399 (1999)). Given that intervenor  
5 had the burden of proof, an uneven division of time is reasonable and petitioner  
6 has not established that the distribution of time was unreasonable.

7 We also agree with respondents that petitioner has not identified a  
8 provision of state or local law requiring that the city council accept written  
9 testimony. Petitioner has not identified a procedure violated and has not  
10 established a basis for reversal or remand based on the city council not accepting  
11 written testimony. Furthermore, even if petitioner had identified a procedure  
12 violated by the city council, petitioner failed to establish prejudice to their  
13 substantial rights.

14 Petitioner does not argue that the city’s process violated constitutional due  
15 process. However, petitioner cites *Wild Rose Ranch Enterprises v. Benton*  
16 *County*, 37 Or LUBA 368, 374-75 (1999) and *Reeves v. City of Wilsonville*, 62  
17 Or LUBA 142, 148 (2010), *aff’d*, 240 Or App 563, 249 P3d 166 (2011) in support  
18 of petitioner’s observation that “[l]ocal governments typically compensate for  
19 any disparity in the allocation of time for oral testimony by allowing the  
20 submission of written testimony.” Petition for Review 16.

21 In *Wild Rose Ranch Enterprises v. Benton County*, the petitioner argued  
22 that the county limitation on oral testimony denied them their federal

1 constitutional rights to due process and equal protection. 37 Or LUBA at 374-75.  
2 We concluded that any error associated with the time limits on petitioner's  
3 testimony at a hearing was remedied by the commissioners' acceptance of new  
4 evidence prior to the hearing and an opportunity after the hearing closed for  
5 submission of written rebuttal. Here, petitioner was not able to supplement their  
6 oral testimony before the city council with a written submission. Petitioner has  
7 not, however, explained why their substantial rights were prejudiced.

8 In *Reeves v. City of Wilsonville*, the design review board accepted written  
9 and oral testimony and approved an application over the petitioner's objections.  
10 62 Or LUBA at 144. The petitioner appealed the decision to the city council  
11 which reviewed the appeal on the record, rejected the appeal and approved the  
12 application. We found, in *Reeves*, that the petitioner had not explained how the  
13 design review process deprived them of due process. *Id.* at 147-48. Similarly,  
14 here, the planning commission accepted oral and written testimony and the city  
15 council reviewed the planning commission recommendation on the record and  
16 petitioner has not shown how they were prejudiced by that process. Petitioner has  
17 not explained how its inability to submit written testimony to the city council  
18 prejudiced their substantial rights when petitioner and their counsel collectively  
19 submitted pages of written testimony to the planning commission and  
20 presumably did or could have submitted the desired material at that time.

21 For the reasons we set out in our resolution of the second subassignment  
22 of error we conclude that the city council was permitted to consider the



1 applications on the record and was not required to accept written testimony from  
2 petitioner or give petitioner additional time to testify before the city council.

3 The third subassignment of error is denied.

4 **E. Lack of City Council Findings Addressing Petitioner's**  
5 **Procedural Arguments**

6 Lastly, petitioner argues that the city council was required but failed to  
7 adopt findings addressing its procedural concerns. Findings must (1) identify the  
8 relevant approval standards, (2) set out the facts which are believed and relied  
9 upon, and (3) explain how those facts lead to the decision on compliance with the  
10 approval standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).  
11 We agree with respondents that the procedural arguments raised by petitioner do  
12 not relate to approval standards and do not require findings. We also agree with  
13 respondents that the cases cited by petitioner as legal authority for its position  
14 that the city council was required to adopt findings responding to its procedural  
15 arguments do not stand for that proposition. Petitioner does not establish a basis  
16 for reversal or remand.

17 The fourth subassignment of error is denied.

18 The first assignment of error is denied.

19 **SECOND ASSIGNMENT OF ERROR**

20 **A. Background**

21 ORS 197.303 and ORS 197.522(1)(a) define “needed housing” as:

22 “all housing on land zoned for residential use or mixed residential  
23 and commercial use that is determined to meet the need shown for

1 housing within an urban growth boundary at price ranges and rent  
2 levels that are affordable to households within the county with a  
3 variety of incomes, including but not limited to households with low  
4 incomes, very low incomes and extremely low incomes, as those  
5 terms are defined by the United States Department of Housing and  
6 Urban Development under 42 [USC section] 1437a.”

7 It is undisputed that intervenor’s proposal is to develop needed housing.

8 ORS 197.522 provides, in part:

9 “(2) A local government shall approve an application for a permit,  
10 authorization or other approval necessary for the subdivision  
11 or partitioning of, or construction on, any land for needed  
12 housing that is consistent with the comprehensive plan and  
13 applicable land use regulations.

14 “(3) If an application is inconsistent with the comprehensive plan  
15 and applicable land use regulations, the local government,  
16 prior to making a final decision on the application, shall allow  
17 the applicant to offer an amendment or to propose conditions  
18 of approval that would make the application consistent with  
19 the plan and applicable regulations. If an applicant seeks to  
20 amend the application or propose conditions of approval:

21 “(a) A county may extend the time limitation under ORS  
22 215.427 for final action by the governing body of a  
23 county on an application for needed housing and may  
24 set forth a new time limitation for final action on the  
25 consideration of future amendments or proposals.

26 “(b) A city may extend the time limitation under ORS  
27 227.178 for final action by the governing body of a city  
28 on an application for needed housing and may set forth  
29 a new time limitation for final action on the  
30 consideration of future amendments or proposals.

31 “(4) A local government shall deny an application that is  
32 inconsistent with the comprehensive plan and applicable land  
33 use regulations and that cannot be made consistent through

1 amendments to the application or the imposition of  
2 reasonable conditions of approval.”

3 During deliberations,

4 “Council President Greisen stated what she would like to say to her  
5 fellow Councilors is that the minimum the proposed, on page 31 of  
6 the packet, under chapter 17.44, there’s three columns that say the  
7 dimensional requirements for the R[-]1 zone requirements and then  
8 what’s proposed by the overlay, the planned development overlay,  
9 and so what she is having pause with is that the proposed, what’s  
10 proposed by the planned development overlay is that there is a  
11 minimum of 3,410 square feet lot size and that is what she would  
12 like to address.” Record 671.

13 Petitioner contends that the council president and another councilor expressed  
14 concerns about the density, lot sizes, and flood plain. At one point, a city  
15 councilor opined about the potential for a 4,700 minimum square foot lot size.  
16 Pursuant to ORS 197.522(3), the city council reopened the record to allow  
17 intervenor to propose changes to the application and conditions of approval.  
18 Intervenor’s counsel testified after the record was reopened for discussions with  
19 them and their statements included:

20 “There’s a lot of engineering that goes into it and they want to make  
21 sure that they can still do the project and that means not reducing  
22 the lots so much that it becomes, you know, essentially unbuildable.  
23 So, they looked at this and they figured out a way and they hope that  
24 it would satisfy the concern of getting the minimum, all the  
25 minimums that, well the average lot size would be substantially  
26 more than 5,000 square feet. They can get all the lots above 4,000  
27 square feet. Which would be for a lot of those lots an increase of 600  
28 - 500 square feet so forth. That’s something they could probably do.  
29 They looked at doing that or looked at adding a park amenity instead  
30 of having a few of the lots. The idea being is that with the P[lanned]  
31 D[velopment] code, as he understands it, the idea is it’s a balance

1 between the amount of open space you have and the amount of lots  
2 you can get. Now if they go down to 44 lots, at that point, you're  
3 looking at two lots fewer than the number of lots they could get  
4 under the standard zoning, plus you know 57% of the parcel being  
5 preserved for open space. Now we get all the lots above 4,000 square  
6 feet. *They cannot get every single lot above 5,000 square feet, that's*  
7 *not financially feasible. They could probably get to where each of*  
8 *the small lots are 4,000 and then you end up with 44 instead of 48.*

9 “\* \* \* \* \*

10 “[Y]eah, *because the problem is, [a city councilor's math] would*  
11 *work great if this were a standard site. The problem we have with*  
12 *focusing on the smallest lot size is, as [city planner] said we're*  
13 *clustering these, and they have to be clustered to make room for the*  
14 *creek. That's the simple way of looking at it. So doing 4,700 square*  
15 *feet, he doesn't think that's feasible. Like he said, if it were just a*  
16 *flat field with no issues that they had to work around, you could*  
17 *probably do that but the problem they have is they can't move these*  
18 *lots around anywhere else on the property, which means we can't*  
19 *make them larger and still protect the natural resources on the*  
20 *property. So, 4,000 is really as far down as we can go in terms of*  
21 *the minimum lot size.*

22 “At a certain point it becomes more sensible to come back with a  
23 straight subdivision, which you know does not necessarily go  
24 through Planning Commission and would not have as much open  
25 space associated with it. *So, what he is trying to do is make this*  
26 *project work because of the amount of open space they'd be offering*  
27 *the City and the number of amenities they're offering without having*  
28 *to say, well it's just not going to pencil, there's no way we can make*  
29 *that work and coming back with just a straight subdivision*  
30 *application, which I don't think the Council would like frankly, as*  
31 *much as this one. So, he would say 4,000 is probably the best they*  
32 *can do and remember when we're talking about 4,000, we're talking*  
33 *about the smallest lot. They worked it out all lots just a little over*  
34 *4,000 square feet but the average is substantially above 5,000 square*  
35 *feet and most of the lots are in that and most of smallest lots are in*  
36 *that 4,500 square foot range. So, they're adding a substantial*



1       *amount of square feet to the smallest lots, but he doesn't think yeah*  
2       *4,700 square feet, that would kill it, he doesn't know how many lots,*  
3       *yeah, a substantial number and remember you know we're already*  
4       *now at 44. We are at two lots beneath what they could get through a*  
5       *standard subdivision. So, they're really not getting anything extra*  
6       *from the P[lanned] D[velopment] process at all. They're offering a*  
7       *lot extra in the way of the public amenities, the pathway, and that*  
8       *sort of thing."* Record 677-78 (emphases added).

9       After a city councilor asked whether reducing the number of lots would reduce  
10      the amount of green space, intervenor's counsel responded that it would not  
11      because intervenor would redraw the lot lines particularly along the main street  
12      so that the green space and proposed public improvements would not change.  
13      Record 679. The city council proceeded to approve intervenor's applications with  
14      a condition of approval that the minimum lot size be 4,000 square feet and the  
15      number of residential lots limited to 44. Record 13.

16           **B.     Opportunity to Respond to Condition of Approval or New**  
17           **Evidence**

18      Petitioner's second assignment of error is that they were improperly denied  
19      the opportunity to respond to new evidence submitted by intervenor. Petitioner  
20      explains:

21           "When the city attorney suggested that the city council reopen the  
22           record and allow Intervenor to address the council's concerns about  
23           density and the number of lots, he was very clear that other parties  
24           were not permitted to respond. The city attorney advised the city  
25           council to 'open the record for the very limited purpose of the lot  
26           size discussion with the [intervenor].'" Petition for Review 21-22  
27           (quoting Record 674, emphasis omitted).

1 Petitioner maintains that “[a]ll participants in a hearing have the right to rebut  
2 evidence placed before the decision-maker.” Petition for Review 23 (citing  
3 *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973); *Woodstock*  
4 *Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146, 153 (1994)). Petitioner  
5 asserts:

6 “Intervenor’s modified plan was itself new evidence because it  
7 significantly changed the proposal. Intervenor’s statements  
8 regarding the engineering issues, the need for smaller lots, 4,700  
9 square foot lots being infeasible, larger lots prohibiting Intervenor  
10 from protecting the natural resources and the inability to provide  
11 project amenities with larger lots was all new evidence.” Petition for  
12 Review 26-27.

13 Petitioner argues that they:

14 “[N]ever had an opportunity to comment on the modified proposal  
15 or the new evidence. Petitioner was deprived of the opportunity to  
16 explain that because Intervenor requested a planned development  
17 overlay, which is a discretionary process, the city was not limited to  
18 applying clear and objective standards to the Applications.  
19 Petitioner did not have the opportunity to clarify that the minimum  
20 lot sizes in the R-1 zone would prevent the City from being forced  
21 to accept a 46-lot subdivision with no project amenities. Petitioner  
22 did not have the opportunity to dispute Intervenor’s statements  
23 regarding the engineering issues, the ability to protect the creek with  
24 larger lots, the feasibility of minimum lot sizes above 4,000 square  
25 feet, or the unsubstantiated claim that the project won’t pencil out  
26 with larger lot sizes and fewer lots. Petitioner was deprived of any  
27 opportunity to address the most critical issues that ultimately led the  
28 city council to change from being concerned about the project to

1 approving it.”<sup>7</sup> Petition for Review 27-28 (citations omitted).

2 Petitioner argues that “[t]he city council’s refusal to reopen the record to allow  
3 [p]etitioner and other parties an opportunity to respond to this new [information]  
4 clearly prejudiced [p]etitioner’s substantial rights.” Petition for Review 27.

5 Respondents answer, in part, that the city council reopened the record  
6 before making a final decision pursuant to ORS 197.522(3), and that the statute  
7 does not provide an opportunity for a response to new evidence, arguing:

8 “The legislature went out of its way to give the City the option to  
9 extend the 120-day deadline to further consider such proposals by  
10 an applicant, but it does not require local governments to extend that  
11 deadline to give others the opportunity to respond. ORS  
12 197.522(3)(b). In so doing, the legislature carved out certain  
13 procedural protections for the local governments to allow them time  
14 to consider proposals intended to make projects better meet land use  
15 regulations, but did not do so for the public, which is meaningful  
16 evidence that the legislature did not intend to do so.” Joint  
17 Respondent’s Brief 17.

18 We do not examine whether the legislature intended to preclude public  
19 comment on conditions of approval or modified applications submitted in  
20 response to the provision in ORS 197.522 providing that an applicant will be

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<sup>7</sup> We observe that petitioner’s testimony at the December 5, 2022, hearing included arguing to the city council that the needed housing statutes did not require the application of only clear and objective standards because of the discretionary review path selected by intervenor. Record 721.

1 given an opportunity to propose a condition of approval or project modifications.<sup>8</sup>  
2 Both *Fasano* and *Woodstock* predate the legislature’s adoption of ORS  
3 197.522(3)’s requirement that an applicant be afforded an opportunity to modify  
4 a housing proposal or offer conditions of approval in response to a local  
5 government’s determination that applicable approval criteria are not met.  
6 Assuming, however, for purposes of this opinion that *Fasano* and *Woodstock*  
7 apply and there is a right to rebut new evidence, we conclude petitioner’s  
8 substantial rights were not prejudiced because petitioner has not identified any  
9 new evidence that was presented.

10 Respondents point to our decision in *Jacobus v. Klamath County* where we  
11 concluded that the petitioners had not established prejudice to their substantial  
12 rights where they did not *identify the alleged new evidence* admitted (or the  
13 additional evidence that they would have submitted in response). 81 Or LUBA  
14 785, 788-89 (2020). Here, intervenor did not submit a new plan, but we agree  
15 with petitioner that the intervenor’s statements that 44 was the number of lots  
16 intervenor could make “pencil” while protecting the creek and providing a  
17 minimum lot size of 4,000 square feet, constituted new *information*. See  
18 *Freedman v. City of Grants Pass*, 57 Or LUBA 385, 393 (2000) (“Even if we  
19 assume that all of the underlying facts, documents, and data cited in the [a

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<sup>8</sup> We acknowledge that it may be that the legislature intended that one of the reasons a city might extend the time to evaluate a modified proposal or a condition of approval is to allow it time to receive public comment.



1 consultant's] letter are derived from the [transportation impact assessment] or  
2 otherwise found elsewhere in the existing record, something intervenor has not  
3 established, [the consultant's] ultimate conclusions constitute new 'other  
4 information' referenced in ORS 197.7[97](9)(b), in the form of new expert  
5 testimony.'"). In *Woodstock*, we agreed

6 "with petitioner that under *Fasano* it ha[d] a substantial right to  
7 rebut evidence submitted by petitioner at the city council hearing.  
8 Therefore, if intervenor presented new *evidence* relevant to the  
9 applicable approval standards during the 'Appellant's Rebuttal'  
10 period, and petitioner was denied an opportunity to rebut that  
11 evidence, petitioner's substantial rights were prejudiced."  
12 *Woodstock*, 28 Or LUBA at 153 (emphasis in original).

13 We then concluded that the statements made by the intervenor were not new  
14 evidence and petitioner was therefore not denied an opportunity to respond to  
15 new evidence.

16 Evidence, for purposes of ORS 197.797, is defined as "facts, documents,  
17 data or other information offered to demonstrate compliance or noncompliance  
18 with the standards believed by the proponent to be relevant to the decision." ORS  
19 197.797(9)(b). We agree with respondents that "the legislature's allowance of  
20 applicant proposals [for conditions of approval] is consistent with existing case  
21 law that provides that, as a general matter, the proposal of a condition of approval  
22 is not new evidence." Joint Respondent's Brief 17. "Conditions of approval are  
23 routinely applied as part of the decision making process to address issues that are

1 raised during the evidentiary phase of land use proceedings.”<sup>9</sup> *Marine Street LLC*  
2 *v. City of Astoria*, 37 Or LUBA 587, 597 (2000). In *Marine Street LLC*, the  
3 petitioner did not provide any authority for their assertion that a condition of  
4 approval providing that a maximum of 20 residential units may be built *was*  
5 *evidence* and we concluded that the petitioner had not provided a basis for  
6 remand. 37 Or LUBA at 597-98.

7 Similarly, petitioner does not identify specific approval standards related  
8 to the new information identified above and does not develop their argument that  
9 the information provided was “evidence”; that is, information related to approval  
10 criteria. We will not develop their argument for them.<sup>10</sup> *Deschutes Development*  
11 *Company v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

12 The second assignment of error is denied.

### 13 **THIRD ASSIGNMENT OF ERROR**

14 Petitioner argues that the city’s decision is not supported by adequate  
15 findings or substantial evidence. Petition for Review 28.

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<sup>9</sup> However, “petitioners are free to challenge the efficacy of any conditions that are attached to the challenged decision to ensure compliance with approval criteria.” *Marine Street LLC*, 37 Or LUBA at 598.

<sup>10</sup> Petitioner lists a variety of arguments and evidence they contend they were not allowed to submit. *See* Petition for Review 18 nn 5 & 6. We observe that it remains unclear why the items listed could not have been submitted while the record was open.

1 As we explained above, adequate findings (1) identify the relevant  
2 approval standards, (2) set out the facts which are believed and relied upon, and  
3 (3) explain how those facts lead to the decision on compliance with the approval  
4 standards. *Heiller*, 23 Or LUBA at 556. Adequate findings are required to support  
5 quasi-judicial land use decisions. *Sunnyside Neighborhood v. Clackamas Co.*  
6 *Comm.*, 280 Or 3, 20-21, 569 P2d 1063 (1977).

7 Substantial evidence is evidence that a reasonable person would rely on in  
8 making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608  
9 (1993). Where there is conflicting evidence and we conclude a reasonable person  
10 could reach the decision made by the local government, in view of all the  
11 evidence in the record, we defer to the local government's choice of evidence.  
12 *Younger v. City of Portland*, 305 Or 356, 360, 752 P2d 262 (1988); *Adler v. City*  
13 *of Portland*, 25 Or LUBA 546, 554 (1993) (stating that, if there is substantial  
14 evidence in the whole record to support the local government's decision, LUBA  
15 will defer to it, notwithstanding that reasonable people could draw different  
16 conclusions from the evidence). LUBA shall reverse or remand a decision that is  
17 not supported by substantial evidence in the whole record. ORS  
18 197.835(9)(a)(C).

19 **A. Adequacy of City Findings Related to 44-Lot Development**

20 Petitioner argues that the approval of the 44-lot project is not supported by  
21 adequate findings or substantial evidence because the evidence in the record  
22 relates to the 48-lot proposal. Petition for Review 33. Petitioner argues that “the

1 city council cannot conclude that a modified plan complies with the approval  
2 criteria if it has no idea what that modified plan will look like.” Petition for  
3 Review 33. Petitioner argues that the city council

4 “did not adopt *any* findings regarding the revised plan. The city  
5 council findings do not contain a single reference to the 44-lot  
6 revised plan, clarify how it addresses the city council’s concerns, or  
7 explain why it complies with the applicable criteria. *The city*  
8 *council’s conclusion that the 44-lot revised plan complies with the*  
9 *approval criteria cannot be affirmed in the absence of any findings*  
10 *addressing the revised proposal itself.”* Petition for Review 32-33  
11 (first emphasis in original, second emphasis added).

12 The city council adopted “the recommendations of the Scappoose Planning  
13 Commission and the findings outlined in the staff report attached as Exhibit B,  
14 attached [to and incorporated into Ordinance 909]” and approved:

15 “The Planned Development Overlay Zone Change, Subdivision  
16 Tentative Plan Approval, Conditional Use Approval, and Sensitive  
17 Lands Development Permits for Flooding, Wetlands, Slope Hazard  
18 and Fish and Riparian Corridor \* \* \* subject to the conditions of  
19 approval outlined in the staff report, attached as Exhibit B, [attached  
20 to and incorporated into Ordinance 909]. In addition to the  
21 conditions of approval contained in the Planning Commission staff  
22 report, during the December 12, 2022, hearing, Council added an  
23 additional condition of approval, which was accepted by the  
24 applicant, to limit the number of lots to 44 and to require a minimum  
25 lot size of 4,000 square feet.” Record 24-25.

26 Respondents answer that the staff report findings adopted by the city council  
27 “thoroughly establishes the compliance of the 48 lots with the approval criteria  
28 applicable[,]” and that this is substantial evidence, “especially when the only  
29 change is the reduction of lots to make the plan more compliant with lot size

1 minimums.” Joint Respondent’s Brief 20. Respondents contend “Petitioner offers  
2 no evidence or argument that contradicts these points, nor do [do they] explain  
3 which criteria or standard, if any, a reduction from [48 to 44] lots would violate.”  
4 *Id.*

5 We agree with respondents that absent identification of criteria that the city  
6 council found required imposition of the 44-lot, 4,000 square foot minimum lot  
7 size condition of approval, petitioner has not shown that additional findings are  
8 required. Although city councilors discussed a desire to obtain a larger minimum  
9 lot size, the city council adopted findings that the 48-lot proposal met the  
10 applicable standards. Contrary to petitioner’s assertion, the city council did not  
11 find that a 44-lot proposal met the applicable criteria; it found that the 48-lot  
12 proposal met the applicable criteria. We agree with respondents that petitioner  
13 does not explain what criteria or standard is violated by the reduction in the  
14 number of lots. *Wissusik v. Yamhill County*, 27 Or LUBA 94 (1994) (where  
15 petitioner does not identify which provision they believe to be violated by the  
16 challenged decision, they do not adequately develop an argument for review.)  
17 Absent a showing that a finding is required, substantial evidence supporting such  
18 a finding is not required.

19 The first subassignment of error is denied.



1           **B.     Substantial Evidence of 44-Lot Development Compliance with**  
2           **Approval Criteria or Feasibility Studies**

3           Petitioner argues “the city council’s approval of the 44-lot revise[d] plan  
4           is not supported by substantial evidence of feasibility or compliance with the  
5           approval criteria. As previously noted, the application narrative and all  
6           supporting technical analysis are based on the 48-lot site plan and layout.”  
7           Petition for Review 33. Petitioner argues that the findings are inadequate and are  
8           not supported by substantial evidence because the city did not review a 44-lot  
9           proposal and determine that it was feasible or provide a later process for parties  
10          to address the 44-lot proposal.

11          Again, we note that there is not a modified, 44-lot proposal; there is a 44-  
12          lot condition of approval. As described above, the city council relied upon its  
13          findings for a 48-lot development. We agree, again, with respondents that  
14          petitioner does not explain which criteria or standard is violated by a reduction  
15          to 44-lots. The city council’s findings do not link the 44 lot (and minimum 4,000  
16          square foot lot) condition to applicable criteria and petitioner does not do so.  
17          Petitioner has not adequately developed a finding or substantial evidence  
18          challenge. Petitioner argues:

19                “If the City concludes that an application does not comply with the  
20                approval criteria, the City’s options are limited to: (1) finding that it  
21                is feasible to satisfy the criterion and adopt conditions necessary to  
22                ensure compliance; (2) deny the proposal; or (3) defer a finding of  
23                compliance with the criterion to a later process that provides for  
24                public notice and hearing.” Petition for Review 29.

1 Petitioner has not identified a criterion the city council concluded the applications  
2 did not meet. Petitioner has not identified a finding dependent upon the condition  
3 of approval and has not adequately developed an argument that the city council  
4 was required to evaluate feasibility or provide for additional public process.<sup>11</sup>  
5 The second subassignment of error is denied.

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<sup>11</sup> Respondents also argue that because conditions of approval are not new evidence, they do not necessarily require findings and proceeds to cite to evidence in the record as support for the 44-lot condition of approval. *Davis v. City of Bandon*, cited by respondents as authority for our consideration of evidence in the record, did not involve a fact pattern similar to that before us. In *Davis*, the petitioner appealed a planning commission approval of their subdivision application with conditions of approval. 28 Or LUBA 38, 41 (1994). The city council voted to approve the subdivision with additional conditions of approval and petitioner tried to withdraw their application. The city council proceeded to approve the subdivision with its conditions of approval, including requiring a bridge be constructed over a wetland. We said:

“As an initial point, petitioners appear to suggest that all conditions of approval must be supported by findings which explain the justification for the condition. We are aware of no general requirement that a decision imposing conditions of approval be remanded simply because a condition of approval is not supported by findings, and we reject the suggestion. Where a condition of approval is challenged and the decision or findings do not identify the authority for imposing that condition or the evidence in the record supporting its imposition, respondent may in its brief, identify the requisite authority and the supporting evidence in the record.” *Id.* at 49 (emphasis added, footnote omitted).

Unlike *Davis*, however, this is not a case where the petitioner is objecting to the authority of a local government to impose a condition of approval on its application and we do not consider *Davis* further.

1                   **C.     Consistency and Clarity of Conditions of Approval**

2           Petitioner's third subassignment of error is that the decision should be  
3   remanded because the findings and conditions of approval are confusing and  
4   inconsistent. Petition for Review 32. Petitioner also argues that the decision will  
5   be difficult to implement because other conditions of approval refer to Lots 45,  
6   46, 47 and 48, numbered lots that will not exist given Condition 53 limits the  
7   maximum number of lots to 44. Petitioner argues:

8           "The city council's notice of decision and findings repeatedly and  
9   exclusively address the 48-lot proposal. [Joint Respondent's Brief]  
10   App[, at] 8, 10, 15-16, 20, 26, 30, 33, 37, 44, 65 and 74; Rec[ord] 6.  
11   Several conditions (*conditions nos. 24, 32, and 45*) *impose*  
12   *additional requirements and assessments for Lots 46, 47, and/or 48,*  
13   *which will be confusing or difficult to implement* because these lots  
14   no longer exist under the revised 44-lot proposal. [Joint  
15   Respondent's Brief] App[, at] 85-87. The city council's decision  
16   must be remanded because the findings and other conditions of  
17   approval are confusing and wholly inconsistent with condition no.  
18   53." Petition for Review 32 (emphasis added).

19   Petitioner does not develop a specific argument concerning findings. The  
20   conditions identified by petitioner as problematic are numbers 24, 32 and 45.  
21   Respondents answer that the findings and conditions remain clear. Respondents  
22   maintains that with respect to condition 24,

23           "[p]etitioner does not explain how [intervenor] will be unable to  
24   determine which lots contain certain residences behind other  
25   properties for the purpose of installing signage, and it can  
26   reasonably be assumed that the City will be able to determine  
27   compliance with this condition as well. Condition 32 requires '5 feet  
28   minimum separation between house foundations and face of  
29   retaining walls proposed on Lots 7-9 and 47-48.' Rec[ord] 10. As



1 the retaining wall itself is clearly shown on the site plan(s) (Rec[ord]  
2 232, 237) and is not proposed to be changed, there is no reason to  
3 believe that [intervenor] or the City will not be able to determine  
4 which lots contain retaining walls. Lastly, condition 45 requires  
5 '[s]ite-specific geotechnical recommendations shall be provided for  
6 houses on Lots 7-9, 17-19, and 47-48 prior to issuance of building  
7 permits.' Again, as these lots are shown on the approved plans, there  
8 is no reason to believe that [intervenor] or the City will be unable to  
9 determine which renumbered lots now contain lots 47 and 48." Joint  
10 Respondent's Brief 22-23.

11 We agree with respondents that petitioner has not explained how the identified  
12 findings or conditions of approval are, in context, confusing, inconsistent or  
13 difficult to apply and has not identified a basis for remand or reversal.

14 The third subassignment of error is denied.

15 The third assignment of error is denied.

#### 16 **FOURTH ASSIGNMENT OF ERROR**

17 Petitioner argues that the city council failed to adopt adequate findings  
18 explaining why all of Phase 1 of intervenor's project is permitted under SMC  
19 17.84.040(B). Petition for Review 34. Phase 1 of the proposed development  
20 includes construction of two private stormwater detention ponds within the  
21 floodplain. SMC 17.84.040(B) provides that uses allowed in special flood hazard  
22 areas, with a flood hazard development permit, include, as relevant here:

23 "3. Installation, reconstruction or improvement of underground  
24 utilities or roadway improvements including sidewalks,  
25 curbs, streetlights and driveway aprons;

26 "4. Minimal ground disturbance(s) but no landform alterations;

27 "\* \* \* \* \*

1       “6.   Community recreation uses such as bicycle and pedestrian  
2       paths or athletic fields or parks;

3       “7.   Public and private conservation areas for water, soil, open  
4       space, forest and wildlife resources [.]”

5   The city council found:

6       “[w]ork within the floodplain areas fall under categories 3, 4, 6 and  
7       7. This includes roadway and utility improvements along JP West  
8       Road and Eggleston Lane, grading, retaining walls, planting within  
9       the riparian corridor, construction of a public walkway in Tract D,  
10      and preservation of open space. Section 17.84.040 is satisfied.”  
11      Record 67 (underscoring omitted).

12      Petitioner argues that the city council’s findings are inadequate because  
13      they do not explain why the stormwater detention ponds are allowed.

14      Petitioner argued to the city that stormwater detention ponds and related  
15      grading work do not qualify as permitted uses under SMC 17.84.040(B).<sup>12</sup>

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<sup>12</sup> Petitioner argued:

“[A] critical component of [intervenor’s] plan is to use ‘allowed development’ to generate fill raising the floodplain level in areas now subject to the more restrictive 20,000 lot size requirement. That is the only way the applicant can seek approval for 30 of the proposed lots. The applicant’s stated plan is to develop all of the site development in Phase I, including the streets, utilities, and stormwater detention ponds. Ostensibly, the excavation from that development will be used to alter the floodplain allowing the developer to propose a formal change to FEMA. However, the applicant skips over an important point. Not all of the site development that will generate the fill it needs is allowed in the floodplain. [SDC 17.84.040 lists out the permitted uses.]

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*[Intervenor] is seeking approval to develop in Phase I, two stormwater detention ponds. Tract C, the larger of the two ponds, is located primarily in the current floodplain. It appears that about 2/3 of that pond is in the floodplain. Tract G, a smaller detention pond, is completely within the current floodplain.*

*There is no way to read SDC 17.84.040 to allow development of private stormwater detention ponds in the floodplain. \* \* \* Grading for two significant detention ponds cannot be justified as minimal ground disturbance, improvements to existing structures, recreational uses, or public works projects. The only provision the applicant could try to use is Subsection 3 that relates to utilities and road improvements.*

However, private detention ponds are clearly not underground utilities. The ponds are open surface improvements unlike any underground utility such as sewer and water pipes that cannot be observed from the surface. There is no plausible way to squeeze large, open detention ponds into underground utilities. Nor are the ponds, that primarily serve to detain private runoff from 48 proposed lots, roadway improvements. Applying the rules of construction required, the plain text limits allowed development under Subsection 3 to road improvements, which include the street, sidewalks, curbs, street lighting, and driveway aprons. The drafters did not include private detention ponds in the definition of a roadway improvement. If the drafters intended road improvements to include private detention ponds for private stormwater, they would have included that term in Subsection 3. ORS 174.010 advises that in construing legislation, one is not to add terms that the drafters omitted.

There is additional context that supports our position. The proposed detention ponds do not serve only to treat runoff roadway improvements referred to in SDC 17.84.040(B.3). The streets, sidewalks, and curbs will all be dedicated to and maintained by the public. Those are the only roadway improvements. The detention

1 Findings must address and respond to specific issues relevant to  
2 compliance with applicable approval standards that were raised in the  
3 proceedings below. *Norvell v. Portland Area LGBC*, 43 Or App 849, 853-54, 604  
4 P2d 896 (1979); *Space Age Fuel, Inc. v. Umatilla County*, 72 Or LUBA 92, 97-  
5 98 (2015). We agree with petitioner that the city council was required to adopt  
6 findings addressing petitioner's argument to the city that the stormwater ponds  
7 were not permitted within the floodplain.

8 Respondents argue that petitioner does not develop an argument as to why  
9 we should not affirm the city council's conclusion that SMC 17.620.040(B) is  
10 met. Respondents argue that the city council adopted the staff report findings  
11 concluding that work within the floodplain areas falls within SMC  
12 17.620.040(B)(3), (4), (6), and (7). Respondents argue that the city council  
13 necessarily took the position that the stormwater ponds are allowed as  
14 "installation, reconstruction, or improvement of underground utilities or roadway  
15 improvements including sidewalks, curbs, streetlights and driveway aprons."

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ponds will remain privately owned by an association. That is because the primary purpose of the ponds is to detain runoff from the improvements on all 48 proposed lots. Staff Report, p. 342. Of the 167,488 feet of impervious surface that contributes runoff to the pond, 126,720 feet is attributed to the 48 lots. The runoff from those 126,720 feet of surface is all private runoff not from any roadway improvements. Clearly the proposed ponds are not roadway improvements by any stretch. Consequently, applying the plain text of SDC 17.84.040, in context, the applicant cannot obtain approval to develop the ponds as part of Phase I." Record 1461-63 (emphasis added).

1 Joint Respondent's Brief 25 (quoting SMC 17.84.040(B)(7)). Respondents next  
2 argue that if we find this inadequate, the city council implicitly accepted the  
3 community development director's understanding of the code. Respondents  
4 direct us to the planning director's testimony before the planning commission and  
5 city council and the city engineer's testimony to the planning commission.  
6 Record 734-35, 1401-05. This includes testimony that the ponds could be allowed  
7 under SMC 17.84.040(B)(8) as a public work structure, a code section not listed  
8 in the city council's findings.

9       ORS 197.829(1) provides:

10       "[LUBA] shall affirm a local government's interpretation of its  
11       comprehensive plan and land use regulations, unless [LUBA]  
12       determines that the local government's interpretation:

13       "(a) Is inconsistent with the express language of the  
14       comprehensive plan or land use regulation;

15       "(b) Is inconsistent with the purpose for the comprehensive plan  
16       or land use regulation;

17       "(c) Is inconsistent with the underlying policy that provides the  
18       basis for the comprehensive plan or land use regulation; or

19       "(d) Is contrary to a state statute, land use goal or rule that the  
20       comprehensive plan provision or land use regulation  
21       implements."

22       The test under ORS 197.829(1) is not whether the interpretation is correct,  
23       or the best or superior interpretation, but whether the governing body's  
24       interpretation is "plausible," given its text and context. *Siporen v. City of*  
25       *Medford*, 349 Or 247, 259, 243 P3d 776 (2010). In light of the standard described



1 in *Siporen*, deference is owed under ORS 197.829(1) when (1) a governing body  
2 of a local government; (2) makes an interpretation of its own land use policies;  
3 (3) that is plausible and not inconsistent with the standards set out in the statute.  
4 *Green v. Douglas County*, 245 Or App 430, 437, 263 P3d 355 (2011). The court  
5 determined that there is not a rigid test for whether an interpretation is adequate  
6 for review

7 “An implicit interpretation of an ordinance provision that is eligible  
8 for ORS 197.829(1) deference is one where ‘[t]he practical effect of  
9 the findings is to give definition to the term’ and where the ‘county’s  
10 understanding of [the term] is inherent in the way that it applied the  
11 standard.’ *Alliance for Responsible Land Use[ v. Deschutes Cty.]*,  
12 149 Or App[ 259,] 267, 942 P2d 836 [1997]. That is, a local  
13 government’s implicit interpretation of an ordinance must carry with  
14 it only one possible meaning of the ordinance provision and an  
15 easily inferred explanation of that meaning.” *Green*, 245 Or App at  
16 439.

17 We do not agree with respondents that the city council explicitly or implicitly  
18 interpreted SMC 17.84.040 to mean that the stormwater ponds are permitted uses.  
19 We also disagree with respondents that the city council’s findings incorporate the  
20 planning director’s testimony before the planning commission. Petitioner argues  
21 that the city council was required to but failed to make findings that the  
22 stormwater ponds are permitted uses. We agree.

23 The fourth assignment of error is sustained.

#### 24 **FIFTH ASSIGNMENT OF ERROR**

25 Petitioner argues that the city council erred in determining that the project  
26 does not conflict with administrative rules implementing Statewide Planning

1 Goal 5 (Natural Resources, Scenic Historic Areas, and Open Spaces) and the  
2 city's Goal 5 Comprehensive Plan policies. Petition for Review 39. Respondents  
3 respond that this petitioner made only general Goal 5 and unrelated  
4 comprehensive plan arguments below and waived the issue in this assignment of  
5 error. Joint Respondent's Brief 29.

6 First, petitioner argues that the planned development is a new conflicting  
7 use in the floodplain and has not been analyzed for the purpose of the economic,  
8 social, environmental, and energy analyses (ESEE) required by OAR 660-023-  
9 0040(4). OAR 660-023-0040(4) provides:

10 "Local governments shall analyze the ESEE consequences that  
11 could result from decisions to allow, limit, or prohibit a conflicting  
12 use. The analysis may address each of the identified conflicting uses,  
13 or it may address a group of similar conflicting uses. A local  
14 government may conduct a single analysis for two or more resource  
15 sites that are within the same area or that are similarly situated and  
16 subject to the same zoning. The local government may establish a  
17 matrix of commonly occurring conflicting uses and apply the matrix  
18 to particular resource sites in order to facilitate the analysis. A local  
19 government may conduct a single analysis for a site containing more  
20 than one significant Goal 5 resource. The ESEE analysis must  
21 consider any applicable statewide goal or acknowledged plan  
22 requirements, including the requirements of Goal 5. The analysis of  
23 the ESEE consequence shall be adopted either as part of the plan or  
24 as a land use regulation."

25 Petitioner argued below that the application is counter to Goal 5 as  
26 currently written. Record 532. Petitioner argued that "[a]dditional research  
27 should be required for how the development pertains to \* \* \* Goal 5," and that  
28 "[t]he documents provided state that the proposed zone change, planning



1 development overlay and subdivision is not in conflict with this goal[,]  
2 however[,] this site contains Natural Resources, Scenic Areas and Open Spaces  
3 all of which will be negatively impacted by this development.” Record 620.  
4 Petitioner did not raise the alleged need for an ESEE analysis below and  
5 petitioner does not answer respondents’ argument that this issue was not  
6 preserved. We agree with respondents that petitioner has not preserved the Goal  
7 5 ESEE issue. The purpose of the statutory waiver requirement is to provide “fair  
8 notice” of an issue, such that the decision-maker and other parties have an  
9 adequate opportunity to respond to the issue. *Boldt v. Clackamas County*, 107 Or  
10 App 619, 623, 813 P2d 1078 (1991). ORS 197.797(1) requires that

11 “An issue which may be the basis for an appeal to [LUBA] shall be  
12 raised not later than the close of the record at or following the final  
13 evidentiary hearing on the proposal before the local government.  
14 Such issues shall be raised and accompanied by statements or  
15 evidence sufficient to afford the governing body, planning  
16 commission, hearings body or hearings officer, and the parties an  
17 adequate opportunity to respond to each issue.”

18 Petitioner did not provide fair notice such that the city had an opportunity to  
19 respond to the ESEE issue raised in their petition for review.

20 Second, petitioner maintains that SMC 17.22.040(A) to (B) and SMC  
21 17.81.070(A) require intervenor to demonstrate compliance with comprehensive  
22 plan policies and that the city council failed to make findings showing such  
23 compliance.

1 SMC 17.22.040(A) provides that the city council must determine “[i]f *the*  
2 *proposal involves an amendment to the comprehensive plan*, the amendment is  
3 consistent with the Statewide Planning Goals and relevant Oregon Revised  
4 Statutes and Administrative Rules[.]” (Emphasis added.) The decisions do not  
5 amend the comprehensive plan, SMC 17.22.040(A) is not applicable and we do  
6 not address it further.

7 SMC 17.22.040(B) provides that the city council must determine as part  
8 of their review of a zoning map request that “[t]he proposal *is consistent with the*  
9 *comprehensive plan* (although the comprehensive plan may be amended  
10 concurrently with the proposed changes in zoning of this title), the standards of  
11 this title or other applicable implementing ordinances[.]” (Emphasis added.)  
12 SMC 17.81.070(A) provides that a planned development overlay application may  
13 be approved upon a finding of substantial conformance with criteria including  
14 that “[t]he proposed development *complies with the comprehensive land use plan*  
15 and is compatible with the surrounding area or its proposed future use[.]”  
16 (Emphasis added.) Petitioner argues that the “city council erred in concluding  
17 that the proposed development complies with the Comprehensive Plan Goal 5  
18 policies” and quotes language from the Comprehensive Plan discussing  
19 development in the floodplain. Petition for Review 38-39.

20 Respondents argue that petitioner did not preserve this assignment of error.  
21 In their reply, petitioner responds that “SMC 17.22.040(B) requires a finding that  
22 the ‘proposal is consistent with the comprehensive plan.’ The Comprehensive

1 Plan Goal 5 provisions cited by Petitioner are part of the Comprehensive Plan.”

2 Petitioner’s Reply Brief 5.

3 It was argued below:

4 “The Scappoose Comprehensive Plan has identified the following  
5 in the Goal for Natural Factors and Local Resources:

6 “Goal 4: Ensure the conservation of fish and wildlife areas and  
7 habitats, including wetlands, floodplain, and riparian areas. Goal 5:  
8 Encourage the retention of open spaces within and between the  
9 different zoning areas. Goal 7: Preserve outstanding scenic areas.  
10 *The Buxton Ranch development is contrary to this entire set of goals,*  
11 *not just the three I listed. Once the development is built, all 7 of these*  
12 *expressed goals become meaningless. There is no returning nature*  
13 *or the City’s local resources back to a pre-developed state. If these*  
14 *are the City’s goals, this development should not be considered.”*  
15 Record 633, 1360 (original emphasis omitted, emphasis added).

16 The issue argued below was that the development was not consistent with the  
17 city’s seven Natural Factors and Local Resources goals.<sup>13</sup> We agree with

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<sup>13</sup> The city council found that its goal “to protect natural resources and conserve scenic and historic area and open spaces” was met. Record 36-37. The city council concluded:

“South Scappoose Creek and wetlands associated with the creek are subject to and are provided with a 50-foot buffer, while other wetlands are subject to and provided with a 25-foot buffer to protect the natural resources in this area. Additionally, the applicant has proposed to dedicate development rights to the City for preservation of the open space tracts and to place a conservation easement over Tract D to protect the associated wetlands and riparian corridor along South Scappoose Creek, as noted in [intervenor’s] narrative and shown on [intervenor’s] circulation plan which assists in

1 respondents that petitioner did not assert below that what appears to be narrative  
2 comprehensive plan language they identify for the first time in their petition for  
3 review constituted an applicable plan policy. This assignment of error was not  
4 preserved.

5 The fifth assignment of error is denied.

## 6 **SIXTH ASSIGNMENT OF ERROR**

7 Petitioner argues that the city council's findings that the project complies  
8 with SMC 17.81 are inadequate and are not supported by substantial evidence.

### 9 **A. SMC 17.81.070(A)**

10 SMC 17.81.070(A) provides that a planned development overlay may be  
11 approved, approved with conditions, or denied based upon substantial  
12 conformance with the criterion, including that "[t]he proposed development  
13 complies with the comprehensive land use plan and is compatible with the  
14 surrounding area or its proposed future use[.]" Petitioner argues that the city  
15 council erred in its findings concluding that the smaller lots are compatible with  
16 the surrounding area as required by SMC 17.81.070(A). Petitioner argues that  
17 suburban lots in the surrounding area are substantially larger than the proposed

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preserving the City's open space. Therefore, the proposed zone change, planned development overlay, and subdivision is not in conflict with this goal." Record 37 (internal citations omitted).

Petitioner does not address this finding.

1 lots and the city council failed to explain why smaller lots are compatible.

2 Petitioner asserts:

3 “The city council concluded that the Application complies with  
4 SMC 17.81.070(A) because ‘[a]dding in the range of lot sizes for  
5 single family detached homes compliments the surrounding area by  
6 adding housing options \* \* \*.’ [Record 60]. SMC 17.81.070(A)  
7 requires that the proposed development be compatible with the  
8 surrounding area, not that it provides a new range of housing types.”  
9 Petition for Review 41.

10 We agree with respondents that the city council’s findings are adequate  
11 and supported by substantial evidence. The city council found:

12 “The subject site is designated for low density residential  
13 development and is zoned R-1, consistent with the comprehensive  
14 plan’s Suburban Residential plan designation as explained above in  
15 the Comprehensive Plan Findings Land Use Policies Section.  
16 Housing types within the area vary and include large acreages with  
17 single family homes, smaller R-1 standard lots with single family  
18 homes and an apartment complex across Scappoose Creek near the  
19 site’s southeast corner. Adding in the range of lot sizes for single  
20 family detached homes complements the surrounding community  
21 by adding housing options in an area planned for residential use,  
22 with larger lots on the western border to be compatible with the  
23 existing residential neighborhoods.” Record 60.

24 The city council identified the relevant criterion and explained how the facts led  
25 to its conclusion that that the project complies with the comprehensive plan and  
26 is compatible with the area.

27 Substantial evidence supports the city council’s conclusion. The planning  
28 director explained that the SMC

29 “states in relation to compatibility, that the planned development



1 shall present an organized arrangement of buildings, facilities, open  
2 spaces and improvements such as recreation facilities, landscaping  
3 and fencing to ensure compatibility with the comprehensive plan in  
4 the area in which it is to be located, adding that this application  
5 proposes all of the amenities mentioned, and that this site is adjacent  
6 to three different zoning districts as it is adjacent to the R-1, which  
7 is low density[,] R-4, which is moderate density, and A-1 which is  
8 high density along its SE border. [The planning director] continued  
9 by stating that the R-1 zoning district then, is not the sole zoning  
10 district to use as the basis for compatibility, as several comments  
11 have suggested.” Record 1405.

12 This is evidence upon which a reasonable person would rely on to conclude that  
13 the proposed residential lots are compatible with the varied, existing residential  
14 neighborhoods. Petitioner’s disagreement with the city council’s conclusion is  
15 not a basis for reversal or remand. The findings are adequate and supported by  
16 substantial evidence.

17 The first subassignment of error is denied.

18 **B. SMC 17.81.070(C)**

19 SMC 17.81.070(C) requires “[t]hat the proposal include[] designs and  
20 construction standards in compliance with city code and that all completed  
21 infrastructure be approved by the city and ownership of all infrastructure and  
22 public utilities [must be] deeded to the city upon completion[.]” Petitioner argues  
23 that the city council erred in concluding that the proposal complies with SMC  
24 17.81.070(C)’s provision that “ownership of all infrastructure and public utilities  
25 [must be] deeded to the city upon completion.” Petitioner argues that the private  
26 stormwater detention ponds will be owned and maintained by the homeowners  
27 association rather than by the city.



1 Respondents answer that petitioner did not preserve this assignment of  
2 error. Petitioner states in their reply that they raised the issue of ownership of the  
3 ponds at Record 721. Petitioner made a variety of arguments reflected at Record  
4 721, including that there was a concern related to the potential failure of the  
5 homeowners association to maintain the stormwater ponds. Petitioner did not  
6 preserve the issue it now raises that the stormwater ponds must be owned by the  
7 city.

8 The second subassignment of error is denied.

9 **C. SMC 17.81.070(G)**

10 SMC 17.81.070(G) requires that “[t]he proposed development can be  
11 substantially completed within a reasonable period of time.” Petitioner argues  
12 that the city council erred in finding that the project complies with 17.81.070(G).  
13 Respondents answer and we agree that petitioner did not preserve an assignment  
14 of error concerning this criterion.

15 The third subassignment of error is denied.

16 **D. SMC 17.81.080(E)**

17 SMC 17.81.080 sets out tentative plan requirements. SMC 17.81.080(E)  
18 governs when a tentative plan will expire and provides:

19 “If substantial construction or development, as determined by the  
20 director, has not taken place within four years from the date of  
21 approval of the general plan, the planning commission shall review  
22 the planned development permit at a public hearing to determine  
23 whether or not its continuation in whole or in part is in the public  
24 interest, and if found not to be, shall remove the planned

development designation on the subject.”

Petitioner argues that the city’s finding that it will evaluate in the future if the applicant does not complete substantial construction within the required time requires a finding of feasibility. Record 65. Respondents answer and we agree that petitioner did not preserve did not preserve an assignment of error concerning this criterion.

The fourth subassignment of error is denied.

The sixth assignment of error is denied.

#### **SEVENTH ASSIGNMENT OF ERROR**

Petitioner argues that the city erred in determining that the project satisfies the standards in SMC 17.154.040.

SMC 17.154.040(B) sets out block length regulations and provides:

“Except for arterial streets, no block face shall be more than five hundred and thirty (530) feet in length between street corner lines and no block perimeter formed by the intersection of pedestrian access ways and local, collector and arterial streets shall be more than one thousand five hundred feet in length. If the maximum block size is exceeded, mid-block pedestrian and bicycle access ways should be provided at spacing no more than 330 feet, unless one or all of the conditions in Subsection C can be met. Minimum access spacing along an arterial street must meet the standards in the city’s adopted Transportation System Plan. A block shall have sufficient width to provide for two tiers of building sites. Reverse frontage on arterial streets may be required by the planning commission.”

“A public street will be extended through the site, as an extension of SW Eggleston Lane, located to the south.” Record 1168. Petitioner argues intervenor’s Eggleston Lane extension exceeds 500 feet in length, is a cul-de-sac

1 but does not include the required circular or hammer head turnaround and that  
2 the project does not provide a required pedestrian and bicycle access way.  
3 Petitioner also argues that the city council did not adequately address the potential  
4 to provide a connection with Day Street.

5 Eggleston Lane and Day Street, along with the proposed 48-lot layout are  
6 shown on the map below.



Record 230.

8 It is undisputed that intervenor's project does not comply with SMC  
9 17.154.040(B). The city approved an exception to SMC 17.154.040(B) as  
10 allowed by SMC 17.154.040(C) which provides:

11 *"Exemptions from requirement of Subsection B of this section may*  
12 *be allowed, upon approval by the planner and the city engineer,*  
13 *where one or all of the following conditions apply:*

1       “1.   *Where topography and/or other natural conditions, such as*  
2       *wetlands or stream corridors, preclude a local street*  
3       *connection consistent with the stated block length standards.*  
4       *When such conditions exist, a pedestrian access way shall be*  
5       *required in lieu of a public street connection if the access way*  
6       *is necessary to provide safe, direct and convenient circulation*  
7       *and access to nearby destinations such as schools, parks,*  
8       *stores, etc.*

9       “2.   Where access management standards along an arterial street  
10       preclude a full local street connection. Where such conditions  
11       exist, and in order to provide for adequate connectivity and  
12       respect the needs for access management, the approval  
13       authority shall require either a right[-]in/right-out public  
14       street connection or public roadway connection to the arterial  
15       in lieu of a full public street connection. Where a right-  
16       in/right-out street connection is provided, turning movements  
17       shall be defined and limited by raised medians to preclude  
18       inappropriate turning movements.

19       “3.   *A cul-de-sac street shall only be used where the city engineer*  
20       *and planner determine that environmental or topographical*  
21       *constraints, existing development patterns, or compliance*  
22       *with other applicable City requirements preclude a street*  
23       *extension. Where the City determines that a cul-de-sac is*  
24       *allowed, all of the following standards shall be met:*

25       “a.   *The cul-de-sac shall not exceed a length of 500 feet,*  
26       *except where the city engineer and planner determine*  
27       *that topographic or other physical constraints of the*  
28       *site require a longer cul-de-sac. The length of the cul-*  
29       *de-sac shall be measured along the centerline of the*  
30       *roadway from the near side of the intersecting street to*  
31       *the farthest point of the cul-de-sac.*

32       “b.   *The cul-de-sac shall terminate with a circular or*  
33       *hammer-head turnaround meeting the Uniform Fire*  
34       *Code and the standards of Public Works Design*  
35       *Standards.*

1           “c. The cul-de-sac shall provide, or not preclude the  
2           opportunity to later install, a pedestrian and bicycle  
3           access way between it and adjacent developable lands.  
4           Such access ways shall conform to the standards in  
5           Section 17.120.180(Q), as applicable.” (Emphases  
6           added.)

7           Petitioner argues that the city council erred in finding that

8           “[Eggleston] Lane complies with the block length requirement  
9           based on the exemption under SMC 17.154.040(C)(1). [Record 99].  
10          The city council determined that the topography prevents  
11          compliance with the block length requirement and Intervenor  
12          satisfied these criteria to the degree possible. [Record 99]. There are  
13          multiple errors with this conclusion.” Petition for Review 44.

14          First, petitioner argues that there is not adequate analysis or evidence of  
15          intervenor’s inability to extend Day Street in order to comply with SMC  
16          17.154.040(B). Petition for Review 44. Second, petitioner argues intervenor did  
17          not demonstrate compliance with SMC 17.154.040(C)(3)’s provision that “a cul-  
18          de-sac street shall only be used where the city engineer and planner determine  
19          that environmental or topographical constraints, existing development patterns,  
20          or compliance with other applicable City requirements preclude a street  
21          extension.” Petitioner maintains that because Eggleston Lane dead ends within  
22          the subdivision, it is a cul-de-sac and because it is a cul-de-sac, the city council  
23          was required to explain how it will connect or how it complies with cul-de-sac  
24          requirements. Third, petitioner argues that the exceptions in SMC 17.154.040(C)  
25          requires approval by the city planner and city engineer and that there is not



1 evidence of such approval. Lastly, petitioner argues a pedestrian access way is  
2 required because

3 “[e]ven if Intervenor was entitled to an exception under SMC  
4 17.154.040(C)(1), ‘a pedestrian access way shall be required in lieu  
5 of a public street connection if the access way is necessary to  
6 provide safe, direct and convenient circulation and access to nearby  
7 destinations such as schools, parks, stores.’ SMC  
8 17.154.040(C)(1).” Petition for Review 45.

9 Respondents direct us to a variety of city council findings. The city council  
10 found:

11 “[Intervenor] proposes construction of a new local street, Eggleston  
12 Lane, which extends south from SW JP West Road and is stubbed  
13 at the south to allow for a future roadway extension. The applicant  
14 proposes a right-of-way width (Eggleston Lane of 54 feet. \* \* \* The  
15 SW Eggleston Lane right-of-way is proposed to extend to the  
16 southern boundary of the site, but the improvements are proposed to  
17 stop just north of the riparian corridor associated with the unnamed  
18 stream, to minimize environmental impacts.” Record 33.

19 The city council also found that

20 “[t]here is a relatively narrow band of developable land between the  
21 South Scappoose Creek Floodplain on the east and steep slopes and  
22 some steep drainageways rising above the valley floor to the west.  
23 The block length for Eggleston Lane could exceed 2,000 feet due to  
24 these natural conditions which do not permit City design standards  
25 (namely, maximum street grades) to be met. Through the project  
26 site, the valley floor outside the floodplain is not wide enough to  
27 create a block or have 2 parallel streets to help create a block. These  
28 natural conditions do not permit development on the site to comply  
29 strictly with the block length criterion; however those criteria are  
30 met to the degree practicable. These limitations, associated with  
31 topography which prevent street connections to the east or west, are  
32 consistent with the provisions of criterion (A). Section



1 17.154.040(A) is satisfied.

2 “There are limitations associated with topography which prevent  
3 street connections to the east or west as additionally described in  
4 Subsection C below addressing permitted exceptions. With the  
5 approval of these exceptions, Section 17.154.040(B) is satisfied.”  
6 Record 99 (underscoring omitted).

7 With respect to Section 17.154.040(C), the city council found:

8 “The east side of the project is dominated by South Scappoose  
9 Creek, its floodplains, wetlands and buffers and riparian corridors.  
10 A roadway or pedestrian bridge to Day Street would negatively  
11 impact natural resources, floodplain and floodway and constitute an  
12 impractical cost for the project.

13 “Accessways to the east and west are not necessary to provide safe,  
14 direct and convenient circulation. To the west, an accessway would  
15 be steep and would not appreciably improve pedestrian circulation  
16 beyond that available in JP West Road. To the east, an existing  
17 sidewalk system along JP West Road already provides safe, direct  
18 and convenient circulation to nearby destinations such as schools,  
19 parks, stores, etc.” Record 100.

20 The city council identified topographical constraints and natural resources  
21 that impeded connections, including to Day Street, and determined that a  
22 pedestrian accessway was not required. Record 99-100. The city council found  
23 that there was already safe and direct circulation in one direction and that it was  
24 precluded in another direction. Petitioner’s disagreement with the city council’s  
25 weighing of evidence and conclusions is not a basis for reversal or remand.

26 Respondents do not, however, address petitioner’s argument that city  
27 planning director and engineer approval is required with respect to  
28 SMC17.154.040(C) exemptions. Further, respondents argue that there is no cul-

1 de-sac but do not explain the basis for that assertion or otherwise respond to  
2 petitioner's argument that cul-de-sac standards applied. Again, SMC  
3 17.154.040(C) provides, in part, that "[e]xemptions from requirement of  
4 Subsection B of this section may be allowed, upon approval by the planner and  
5 the city engineer[.]" SMC 17.154.040(C)(3) first provides that "[a] cul-de-sac  
6 street shall only be used where the city engineer and planner determine that  
7 environmental or topographical constraints, existing development patterns, or  
8 compliance with other applicable City requirements preclude a street extension[.]"  
9 and then sets out standards applicable to cul-de-sacs. We agree with petitioners  
10 that the findings are not adequate because they do not explain how the evidence  
11 leads to the conclusion that the city planner and city engineer agree that the  
12 exemption is appropriate, and do not either explain why the street is not a cul-de-  
13 sac or, if it is a cul-de-sac, address the cul-de-sac standards.

14 The seventh assignment of error is sustained.

15 The decision is remanded.



## Certificate of Mailing

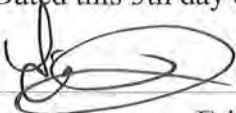
I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2023-001 on September 5, 2023, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

E. Michael Connors  
Hathaway Larson LLP  
1125 NW Couch Street, Suite 550  
Portland, OR 97209

Garrett H. Stephenson  
Schwabe, Williamson & Wyatt PC  
1211 SW 5th Avenue, Suite 1900  
Portland, OR 97204

Peter O. Watts  
1969 Willamette Falls Drive, Suite 260  
West Linn, OR 97068

Dated this 5th day of September, 2023.



Erin Pence  
Executive Support Specialist

Jessica Loftis  
Executive Support Specialist

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

JOEL HAUGEN,  
*Petitioner,*

vs.

CITY OF SCAPPOOSE,  
*Respondent,*

and

DAVID WEEKLEY HOMES,  
*Intervenor-Respondent.*

LUBA No. 2023-001

FINAL OPINION  
AND ORDER

Appeal on remand from the Court of Appeals.

E. Michael Connors and Christopher P. Koback represented petitioner.

Peter O. Watts represented respondent.

Garrett H. Stephenson and Bailey M. Oswald represented intervenor-respondent.

RUDD, Board Member; RYAN, Board Chair; ZAMUDIO, Board Member, participated in the decision.

REMANDED 04/30/2024

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a city council decision approving a planned development overlay zone designation, a conditional use permit, a tentative subdivision plat, and a sensitive lands development permit required to subdivide the subject property and develop numerous single-family residential lots.

**BACKGROUND**

This matter is on remand from the Court of Appeals. In *Haugen v. City of Scappoose*, \_\_\_\_ Or LUBA \_\_\_\_ (LUBA No 2023-001, Sept 5, 2023), we denied petitioner's first, second, third, fifth and sixth assignments of error. We sustained petitioner's fourth and seventh assignments of error and remanded the decision to the city. In *Haugen v. City of Scappoose*, 330 Or App 723, 545 P3d 760 (2023), the Court of Appeals reversed and remanded our decision with respect to the second and third assignments of error. We now address the court's decision.

**ASSIGNMENTS OF ERROR**

**A. Second Assignment of Error**

Petitioner explained that, pursuant to ORS 197.522(3), the city council reopened the record to allow intervenor to propose changes to its application and conditions of approval.<sup>1</sup> Petitioner argued that the city council erred in not

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<sup>1</sup> ORS 197.522(3) provides, in relevant part:

"If an application is inconsistent with the comprehensive plan and applicable land use regulations, the local government, prior to



1 allowing petitioner to respond to intervenor's statements. Petitioner asserted:  
2 "Intervenor's statements regarding the engineering issues, the need for smaller  
3 lots, 4,700 square foot lots being infeasible, larger lots prohibiting Intervenor  
4 from protecting the natural resources and the inability to provide project  
5 amenities with larger lots was all new evidence." Petition for Review 26-27. We  
6 denied petitioner's second assignment of error.

7 The Court of Appeals explained:

8 "In his second assignment of error, we understand petitioner to  
9 assert that LUBA erred by declining to address the merits of his  
10 argument that the information intervenor discussed with the city  
11 council after it reopened the record was 'evidence.' ORS  
12 197.797(9)(b) defines 'evidence' in the context of a land use hearing  
13 as 'facts, documents, data or other information offered to  
14 demonstrate compliance or noncompliance with the standards  
15 believed by the proponent to be relevant to the decision.'" *Haugen*,  
16 330 Or App at 730.

17 The Court of Appeals reversed and remanded our decision on this issue,  
18 explaining that we erred in finding that petitioner did not develop their argument  
19 that the information provided by intervenor's counsel was evidence because  
20 petitioner did not identify approval criteria to which the information related.

21 The Court of Appeals concluded that petitioner had identified with as much  
22 specificity as city council members' concerns "about the 'density, lot sizes and

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making a final decision on the application, shall allow the applicant  
to offer an amendment or to propose conditions of approval that  
would make the application consistent with the plan and applicable  
regulations. \* \* \*."

1 floodplain since the R-1 zone is a low-density residential zone and a significant  
2 amount of the property is within the floodplain.” *Id.* at 732.

3 After describing in detail statements made by intervenor’s counsel after  
4 the record was reopened, we previously observed that:

5 “After a city councilor asked whether reducing the number of lots  
6 would reduce the amount of green space, intervenor’s counsel  
7 responded that it would not because intervenor would redraw the lot  
8 lines particularly along the main street so that the green space and  
9 proposed public improvements would not change. The city council  
10 proceeded to approve intervenor’s applications with a condition of  
11 approval that the minimum lot size be 4,000 square feet and the  
12 number of residential lots limited to 44.”<sup>1</sup> *Haugen*, \_\_\_\_ Or LUBA at  
13 \_\_\_\_ (slip op at 23) (record citation omitted).

14 We explained that “intervenor did not submit a new plan, but we agree with  
15 petitioner that the intervenor’s statements that 44 was the number of lots  
16 intervenor could make ‘pencil’ while protecting the creek and providing a  
17 minimum lot size of 4,000 square feet, constituted new information.” *Id.* at (slip  
18 op at 26) (emphasis from original omitted). We concluded, however, that  
19 petitioner did not identify specific approval standards related to the new  
20 information and therefore did not develop their argument that the new  
21 information was new evidence offered to demonstrate compliance with the  
22 standards relevant to the decision. Consistent with the Court of Appeals decision,  
23 we now address whether the information submitted was evidence, conclude that  
24 it was, and determine that petitioner was entitled to an opportunity to address the  
25 evidence provided.

1 For purposes of ORS 197.797(9)(b), “evidence” is defined as “facts,  
2 documents, data or other information offered to demonstrate compliance or  
3 noncompliance with the standards believed by the proponent to be relevant to the  
4 decision.” Approval criteria applicable to planned development overlays include  
5 “[t]he proposed development complies with the comprehensive land use plan and  
6 is compatible with the surrounding area or its proposed future use[.]” Scappoose  
7 Municipal Code (SMC) 17.81.070(A). Conditional use permit approval criteria  
8 include “[t]he characteristics of the site are suitable for the proposed use  
9 considering size, shape, location, topography and natural features[.]” SMC  
10 17.130.050(A)(1). Information related to engineering issues, the financial  
11 infeasibility of certain lot sizes, and the impact on project amenities are  
12 potentially responsive to both of these criteria and is evidence. Intervenor argued  
13 that its project concerned “needed housing” and that pursuant to ORS 197.522(3)  
14 (2021), the applicant, and only the applicant, is allowed to offer amendments or  
15 conditions of approval if a local government intends to find that its land use  
16 regulations are not met. We need not address this argument because we conclude  
17 that intervenor submitted evidence in addition to amendments and conditions of  
18 approval.

19 The second assignment of error is sustained.

20 **B. Third Assignment of Error**

21 The city council adopted as findings a staff report addressing the  
22 compliance of a 48-lot development with the applicable approval criteria. The

1 city council nonetheless imposed a condition of approval limiting the total lot  
2 number to 44. In its third assignment of error, petitioner argued that the city  
3 council

4 “did not adopt *any* findings regarding the revised plan. The city  
5 council findings do not contain a single reference to the 44-lot  
6 revised plan, clarify how it addresses the city council’s concerns, or  
7 explain why it complies with the applicable criteria. *The city*  
8 *council’s conclusion that the 44-lot revised plan complies with the*  
9 *approval criteria cannot be affirmed in the absence of any findings*  
10 *addressing the revised proposal itself.”* Petition for Review 31-32  
11 (first emphasis in original, second emphasis added).

12 We agreed with respondents that the city adopted findings, supported by  
13 substantial evidence, that a 48-lot project satisfies the applicable approval  
14 criteria. We also agreed with respondents that “absent identification of criteria  
15 that the city council found required imposition of the 44-lot, 4,000 square foot  
16 minimum lot size condition of approval, petitioner ha[d] not shown that  
17 additional findings [we]re required.” *Haugen*, \_\_\_ Or LUBA at \_\_\_ (slip op at  
18 31).

19 Differently, the Court of Appeals agreed with petitioner and reasoned:

20 “Petitioner’s argument was that, in light of that inconsistency, the  
21 council should be understood to have approved only a 44-lot project,  
22 notwithstanding its configuration of the ordinance as approving a  
23 48-lot project with a condition limiting the number and minimum  
24 size of the lots. LUBA did not explain why, given the procedures  
25 the council followed, petitioner’s understanding was incorrect. By  
26 failing to engage with the facts underlying petitioner’s argument that  
27 the council’s order was not supported by substantial evidence and  
28 reason, LUBA misapplied its standard of review and its order is  
29 therefore unlawful in substance.” *Haugen*, 330 Or App at 734-35.

1 As the Court of Appeals explained, although the city council ultimately  
2 imposed a condition of approval limiting the development to 44 lots, the adopted  
3 decision concludes that a development with 48 lots meets the applicable criteria.

4 “[I]t is the final written decision that is subject to LUBA review, not  
5 the oral statements that individual decision makers may make during  
6 the local proceedings. *Lowery v. City of Portland*, 68 Or LUBA 339,  
7 359 (2013); *Hale v. City of Beaverton*, 21 Or LUBA 249, 258  
8 (1991); *McCoy v. Linn County*, 16 Or LUBA 295, 306 (1987);  
9 *Citadel Corporation v. Tillamook County*, 9 Or LUBA 401, 404  
10 (1983).” *Rawson v. Hood River County*, 77 Or LUBA 415, 424  
11 (2018).

12 Accordingly, it is not clear to us that the city council concluded *that the*  
13 *applicable criteria* required that the development be limited to 44 lots. However,  
14 the final written decision must be supported by substantial evidence, that is,  
15 evidence a reasonable person would rely upon to reach a conclusion. *Dodd v.*  
16 *Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). We conclude in the  
17 second assignment of error that the city council was required to allow petitioner  
18 to respond to the evidence introduced by intervenor. Because there was no  
19 opportunity to respond to it, intervenor’s unchallenged evidence was not  
20 evidence upon which a reasonable person would rely, it was not substantial, and  
21 the findings are not adequate.

22 The third assignment of error is sustained.

23 The Court of Appeals decision does not disturb the remainder of our  
24 September 5, 2023 decision.

25 The city’s decision is remanded.

## **CITY OF SCAPPOOSE STAFF REPORT**

Request: 48-lot Subdivision (SB1-22), Planned Development (ZC1-22), Conditional Use (CU1-22), and Sensitive Lands Development Permits for Floodplain, Wetlands, Slope Hazard, and Fish & Riparian Corridor (SLDP 1-22, 2-22, 3-22, and 4-22, respectively).

Location: South of SW JP West Road and Captain Roger Kucera Way (Columbia County Assessor Tax Lot 3212-CB-00401)

Applicant: David Weekley Homes

Owner: Buxton Family Investments LLC

**EXHIBITS** *Note: Exhibits referenced in Planning Commission staff report can be accessed at [www.scappoose.gov/bc-pc/page/planning-commission-15](http://www.scappoose.gov/bc-pc/page/planning-commission-15) (October 27, 2022 Planning Commission meeting).*

1. Vicinity Map [pg.108](#)
2. Application Forms [pgs.109-117](#)
3. Applicant's Narrative, dated August 8, 2022 [pgs.118-223](#)
4. Preliminary Subdivision Plans [pgs.224-240](#)
  - A. Cover Sheet, Sheet 1
  - B. Phasing Plan, Sheet 1.1
  - C. Preliminary Plat, Sheet 2
  - D. Cross Sections, Sheet 2.1
  - E. Existing Condition and Demolition Plan, Sheet 3
  - F. Preliminary Grading and Erosion Control Plan, Sheet 4
  - G. Preliminary Street Plan, Sheet 5
  - H. Typical sections, Hose Pull Detail, & Easement Detail, Sheet 5.1
  - I. Preliminary Street and Storm Plan and Profile – Eggleston, Sheet 6
  - J. Preliminary Street and Storm Plan and Profile – West, Sheet 7
  - K. Stormwater Facilities, SDLN-01, SDLN-03 Plan & Profile, Sheet 8
  - L. Preliminary Sanitary and Waterline Plan and Profile, Sheet 9
  - M. Preliminary Sanitary Plan and Profile, Sheet 10
  - N. Preliminary Waterline Plan and Profile, Sheet 11
  - O. Circulation Plan, Sheet 12
  - P. Landscape Planting Plans, Legends & Notes, Sheets L1 – L2
5. Slope Analysis, dated October 2021 [pg.241](#)
6. Vehicle Turning Movement Diagram, dated July 2022 [pgs.242-244](#)
7. Cut/Fill Report & Exhibit, dated June 8, 2022 [pg.245](#)
8. Letter of Map Revision (LOMR) (File 21-10-0251P), effective April 19, 2021 [pgs.247-248](#)
9. Federal Emergency Management Agency (FEMA) CLOMR Approval (File 22-10-0362R), dated June 17, 2022 [pgs.249-251](#)
10. Buxton CLOMR No-Rise Certification, dated April 11, 2022 [pgs.252-74](#)
11. Buxton Ranch Subdivision – FEMA/ESA Compliance Assessment Technical Memo, prepared by Environmental Science & Assessment (ES&A), dated July 31, 2022 [pgs.261-274](#)
12. Excerpt from Scappoose Local Wetland Inventory Map (LWI), dated December 1998 [pg.275](#)



13. Excerpt from Scappoose Local Riparian Inventory Map, dated December 1998 [pg.276](#)
14. Oregon Department of Fish and Wildlife (ODFW) Correspondence, August 29, 2019 [pg.277](#)
15. Oregon Department of State Lands (DSL) Wetland Concurrence, dated April 29, 2019 & September 26, 2019 [pgs.278-292](#)
16. Geotechnical Report, dated December 4, 2019 (Appendices available upon request) [pgs.293-308](#)
17. Rock Wall in Floodplain Memorandum, dated September 29, 2021 [pgs.309-310](#)
18. Preliminary Flexible Pavement Design, November 3, 2021 (Appendices available upon request) [pgs.311-317](#)
19. Infiltration Study, dated December 2, 2021 (Attachments available upon request) [pgs.318-321](#)
20. Preliminary Storm Drainage Report, dated October 17, 2022 (Appendices available upon request) [pgs.322-347](#)
21. Fire Hydrant Flow, November 16, 2021 [pg.348](#)
22. Traffic Impact Study, dated May 2, 2022 (Appendices available upon request) [pgs.349-371](#)
23. Seasonal Adjustment Factor Letter, dated August 2, 2022 [pgs.372-373](#)
24. Buxton Ranch Draft Covenants, Conditions & Restrictions (CC&Rs) [pgs. 374-434](#)
25. Neighborhood Meeting Information [pgs.435-462](#)
26. Will Serve Letters (Columbia River PUD, NW Natural, Waste Management) [pgs.463-467](#)
27. Architectural Elevations and Floor Plans [pgs.468-478](#)
28. Comments from Scappoose Public Works Director, dated September 16, 2022 [pg.479](#)
29. Comments from Scappoose Building Official, dated September 6, 2022 [pg.480](#)
30. Comments from City of Scappoose Police Chief, dated September 12, 2022 [pg.481](#)
31. Comments from Scappoose School District, dated September 9, 2022 [pg.482](#)
32. Comments from Scappoose Rural Fire Protection District, dated September 29, 2022 [pg.0483](#)
33. Comments from Columbia River People's Utility District (PUD), dated September 9, 2022 [pg.484](#)
34. Comments from Oregon Department of Fish and Wildlife, dated September 28, 2022 [pgs.485-486](#)
35. Comments from Scappoose Bay Watershed Council, dated September 26, 2022 [pg.487](#)
36. Oregon Department of State Lands, Wetland Land Use Notice Response, dated September 23, 2022 [pgs.488-489](#)
37. Comment from Columbia County Public Works Department, dated September 23, 2022 [pg.490](#)
38. Article from International Journal of Environmental Research and Public Health, "Designing Multifunctional Urban Green Spaces: An Inclusive Public Health Framework", submitted as public comment by Joel Haugen via email, October 14, 2022 [pgs.491-504](#)
39. Comment from Craig and Melissa Hermes (including article from USDA Natural Resources Conservation Service) via email and applicant response, dated October 18, 2022 [pgs.505-509](#)
40. Comment from Suzie Shull via email and applicant response, dated October 18, 2022 [pgs.510-511](#)
41. Comment from Chuck Klobes via email and applicant response, dated October 19, 2022 [pgs.512-513](#)
42. Comment from Jim Lykins (including a video, which was emailed to the Planning Commission on October 20, 2022), dated October 19, 2022, and applicant response in green font. [pgs.514-517](#)
43. Comment from Pat Anderson via email, dated October 19, 2022 and applicant response in green font. [pgs.518-521](#)
44. Comment from Deb Miller (with video link in document) via email, dated October 19, 2022 and applicant response. [pgs.522-523](#)
45. Video sent by Paul Fidrych via email on October 19, 2022 (emailed to Planning Commission on October 20, 2022) [pg.524](#)
46. Comment from David Clark (unable to determine the exact name due to handwritten letter), dated October 19, 2022 [pg.525](#)
47. Comment from Joel Haugen (including three exhibits, Goal 5 and Goal 7 documents) via email dated October 19, 2022 (Applicant response will be sent separately to the Planning Commission)

and entered into the record as additional findings – it was not ready at the time of release of this staff report). [pgs.523-536](#)

## **SUBJECT SITE**

- The subject site is approximately 17 acres<sup>1</sup> and is located south of SW JP West Road near Captain Roger Kucera Way, with South Scappoose Creek and SW 4<sup>th</sup> Street to the east and SW Jobin Road to the west. The site is zoned Low Density Residential (R-1) and is designated as Suburban Residential by the Scappoose Comprehensive Plan. Adjacent zoning is Moderate Density Residential (R-4), High Density Residential (A-1), and Public Lands Utility (PL-U) to the east, Public Lands Recreation (PL-R) to the north, and Low Density Residential (R-1) to the west and south.
- The subject site does not have an address assigned and consists of a single tax lot (Columbia County Assessor Tax Lot 3212-CB-00401). The site is currently vacant except for an old barn/storage building. The site has historically been used for agriculture (pasture and hay).
- The site slopes downhill from west to east towards South Scappoose Creek, which flows northward along the eastern portion of the site. A small stream (referred to in some documents as an unnamed drainage) flows in the southwest in an easterly direction where it flows into South Scappoose Creek.
- The elevations along the northern portion of the property range from 75 feet at the northwest corner to 50 feet at top of bank of South Scappoose Creek. In the southern portion of the site, the high elevation is 108 feet adjacent to Tax Lot 3212-CB-02000, then slopes downward to the east to elevation 50 feet at South Scappoose Creek. Slopes range from 1.5% to 27%. See **Exhibit 4.E**.
- The site contains floodplain, wetlands, fish and riparian corridor, and slope hazard areas, as further described below under the Sensitive Lands Development Permits heading.

## **OBSERVATIONS**

### CONSOLIDATED LAND USE APPLICATIONS

- The applicant is requesting approval of seven separate applications. Planning Commission provides a recommendation to City Council for the Planned Development application and Council is the decision authority. While the Planning Commission would normally be the approval authority for the proposed subdivision, conditional use and associated sensitive lands permits, due to consolidation of proceedings, the City Council will decide the entire application package (based on Planning Commission's recommendation).
- All seven requests would need to be approved for the applicant to be permitted to construct the proposed, phased residential subdivision.

### PROPOSED PLANNED DEVELOPMENT

- A Planned Development is an overlay to the existing base zoning and is processed as a zone change on one parcel. Planned Developments are generally utilized when there are natural resources on site

<sup>1</sup> Columbia County records lists the acreage of the property (tax lot 3212-CB-00401) as 17.13 acres. The applicant's narrative (Exhibit 3) lists the acreage of the property as 17.31 acres based on their survey data.

that are meant to be protected. As stated in SDC (Scappoose Development Code) Chapter 17.81 – Planned Development Overlay (PD), the purpose of this overlay is to provide more flexibility in the development of land; encourage variety and creativity in the development pattern of the community; conserve natural land features; facilitate aesthetic and efficient use of open space; create public and private open space; encourage the application of new techniques and technology to community development which contribute to superior living or development patterns; use land efficiently in order to reduce the costs of housing, maintenance, street systems and utility networks; promote energy conservation and crime prevention; and relate development to the natural environment and its users.

- Planned developments are meant to offer a balance of flexibility and predictability regarding the City's development standards. Any latitude granted by the City is offset by the fact that development must conform to the unique set of standards applicable to the site. Through this mechanism, the City is assured that the construction will be consistent with the vision endorsed in the approval of the Planned Development.
- The applicant has stated in their narrative (**Exhibit 3**) the goals and objectives of this planned development are as follows:
  - Take advantage of and protect the sensitive environmental, visual, and recreational values of South Scappoose Creek and wetlands on the property.
  - Provide a quality subdivision for single family homes, with recreational amenities for residents and the public to enjoy.
  - Maintain floodplain storage capacity with balanced cut/fill, while ensuring the home sites and adjacent properties are safe from flooding.
  - Create useable recreational open space and enhance the overall visual and recreational quality of the development with a combination of parks and open spaces with quality landscaping.
  - Accommodate a housing type and size that provides options for the local community, is affordable and provide opportunities for next generations of Scappoose residents.
  - Accommodate future development via extension of the public street.
- The applicant proposes to cluster the residences away from South Scappoose Creek and to create several tracts to preserve open space (further described below). The applicant is seeking approval of specific dimensional standards to accommodate the proposed unit count as allowed by the flexibility in the Planned Development process. The applicant is also seeking a 4% increase in residential density. Images of the applicant's anticipated housing styles are enclosed as **Exhibit 27**.

#### SENSITIVE LANDS DEVELOPMENT PERMITS

The applicant is seeking approval of four Sensitive Lands Development Permits, for Floodplain, Wetlands, Slope Hazard, and Fish & Riparian Corridor activities.

##### *Floodplain*

Portions of the site are located within the Special Flood Hazard Area (100-year floodplain) associated with South Scappoose Creek. The floodplain for the creek was previously defined by Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs) 41009C0444D and 41009C482D, effective November 26, 2010. However, FEMA issued a Letter of Map Revision (LOMR, #21-10-0251P),

effective April 19, 2021, which corrected<sup>2</sup> the Base Flood Elevation on the subject property and others along South Scappoose Creek. The LOMR approval (**Exhibit 8**) is now the official record of the Special Flood Hazard Area. The associated existing floodplain boundary is depicted with a green dashed line in the applicant's drawings (**Exhibit 4**).

More recently, the applicant's consultants have obtained FEMA approval of a Conditional Letter of Map Revision (CLOMR, **Exhibit 9**), which is FEMA's process of evaluating whether the applicant's *proposed* floodplain activities meet minimum National Flood Insurance Program standards. The City can then rely on the CLOMR approval to authorize floodplain modifications including site construction (grading, roadways, utilities), after which the applicant must submit as-built drawings and survey information back to FEMA for review. Assuming that construction was completed in conformance with the CLOMR, then FEMA would issue a new LOMR to re-define the floodplain. The associated proposed floodplain boundary is depicted with a blue dashed line in the applicant's drawings (**Exhibit 4**).

The proposed site grading would expand the flood storage capacity by cutting more material than filling, consistent with code requirements contained in SDC Chapter 17.84 – Sensitive Lands Flooding. The subdivision project includes proposed fill of up to approximately 2,494 cubic yards within the 100-year floodplain, which is compensated for by 2,503 cubic yards of cut (removal of material), for a net cut of 9 cubic yards. See **Exhibit 7**.

#### *Wetlands*

The site contains six identified wetlands, as depicted on the phasing plan (**Exhibit 4.B**)

- The Environmental Assessment (**Exhibit 11**) prepared for this development by the applicant's consultant (ES&A) identified 4 wetlands on the property:
  - Wetland "A" is a small, isolated area in the northwest portion of the site. Wetland A is set aside in Tract B.
  - Wetland "B" is a small are on the western boundary about mid-point north to south. This wetland is set aside in Tract F.
  - Wetlands "C" & "D" are associated with adjacent stream "A" along the southwestern portion of the site and Scappoose Creek along the eastern boundary. These two stream-related wetlands are located within Tract E. This small stream originates at a culvert outfall from Wetland C and flows southeast and east to a wetland associated with South Scappoose Creek.
- The ES&A wetland delineation was approved by Oregon Department of State Lands, or DSL (**Exhibit 15**). DSL also approved a prior wetland delineation (also included in **Exhibit 15**), which identified 2 additional wetlands on the property:
  - Wetland 1 is located in the northeastern area of the site serving as a "side channel" created through the Scappoose Bay Watershed Council project.
  - Wetland 2 is a larger wetland in the southeastern area of the site.

<sup>2</sup> Corrections included accounting for the construction of Veterans Park, replacement of the JP West Road Bridge, and Scappoose Bay Watershed Council floodplain restoration efforts.

The applicant proposes temporary activities to Wetland A for a sanitary sewer connection to an existing manhole and also proposes grading within the 50-foot buffer associated with wetlands within the fish and riparian corridor. In addition to City Sensitive Lands Development Approval, wetland filling and mitigation is subject to applicable standards issued by the U.S. Army Corps of Engineers (Corps) and DSL, though in this case, the wetland impacts are likely below the 50-cubic-yard DSL threshold for a state wetland fill permit<sup>3</sup> and Wetland A is likely not regulated by the U.S. Army Corps of Engineers. The recommended conditions of approval require that the applicant submit a No State Permit Required letter from DSL if no permit is required for the proposed project.

#### *Fish and Riparian Corridor*

The site is located along South Scappoose Creek and contains Fish and Riparian Corridor. The Scappoose Bay Watershed Council (SBWC) performed creek restoration activities in 2018 and 2019 within this site (and at Veterans Park) to “include bank laybacks to minimize active bank erosion and provide channel capacity during high flows, floodplain benches to increase floodplain interaction during seasonal flood flows, and side channel reconnections to access historic off-channel areas.”<sup>4</sup> The FEMA/ESA Compliance Assessment Technical Memo (**Exhibit 11**) further explained that the project restored the western bank of the creek in two areas and created inset floodplain side channels in two other areas.

The applicant proposes activities within the fish and riparian corridor, including a proposed compacted gravel public pathway to provide a public amenity; construction of Eggleston Lane where it connects to JP West Road; grading; and a stormwater outfall. The applicant proposes to plant native species within the riparian corridor, extending west to the edges of the residential area.

#### *Slope Hazard Areas*

Portions of the site are defined as Slope Hazard Areas under the SDC. The applicant is seeking approval of a Sensitive Lands Development Permit for activities (grading, installation of water main, etc.) within the slope hazard area. The Geotechnical Report (**Exhibit 16**) notes that “The proposed development is geotechnically feasible, provided that the recommendations of this report are incorporated into the design and construction phases of the project.” Therefore, the recommended conditions of approval require the applicant to follow the recommendations of the geotechnical report.

#### PROPOSED SUBDIVISION, STREET SYSTEM, AND RIGHT-OF-WAY DEDICATION

- The applicant requests approval of an application to subdivide 17.13-acres into 48 single-family residential lots, ranging in size from 3,410 sq. ft. to 13,083 sq. ft, and 7 open space tracts (See **Exhibit 4.C**).
  - Tract A would support a private park with a picnic table and overlook the wetland area in Tract B.
  - Tract B would be open space, including a wetland.
  - Tract C would support a stormwater facility.

<sup>3</sup> Wetland A is subject to DSL’s 50-cubic-yard threshold. If impacts are proposed to other wetlands associated with South Scappoose Creek, any non-zero impact requires DSL approval since South Scappoose Creek is Essential Salmonid Habitat.

<sup>4</sup> <https://www.scappoosebay-wc.org/projects/south-scappoose-creek-restoration/>

- Tract D would be the site of the future “Greg Buxton Park.”
  - Tract E would be open space.
  - Tract F would support a wetland.
  - Tract G would support a stormwater facility and open space.
- Tract D, the site of the future “Greg Buxton Park”, includes construction of a public, compacted gravel trail starting near the intersection of JP West Road and the proposed Eggleston Lane extension. The public trail extends south from the start point, along the western edge of the Scappoose Creek riparian corridor and connects back to Eggleston Lane south of Lot 18 as shown on **Exhibit 4.P**. The public trail also continues south, to the south side of lot 18, then connecting with Eggleston Lane. Tract D would also contain considerable open space and riparian plantings to preserve habitat and maintain water quality.
  - The applicant requests phasing of the proposed subdivision (Phase 1 & 2) for platting purposes related to the floodplain on site. The purpose of the phasing is to allow for the Phase 1 plat to be recorded following substantial completion of the roads and utilities for the entire subdivision. The Phase 1 plat includes all lots that are not within the currently mapped 100-year floodplain (see **Exhibit 4.B**). The Phase 2 plat would not be recorded until after the applicant applies for and receives approval from FEMA of its final Letter of Map Revision (LOMR), which would formally modify the effective floodplain maps for the project site. Once the LOMR is approved by FEMA, all lots within the subdivision would no longer be within the mapped 100-year floodplain. At that point, the applicant would be allowed to obtain building permits for homes in the Phase 2 portion of the subdivision.<sup>5</sup>
  - The development proposes a 10' dedication and half-street right-of-way improvements to SW JP West Road to the Collector standard for approximately 600', which is consistent with the City's TSP (Transportation System Plan). The improvements include curb and gutter, 18' paving to centerline (except where existing paving is acceptable), 6' sidewalk, 5.5' planter area with street trees, streetlights, and storm system improvements.
  - The applicant proposes construction of a new local street, Eggleston Lane, which extends south from SW JP West Road and is stubbed at the south to allow for a future roadway extension. The applicant proposes a right-of-way width (Eggleston Lane) of 54 feet (**Exhibit 4.G**). As seen on **Exhibit 4.G**, Eggleston Lane will be improved to meet the City's local road section<sup>6</sup>, including a 32' paved width with curb and gutter, 5' sidewalks, a 5.5' planter area with street trees and streetlights. The SW Eggleston Lane right-of-way is proposed to extend to the southern boundary of the site, but the improvements are proposed to stop just north of the riparian corridor associated with the unnamed stream, to minimize environmental impacts.

<sup>5</sup> Until the LOMR is issued, the Phase 2 parcels are mapped within the 100-year floodplain and therefore no building permits could be issued for sites that don't meet the 20,000 SF minimum lot size in the floodplain.

<sup>6</sup> Pursuant to SDC 17.154.020(C), due to the sensitive site conditions, staff supports utilizing a local street section rather than a Neighborhood Street section to minimize floodplain, riparian, and wetland impacts.



### TRAFFIC IMPACT ANALYSIS

- The applicant submitted a Traffic Impact Study (TIS) completed by Kittelson & Associates, attached as **Exhibit 22**. The study estimated that the proposed 48-lot development would generate 514 daily trips, of which 38 would be during the morning peak hour and 50 would be during the evening peak hour. The applicant's transportation engineer concluded that all study intersections meet the respective mobility standards and targets before and after the proposed development. Therefore, no transportation mitigation was recommended by the applicant's transportation engineer.
- The TIS indicates that approving the Zone Change and Planned Development would be consistent with the state Transportation Planning Rule since it would not significantly affect area roadways, as discussed in more detail in the findings.

### PUBLIC UTILITY IMPROVEMENTS

- Municipal water is available from an existing 12-inch water main in SW JP West Road. The applicant proposes to extend an 8-inch water main within the SW JP West Road to the southern paving limits and to loop this to the existing water main in the southwestern portion of the site. Water meters will be installed to serve each lot, as depicted on the preliminary water plan (**Exhibit 4.N**).
- Sanitary sewer is available via an existing 8-inch main in SW JP West Road. The applicant proposes to extend an 8-inch sewer main within the Eggleston Lane right of way to the southern paving limits and install laterals to serve each lot.
- The applicant proposes that stormwater from the Buxton Ranch subdivision would be managed within two stormwater facilities to be located within Tract C and Tract G (**Exhibit 4.K**). The applicant has submitted a Preliminary Storm Drainage Report (**Exhibit 20**) detailing the stormwater approach. Per the Draft Covenants, Conditions & Restrictions (CC&Rs, **Exhibit 24**), the Homeowner's Association will maintain the stormwater facilities.
- Electrical power and telephone service are provided by Columbia River PUD and CenturyLink, and cable television is provided by Comcast. All services can be extended to the site.

### STREET TREES & LANDSCAPING

- The Development Code requires street trees along all street frontages. The applicant has submitted a Planting Plan, attached as **Exhibit 4.P**. As shown on the Planting Plan (**Exhibit 4.P**), the applicant proposes to plant a total of 66 street trees along the extension of Eggleston Lane and SW JP West Road. The applicant is required by the recommended conditions of approval to submit a final street tree plan ensuring conformance with Chapter 17.104 of the SDC (Scappoose Development Code) and to plant the trees in conformance with the requirements in Section 13.28.020, C of the SMC (Scappoose Municipal Code).
- The applicant is proposing 6 open space tracts as part of the proposed development as shown on **Exhibit 4.P** and explained in Table 2 of the applicant's narrative (**Exhibit 3**). All tracts are landscaped to varying degrees, with a variety of vegetation as shown on **Exhibit 4.P**. Landscaping in Tract D, "future Greg Buxton Park" will consist of high grass, medium to dense brush with trees, dense forest with medium undergrowth and dense forest with little undergrowth as shown on **Exhibit 4.P**.

- A variety of fencing is proposed as shown on **Exhibit 4.P**. Around water quality facilities, either wood split rail or black chain-link fencing is proposed. Cedar fencing with steel posts is proposed in the rear and side yards of home lots. Lastly, a lock and load retaining wall system is proposed outside of floodplain areas. The applicant has included a fencing plan on **Exhibit 4.P**.

#### PUBLIC & PRIVATE AGENCIES AND PUBLIC NOTICE

- The City of Scappoose Engineering, Public Works, Police Department, Building Department and City Manager, Scappoose Rural Fire District, Columbia County Public Works, Oregon Department of State Lands (DSL), Columbia River People's Utility District, Scappoose Bay Watershed Council, Columbia County Soil and Water Conservation District, Oregon Department of Fish and Wildlife (ODFW), and Oregon Department of Land Conservation and Development have been provided an opportunity to review the proposal. Staff did not receive any objections from these agencies. Comments are attached as **Exhibits 28-37** and those issues applicable to the Planning Commission have been included in the recommended conditions of approval.
- The Scappoose Rural Fire District submitted a comment that two private lots cannot be shared to establish a hammerhead (**Exhibit 32**). The Fire District had concerns regarding the maintenance of the hammerhead and the ability to keep the hammerhead clear of obstructions if the hammerhead were on private property in an easement. The applicant volunteered to place the hammerhead in a tract rather than in an easement, which is included in the recommended conditions of approval, and the applicant will be required to pave and provide curbs along the tract to clearly denote the hammerhead. This alleviated the concerns of the Scappoose Fire District regarding the hammerhead. Additionally, all lots within the development are required to be sprinklered.
- The Columbia County Soil and Water Conservation District chose not to comment on the application since it is a non-regulatory agency and permits are required to meet environmental standards and regulations (namely, DSL and U.S. Army Corps of Engineers wetland removal-fill permits).
- Notice of this request was mailed to property owners located within 300 feet of the subject site on October 6, 2022. Notice was also posted on the property on September 30, 2022 and published in the local newspaper on October 7 and 14, 2022.
- Several public comments have been received as of the date of this report, which are attached as **Exhibits 38 – 47**. An applicant response has been provided for comments attached as **Exhibit 39 – 44**, which are included as additional findings to this report. Staff concurs with the applicant's responses. The applicant will provide additional responses to comments already submitted; however, those will be emailed to the Planning Commission separately (or during the hearing) as they were not received in time to be included in the staff report. They will be entered into the official record for this application once received.

#### FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR APPROVAL

**1. The following Statewide Planning Goals have been considered by the City of Scappoose as they pertain to this request:**

**A. *Citizen Involvement (Goal 1)***

**Objective:** *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

**Finding:** The City's acknowledged Comprehensive Plan and Development Code includes citizen involvement procedures with which the review of this application will comply. This process allows for citizens to communicate their written or verbal input into the zoning map amendment review since a Planned Development overlay to an existing zone is processed as a zone change. The Planning Commission will hold a public hearing to review and comment on the zone change to make a recommendation to the City Council. Within the zone change process, the applicant is required to post site notices, the City mails notices to nearby property owners, notice is published in the newspaper, and Planning Commission and City Council public hearings will be held; this process complies with the Goal.

**B. Land Use Planning (Goal 2)**

**Objective:** *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

**Finding:** The procedural requirements for planned developments and zone changes are contained in the Scappoose Municipal Code, which involve assessment of the application's merits, notice to affected parties, and public hearings. The Municipal Code also provides for public input for the associated Subdivision, Conditional Use, and Sensitive Lands Development Permit applications. The proposal includes a request to change the zoning designation of urban land within the Urban Growth Boundary and to permit a residential subdivision using the Planned Development procedure, in compliance with Goal 2. Notice of the proposed zoning map amendment has been provided by the City of Scappoose to the Oregon Department of Land Conservation and Development (DLCD) as required. DLCD staff has not commented on the proposal.

**C. Agricultural Lands (Goal 3)**

**Objective:** *To preserve and maintain agricultural lands.*

**Finding:** This Goal is not applicable because the site is within the City of Scappoose Urban Growth Boundary and is currently zoned for residential use.

**D. Forest Lands (Goal 4)**

**Objective:** *To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.*

**Finding:** This Goal is not applicable because the site is within the City of Scappoose Urban Growth Boundary and City Limits.

**E. Open Spaces, Scenic and Historic Areas and Natural Resources (Goal 5)**

**Objective:** *To protect natural resources and conserve scenic and historic areas and open spaces.*

**Finding:** The site abuts South Scappoose Creek. Portions of the subject site are within the 100-year floodplain and the South Scappoose Creek riparian corridor. Additionally, there are 6 wetlands on-site, totaling approximately 1.22 acres as confirmed by the Oregon Department of State Lands in two separate wetland delineation concurrences in **Exhibit 15**. South Scappoose Creek and wetlands associated with the creek are subject to and are provided with a 50-foot buffer, while other wetlands are subject to and provided with a 25-foot buffer to protect the natural resources in this area. Additionally, the applicant has proposed to dedicate development rights to the City for preservation of the open space tracts and to place a conservation easement over Tract D to protect the associated wetlands and riparian corridor along South Scappoose Creek, as noted in the applicant's narrative (**Exhibit 3**) and shown on the applicant's circulation plan (**Exhibit 4.O**) which assists in preserving the City's open space. Therefore, the proposed zone change, planned development overlay, and subdivision is not in conflict with this Goal.

*F. Air, Water and Land Resources Quality (Goal 6)*

**Objective:** *To maintain and improve the quality of the air, water and land resources of the state.*

**Finding:** The site is currently designated for low density residential use, and is also subject to City regulations that do not allow off-site impacts from noise, vibration, odors, glare, or other "nuisance" effects. For this reason, the potential harmful effects on air, water and land resource quality is already limited. The proposal will therefore have no significant impact with respect to this Goal.

*G. Areas Subject to Natural Disasters and Hazards (Goal 7)*

**Objective:** *To protect people and property from natural hazards.*

**Finding:** Portions of the subject site are located within the Special Flood Hazard Area as confirmed by FEMA's Letter of Map Revision (LOMR) number 21-10-0251P, issued October 2019 (**Exhibit 8**). The residences proposed in Phase 1 are outside the regulated floodplain, while the residences proposed in Phase 2 will also be outside the regulated floodplain, provided the applicant constructs the site development consistent with FEMA's Conditional Letter of Map Revision approval (**Exhibit 9**) and subsequently obtains a final LOMR from FEMA. Therefore, the applicant's proposed grading activities will reduce the likelihood of flood damage to the proposed residences. As explained in **Exhibit 10**, the base flood elevation (BFE) ranges from 52.29 feet above mean sea level at the south end of the property to 51.98 feet above mean sea level at the north end of the property (per Table 2 of **Exhibit 10**). The finished floor elevations for the residences are proposed to be 2 feet higher than BFE, per the applicant's narrative (**Exhibit 3**). The applicant's cut-fill analysis (**Exhibit 7**) indicates that the development would result in a net increase of 9 cubic yards of flood storage capacity (a net reduction of 9 cubic yards of fill in the Special Flood Hazard Area) to ensure that neighboring properties do not experience increased risk of flood damage. No fill is proposed within the floodway and the applicant's engineer has provided a "No-Rise Certification" indicating that the proposed development will not impact 100-year flood elevations in the site vicinity (**Exhibit 10**). The site has Slope Hazard Areas, as defined by the City of Scappoose, present on site. The Geotechnical Report (**Exhibit 16**) concluded that the Slope Hazard Areas are "underlain by stiff soils with a moderate resistance to slope instability." No areas of prior instability were observed during the Geotechnical Engineer's field visit. Therefore, the proposal is consistent with this Goal.

*H. Recreational Needs (Goal 8)*

**Objective:** *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

**Finding:** Section 5 of the Scappoose Parks, Trails and Open Space Plan discusses development of a trail along South Scappoose Creek through pursuing a partnership with property owners and neighbors. The applicant's proposed Tract D for open space would include public trail access in line with the Scappoose Parks, Trails and Open Space Plan. The applicant proposes a 15' public access easement within Tract D (**Exhibit 4.P**). Within the proposed 15' public access easement, the applicant proposes a 5' wide compacted gravel pathway along the outer edges of the drainageway as explained in the applicant's narrative (**Exhibit 3**) and shown in **Exhibit 4.P**. Residential development of the subject property will increase demand for parks and recreation facilities in the City; however, it will also generate Parks System Development Charge revenues for park improvements. This goal is met.

*I. Economic Development (Goal 9)*

**Objective:** *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

**Finding:** The site is presently designated for residential development on the Comprehensive Plan and has not been planned for economic development. Consequently, the proposed application will have no significant impact on the City's planning for economic development.

*J. Housing (Goal 10)*

**Objective:** *To provide for the housing needs of citizens of the state.*

**Finding:** The proposed zone change, planned development, and subdivision will assist the City of Scappoose in maintaining a supply of a variety of housing sizes to meet the housing needs of local citizens. The proposed zone change is supportive of this Goal. The 2017 Housing Needs Analysis indicates that an additional 1,229 new dwelling units are required to be constructed in Scappoose for the 2018-2038 planning horizon (see Page 59 of the 2017 Housing Needs Analysis) and that the City has the available residentially designated land within its Urban Growth Boundary to meet that need. The applicant's proposal to develop the site is consistent with the Housing Needs Analysis findings, since a wider range of housing types and more compact urban form can be achieved under the proposed Planned Development standards than under the existing low density residential zone. Therefore, this proposal brings the City closer to meeting Goal 10 commitments and provides for some of the housing needs of citizens of the state.

*K. Public Facilities and Services (Goal 11)*

**Objective:** *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

**Finding:** The subject property lies within the Urban Growth Boundary (UGB) and is therefore considered to be urban property, which requires the extension of public facilities and services at the developer's expense. Full urban services are available to serve the site. The applicant proposes to extend existing public facilities and services into the subject site in a timely, orderly and efficient manner, consistent with Development Code standards and the Public Works Design Standards. Electricity, telephone, and gas are provided to adjacent residential properties and could be made available through the extension of nearby lines and public service infrastructure. Water is available in JP West Road and sanitary sewer is available

within the site boundaries. Storm drainage facilities would be constructed to serve the site at the time of development. Therefore, Goal 11 is satisfied.

*L. Transportation (Goal 12)*

**Objective:** *To provide and encourage a safe, convenient and economic transportation system.*

**Finding:** Statewide Planning Goal 12 is implemented by the state Transportation Planning Rule (TPR). The City adopted an updated Transportation System Plan (TSP) on September 6, 2016. The Scappoose TSP assumed that this site would be developed under the City's Suburban Residential (SR) and Low Density Residential Comprehensive Plan and Zoning designations, respectively.

The applicant's transportation engineer estimated traffic impacts using standard trip generation ratios published by the Institute of Transportation Engineers for the proposed 48-unit development. As discussed further in **Exhibits 22 and 23**, the development is anticipated to generate 514 daily trips, with 38 total trips during the weekday AM peak hour and 50 trips during the weekday PM peak hour.

Based on the applicant's traffic analysis, the City does not anticipate that this level of development would have a significant effect on the operations of the local street network. The applicant's transportation engineer concluded that all study intersections meet the respective mobility standards and targets before and after the proposed development. Additional findings are found in Findings of Fact, Scappoose Municipal Code (in particular, the response to 17.22.050).

The proposed planned development and subdivision includes improvement to the SW JP West Road right-of-way and construction of a segment of an existing public street, Eggleston Lane. Eggleston Lane right-of-way will be extended to the south property line and improvements will extend to (but not beyond) the unnamed stream, allowing for future connection to properties to the south. The proposed circulation plan (**Exhibit 4.O**) allows for safe and efficient circulation; therefore, Goal 12 is met.

*M. Energy Conservation (Goal 13)*

**Objective:** *To conserve energy.*

*1. Land use plans should be based on utilization of the following techniques and implementation devices which can have a material impact on energy efficiency:*

- a. Lot size, dimension, and siting controls;*
- b. Building height, bulk and surface area;*
- c. Density of uses, particularly those which relate to housing densities;*
- d. Availability of light, wind and air;*
- e. Compatibility of and competition between competing land use activities; and*
- f. Systems and incentives for the collection, reuse and recycling of metallic and nonmetallic waste.*

**Finding:** The applicant is seeking approval of a Planned Development (PD). According to Section 17.81.010 of the SDC, the purpose of a Planned Development is to provide more flexibility in the development of land; encourage variety and creativity in the development pattern of the community; conserve natural land features; facilitate efficient use of open space; create public and private open space; encourage the application of new techniques and technology to community development which contribute to superior living or development patterns; use land efficiently in order to reduce the costs of housing, maintenance,



street systems and utility networks; promote energy conservation and crime prevention; and relate development to the natural environment and its users.

The subject property is in a desirable location for residential development because its central location is close to many local businesses and amenities. This makes it possible and convenient to meet basic daily needs close to home. This reduces the need for automobile travel and supports alternative transportation modes (walking, cycling) that are more energy efficient. The applicant's Planned Development proposal clusters development on the western area of the site to create a compact development, which conserves energy related to infrastructure construction and transportation (**Exhibit 4**).

Therefore, the proposal will contribute to a more energy-efficient land use pattern within the City's Urban Growth Boundary.

#### *N. Urbanization (Goal 14)*

**Objective:** *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

**Finding:** The subject property is at a central location within the Urban Growth Boundary and no expansion of the Urban Growth Boundary is proposed. The proposed Zone Change will not affect the City's Goal 14 compliance.

#### *O. Other Goals*

**Finding:** The following goals are not applicable to this application:

- Willamette River Greenway (Goal 15)
- Estuarine Resources (Goal 16)
- Coastal Shorelands (Goal 17)
- Beaches and Dunes (Goal 18)
- Ocean Resources (Goal 19)

**2. The following Goals and Policies from the Scappoose Comprehensive Plan are applicable to this request:**

#### *General Goals for Land Uses*

- 1) *The growth of the City should be orderly and in accordance with the public health, safety and welfare, while preserving individual choice and recognizing existing patterns of development.*

**Finding:** The proposed subdivision will be orderly and in accordance with the public's health, safety, and welfare, by:

- Adding to the City's mixture of housing by providing single-family detached homes on a range of lot sizes to accommodate 48 residences as shown in the enclosed Preliminary Plat (**Exhibit 4.C**).

- Placing residential development adjacent to other residential areas.
- Providing half-street improvements to SW JP West Road and constructing a segment of an existing public street, Eggleston Lane.
- Ensuring adequate levels of public services by requiring that water lines, sanitary sewer, storm sewer, and streets be installed by the applicant to serve the needs of the proposed residential development.
- Preserving open space to protect riparian and wetland areas and to preserve floodplain storage capacity.

The proposed amendment is supportive of this Goal.

- 6) *Residential living areas should be safe, attractive, and convenient, and should make a positive contribution to the quality of life and personal satisfaction of the residents; additionally, there should be sufficient areas for a wide range of housing choices.*

**Finding:** Development of the subject site is required to provide all the infrastructure associated with new residential development, including public streets with curbs and sidewalks. The proposed single-family housing will complement and expand the range of housing choices for City residences. A prominent feature of the development will be the preservation of open space, in particular Tract D, which is proposed as a park with a public trail along its western edge to serve as a recreational amenity for residents of the subdivision and surrounding area, contributing to quality of life for residents. The proposed zoning map amendment, along with the associated planned development and subdivision, is supportive of this Goal.

- 15) *Housing that meets the local residents' housing needs should be allowed and encouraged.*

**Finding:** It is important for the City to have residential land available that will support the construction of a range of housing options for its residents. The proposed Planned Development offers a range of lot sizes to support housing with the opportunity for individual lot ownership. The subject property is in a desirable location for residential development because of proximity to city services and an existing transportation network. This makes it possible and convenient to meet basic daily needs close to a place of residence.

The proposed Planned Development Overlay zoning map amendment will allow a variety of housing to be constructed which will help meet the need for housing in the City. Therefore, the proposed amendment is supportive of this Goal.

General Land Use Goals 2-5, 7-14, and 16-19 are not applicable to the proposed development.

### *Policies for Public Facilities and Services*

- 4) *Require in new developments that water, sewer, street and other improvements be installed as part of initial construction.*
- 10) *Require new developments to provide adequate drainage at time of initial construction in accordance with the Scappoose Storm System Master Plan while discouraging the alteration of streams, the drainage of wetlands that are identified as significant and the removal of vegetation*

*beside streams. Natural drainage ways shall be used to carry storm water runoff whenever possible.*

**Finding:** The City Engineer, City Manager, Public Works Director, Building Official, Chief of Police, Fire Chief, and school Superintendent were provided with the opportunity to determine whether sufficient capacity exists for needed facilities and services. No objection to this application has been expressed by City Departments or public service agencies (see **Exhibits 28-36**). The Proposed Development Plans provide for the construction of necessary water, sewer, streets and other public facilities consistent with this Policy. The applicant submitted preliminary sanitary sewer, storm drainage, and water plans (**Exhibits 4.I, 4.J, 4.K, 4.L, 4.M, and 4.N**) to demonstrate the feasibility of serving the site with public facilities. As part of permitting, all plans and improvements are subject to review by the City Engineer and must conform to the requirements of the Scappoose Municipal Code, the Public Works Design Standards and Standard Specifications, and applicable utility master plans.

The proposed development includes temporary impacts to Wetland A for a sanitary sewer connection to an existing manhole (as shown on **Exhibit 4.M**), along with minor grading within the 50-foot buffer associated with the wetlands within the riparian corridor, as shown on **Exhibit 4.F**. Disturbances within the riparian corridor will subsequently be replanted with a native riparian mix, shrub swamp mix or approved similar planting as noted on **Exhibit 4.P**. No alteration of streams is proposed. As described in the applicant's narrative (**Exhibit 3**), the native vegetation area will be widened resulting in an improved overall resource. The applicant proposes grading within the 100-year floodplain, resulting in a net increase in flood storage capacity (grading will result in a net cut/removal of soil). The grading plan and stormwater outfall locations will be designed to limit erosion impacts to the creek and riparian areas.

This Policy is satisfied.

Public Facilities and Services Policies 1-3, 5-9, and 11-29 are not applicable to the proposed development.

### *Transportation Policies*

- 2.7) *Ensure that land use approvals on properties including or adjacent to rights-of-way and street improvements which are less than that specified in the transportation plan and maps require: dedication of adequate land for public right-of-way to meet that specified in the plan; construction of the required interior street system; and construction of, or execution of a non-remonstrance deed restriction for the specified street improvements immediately adjacent to the properties.*

**Finding:** The proposed development plans provide for the dedication of 10' of additional right-of-way to meet the Neighborhood Route standard for JP West Road. The plans also provide for the dedication of an internal local street (Eggleston Lane) per City standards. Pursuant to SDC 17.154.020(C), due to the sensitive site conditions, staff supports utilizing a local street section rather than a Neighborhood street section to minimize floodplain, riparian, and wetland impacts.<sup>7</sup> This Policy is satisfied.

<sup>7</sup> SDC 17.154.020(C) states that "Subject to approval of the planner and the public works director, street sections may be modified administratively based on geographical constraints of steep slopes, wetlands, floodplains, and

- 3.5) *Require sidewalks on all new streets within the Urban Growth Boundary and that these facilities be designed to the standards in the City's adopted Transportation System Plan.*
- 3.7) *Ensure that new development and redevelopment provide pedestrian connections within the site and to adjacent sidewalks, existing and planned developments, and transit streets and facilities.*

**Finding:** The proposed development plans provide for sidewalks adjacent to and throughout the development connecting to existing sidewalk systems. The public sidewalk on Eggleston Lane would also interconnect with the applicant's proposed public trail in Tract D, which is provided in accordance with the South Scappoose Creek trail envisioned in the Scappoose Parks, Trails and Open Space Plan. This Policy is satisfied.

- 4.7) *Require that proposed land developments mitigate adverse traffic impacts and ensure that all new development contributes a fair and proportionate share toward on-site and off-site transportation system improvements.*

**Finding:** The Traffic Impact Study and Seasonal Adjustment Factor Letter provided by the applicant's transportation engineer (**Exhibits 22 and 23**) demonstrate that mobility standards will be met with this development and therefore did not recommend any mitigation actions for the applicant. The development is making street improvements along frontage areas and dedicating right-of-way. Additionally, internal streets are being constructed in accordance with City standards. Residential development of the site will increase usage of area streets; however, it will also generate Transportation System Development Charge revenues for transportation improvements, ensuring the applicant contributes a fair and proportionate share toward on-site and off-site transportation system improvements. This Policy is satisfied.

- 5.7) *Enhance the aesthetics of all streets and roadways through planting and maintenance of street trees.*

**Finding:** The proposed development plans provide for street trees consistent with this Policy. This Policy is satisfied.

The following Transportation Goals and Policies are not applicable to the proposed development:

- Goal 1 (Policies 1.1-1.7)
- Goal 2 (Policies 2.1-2.6)
- Goal 3 (Policies 3.1-3.4, 3.6, and 3.8-3.12)
- Goal 4 (Policies 4.1-4.6)
- Goal 5 (Policies 5.1-5.6)
- Goal 6 (Policies 6.1-6.5)
- Goal 7 (Policies 7.1-7.5)
- Goal 8 (Policies 8.1-8.4)

constraints imposed by existing structures. Modifications may include, but are not limited to, reduced paving widths, elimination of on-street parking and eliminating sidewalks on one side of the street."

- Goal 9 (Policies 9.1-9.8)

### *Housing Policies*

- 2) *Ensure that newly developed housing adjacent to or within Sensitive Lands receive the appropriate development permit.*

**Finding:** The applicant proposes a 48-lot single-family planned development and residential subdivision within a site that contains Sensitive Lands (Floodplain, Wetlands, Slope Hazard, and Fish & Riparian Corridor). Accordingly, the applicant is seeking approval of four Sensitive Lands Development Permits as part of this application. Additionally, all required State and Federal Permits and subsequent City Engineering approvals to finalize the required permitting for actual construction will be completed. Subsequent to construction of the subdivision's grading and public works improvements, the final approval will be a Letter of Map Revision from FEMA, which would allow construction of residences within Phase 2, thereby completing all permitting requirements for floodplain sensitive lands. This Policy is satisfied.

- 8) *Ensure that subdivisions provide all necessary public services paid for by the developer.*

**Finding:** The developer will be required to construct all public and private improvements at its own expense, consistent with this Policy.

Housing Policies 1,3-7, and 9-12 are not applicable to the proposed development.

### *Natural Factors and Local Resources Policies*

- 9) *Work with Department of Fish and Wildlife to conserve substantial fish and wildlife habitats.*

**Finding:** The applicant's natural resources consultant (ES&A) coordinated with the Oregon Department of Fish and Wildlife to obtain ODFW staff input prior to submitting this application to the City. Monica R. Blanchard of ODFW (**Exhibit 14**) provided an August 29, 2019 email to ES&A in which she noted: "The riparian area, wetlands, and South Scappoose Creek are the most sensitive habitats and provide the highest quality cover and refuge for native species in the area of the project: protection and enhancement of these areas is our primary concern at this site. We appreciate the efforts to minimize wetland disturbance, add additional riparian vegetation, and avoid construction in the stream corridor."

The project provides the City's required buffering for streams and wetlands and the applicant proposes to install riparian-compatible plantings in Tract D (**Exhibit 4.P**). Storm drainage will be treated and detained prior to release to ensure run-off won't adversely affect the stream corridor and native species. This Policy is satisfied.

- 15) *Comply with applicable State and Federal environmental regulations.*

**Finding:** The conditions of approval require the applicant to provide evidence of issuance of all applicable permits from state and Federal agencies prior to commencing site clearing or development activities. This Policy is satisfied.

Natural Factors and Local Resources Policies 1-8, 10-14, and 16-21 are not applicable to the proposed development.

### *Suburban Residential Land Use Designation Policies*

- 3) *Promote the development of homesites at a density and standard consistent with: the level of services that can reasonably be provided, and the characteristics of the natural environment.*

**Finding:** As detailed in the response to Section 17.81.050(C)(1), the R-1 zone would typically permit 46 dwelling units at this location. The applicant is requesting an increase of 2 units (a 4% increase) in accordance with the Planned Development density increase allowance under Section 17.81.050(C)(3), if authorized by the Planning Commission. The applicant's narrative states that "The development is adequately supported by necessary public services as demonstrated in the application. The characteristics of the natural environment surrounding the developed areas on site are being preserved and/or improved with new additional plantings. The result overall is a project with homesites consistent with the level of services that can be provided while preserving, protecting and enhancing the natural environment." Staff concurs with this analysis. This Policy is satisfied.

- 4) *Review diligently all subdivision plats to ensure the establishment of a safe and efficient road system.*

**Finding:** The applicant's circulation plan (**Exhibit 4.O**) demonstrates an orderly extension of streets to ensure a safe and efficient transportation network, and the final plat will be reviewed by City staff subsequent to land use approval to ensure consistency with the Scappoose Municipal Code and the Public Works Design Standards. The applicant provided a Traffic Impact Study (**Exhibit 22**) that demonstrates the proposal will not significantly affect any existing transportation facility. This Policy is satisfied.

- 5) *Encourage developers to allocate land for open space or recreation in their subdivisions.*

**Finding:** The site contains Sensitive Lands (Floodplain, Wetlands, Slope Hazard, and Fish & Riparian Corridor). Accordingly, the applicant is seeking approval of four Sensitive Lands Development Permits as part of this application and the applicant proposes to cluster the dwellings in the least sensitive areas and create several tracts to protect sensitive areas and preserve open space. Tract A would contain a park located with a picnic table and overlook area to the wetlands in Tract B. Tract C will provide stormwater treatment. Tract D would contain open space for a potential future park, and the applicant will construct, a compacted gravel pathway for public use along the western (outer) edge of the South Scappoose Creek riparian corridor. The pathway will act as an extension of the pathway system in Veterans Park, extending from the north end near JP West Road, southward behind the easternmost lots and back out to Eggleston Lane south of Lot 18 (**Exhibit 4.C**). Tracts E and F will provide open space, and Tract G will provide open space and manage stormwater from JP West Road. This Policy is satisfied.



Suburban Residential Land Use Designation Policies 1, 2, and 6 are not applicable to the proposed development.

### *Policies for Hazard Areas*

- 1) *Prohibit development on lands within the 100-Year Floodplain, on slopes exceeding 20 percent, on lands with recognized drainage problems, and on lands with soils classified by the SCS as having severe building constraints, unless a showing that design and construction techniques can eliminate potential loss of life and property, specifically:*
  - A) *All development within the 100-Year Floodplain shall conform to the standards set by HUD, and the proposal for development shall be approved by the City Engineer.*
  - B) *All development plans on slopes greater than 20 percent shall be reviewed and approved by the Superintendent of Public Works.*
  - C) *All development plans on lands with recognized drainage problems shall be reviewed and approved by the Superintendent of Public Works.*
  - D) *All development plans on lands with suspect soils shall be submitted with a report from a soils geologist attesting to the safety of the plans, and then shall be reviewed and approved by the City Engineer.*

**Finding:** Portions of the property are within the Special Flood Hazard Area (100-year floodplain), along with wetlands and slopes exceeding 20%. The applicant has provided a Slopes Analysis (**Exhibit 5**), together with a Geotechnical Report (**Exhibit 16**), which were used to guide the design to ensure appropriate floodplain protection and slope stability. The Geotechnical Report concluded that the Slope Hazard Areas are “underlain by stiff soils with a moderate resistance to slope instability.” The applicant provided a preliminary stormwater report (**Exhibit 20**) to demonstrate feasibility of managing stormwater in accordance with the Public Works Design Standards. The applicant proposes to cluster the residences outside the South Scappoose Creek 100-year floodplain (as amended via Letter of Map Revision #21-10-0251P and proposed to be altered in accordance with Conditional Letter of Map Revision File 22-10-0362R) and to create several tracts to preserve open space (including the 100-year floodplain). The applicant has provided a floodplain balanced cut/fill analysis (**Exhibit 7**) and no-rise analysis (**Exhibit 10**) certifying that the proposed development will not impact the 100-year flood elevations, floodway elevations and floodway widths on the Scappoose Creek in the vicinity of the proposed development. All final development plans will be reviewed and approved by the City Engineer and Public Works Director prior to construction. The application includes appropriate Sensitive Lands Development Permit reviews consistent with this Policy.

Hazard Areas Policies 2 and 3 are not applicable to the proposed development.

Based on the Responses provided above, the applicant has demonstrated compliance with the applicable Comprehensive Plan Policies.

**3. The following sections of Title 17 of the Scappoose Municipal Code (Scappoose Development Code) are applicable to this request:**

***Chapter 17.01 INTRODUCTION***

17.01.060 Right-of-way dedications and improvements. Upon approval of any development permit or any land use approval of any property which abuts or is served by an existing substandard street or roadway, the applicant shall make the necessary right-of-way dedications for the entire frontage of the property to provide for minimum right-of-way widths according to the city's public works design standards and shall improve the abutting portion of the street or roadway providing access to the property in accordance with the standards in Chapter 17.154.

**Finding:** As illustrated on the site plans (**Exhibits 4.G and 4.H**), the Applicant proposes to dedicate 10' along SW JP West Road along the entire frontage of the property, to yield a right-of-way width of 30 feet, south of centerline, consistent with the street's Neighborhood Route designation in the Transportation System Plan. The abutting portion of JP West Road will be required to be fully improved in accordance with the City's Public Works Design Standards and Chapter 17.154 prior to final plat approval of Phase 1. Further detail is provided in the findings pertaining to Chapter 17.154. Section 17.01.060 is satisfied.

***Chapter 17.22 AMENDMENTS TO THE TITLE, COMPREHENSIVE PLAN, AND MAPS***

17.22.030 Quasi-judicial amendments. Quasi-judicial amendments shall be in accordance with the procedures set forth in Chapter 17.162 and the following:

- A. The commission shall make a recommendation to the Council to approve, approve with conditions or deny an application for a quasi-judicial comprehensive plan map amendment or zone changes.
- B. The council shall decide the applications on the record.
- C. A quasi-judicial application may be approved, approved with conditions or denied.

**Finding:** The applicant has requested that this subdivision be reviewed under the Planned Development Overlay provisions of the SDC (Scappoose Development Code). The Planned Development Overlay is approved as a Zone Change, which requires compliance with this Chapter. The Planned Development Overlay is a quasi-judicial review, which requires Planning Commission recommendation and a City Council decision. Section 17.22.030 is satisfied.

17.22.040 Approval criteria. Planning commission review and recommendation, and Council approval, of an ordinance amending the comprehensive plan, the zoning map, or this title shall be based on the following criteria:

- A. If the proposal involves an amendment to the comprehensive plan, the amendment is consistent with the Statewide Planning Goals and relevant Oregon Revised Statutes and Administrative Rules;

**Finding:** This proposal does not amend the Comprehensive Plan. However, findings related to the Statewide Planning Goals have been provided within this report. This application is consistent with applicable Oregon Revised Statutes and Administrative Rules (namely, the Transportation Planning Rule) as further detailed below in the response to Section 17.22.050. Section 17.22.040(A) is satisfied.

- B. *The proposal is consistent with the comprehensive plan (although the comprehensive plan may be amended concurrently with proposed changes in zoning or this title), the standards of this title, or other applicable implementing ordinances;*

**Finding:** Findings have been provided throughout this report to show consistency with the Comprehensive Plan, the standards of the development code, and other implementing ordinances. The proposed Planned Development would permit compatible residential development alongside adjacent existing residential uses and sensitive lands. The applicable comprehensive plan policies are outlined above, including a *Suburban Residential Land Use Designation* policy, specifically “5) Encourage developers to allocate land for open space or recreation in their subdivisions.” The proposed planned development provides significant open space and a public trail for recreation, consistent with this policy. Section 17.22.040(B) is satisfied.

- C. *The change will not adversely affect the health, safety, and welfare of the community;*

**Finding:** The applicant has completed analysis of the storm system, floodplain, geotechnical conditions, transportation, sensitive lands, and natural resources. The streets and utilities are designed to City standards and all Fire Marshal requirements will be met prior to construction. No report or review has demonstrated that the zone change to allow a Planned Development will adversely affect the health, safety, and welfare of the community, provided the recommendations within the technical reports are implemented. The recommended conditions of approval require compliance with the geotechnical report and require submittal of a final stormwater report. The planned streets and trails will increase opportunities for active and passive recreation in a safe environment.

The applicant has provided the required transportation analysis (**Exhibits 22 and 23**) to assess the specific uses proposed to ensure a safe transportation system. The proposed change would foster new development that is consistent with the existing residential character, which would reinforce and enhance a residential neighborhood. The Planned Development Overlay allows for flexibility in design thereby allowing for better accommodation of the floodplain and sensitive lands within the subject property, while maintaining compliance with the allowed density under the Planned Development code provisions. Development would provide needed housing for the City, and the applicant would improve the street and utilities at its own expense. Findings elsewhere in this report demonstrate that the proposal does not pose negative effects on the health, safety, and welfare of the community. Section 17.22.040(C) is satisfied.

- D. *The proposal either responds to changes in the community or it corrects a mistake or inconsistency in the comprehensive plan, the zoning map, or this title; and*

**Finding:** The proposal responds to changes in the community, namely, the need for housing types as identified in the City’s 2017 Housing Needs Analysis (page 73), which specifically recommended that “For parcels partially within the floodplain, encourage development on the areas not within the floodplain by allowing cluster development and density bonuses.” The 2017 Housing Needs Analysis (page 59) indicates that an additional 1,229 new dwelling units are required to be constructed in Scappoose for the 2018-2038 planning horizon. The report indicates that there are several demographic changes which have

increased demand for residential housing. The applicant's proposal to utilize a Planned Development to site housing outside the floodplain is consistent with the Housing Needs Analysis findings. Single family detached small lot housing is not readily available within the City and providing a range of lot sizes supports the City's needs related to attracting and serving residents. The proposed development responds to changes in the community by providing needed housing while preserving sensitive areas as open space. Section 17.22.040(D) is satisfied.

E. *The amendment conforms to Section 17.22.050.*

**Finding:** Consistency with Section 17.22.050 is demonstrated below. Section 17.22.040(E) is satisfied.

*17.22.050 Transportation planning rule compliance. Proposals to amend the comprehensive plan or zoning map shall be reviewed to determine whether they pursuant to Oregon Administrative Rule (OAR) 660-012-0060 (Transportation Planning Rule - TPR). Where the City, in consultation with the applicable roadway authority, finds that a proposed amendment would have a significant effect on a transportation facility, the City shall work with the roadway authority and the applicant to modify the request or mitigate the impacts in accordance with the TPR and applicable law.*

*660-012-0060 Plan and Land Use Regulation Amendments*

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

*(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*

**Finding:** The proposed Planned Development and zone change will not necessitate changes to the functional classification of existing or planned transportation facilities.

*(b) Change standards implementing a functional classification system; or*

**Finding:** The proposed Planned Development and zone change will not change any standards implementing the functional classification system.

*(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection. If a local government is evaluating a performance standard based on projected levels of motor vehicle traffic, then the results must be based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*

*(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*

*(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*

*(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

**Finding:** The City's 2016 TSP assumed that this site would be developed under the City's Suburban Residential (SR) Comprehensive Plan designation and Low-Density Residential zone, and street functional classifications were established accordingly. Based on the Traffic Impact Study (**Exhibit 22**), streets that would experience traffic from the development include SW JP West Road (a Neighborhood Street), SW 4th Street (a Neighborhood Street), SW 1st Street (a Neighborhood Street), U.S. Highway 30 (an Arterial Street), and SW Maple Street (a Neighborhood Street). As discussed in **Exhibit 22**, traffic projections have been computed using standard trip generation ratios published by the Institute of Transportation Engineers for a 48-unit Single-Family Detached Housing use.

As detailed in **Exhibit 22**, under the existing R-1 zone, 46-units of single-family Detached Housing would generate 494 daily trips. However, as the Planned Development provisions of Chapter 17.81 allow up to a 25% density increase, the applicant's transportation engineers analyzed the reasonable worst-case scenario of a 57-lot development (46 units plus 25%), which would generate 602 daily trips. The proposed planned development is therefore expected to result in an increase in the trip generation potential of the site by 108 daily trips. An increase of less than 400 daily trips is considered a small increase (per Oregon Highway Plan Policy 1F.5) and will not result in a significant effect on a transportation facility.

The study provided detailed analysis of seven nearby intersections: SW JP West Road/Captain Roger Kucera Way, SW JP West Road/SW 4th Street, SW JP West Road/SW 1st Street, SW JP West Road/US 30, SW Maple Street/SW 4th Street, SW Maple Street/SW 1st Street, and SW Maple Street/US 30.

Per **Exhibit 22**, "All the study intersections meet their respective mobility standards and targets today and in the future year 2023 before and after site development during the weekday AM and PM peak hours." Based on the above evidence, the zone change for the Planned Development would not further degrade the performance of area roadways and the City can conclude that the proposal does not have a significant effect on the affected intersections in particular or on the transportation system in general. Section 17.22.050 is satisfied.

#### ***Chapter 17.44 R-1 LOW DENSITY RESIDENTIAL***

##### ***17.44.030 Permitted and Conditional Uses***

**Finding:** Single family detached housing, as proposed, is an outright allowed use within the district. The applicant has proposed a Planned Development, which is a Conditional Use in the R-1 district. Section 17.44.030 is satisfied.

##### ***17.44.050 Dimensional requirements.***

**Finding:** The subject site is zoned R-1 – Low Density Residential. The applicant proposes an average lot size of 4,917 square feet, which is an average lot size reduction of 18% below 6,000 square feet as allowed through the Planned Development (PD) provisions. The applicant's requested dimensional requirements are summarized in the third column of the following table.

<b><i>Dimensional Requirements</i></b>	<b><i>Requirement</i></b>	<b><i>Proposed by PD Overlay</i></b>
<i>Minimum lot area Single-family detached</i>	<i>Six thousand (6,000) square feet outside the Scappoose Creek Flood Plain  Twenty thousand (20,000) square feet when a structure is located in the Scappoose Creek Flood Plain</i>	Minimum 3,410 square feet; no residences within the Special Flood Hazard Area (requires FEMA approval of Letter of Map Revision for Phase 2 lots)
<i>Minimum lot width</i>	<i>Not be less than fifty feet, except the minimum lot width at front property line on the arc of an approved full cul-de-sac shall not be less than thirty feet  Flag lots shall provide a minimum of twenty-five feet of frontage along a public right-of-way</i>	35 feet  Flag lots shall provide a minimum of 12 feet of frontage along a public right-of-way
<i>Minimum setback</i>		Setbacks applicable to yards not adjacent to site perimeter
<i>Front Yard</i>	<i>Twenty -feet</i>	12 feet
<i>Front of garages or carports</i>	<i>Twenty feet from the property line where access occurs</i>	20 feet
<i>Side yard</i>	<i>Total a minimum of fifteen feet with one setback not less than ten feet, which shall be on the street side for corner lots</i>	5 feet minimum each side (8 feet on street side for corner lots)
<i>Rear yard</i>	<i>Twenty feet</i>	15 feet
<i>Setbacks for accessory building behind a residence</i> <i>Side</i> <i>Rear</i>	<i>Five feet each Five feet</i>	5 feet 5 feet
<i>Maximum height</i> <i>Accessory Building</i>	<i>Thirty-five feet Twenty-two feet</i>	35 feet 22 feet
<i>Principal building per lot</i>	<i>One</i>	One
<i>Maximum building coverage</i>	<i>Thirty-five percent of the lot area</i>	55% of lot area

Lot sizes, lot width, and setbacks shall meet the minimum requirements of the Planned Development overlay at the time of development of each lot. With the approval of the Planned Development, Section 17.01.060 is satisfied.



## Chapter 17.81 PLANNED DEVELOPMENT OVERLAY (PD)

***17.81.010 Purpose.** The purpose of this district is to provide more flexibility in the development of land; encourage variety and creativity in the development pattern of the community; conserve natural land features; facilitate aesthetic and efficient use of open space; create public and private open space; encourage the application of new techniques and technology to community development which contribute to superior living or development patterns; use land efficiently in order to reduce the costs of housing, maintenance, street systems and utility networks; promote energy conservation and crime prevention; and relate development to the natural environment and its users. A planned development shall be considered as an overlay to an existing zone, and the development of said property shall be in accordance with that zone's requirements, except as may be specifically allowed by the planning commission. For purposes of implementing these objectives, two means are available:*

- A. The property owner or his or her representative may apply for a planned development to overlay an existing zone and shall submit an acceptable plan and satisfactory assurances that it will be carried out in accordance with the procedures set forth in Section 17.81.060; or*
- B. The property owner of a particular parcel, the planning commission, or the city council may apply for a planned development designation to overlay an existing zone without submitting any development plans; however, no development of any kind may occur until a final plan has been submitted and approved. A planned development overlay initiated by the commission or council shall address itself to the purposes set forth herein: a planned development overlay may be approved under these circumstances for a property that has unique characteristics (for example, having geological, ecological or archeological significance), and the development of which may have a significant impact upon the surrounding area or the city as a whole due to its scope, potential housing or employment density, and anticipated traffic generation. However, the commission and council shall set forth the reasons for approval and the areas of concern that must be addressed when final plans are submitted.*

**Finding:** The project site is encumbered by the following constraints: floodplains, floodway, steep slopes, drainageways, wetlands and riparian corridors. The applicant has requested a Planned Development overlay to create a residential development that offers single-family residences on lots with a variety of sizes, with the overarching function of minimizing impacts to sensitive areas. Based on discussion in the applicant's narrative (**Exhibit 3**), the proposed Planned Development:

- Protects, preserves and enhances the natural features.
- Provides public and private open space area throughout the development site, including a gravel public walking trail along the South Scappoose Creek riparian corridor.
- Utilizes land in an efficient manner by clustering the density within developable areas of the site.

Such a layout would use land efficiently to reduce the cost of housing and infrastructure, which has the secondary benefit of conserving energy. The applicant has submitted a combined application for a Planned Development overlay, Subdivision, Conditional Use Permit, and Sensitive Lands Development Permits. The Conditions of Approval require satisfactory assurances (e.g., performance bonds) that the development plan will be carried out in accordance with the procedures set forth in Section 17.81.060. While Section

17.81.010 does not contain approval criteria, the proposed Planned Development appears consistent with the stated purposes within this section.

17.81.020 Applicability. *A. Commercial, Industrial, and Residential. The planned development process may be applied in any zone to all commercial and industrial uses, and excluding the R-1 zone, all residential uses for site-constructed housing, subject to requirements of the underlying district, the land division regulations, and sections 17.81.040 and 17.81.050 of this chapter. In the R-1 zone, the planned development overlay shall be processed as a Conditional Use.*

**Finding:** The subject property is zoned Low Density Residential (R-1). The applicant is requesting a Planned Development overlay zone change from R-1 to R-1PD and proposing site-constructed detached homes. No manufactured homes are proposed. Therefore, as a Planned Development, this application will be processed as a Conditional Use. Section 17.81.020 is satisfied.

17.81.030 Permitted uses.

*A. For residential districts:*

- 1. Uses permitted in the underlying district;*
- 2. Housing concepts may include, but are not limited to, single-family residences, duplexes, row houses, townhouses, cluster units, multiple-family dwellings or manufactured homes;*
- 3. Related commercial uses as part of the development;*
- 4. Related public lands uses designed to serve the development;*
- 5. Accessory buildings and uses, not to exceed twenty-five percent of the lot area of the principal use.*

**Finding:** The applicant has proposed single-family detached residences, which are a permitted use in the R-1 zone. Section 17.81.030 is satisfied.

17.81.040 Dimensional standards.

*A. Lot Width, Depth, Coverage, Setback and Frontage Requirements.*

*Minimum lot size, width, depth, coverage, setback and frontage requirements for lots in a planned development may be less than the minimums specified in the underlying district if in accordance with the approved general plan and the density standards of this section.*

**Finding:**

The applicant has requested reductions to dimensional standards as previously summarized in Section 17.44.050 and reproduced below:

<b><i>Dimensional Requirements</i></b>	<b><i>Requirement</i></b>	<b><i>Proposed by PD Overlay</i></b>
<i>Minimum lot area Single-family detached</i>	<i>Six thousand (6,000) square feet outside the Scappoose Creek Flood Plain  Twenty thousand (20,000) square feet when a structure is located in the Scappoose Creek Flood Plain</i>	Minimum 3,410 square feet; no residences within the Special Flood Hazard Area (requires FEMA approval of Letter of Map Revision for Phase 2 lots)

<i>Minimum lot width</i>	<i>Not be less than fifty feet, except the minimum lot width at front property line on the arc of an approved full cul-de-sac shall not be less than thirty feet</i>  <i>Flag lots shall provide a minimum of twenty-five feet of frontage along a public right-of-way</i>	35 feet  Flag lots shall provide a minimum of 12 feet of frontage along a public right-of-way
<i>Minimum setback</i>		Setbacks applicable to yards not adjacent to site perimeter
<i>Front Yard</i>	<i>Twenty -feet</i>	12 feet
<i>Front of garages or carports</i>	<i>Twenty feet from the property line where access occurs</i>	20 feet
<i>Side yard</i>	<i>Total a minimum of fifteen feet with one setback not less than ten feet, which shall be on the street side for corner lots</i>	5 feet minimum each side (8 feet on street side for corner lots)
<i>Rear yard</i>	<i>Twenty feet</i>	15 feet
<i>Setbacks for accessory building behind a residence</i> <i>Side</i> <i>Rear</i>	<i>Five feet each</i> <i>Five feet</i>	5 feet 5 feet
<i>Maximum height</i> <i>Accessory Building</i>	<i>Thirty-five feet</i> <i>Twenty-two feet</i>	35 feet 22 feet
<i>Principal building per lot</i>	<i>One</i>	One
<i>Maximum building coverage</i>	<i>Thirty-five percent of the lot area</i>	55% of lot area

**Finding:** The subject site is zoned R-1 – Low Density Residential. The applicant proposes an average lot size of 4,917 square feet, which is an average lot size reduction of 18% below 6,000 square feet as allowed through the Planned Development (PD) provisions. The density calculations for the site permit 46 units to be constructed under the R-1 zone and the Planned Development criteria under criterion C.3 below permits an increase of up to 25% in the number of dwelling units that may be permitted based on specified findings (up to 57 units). The applicant is proposing 48 dwellings, which is a 4% increase in the number of dwelling units permitted under the R-1 standards. Section 17.81.040(A) is satisfied.

*B. Minimum Site Size. A planned development shall be established on a parcel of land that is suitable for the proposed development, and shall not be established on less than four acres of contiguous land, unless the planning commission finds that property of less than four acres is suitable as a planned development by virtue of its unique character, topography or natural features, or by virtue of its qualifying as an isolated problem area as determined by the planning commission.*

**Finding:** The subject site contains over 17 acres. This site is sufficiently large enough to accommodate a residential development while protecting and enhancing the natural features of this property including South Scappoose Creek, it's riparian corridor, and nearby wetlands and slope hazard areas. Therefore, this site is suitable for a planned development. Section 17.81.040(B) is satisfied.

*17.81.050 General requirements.*

*A. Compatibility with Neighborhoods.*

1. *The planned development shall present an organized arrangement of buildings, facilities, open spaces and improvements such as recreation facilities, landscaping and fencing to ensure compatibility with the comprehensive plan and the area in which it is to be located.*

**Finding:** The applicant's proposal appears to provide for an organized layout of streets (**Exhibit 4.G and 4.O**), pathways, open space, and cluster of residential lots while incorporating the natural features of the property. The applicant is proposing a public path along the western edge of Tract D and is proposing additional tracts to protect wetlands and open space as shown on **Exhibit 4.C**. Proposed plantings are illustrated on **Exhibit 4.P**, consisting of street trees, perimeter plantings in Tract G, and riparian corridor plantings in Tract D, while privacy fencing is anticipated along rear and side lot lines (**Exhibit 4.P**).

The perimeter lots along the west boundary have lot sizes that generally exceed the R-1 standards consistent with abutting lots to the west, which are also within the R-1 zone, thereby complying with these criteria. Section 17.81.050(A)(1) is satisfied.

2. *Peripheral yards of a planned development site shall be at least as deep as those required by the yard regulations of the adjoining district, unless the planning commission finds that equal protection will be accorded through specific features of the approved plan.*

**Finding:** Peripheral yards affect Lots 7-17 and lots 44-48. The abutting properties to the north and west are zoned R-1 and thus have 20 feet rear setbacks and side setbacks totaling a minimum of 15 feet abutting the proposed development. The applicant's proposed setback lines, illustrated on **Exhibit 4.G**, meet these setbacks for Lots 7-17 and Lots 45-48. Lot 44 does not meet this standard as its northern setback needs to be 20 feet where abutting tax lot 3212-CB-00403 to match tax lot 403's 20-foot rear setback. Staff recommends a condition of approval requiring peripheral yards to meet Section 17.81.050(A)(2). Section 17.81.050(A)(2) is satisfied with the recommended conditions of approval.

*B. Open Space.*

1. *Open space in a planned development means the land area to be used for scenic landscaping, or open recreational purposes within the development. It shall not include street right-of-ways, driveways or open parking areas.*
2. *Open space shall be provided for the recreational and leisure use of the individuals occupying the planned development, and designed to enhance the present and future value of the development.*
3. *To the maximum extent possible, natural features of the land shall be preserved and landscaping provided.*
4. *In order to assure that open space will be permanent, dedication of development rights to the city for other than open space use may be required.*

5. *Instruments guaranteeing the maintenance of open space shall be reviewed and approved by the planning commission. Documents dedicating development rights and provisions for maintenance of open space shall be approved as to form by the city attorney.*
6. *The planning commission may require that instruments of conveyance provide that in the event the open space is permitted to deteriorate, or is not maintained in a condition consistent with the approved plan, the city may, at its option, cause such maintenance to be done and assess the costs to the affected property owners.*

**Finding:** The combined area of the parks and open space tracts is 428,469 square feet, which exceeds 56% of the gross site area. The applicant proposed the following park and open space tracts for use by residents<sup>8</sup>, which do not include street rights-of-way, driveways, or open parking areas:

Park and Open Space Tracts	Land Area (SF)
A. Park	10,914
B. Open Space	13,902
D. Park/Open Space	298,645
E. Open Space	95,947
F. Open Space	2,734
G. Park/Stormwater	6,327
<b>Total</b>	<b>428,469</b>

Tract A is an open space park accessible to residents which contains a picnic table overlook area. Tract D is open space for the floodplain and riparian corridor and contains a compacted gravel pathway for recreational purposes which is not just available to the residents but also the public via a public access easement. Tract G contains a landscape entry feature. Tracts B, E, and F are for protection of sensitive areas and preservation of open space. The design results in the majority of lots having frontage on an open space on at least one yard, thereby enhancing the value of the development.

The natural features on site include South Scappoose Creek, an unnamed drainageway, and associated wetlands and riparian corridors (**Exhibit 11**). Additionally, there are isolated wetlands within Tracts B, E and F which are being protected. Minimal proposed impacts to the natural features are proposed, along with improvements to the Scappoose Creek Riparian Corridor consisting of enhanced native landscaping (**Exhibit 4.P**). The applicant's narrative (**Exhibit 3**) indicates the owner is prepared to dedicate the development rights of the open space areas, if required by the City Council.

The tracts will be platted as tracts on the subdivision plat and will be required to be owned and maintained by a Homeowners Association managed by residents of the Planned Development. The applicant has included draft Covenants Conditions and Restrictions (CC&Rs) (**Exhibit 24**) which detail the ongoing responsibility for maintenance of open space areas. The applicant's narrative (**Exhibit 3**) acknowledges that the Planning Commission and City Council may require instruments of conveyance so that the City may, at its option, cause maintenance to be done and assess the costs to the affected property owners. Section 17.81.050(B) is satisfied.

<sup>8</sup> This table excludes Tract C, which is solely for stormwater management.

C. *Residential Density.*

1. *In a residential planned development, the density permitted is the same as that of the underlying district or districts. In a mixed-use planned development, the number of allowable units is based on net residential area. The net residential area for a planned development shall be calculated by taking the total area of the development less streets, commercial, industrial, public lands and other nonresidential uses. Recreational trails and areas, and open space, etc., shall be included in the net residential area. The number of dwelling units permitted in a planned development shall be calculated by dividing the net residential area by the minimum lot size required in the underlying residential district or districts. In a commercial or expanded commercial district, multifamily densities shall be permitted where limited residential use is determined to be appropriate by the planning commission.*
2. *Greenways, streams and steep topography areas will be counted as contributing to the density only to the extent that it can be shown, through a planning commission review, that a typical development could be accommodated on the site with realistic street configuration, grades and standard lot sizes. The number of dwellings yielded from such a tentative subdivision review process shall be used as a base in determining the overall density for the site.*

**Finding:** The proposed project is a residential planned development, and as such, the density permitted is the same as that of the underlying district. The base density of the site is as follows:

Area and Density Calculation	
Gross Site Area	753,950 square feet
Street Rights-of-way	71,288 square feet
Streams, Wetlands (outside of floodplain)	122,710 square feet
Floodplain (outside of rights-of-way)	283,214 square feet
Net Area	276,738 square feet
Base Density	276,738/6,000 = 46.12 rounded to 46 units

**Finding:** The applicant has prepared density calculations as demonstrated above in compliance with the city's standards. Section 17.81.050 (C)(1) and (2) is satisfied.

3. *An increase of up to twenty-five percent in the number of dwelling units may be permitted upon a finding by the planning commission that such increased density will contribute to:*

**Finding:** The base density is 46 units. Adding 25% more dwellings would equal 11.5 additional units or 57.5 total units. The applicant is requesting a total of 48 units which is 2 more units than permitted by the base density and represents a 4% increase. This increase can be granted by the Planning Commission and City Council based on the factors outlined below.

- a. *Satisfaction of the need for additional urban area housing of the type proposed;*

**Finding:** The applicant is proposing “small lot single family detached housing” as the primary housing type with some larger lot single family sites included primarily adjacent to neighboring properties along the west site boundary. The 2017 Housing Needs Analysis (see page 59 of the 2017 Housing Needs Analysis) indicates that an additional 1,229 new dwelling units are required to be constructed in Scappoose for the 2018-2038 planning horizon, and single family detached housing is in high demand within both Scappoose and the Portland Metro Area. Section 17.81.050 (C)(3)(a) is satisfied.

*b. The provision of housing which is convenient to commercial, employment, and community services and opportunities;*

**Finding:** The site is relatively close to commercial, employment, and community services and opportunities. It is approximately 4 blocks to the Highway 30 commercial areas, making it proximate to commercial as well as employment opportunities. Additionally, Veterans Park is across JP West Road from the site and the Scappoose Middle School is 5 blocks away. As such, convenient access is provided to community services and opportunities. Section 17.81.050 (C)(3)(b) is satisfied.

*c. The creation of a land use pattern that is complementary to the community and its identity, and to the community design process;*

**Finding:** The land use pattern is constrained by natural features on the site. For example, no street can reasonably be proposed to the east due to the intervening South Scappoose Creek, its floodplain, floodway, wetlands, and riparian corridor. To the west, slopes are too steep to construct public streets to connect to existing public streets while meeting the Public Works Design Standards. This complements those properties on the east and west sides as they had the same situation in that extensions of public streets cannot be made. There is an opportunity to connect to the south in the future, when property along the existing section of Eggleston Lane further develops; this street would promote better connectivity within the area. Housing types within the area are varied and include large acreages with single family homes, smaller R-1 standard lots with single family homes and an apartment complex across South Scappoose Creek near the site’s southeast corner. The proposed range of lot sizes complements the surrounding community by adding housing options to those already available. Section 17.81.050 (C)(3)(c) is satisfied.

*d. The conservation of energy;*

**Finding:** This proposed project conserves energy by providing smaller lots along a public street reducing the overall costs of construction and maintenance of both streets and utilities on a per unit basis with a denser land use pattern. Energy is also conserved with the location of the site being within walking and/or biking distance from parks, schools and the commercial areas near Highway 30. Section 17.81.050 (C)(3)(d) is satisfied.

*e. The efficient use of transportation facilities; and*



**Finding:** The site's location and housing type is efficient in terms of transportation facility use, as it makes use of an existing street (JP West Road) and constructs a segment of another street (Eggleston Lane). The site is located near both commercial and City facilities including the business district along Highway 30, Veterans Park, and Scappoose Middle School, accommodating multi-modal transportation uses including cars, bikes and pedestrians. Section 17.81.050 (C)(3)(e) is satisfied.

*f. The effective use of land and available utilities and facilities.*

**Finding:** The planned development process and the project proposed allows for the preservation of natural resources and construction of community amenities while providing a range of lot sizes. All City and franchise utilities are directly adjacent to or already extended through the site. Nearby streets including the adjacent JP West Road (Neighborhood Route) is 5 blocks from a major arterial (Highway 30). The residents of the proposed project will have efficient access to Veterans Park and Scappoose Middle School. The proposed open space tracts are an effective method of preserving floodplain storage capacity and enhancing riparian and wetland buffer areas. Section 17.81.050 (C)(3)(f) is satisfied.

*E. Staging.*

1. *The applicant may elect to develop the site in successive stages in a manner indicated in the general plan. Each such stage shall be substantially complete within itself.*
2. *The planning commission may require that development be done in stages if public facilities are not adequate to service the entire development initially.*

**Finding:** The applicant is proposing to stage (phase) this development for platting purposes, as indicated on Sheet 1.1 of the plan set (**Exhibit 4.B**). The recommended conditions of approval require construction of the public improvements in Phase 1. After this point, building permits could be issued for lots proposed in Phase 1 as they are outside the current mapped Special Flood Hazard Area. The applicant intends to then complete its final Letter of Map Revision process with FEMA to formally modify the floodplain maps for the project site (after which the Phase 2 lots would be mapped as being outside the mapped Special Flood Hazard Area). Section 17.81.050 (E) is satisfied.

17.81.060 Procedure. *An application for a planned development overlay shall be heard and approved under the public hearing procedures set forth in Chapter 17.162 of Title 17 of the Scappoose Municipal Code. A planned development, quasi-judicial zone change, and as necessary, a quasi-judicial comprehensive plan map amendment, may be processed concurrently. The fee charged for initiating a planned development overlay shall be equal to that charged for zone changes.*

**Finding:** This request for a Planned Development overlay will be heard and approved under the public hearing procedures in Chapter 17.162. All applications are being submitted for concurrent review. The applicant has submitted the required fees for the applications. Section 17.81.060 is satisfied.

17.81.070 Approval criteria. *An application may be approved, approved with conditions, or denied based upon substantial conformance with the following criteria:*

*A. The proposed development complies with the comprehensive land use plan and is compatible with the surrounding area or its proposed future use;*

**Finding:** The subject site is designated for low density residential development and is zoned R-1, consistent with the comprehensive plan's Suburban Residential plan designation as explained above in the Comprehensive Plan Findings Land Use Policies section. Housing types within the area vary and include large acreages with single family homes, smaller R-1 standard lots with single family homes and an apartment complex across Scappoose Creek near the site's southeast corner. Adding in the range of lot sizes for single family detached homes complements the surrounding community by adding housing options in an area planned for residential use, with larger lots on the western border to be compatible with the existing residential neighborhoods. To provide adequate light, air, and space, staff recommends a condition of approval requiring a minimum 5' separation between house foundations and retaining walls proposed on Lots 7-9 and 47-48 (where the walls are proposed to retain soil above the finished grade of the building pad). Section 17.81.070 (A) is satisfied.

*B. That exceptions from the standards of the underlying district are warranted by the design and amenities such as usable common open space, cluster development, etc.*

**Finding:** The applicant is requesting exceptions from the standards of the underlying R-1 district and proposes amenities throughout the site. As illustrated on **Exhibit 4.C**, smaller lots have been clustered towards the center of the site with larger lots along the west and north property lines. Open space areas are proposed throughout, though primarily on the south and east.

Capitalizing on the proximity to Veterans Park, the applicant proposes construction of a public trail starting near the intersection of JP West Road and the proposed Eggleston Lane extension, extending through Tract D and connecting back to Eggleston Lane south of Lot 18. There is also a connection between the trail and Eggleston Lane between Lots 28 and 33. These connections create two loops with the public sidewalk system and extends the public pedestrian system substantially further south. The trail is proposed to be open to the public in accordance with the South Scappoose Creek trail envisioned in the Scappoose Parks, Trails and Open Space Plan. Tract D is an open space tract protecting South Scappoose Creek, floodplain, and wetlands 1 and 2. The area adjacent to the pathway will be replanted in native plant materials (**Exhibit 4.P**) and the riparian corridor will be widened and planted to preserve water quality and increase the public's enjoyment of the area.

Tract A is a 10,914 square foot open space park area for the residents of the subdivision and includes a crushed rock path and picnic area overlooking Tract B, which is intended to protect wetland and buffers around the wetland.

Tract G is proposed on the west side of Eggleston Lane adjacent to JP West Road. This open space tract contains a small stormwater facility to treat runoff from JP West Road and also has a landscaped entry feature consisting of a lawn area framed by plantings along the west and south sides. The applicant's narrative (**Exhibit 3**) states that this area is usable for both passive and active recreation. Staff notes that Tract G seems usable for passive recreation but notes that this Tract appears small for active recreation. Section 17.81.070 (B) is satisfied.

- C. *That the proposal include designs and construction standards in compliance with city code and that all completed infrastructure be approved by the city and ownership of all infrastructure and public utilities deeded to the city upon completion;*

**Finding:** The Preliminary Development Plans in **Exhibit 4** depict proposed grading and infrastructure, including the extent of all proposed streets, water, sanitary, and storm sewer utilities on site. The applicant will be required to construct all utilities to the City's Public Works Design Standards and Specifications. Final Construction Plans will be prepared and submitted as part of the building permit process. When satisfactorily completed, the infrastructure will be approved and accepted by the City. Section 17.81.070 (C) is satisfied.

- D. *That the development can be designed so as to provide for adequate access to and efficient provision of services to adjoining parcels;*

**Finding:** The site has constraints that prohibit access to the east and west. To the west is both existing development and steep slopes. A public street could not be extended to connect with SW Jobin Lane and meet City standards regardless of the type of development. To the east lies Scappoose Creek and its associated floodplain and floodway, wetlands and riparian corridor. Roadway extension across the creek is not achievable without considerable environmental impact. Given these constraints, the applicant's circulation plan (**Exhibit 4.O**) demonstrates an orderly extension of streets to ensure a safe and efficient transportation network. The applicant proposes to connect to the existing waterline that extends south from the end of Jobin Lane, thereby creating an improved looped water system (**Exhibit 4.L**). The proposed development is designed to extend access to the south for future connection of the street and utilities to serve those properties. The right-of-way extends to the south property line to ensure this connection can be completed in the future. All other services are available to properties located east and west of the site. The planned development proposal will widen JP West Road to its full width, south of centerline. Section 17.81.070 (D) is satisfied.

- E. *That streets are adequate to support anticipated traffic, and the development will not overload the streets outside the planned area (as supported, when necessary, by a formal traffic impact analysis);*

**Finding:** The internal street design is adequate for the proposed 48-Lot development as it conforms to the City's local street standard. The street meets the standards in the Public Works Design Standards. As determined by the Traffic Impact Study (**Exhibit 22**), there is adequate capacity to accommodate this development; the existing and proposed street network will continue to operate acceptably with the addition of the houses constructed from the development. Section 17.81.070 (E) is satisfied.

- F. *That proposed utility and drainage facilities are adequate for the population densities and type of development proposed;*

**Finding:** As discussed in the responses to Chapter 17.154, adequate utilities and drainage facilities can be constructed by the applicant to serve the proposed Planned Development. Initial computations submitted

by the applicant indicate that stormwater will be released into South Scappoose Creek after treatment and detention (**Exhibit 20**). Sanitary sewer exists on the site and can be provided to all proposed lots. Water will be looped through the site via a connection at JP West Road, then south in Eggleston Lane and west through Tract E to connect to an existing waterline. The development plans (**Exhibit 4**) and associated storm and sanitary sewer profiles and details demonstrate the feasibility of the utility and drainage facilities for the proposed planned development. All franchise utilities are immediately available to serve the site as well and are located in JP West Road. The Conditions of Approval require review by the City Engineer of all proposed plans. Section 17.81.070 (F) is satisfied.

*G. That the proposed development can be substantially completed within a reasonable period of time.*

**Finding:** The applicant's narrative (**Exhibit 3**) indicates an intention to complete development of this subdivision within 2-5 years, which is typical for a development of this scale, location and complexity. The applicant has indicated that site development (streets, utilities, etc.) is anticipated to be completed within one year. Section 17.81.070 (G) is satisfied.

#### *17.81.080 Tentative Plan.*

*A. Submission Requirements. The proponent shall submit an application with applicable fees to the planning commission for approval in principal. The tentative plan shall consist of twenty copies of all plans, maps and diagrams drawn in sufficient detail to indicate the nature of the plan elements and a written narrative description.*

**Finding:** The applicant has submitted all applicable fees for approval of the tentative plan and has also provided plans and diagrams (**Exhibit 4**) in sufficient detail to indicate the nature of the plan elements. Additionally, a written narrative (**Exhibit 3**), supporting information and reports have also been provided. Section 17.81.080 (A) is satisfied.

#### *B. Procedures.*

*[...]*

*4. Tentative Plan Expiration Date. Within one year following the effective date of approval of a tentative plan, the general plan and program shall be submitted, and shall incorporate any modification or condition required by approval of the tentative plan. The planner may, upon written request by the applicant, grant an extension of the expiration date of up to six months, upon a written finding that the facts upon which the approval was based have not changed to an extent sufficient to warrant re-filing of the tentative plan, and after finding that no other development approval would be affected.*

**Finding:** The applicant is required to submit the Final Plan for the Planned Development and Subdivision for review by City staff within one year from the effective date of the approval by City Council. Section 17.81.080(B)(4) is satisfied.

*C. Submission Materials. The tentative plan need not be a finished drawing, but it should present all relevant graphic data, and be drawn to an engineering scale. The information shall include, but is not limited to, the following:*

1. *Proposed land uses, building locations, housing unit densities and estimated employment densities;*
2. *Existing and proposed contour map or maps of the site to a scale commensurate with the size of the development;*
3. *Location, widths and names of all existing or platted streets or other public ways, railroad and utility right-of-ways, parks or other public open spaces, and land uses within five hundred feet of the boundaries of the development;*
4. *Existing sewers, water mains and other underground facilities within and adjacent to the development and their certified capacities;*
5. *Proposed sewers or other disposal facilities, water mains and other underground utilities;*
6. *A tentative subdivision plan if the property is proposed to be divided;*
7. *Proposed grading and drainage pattern;*
8. *Areas proposed to be dedicated or reserved for interior circulation, public parks, playgrounds, schools sites, public buildings or other uses dedicated or reserved to the public, if any;*
9. *Open space that is to be maintained and controlled by the owners of the property and the proposed uses thereof;*
10. *A traffic flow map showing the circulation pattern within, and adjacent to, the proposed development;*
11. *Location and dimensions of pedestrian walkways, malls, trails or easements;*
12. *Location, arrangement, number and dimensions of automobile garages and parking spaces, width of aisles, bays and angle of parking, if any;*
13. *Location, arrangement, and dimensions of truck loading and unloading spaces and docks, if any;*
14. *Tentative architectural plans and elevations of typical buildings and structures, indicating the general height, bulk, appearance and number of dwelling units, if applicable;*
15. *A tentative tree planting and landscaping plan including areas of ground cover and approximate finished grades, slopes, banks and ditches. All existing trees over six inches in diameter and groves of trees shall be delineated. Trees to be removed by development shall be so marked;*
16. *The approximate locations, height and materials of all walls, fences, and screen plantings. Elevation drawings of typical walls and fences shall be included;*
17. *The stages, if any, of the development construction. Stages shall be clearly marked on the general development plan;*
18. *Narrative statement of the goals and objectives of the planned development;*
19. *A completed professional market analysis, if required by the planning commission;*
20. *Evidence of resources available to develop the project;*
21. *Tables showing the total number of acres, the distribution of area by use, the percentage designated for each dwelling type, off-street parking, streets, parks, playgrounds, schools and open spaces as shown on the proposed development plan;*
22. *Tables showing the overall residential density of a proposed residential development, and overall employment density of a proposed commercial or industrial development, including any proposals for the limitation of density;*
23. *Drafts of appropriate restrictive covenants and documents providing for the maintenance of any common open space, required dedications or reservations, public open spaces, and any dedications of development rights.*

**Finding:** The plans submitted (**Exhibit 4**) are detailed and present all relevant graphic data drawn at an engineering scale. It includes all applicable information listed in items one through thirteen above along with additional materials to allow for a thorough review for compliance with city standards. The applicant has provided seven (7) tentative home designs proposed for the project which indicate their general height (2 story), their bulk and appearance (**Exhibit 27**). One of the designs is a single level home. Each design in turn can have multiple finishes and colors resulting in diverse styles.

In response to criterion 14 above, preliminary architectural elevations are provided are **Exhibit 27**.

In response to criterion 15 and 16 above, the Preliminary Plan Set (**Exhibit 4**) includes Landscaping Plans and Grading plans. The landscape plans provide areas of groundcover which reflects street trees, open space landscaping, fencing and types and heights of proposed retaining walls.

In response to criterion 17 above, the applicant has provided the Phasing Plan on **Exhibit 4.B**.

In response to criterion 18 above, the applicant's narrative (**Exhibit 3**) states the goals and objectives of this planned development are as follows:

- Take advantage of and protect the sensitive environmental, visual and recreational values of South Scappoose Creek and wetlands on the property.
- Provide a quality subdivision for single family homes, with recreational amenities for residents and the public to enjoy.
- Maintain floodplain storage capacity with balanced cut/fill, while ensuring the home sites and adjacent properties are safe from flooding.
- Create useable recreational open space and enhance the overall visual and recreational quality of the development with a combination of parks and open spaces with quality landscaping.
- Accommodate a housing type and size that provides options for the local community, is affordable and provide opportunities for next generations of Scappoose residents.
- Accommodate future development via extension of the public street.

In response to criterion 19 above, a Market Analysis is not required unless specifically requested by the Planning Commission.

In response to criterion 20 above, David Weekley Homes was founded in 1976 in Houston, Texas, and the applicant's narrative (**Exhibit 3**) indicates that it is the 18th largest builder in the United States and the nation's largest private home builder.

In response to criterion 21 above, the applicant has provided tables showing the distribution of area by use, the percentage designated for each dwelling type, off-street parking, streets, parks, playgrounds, schools and open spaces as part of the within the application narrative. An excerpt of the applicable narrative response is included below.

Land Use Distribution		
Land Use	Square Feet	Percentage
Single Family Residential Lots	236,037	31.30%
Street Rights-of-way	71,288	9.45%
Park Tracts	309,559	41.09%

Open Space/Resource Tracts	118,910	15.76%
Storm Water Quality Tract	18,156	2.40%
Total	753,950	100%

In response to criterion 22 above, the applicant has included tables showing the overall residential density of a proposed residential development, and overall employment density of a proposed commercial or industrial development, including any proposals for the limitation of density as part of their narrative (**Exhibit 3**).

In response to criterion 23 above, the applicant has provided a draft set of Covenants, Conditions, and Restrictions (CC&Rs) (**Exhibit 24**) providing for the ownership and maintenance of common open space. All required dedications or reservations, public open spaces, and all rights-of-way will be dedicated on the Plat. Section 17.81.080 (C) is satisfied.

*E. Expiration. If substantial construction or development, as determined by the director, has not taken place within four years from the date of approval of the general plan, the planning commission shall review the planned development permit at a public hearing to determine whether or not its continuation in whole or in part is in the public interest, and if found not to be, shall remove the planned development designation on the subject site.*

**Finding:** This provision will be evaluated in the future if the applicant does not complete substantial construction within the specified timeframe. Section 17.81.080 (E) is satisfied.

#### **Chapter 17.84 SENSITIVE LANDS--FLOODING**

*17.84.030 General provisions. A. This chapter shall apply to all special flood hazard areas (Zones A, AE, AO) within the jurisdiction of the city.*

*B. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled the "Flood Insurance Study for Columbia County, Oregon and Incorporated Areas," effective November 26, 2010, with accompanying Flood Insurance Rate Maps, is adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file at the Planning Department.*

**Finding:** South Scappoose Creek flows through the eastern edge of the property. The floodplain for the creek was defined by FEMA Flood Insurance Rate Maps (FIRMs) 41009C0444D and 41009C482D, effective November 26, 2010. However, the applicant's consultant (West Consultants, Inc.) has previously filed a Letter of Map Revision (LOMR, #21-10-0251P), which was approved by FEMA (Effective April 19, 2021), correcting the Base Flood Elevation on the subject property and others along South Scappoose Creek to reflect current conditions. The LOMR approval (**Exhibit 8**) is now the official record of the Special Flood Hazard Area.

Based on this LOMR, the Phase 1 lots are outside the Special Flood Hazard Area while the Phase 2 lots are inside the Special Flood Hazard Area. The applicant proposes floodplain modifications which would remove the Phase 2 lots from the Special Flood Hazard Area. These modifications have been conditionally



approved by FEMA in Conditional Letter of Map Revision (CLOMR) #22-10-362R dated June 17, 2022. The recommended Conditions of Approval require the applicant to obtain LOMR approval prior to obtaining building permits for lots within Phase 2. Sections 17.84.030(A) and (B) are satisfied.

*C. All new construction and substantial improvements shall be constructed with materials and utilize equipment resistant to flood damage.*

*D. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.*

**Finding:** For the purposes of this chapter, 'new construction' only refers to buildings and not to site improvements. The Phase 1 lots (Lots 1 to 18) are outside the currently designated Special Flood Hazard Area and thus are not subject to this provision. The Phase 2 lots (Lots 19 to 48) are proposed to be outside the future Special Flood Hazard Area, at which time they would no longer be subject to this provision. FEMA has approved the applicant's CLOMR, which indicates that if the project is built as proposed it would meet minimum National Flood Insurance Program standards. **Exhibit 4.B** shows that the proposed houses would all be outside the modified floodplain, if built in accordance with the approved CLOMR. Following site construction, the applicant will formalize the floodplain alterations with a LOMR. The recommended Conditions of Approval require the applicant to obtain LOMR approval prior to obtaining building permits for lots within Phase 2. The site has no existing structures on which substantial improvements could be completed. Sections 17.84.030(C) and (D) are satisfied.

*E. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.*

**Finding:** The grading design of the site is such that all electrical, heating, ventilation, plumbing and air condition equipment will be elevated to prevent water from entering or accumulating during a 100-year flood event. Additionally, the recommended conditions of approval require the applicant to elevate the equipment to at least one foot above base flood elevation. The Phase 1 lots (Lots 1 to 18) are outside the currently designated Special Flood Hazard Area and thus are not subject to this provision. If built per the approved CLOMR, the Phase 2 lots (Lots 19 to 48) are proposed to be outside the future Special Flood Hazard Area, at which time they would no longer be subject to this provision. The Conditions of Approval require the applicant to obtain LOMR approval prior to obtaining building permits for lots within Phase 2. Section 17.84.030(E) is satisfied.

*F. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system in accordance with the state of Oregon Building Codes and Plumbing Code.*

**Finding:** All water supply systems will be designed to eliminate infiltration of floodwaters and designs will follow Oregon Building Codes and Plumbing Code and the Public Works Design Standards. Section 17.84.030(F) is satisfied.

*G. All new construction, all manufactured homes and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure.*

**Finding:** If site grading is performed according to the Conditional Letter of Map Revision (CLOMR), the new homes would be located outside of the floodplain and therefore anchoring is not required per this provision. Section 17.84.030(G) is not applicable.

*H. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.*

**Finding:** Sanitary systems proposed for construction will be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters. The applicant's narrative (**Exhibit 3**) indicates that all manholes in the floodplain will be constructed with a water-tight frame and cover and underground piping will be fused to eliminate joints, as will be verified during public works permitting and construction inspection. The recommended conditions of approval require the applicant to utilize watertight joints and manholes for all utilities placed within the floodplain. Section 17.84.030(H) is satisfied.

#### *17.84.040 Permitted Uses.*

*B. The following uses shall be permitted in special flood hazard areas and shall require a development permit under this Chapter in addition to any applicable federal, state or county permits:*

- 1. Residential zones: A single-family detached dwelling or a single-family manufactured home and their accessory uses on lots greater than 20,000 square feet where a structure is to be placed within an area regulated by this Chapter;*
- 2. Commercial and Industrial zones: Permitted uses of the underlying zone and their accessory uses on lots greater than 20,000 square feet where a structure is to be placed within an area regulated by this Chapter;*
- 3. Installation, reconstruction or improvement of underground utilities or roadway improvements including sidewalks, curbs, streetlights and driveway aprons;*
- 4. Minimal ground disturbance(s) but no landform alterations;*
- 5. Substantial improvements to existing structures;*
- 6. Community recreation uses such as bicycle and pedestrian paths or athletic fields or parks;*
- 7. Public and private conservation areas for water, soil, open space, forest and wildlife resources; and*
- 8. Public works projects.*

**Finding:** The application seeks to alter the existing floodplain in concert with permitted uses in the Scappoose Development Code. If the site is developed in accordance with the approved CLOMR, no homes will be constructed within the proposed Special Flood Hazard Area. However, on an interim basis until FEMA approves the LOMR following site construction, the Phase 2 lots (Lots 19 to 48) are currently in the mapped special flood hazard area and thus would be substandard size to meet the 20,000 square foot minimum. The recommended Conditions of Approval require the applicant to obtain LOMR approval prior to applying for Phase 2 plat approval and prior to issuance of building permits for lots within Phase 2. The site is not located within a commercial or industrial zone. Work within the floodplain areas fall under categories 3, 4, 6, and 7. This includes roadway and utility improvements along JP West Road and Eggleston Lane, grading, retaining walls, plantings within the riparian corridor, construction of a public pathway in Tract D, and preservation of open space. Section 17.84.040 is satisfied.

#### *17.84.140 Standards.*

*In Zone A, Zone AE, and Zone AO, the following standards are required:*

*A. Anchoring.*

- 1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure.*
- 2. All manufactured homes shall likewise be anchored to prevent flotation, collapse and lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).*

*B. Construction Materials and Methods.*

- 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.*
- 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.*
- 3. Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during condition of flooding.*

**Finding:** If the site is developed in accordance with the approved CLOMR, the proposed balanced cuts/fills for this development ensure that none of the developable portions of any of the 48 lots will be within Zone A, Zone AE, or Zone AO following issuance of the final LOMR after site construction is complete. See **Exhibits 4.C, 7, and 9**. No manufactured homes are proposed.

The applicant's narrative (**Exhibit 3**) indicates that all new construction and site improvements are designed to be constructed using methods and practices that minimize flood damage. Even though the houses would be outside the Special Flood Hazard Area, all new homes will be designed and constructed with materials and utility equipment resistant to flood damage, with the habitable floor area elevated at least 2 feet above the base flood elevation. All electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities are designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during condition of flooding. The recommended conditions of approval require that the electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be elevated at least 1 foot above the base flood elevation (BFE). Section 17.84.140(A-B) is satisfied.

*C. Utilities.*

- 1. All new and replacement water supply systems shall be designed to eliminate infiltration of floodwaters into the system.*
- 2. New and replacement sanitary sewerage systems shall be designed to eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.*
- 3. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding, consistent with Oregon Department of Environmental Quality standards.*

**Finding:** All water and sanitary systems are designed in a manner to eliminate infiltration or discharge, as will be verified during permit review. The primary lines are located underground outside of the floodplain however where potentially impacted by floodwaters, all city standards will be met. Staff recommends a condition of approval requiring all utilities placed within the floodplain (sanitary and water systems) to be constructed with watertight joints and manholes. There are no proposed waste disposal systems (septic systems) proposed as part of this development. Section 17.84.140(C) is satisfied.

*D. Subdivision Proposals.*

- 1. All subdivision proposals shall be consistent with the need to minimize flood damage.*
- 2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.*
- 3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.*
- 4. Where base flood elevation data has not been provided or is not available from another authoritative source, the applicant shall provide such information.*

**Finding:** The proposed development is designed so that all lots are located outside of the proposed Special Flood Hazard Area (per FEMA's approved CLOMR, **Exhibit 9**), thus minimizing flood damage.

At the entrance of the site, JP West Road's cross section is proposed to be built to have a cross slope of 1.5%, within the vicinity of the Eggleston Road intersection, instead of the 2.5% standard cross slope. Portions of JP West Road along the frontage of the site are under jurisdiction of Columbia County; however, the Columbia County Public Works Department submitted a comment (**Exhibit 37**) which stated that the applicant must meet all City of Scappoose standards for street improvements, right of way dedication and stormwater/drainage improvements, so the applicant will coordinate with City staff during final design and permitting for the improvements to JP West Road. The proposed profile keeps the grade of Eggleston Lane higher in elevation to reduce the flooding depths expected in the roadway. During the 100-year event (1% chance annually), the floodwaters would span Eggleston Lane for roughly 20 feet of its length near the site's entrance, as shown on the Street Plan (**Exhibit 4.G**). The maximum water depth expected at the centerline is 2 inches, but the applicant's narrative (**Exhibit 3**) states the west side of Eggleston will have less water depth than at centerline and the curb on the west side will remain visible. A cross section for the shed section of Eggleston Road is included as **Exhibit 4.H**.

Utilities located underground will be constructed with fused piping and all manholes in the floodplain will be constructed with a water-tight frame and cover. A stormwater system including treatment and detention is required to minimize exposure to flood damage (**Exhibit 4.K**). Base flood elevation data is available to this site via Letter Of Map Revision 21-10-0251P. The applicant's consultants prepared a hydraulic analysis for the proposed grading within the 100-year floodplain and FEMA approved a CLOMR, included as **Exhibit 9**. Subsequent to development in line with the issued CLOMR, the applicant is required to apply for a LOMR after the construction of site improvements (roads and utilities) is complete. Section 17.84.140(D) is satisfied.

*E. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one foot or more above base flood elevation. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a registered professional engineer or shall meet or exceed the following minimum criteria:*

- 1. A minimum of two openings with a net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;*
- 2. The bottom of all openings shall be no higher than one foot above grade;*
- 3. Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters; and*

*4. Screening, fencing or otherwise obstructing open areas between pillars on pile or pillar foundations shall be prohibited.*

**Finding:** Phase 1 lots are outside of the existing Special Flood Hazard Area, so they are not subject to this standard. The proposed development is designed so that all lots and utilities are located outside of the proposed Special Flood Hazard Area (per the approved CLOMR in **Exhibit 9**). The applicant's narrative (**Exhibit 3**) indicates that the lowest floor of each residence would be 2 feet above the base flood elevation. Eggleston Lane is mostly located outside of the floodplain, but for a small area of the roadway south of the JP West Road/ Eggleston Lane intersection, as shown on **Exhibit 4.C** and discussed above in Subsection D. Once site grading and utility infrastructure is complete, all lots will be located outside of the floodplain, at which time the applicant will apply for a LOMR. Once the LOMR is issued, the applicant can proceed with construction of units on the Phase 2 lots (Lots 19-48) as they will then be outside the regulated Special Flood Hazard Area. Therefore, these criteria are met. Section 17.84.140(E) is satisfied.

*17.84.170 Regulations pertaining to fill.*

*A. No filling operations of any kind shall be allowed in the floodway.*

*B. No fill in floodway fringe areas shall be allowed unless the net effect of excavation and filling operations (onsite) constitutes no positive change in fill volume, as certified by a registered professional engineer.*

*C. Fill shall be allowed under city fill permit procedures in shaded Zone X and shall not be regulated by this Chapter.*

*D. No structure shall be built nor any excavation grading, nor filling shall be done within the one-hundred-year flood plain without first meeting the requirements of this chapter regulating construction, alteration, repair and moving of buildings.*

**Finding:** There is no fill proposed within the floodway. A Balanced Cut/Fill Analysis (**Exhibit 7**) has been provided demonstrating that the net effect of excavation and filling operations (onsite) constitutes no positive change in fill volume, as certified by the applicant's Project Engineer, who is a registered professional engineer. The result of the grading plan is a net cut of 9 cubic yards (an increase in flood storage capacity by 9 cubic yards). See **Exhibit 7**.

No structure is proposed to be altered, repaired or moved. Any existing structures on site will be removed with construction of the project improvements. Section 17.84.170 is satisfied.

*17.84.180 Floodways.*

*A. Floodways are established in special flood hazard areas (SFHA) to transport the waters of a one hundred-year flood out of the community as quickly as possible. Encroachments on the floodway generally produce a rise in base flood elevations and contribute to other hydraulic problems. Accordingly, the city prohibits encroachments, including fill, new construction, parking, substantial improvements, and other development unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.*

*B. If subsection A above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this chapter.*

**Finding:** The project includes minor grading of small areas of the floodway resulting in a cut and no fill (**Exhibit 4.F**). This work does not include fill, new construction, parking or substantial improvements. The applicant submitted a CLOMR-F application to FEMA, which was approved on June 17, 2022. This CLOMR-F application included detailed hydrologic and hydraulic analysis (**Exhibit 10**) performed in accordance with standard engineering practice by a professional civil engineer. The analysis demonstrated that the result of the grading will not result in any increase in flood levels during the occurrence of the base flood discharge. The subdivision project proposes minor cuts and fills within the 100-year floodplain resulting in a net cut of 9 cubic yards less material in the floodplain (an increase in flood storage capacity by 9 cubic yards). Section 17.84.180 is satisfied.

*17.84.200 Special regulations for development in the Scappoose Creek floodway fringe (Zones A, AE, and AO).*

*A. Proposed development or substantial improvement in the Scappoose Creek floodway fringe shall conform with applicable general and specific standards in Section 17.84.140, and special standards in Zone AO (Sections 17.84.190 and 17.84.200).*

**Finding:** Grading within the floodway fringe is proposed as shown on **Exhibit 4.F**. The applicant has enclosed an application for a Sensitive Lands Development Permit for the proposed development and provided supporting evidence as discussed in applicable sections. Section 17.84.200 is satisfied.

#### **Chapter 17.85 SENSITIVE LANDS--WETLANDS**

*17.85.030 Applicability of provisions. The sensitive lands - wetlands overlay shall apply to the wetlands as shown on the Scappoose Local Wetlands Inventory dated December 1998 and adopted within the city comprehensive plan, and/or within the most current version of the National Wetland Inventory and within a twenty-five-foot wetland buffer except as follows: where any portion of a significant wetland is included within a riparian corridor per Section 17.89.030(A), the standard distance (fifty feet) to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.*

**Finding:** The Local Wetlands Inventory map (**Exhibit 12**) identifies wetlands on site. The Environmental Assessment (**Exhibit 11**) prepared for this development by the applicant's consultant (ES&A) identified 4 wetlands on the property.

- Wetland "A" is a small, isolated area in the northwest portion of the site. Wetland A is set aside in Tract B.
- Wetland "B" is a small are on the western boundary about mid-point north to south. This wetland is set aside in Tract F.
- Wetlands "C" & "D" are associated with adjacent stream "A" along the southwestern portion of the site and Scappoose Creek along the eastern boundary. These two stream related wetlands are located within Tract E.

Additionally, a prior wetland delineation (**Exhibit 15**) identified 2 additional wetlands on the property.

- Wetland 1 is located in the northeastern area of the site serving as a "side channel" created through the Scappoose Bay Watershed Council project.
- Wetland 2 is a larger wetland in the southeastern area of the site.

In sum, there is a total of 6 wetlands identified on the property. Isolated wetlands are subject to a 25-foot wetland buffer while wetlands included within a riparian corridor are subject to a 50-foot buffer, as measured from the upland edge of the wetland. The applicant's plans reflect these required buffer widths (see **Exhibit 4.C**). Activities within these wetlands and buffers are subject to City review as part of the application. The applicant has requested a Sensitive Lands Development Permit to authorize wetland buffer impacts and temporary wetland impacts to Wetland A in Tract B, to connect to the sanitary sewer system. Section 17.85.030 is satisfied.

*17.85.040 Activities within a sensitive lands - wetlands overlay.*

*A. The following uses are outright permitted uses within wetland areas, and do not require a sensitive lands development permit - wetlands overlay:*

- 1. Public and private conservation areas for water, soil, open space, forest and wildlife resources;*
- 2. Removal of non-native vegetation including poison oak, tansy ragwort, blackberry or other noxious vegetation; and*
- 3. Maintenance or repair of existing structures or improvements (including asphalt or concrete drives) that do not involve a change in size, use or function.*

**Finding:** The applicant's narrative (**Exhibit 3**) states that the open space tracts protecting wetlands (Tracts B, D, E, and F) will have conservation easements over their entirety, as permitted by this section. Section 17.85.040(A) is satisfied.

*B. The alteration of a significant wetland by grading, excavation, placement of fill, or vegetation removal subject to review under Section 17.85.090. Any proposed alteration outside of a significant wetland but within a wetland buffer requires a sensitive lands development permit - wetlands overlay. An alteration is a change in the topography or vegetation of a wetland area, as regulated by this section, which may affect the functions and values of such features and are subject to the permit procedure and standards of this chapter. An alteration includes the following activities:*

- 1. Dredging, filling, excavation or the placement of riprap or a mooring with rock, trees, wood, etc.;*
- 2. The clearing of any native riparian or wetland vegetation with the wetland area, or the removal of any native tree within the wetland area which has a diameter of six inches or greater at four feet above grade;*
- 3. Streets, including bridges, when part of an approved future street plan, subdivision plan construction, improvement or alteration or city transportation system plan, including the installation of underground utilities and construction of roadway improvements including, but not limited to, sidewalks, curbs, streetlights, and driveway aprons;*
- 4. Utilities such as water, stormwater, and sanitary sewer lines;*
- 5. Bicycle pedestrian paths;*
- 6. Parks and recreational facilities;*
- 7. Driveways or pedestrian paths where necessary to afford access between portions of private property that may be bisected by a wetland area and/or buffer;*
- 8. Water detention, filtration facilities and erosion control improvements such as detention ponds, bio-filtration swales or ponds, or bank stabilization measures;*
- 9. Viewing platforms, boardwalks, and other improvements associated with the provision of public access for observation of natural areas/wetland areas; and,*
- 10. Other development proposals determined by the planner as requiring a sensitive lands development permit - wetlands overlay.*



*C. Landform alterations or developments other than partitioning and subdividing that are within twenty-five feet of wetland areas that are not identified as "Local Wetlands," and that meet the jurisdictional requirements and permit criteria of the U.S. Army Corps of Engineers and the Division of State Lands, do not require a local sensitive lands development permit - wetlands overlay. However, no building permit will be issued for such activity unless all pertinent state and federal requirements are met, which the planner shall verify.*

**Finding:** The applicant commissioned an assessment of the site to examine the condition and extent of wetlands. The Oregon Department of State Lands (DSL) approved two wetland delineations, both of which are included as **Exhibit 15**. DSL noted that the southwestern portion of the site was outside the wetland delineation limits, so the recommended conditions of approval specify that no ground disturbance is permitted in the un-delineated area. The proposed sanitary sewer reconstruction in Tract B will result in a temporary impact to Wetland A and to its buffer to accommodate connection to an existing manhole (**Exhibit 4.L**). The DSL comments (**Exhibit 36**) indicate that wetland activities over certain thresholds (50 cubic yards in most instances; zero cubic yards in Essential Salmond Habitat) requires a state wetland removal-fill permit and that wetland permits may also be required from the U.S. Army Corps of Engineers. The recommended Conditions of Approval require demonstration of obtaining any applicable permits from outside agencies (e.g., the U.S. Army Corps of Engineers and the Oregon Department of State Lands). The recommended conditions of approval also require the applicant to submit a No State Permit required letter from DSL if no permit is required for the proposed project.

Additionally, the conditions of approval require restoration of Wetland A and its buffer by replanting with native vegetation following construction. Minor grading is proposed within the 50-foot buffer associated with wetlands within the riparian corridor (**Exhibit 4.F**). The applicant's narrative (**Exhibit 3**) indicates that the open space tracts protecting wetlands (Tracts B, D, E, and F) are proposed to include specific activities such as pedestrian, bicycle pathways and pathway construction, utilities and utility construction, wetland and resource mitigation and enhancement, and floodplain management activities. The applicant has requested a Sensitive Lands Development Permit to authorize these wetland and wetland buffer impacts. Sections 17.85.040(B) and (C) are satisfied.

*17.85.050 Wetlands area density adjustment. In order to provide incentive for siting and re-siting residential dwelling units to avoid wetland areas and buffers, any partition, subdivision, or site development review application involving land that is subject to the wetlands overlay may be paired with a sensitive lands development permit - wetlands overlay application in such a manner as to provide for the development of allowed housing types to the net density that would have existed for the base zone without the restrictions provided by the twenty-five-foot wetland buffer. However, said development shall only qualify for such a density bonus if any structures existing previous to the adoption of the wetlands overlay are relocated outside of the wetland buffer area.*

**Finding:** The applicant is not seeking a wetlands area density adjustment under this provision. Section 17.85.050 does not apply.

*17.85.090 Review standards.*

*A. Grading, excavation, placement of fill and vegetation removal within a significant wetland shall only be permitted if the proposed alteration meets the following conditions:*

- 1. The alteration is necessary to allow use of, or access to, a lot or parcel that was in existence on the date this chapter was adopted; and*
- 2. The proposed alteration is the minimum necessary to provide for the proposed use or access.*

**Finding:** No grading, excavation, placement of fill or permanent vegetation removal is proposed within Wetlands B, C, D, 1, or 2. There is an existing sanitary sewer line along the western edge of the development which is near the end of its lifespan and needs to be replaced. The proposed sanitary sewer reconstruction in Tract B will result in temporary impact to Wetland A and to its buffer to accommodate connection to an existing manhole (**Exhibit 4.L**). The impacts associated with excavation and utility connection will be temporary and limited to those activities necessary to connect a pipe to an existing manhole. Section 17.85.090(A) is satisfied.

*B. The following criteria shall be included in review of any application to which the sensitive lands - wetlands overlay is applicable:*

*1. Activities within a wetland are subject to the permit requirements of the Oregon Division of State Lands (DSL) and the U.S. Army Corps of Engineers. No building permit will be issued for development projects within the wetlands overlay unless all pertinent state and federal requirements are met. DSL and, as necessary, the U.S. Army Corps of Engineers will be notified of any regulated development proposed in a wetland area;*

**Finding:** The recommended Conditions of Approval require the applicant to provide evidence of issuance of all applicable permits from County, State, and Federal agencies prior to commencing site clearing or development activities. This includes any permits from the U.S. Army Corps of Engineers and the Oregon Department of State Lands prior to any wetland alterations that are regulated by those agencies. The recommended conditions of approval also require the applicant to submit a No State Permit required letter from DSL if no permit is required for the proposed project. Section 17.85.090(B,1) is satisfied.

*2. Properties that contain wetland areas shall have a wetland determination approved by DSL staff before any development permit is issued. If in making this determination DSL staff indicate that a "jurisdictional delineation" study of the boundary is necessary, the study shall be completed by the applicant and approved by DSL staff before any building permits are issued, including grading permits;*

**Finding:** Environmental Science and Assessment, LLC performed two wetland delineations which identified 6 wetlands on site. DSL concurred with the wetland delineations (**Exhibit 15**). Section 17.85.090(B)(2) is satisfied.

*3. A wetland buffer area shall be established between a wetland and a proposed development as condition of development permit approval to achieve the maintenance of vegetative cover and the water quality characteristics of the area;*

**Finding:** Wetlands buffer areas have been provided (as shown on **Exhibit 4.C**) within the design of the project. Some areas within the wetland buffers will be replanted to achieve maintenance of vegetative cover and the water quality characteristics of the area. Other vegetated buffer areas will remain intact for the same purpose. The recommended Conditions of Approval require the necessary buffers to maintain the function and values of wetlands. Section 17.85.040(B)(3) is satisfied.

*4. The city will not approve a partition or subdivision in a wetland area that proposes to create a lot that would not have the ability to obtain a building permit without variance approval;*

**Finding:** The proposed subdivision has been designed so that all lots are outside of the identified wetlands and thereby are buildable without variance approval. Section 17.85.040(B)(4) is satisfied.

*5. Construction sites adjacent to wetlands shall be required to install erosion/sedimentation control devices between the land area to be disturbed and the wetland. All such devices shall conform to the requirements found within the city public works design standards;*

**Finding:** The Preliminary Grading and Erosion Control Plan (**Exhibit 4.F**) includes proposed erosion/sedimentation control fencing. The conditions of approval require the applicant to follow the recommendations of the geotechnical report and to implement erosion control measures as required by the Public Works Design Standards. Section 17.85.040(B)(5) is satisfied.

*6. Developments adjacent to wetlands which have significant impervious surface areas will be required to have stormwater detention and filtration facilities as part of their approved design. The design of such facilities shall conform to the requirements found within the city public works design standards; and*

**Finding:** The applicant has submitted a preliminary stormwater report (**Exhibit 20**) describing the proposed stormwater management strategies, including detention and water quality treatment. Consistency with the Public Works Design Standards (including any alternate materials or methods as authorized under sections 1.0010 and 1.0050) will be confirmed during permitting. Section 17.85.040(B)(6) is satisfied.

*7. All proposed alterations are subject to consultation with ODFW and others potentially affected by the alteration. Agency recommendations to mitigate for the loss of wetland values and functions may be made conditions of approval of a proposed use.*

**Finding:** There is a wetland impact proposed in order to connect to the existing sanitary sewer line located within Wetland A. This is a temporary impact of 215 square feet and the recommended Conditions of Approval require the disturbed area to be replanted with appropriate native species. The applicant's consultant coordinated with ODFW (**Exhibit 14**). ODFW has also been provided notice of this application by the City of Scappoose and submitted comments attached as **Exhibit 34**. Staff has recommended conditions of approval based on ODFW comments as further detailed in the response to 17.89.090. Section 17.85.040(B)(7) is satisfied.

#### Chapter 17.86 SENSITIVE LANDS--SLOPE HAZARD

##### 17.86.020 Applicability of uses.

*A. Except as provided by this section, the following uses are permitted uses:*

- 1. Accessory uses such as lawns, gardens or play areas, except in wetlands;*
- 2. Agricultural uses conducted without locating a structure or altering landforms;*
- 3. Public and private conservation areas for water, soil, open space, forest and wildlife resources;*
- 4. Removal of poison oak, tansy ragwort, blackberry or other noxious vegetation;*
- 5. Fences.*

**Finding:** The applicant's narrative (**Exhibit 3**) confirms that lawns and gardens are likely to be located within slope hazard areas. Some wetland and buffer areas are also proposed to remain in these areas and conserved for water, wildlife and open space resources. Removal of noxious vegetation will occur where necessary and fences constructed. These are all permitted uses under this section. Section 17.86.020(A) is satisfied.

*B. Separate permits shall be obtained from the appropriate state, county or city jurisdiction for the following:*

- 1. Installation of underground utilities and construction of roadway improvements including sidewalks, curbs, streetlights and driveway aprons;*
- 2. Minimal ground disturbance(s) but no landform alterations.*

**Finding:** The applicant has or will obtain the necessary permits from the appropriate state, county or city jurisdictions for all proposed site improvements, consistent with these criteria. Based on the location of the slope hazard areas, the City is anticipated to be the only permitting authority. The conditions of approval require the applicant to provide evidence of issuance of all applicable permits from County, State, and Federal agencies prior to commencing site clearing or development activities. Section 17.86.020(B) is satisfied.

*C. For the purpose of this chapter, "slope hazard areas" means those areas subject to a severe risk of landslide or erosion. They include any of the following areas:*

- 1. Any area containing slopes greater than or equal to fifteen percent and two of the following subsections;*
  - a. Impermeable soils (typically silt and clay) frequently interbedded with granular soils (predominately sand and gravel),*
  - b. Any area located on areas containing soils which, according to the current version of the soil survey of Columbia County, Oregon may experience severe to very severe erosion hazard,*
  - c. Any area located on areas containing soils which, according to the current version of the soil survey of Columbia County, Oregon are poorly drained or subject to rapid runoff*
- 2. Any area potentially unstable as a result of natural drainageways, rapid stream incision, or stream bank erosion;*
- 3. Any area located on an alluvial fan, presently subject to or potentially subject to inundation by debris flows or deposition of stream transported sediments;*
- 4. Any area containing slopes greater than or equal to twenty percent.*

**Finding:** As indicated on page 6 of the geotechnical report (**Exhibit 16**) and slope analysis (**Exhibit 5**), the geotechnical engineer found that slope hazard areas as defined by this section are present. Section 17.86.020(C) is satisfied.

*D. Landform alterations or developments within slope hazard areas that meet the jurisdictional requirements and permit criteria of the U. S. Army Corps of Engineers, Division of State Lands, and/or other federal, state or regional agencies do not require duplicate analysis or local permits. The city may require additional information not addressed above. When any provision of any other chapter of this title conflicts with this chapter, the regulations that provides more protection to the sensitive areas shall apply unless specifically provided otherwise in this chapter; provided, such exceptions shall not conflict with any federal, state or local regulation.*

**Finding:** The Existing Conditions Plan (**Exhibit 4.E**) shows the various slopes throughout the site. In addition, a slope analysis (**Exhibit 5**) has been included within the submittal. Most of the proposed uses where construction activity is occurring on steep slopes is outside the purview of Corps or DSL or federal, state or regional agencies and thus require a local Sensitive Lands Development Permit, as requested by the applicant. The recommended conditions of approval require the applicant to provide evidence of issuance of all applicable permits from County, State, and Federal agencies prior to commencing site clearing or development activities. Section 17.86.020(D) is satisfied.

*E. A development permit shall be obtained before construction or development begins within any area of slope hazard as identified in subsection C of this section. The permit shall apply to all structures including manufactured homes.*

**Finding:** The applicant is seeking approval of a Sensitive Lands Development Permit for activities (grading, installation of water main, etc.) within the slope hazard area. All required development permits will be obtained prior to development on the site including areas of slope hazard. The conditions of approval require site-specific geotechnical investigation and recommendations for several lots with steeper existing grades. Section 17.86.020(E) is satisfied.

*F. Except as explicitly authorized by other provisions of this chapter, all other uses are prohibited on steep slope areas.*

**Finding:** Per the findings within D and E above, the proposed uses are permitted uses and are subject to the applicable federal, state, regional or local permit requirements. The applicant has not sought authorization for prohibited uses. Section 17.86.020(F) is satisfied.

*G. A use established prior to the adoption of this title, which would be prohibited by this chapter or which would be subject to the limitations and controls imposed by this chapter, shall be considered a nonconforming use. Nonconforming uses shall be subject to the provisions of Chapter 17.132.*

**Finding:** No existing uses of the property will remain after approval and construction of the proposed development. Section 17.84.020(G) is satisfied.

*H. The planner shall determine if a slope hazard applies based upon one or any combination described in subsection C of this section.*

**Finding:** The slope hazard provisions are applicable as noted. Section 17.84.020(H) is satisfied.

*17.86.050 General provisions for slope areas.*

*A. Slope hazard regulations apply to those areas meeting the federal, state or local definition of "slope hazard" as identified in Section 17.86.020(C) and areas of land adjacent to and within one hundred feet of areas identified as slope hazards.*

*B. Slope locations may include but are not limited to those areas identified as slope hazards in the Scappoose comprehensive plan.*

*C. Precise boundaries may vary from those shown on maps; specific delineation of slope hazards boundaries may be necessary. Slope hazard delineation will be done by qualified professionals at the applicant's expense.*

**Finding:** The application includes a slope analysis plan (**Exhibit 5**) along with a geotechnical report (**Exhibit 16**) defining areas which may be considered slope hazards. Section 17.86.050 is satisfied.

*17.86.070 Approval standards.*

*A. The planner or the planning commission may approve or approve with conditions or deny an application request within the slope area based upon following findings:*

*1. Land form alterations shall preserve or enhance slope stability;*

**Finding:** As noted in the Geotechnical Report (**Exhibit 16**), the engineer has made recommendations to ensure slope stability from initial site preparation to completion of all house construction. The report notes that "The proposed development is geotechnically feasible, provided that the recommendations of this report are incorporated into the design and construction phases of the project." The recommended conditions of approval require the applicant to follow the recommendations of the geotechnical report. Section 17.86.070(A)(1) is satisfied.

*2. The proposed landform alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;*

**Finding:** The geotechnical report (**Exhibit 16**) notes that "The proposed development is geotechnically feasible, provided that the recommendations of this report are incorporated into the design and construction phases of the project." The applicant has provided a preliminary grading and erosion control plan (**Exhibit 4.F**) demonstrating feasibility of minimizing erosion to avoid adverse impacts. By following the recommendations from the geotechnical engineer, the development will minimize risk of erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property. The recommended conditions of approval require the applicant to follow the recommendations of the geotechnical report and to implement erosion control measures as required by the Public Works Design Standards. Section 17.86.070(A)(2) is satisfied.

*3. Landform alterations or developments address stormwater runoff, maintenance of natural drainageways, and reduction of flow intensity by the use of retention areas;*

**Finding:** While the term 'natural drainageway' is not defined in the SDC, staff interprets this term to apply both to South Scappoose Creek and to the unnamed creek in the southern portion of the site, neither of which is proposed to be altered within slope hazard areas. The proposed development addresses stormwater run-off through completion of a public stormwater system that leads to a stormwater facility for both treatment and retention prior to release into the natural drainageway as detailed in the applicant's Preliminary Storm Drainage Report (**Exhibit 20**). The recommended conditions of approval require the applicant to implement stormwater management in conformance with the Public Works Design Standards. Section 17.86.070(A)(3) is satisfied.

*4. The structures are appropriately sited and designed to ensure structural stability and proper drainage of foundation and crawl space areas for development with any of the following soil conditions: wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock;*

**Finding:** Although the Geotechnical Report (**Exhibit 16**) did not identify these specific soil conditions, poorly drained soils and impermeable soils interbedded with granular soils were found. The applicant's geotechnical engineer's recommendation in the report ensures structural stability and proper drainage of foundation and crawl space areas are provided for within the development. The recommended conditions of approval require the applicant to follow the recommendations of the geotechnical report. Section 17.86.070(A)(4) is satisfied.

*5. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 17.100;*

**Finding:** The engineering plans (**Exhibit 4**) and geotechnical report (**Exhibit 16**) both address erosion control measures necessary to prevent erosion. The geotechnical report recommends that areas of exposed soil be seeded with an approved grass seed mixture or hydroseeded with an approved grass seed/mulch fertilizer mixture as indicated in **Exhibit 4.P**. The recommended conditions of approval require the applicant to follow the recommendations of the geotechnical report and to implement erosion control measures as required by the Public Works Design Standards. Section 17.86.070(A)(5) is satisfied.

*6. The water flow capacity of the drainageway is not decreased or the drainageway will be replaced by a public facility of adequate size to accommodate maximum flow;*

**Finding:** No alterations to natural drainageways within slope hazard areas are proposed for alteration with this development as shown in the grading plan (**Exhibit 4.F**). Section 17.86.070(A)(6) is satisfied.

*7. The necessary U.S. Army Corps of Engineers and state of Oregon Land Board, Division of State Lands and Department of Environmental Quality approvals shall be obtained;*

**Finding:** Most of the proposed uses where construction activity is occurring on steep slopes is outside the purview of Corps or DSL or federal, state or regional agencies and thus require a Sensitive Lands Development Permit, as requested by the applicant. The recommended conditions of approval require the applicant to provide evidence of issuance of all applicable permits from County, State, and Federal agencies prior to commencing site clearing or development activities. Section 17.86.070(A)(7) is satisfied.

*8. No development, building, construction or grading permit may be issued on lands in the slope hazard area until the public works director approves:*

*a. An engineering geotechnical study and supporting data demonstrating that the site is stable for the proposed use and development,*

**Finding:** A geotechnical study (**Exhibit 16**) demonstrating with supporting data that the site is stable for the proposed use and development has been included with the application. The report has specific recommendations to ensure stability is maintained. The recommended conditions of approval require the applicant to follow the recommendations of the geotechnical report. Section 17.86.070(A)(8)(a) is satisfied.

*b. The study shall include at a minimum geologic conditions, soil types and nature, soil strength, water table, history of area, slopes, slope stability, erosion, affects of proposed construction, and*



*recommendations. This study shall be completed by a registered geotechnical engineer in the state of Oregon. The plans and specifications shall be based on the study recommendations shall be prepared and signed by a professional civil engineer registered in the state of Oregon,*

**Finding:** The geotechnical report (**Exhibit 16**) includes the requirements of b. above. The recommended conditions of approval require the applicant to follow the recommendations of the geotechnical report. Section 17.86.070(A)(8)(b) is satisfied.

*c. A stabilization program for an identified hazardous condition based on established and proven engineering techniques that ensure protection of public and private property,*

**Finding:** The geotechnical report submitted (**Exhibit 16**) includes identification of hazardous conditions and their locations. Recommendations are included in the report to specifically address the requirement to ensure protection of public and private property. The recommended conditions of approval require the applicant to follow the recommendations of the geotechnical report. Section 17.86.070(A)(8)(c) is satisfied.

*d. A plan showing that the strategically important vegetative cover shall be maintained or established for stability and erosion control purposes,*

**Finding:** The geotechnical report (**Exhibit 16**) lays out a plan regarding vegetation and revegetation for stability and erosion control. All areas of bare soil are to be replanted in accordance with that report. Additionally, other areas as shown on the landscape plan (**Exhibit 4.P**) will receive planting treatments to specifically address other criteria. The recommended conditions of approval require the applicant to follow the recommendations of the geotechnical report and to implement erosion control measures as required by the Public Works Design Standards. Section 17.86.070(A)(8)(d) is satisfied.

*e. A plan showing the proposed stormwater system. Said system will not divert stormwater into slope hazard areas.*

**Finding:** A stormwater system plan (**Exhibit 4.K**) has been submitted and no water is diverted into slope hazard areas (**Exhibit 4.F**). Section 17.86.070(A)(8)(e) is satisfied.

*B. Where landform alterations and/or development are allowed within and adjacent to the one hundred-year floodplain, the requirements of Chapter 17.84 shall be met.*

**Finding:** Compliance with Chapter 17.84 is addressed herein. Section 17.86.070(B) is satisfied.

*C. Where landform alterations and/or development are allowed within and adjacent to wetlands, the requirements of Chapter 17.85 shall be met.*

**Finding:** Compliance with Chapter 17.85 is addressed herein. Section 17.86.070(C) is satisfied.

## **Chapter 17.89 SENSITIVE LANDS--FISH AND RIPARIAN CORRIDOR OVERLAY**

*17.89.030 Applicability of provisions. The sensitive lands - fish and riparian corridor overlay shall apply to the following riparian corridors as shown on the Scappoose Riparian Inventory dated December 1998 and adopted within the city comprehensive plan. The riparian corridor boundary is fifty feet from the top of the bank except as follows:*

*A. Where the riparian corridor includes all or portions of a significant wetland as identified in the Scappoose Riparian Inventory, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland; and*

*B. Except as provided for in subsection A of this section, the measurement of distance to the riparian corridor boundary shall be from the top of bank. The measurement shall be a slope distance. In areas where the top of each bank is not clearly defined, the riparian corridor boundary shall be measured from the ordinary high water level, or the line of nonaquatic vegetation, whichever is most landward.*

**Finding:** The eastern portion of the subject site falls within 50 feet of the top of the bank of South Scappoose Creek. Additionally, there are wetlands associated with the creek as depicted on **Exhibit 4.C**. Therefore, the requirements of Chapter 17.89 apply to the proposed subdivision. Section 17.89.030 is satisfied.

*17.89.040 Activities allowed within the fish and riparian corridor. A. The permanent alteration of the riparian corridor by grading or by the placement of structures or impervious surfaces is prohibited. However, certain activities may be allowed within the fifty-foot fish and riparian corridor boundary, provided that any intrusion into the riparian corridor is minimized, and no other options or locations are feasible. A sensitive lands development permit - fish and riparian corridor overlay is necessary to approve the following activities:*

*1. Streets, roads and paths;*

*2. Drainage facilities, utilities, and irrigation pumps;*

*3. Water-related and water-dependent uses; and*

*4. The expansion of existing, or creation of new bank stabilization and flood control structures, shall be evaluated by the director and appropriate state natural resource agency staff. Such alteration of the riparian corridor shall be approved only if less invasive or nonstructural methods will not adequately meet the stabilization or flood control needs.*

**Finding:** The applicant proposes activities within the fish and riparian corridor, including a proposed compacted gravel public pathway to provide a public amenity, primarily behind Lots 30-37; construction of Eggleston Lane where it connects to JP West Road; grading to ensure adequate drainage between the residential area and the top of bank of Scappoose Creek; and a stormwater outfall near the intersection of Eggleston Lane and JP West Road.

The applicant proposes to plant native species within the riparian corridor, extending west to the edges of the residential area to improve and extend the riparian habitat area as indicated in **Exhibit 4.P**. The end result of these activities should be an improved and larger riparian area. The applicant has consulted Oregon Department of Fish and Wildlife during their design process (**Exhibit 14**). Section 17.89.040(A) is satisfied.

*B. Removal of riparian vegetation is prohibited, except for:*

- 1. Removal of non-native vegetation and replacement with native plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed;*
- 2. Removal of vegetation necessary for the development of approved water-related or water-dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water-dependent or water-related use; and*
- 3. Trees in danger of falling and thereby posing a hazard to life or property may be felled, following consultation and approval from the community development director (director). The director may require these trees, once felled, to be left in place in the riparian corridor.*

**Finding:** The applicant is not seeking authorization under this provision since removal of vegetation is permitted in conjunction with the permitted grading activities allowed under Section 17.89.040.A above. The applicant's narrative (**Exhibit 3**) indicates that areas that were previously planted by Scappoose Bay Watershed Council (SBWC) will have vegetation removed and replanted. Based upon observation, shortly after planting by SBWC, many of the plantings were compromised by siltation from larger storms. The applicant's proposed plantings will repair those areas as well as extend the riparian corridor plantings beyond the 50-foot buffer area. Section 17.89.040(B) is satisfied.

*C. Exceptions. The following activities are not required to meet the standards of this section, and do not require a sensitive lands development permit - fish and riparian corridor overlay:*

- 1. Commercial forest practices regulated by the Oregon Forest Practices Act;*
- 2. Normal and accepted farming practices other than buildings or structures, occurring on land used for farm use and existing in the riparian area since prior to the date of adoption of this chapter;*
- 3. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area;*
- 4. Maintenance, planting, and replanting of existing lawn and landscape areas containing non-native vegetation. However, such areas may not be expanded to further intrude into the riparian corridor;*
- 5. Maintenance of existing bank stabilization and flood control structures; and*
- 6. Maintenance or repair of existing structures or improvements (including asphalt or concrete drives) that do not involve a change in size, use or function.*

**Finding:** None of these activities are proposed. Section 17.89.040(C) is satisfied.

*17.89.050 Fish and riparian corridor density adjustment.*

*A. In order to provide incentive for siting and re-siting residential dwelling units to avoid the fish and riparian corridor, any partition, subdivision, or site development review application involving land subject to the fish and riparian corridor overlay may be paired with a sensitive lands development permit - fish and riparian corridor overlay application in such a manner as to provide for the development of allowed housing types to the net density that would have existed for the base zone without the restrictions provided by the fifty-foot fish and riparian corridor boundary. However, said development shall only qualify for such a density bonus if any structures existing previous to the adoption of the fish and riparian corridor overlay are relocated outside of the fish and riparian corridor overlay area.*

**Finding:** The applicant is not seeking a fish and riparian corridor density adjustment under this provision. Section 17.89.050 does not apply.

17.89.090 Review standards. *The following criteria shall be included in review of any application to which the fish and riparian corridor overlay is applicable:*

*A. In consultation with a representative of the Oregon Department of Fish and Wildlife, the planner shall identify which areas of the site are the most sensitive and susceptible to destruction, and which are the most significant;*

**Finding:** Environmental Science and Assessment coordinated with Monica R. Blanchard of the Oregon Department of Fish and Wildlife (**Exhibit 14**). The Department identified the riparian area, wetlands and South Scappoose Creek as the most sensitive habitats providing the highest quality cover and refuge for native species in the area. ODFW stated “[ODFW] appreciates the efforts to minimize wetland disturbance, add additional riparian vegetation and avoid construction in the stream corridor as proposed by this project.” ODFW has also identified the following information (**Exhibit 34**) regarding other Oregon Sensitive Species present at the development site:

“There are juvenile and adults of multiple Lamprey species present at the site. This area acts as rearing and migration corridor for Pacific Lamprey as well as Western Brook Lamprey (*Lampetra richardsoni*).

There are Cutthroat Trout (*Oncorhynchus clarkii clarkii*) present in this section of South Scappoose Creek as well. This site includes rearing and migration habitat.” Section 17.89.090(A) is satisfied.

*B. After consultation with a representative of the Oregon Department of Fish and Wildlife, the planner shall analyze what the effect of proposed development will have on the fish and wildlife, hydrology, water quality, and riparian functions; determine if there will be a significantly adverse impact on the fish and wildlife resource; and, if the fish and wildlife habitat will be adversely impacted, the planner shall investigate if other development proposals could protect the fish and riparian corridor and still reasonably allow permitted activities;*

*C. The planner may condition the approval of an application to require protection of the habitat, or if the project is unable to mitigate habitat degradation, the planner may deny the application.*

**Finding:** The Oregon Department of Fish and Wildlife provided the following recommendations as part of their agency comment (**Exhibit 34**):

*We recommend every attempt to incorporate permeable building techniques or expansion of water quality facilities be employed to reduce run-off impacts on the stream as well as slow water entering the creek during high water events. We also would recommend planting the entirety of the area between the proposed houses and the creek with native vegetation (not just the 50-foot buffer area) and using a permeable material for the trail through the riparian area. Where possible, we would also like to see the main alignment of the trail placed outside the 50-foot riparian buffer, rather than on the outer edge, with shorter spur trails into this area for creek viewing and access.*

As explained in the applicant’s narrative (**Exhibit 3**), the proposed project protects the most sensitive habitats on the site and enhances the riparian plantings of the area beyond the required 50-foot corridor. The applicant has not proposed permeable paving, but the preliminary stormwater report (**Exhibit 20**) details the applicant’s proposal for stormwater quality treatment and detention, and the recommended conditions of approval require the applicant to implement stormwater management in conformance with the Public Works Design Standards. The applicant has not proposed planting the entirety of the area between the proposed houses and the creek with native vegetation, but the recommended Conditions of Approval require the applicant to plant native species in all disturbed fish and riparian corridor areas and

in additional portions of the riparian buffer. The conditions of approval require that the gravel path utilize uniformly graded stones to ensure that the trail remains permeable.

As shown in **Exhibit 4.G**, the majority of the proposed trail is outside the riparian buffer, while the portion behind Lots 18-24 is at the outer edge of the riparian buffer. Overall, there will be an improvement to increase the riparian plantings that currently exist at this time. The recommended Conditions of Approval require the applicant to plant native species in all disturbed fish and riparian corridor areas. Sections 17.89.090(B) and (C) are satisfied.

#### **Chapter 17.100 LANDSCAPING, SCREENING AND FENCING**

##### 17.100.030 General provisions.

*A. Unless otherwise provided by the lease agreement, the owner, tenant and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping which shall be maintained in good condition so as to present a healthy, neat and orderly appearance and shall be kept free from refuse and debris.*

*B. All plant growth in landscaped areas of developments shall be controlled by pruning, trimming or otherwise so that:*

- 1. Public utilities can be maintained or repaired;*
- 2. Pedestrian or vehicular access is unrestricted;*
- 3. Visual clearance area provisions are met. (See Chapter 12.10, Visual Clearance Areas.)*

**Finding:** Common areas will be owned and maintained by the Homeowners Association in accordance with the proposed Covenants, Conditions and Restrictions (CC&R's, **Exhibit 24**). To present a healthy, neat and orderly appearance, allow utility and pedestrian access, and allow for visual clearance at driveways and intersections, the recommended conditions of approval require the CC&Rs to specify that a homeowner's association will maintain the common areas. According to the narrative (**Exhibit 3**), individual homeowners will be responsible for maintenance within each lot. Sections 17.100.030 (A-B) are satisfied.

*C. Certificates of occupancy shall not be issued unless the landscaping requirements have been met or a bond has been posted with the city to insure the completion of landscaping requirements.*

**Finding:** The recommended conditions of approval require installation of landscaping prior to issuance of occupancy, or posting of a bond. Section 17.100.030(C) is satisfied.

*D. Existing plant materials on a site shall be protected to prevent erosion. Existing plant materials may be used to meet landscaping requirements if no cutting or filling takes place within the dripline of the tree.*

**Finding:** Existing on-site plant materials proposed for retention will be protected to minimize erosion (**Exhibit 4.F**). Existing plant materials are not being utilized to address landscaping requirements. The City will require effective erosion control measures as part of site permitting. Section 17.100.030(D) is satisfied.

##### 17.100.090 Buffering and screening requirements.

- A. *Buffering and screening are required to reduce the impacts on adjacent uses which are of a different type. The owner of each proposed development is responsible for the installation and effective maintenance of buffering and screening. When different uses abut one another, buffering and screening are required. When different uses would be abutting one another except for separation by a right-of-way, buffering, but not screening, shall be required.*

**Finding:** The subject site abuts residential uses on all sides, and also abuts Veterans Park on the north side. The proposed development is a residential use. Therefore, no screening or buffering is required by this section. Section 17.100.090 does not apply.

17.100.110 Fences or walls.

A. *Fences, walls or combinations of earthen berms and fences or walls up to four feet in height may be constructed in required front yards. Rear and side yard fences, or berm/fence combinations behind the required front yard setback may be up to six feet in height without any additional permits. Any proposed fence or fence/berm combination higher than six feet shall require a building permit. Any fence or fence/berm combination greater than eight feet in height shall require planning commission approval in addition to a building permit.*

**Finding:** The Landscaping Plan (**Exhibit 4.P**) shows proposed retaining wall locations and proposed retaining wall/fence locations. There will be some combination retaining wall/fence combinations that approach 10 feet in height, generally where privacy fencing is located on top of a wall. No fencing, walls or combinations of berms and fences or walls are proposed within front yards of the residences as part of this application. Should fencing be installed in the front yards by homeowners, they will be required to comply with this standard. No walls exceeding 4 feet in height in required front yards are permitted. Any fence exceeding 6 feet in height will require building permits. The proposed wall/fence combinations exceeding 8 feet can be approved by the Planning Commission as part of this application (and will also require building permits). Section 17.100.110(A) is satisfied.

B. *The prescribed heights of required fences, walls or landscaping shall be measured from the lowest of the adjoining levels of finished grade.*

C. *Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood or brick, or otherwise acceptable by the planner. Corrugated metal is not considered to be acceptable fencing material. Fences and walls shall be in compliance with other city regulations.*

**Finding:** Fencing and walls proposed are measured from the lowest of the adjoining levels of finish grade. The applicant's narrative (**Exhibit 3**) indicates that fencing types proposed include black vinyl chain link in some open space area boundaries, with wood fencing proposed along lot boundaries. Currently, rockery walls are proposed; however, lock and load walls may also be utilized where appropriate. The fence and wall type details are shown on the landscape plans (**Exhibit 4.P**). Section 17.100.110(B) and (C) is satisfied.

17.100.140 Re-vegetation.

- A. *Upon completion of construction activities, where natural vegetation or topsoil has been removed in areas not affected by the landscaping requirements and that are not to be occupied by structures, such areas are to be replanted as set forth in this section to prevent erosion.*

- B. *Preparation for Re-vegetation. Topsoil removed from the surface is to be stored on or near the sites and protected from erosion while construction activities are underway; and*
  - 1. *Such storage may not be located where it would cause suffocation of root systems of trees intended to be preserved; and*
  - 2. *After completion of such activities, the topsoil is to be restored to exposed cut and fill embankments or building pads to provide a suitable base for seeding and planting.*
- C. *Methods of Re-vegetation.*
  - 1. *Acceptable methods of re-vegetation include hydro-mulching or the planting of rye grass, barley or other seed with equivalent germination rates, and where lawn or turf grass is to be established, lawn grass seed or other appropriate landscape cover is to be sown at not less than four pounds to each one thousand square feet of land area.*
  - 2. *Other re-vegetation methods offering equivalent protection may be approved by the approval authority.*
  - 3. *Plant materials are to be watered at intervals sufficient to ensure survival and growth.*
  - 4. *The use of native plant materials is encouraged to reduce irrigation and maintenance demands.*

**Finding:** All areas where natural vegetation or topsoil has been removed are required to be replanted if they don't contain a structure or hardscape. The use of native materials is emphasized within the landscape plan (**Exhibit 4.P**). The recommended conditions of approval require the applicant to implement erosion control measures as required by the Public Works Design Standards. Section 17.100.140 is satisfied.

## **Chapter 17.104 STREET TREES**

### 17.104.020 Applicability.

- A. *The provisions of this chapter shall apply to all development as defined in Scappoose Municipal Code Chapter 17.26, Definitions, except a building permit to add to or remodel an existing single- family residence.*
- B. *All development shall be required to plant street trees. Street trees shall be defined as trees located on land lying between the property lines on either side of all streets, avenues or public rights-of-way within the city or within easements defined on a recorded plat as street tree easements.*
- C. *All street trees required under this chapter shall be subject to the requirements of Scappoose Municipal Code Chapter 17.140 Public Land Tree Removal.*

**Finding:** This development project proposes street trees. Street tree plantings are shown on the Landscaping Plan (Sheets L1 & L2 of **Exhibit 4.P**). City Sprite Zelkova and Japanese Snowbell street trees are proposed to be planted between approximately 20 to 40 feet apart. The street trees will be planted in conjunction with future development of the roadways within the proposed subdivision. The recommended Conditions of Approval require the applicant to submit a final landscaping plan prior to the start of construction. Section 17.104.020 is satisfied.

### 17.104.040 Standards for street trees.

- A. *Street trees shall be selected from the approved street tree list included as Appendix A of the Scappoose Comprehensive Urban Forestry Plan.*



*B. At the time of planting, street trees shall not be less than ten feet high for deciduous trees and five feet high for evergreen trees.*

**Finding:** The proposed street trees have been selected from the list provided by the City and the trees proposed are deciduous in nature. They will be at least ten feet in height at the time of planting with a minimum caliper of 2 inches as indicated on **Exhibit 4.P. Section 17.104.140(A) and (B)** is satisfied.

*C. Spacing and minimum planting areas for street trees shall be as follows:*

- 1. Street trees under twenty-five feet tall and less than sixteen feet wide at maturity shall be spaced no further than fifteen feet apart in planting areas containing no less than sixteen square feet of porous surface and not less than four feet wide;*
- 2. Street trees under twenty-five feet tall and greater than sixteen feet wide at maturity shall be spaced no further than twenty feet apart in planting areas containing no less than sixteen square feet of porous surface and not less than four feet wide;*
- 3. Street trees between twenty-five feet to forty feet tall and less than twenty-five feet wide at maturity shall be spaced no greater than twenty-five feet apart in planting areas containing no less than twenty-four square feet of porous surface and not less than six feet wide;*
- 4. Street trees between twenty-five feet to forty feet tall and greater than twenty-five feet wide at maturity shall be spaced no greater than thirty feet apart in planting areas containing no less than twenty-four square feet of porous surface and not less than six feet wide;*
- 5. Street trees greater than forty feet tall at maturity shall be spaced no greater than forty feet apart in planting areas containing not less than thirty-six square feet of porous surface and not less than eight feet wide.*

**Finding:** The street trees proposed fall under category #2 above being under twenty-five feet tall and greater than sixteen feet wide at maturity. As shown on the applicant's proposed landscape plan (**Exhibit 4.P**), the proposed spacing does not meet the standards of Section 17.104.140(C) as the tree spacing is too great for trees classified under category #2 above. Accordingly, the recommended conditions of approval require the applicant to provide street trees meeting the spacing and size standards of Chapter 17.104. With the proposed condition of approval, Section 17.104.140(C) is met.

*D. Street trees located under or within ten feet of overhead utility lines shall be less than twenty-five feet tall at maturity.*

**Finding:** Overhead utilities are present along JP West Road. The street trees proposed along this street are shorter than twenty-five feet tall at maturity. Section 17.104.140(D) is satisfied.

*E. Street trees shall be planted in accordance with the requirements of Scappoose Municipal Code Section 13.28.010(C).*

**Finding:** Street trees are required to be planted in accordance with the requirements of Scappoose Municipal Code Section 13.28.020(C). The recommended conditions of approval require the applicant to submit a final street tree planting plan ensuring conformance with Chapter 17.104 of the Scappoose Development Code and to plant the trees in conformance with the requirements in Section 13.28.020(c) of the Scappoose Municipal Code. Section 17.104.140(E) is satisfied.

## **Chapter 17.106 OFF-STREET PARKING AND LOADING REQUIREMENTS**

### **17.106.020 General provisions.**

*A. The dimensions for parking spaces are subject to the requirements in Section 17.106.050, and as follows:*

- 1. Nine feet wide and eighteen feet long for a standard space;*

**Finding:** According to the applicant's narrative (**Exhibit 3**), each new home will have a minimum 20 foot wide and 20 foot-deep driveway, exceeding the minimum dimension for parking spaces. Each home is also anticipated to provide a minimum 20-foot-wide by 20-feet-deep garage. Section 17.106.020(A) is satisfied.

*B. The provision and maintenance of off-street and loading spaces are the continuing obligations of the property owner:*

- 1. No building or other permit shall be issued until plans are presented to the planner to show that property is and will remain available for exclusive use as off-street parking and loading space; and*
- 2. The subsequent use of property for which the building permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this title.*

**Finding:** This is a residential development, so there are no parking lots or structures. All parking will be on each lot in garages and driveways, or on-street, as shown in the Preliminary Street Plan (**Exhibit 4.G**). Section 17.106.140(B) is satisfied.

### *H. Location of Required Parking.*

- 1. Off-street parking spaces for single-family, duplex dwellings and single-family attached dwellings shall be located on the same lot with the dwelling.*

**Finding:** Single car and two-car garages and driveways are proposed on the same lot with the dwelling. Section 17.106.020(H) is satisfied.

### **17.106.030 Minimum off-street parking requirements.**

#### *A. Residential Uses.*

- 1. Single-family residence or duplex: 2 spaces for each dwelling unit.*

**Finding:** A minimum of 2 parking spaces is proposed for each dwelling unit. Garage parking does count towards the required parking spaces. Section 17.106.030 is satisfied.

## **Chapter 17.130 CONDITIONAL USE**

### **17.130.050 Approval standards and conditions.**

*A. The planning commission shall approve, approve with conditions, or deny an application for a conditional use based on findings of fact with respect to each of the following criteria:*

- 1. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;*
- 2. All required public facilities have adequate capacity to serve the proposal;*

3. *The applicable requirements of the zoning district are met;*
4. *The use is compatible with surrounding properties or will be made compatible by imposing conditions.*

**Finding:** The applicant is proposing a Planned Development, which in the R-1 zone is a Conditional Use. As detailed in the applicant's narrative (**Exhibit 3**), this property contains 6 wetlands, two creeks, a 100-year floodplain, plus slopes in excess of 20%. Given the importance of protecting natural features to the greatest degree possible, the characteristics of this site are suitable for a Planned Development that clusters single family homes out of sensitive areas, where feasible. As demonstrated herein and on the Development Plans (**Exhibit 4**), all required public facilities are available and adequate to serve the proposed 48-Lot development. Compliance with the R-1 zoning is addressed herein as are permitted adjustments to those standards through standards within the Planned Development Code Section. The applicant is proposed detached single-family homes, which are compatible with the surrounding neighborhoods. Additionally, the design provides for larger lots along the north and west perimeters to not only demonstrate compatibility by use but also by size (since the existing lots to the west and north are larger). Section 17.130.050(A) is satisfied.

*C. The planning commission may impose conditions on its approval of a conditional use, which it finds are necessary to ensure the use is compatible with other use in the vicinity. These conditions may include, but are not limited to, the following:*

1. *Limiting the hours, days, place and manner of operation;*
2. *Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust;*
3. *Requiring additional setback areas, lot area, or lot depth or width;*
4. *Limiting the building height, size or lot coverage, or location on the site;*
5. *Designating the size, number, location and design of vehicle access points;*
6. *Requiring street right-of-way to be dedicated and the street to be improved;*
7. *Requiring landscaping, screening, drainage and surfacing of parking and loading areas;*
8. *Limiting the number, size, location, height and lighting of signs;*
9. *Limiting or setting standards for the location and intensity of outdoor lighting;*
10. *Requiring berming, screening or landscaping and the establishment of standards for their installation and maintenance;*
11. *Requiring and designating the size, height, location and materials for fences;*
12. *Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas and drainage areas;*
13. *Requiring the dedication of sufficient open land area for a greenway adjoining and within the floodplain when landform alterations and development are allowed within the one hundred-year floodplain.*

**Finding:** The Planning Commission may impose conditions which it finds are necessary to ensure the use is compatible with other uses in the vicinity. Staff recommends the Planning Commission impose conditions as detailed at the end of the staff report.

## **CHAPTER 17.150 - LAND DIVISION: SUBDIVISION**

### **17.150.020. General Provisions.**

*C. When subdividing tracts into large lots, the planning commission shall require that the lots be of such size and shape as to facilitate future re-division in accordance with the requirements of the zoning district and this title.*

**Finding:** The applicant is not proposing large lots that could be further subdivided. Section 17.150.020(C) is satisfied.

*D. Where landfill and/or development is allowed within and adjacent to the one-hundred-year floodplain, the city may require the dedication of sufficient open land area for a greenway adjoining and within the floodplain. This area shall include portions at a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain.*

**Finding:** There is floodplain associated with South Scappoose Creek along the eastern third of the property as described in the approved Letter of Map Revision (**Exhibit 8**). This land is set aside (Tract D) as a park, containing 298,644 square feet. The applicant proposes a compacted gravel trail within the floodplain within a public easement to enhance the circulation system along the creek as an extension of the Scappoose Veteran's Park system. Section 4 and 5 of the Scappoose Parks, Trails and Open Space Plan discusses development of a trail along South Scappoose Creek, so the applicant's proposed trail in Tract D is in line with the Scappoose Parks, Trails and Open Space Plan. In addition, the entire tract will be preserved in a conservation easement with rights given to the City to improve the trail and/or construct a paved pedestrian/bicycle pathway which could ultimately be extended further south. Section 17.150.020(D) is satisfied.

*E. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located to minimize flood damage and constructed according to public works design standards and specifications.*

**Finding:** Proposed public utilities are shown in **Exhibit 4**. This exhibit illustrates the extent of all proposed new water, sanitary, and storm sewer utilities on site. The applicant will be required to construct all utilities to the City's Public Works Design Standards and Specifications to minimize flood damage. Section 17.150.020(E) is satisfied.

*F. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.*

**Finding:** **Exhibit 4.F** shows the applicant's proposed preliminary grading plan and **Exhibits 4.I, 4.J, and 4.K** show the proposed stormwater facilities on site. A preliminary stormwater report is included as **Exhibit 20**. As there is no public stormwater system adjacent to the site, the applicant proposes to collect stormwater runoff from the project and direct it through stormwater facilities before being discharged. The Infiltration Report (**Exhibit 19**) includes infiltration test results per the Public Works Design Standards. A final stormwater report will be required prior to approval of subdivision construction plans. Section 17.150.020(F) is satisfied.

*G. Where base flood elevation has not been provided or is not available from another authoritative source, it shall be generated by the developer.*

**Finding:** The base flood elevation has been provided, based on FEMA approved LOMR (**Exhibit 8**), as discussed herein.

*H. All subdivision proposals shall include neighborhood circulation plans that conceptualize future street plans and lot patterns to parcels within five hundred feet of the subject site. Circulation plans address future vehicular/bicycle/pedestrian transportation systems including bike lanes, sidewalks, bicycle/pedestrian paths, and destination points. A circulation plan is conceptual in that its adoption does not establish a precise alignment.*

**Finding:** The neighborhood circulation plan submitted by the applicant is attached as **Exhibit 4.O**. The plan demonstrates that the site can be developed in a logical pattern that takes into account existing and future development on neighboring properties and constraints imposed by South Scappoose Creek to the east and steeper slopes to the west. Construction of this roadway system beyond the site boundaries is dependent upon development of parcels to the south. This alignment roughly corresponds to the proposed street connection identified in Figure 15 (Conceptual Local Street Connections) in the City's 2016 TSP. The applicant proposes a Local Street instead of a Neighborhood Route. The planner and public works director have reviewed the proposal for a Local Road instead of a Neighborhood Route and accept the applicant's modification request pursuant to Section 17.154.020(C) to minimize floodplain, riparian, and wetland impacts.

The precise location and design of the off-site streets will be determined once future development proposals are evaluated, but the conceptual plan demonstrates that the site and properties to the south can be efficiently served with transportation to provide smooth connections between land uses. Section 17.150.020(H) is satisfied.

*17.150.050 Phased development.*

*A. The planning commission may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period for any phase be greater than two years without submitting a final plat for each completed phase. In no case will the total time for construction of the development exceed seven years. The planning commission may require a new application for a tentative plan for subsequent phases following the final plat approval.*

*B. The following criteria shall be satisfied in order to approve a phased subdivision proposal:*

- 1. All underground utilities shall be scheduled to be constructed in conjunction with or prior to each phase to ensure provision of public facilities prior to building occupancy;*
- 2. The development and occupancy of any phase shall not be dependent on the use of temporary public facilities. A temporary public facility is an interim facility not constructed to the applicable city or district standard; and*
- 3. The phased development shall not result in requiring the city or other property owners to construct public facilities that were required as a part of the approval of the tentative plan.*

**Finding:** The applicant is proposing a phased development, as indicated on Sheet 1.1 of the plan set (**Exhibit 4.B**). The Phase 1 plat would create Lots 1-18 and Tracts A-G and would dedicate the public right-of-way and establish easements, while denoting the Phase 2 areas as "tracts for future development" (or similar language). The recommended conditions of approval require construction of the public improvements in Phase 1. After this point, building permits could be issued for lots proposed in Phase 1 as they are outside the current mapped Special Flood Hazard Area. The applicant intends to then complete

its final Letter of Map Revision process with FEMA to formally modify the floodplain maps for the project site (after which the Phase 2 lots would be mapped as being outside the mapped Special Flood Hazard Area). The applicant's expected timeframe for the LOMR approval is 9-12 months. As such, Phase 2 will be platted shortly after the LOMR approval and within the 2 years of Phase 1 plat recording. Section 17.150.050 is satisfied.

17.150.060 Approval standards--Tentative plan.

*A. The planning commission may approve, approve with conditions or deny a tentative plan based on the following approval criteria:*

- 1. The proposed tentative plan complies with the city's comprehensive plan, the applicable chapters of this title, the public works design standards, and other applicable ordinances and regulations;*
- 2. The proposed plat name is not duplicative or otherwise satisfies the provisions of ORS Chapter 92[.090(1)];*
- 3. The streets and roads are laid out so as to conform to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects, including conformance with submitted neighborhood circulation plans, unless the city determines it is in the public interest to modify the street or road pattern; and*
- 4. An explanation has been provided for all public improvements.*

**Finding:** The proposed Preliminary Plat (**Exhibit 4.C**) complies with the City's Comprehensive Plan through its conformance with applicable standards of the Development Code, as detailed within the Findings of Fact. Review by the City Engineer and all referral agencies ensures compliance with the City's Public Works Design Standards and Specifications and all other applicable regulations regarding street, sewer, water and all other public improvement configurations and construction materials, as well as private utilities. Appropriate conditions of approval detailing required improvements, and in particular, development of a street and utility system satisfying the policies outlined within the Comprehensive Plan, Development Code, and Public Works Design Standards and Specifications, are included. Section 17.150.060(A)(1) is satisfied.

The applicant has proposed "Buxton Ranch" as the name for this subdivision. Prior to recording, the surveyor will need to confirm with the County Surveyor's office that the subdivision name is acceptable. Section 17.150.060(A)(2) is satisfied.

The neighborhood circulation plan submitted by the applicant is attached as **Exhibit 4.O**. The proposed streets are laid out consistent with the established neighborhood streets, surrounding subdivisions, and natural resource constraints. The primary internal street design, for Eggleston Lane, allows for a future extension to the south as adjacent properties are developed. Extensions to the west and east are not possible due to slope conditions and Scappoose Creek and the corresponding floodplain and floodway. Section 17.150.060(A)(3) is satisfied.

The applicant's narrative and preliminary plans (**Exhibits 3 & 4**) sufficiently describe all required public improvements. Section 17.150.060(A)(4) is satisfied.

## **Chapter 17.154 STREET AND UTILITY IMPROVEMENT STANDARDS**

### **17.154.020 General provisions.**

*A. The standard specifications for construction, reconstruction or repair of streets, sidewalks, curbs and other public improvements within the city shall occur in accordance with the standards of this title, the public works design standards, the transportation system plan, and in accordance with county or state standards where appropriate.*

*B. The public works director may require changes or supplements to the standard specifications consistent with the application of engineering principles.*

*C. Subject to approval of the planner and the public works director, street sections may be modified administratively based on geographical constraints of steep slopes, wetlands, floodplains, and constraints imposed by existing structures. Modifications may include, but are not limited to, reduced paving widths, elimination of on-street parking and eliminating sidewalks on one side of the street.*

**Finding:** The proposed streets are designed consistent with City standards. The Site has frontage on SW JP West Road, which is classified as a Neighborhood Route, per Figure 12 of the Transportation System Plan (TSP). Figure 15 of the TSP calls for a Neighborhood Route to be extended between SW JP West Road and E.M. Watts Road, conceptually aligned with Eggleston Lane, which would be through the subject site. Due to the sensitive site conditions, staff supports utilizing a local street section rather than a Neighborhood street section to minimize floodplain, riparian, and wetland impacts. The TSP also anticipates pedestrian connections to be established from SW Maple Street and SW Jobin Road. However, there are no existing rights-of-way or easements from these two streets that would accommodate such a pedestrian link. Section 17.154.020 is satisfied.

### **17.154.030 Streets.**

*A. No development shall occur unless the development has frontage or approved access to a public street:*

*1. Streets within a development and streets adjacent to a development shall be improved in accordance with this title and the public works design standards and specifications.*

*2. Any new street or additional street width planned as a portion of an approved street plan shall be dedicated and improved in accordance with this title and the public works design standards and specifications.*

**Finding:** The subject site has frontage on SW JP West Road along the north property line. This street is classified as a Neighborhood Route, which has a design standard of 60-foot right-of-way, 36-foot paved section, 5.5-foot planter strip and 6-foot sidewalk. The Preliminary Plat (**Exhibit 4.C**) provides for dedication of 10 feet of additional right-of-way for SW JP West Road along the site frontage to yield 30 feet south from centerline.

The proposed development includes a primary internal local street (Eggleston Lane), which is aligned with the existing intersection of Captain Roger Kucera Way and SW JP West Road. The street is designed to extend through the site to the abutting property to the south, which will accommodate future extension, when that property is developed. Because Eggleston Lane will be a temporary dead-end street a temporary interim turn-around has been provided at the south end within a tract. The proposed public street system illustrated on the submitted drawings will be dedicated and improved in accordance with the Public Works Design Standards and Specifications. Section 17.154.030(A)(1-2) is satisfied.

3. Subject to approval of the city engineer and the planner, the planner may accept and record a non-remonstrance agreement in lieu of street improvements if two or more of the following conditions exist:

- a. A partial improvement is not feasible due to the inability to achieve a cohesive design for the overall street;
- b. A partial improvement may create a potential safety hazard to motorists or pedestrians;
- c. Due to the nature of existing development on adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide a significant improvement to street safety or capacity;
- d. The improvement would be in conflict with an adopted capital improvement plan;
- e. Additional planning work is required to define the appropriate design standards for the street and the application is for a project which would contribute only a minor portion of the anticipated future traffic on the street.

**Finding:** The SW Eggleston Lane Right-of-way is proposed to extend to the southern boundary of the site, but the improvements are proposed to stop just north of the riparian corridor associated with the unnamed stream to minimize environmental and grading impacts. Since the stream is close to the southern boundary there is insufficient room to construct the last portion of the street without impacting the stream or without needing to construct improvements on adjoining properties. Therefore, a partial improvement is not feasible due to the inability to achieve a cohesive design for the overall street. This approach avoids impacts to the unnamed stream until such time that the street extension is warranted by adjoining development. The narrative (**Exhibit 3**) indicates the applicant will record a non-remonstrance agreement in lieu of extending street improvements (and public utilities) to the southern boundary. In addition to this non-remonstrance agreement, the applicant proposes to improve JP West Road in front of tax lot 3212-CB-00403 (between Lot 1 and Tract G) and in front of tax lots 3212-CB-00404 and 3212-CB-00402 (west of the proposed development). Section 17.154.030(A)(3) is satisfied.

*B. Rights-of-way shall be created through the approval of a final subdivision plat or major partition; however, the council may approve the creation of a street by acceptance of a deed, provided that such street is deemed essential by the council for the purpose of general traffic circulation:*  
[...]

**Finding:** The Preliminary Plat (**Exhibit 4.C**) demonstrates the proposed rights-of-way for proposed internal streets and widening of SW JP West Road. These rights-of-way will be officially dedicated when the Phase 1 Plat is recorded. No deed of dedication is required. Section 17.154.030(B)(1) is satisfied.

*C. The planning commission may approve an access easement established by deed without full compliance with this title provided such an easement is the only reasonable method by which a lot large enough to develop can develop:*

1. Vehicular access easements which exceed one hundred fifty feet shall be improved in accordance with the Uniform Fire Code.
2. Vehicular access shall be improved in accordance with the public works design standards.

**Finding:** This standard is not applicable since easements are proposed to be created via final plat and not by deed. For reference, the Preliminary Plat (**Exhibit 4.C**) proposes the following access easements:



- Access easement to flag lots 46, 47, and 48.
- Access easement to flag lots 7 and 8.
- Access easement to Tract F for HOA and City of Scappoose for utility maintenance (located on flagpole of Lot 9).
- Access easement to Tract A and B for HOA and City of Scappoose for utility maintenance.

The recommended conditions of approval require the applicant to satisfy Oregon Fire Code provisions for turnarounds. Section 17.154.030(C) is satisfied.

*D. The location, width and grade of all streets shall conform to an approved street plan and shall be considered in their relation to existing and planned streets, to topographic conditions, to public convenience and safety, and in their appropriate relation to the proposed use of the land to be served by such streets:*

- 1. Street grades shall be approved by the public works director in accordance with the city's public works design standards; and*
  - 2. Where the location of a street is not shown in an approved street plan, the arrangement of streets in a development shall either:*
    - a. Provide for the continuation or appropriate projection of existing streets in the surrounding areas, or*
    - b. Conform to a plan adopted by the council, if it is impractical to conform to existing street patterns because of particular topographical or other existing conditions of the land. Such a plan shall be based on the type of land use to be served, the volume of traffic, the capacity of adjoining streets and the need for public convenience and safety.*
  - 3. New streets shall be laid out to provide reasonably direct and convenient routes for walking and cycling within neighborhoods and accessing adjacent development.*
- E. The street right-of-way and roadway widths shall not be less than the minimum widths described in the city's public works design standards.*

**Finding:** The neighborhood circulation plan submitted by the applicant is attached as **Exhibit 4.O**. The Preliminary Plat (**Exhibit 4.C**) proposes the rights-of-way for the proposed internal street (Eggleston Lane) and widening of SW JP West Road in accordance with these criteria. The site has frontage on SW JP West Road, which is classified as a Neighborhood Route and requires a 60-foot right-of-way; the applicant proposes dedicating 10 feet of right-of-way to provide 30 feet south from centerline. Figure 15 of the TSP calls for a Neighborhood Route to be extended between SW JP West Road and E.M. Watts Road, conceptually aligned with Eggleston Lane, which would be through the subject site. Due to existing built conditions south of the project and sensitive site conditions, in accordance with Section 17.154.020(C), staff supports utilizing a local street section rather than a Neighborhood Route section to minimize floodplain, riparian, and wetland impacts. Based on this provision, the applicant proposes a 54-foot right-of-way consistent with the local street standard.

All street grades will be approved by Public Works staff in accordance with the City's design standards. The proposed public streets will be designed to provide adequate street widths and grades to comply with the City's Public Works Design Standards.

The City's Public Works Design Standards require public rights-of-way and paved roadways with curbs and sidewalks. The applicant's preliminary plans (**Exhibit 4**) depict a 32-foot paved width, 5-foot planter

(excluding curb) with street trees, and 5-foot sidewalks for Eggleston Lane, and a minimum of 18-feet of half street improvements to accommodate the full 36-foot paved width, including 5-foot planter (excluding curb) with street trees, and 6-foot sidewalks for JP West Road. The recommended Conditions of Approval require paving, curb and gutter, sidewalks, streetlights and street trees. An eight (8) foot public utility easement (PUE) will be required along all rights-of-way for public utilities.

The new street is laid out to provide reasonably direct and convenient routes for walking and cycling within neighborhoods and walking is enhanced through the proposed public trail along the Scappoose Creek riparian corridor. Section 17.154.030(D) and (E) are satisfied.

*F. Where necessary to give access or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary lines of the tract to be developed. A reserve strip across the end of a dedicated street shall be deeded to the city; and a barricade shall be constructed at the end of the street by the property owners which shall not be removed until authorized by the public works director, the cost of which shall be included in the street construction cost.*

**Finding:** The preliminary plans in **Exhibit 4.G** indicate that the applicant is proposing to extend Eggleston Lane right-of-way to the southern boundary of the site to provide for future development to the south. As discussed in Section 17.154.030(A)(3), the improvements are proposed to stop just north of the riparian corridor associated with the unnamed stream to minimize environmental and grading impacts until such time that the street extension is warranted by adjoining development. The recommended Conditions of Approval require that the applicant install a barricade at the end of the paved section of the stubbed street in accordance with MUTCD<sup>9</sup>. Section 17.154.030(F) is satisfied.

*G. No street name shall be used which will duplicate or be confused with the names of existing streets within the city's urban growth boundary, except for extensions of existing streets. Street names and numbers are subject to review and approval the Scappoose rural fire district.*

**Finding:** Eggleston Lane is the only new street, and the City has indicated that this name is appropriate because it will ultimately connect with the existing Eggleston Lane south of this development when that property is developed. The name is a prior approved name by the Scappoose Rural Fire Protection District to ensure they do not duplicate existing street names. Section 17.154.030(G) is satisfied.

*H. Concrete vertical curbs, curb cuts, wheelchair, bicycle ramps and driveway approaches shall be constructed in accordance with standards specified in this chapter and the city's public works design standards. Concrete curbs and driveway approaches are required and shall be built to the city's configuration standards.*

**Finding:** The recommended conditions of approval require all streets to be constructed to the standards detailed within the City's Public Works Design Standards and Standard Specifications. Section 17.154.030(H) is satisfied.

<sup>9</sup> MUTCD – Manual on Uniform Traffic Control Devices

*O. The developer shall install all street signs, relative to traffic control and street names, as specified by the public works director for any development. The cost of signs shall be the responsibility of the developer.*

**Finding:** As part of the site development, the applicant will install street signs, relative to traffic control and street names, as specified by the City. The conditions of approval require the applicant to install a “No Outlet” sign at the subdivision entrance. Section 17.154.030(O) is satisfied.

*P. Joint mailbox facilities shall be provided in all residential developments, with each joint mailbox serving at least two dwelling units.*

- 1. Joint mailbox structures shall be placed adjacent to roadway curbs;*
- 2. Proposed locations of joint mailboxes shall be designated on a copy of the tentative plan, and shall be approved by the U.S. Post Office prior to plan approval; and*
- 3. Plans for the joint mailbox structures to be used shall be submitted for approval by the planner prior to final approval.*

**Finding:** Joint mailboxes will be located adjacent to roadway curbs and will comply with provisions of the Americans with Disabilities Act and implementing federal and state regulations as directed by the U.S. Postal Service. The recommended Conditions of Approval require that plans for the joint mailbox structure(s) be approved by the U.S. Post Office and City planner prior to approval of the Phase 1 plat. Section 17.154.030(P) is satisfied.

*R. Street lights shall be installed in accordance with the city’s public works design standards.*

**Finding:** Street lights will be required to be installed in accordance with the city’s Public Works Design Standards and in coordination with the Columbia River PUD. Section 17.154.030(R) is satisfied by the conditions of approval.

*S. A Transportation Impact Study (TIS) must be submitted with a land use application if the conditions in (1) or (2) apply in order to determine whether conditions are needed to protect and minimize impacts to transportation facilities, consistent with Section 660-012-0045(2)(b) and (e) of the State Transportation Planning Rule.*

*[...]*

*2. Applicability – TIS report. A TIS report shall be required to be submitted with a land use application if the proposal is expected to involve one or more of the following:*

- a. The proposed development would generate more than 10 peak hour trips or more than 100 daily trips.*
- b. The proposal is immediately adjacent to an intersection that is functioning at a poor level of service, as determined by the city engineer.*
- c. A new direct approach to US 30 is proposed.*
- d. A proposed development or land use action that the road authority states may contribute to operational or safety concerns on its facility(ies).*

*3. Consistent with the city’s Traffic Impact Study (TIS) Guidelines, the city engineer will determine the project study area, intersections for analysis, scenarios to be evaluated and any other pertinent information concerning the study and what must be addressed in either a TIS letter or a TIS report.*

*4. Approval Criteria. When a TIS Letter or Report is required, a proposal is subject to the following criteria:*

- a. The TIS addresses the applicable elements identified by the city engineer, consistent with the Traffic Impact Study Guidelines;*

*b. The TIS demonstrates that adequate transportation facilities exist to serve the proposed development or, in the case of a TIS report, identifies mitigation measures that resolve identified traffic safety problems in a manner that is satisfactory to the city engineer and, when state highway facilities are affected, to ODOT;*

*c. For affected non-highway facilities, the TIS report establishes that mobility standards adopted by the city have been met; and*

*d. Proposed public improvements are designed and will be constructed consistent with Public Works Design Standards and access standards in the Transportation System Plan.*

**5. Conditions of Approval.**

*a. The city may deny, approve, or approve a proposal with conditions necessary to meet operational and safety standards; provide the necessary right-of-way for improvements; and to require construction of improvements to ensure consistency with the future planned transportation system.*

*b. Construction of off-site improvements may be required to mitigate impacts resulting from development that relate to capacity deficiencies and public safety; and/or to upgrade or construct public facilities to city standards.*

*c. Improvements required as a condition of development approval, when not voluntarily provided by the applicant, shall be roughly proportional to the impact of the development on transportation facilities. Findings in the development approval shall indicate how the required improvements directly relate to and are roughly proportional to the impact of development.*

**Finding:** The applicant has submitted a Traffic Impact Study and Seasonal Adjustment Factor Letter (**Exhibits 22-23**) to analyze traffic impacts. The 48 proposed units would generate approximately 514 daily trips including 38 AM weekday Peak Hour trips and 50 PM weekday Peak Hour trips, using Institute of Transportation Engineers standard trip generation ratios for single-family detached housing.

The study focused on seven nearby intersections: SW JP West Road/Captain Roger Kucera Way, SW JP West/SW 4th Street, SW JP West Road/SW 1st Street, SW JP West Road/US 30, SW Maple Street/SW 4th Street, SW Maple Street/SW 1st Street, and SW Maple Street/US 30. The Highway 30 intersections are under Oregon Department of Transportation (ODOT) jurisdiction while the remaining intersections are under City and Columbia County jurisdiction.

All of the study intersections meet their respective mobility standards and targets today and in the future year 2023 before and after site development during the weekday AM and PM peak hours. The 2016 TSP specifies that all-way stop-controlled intersections have a target of Level of Service 'D,' or better, and this is met for all studied intersections except the SW JP West Road/US 30. However, this intersection would have a year 2023 volume-to-capacity (v/c) ratio of 0.59, which meets ODOT's mobility standards (ODOT utilizes v/c rather than Level of Service for the mobility standard).

The traffic analyses also addressed Transportation Planning Rule requirements for the zone change, which are detailed in the response to Section 17.22.050. Section 17.154.030(S) is satisfied.

17.154.040 Blocks. *A. The length, width, and shape of blocks shall be designed with regard to providing adequate building sites for the use contemplated, consideration of needs for safe and convenient pedestrian and vehicular access and circulation and recognition of limitations and opportunities of topography.*

*B. Except for arterial streets, no block face shall be more than five hundred and thirty (530) feet in length between street corner lines and no block perimeter formed by the intersection of pedestrian accessways and local, collector and arterial streets shall be more than one thousand five hundred feet in length. If the maximum block length is exceeded, mid-block pedestrian and bicycle accessways should be provided at spacing no more than 330 feet, unless one or all of the conditions in Subsection C can be met. Minimum access spacing along an arterial street must meet the standards in the city's adopted Transportation System Plan. A block shall have sufficient width to provide for two tiers of building sites. Reverse frontage on arterial streets may be required by the planning commission.*

**Finding:** As illustrated in the applicant's neighborhood circulation plan (**Exhibit 4.O**), the primary local street within this development (Eggleston Lane) is aligned with Captain Roger Kucera Way and is extended through the site to the southern boundary to accommodate future extension. There are no other existing streets that are stubbed to this property allowing for logical extension.

There is a relatively narrow band of developable land between the South Scappoose Creek Floodplain on the east and steep slopes and some steep drainageways rising above the valley floor to the west. The block length for Eggleston Lane could exceed 2,000 feet due to these natural conditions which do not permit City design standards (namely, maximum street grades) to be met. Through the project site, the valley floor area outside of floodplain is not wide enough to create a block or have 2 parallel streets to help create a block. These natural conditions do not permit development on the site to comply strictly with the block length criterion; however, those criteria are met to the degree practicable. These limitations, associated with topography which prevent street connections to the east or west, are consistent with the provisions of criterion (A). Section 17.154.040(A) is satisfied.

There are limitations associated with topography which prevent street connections to the east or west as additionally described in Subsection C below addressing permitted exemptions. With the approval of these exceptions, Section 17.154.040(B) is satisfied.

*C. Exemptions from requirement of Subsection B of this section may be allowed, upon approval by the planner and the city engineer, where one or all of the following conditions apply:*

*1. Where topography and/or other natural conditions, such as wetlands or stream corridors, preclude a local street connection consistent with the stated block length standards. When such conditions exist, a pedestrian access way shall be required in lieu of a public street connection if the access way is necessary to provide safe, direct and convenient circulation and access to nearby destinations such as schools, parks, stores, etc.*

**Finding:** The project site has both topographical and natural resource constraints to the west and natural resource constraints to the east which prohibit street connections that would otherwise satisfy the block length requirements of Subsection B. Therefore, staff supports the applicant's exemption request under this Subsection.

The applicant's narrative (**Exhibit 3**) explains that the west side of the site contains steep slopes on-site and off-site between the site and Jobin Lane. Additionally, there are isolated wetlands and buffers along with a stream and riparian corridor including buffers. At the request of the City Engineer, the applicant's engineer analyzed the viability of providing an emergency vehicle connection to Jobin Lane; however,

slopes for this connection would exceed 18% or would otherwise impact large areas of resource if attempted further south.

The east side of the project site is dominated by South Scappoose Creek, its floodplains, wetlands and buffers and riparian corridors. A roadway or pedestrian bridge to Day Street would negatively impact natural resources, floodplain and floodway and constitute an impractical cost for the project.

Accessways to the east and west are not necessary to provide safe, direct and convenient circulation. To the west, an accessway would be steep and would not appreciably improve pedestrian circulation beyond that available in JP West Road. To the east, an existing sidewalk system along JP West Road already provides safe, direct and convenient circulation to nearby destinations such as schools, parks, stores, etc. Section 17.154.050(C) is satisfied.

17.154.050 Easements.

*A. Easements for sewers, drainage, water mains, electric lines or other public utilities shall be either dedicated or provided for in the deed restrictions, and where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse and such further width as will be adequate for conveyance and maintenance.*

*B. A property owner proposing a development shall make arrangements with the city, the applicable district and each utility franchise for the provision and dedication of utility easements necessary to provide full services to the development.*

**Finding:** Easements for sanitary sewers, drainage, water mains, or other public utilities will be dedicated on the plat and are shown in the tentative plans. An easement will be provided over the existing sanitary sewer that will remain through the site. Where deemed necessary by the City, a stormwater easement or drainage right-of-way will be provided over the entirety of the specified tracts containing known water features. The applicant is required by the recommended Conditions of Approval to illustrate all existing and proposed easements on the Final Plat and to provide an 8-foot public utility easement adjacent to all rights-of-way. Section 17.154.050(A-B) is satisfied.

17.154.070 Sidewalks.

*A. Sidewalks are required and shall be constructed, replaced or repaired in accordance with the city's public works design standards.*

*B. Maintenance of sidewalks and curbs is the continuing obligation of the adjacent property owner.*

**Finding:** The applicant is required by the Conditions of Approval to construct sidewalks in accordance with the Public Works Design standards. Section 17.154.070(A-B) is satisfied.

17.154.080 Public use areas.

*A. Where a proposed park, playground or other public use shown in a development plan adopted by the city is located in whole or in part in a subdivision, the commission may require the dedication or reservation of such area within the subdivision.*

**Finding:** Section 5 of the Scappoose Parks, Trails and Open Space Plan discusses development of a trail along South Scappoose Creek through pursuing a partnership with property owners and neighbors. The applicant's proposed Tract D for open space would include trail access in line with the Scappoose Parks, Trails and Open Space Plan (**Exhibit 4.P**). Section 17.154.080(A) is satisfied.

*B. Where considered desirable by the commission in accordance with adopted comprehensive plan policies, and where a development plan of the city does not indicate proposed public use areas, the commission may require the dedication or reservation of areas within the subdivision or sites of a character, extent and location suitable for the development of parks and other public use.*

**Finding:** The east side of the property located within Tract D has character suitable for public uses. The applicant is proposing a public trail along Tract D's west edge and the applicant's narrative (**Exhibit 3**) acknowledges that in the future, the City may want to expand the pedestrian/bicycle network. Staff recommends the Planning Commission require the reservation of an easement, not just for conservation, but for other public purposes over this tract. Section 17.154.080(B) is satisfied.

*C. If the declarant is required to reserve land area for a park, playground or other public use, such land shall be acquired by the appropriate public agency within eighteen months following plat approval, at a price agreed upon prior to approval of the plat, or such reservation shall be released to the declarant.*

**Finding:** There is currently no requirement to reserve land area for a park, playground or other public use on this property. The applicant is providing a public compacted gravel trail through Tract D and is providing conservation easements over open space tracts as described in **Exhibit 3**. Section 17.154.080(C) is satisfied.

17.154.090 Sanitary sewers.

*A. Sanitary sewers shall be installed to serve each new development and to connect developments to existing mains in accordance with the provisions set forth by the city's public works design standards and the adopted policies of the comprehensive plan.*

*B. The public works director shall approve all sanitary sewer plans and proposed systems prior to issuance of development permits involving sewer service.*

*C. Proposed sewer systems shall include consideration of additional development within the area as projected by the comprehensive plan and the wastewater treatment facility plan and potential flow upstream in the sewer sub-basin.*

*D. Applications shall be denied by the approval authority where a deficiency exists in the existing sewer system or portion thereof which cannot be rectified within the development and which if not rectified will result in a threat to public health or safety, surcharging of existing mains, or violations of state or federal standards pertaining to operation of the sewage treatment system.*

**Finding:** The proposed sanitary sewer system to serve this development is shown on the Preliminary Plans (**Exhibits 4.L and 4.M**); the applicant proposes to connect to the existing public sanitary sewer through the site. The existing sanitary sewer will be rerouted on the site as shown on **Exhibits 4.L and 4.M** to replace existing sanitary sewer lines that are near the end of their service lives. The system has been designed and will be installed to serve new development and connect developments to existing mains. The public works director will review and approve sanitary sewer plans prior to issuance of development

permits. No deficiency has been identified to exist and adequate capacity is available to serve this development. Section 17.154.090 is satisfied.

*17.154.100 Storm drainage. A. The planner and public works director shall issue permits only where adequate provisions for stormwater and floodwater runoff have been made, and:*

- 1. The stormwater drainage system shall be separate and independent of any sanitary sewerage system.*
- 2. Where possible, inlets shall be provided so surface water is not carried across any intersection or allowed to flood any street.*
- 3. Surface water drainage patterns shall be shown on every development proposal plan.*
- 4. All stormwater analysis and calculations shall be submitted with proposed plans for public works directors review and approval.*
- 5. All stormwater construction materials shall be subject to approval of the public works director.*

**Finding:** As depicted in **Exhibits 4.I, 4.J, and 4.K** and discussed in the Preliminary Stormwater Report (**Exhibit 20**) the storm system will be independent of the sanitary sewer system. The proposed system design demonstrates that stormwater runoff from impervious surfaces will be collected in catch basins, treated, and discharged without impacting street intersections. The submitted report (**Exhibit 20**) includes required calculations and the plans include details demonstrating that construction materials meet Public Works Design standards. A final stormwater report will be required prior to approval of subdivision construction plans.

The applicant has noted the limited ability to fill within the floodplain proposing to adjust the design on Eggleston Lane, rather than adding floodplain fill to raise the street, and to meet the minimum standards set forth in the PWDS section 5.0010, which requires meeting the requirements of the AASHTO Policy on Geometric Design of Highways and Streets. Based on these criteria for the design, during the 100-year event (1% chance annually), the floodwaters would span Eggleston Lane for roughly 20 feet of its length near the site's entrance to JP West Road, as shown on the Street Plan (**Exhibit 4.G**). The maximum water depth expected at the center line is 2 inches, but the applicant's narrative (**Exhibit 3**) states the west side of Eggleston will have less water depth than at centerline and the curb on the west side will remain visible. A cross section for the shed section of Eggleston Road is included as **Exhibit 4.H**. Section 17.154.100(A) is satisfied.

*B. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse and such further width as will be adequate for conveyance and maintenance.*

**Finding:** The site abuts South Scappoose Creek on the east and contains an unnamed stream in the southern portion that flows into South Scappoose Creek. The recommended conditions of approval require the applicant to provide easements on the Phase 1 final plat in accordance with Section 2.0024 (Easements) of the Public Works Design Standards. Section 17.154.100(B) is satisfied.

*D. Where it is anticipated by the public works director that the additional runoff resulting from the development will overload an existing drainage facility, the planner and engineer shall withhold approval of the development until provisions have been made for improvement of the potential condition or until provisions have been made for storage of additional runoff caused by the development.*



**Finding:** Public Works staff has not indicated that runoff from this development will overload an existing drainage facility. Details for storm drainage have been provided within the submitted Storm Drainage Report (**Exhibit 20**). A final stormwater report will be required prior to approval of subdivision construction plans. Section 17.154.100(D) is satisfied.

17.154.105 Water system. *The planner and public works director shall issue permits only where provisions for municipal water system extensions have been made, and:*

*A. Any water system extension shall be designed in compliance with the comprehensive plan existing water system plans.*

*B. Extensions shall be made in such a manner as to provide for adequate flow and gridding of the system.*

*C. The public works director shall approve all water system construction materials.*

**Finding:** All proposed building lots within the subdivision will be served by water lines which must be designed in accordance with the Public Works Design Standards. Water will be looped through the site via a connection at JP West Road, then south in Eggleston Lane and west through Tract E to connect to an existing waterline (**Exhibit 4.L**). The recommended Conditions of Approval require that the applicant demonstrate sufficient domestic and fire flow pressure for all lots. The City Engineer will review and approve all proposed plans. Section 17.154.105 is satisfied.

17.154.107 Erosion controls.

*A. Any time the natural soils are disturbed and the potential for erosion exists, measures shall be taken to prevent the movement of any soils off site. The public works director shall determine if the potential for erosion exists and appropriate control measures.*

*B. The city shall use the city's public works design standards as the guidelines for erosion control.*

**Finding:** The Preliminary Grading and Erosion Control Plan (**Exhibit 4.F**) includes erosion control measures. The applicant will be required to conduct erosion control measures in accordance with the City's Public Works Design Standards. Erosion control Best Management Practices, such as construction entrances, siltation fences, and other appropriate measures as determined by the City and applicant during final engineering will be implemented in accordance with City standards. The Conditions of Approval require review by the City Engineer of all proposed plans. Section 17.154.107 is satisfied.

17.154.120 Utilities.

*A. All utility lines including, but not limited to those required for electric, communication, lighting and cable television services and related facilities shall be placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high-capacity electric lines operating at fifty thousand volts or above [...]*

*B. The applicant for a subdivision shall show on the development plan or in the explanatory information, easements for all underground utility facilities [...]*

**Finding:** All utilities, except for surface mounted transformers, surface mounted connection boxes and meter cabinets, are designed consistent with these criteria and are proposed to be underground. Appropriate Public Utility Easements (PUE's) are shown on the tentative plans (**Exhibit 4.H**) and will be

recorded on the plat. All private utilities will be underground in an 8-foot Public Utility Easement (PUE) behind the right-of-way line, as required by the recommended Conditions of Approval. Additional easements may be required for transformers upon coordination of final design with the Columbia River PUD. Section 17.154.120 is satisfied.

*17.154.200 Engineer's certification required. The land divider's engineer shall provide written certification that all improvements, workmanship and materials are in accord with current and standard engineering and construction practices and are of high grade and that improvements were built according to plans and specifications, prior to city acceptance of the subdivision's improvements or any portion thereof for operation and maintenance.*

**Finding:** As part of the site development, and prior to the Phase 1 final plat, the Project Engineer is required to provide written certification that all improvements, workmanship and materials are in accord with current and standard engineering and construction practices and are of high grade and that improvements were built according to plans and specifications. Section 17.154.200 is satisfied.

#### ***Chapter 17.162 PROCEDURES FOR DECISION MAKING--QUASI-JUDICIAL***

##### *17.162.021 Consolidation of proceedings.*

*A. Except as provided in subsection C of this section, whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding.*

*B. In such cases as stated in subsection A of this section, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 17.164.110, in the following order of preference: the council, the commission, or the planner.*

*C. Where there is a consolidation of proceedings:*

*1. The notice shall identify each action to be taken;*

*2. The decision on a plan map amendment shall precede the decision on the proposed zone change and other actions. Plan map amendments are not subject to the one hundred twenty-day decision making period prescribed by state law and such amendments may involve complex issues. Therefore, the planner shall not be required to consolidate a plan map amendment and a zone change or other permit applications requested unless the applicant requests the proceedings be consolidated and signs a waiver of the one hundred twenty-day time limit prescribed by state law for zone change and permit applications; and*

*3. Separate actions shall be taken on each application.*

*D. Consolidated Permit Procedure.*

*1. Use of the consolidated permit procedures described in this section shall be at the election of the applicant.*

*2. When the consolidated procedure is elected, application and fee requirements shall remain as provided by resolution approved by the council. If more than one permit is required by this title or other ordinance to be heard by the planning commission or city council, each such hearing shall be combined with any other permit also requiring such hearing. The standards applicable to each permit by this or any other ordinance shall be applied in the consolidated procedures to each application.*

*3. In a consolidated proceeding, the staff report and recommendation provided by the planner shall be consolidated into a single report.*

4. All rules and ordinances of the city not in conflict with this section shall apply in a consolidated permit procedure.

**Finding:** The applicant is requesting consolidation of the following land use requests:

- Planned Development/Zone Change;
- Subdivision;
- Conditional Use;
- Sensitive Lands Development Permit for:
  - Floodplain;
  - Wetlands;
  - Slope Hazards;
  - Fish and Riparian Corridor

The consolidation, as requested by the applicant, is permissible. Section 17.162.021 is satisfied.

*17.162.090 Approval authority responsibilities. [...]*

*C. The planning commission shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, approve with conditions, approve with modifications or deny the following development applications:*

*[...]*

*2. A quasi-judicial comprehensive plan map amendment except the planning commission's function shall be limited to a recommendation to the council. The commission may transmit their recommendation in any form and a final order need not be formally adopted;*

*3. A quasi-judicial zoning map amendment shall be decided in the same manner as a quasi-judicial plan amendment; [...]*

*4. Conditional use pursuant to Chapter 17.130;*

*6. Sensitive land permits and variances pursuant to Chapter 17.84, Chapter 17.85, and Chapter 17.86 for applications requiring planning commission action;*

**Finding:** The applicant has requested the concurrent review of a Zone Change, Planned Development Overlay, Tentative Subdivision, Conditional Use, and Sensitive Lands Development Permits. The Planning Commission will make a recommendation to the City Council regarding the applicant's request. Section 17.162.090(C) is satisfied.

## **RECOMMENDATION**

Based on the Findings of Fact and the materials submitted by the applicant, staff recommends that the Planning Commission recommend that the City Council **APPROVE** Docket # **SB1-22, ZC1-22, CU1-22, SLDP 1-22, 2-22, 3-22 and 4-22**, subject to the following:

## CONDITIONS OF APPROVAL

### PUBLIC UTILITIES/INFRASTRUCTURE

1. All streets, utilities, and other public infrastructure improvement plans shall be prepared by a registered professional engineer, licensed in the State of Oregon, and adhere to the applicable Scappoose Municipal Code, utility Master Plans, and the City of Scappoose Public Works Design Standards (PWDS), except where deviations from the standards are allowed and approved by the City Engineer.
2. Prior to approval of final subdivision construction plans, detailed storm drainage, sanitary sewage collection, and water distribution plans, which incorporate the requirements of this land use decision, the City of Scappoose Municipal Code and the PWDS and Standard Specifications (current ODOT/APWA "Oregon Standard Specifications for Construction" and the current "Oregon Standard Drawings"), shall be submitted to, and approved by, the City Engineer and City Planner. In addition, the following shall occur:
  - a. Obtain an NPDES permit from the Department of Environmental Quality and Grading Permit from the City of Scappoose, as applicable, prior to any earthwork. A copy of the approved NPDES permit shall be submitted to the City Engineer prior to approval of the Grading Permit for construction of the subdivision.
  - b. Provide erosion control measures meeting the requirements of the City of Scappoose PWDS, Section 2.0051. For subdivision plats, temporary erosion control measures shall also be utilized by subsequent builders during construction of dwellings and other lot improvements.
  - c. Provide stormwater conveyance, treatment and disposal for the proposed stormwater facility which meets the requirements of the City of Scappoose PWDS and subject to approval by the City Engineer. Clean Water Services (CWS) or City of Portland standards are acceptable treatment methods. The on-site storm system consisting of Tracts C and G, shall be privately owned and maintained by the Homeowners Association. The project engineer shall provide calculations demonstrating that the treatment and/or detention capacity of the proposed system is adequate. The applicant may be required to install safety fencing along the perimeter of the stormwater ponds, to be determined by City staff prior to construction.
  - d. Construct 8-inch minimum water main to serve the subdivision. Extend water main line to the southern boundary of the paved section of Eggleston Lane and loop to the existing water main in the southwest portion of the site. The applicant shall install an 8-inch isolation valve and blow-off at the end of the water lines, as directed by the City Engineer, in accordance with the Public Works Design Standards. Water lines shall be tested in accordance with the AWWA and the City of Scappoose PWDS.
  - e. Provide computations to the City Engineer and Fire Chief demonstrating adequate domestic and fire flow for the subdivision.
  - f. Provide sanitary sewers meeting the requirements of the City of Scappoose PWDS. Extend sanitary sewer main line to the southern boundary of the paved section of Eggleston Lane.

Following construction and paving, the existing sanitary sewer manhole and main line shall be vacuumed, or pressure tested in accordance with the Public Works Design Standards.

- g. Utilize watertight joints and manholes for all utilities placed within the floodplain.
- 3. Easements and maintenance agreements which may be required by the PWDS or Scappoose Municipal Code for the provision, extension, and maintenance of utilities shall be submitted to the City Engineer for review and approval prior to filing the Phase 1 Final Plat. All public utilities that run across private property shall be within an exclusive public utility easement, as required by the PWDS, and in all cases shall be wide enough to allow construction and/or maintenance work to proceed within the easement limits. Any easements to allow access and maintenance of private drainage lines or other common elements and their associated appurtenances shall meet the applicable requirements of the developer and the Oregon Structural Specialty Code and Oregon Plumbing Specialty Code, whichever is greater.
- 4. Combined public utility easements shall only be allowed with the consent of the City Engineer, and only when they are of sufficient width to allow work on any utility contained within the easement to be conducted within the easement limits. All required easements, including those for natural gas, cable, electric, and telephone shall be shown on the face of the Phase 1 Final Plat.
- 5. All required public utilities shall be installed and accepted by the City or a performance bond shall be provided prior to submitting the Phase 1 plat for City approval and recording.
- 6. All public utility services shall be extended to and through the property to points where a future extension may reasonably be expected prior to the issuance of building permits for individual residences (Public Works Design Standards Sections 3.0010 & 4.0010).
- 7. An 8-foot wide Public Utility Easement shall be located along the frontage of the street rights-of-way and be recorded as such on the Phase 1 Final Plat unless otherwise approved by the City Engineer.
- 8. Prior to construction document approval, a hydraulic analysis and final storm drainage report shall be submitted which demonstrates to the satisfaction of the City Engineer that the site will not flood, nor cause increased flooding of adjacent properties either upstream or downstream. This includes analysis for design of infrastructure to adequately convey any future upstream basin area flows, in compliance with the PWDS.
- 9. Provide storm drainage easements on the Phase 1 final plat in accordance with Section 2.0024 (Easements) of the Public Works Design Standards.
- 10. All site public utility infrastructure shall be constructed and accepted by the City prior to recording of Phase 1 Final Plat.
- 11. The applicant shall enter into a development agreement with the City regarding replacement and redirection of the existing sanitary sewer line in Tract B and through lots 7-9. The applicant is required to obtain all permits required by local, state, and federal agencies, as necessary.
- 12. That the applicant shall submit final drawings meeting the requirements of the City of Scappoose Public Works Design Standards, Sections 1.2020 and 1.2032.

13. As part of the site development, and prior to recording of the Phase 1 Final Plat, the Project Engineer shall provide written certification that all improvements, workmanship and materials are in accord with current and standard engineering and construction practices and are of high grade and that improvements were built according to plans and specifications.

#### STREET SYSTEM

14. The applicant shall provide half-street improvements to the abutting section of JP West Road and in front of tax lots 3212-CB-00403 and 3212-CB-00404 and tax lot 3212-CB-00402. Streets shall include all subgrade improvements, curb and gutter, 6' sidewalks, 5.5' planter area with street trees (if no conflicts exist), streetlights, signing and striping and paving to a 50-year design life (perpetual pavement) from the centerline south or 18-feet, whichever is greater. If portions of the existing cross section are adequate (as determined by the City Engineer) due to prior improvements associated with Veterans Park or the JP West Road bridge, those sections may remain in place rather than being reconstructed. In lieu of constructing Eggleston Lane to the southern site boundary, the applicant shall improve JP West Road along the extents depicted on the Planned Development drawings.
15. The applicant shall construct Eggleston Lane in accordance with City local street standards, to include curb and gutter, 5' sidewalks, 5.5' planter area with street trees, streetlights, signing and striping, and 32' of paving to a 50-year design life within a 54' right of way. A barricade shall be installed at the edge of pavement at the southern terminus of the street, in accordance with the MUTCD (Manual on Uniform Traffic Control Devices).
16. Any substandard sidewalk or curb and gutter along the project frontage shall be replaced prior to Phase 1 Final Plat approval.
17. All street improvements shall meet the requirements of the City of Scappoose Public Works Design Standards, Transportation Master Plan, and Storm Drain System Master Plan.
18. The applicant shall apply for a right of way permit from the City of Scappoose prior to the issuance of Notice to Proceed.
19. Following construction and prior to paving, the sanitary sewer manholes and lines shall be mandreled, camera inspected, and once paved, vacuum tested in accordance with the Public Works Design Standards.
20. The applicant shall be responsible for the installation of all streetlights, street name signs, stop signs, stop bars, crosswalks, and any parking restriction signs or curb painting delineating parking restriction, per the requirements of the Scappoose Public Works Design Standards and Specifications, the current Manual on Uniform Traffic Control Devices, the Scappoose Rural Fire District Code and USPS. The applicant shall install a "No Outlet" sign at the subdivision entrance.
21. A waiver of remonstrance against assessment for the future extension of Eggleston Lane and associated public utilities shall be signed by the applicant and shall be binding on all future owners. The waiver shall be prepared by the City.

## FIRE AND LIFE SAFETY

22. The applicant shall comply with Oregon Fire Code provisions, as determined by the Scappoose Rural Fire District, during the permitting phase.
23. Residential sprinklers are required for all residential units and a note to this effect shall be included on the Phase 1 and Phase 2 Final Plats.
24. Turnarounds and signage shall be provided as follows:
  - Address signage placed at driveway entrance for lots where residences are behind other properties (Lots 7-9 and 46-48).
  - Emergency fire truck turn-around shall be paved, with curbs provided, and placed in a tract (not in an easement as currently shown on the development plans), to be owned and maintained by the Homeowner's Association. The turnaround may be removed in the future when Eggleston Lane is extended south.
  - "No Parking" signs shall be posted by the applicant near the emergency vehicle turnaround as determined by the Fire Chief and City Engineer.
25. The applicant shall provide fire hydrants as required by the Scappoose Rural Fire Department:
  - Fire hydrants shall meet current City/Fire Department specifications and have an integrated Storz nozzle for the large discharge port. After market add-ons are not permitted. A blue reflector meeting the requirements of Fire District Ordinance 17-02 shall be required adjacent to hydrants.
  - The hydrant system shall be designed to meet flow requirements of the International Fire Code. All hydrants and locations shall be approved by the Fire Department prior to installation.
26. The applicant shall obtain Scappoose Rural Fire Department approval of proposed street names.

## STREET TREES & LANDSCAPING

27. Prior to Notice to Proceed, the applicant shall submit a final landscape plan for the review and approval of the City Planner. The landscape plan shall indicate the location, number, and species of all proposed plantings and indicate the height, location, and material of proposed fencing.
28. The applicant shall submit a final landscaping plan conforming to the requirements of Scappoose Municipal Code Section 13.28.020 and Chapter 17.104 (Street Trees) of the Scappoose Development Code and shall install the required trees with root guards to protect sidewalks. All street trees shall have a two-inch minimum caliper and be spaced as appropriate for the selected species, as specified in the approved Street Tree List and as may be required for the location of above ground utility vaults, transformers, light poles, and hydrants. Street trees located under or within ten feet of overhead utility lines shall be less than twenty-five feet tall at maturity. All street trees shall be of good quality and shall conform to the American Standard for Nursery Stock (ANSI Z60.1), as certified by a registered landscape architect licensed in the state of Oregon. The City Planner reserves the right to reject any plant material that does not meet this standard. An irrigation system shall be installed for use during the establishment period.

29. The applicant shall plant native plantings in all disturbed riparian/wetland buffers, within the disturbed area of Wetland A, and within the riparian buffer east and south of Lots 18-25. Species, size, and spacing shall be as recommended by WEST Consultants and approved by the City Planner and City Engineer prior to installation. Applicant shall submit evidence of compliance with DSL permit for the duration of the compliance period, as applicable.
30. Landscaping, substantially in conformance with the final approved landscaping plan, shall be installed prior to Phase 1 Final Plat approval, with the exception of street trees, which may be installed prior to occupancy of individual units where they are to be located along the frontage of a lot. Street trees along tracts shall be installed prior to Phase 1 Final Plat approval.

**PLANNED DEVELOPMENT OVERLAY, OPEN SPACE, AND TRACTS**

31. The applicant shall provide a minimum of two parking spaces on each lot. Garages may be utilized to satisfy this requirement.
32. The following dimensional standards shall apply to the project:

<b>Requirement</b>	<b>Detached housing units</b>
Minimum Lot Area	<b>3,410</b> square feet for structures outside Scappoose Creek Flood Plain
Lot Width	<b>35</b> feet minimum
Lot frontage for Flag Lots	<b>12</b> feet minimum
Setbacks applicable to yards not adjacent to site perimeter:	
Front/dwelling	<b>12</b> feet minimum
Front/garage	<b>20</b> feet minimum
Side/street	<b>8</b> feet minimum
Side/internal	<b>5</b> feet minimum each side
Rear	<b>15</b> feet minimum (accessory buildings <b>5</b> feet min.)
Peripheral yards	Match minimum setback of abutting parcel per Section 17.81.050(A)(2)
Height	<b>35</b> feet
Building Coverage	<b>55%</b>
Retaining wall separation	5 feet minimum separation between house foundations and face of retaining walls proposed on Lots 7-9 and 47-48
Additional Requirements	Based on all applicable sections of the Development Code

Minimum lot size 4,000 sf, revised by Council decision 12/19/2022

33. Building permits for structures will not be issued until the CC&R's are approved by the City and recorded at Columbia County. The applicant shall submit a final version of the Declaration



of Protective Covenants, Conditions, Restrictions and Easements (CC&R's) of the subdivision for review and approval by the City Planner and City Engineer. The CC&R's shall:

- a. Grant authority to the City to enforce the requirements for maintenance of the private stormwater facilities in Tracts C and G and specify that the stormwater facilities shall be maintained by the Homeowners Association.
- b. Specify that the open space areas in Tracts A, B, D, E, F, and G shall be maintained and preserved in perpetuity for the benefit of the homeowners (notwithstanding the public trail easement, which will allow the public to use the trail in Tract D).
- c. Provide an ongoing funding mechanism for the association to cover the costs of maintenance and provide a copy of the reserve fund for city review.
- d. Require City signature prior to recording at Columbia County.
- e. Specify that the CC&R's may not be amended without the written consent of the City for issues that impact the right of way, stormwater or open space tracts, or any other issues relevant to the City.
- f. Be recorded in conjunction with the Phase 1 Final Plat.

34. Walls or fences exceeding 4 feet in height are not permitted in front yards. Fence/wall combinations exceeding 6 feet in height (in rear/side yards) shall require building permits. Any proposed fence/wall combination exceeding 8 feet in height and not shown on the approved Planned Development plans requires separate Planning Commission approval pursuant to Section 17.100.110(A).

**SENSITIVE LANDS (WETLANDS, RIPARIAN, FLOODPLAIN)**

35. Tracts shall be created on the Phase 1 Final Plat as follows:

Tract	Purpose
Tract A	Park
Tract B	Open Space, Wetland, Wetland Buffer
Tract C	Stormwater Facility
Tract D	Park, Open Space, Wetlands, Wetland Buffer, Riparian Buffer
Tract E	Open Space, Wetlands, Wetland Buffer, Riparian Buffer
Tract F	Open Space, Wetland, Wetland Buffer
Tract G	Park, Stormwater Facility

- The applicant shall dedicate development rights to the City for preservation of open space tracts. Documents dedicating development rights shall be prepared by the applicant and reviewed as to form by the City Attorney.
- Tracts C and G shall be subject to public storm drainage easements on the Phase 1 Final Plat. The developer shall sign a Stormwater Access Easement and Covenant Agreement with the City for these tracts.
- Tract D shall be subject to a conservation easement on the Phase 1 Final Plat to prohibit activities that are not in compliance with the Wetlands and Fish and Riparian Corridor Overlay, while granting rights to the City to improve Tract D in the future. Trails or other improvements may be proposed within the conservation easement outside the significant wetland(s) subject to the approval of a Sensitive Lands Development Permit

demonstrating compliance with Chapters 17.85 and 17.89, as applicable. The applicant shall retain the natural features and natural vegetative cover to the maximum extent possible.

36. A 15-foot public access easement through Tract D shall be granted to the City on the Phase 1 Final Plat for pedestrian access. The gravel path shall utilize uniformly graded stones to ensure that the trail remains permeable.
37. No ground disturbance is permitted in the southwestern portion of the site outside the limits of the prior wetland delineations, unless that area is delineated, approved by DSL, and applicable Federal, state, and City permits are obtained.
38. The applicant shall submit a final cut/fill analysis prepared by a registered professional engineer after completion of the roads, utilities, and final grading, demonstrating compliance with the approved CLOMR, File number 22-10-0362R, prior to submitting for LOMR approval.
39. The applicant shall not submit the Phase 2 Final Plat application until FEMA has issued a Letter of Map Revision based on the approved CLOMR, File number 22-10-0362R. No building permits for Phase 2 lots will be issued until FEMA has issued the Letter of Map Revision which indicates that all Phase 2 lots are no longer within the mapped 100-year floodplain.
40. All finished floors shall be elevated at least 2 feet above the base flood elevation (BFE). Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be elevated at least 1 foot above the base flood elevation (BFE).
41. The applicant shall provide evidence of issuance of all applicable permits from County, State, and Federal agencies prior to commencing site clearing or development activities. This includes wetland permits from Oregon Department of State Lands and U.S. Army Corps of Engineers, as applicable. The applicant shall submit a No State Permit Required letter from DSL if no permit is required for the proposed project.

#### GEOTECHNICAL

42. The applicant shall provide a final Geotechnical report in accordance with the Public Works Design Standards that conforms to the proposed design.
43. Prior to issuance of Notice to Proceed for public works construction, the applicant shall submit a review by the Geotechnical Engineer of record to verify conformance of the final plan with the Geotechnical report and shall adhere to the recommendations contained in the Geotechnical report.
44. A Geotechnical Engineer registered to practice in the state of Oregon shall oversee earthwork portions of the development.
45. Site-specific geotechnical recommendations shall be provided for houses on Lots 7-9, 17-19, and 47-48 prior to issuance of building permits. Recommendations shall address foundation design, surface and subsurface drainage, structural fill, and other relevant parameters based on the geotechnical engineer's professional judgment.

## MISCELLANEOUS

46. Development and construction on the site shall conform substantially to the preliminary plans submitted by Pioneer Design Group, included as **Exhibit 4** in this report, as amended by the conditions of approval (unless modified via subsequent land use decisions) and shall conform to final construction plans reviewed and approved by the City Engineer, the Building Official, and Scappoose Rural Fire Protection District. All plans shall comply with the applicable building, planning, engineering and fire protection codes of the City of Scappoose.
47. The applicant shall enter into a construction Improvement Agreement with the City of Scappoose for all public improvements. A performance bond of 110% of the Public Works Construction costs shall be provided prior to the commencement of work.
48. Approval of a Tentative Plat shall expire twelve (12) months after the date of the formal notice of decision. In no case shall the actual construction time period for any phase be greater than two years without submitting a final plat for each completed phase, and in no case shall the total time for construction of the phased development exceed five years. The applicant is required to install all underground utilities and street improvements for the entire subdivision prior to applying for approval of the Phase 1 Final Plat.
49. The Phase 1 and Phase 2 Final Plats shall conform to the requirements of ORS Chapter 92 (Subdivisions and Partitions) and contain a note specifying that the plat is subject to the conditions of approval as set forth in the Land Use Approval for Local File number SB1-22.
50. All existing and proposed easements shall be illustrated on the Final Plats.
51. The applicant shall install locking cluster mailboxes to serve the development, subject to the approval of the USPS Postmaster and City Engineer. The mailboxes shall comply with Section 17.154.030(P) of the Municipal Code, Chapter 11 of the Oregon Structural Specialty Code, and U.S. Postal Service regulations and shall be approved by the U.S. Post Office and the City Planner prior to Phase 1 Final Plat approval.
52. The applicant shall furnish a full-size copy of the Final Subdivision Plat for each phase to the City of Scappoose for review and approval. After City approval of the Final Plat, the Plat shall be recorded with Columbia County and the applicant shall provide an electronic copy of the recorded Final Plat to the City Planner.
53. This approval authorizes no more than 44 lots, with a minimum square footage of 4,000 square feet (condition of approval added by Council decision made on 12/19/2022).



# SCAPPOOSE

Oregon

September 10, 2024

**LAND USE REFERRAL: REMAND HEARING - Buxton Ranch Planned Development SB1-22, ZC1-22, CU1-22, SLDP 1-22, 2-22, 3-22, 4-22**

**RETURN TO:** Laurie Oliver Joseph, Community Development Director, City of Scappoose, 33568 East Columbia Ave, Scappoose, OR, 97056 (or email comments to [loliver@scappoose.gov](mailto:loliver@scappoose.gov)) by **September 20, 2024**. For questions, you can reach Laurie Oliver Joseph at the email provided above or by calling 503-543-7184.

**REGARDING:** Remand Public Hearing to consider the four assignments of error remanded to the City to address, resulting from LUBA Case No. 2023-001. *David Weekley Homes is requesting approval of an application to subdivide Columbia County Assessor Map Number 3212-CB-00401 to create 48 lots in the Low Density Residential (R-1) zoning district. (David Weekley Homes initially requested approval for a 48-lot subdivision; however, the City authorized no more than 44 lots with a minimum square footage of 4,000 square feet as a condition of approval in its final decision). Additionally, the applicant requests approval of: a Zone Change since this is a PD (Planned Development, which acts as a zone change on the parcel); a Conditional Use Permit since PD's are allowed as a Conditional Use in the R-1 zone, and Sensitive Lands Permits for the Floodplain, Steep Slope, Wetlands, and Fish and Riparian Corridor on the site. The site is ~ 17.3 acres and is located south of the Captain Roger Kucera Way and SW JP West Road intersection.*

Please see the attached Remand Hearing Notice for more information regarding the scope of the remand and the four assignments of error that can be commented on. If you do not wish to provide a comment, please indicate that via a comment on this form or via an email to [loliver@scappoose.gov](mailto:loliver@scappoose.gov).

1.   X   We have reviewed the enclosed application and have no objection to its approval as submitted.
2.        Please see either our comments (below) or attached letter.
3.        We are considering the proposal further and will have comments to you by \_\_\_\_\_.
4.        Our board must meet to consider this; we will return their comments to you by \_\_\_\_\_.
5.        Please contact our office so we may discuss this.
6.        We recommend denial of the application. Please see either our comments (below) or attached letter:

COMMENTS: \_\_\_\_\_  
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Signed: 

Title: Building Official

Date: 9-10-11



SCAPPOOSE  
Oregon

EXHIBIT B2

September 10, 2024

**LAND USE REFERRAL: REMAND HEARING - Buxton Ranch Planned Development SB1-22, ZC1-22, CU1-22, SLDP 1-22, 2-22, 3-22, 4-22**

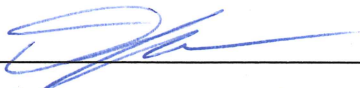
**RETURN TO:** Laurie Oliver Joseph, Community Development Director, City of Scappoose, 33568 East Columbia Ave, Scappoose, OR, 97056 (or email comments to [loliver@scappoose.gov](mailto:loliver@scappoose.gov)) by **September 20, 2024**. For questions, you can reach Laurie Oliver Joseph at the email provided above or by calling 503-543-7184.

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6. ☐ We recommend denial of the application. Please see either our comments (below) or attached letter:

COMMENTS: Original comments provided in 2022 st. 11  
apply.  
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Signed: 

Title: Public Works Director

Date: 9/12/2024





SCAPPOOSE  
*Oregon*

EXHIBIT B3

September 10, 2024

**LAND USE REFERRAL: REMAND HEARING - Buxton Ranch Planned Development SB1-22, ZC1-22, CU1-22, SLDP 1-22, 2-22, 3-22, 4-22**

**RETURN TO:** Laurie Oliver Joseph, Community Development Director, City of Scappoose, 33568 East Columbia Ave, Scappoose, OR, 97056 (or email comments to [loliver@scappoose.gov](mailto:loliver@scappoose.gov)) by **September 20, 2024**. For questions, you can reach Laurie Oliver Joseph at the email provided above or by calling 503-543-7184.

**REGARDING:** Remand Public Hearing to consider the four assignments of error remanded to the City to address, resulting from LUBA Case No. 2023-001. *David Weekley Homes is requesting approval of an application to subdivide Columbia County Assessor Map Number 3212-CB-00401 to create 48 lots in the Low Density Residential (R-1) zoning district. (David Weekley Homes initially requested approval for a 48-lot subdivision; however, the City authorized no more than 44 lots with a minimum square footage of 4,000 square feet as a condition of approval in its final decision). Additionally, the applicant requests approval of: a Zone Change since this is a PD (Planned Development, which acts as a zone change on the parcel); a Conditional Use Permit since PD's are allowed as a Conditional Use in the R-1 zone, and Sensitive Lands Permits for the Floodplain, Steep Slope, Wetlands, and Fish and Riparian Corridor on the site. The site is ~ 17.3 acres and is located south of the Captain Roger Kucera Way and SW JP West Road intersection.*

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6. ☐ We recommend denial of the application. Please see either our comments (below) or attached letter:



COMMENTS: \_\_\_\_\_  
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Signed: 

Title: Superintendent, Scappoose School District

Date: 9/16/2024



SCAPPOOSE  
*Oregon*

EXHIBIT B4

September 10, 2024

**LAND USE REFERRAL: REMAND HEARING - Buxton Ranch Planned Development SB1-22, ZC1-22, CU1-22, SLDP 1-22, 2-22, 3-22, 4-22**

**RETURN TO:** Laurie Oliver Joseph, Community Development Director, City of Scappoose, 33568 East Columbia Ave, Scappoose, OR, 97056 (or email comments to [loliver@scappoose.gov](mailto:loliver@scappoose.gov)) by **September 20, 2024**. For questions, you can reach Laurie Oliver Joseph at the email provided above or by calling 503-543-7184.

**REGARDING:** Remand Public Hearing to consider the four assignments of error remanded to the City to address, resulting from LUBA Case No. 2023-001. *David Weekley Homes is requesting approval of an application to subdivide Columbia County Assessor Map Number 3212-CB-00401 to create 48 lots in the Low Density Residential (R-1) zoning district. (David Weekley Homes initially requested approval for a 48-lot subdivision; however, the City authorized no more than 44 lots with a minimum square footage of 4,000 square feet as a condition of approval in its final decision). Additionally, the applicant requests approval of: a Zone Change since this is a PD (Planned Development, which acts as a zone change on the parcel); a Conditional Use Permit since PD's are allowed as a Conditional Use in the R-1 zone, and Sensitive Lands Permits for the Floodplain, Steep Slope, Wetlands, and Fish and Riparian Corridor on the site. The site is ~ 17.3 acres and is located south of the Captain Roger Kucera Way and SW JP West Road intersection.*

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COMMENTS: \_\_\_\_\_  
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Signed: Scott Toenjes

Title: Engineering Technician II

Date: 9/17/2024