# AGENDA

**Meeting Location:**
Eugene Public Library, Bascom-Tykeson Room
100 W. 10th Avenue
Eugene, OR 97401

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

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

**MONDAY. DECEMBER 10, 2012 – REGULAR MEETING (11:30 a.m. to 1:30 p.m.)**

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

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

**11:40 a.m. II. DEERBROOK PUD APPEAL DELIBERATIONS & POSSIBLE ACTION (PDT 12-1)**

Staff: Becky Taylor, 541-682-5437

**1:20 p.m. III. ITEMS FROM COMMISSION AND STAFF**

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

Commissioners: Steven Baker; Jonathan Belcher; Rick Duncan; Randy Hledik, Chair; John Jaworski; Jeffery Mills; William Randall, Vice Chair

**AGENDA ITEM SUMMARY**
**December 10, 2012**

**To:** Eugene Planning Commission

**From:** Becky Taylor, Associate Planner, Eugene Planning Division

**Subject:** Appeal of Hearings Official Decision: Deerbrook PUD (PDT 12-1)

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**BACKGROUND**
This is the second deliberation meeting following the November 14, 2012 public hearing of the Deerbrook PUD (PDT 12-1) appeal. At the first deliberation meeting on December 3, 2012, the Planning Commission (PC) reviewed all of the "preliminary issues" and most of the appeal issues (as outlined in Attachments 1 and 2 of the December 3, 2012 Agenda). With the exception of 3 issues, the PC made preliminary votes on all appeal items. At the conclusion of the Decmeber 3, 2012 meeting, it was agreed that the commission would come back on December 10, 2012 to finish its discussion of the 3 remaining appeal items (i.e. #3 and #7a, Lot Standards; #9 Stormwater; and #11 "19-Lot Rule") and to consider action on a draft final order.

Based on the direction of the PC's votes, staff has prepared a draft final order for consideration. However, given the concern expressed from a few commissioners regarding the changes to the proposed development (e.g. the 75 lot plan vs. the 47 lot illustration), we have provided alternate findings to consider. Further discussion of this issue follows below. Similarly, we have provided alternate findings for the 3 unresolved appeal issues, as well as solar standards (appeal items #4, 7b). Please note that this alternative text has been highlighted in the draft final order.

**DELIBERATIONS**
As we progressed through the various appeal items on December 3, 2012, it became apparent to staff that there may be some confusion about some of the initial decisions made at the first deliberation, specifically as it relates to the original 75 lot application versus the 47 lot illustration. Based on these comments, there were two questions that emerged for additional discussion:

- Did the Hearings Official decision evaluate the various criteria (under appeal) against the 75 lot application proposal or, as SEN asserts on pages 7-8 of SEN's appeal statement, did the Hearings Official instead consider the 47-lot plan as if it was the application?
- Does the PC agree with staff's proposal to respond to relevant appeal issues by evaluating the 75 lot application and imposing conditions of approval to limit the development to those portions of the 75-lot plan that are consistent with the criteria (resulting in the 47 lot design)?

With respect to the first question, staff believes the Hearings Official stopped short of evaluating all the applicable criteria against the 75 lot plan once he found non-compliance with the 20% slope requirement. Staff have therefore, modified the findings under several appeal items (e.g. stormwater, solar and others) to clarify whether the 75 lot plan (not just the remaining 47 lots) comply with the various criteria. The modified findings make it clear that the eastern portion of the property does not

comply with several of the applicable development standards raised in the appeal. Therefore, if the appeal issues regarding slope were overturned at LUBA, the findings would still conclude that the eastern portion could not be built.

With regard to the second question, staff believes the best place to address this concern is under subsection 2c of Appeal Issue #1. The PC consensus was to affirm the Hearings Official's determination that the site's slope must be determined based on five-foot contours but to disagree with the Hearings Official's determination as to the best evidence in the record with regard to the location of 20% slope areas on the site. The HO rejected the applicant's five-foot contour map and was left with a question as to the location of the 20% slope areas. The PC consensus was that the applicant's five-foot contour map is the correct map to evaluate the slope criterion and that the HO erred when he rejected that map.

In order to implement the PC's direction, staff has added a condition of approval that would be imposed as part of the final order. This condition requires the final PUD to be revised to eliminate the eastern lots, resulting in a final plan consistent with the 47 lot illustration. Some commissioners expressed concern with the level of change this would make to the 75 lot plan in the application. If the PC thinks this condition should not, or cannot be applied, the PC must deny the PUD application. Staff has provided alternate findings to consider with respect to this appeal item. The City Attorney will be present to discuss the legalities on the areas of concern, such as the degree of change and the imposition of conditions.

**PLANNING COMMISSION'S REVIEW ROLE**

Based on procedural requirements set forth in the Eugene Code (see EC 9.7655), the PC may address only those issues set out in the appeal statements submitted on October 3, 2012. Further, the PC limits its consideration to the evidentiary record established before the HO; the PC may not accept new evidence, except that which it officially notices. The City Attorney has advised that the PC should not use its authority to take official notice of material that would be new evidence when it is considering an appeal that otherwise prohibits new evidence, like this one.

The code requires that the PC review be focused entirely on the question of whether or not the HO failed to properly evaluate the application or make a decision consistent with the applicable criteria. Those criteria are the Tentative PUD – Needed Housing Approval Criteria at EC 9.8325, to the extent they are implicated by the appeals. In the event that the PC finds the HO erred in denying the request and chooses to reverse the decision, the PC is required to provide specific findings of fact as to why the decision was in error. The PC cannot reverse the decision without such findings.

The PC decision must be made in accordance with the procedures for appeals at EC 9.7650 through EC 9.7685. The Applicant has granted a timeline extension, extending the date by which the PC needs to make its decision, from December 11, 2012 to December 21, 2012. This has lessened the pressure to get through all of the materials and make a final decision today.

**ATTACHMENTS**

Attached is a draft Final Order, based on the preliminary votes of the December 3rd meeting and the concerns expressed – particularly regarding the evaluation of the entire "75-lot plan." The highlighted text indicates where additional PC deliberation is needed – and identifies areas that may need to

change, according to the PC's decision.

The entire record of materials for the subject application is available for review at the Eugene Planning Division offices, and will be provided to the PC under separate cover. The record index will also be an attachment to the Final Order.

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

Eugene Planning Commission

# DRAFT FINAL ORDER OF THE EUGENE PLANNING COMMISSION ON APPEAL OF DEERBROOK PUD (PDT 12-1)

## I. INTRODUCTION

This Final Order concerns a cross-appeal of the decision by the Eugene Hearings Official (HO) to deny the request for tentative approval of Deerbrook PUD (PDT 12-1). The application requests approval for the development of 75 single-family residential lots on the approximately 26-acre subject property which is located in the south hills of Eugene, adjacent to West Amazon Drive and south of Martin Street. The property is zoned R-1/PD/WR (Low-Density Residential with Planned Unit Development and Water Resource Overlays). The application seeks approval under the Needed Housing approval criteria rather than the General criteria, as provided in Eugene Code (EC) section 9.8325.

Upon an initial staff recommendation for denial of the 75-lot proposal (as reflected in the June 2012 staff report), the applicant postponed the public hearing and submitted plans showing a 47-lot plan that included development of only the western portion of the subject property. As described in the HO's decision and clarified by City staff, the 47-lot plan as referred to in the record below, is best described and understood as the applicant's illustration of how the possible conditions of approval suggested in the initial staff report could be met (that is, in the event that the HO granted approval rather than denial as initially recommended by staff). Most importantly, the applicant's illustrative plan removes all proposed development from the eastern portion of the site, in a manner that is necessary to show compliance with the Needed Housing approval criteria at EC 9.8325(5) related to the prohibition of grading on portions of the site that meet or exceed 20% slope, as well as other applicable criteria.

After a second public notice, following the applicant's postponement and submittal of the 47-lot illustrative plan, the HO held a public hearing on August 1, 2012. At that time, the staff report was revised to recommend conditional approval based largely on the changes shown on the applicant's 47-lot illustrative plan. However, after receiving further testimony and evidence during the public hearing and open record period, the HO issued a decision denying the application on September 21, 2012.

On October 3, 2012, two appeals were filed: one from Dan Snyder, Law Office of Charles M. Tebbitt, PC, on behalf of the Southeast Neighborhood Association (SEN); and another from Bill Kloos, Law Office of Bill Kloos, PC, on behalf of the Applicants, Martin and Leslie Beverly, and Ed McMahon for the Homebuilders Association (HBA). The Planning Commission (PC) held a public hearing on the appeals, on November 14, 2012. At the public hearing, both appellant parties and other members of the public testified on the appeals. The same evening, immediately following closure of the public hearing, the PC closed the record to additional argument. The PC subsequently deliberated on the issues raised by the parties at its meetings on December 3rd and 10th, 2012.

As required by the Eugene Code, the appeals are based on the record and limited to the assignments of error contained in the appeal statements submitted. As described below in Section III, Preliminary Issues, the PC resolves a number of procedural and evidentiary issues raised by the parties. In Section IV, Appeal Issues, the PC includes findings and conclusions with regard to each appeal issue raised by the parties which ultimately lead the PC to its final local decision in this matter to reverse the HO's decision. As reversed on appeal, and further discussed below, the PC's Final Order approves the tentative PUD application for Deerbrook PUD (PDT 12-1), with conditions and revised findings. For clarity, the PC notes that tentative PUD approval is only granted for development of the western portion of the subject site as illustrated on the applicant's 47-lot plan (see attached). This approval specifically excludes the development proposed on the eastern portion of the site as shown on the applicant's original 75-lot plans.

**Alternative:** Depending on the outcome of appeal issues below, the PC may decide to affirm the Hearings Official's denial. In that case, the highlighted language above would be revised to reflect that outcome.

## II. RECORD BEFORE THE PLANNING COMMISSION

The record before the Planning Commission consists of all the items listed in the attached Index of Planning Commission Record, which were physically before, and not rejected by, the PC prior to its final decision. EC 9.7655(2) limits the nature of evidence that the PC can consider on appeal as follows: "The record from the proceeding of the Hearings Official or Historic Review Board shall be forwarded to the appeal review authority. No new evidence pertaining to the appeal issues shall be accepted." Pursuant to this section, the PC cannot accept any new evidence, and there is no process for an exception to this rule. As addressed below in Section III, Preliminary Issues, a number of items submitted by the parties are specifically rejected by the PC as inadmissible new evidence. As such, these items are not included in the record or referenced in the attached index, nor are they considered by the PC in reaching a decision on these appeals. The PC's decision on the appeals is otherwise based upon consideration of all other relevant evidence and argument within the record to date.

## III. PRELIMINARY ISSUES

Preliminary issues are those raised by the appellants that are procedural or evidentiary in nature. The PC resolves these issues below.

### SEN Request that the PC Dismiss the HBA from Deerbrook Appeal

Relevant Code Text:
EC 9.7655(1)(d) specifies that "[a]ny person who submitted written comments in regard to the original application" may appeal a Hearings Official's decision.

On October 5, 2012:
The SEN submitted a request that the PC "dismiss" the HBA from the Deerbrook Appeal. The SEN assert that:

1) The HBA's written comments to the HO were prepared before the applicant formally

submitted its application to the City and, therefore, must not have been "in regard to the *original application*";

2) The HBA comments did not "raise any issues of substance concerning the Applications' compliance with the requisite code criteria";
3) The HBA should have submitted its own appeal form and fee and should not be allowed to join the Applicant's appeal; and
4) It appears the HBA did not sign the appeal statement or appeal form.

<u>On October 9, 2012</u>:
The Applicant/HBA submitted a response, first noting that SEN's request is pointless since, if it was approved, nothing would change; it would merely result in striking some references to the HBA from the appeal documents (the appeal would otherwise remain as it is filed and the HBA would simply testify as a participant in the hearing before the PC). In response to SEN's issues, the Applicant/HBA assert that:

1) The February 23, 2012 HBA letter was dated after the neighborhood meeting where the development plan (later submitted with the application) was presented to the neighborhood, so the comments were "in regard to the *original application*"; and
2) The code does not require that an appellant's comments be substantive as to the applications' consistency with specific criteria;
3) The code does not prohibit multiple persons from filing a joint appeal; and
4) The HBA did sign the appeal form and was not required to sign the appeal statement (like SEN's appeal statement, the Applicant/HBA's appeal statement was signed only by the attorney).

<u>On October 11, 2012</u>:
The SEN submitted a reply to HBA's response, stating that:

1) "The Code does not allow for HBA to circumvent this process by 'pre-commenting' on a developers proposed plans *before* those plans have actually been transcribed onto a formal application and officially filed with the City"; and
2) The HBA's comments to the HO did not include any of the issues now raised in the appeal and HBA should be limited to raising issues that *it* raised to the HO. Specifically, HBA did not raise before the HO the argument that the code should be interpreted in such a way that "allows property in the Buildable Lands Inventory to be developed under clear and objective standards."

<u>PC Determination</u>:
The PC hereby denies SEN's request because HBA has clearly satisfied the City's requirements for filing an appeal, as further articulated below.

1) The February 23, 2012 HBA letter qualifies as "written comments in regard to the original application." The date on the HBA letter is immaterial. A copy of the HBA letter was submitted for the HO's consideration in regard to the application that originated this appeal and it clearly relates to that application. This is consistent with the code text at EC 9.7655(1)(d). The letter specifically refers to PDT 12-1 and states, in part: "I have reviewed the Site Plan and narrative for the PUD, which will go to public hearing in late June. This project, proposing 75 lots on 26 acres in the South Hills, to be reviewed under the Needed Housing Standards, is a case study for the reasonableness of the density assumptions for

the BLI in the South Hills." The June 2012 staff report specifically identified and responded to the February 23, 2012 HBA letter.

2) There is no code requirement that, to file a local appeal, the appellant must have raised an issue as to the application's consistency with a particular criterion. The code does require that every appeal issue must have been raised somewhere, by someone, in the HO's record [EC 9.7655(3)]. SEN argues that "HBA did not raise before the hearings official the argument that the code should be interpreted in such a way that allows property in the Buildable Lands Inventory to be developed under clear and objective standards." However, that issue was raised by the Applicant as part of its September 12, 2012, final argument, where it states and elaborates on the following argument: "[t]he statutory scheme anticipates that land inventoried in the acknowledged BLI for housing is to be developable for housing under clear and objective standards, not off-limits to development under clear and objective standards."
3) There is no code requirement that prohibits numerous persons or entities from joining in a single appeal. In this case, there is a single appeal form and a single narrative, with one individual representing both appellant parties (attorney Bill Kloos).
4) Contrary to SEN's assertion, the HBA did sign the appeal form and was not required to sign the appeal statement (like SEN's appeal statement, the applicant/HBA's appeal statement was signed only by the attorney).

**<u>SEN Request that the PC Strike Portions of the Applicant/HBA Appeal</u>**

<u>Relevant Code Text</u>:
EC 9.7655 <u>Filing Appeal of Hearings Official or Historic Review Board Initial Decision</u> provides at (2) that "No new evidence pertaining to appeal issues shall be accepted." EC 9.7655 <u>Filing Appeal of Hearings Official or Historic Review Board Initial Decision</u> provides at (3) that the basis of an appeal "is limited to the issues raised during the review of the original application."

<u>On October 5, 2012</u>:
The SEN objects to what it identifies as new evidence and issues introduced in the Applicant/HBA appeal:

1) The alleged new evidence is the set of figures submitted by the Applicant/HBA to support its critique of Kevin Matthew's slope map at pages 8-9 of the Applicant/HBA Appeal Statement; and
2) The alleged new issue is addressed in the Applicant/HBA's first assignment of error (sections 3 and 4) asserting that the "Matthews Map" has methodological flaws that are not in the staff map, at pages 6-12 of the Applicant/HBA appeal.

<u>On October 9, 2012</u>:
The Applicant/HBA responded, asserting that there is no new evidence in their appeal statement. They argue that the two graphics on page 8 of their appeal statement are evidence excerpted from the record, displaying the same small part of the site plan, one graphic taken from Sheet L2.0 of the Applicant's plan and the other a "re-creation" of the "Matthews Map." Also, they provide a different set of graphics for the PC to consider, in case the PC determines that the "re-creation" is new evidence. This different set of graphics includes a direct copy of the Applicant's site plan and an enlargement of that same site plan with a 25' circle drawn on top.

The Applicant/HBA argues that its appeal issues do not need to be limited to the issues raised before the HO. Further, they assert that if the PC finds new evidence, it should strike the evidence and not the entire issue being raised.

On October 11, 2012:
The SEN responded that the request to strike is also based on the Applicant's failure to raise the alleged deficiencies of Mr. Matthew's map before the HO.

PC Determination:
With respect to EC 9.7655(2), "No new evidence pertaining to appeal issues shall be accepted," the PC rejects the two graphics imbedded in the Applicant/HBA's appeal statement at page 8. The PC finds that these "re-creations" are more than admissible manipulations of existing record evidence. The set of graphics provided in the Applicant/HBA's October 9 letter are acceptable and those graphics may be consulted instead of the ones at page 8 of the Applicant/HBA's appeal statement; references to the stricken graphics are also stricken or ignored. The remaining text in the appeal statement relevant to the October 9 graphics, and as discussed in the following paragraph, are retained as part of the record. That critique of Mr. Matthews' map can be argued based on the record evidence.

With regard to EC 9.7655(3), "limiting an appeal to issues raised during the review of the original application," the PC reject SEN's contention that the Applicant/HBA raises a new issue in its first assignment of error (sections 3 and 4). The PC considers the issues raised in the Applicant/HBA appeal. The PC disagrees with assertions made by both SEN and the Applicant/HBA. The PC does not agree with the Applicant/HBA assertion that the code allows it to raise a new issue to the PC. However, the PC also disagrees with SEN's assertion that that the Applicant/HBA has actually raised a new issue. The record before the HO very clearly includes assertions about the correctness of the various slope maps in the record. In the Applicant's final argument, it directs such assertions specifically at the "Matthews Map." SEN contends that every argument pertaining to an appeal issue must have been made in the initial review process. The PC disagrees. For these reasons, the PC considers the issues raised in the Applicant/HBA appeal.

**Applicant/HBA Request that the PC Take Official Notice of Documents**

Relevant Code Text:
EC 9.7095 Quasi-Judicial Hearings – Official Notice and Record of Proceedings provides that the PC may take official notice of any public record of the City. EC 9.7655 Filing Appeal of Hearings Official or Historic Review Board Initial Decision provides that "No new evidence *pertaining to appeal issues* shall be accepted." (italics added for emphasis).

Applicant/HBA:
In their Appeal Statement, the Applicant/HBA has asked the PC to take official notice of several HO decision documents on other PUD applications to support their argument that the HO decision on the modification to lot standards is unprecedented in Eugene.

PC Determination:
The PC denies the request for official notice. The documents are being offered by the Applicant/HBA as

substantive evidence to aid in its Appeal Issues #3 and #4. This is arguably inconsistent with EC 9.7655 which provides that "No new evidence *pertaining to appeal issues* shall be accepted." The PC also notes that in response to staff's November 14 recommendation against taking official notice, the Applicant has acknowledged that "the PC has much material…and that not taking official notice…will lessen the work before you. The applicant is OK with this [staff's] recommendation." (See November 14, 2012 Hearing Exhibit C, letter from Rick Satre). The Applicant does not rely on these documents to support their related appeal issues (#3 and #4), so they are unnecessary.

**Request to Consider SEN Testimony that the HO Excluded from the Record**

SEN:
In their Appeal Statement, the SEN claims that the HO erred when he refused to consider the SEN rebuttal testimony dated September 11, 2012.

PC Determination:
The SEN testimony could not be considered because it was submitted after the close of the record. While the HO would likely have considered an extension of the record with a timeline extension from the Applicant, none was provided, so the HO had no recourse but to formally issue an Order denying the SEN request. The PC denies the SEN request and rejects testimony submitted after the close of the HO record.

**Applicant/HBA Request to Reject the SEN Appeal**

Applicant/HBA:
At the November 14, 2012 hearing, Bill Kloos argued that the SEN was not approved by the SEN Board of Directors and that the SEN Charter does not allow appeals (see Hearing Exhibit A).

SEN:
Dan Snyder argued that the neighbors had a quorum of board members present at the hearing and took an official vote ratifying the filing of the appeal; he also asserted that the neighbor's charter clearly authorizes the filing of appeals in local land use planning actions.

PC Determination:
Whether or not SEN complied with its own charter is not an issue for the PC to consider. It does not relate to an approval criterion and was not an issue before the HO. Therefore, it is beyond the scope of the PC's review. City staff accepted the SEN appeal with the 50% fee for recognized neighborhood associations; to assert its argument, the Applicant/HBA could challenge that staff action, not the HO decision. For these reasons, the PC will continue to consider SEN's appeal.

**Request to Reject the SEN "Google Map" Transparency (Hearing Exhibit E)**

SEN:
At the November 14, 2012 hearing, Mr. Snyder distributed documents to the Planning Commission, which he described as being a transparency of a "Google Map" overlaying an excerpt of the Goal 5 Scenic Areas map. This information was being presented by the SEN to support its Appeal Issue #6 – to show that the subject property is not on the Goal 5 Scenic Area map and, as such, the PUD is not

exempt from the geotechnical analysis standards. Refer to Appeal Issue #6 for more information.

Applicant/HBA:
Mr. Kloos requested that the PC reject this as "new evidence." (See Hearing Exhibit E.)

PC Determination:
The PC rejects and does not consider the "Google Map" transparency because it is new evidence that is not in the record and was not considered by the HO in rendering his decision.

**Request to Reject the SEN "Demonstrative Exhibit"**

SEN:
At the November 14, 2012 hearing, Mr. Snyder posted the Applicant's full-size contour map and then called Mr. Matthews, with ruler and marker in hand, to measure and mark on that map.

Applicant/HBA:
Mr. Kloos requests that the PC not accept this map because the markings on the map are new evidence.

PC Determination:
The PC rejects and does not consider the map prepared by Mr. Matthews at the hearing because the markings on the map are new evidence.

**Request to Reject Appellants' Testimony Received After November 14, 2012**

Both Parties:
Staff received an email with an attached letter from Dan Snyder on November 16, 2012, and emails with attached letters from Bill Kloos on November 15 and November 19, 2012. Staff also received a letter from Dan Snyder, dated November 30, 2012.

PC Determination:
The time for submitting material into the record closed on November 14, 2012. Therefore, all the materials submitted after close of the record are excluded and not considered.

## IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The PC's findings and conclusion regarding each appeal issue are provided below. After consideration of the applicable law and all argument and evidence in the record, the PC finds that the subject application meets all applicable PUD approval criteria from EC 9.8325, with additional findings and conditions of approval as described below. The HO's initial decision to deny the application is therefore reversed. As a result of the PC's determinations on the appeal issues below, tentative PUD approval is only granted for development of the western portion of the subject site as illustrated on the applicant's 47-lot plan. This approval specifically excludes the development proposed on the eastern portion of the site as shown on the applicant's original 75-lot plans. In the event of any conflict between the HO's decision and this Final Order, this Final Order shall prevail.

**Alternative:** Depending on the outcome of appeal issues below, the PC may decide to affirm the Hearings Official's denial. In that case, the highlighted language above would be revised to reflect that outcome.

***Applicant/HBA Appeal Issue #1: 20% Slope Grading Prohibition***
***"The HO erred in applying the 20% slope grading standard at all, and in finding that the application did not comply with the standard."***

***1. "The HO erred in concluding the 20% slope grading standard must be applied.***

***(a) The method for measuring 20% slope is too ambiguous for the standard to be applied at all. The argument over how to measure slope shows the standard can't be applied in a clear and objective way. Hence, it may not be applied at all. ORS 197.307(4); OAR 660-008-0015; Rudell v. City of Bandon, 62 Or LUBA 279 (LUBA No. 2010-037, November 29, 2010).***

PC Findings: The Applicant argued to the HO that the approval criterion at EC 9.8325(5) "There shall be no proposed grading on portions of the development site that meet or exceed 20% slope" violates state laws that require needed housing approval criteria to be clear and objective. The Applicant argues that the City is prohibited from applying the 20% slope criterion to the subject application for needed housing and from applying it to any future applications for needed housing. The applicant asserts that, because the criterion itself does not specify the method for determining slope, it is not clear and objective.

The HO rejected the Applicant's argument, citing another LUBA case that rejected this exact argument:

> The applicant, in its written statement, hearing testimony, and post-hearing testimony, also asserts that this criterion (EC 9.8325(5)) requires the city to exercise discretion and cannot be applied as a clear and objective standard, as required for a "needed housing" development, because it does not set out the prescribed unit of measurement for determining slope. However, the Land Use Board of Appeals rejected this exact argument, about this exact criterion (EC 9.8325(5)) in *Home Builders v. City of Eugene*, 41 Or LUBA 370, 410-411 (2002). LUBA stated, "the slope of a property is an objective determinable fact, and the absence of instructions on how to determine slope does not offend [the needed housing statute]." (See page 12 of HO Decision.)

PC Decision: The PC rejects this argument and finds no error in the HO's reliance on the direct ruling from the Land Use Board of Appeals (LUBA) [*Home Builders v. City of Eugene*, 41 Or LUBA 370, 410-411 (2002)] that rejected this exact argument. This ruling does not alter the HO's decision.

***(b) Absent code language on how to measure slope, the method to be used was not initially specified until the HO decision. This is too late. It violates the applicant's***

***right to know at the front end of the process what it must show. ORS 227.173(1); West Main Townhomes v City of Medford, 234 Or App 343, 346, 229 P3d 607 (2010).***

PC Findings: Contrary to the Applicant's statements made under sub-assignment (1)(b), the fact that the City would utilize the Applicant's own contour map (which is required by the City's application form to show 5' contours) to determine whether a portion of the site meets or exceeds 20% slope is evidence that the method has been clearly communicated to the Applicants since before they applied for the PUD. Staff confirmed in writing that the five-foot increment shown on the site plan is the correct contour interval following the pre-application conference, well before the PUD application was submitted (see December 20, 2011 letter from Becky Taylor to Carol Schirmer.)

The HO also addressed this issue:

> The applicant argues that there are four methodologies for measuring slope posited to date (Applicant's Testimony, Aug. 22, 2012). The hearings official disagrees. Despite the staff informing the applicant to measure slope using the five-foot contours on the application maps, the applicant chose to ignore that advice and measure slope over the entire site. After the hearing, the applicant then proposed to use yet a different map—the USGS topo map in the refinement plan. USGS topos have 40-foot contours [20-foot (sic)]. Just because the applicant disagrees with the instruction to use the five-foot intervals (and tried to use other methods), does not mean that the 20% rule here is not clear and objective. (See pages 12 and 13 of HO Decision.)

PC Decision: The PC rejects this argument and finds no error in the HO's determination that the Applicant had notice of the 20% slope criterion and knew what it must show during the application process ("at the front end of the process"). This ruling does not alter the HO's decision.

***(c) State law prohibits using the 20% slope grading limitation that would prevent development of any part of this site that could be developed under the discretionary standards of EC 9.8320. ORS 197.307(6). State law requires development under clear and objective standards. ORS 197.307(4); OAR 660-008-0015."***

PC Findings: The Applicant's argument that the 20% slope grading limitation prevents development of a part of the site that could be developed under the discretionary standards of EC 9.8320 is unfounded. The record shows that the Applicant has been unable to obtain PUD approval to date, with a series of prior applications being denied at the local level without further appeal, under the City's discretionary approval criteria. The Applicant/HBA also asserts that removal of this criterion would make the original 75-lot proposal approvable; however, the record shows that the 75-lot proposal had other areas of non-compliance or was lacking evidence that

would be needed to show compliance with the approval criteria, such as with the stormwater drainage standards.

PC Decision: The PC rejects this argument and finds no error in the HO's determination that the 20% slope criterion is consistent with the State's needed housing requirements. Even if the Applicant's understanding of the law is correct, the 20% grading limitation does not prevent development of a part of the site that could be developed under the discretionary standards of EC 9.8320. This ruling does not alter the HO's decision.

***2. The HO erred in finding that 20% slope must be determined based on 5-foot contour elevations.***

***(a) If the 20% slope grading limitation is to be applied at all, it must be interpreted consistent with the rules in PGE. State law provides that land in the acknowledged BLI is presumed to be developable. That state law is relevant context for interpreting the 20% limitation in the current circumstance. Because this site is in the acknowledged BLI for housing, it is presumed to be developable for housing. Measuring slope across the entire site, as done in the original application, is the correct interpretation because it allows the entire site to be developed, consistent with its status in the BLI.***

PC Findings: The record shows that the subject property is included in the City's currently adopted Residential Land Study as buildable land. The HO correctly based compliance on the subject application being Needed Housing because it is in the buildable lands inventory (i.e. the Residential Lands Study).

The inclusion of a steep-sloped property on the City's buildable land inventory (BLI) does not mean that the property is buildable at the same density that a comparably-sized flat/unconstrained property. In determining whether a BLI has sufficient land to satisfy a city's 20-year need for housing, density averages and estimates are used that take into account the constrained nature of some land on the inventory. Maximum allowed densities will not necessarily be achieved, and are not assumed, for every acre on a city's inventory.

PC Decision: The PC rejects this argument and affirms that the inclusion of a steep-sloped property on the City's BLI does not mean that the property is buildable at the same density that a comparably-sized flat/unconstrained property. Maximum allowed densities will not necessarily be achieved, and are not assumed, for every acre on a city's inventory. This ruling does not alter the HO's decision.

***(b) If the 20% slope grading limitation is to be applied at all, it must be interpreted consistent with the rules in PGE v. Bureau of Labor and Industries, 371 Or 606, 859 P2d 1143 (1993). That means an interpretation of the 20% slope standard that is consistent with the context provided by the refinement plan, the South Hills Study (SHS), which the code implements. The SHS uses the 20% slope standard, and it bases that standard on the USGS topo map, which is reproduced in the SHS.***

***Measuring slopes based on the 20-foot contours of the USGS map in the SHS is both consistent in the context of the refinement plan and allows the entire proposed development.***

PC Findings: The Applicant/HBA argues that slope should be measured using 20-foot contour intervals instead of five-foot increments. The argument of this sub-assignment contradicts the argument under sub-assignment (2)(a) (arguing that slope should be measured across the entire site). To support a 20-foot increment, they claim that the slope standard must be read in context of the South Hills Study (SHS) and therefore should be measured consistent with the USGS topographic map used for that study.

The South Hills Study is an area-specific plan that is not invoked by the PUD slope criterion, which applies City-wide. A consistent measurement of 5-foot contours is utilized for PUD applications in steep slope areas across the City.

PC Decision: The PC rejects this argument, but also finds that the HO erred because he did not expressly state that the USGS topography maps and SHS are not the context for determining the contour measurement required to demonstrate consistency with the code criterion at EC 9.8325(5). The HO should have addressed this question. The PC addresses this question by affirming that the approval criterion regarding slope has no relationship to the SHS or the USGS maps; this approval criterion applies to the entire City, not just the SHS area. This ruling modifies the HO's decision by adding findings under EC 9.8325(5) to expressly state that the SHS and the USGS maps have no relationship to this criterion.

***(c) The HO erred in considering any measurement of slope based on a five foot contour interval map, because the five-foot contour intervals reflect neither the text nor the context of the code. The five foot contour map requirement is just an information requirement made up by staff; it could change tomorrow or even during this proceeding; it is not ratified in any rule, order or code language, acknowledged or otherwise. Importing 5-foot contour maps into the standards is contrary to law. Doumani v. City of Eugene, 35 Or LUBA 388 (1999).***

PC Findings: Here, the Applicant/HBA argues that the HO erred in not addressing the argument that the City cannot use a five-foot increment for determining slope based on the application form's requirement for submittal of that information. The PC agrees with the Applicant/HBA that the HO erred in not addressing this argument; however, the PC disagrees with the Applicant/HBA's argument that the City cannot use a five-foot increment for determining slope based on the application form.

Applicant/HBA relies on a case (*Doumani*) where the City refused to accept an application submitted by a person that did not own the underlying property. The City relied on the application form requirement for the owner's signature. This case is very different. There is a code criterion that clearly requires the applicant to submit slope information for determining whether any portions of the site are 20% or more. The official application form provides the level of detail the City requests

for determining compliance with that criterion.

The PUD application form requires the information to be used to determine consistency with applicable criteria for any PUD throughout the City; it specifies a five-foot contour interval. The Applicant/HBA is suggesting that this particular application should be treated differently by using the 20-foot contour map of the SHS or the USGS maps. The PUD application form lists information needed from the Applicant to ensure that staff has sufficient information to evaluate the application under the relevant approval criteria. This ensures consistency – and the clear and objective application of this standard. The SHS is a policy document, whereas this code language is specifically clear and objective, as are the application form requirements. This ensures that there is no subjectivity in the data source – and that the data is correlated to the site in question. The application form requires the Applicant to map the contours of the site, rather than relying on another published form of contours and superimposing those on the site; the former is site-specific, whereas the latter has greater subjectivity and room for error.

PC Decision: The PC rejects this assignment of error and finds that the HO was correct in considering slope based on five-foot contour intervals. However, this determination in and of itself does not sufficiently resolve which of the five-foot contour maps showing the 20% slope areas is the most accurate. The various maps of record (i.e. the "staff map," "Matthews Map," and the Applicant's "75-lot plan" and "47-lot plan") all show five-foot contour intervals; the contours are consistent among the various maps of record, as they are all based on the Applicant's plans.

Measuring slope at five-foot contour intervals to determine the portions of the development site that meet or exceed 20% slope was the basis for identifying the areas that cannot be graded, pursuant to the approval criterion at EC 9.8325(5). The delineation of these 20% sloped areas is where the maps of record are inconsistent. The staff map highlighted these areas in yellow, using the methodology described in the July 2012 staff report to the HO. The Applicant shaded these areas on their 47-lot plan, which resulted in the removal of the eastern portion of the site because it was dominated by slopes that met or exceeded 20%. The Applicant's delineation of these areas is generally consistent with the staff map, with some subtle refinements that staff acknowledged and concurred to in the July 2012 staff report to the HO. The Matthews Map was also consistent with the staff map and the Applicant's 47-lot plan mapping of 20% slope areas, except that it identified a few additional areas in excess of 20% that were highlighted in red.

The HO relied on the Matthews Map (August 1, 2012 Hearings Official Public Hearing Exhibit C). As discussed below in sub-assignments of error #3 and #4 of this appeal issue regarding slope, the PC finds that the HO erred in relying on the Matthews Map and concludes that the Applicant's illustrative 47-lot plan (see attached) is the most accurate depiction of 20% slope areas based on five-foot contour intervals. The HO's reliance on the Matthews Map was the basis of his denial of the PUD, primarily because he assumed that the development needed to be reconfigured to respond to

the Matthews Map to avoid the additional areas highlighted in red.

The HO's error in relying on the Matthews Map establishes a consistent theme of further, subsequent errors in the HO's decision. Most notably is his failure to address the Applicant's entire 75-lot plan against all of the approval criteria. This decision corrects those errors by providing findings, making decisions, and imposing conditions as necessary to address the relevant approval criteria. For example, as discussed in greater detail under Appeal Issue #9, regarding stormwater, the HO decision only addresses the western portion of the site. The record shows deficiencies in stormwater and other service provisions to the eastern portion of the site, which the HO's decision does not fully address. Instead, the HO relies on his analysis of the slope approval criterion, as evaluated by Kevin Matthews and shown on the Matthews Map, to assume particular outcomes relative to other approval criteria.

To address this appeal issue regarding the accuracy of the five-foot contour intervals and to implement that measurement relative to the approval criterion at EC 9.8325(5), the following condition of approval is imposed:

- The final PUD plans shall be revised to show the areas of 20% slope and removal of proposed development from the eastern portion of the site, consistent with the Applicant's illustrative 47-lot plan (Sheet L2.0 of the dated August 22, 2012). The following restriction shall also be noted: "The shaded areas of 20 percent slopes shall not be graded, pursuant to EC 9.8325(5). Construction site management shall include protective fencing of these areas. Utilities in these locations will need to be installed without grading, such as with boring or other construction technique."

As a result of the above findings, the PC reverses the HO's decision. The above condition of approval (also listed at the end of this Final Order as condition of approval #3) ensures compliance with the relevant approval criterion at EC 9.8325(5).

**Alternative:** The PC determines that the HO erred in relying on the Matthews map but still affirms his decision to deny the application for lack of compliance with EC 9.8325(5). The PC's denial under this criterion is based on the following reasons: _____.

***3. The HO erred in choosing the Matthews Map, even though he concluded it is not clear to him that the Matthews Map resulted in more accurate information. The evidence in the record shows the Matthews Map has methodological flaws that are not in the Staff Map. The Commission should opt for the Staff Map.***

***4. The HO erred in faulting the applicant for failing to design around the Matthews Map. The record shows that the Matthews Map placed in the record was documented late in the***

***process (three weeks after the hearing), has methodological shortcomings discussed above, and is unsuitable for site planning by the applicant due to its size and lack of scale.***

***(a) Contrary to the HO's finding, the applicant did respond to the Matthews Map, to the extent possible based on the sketchy documentation associated with the Matthews Map.***

***(b) There is no basis in law or in common sense for denying this application for failure to conform the Site Plan to the Matthews Map of slopes, rather than the Staff Map of slopes.***

PC Findings: The Applicant/HBA faults the HO for relying on the Matthews Map to evaluate the slope criterion and for expecting the applicant to design around that map. The Applicant/HBA finds methodological flaws in the Matthews Map. Mr. Matthews explained his methodology in an August 20, 2012 letter to the Tebbutt Law Office, which the Applicant/HBA critiques as follows:

> Mr. Matthews started with a .PDF map, which he imported into Photoshop, then measured the distance between the contour lines in Photoshop, using a circular brush tip for the diameter of a 25-foot circle. The image resolution is stated as 3302 x 2282 pixels. Pixels are squares placed on a grid pattern to represent shapes (straight and curved lines, circles, etc.). This creates room for error or fudging in the measurement. The pixelated lines on the map have depth. That is, each contour line becomes multiple pixels wide…

The Applicant/HBA note that the discrepancies between the two maps are likely a result of computer monitor resolution, affecting pixel size, and by moving drawings into and out of software, which generates inaccuracies in line weight. The Applicant asserts that the Matthews Map cannot be reproduced to-scale to be used as a reliable source for dictating or restricting areas of development.

The accuracy of Mr. Matthews' map was even questioned by the HO:

> It is not clear to the hearings official whether the software resulted in more accurate information, but the hearings official believes that the circular shape of the measuring tool did provide more accurate information. (See page 13 of the HO Decision.)

The evidence of record shows that the areas of 20% slope submitted by Kevin Matthews cannot be confirmed on the same area of the site plan produced by the Applicant, even when applying the circular measuring tool. The Applicant/HBA shows that the five-foot contours in this area are greater than 25 feet apart – that the circle fits between the contour lines. Hence, the circle measurement tool did not provide different results that the square measurement tool initially used by staff; the Matthews Photoshop map produced different results than the Applicant's AutoCAD map.

Further, the PC concludes that the circular tool does not produce more accurate measurements than a square one; the circular tool was used by Mr. Matthews, whereas the square was use by staff and the Applicant (see page 3 of the July 23, 2012 staff report for a detailed description of the staff analysis methodology). The PC believes the most convincing evidence of map accuracy is Sheet L2.0 of the Applicant's August 22, 2012 plans (the Applicant's illustrative 47-lot plan), which was provided to-scale and stamped and signed by the Applicant's design professional, Carol Schirmer.

PC Decision: The PC accepts these arguments and determines that the HO erred in relying on the Matthews Map. The PC reverses the HO's decision by confirming that Sheet L2.0 of the Applicant's plan dated August 22, 2012 (see attached) is the correct map for determining compliance with the approval criterion at EC 9.8325(5). Approval condition #3, which is listed at the end of this Final Order, ensures compliance with this criterion.

***<u>Applicant/HBA Appeal Issue #2: Improvements in West Amazon Drive Right-of-Way</u>***
***"The HO erred in failing to find that West Amazon Blvd. improvements can be constructed within the 60-foot right-of-way in compliance with the 20% slope grading limitation of EC 9.8325(5)."***

PC Findings: The source of this assignment of error cannot be specifically found in the HO decision; it is not clear how this "failure to find" would have changed the HO decision. With regard to West Amazon Drive, the HO correctly begins his evaluation of EC 9.8325(5) as follows:

> To start, the existing West Amazon Drive is not included in the "development site," which is a term defined in EC 9.0500 as follows: "A tract of land under common ownership or control, either undivided or consisting of two or more contiguous lots of record. For the purpose of land use applications, development site shall also include property under common ownership or control that is bisected by a street or alley." As such, the existing West Amazon Drive right-of-way is not subject to this approval criterion. (See page 12 of HO Decision.)

There is nothing in the HO's evaluation of EC 9.8325(5) that critiques West Amazon Drive. It does not appear that the HO was concerned about the construction of West Amazon Drive occurring outside of the existing right-of-way, and therefore being subject to the 20% slope grading prohibition; conversely, the HO endorsed the conditions of approval recommended by staff regarding the establishment of slope easements and the delineation of 20% sloped areas that shall not be graded, as an additional precautionary measure to ensure compliance.

Further, the Applicant/HBA does not appear to be contesting the related approval conditions by offering the following, additional condition of approval:

- Final plans for West Amazon Drive will show retaining walls where necessary to ensure that road improvements will not require grading of slopes 20% or greater

outside the right-of-way.

PC finds no harm in adding this condition of approval to further ensure compliance with EC 9.8325(5), by providing for another construction technique to avoid grading areas outside the right-of-way that have 20% slopes.

PC Decision: The PC finds no error, but modifies the HO's decision to add the Applicant's recommended condition of approval for retaining walls, where necessary. (The condition of approval is listed as #5 at the end of this Final Order.)

***<u>Applicant/HBA Appeal Issue #3 and SEN Appeal Issue #7a: Lot Standards</u>***

***Applicant/HBA:*** ***"The HO erred in finding no compliance with the /WR 33% lot area limitation because he erroneously denied the requested modification to allow some undersized lots. He simply applied the wrong standard in denying the requested modification."***

***SEN:*** ***"…the Hearings Official determined that neither Application complied with EC 9.8325(7)(a), which prohibits a new lot if more than 33% of that lot would occupy a /WR conservation setback zone. The Official expressly found that 'the application does not comply with this criterion.' Decision at 21. Despite this finding, the Official did not base his denial on this ground."***

PC Findings: The standard at EC 9.8325(7) requires: "The PUD complies with all of the following (an approved adjustment to a standard pursuant to the provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard):

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

Under EC 9.8325(11), a modification to applicable lot standards is allowed if consistent with the purposes as set out in the PUD purpose statements at EC 9.8300.

EC 9.8300 <u>Purpose of Planned Unit Development</u>. The PUD provisions are designed to provide a high degree of flexibility in the design of the site and the mix of land uses, potential environmental impacts, and are intended to:

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

(c) A variety of dwelling types that help meet the needs of all income groups in the community.

(d) Preservation of existing natural features and the opportunity to enhance habitat areas.

(e) Clustering of residential dwellings to achieve energy and resource conservation while also achieving the planned density for the site.

(2) Create comprehensive site plans for geographic areas of sufficient size to provide development at least equal in quality to those that are achieved through the traditional lot by lot development and that are reasonably compatible with the surrounding area.

The HO only evaluated the Applicant's illustrative 47-lot plan against the above approval criterion, rather the original 75-lot plans. He appears to have limited his review to the western portion of the site because the entire eastern portion of the site could not be developed consistent with the slope criterion at EC 9.8325(5). The PC finds error in this limited review and provides findings regarding the eastern portion of the site as well.

With regard to the HO's analysis of the western portion of the site, the HO found non-compliance with the lot standards approval criterion for two reasons: 1) because he assumed the lots needed to be reconfigured to respond to the Matthews Map, he could not ensure that the lots would meet the approval criterion; and 2) because he did not evaluate the modification approval criteria for the lots with areas below minimum requirements.

With regard to the uncertain compliance with the lot standards, the HO states: "…when making the changes to comply with EC 9.8325(5) …the hearings official cannot determine which lots might need to be modified…" The reference to EC 9.8325(5) is the slope criterion, under which the HO evaluated the Matthews Map to determine non-compliance. The HO was also uncertain how this would affect the 33% lot coverage of the /WR setback, when he states "the applicant did not analyze how any of the lots listed above, if sized in compliance with the dimensional standards would have more than 33% of lot occupied by the area listed in subsection EC 9.8325(7)(a)1 and 2. (See page 21 of HO Decision.) The PC finds that the HO erred in relying on the Matthews Map to determine approval of the slope criterion at EC 9.8325; therefore, the PC finds that the HO also erred in assuming additional non-compliance with the applicable lot standards.

Moreover, the PC finds that the HO applied the wrong test when evaluating the non-compliant lots. The HO states:

> The applicant's alternative site plan shows lots 9, 10, 11, 26, 32, and 42 would not comply with applicable R-1 lot standards at EC 9.2760, with regard to the minimum lot size of 4,500 square feet. The applicant requests relief from the applicable minimum standards under EC 9.8325(11), for these lots

> because the purpose of the PUD provisions is to provide a high degree of flexibility in the design of the site, clustering, and potential environmental impacts. Applicants Testimony at 13 (Aug. 22, 2012). [See page 21 of HO Decision.]

The six lots the HO references (9, 10, 11, 26, 32, and 42 on the Applicant's August 22, 2012 plan) have lot areas between 3,777 and 4,460 square feet, which are all below the 4,500 square feet required for R-1-zone lots. The applicant requests relief from the applicable minimum standards under EC 9.8325(11), for up to 50% of the proposed lots. Of the 47 lots proposed on the western portion of the site, the six non-compliant lots equate to only 12% of the proposed lots, well below the 50% allowed.

Instead of evaluating the purpose statements at EC 9.8300, the HO stated that he "believes that the applicant has sufficient opportunity on site to comply in full with the dimensional standards." (See page 21 of HO Decision.) The PC agrees with the Applicant that this is not the test for modifying the applicable lot standards. The June 21, 2012 staff report responded to the Applicant's request, as follows:

> Staff generally agrees with the applicant that PUD process can provide an opportunity for flexibility under applicable standards, subject to a demonstration of compliance with the PUD purposes at EC 9.8300, and that such flexibility is desirable on a site such as this to allow for example, clustering of dwelling units. Under EC 9.8325(11), the applicant relies on one of the PUD purposes set out at EC 9.8300(1)(e), by stating: "Clustering means having lots with smaller dimensions. Clustering conserves energy and resources. For this reason alone the requested relief meets the code standard."
>
> While staff views this as a minimal showing under the applicable criteria for granting flexibility, and the applicant's analysis of applicable lot standards remains incomplete as noted above, the request to allow flexibility for only up to 50% of the lots does provide some quantifiable measure that can be verified at a later stage. Staff would also note that the term "clustering" is not defined in code, and the applicant does not offer any clear basis for their interpretation of the term in this case, beyond the statement quoted above.

The PC finds that the western portion of the development plan (as represented by the Applicant's illustrative 47-lot plan) meets the applicable approval criteria for granting a modification to the lot standards for the following reasons:

1. With regard to EC 9.8300(1)(a), some of the affected lots (i.e. Lots 26, 32, and 42) would have "shared use of services and facilities" with regard to the private street and stormwater infrastructure provided by "West Morning Drive."

2. With regard to EC 9.8300(1)(b), the development provides "a compatible mix of land uses that encourages alternatives to the use of automobiles" by maintaining or replacing the existing pedestrian connections through the site to adjacent parklands.
3. With regard to EC 9.8300(1)(c), by virtue of being a "needed housing" development, the PUD will provide "a variety of dwelling types that help meet the needs of all income groups in the community." It is noted that smaller lot sizes typically equate to smaller, and thus more affordable, homes.
4. With regard to "preservation of existing natural features…" under the needed housing approval criteria, the PUD is not afforded the same review of natural resource protection; however, subject sub-standards lots are located to avoid existing natural features, namely the open waterways and the areas of 20% slope.
5. With regard to EC 9.8300(1)(e), "clustering of residential dwellings to achieve energy and resource conservation while also achieving the planned density for the site," the non-compliant lots are "clustered" to the extent the smaller lot sizes enable future residential dwellings to be located closer together and utilizing energy and resources more efficiently with regard to urban services and utilities. With regard to density, the substandard lot areas are offset by larger tracts of open space; the overall density is only one-unit per acre (47 lots on 26 acres), which is well below the maximum density of five-units per acre (required by the property's location being east of Friendly Street.)
6. With regard to EC 9.8300(2), the site plan is "at least equal in quality to those that are achieved through the traditional lot by lot development" to the extent the development consists of individual lots for the future residences. This "lot by lot" development layout is "reasonably compatible with the surrounding area."

However, the PC finds that the eastern portion of the development plan (as represented by the Applicant's original 75-lot plan), does not contain the same elements described above to warrant a modification to the lot standards. The Applicant's plan for the eastern portion of the site identifies nine non-compliant lots: Lots 50 through 54 have lot sizes that range between 4,254 and 4,294 square feet; and Lots 63 through 68 have lot sizes that range between 3,301 and 4,468 square feet. These lots are located between two streets, which appears to be the primary constraint; whereas the compliant lots abutting the /WR resource associated with the site's most easterly waterway, are larger – ranging between 7,098 and 10,000 square feet. Therefore, the PC finds no sufficient basis to grant a modification to the lot standards for the eastern portion of the site. It is noted that the PC's decision otherwise requires the eastern portion of the site to be removed from the development plan for other areas of non-compliance, namely with the provision of key urban services and with the restriction from grading 20% slopes. However, the lack of justification for a modification to lot standards on the eastern portion of the site is a further basis for the PC's finding of non-compliance under EC 9.8325(7)(a),

and thus to require elimination of the proposed development on the eastern portion of the site.

PC Decision: The PC reverses the HO's basis for denial under the approval criterion EC 9.8325(7)(a) and, instead, approves a modification to the lot standards only on the western portion of the site as shown on the Applicant's illustrative 47-lot plan dated August 22, 2012 (see attached). The PC also modifies the HO's decision to add the above findings regarding the eastern portion of the site. With elimination of development on the eastern portion of the site, and modification approval for only those lots on the western portion of the site, the PC finds compliance with the applicable lot standards.

**Alternative:** The PC affirms the HO's denial under this criterion but for different reasons. The HO did err with regard to the proper test for allowing a modification to minimum lot standards (compliance with PUD purpose statements at EC 9.8300), and the PC does not rely on the Matthews Map for its determination of non-compliance here. Instead, the PC finds an inadequate basis in the application and related record materials to determine that a modification to lot standards meets the applicable criteria in the PUD purpose statements at EC 9.8300.

***Applicant/HBA Appeal Issue #4 and SEN Appeal Issue #7b: Solar Lot Standards***

***Applicant/HBA:*** ***"The HO erred in finding no compliance with the solar lot standards."***

***SEN:*** ***"Similarly, the Hearings Official found that the Applications did not comply with EC 9.8325(10), which requires compliance with Solar Lot Standards found at EC 9.2790. Nonetheless, the Official also failed to base his denial on this issue."***

PC Findings: The standard at EC 9.8325(10) requires that "Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 Solar Lot Standards (these standards may be modified as set forth in subsection (11) below)."

The HO did not find evidence in the record to determine solar lot standard compliance, as required by EC 9.8325(10), as follows:

> The alternative site plan, sheet L9.0 explains how the PUD complies with the solar lots standards. However, the percentage of lots complying with this standard for a site plan that complies with EC 9.8325(5) has not been determined, so the hearings official cannot conclude that the PUD complies with the solar lots standards, and the applicant has not requested a modification. The hearings official does not believe the applicant would be unable to comply with the solar lot standards; the hearings official only notes that the current record does not support a finding of compliance. (See page 31 of HO Decision.)

The PC finds that the HO erred for two reasons: 1) he only evaluated the western portion of the site (the Applicant's illustrative 47-lot plan), rather the entire 75-lot

plan; and 2) he relied on the Matthews Map to find ambiguity about compliance, assuming that the development layout needed to be realigned to respond to the Matthews Map.

With regard to the western portion of the site and shown on the Applicant's illustrative 47-lot plan, compliance with the solar lot standards is found as follows:

> Lot 1: This lot is located at the northwest property corner and complies with the solar lot standards by having a north-south dimension of at least 75 feet, and by having a front lot line on West Amazon Drive that is within 30 degrees of the true east-west axis.
>
> Lots 2 through 25: This cluster of lots is located southwest of the West Amazon Drive right-of-way, west of the westerly waterway. Lots 4, 5, 13, 19, 20, 23, and 24 comply by having a 75-foot north-south dimension and a front lot line within 30 degrees of the true east-west axis. The other lots do not comply; however these lots are eligible for an exception per EC 9.2790(3)(b) because of the existing alignment of West Amazon Drive and the planned alignment of Senger Lane. Consistency with the street connectivity standards prevents the lots from being in a north-south alignment.
>
> Lots 26 through 36: This cluster of lots is located on the north side of the existing West Amazon Drive right-of-way, between the west and middle waterways. Of these, Lots 29 through 32 comply, whereas the others do not. The north-south alignment of the waterways coupled with areas of 20% slope makes these lots eligible for an exception, pursuant to EC 9.2790(3)(b), which states that exceptions can be granted if natural features prevent the lots from being oriented for solar access. As such, as exception is granted.
>
> Lots 37 through 47: This cluster of lots is located on the east side of the middle waterway, between West Morning Drive and Canyon Drive (i.e. Lots 37 through 47). Only one lot (Lot 43) meets the solar standards outright because it has a front line on an east-west street (West Morning Drive) and has a lot depth that exceeds 75 feet. This portion of the site has about 200 feet of width between the middle waterway and the west property boundary, preventing additional east-west streets that would otherwise provide the balance of those lots with front lot line orientation within 30 degrees of the true east-west axis. EC 9.2790(3)(b) allows an exception from lots being oriented for solar access in these situations; as such, an exception is granted.

Twelve of the 47 lots (25 percent) shown on the Applicant's illustrative 47-lot plan comply outright with the solar standards. Although this does not meet the 70 percent minimum of EC 9.2790(2), EC 9.2790(3)(b) allows an exception if compliance with street standards or natural features prevent the lot configuration from being oriented for solar access. The HO found compliance with the solar access standards

for these lots based on the exception provisions; however, he then ruled that he could not ensure compliance following a reconfiguration of the lots as a result of relying on the Matthews Map.

The HO did not err in finding compliance with the solar standards with the exception provision for the Applicant's illustrative 47-lot plan; however, he did err in presuming those lots needed to be reconfigured. As confirmed in the appeal issues above, the PC has reversed the HO's decision on EC 9.8325(5), regarding slope, and has confirmed that the Matthews Map is not the correct map to use in the evaluation of this PUD application. As such, there is no ambiguity about solar lot compliance for the western portion of the site.

The HO also erred in not evaluating the eastern portion of the site, as represented on the Applicant's original 75-lot plan. Instead, the HO stopped evaluating this portion of the site against the remaining approval criteria when he found that this portion of the site could not meet approval criterion EC 9.8325(5). With regard to the eastern portion of the site, only three of the lots (Lots 58 through 60) comply with the solar lots standards. Although the west boundary of this portion of the site is bordered by a north-south running street (Canyon Drive), which is a fixed alignment given the existing street stub to the south, and the east boundary of this portion of the site is bordered by a north-south running Goal 5 protected waterway, there is sufficient area in-between to reorient these lots. As confirmed previously, regarding lot standards, there is insufficient evidence to grant an exception. Here, similarly, the PC does not grant an exception to the solar lot standards for the eastern portion of the site.

PC Decision: The PC reverses the HO's decision regarding the western portion of the site under EC 9.8325(10); the ambiguity of compliance with the solar lot standards and the applicable exception thereto has been removed by the PC's ruling on the Matthews Map in the appeal issues above. The PC also modifies the HO's decision to add the above findings regarding the eastern portion of the site, specifically noting that this portion of the site does not comply with the solar lot standards or its exception provisions.

**Alternative:** The PC affirms the HO's denial under this criterion but for different reasons. The HO did err in his reliance on the Matthews Map, and by not evaluating the eastern portion of the proposed development. However, the PC finds an inadequate basis in the application and related record materials to determine compliance with the solar lot standards and related exceptions under EC 9.8325(10) and EC 9.2790.

***Applicant/HBA Appeal Issue #5: Standards Review for Goal 5 Crossing***

***"The HO erred in denying this application for failure to demonstrate, in this record, that the applicant will be able to get Standards Review approval for Goal 5 road crossings. There is no basis in the code for denying this application for failure to get Standards Review approval now, rather than in a***

***separate application that will be subject to public notice and an opportunity for a full public hearing."***

PC Findings: EC 9.8325(11) requires the PUD to comply with applicable development standards explicitly addressed in the application. The HO denied the PUD under this criterion based on the applicable development standards at EC 9.4930 /WR Water Resources Conservation Overlay Zone – Permitted and Prohibited Uses and Exceptions. The record shows that the proposed public improvement crossings of the /WR resource areas will require Standards Review approval, pursuant to EC 9.4930(3)(b).

The HO did not deny the PUD application because the Applicant did not apply for a Standards Review application concurrent with the PUD; rather, the HO denied the PUD application under approval criterion EC 9.8325(11) because he assumed the lots and streets needed to be reconfigured to avoid the additional areas of 20% slope identified by the Matthews Map. The HO states:

> Because the applicant will need to adjust the locations of roads (and thus possibly crossings within the resource area, the hearings official cannot conclude that the PUD complies with this criterion. The hearings official does not believe the applicant would be unable to show compliance with Standards Review; the hearings official only notes that the current record does not support a finding of compliance. (See page 32 of HO decision.)

This uncertainty has been removed by the PC's determination, under the appeal issues above, that the HO erred in relying on the Matthews Map. The PC finds that it is appropriate to defer Standards Review approval as a condition of final PUD approval.

PC Decision: The PC reverses the HO's basis for denial under EC 9.8325(11) by relying on the Applicant's maps, rather than the Matthews Map, for evaluating the applicable approval criteria. The PC affirms that Standards Review approval should be required as a condition prior to final PUD approval. (The condition of approval is listed as #6 at the end of this Final Order).

***SEN Appeal Issue #6: Geotechnical Requirements***
***"The site is not exempt from the geotechnical requirements of EC 9.6710(6)."***

PC Findings: The approval criterion at EC 9.8325(7)(d) requires the PUD to comply with the geotechnical analysis standards at EC 9.6710. EC 9.6710(6) specific to Needed Housing applications, which states:

> *Unless exempt under 9.6710(3)(a)-(f)*, in lieu of compliance with subsections (2), (4), and (5) of this section, applications proposing needed housing shall include a certification from an Oregon licensed Engineering Geologist or an Oregon licensed Civil Engineer with geological experience stating . . .

The referenced exemptions at EC 9.6710(3) state:

> The following activities are exempt from the requirements of this section: . . .
> (f) activities on land included on the city's acknowledged Goal 5 inventory.

The HO concluded that the PUD is exempt from the geotechnical requirements at EC 9.6710 because the subject property is included on the City's acknowledged Goal 5 inventory. The HO determination is based on the Goal 5 Inventory shown on Figure H-2 of the Scenic Sites Working Paper. The SEN assert that the HO finding is incorrect and should be reversed by the PC, because they believe the adopted Scenic Area map is too ambiguous.

The PC finds that it is not necessary to evaluate the Scenic Area map because the Applicant does not rely on an exemption to fulfill the relevant approval criterion at EC 9.8325(7)(d). The Applicant initially sought compliance with EC 9.6710(6)(b), without the exception provision, by providing "…certification from an Oregon licensed Engineering Geologist or an Oregon licensed Civil Engineer with geological experience stating:

> (a) That the proposed development activity will not be impacted by existing or potential stability problems or any of the following site conditions: springs or seeps, depth of soil bedrock, variations in soil types, or a combination of these conditions; or
>
> (b) If proposed development activity will be impacted by any of the conditions listed above the methods for safely addressing the impact of the conditions. This subsection also requires the applicant to state that the development will occur in accordance with the Engineer's statement."

The applicant submitted the above certification, prepared by Gunnar Schlieder, Ph.D., CEG, GeoScience, Inc. Dr. Schlieder, an Oregon certified engineering geologist, is a local expert in geology; the City has employed his services numerous times, including the development of local standards for geotechnical analysis applicability and report contact requirements. In his August 22, 2012 letter, Dr. Schlieder responds to the concerns raised by opponents and certifies the following:

> However, the fact that slope movements are present in the vicinity of the site does not automatically indicate that the site itself is underlain with such features. GeoScience's test pits prove that it is not. The geological/geotechnical information developed by GeoScience does indicate the presence of variable thickness of expansive soil over portions of the site. The 2/4/2007 report addresses this issue both for infrastructure and foundations, with recommendations tailored to the specific conditions found in nine different design areas which were distinguished on the site.
>
> The presence of expansive soil on the site does not represent a threat to public

health and safety, as the shrink-swell related movement is very slow and limited in magnitude. If appropriate construction practices are employed, which have been listed for each design area in the February 4, 2007 GeoScience report, there is no risk to public welfare from the presence of these soils on the PUD.

Dr. Schlieder provides specific recommendations for road construction, underground utilities, general grading, erosion control, slope stability, use of native materials, foundations, drainage, and supervision of construction and road grading on pages 11 through 15 of the February 4, 2007 report. The PC confirms that this meets the test of EC 9.6710(6) and the related approval criterion at EC 9.8325(7)(d).

PC Decision: Rather than finding error with the HO's decision regarding compliance with EC 9.8325(7)(d) based on the Goal 5 inventory exception provision provided at EC 9.6710(3), the PC modifies the HO's decision to affirm that Applicant has met the requirements of EC 9.6710(6) with Dr. Schlieder's certification, dated August 22, 2012, and the geotechnical analysis and recommendations provided in Dr. Schlieder's February 4, 2007 report. To ensure compliance, the following condition of approval is warranted:

- The final PUD plans shall state that the development will occur in accordance with the geotechnical recommendations provided in the GeoScience, Inc. report dated February 4, 2007.

With the addition of this condition and the revised findings above, the PC finds that the requirements of EC 9.8325(7)(d) and the related standards at EC 9.6710(6) have been met. (The condition of approval is listed as #18 at the end of this Final Order.)

***<u>SEN Appeal Issue #7: Lot Standards (See Applicant/HBA Appeal Issues #3 and #4 above)</u>***
*This issue has two parts: a) lot dimension standards; and b) solar lot standards, both of which are addressed above, under Appeal Issue #3 and #4.*

***<u>SEN Appeal Issue #8: Compliance with EC 9.7007 Neighborhood / Applicant Meeting</u>***
***SEN asserts that there are two plans being evaluated as part of the subject request: the initial 75-lot plan; and the 47 lot alternate plan, addressing the staff recommendations. The SEN claims procedural error because only the 75-lot plan was presented at the pre-application Neighborhood/Applicant Meeting, required by EC 9.7007.***

PC Findings: The Applicant held two neighborhood meetings with SEN (December 8, 2011 and January 10, 2012). At these meetings, the Applicant presented its original 75-lot plan. Then, the Applicant submitted the 75-lot plan with its application. The Applicant later submitted a 47-lot plan that the HO Official regarded "as simply illustrative of how the applicant could comply with the conditions of approval recommended in the original (June 2012) staff report" and not as a revised application. At page 7 of its appeal statement, SEN argues that the "[c]ode required the Applicant to share its actual proposed site plan with Southeast Neighbors prior to submitting an application. EC 9.7007(8). The Applicant has never completed this

requirement for its 47-lot Application. Its failure to do so requires the PC to deny the 47-lot Application in total."

The PC finds this the issue is beyond the scope its review. Under the Eugene Code, the neighborhood meeting is an application requirement that is considered by the City as part of completeness review under EC 9.7015. The code provides that a PUD application will not be deemed complete for City consideration unless it includes specific documentation of the neighborhood meeting; EC 9.7007(11); EC 9.7010. The code also provides that "[i]f the site plan submitted with the application does not substantially conform to the site plan provided at the [neighborhood] meeting, the applicant shall be required to hold a new neighborhood/applicant meeting." EC 9.7007(12). In this case, when the application was submitted, staff determined that the Applicant submitted the required documentation and that the site plan submitted with the application substantially conformed to the one provided at the neighborhood meeting. The application was deemed complete, and the HO's evaluation process began.

Even if staff had been incorrect in their determinations, once an application is deemed complete, there is no basis for the HO or the PC to reconsider compliance with the neighborhood meeting requirement. The HO noted, under the introductory heading "Application referrals and Public Notice" on page 7 of his decision, that the application materials confirm compliance with EC 9.7007. The HO does not revisit the requirement under any criteria. EC does not include a PUD approval criterion under which the HO or the PC may consider compliance with neighborhood meeting requirement.

Further, the HO's decision actually evaluated the 75-lot plan – the one presented at the neighborhood meetings – as the application (see page 2 of HO Decision). The HO's denial is based on shortcomings in the 75-lot proposal. As noted above, the HO regarded the 47-lot plan as additional evidence, but not as a revised application.

PC Decision: The PC denies this assignment of error. This issue is beyond the scope of the PC's review.

***<u>SEN Appeal Issue #9: Stormwater</u>***

***"The Hearings Official ruled that the Applicant complied with EC 9.8325(13) because 'the condition of approval required to comply with EC 9.8325(7)(j) that addresses flow-control ensures that the application complies with this approval criteria." Decision at 34. This determination was in error, as the Applicant must make an independent showing that it can comply with this criterion."***

PC Findings: The approval criteria at EC 9.8325(7)(j) and EC 9.8325(13) both relate to stormwater. SEN argues that, because these are different criteria, compliance with the first criterion does not equate to compliance with the second. The HO determined that compliance with criterion (13) was ensured through the condition for flow control established under criterion (7)(j). When evaluating criterion (13), however, the HO

did more than refer to criterion (7)(j); the record shows that he made an independent evaluation of the approval criteria.

EC 9.8325(13) states "Stormwater runoff from the PUD will not damage natural drainage courses either on-site or downstream by eroding or scouring the natural drainage courses or by causing turbidity, or the transport of sediment due to increased peak flows or velocity." The HO states:

> The applicant responds to this approval criterion as follows: "Stormwater is not being added to any natural drainage course onsite. The plans show that stormwater from this site, after treatment in onsite facilities, will enter the city's piped system at the north end of the site. These facilities eventually discharge to the Amazon Canal, an engineered drainageway and part of the city's stormwater system. In terms of impacts on the waterway offsite, the owners understand this standard to mean that no damage will result if onsite stormwater detention facilities are constructed to city standards to accommodate the 10-year design storm. The stormwater facilities are designed to meet this city standard; hence a positive finding can be made." (See page 33 of the HO Decision.)

The key finding above is that the development will provide onsite detention, so that the development is not adding stormwater runoff to open waterways. With regard to the onsite waterways, the HO's conclusion that the development does not impact on-site waterways is based on the assumption that the previous criterion at EC 9.8325(5), regarding slope, has removed the eastern portion of the site from development. The HO did not evaluate the applicant's initial 75-lot site plan against the stormwater approval criteria at EC 9.8325(7)(j) or EC 9.8325(13); however, the June 21, 2012 staff report provided an analysis and found that the eastern portion of the site did not meet either approval criterion.

The topography of the site creates two distinct drainage basins, which coincides with the analysis of the western portion of the site, separate from the eastern portion. The staff analysis of the stormwater development standards at EC 9.6791 through EC 9.6797, invoked by criterion EC 9.8325(7)(j) is as follows:

> <u>Western Drainage Basin</u>
> The western portion of the site shows a piped stormwater system extended from Martin Street within the proposed streets, with an interconnecting piped system between the streets at the northwest portion of the site, corresponding to gravity drainage and site topography, and involving a piped crossing of the westerly waterway. The proposed stormwater pipes located outside the streets are proposed within public utility easements (PUE). If the Hearings Official ultimately approves the application, the staff recommendations regarding acceptance and determination of the final PUE locations at EC 9.8325(7)(b), as well as waterway crossings and grading restrictions are applicable here, as are staff's proposed conditions regarding compliance with other public improvement standards.

The available information indicates that the receiving system has the capacity to accommodate addition runoff from the proposed development. Staff concurs that the proposed development complies with the stormwater destination standards of EC 9.6791. As noted in the Hydrology Report, a downstream deficiency for the future 10-year storm previously existed at segment 65344 – 66656 in Martin Street. The completion of Capital Projects AM06A and AM06B under City Project Number 3951 (i.e., City Contract No. 2007-09) has corrected these deficiencies. No other downstream deficiencies in the Amazon Channel, which is the receiving system for the proposed development, have been identified for the 10-year design storm, per modeling in the 2002 City of Eugene Stormwater Basin Master Plan, Volume II of VI for the Amazon Basin.

Eastern Drainage Basin

The applicant has not provided sufficient information regarding the capacity of this drainage basin to accommodate the proposed stormwater runoff from the contributing development along Canyon Drive. The applicant's plans show a "potential location for stormwater detention" on eastern portion of the site, on the portion of Tract A located north of Lot 69. North of this area, on City park land, the applicant's plans also show a "potential location for stormwater detention." Referral comments from Parks and Open Space (POS) staff raise concerns about proposed construction of stormwater facilities in a City-owned and managed natural area park. The POS comments indicate that approval of such facilities on City-owned park land would be dependent upon a demonstration that, at a minimum, no feasible alternative exists, negative impacts to streams, vegetation and public access facilities are minimized, and all other permits and approvals are obtained. Based on the lack of evidence to support compliance with the applicable stormwater development standards for the eastern portion of the development, staff cannot craft reasonable conditions of approval to support development in this area. (See pages 25 and 26 of the June 21, 2012 staff report.)

The staff analysis above concludes that the western portion of the site has conveyance capacity, but establishes uncertainty about the eastern portion of the site. (Note: The above analysis did not include impacts from increased flows, but is addressed below.) The HO erred by not including an analysis of the eastern portion of the site in his decision. The PC corrects this error by establishing a condition (condition of approval #3, provided at the end of this Final Order) that removes the eastern portion of the site from the development. The HO did not err in his analysis of the western portion of the site – for either criterion (7)(j) or (13) – but his findings have some technical inaccuracies.

Under approval criterion EC 9.8325(7)(j), the HO found compliance with the stormwater development standards at EC 9.6791 through EC 9.6797, as follows:

The applicant responded to testimony about stormwater drainage in its August 22, 2012 post-hearing testimony. Specifically, the applicant noted EC 9.6790(2) requires that post-development flows will not exceed existing pre-development flows and that the 2007 study explains how this will be accomplished.

The applicant has not proposed any pre-treatment or detention for this portion of the development site, as required by current stormwater development standards. However, given the available data regarding the downstream system, and given the clear and objective nature of the balance of the stormwater development standards, the western portion of the development site can meet these requirements with the following conditions of approval:

- The final PUD plans and final subdivision plat shall note the following requirement: "At the time of development, each lot shall have its own filtration stormwater management system (e.g. flow-through planter) that is sized to meet the requirements of EC 9.6792 Stormwater Pollution Reduction and EC 9.6793 Stormwater Flow Control (Headwaters). Each lot owner will be responsible for maintaining its stormwater management system consistent with EC 9.6797 Stormwater Operation and Maintenance."

- During the PEPI permit process, the public stormwater system shall include City-approved proprietary stormwater treatment technology that meets the requirements of EC 9.6792 Stormwater Pollution Reduction and EC 9.6793 Stormwater Flow Control (Headwaters).

The applicant's August 22, 2012 testimony accepts these conditions of approval and states that the applicant will comply with them (the conditions are listed as #16 and 17 at the end of this Final Order).

The above statement that "EC 9.6790(2) requires that post-development peak flows will not exceed existing pre-development flow" is inaccurate. The stormwater development standards at EC 9.6791 through EC 9.6797 do not require this detention – of the western portion of the site. The reference here is actually EC 9.6793 Stormwater Flow Control (Headwaters), but this code provision would not apply to the development proposed on the western portion of the site because the outfall to an open conveyance system occurs below an elevation of 500 feet. In other words, the criterion at EC 9.8325(7)(j) does not require the Applicant to provide on-site detention of stormwater runoff from the development proposed on the western portion of the site. The eastern portion of the site, however, would require detention under EC 9.8325(7)(j). As noted above, the Applicant's proposed detention ponds that overflowed to open drainage systems on City parklands did not meet this criterion. The PC addresses this with the imposition of condition of approval #3. Further, even though the flow control standards at EC 9.6793 do not

apply, the PC endorses the HO's condition for compliance because it provides the detention necessary to address the approval criterion at EC 9.8325(13).

The key to compliance with EC 9.8325(13) is that the development will provide onsite detention, so that stormwater runoff will not increase peak flows or velocity in such a manner as to cause damage to the open drainage system. The HO addressed this criterion as follows:

> The above approval criterion is specific to "stormwater runoff from the PUD," rather than street and utility crossings of the onsite natural drainage courses. As addressed previously at EC 9.8325(7)(j), regarding the stormwater development standards at EC 9.6791 through EC 9.6797, the western portion of the development site does not direct stormwater runoff from the PUD to an on-site waterway, although the proposed piped system does outfall to an open drainage system farther to the north. The condition of approval required to comply with EC 9.8325(7)(j) that addresses flow-control ensures that the application complies this approval criterion. (See page 34 of HO Decision.)

The HO imposed flow control standards at EC 9.8325(7)(j), even though they were not required for the western portion of the site, to ensure that the development would provide the detention necessary to comply with the requirement of EC 9.8325(13).

As conditioned, each lot within the proposed development will be required to detain post-development peak flows to pre-development levels. The pollution-reduction medium on each lot, required for compliance with EC 9.6792 Stormwater Pollution Reduction, such as a flow-through planter at the roof downspout, will be required to have a larger sizing factor to provide detention and reduce the overflow during peak flow events. The flow control standards were specifically designed to address erosion of Headwater Streams. The use of City standards provides greater certainty at the time of implementation, during building permit review. Further, as a public improvement, the outfall will be required to meet public design standards, which requires stability and velocity measures at outfalls in every case.

PC Decision: The PC rejects SEN's arguments and finds that the HO did make an independent evaluation of the criteria at EC 9.8325(7)(j) and EC 9.8325(13), which both relate to stormwater runoff from the proposed development. Although EC 9.8325(7)(j) does not require the development to meet EC 9.6793 Stormwater Flow Control (Headwaters), the PC endorses the HO's imposition of this standard to ensure that the development provides onsite stormwater management facilities that detain post-development peak flows to pre-development levels, which is necessary to ensure compliance with EC 9.8325(13). The flow control standards at EC 9.6793 provide this detention and are standards that City staff can readily implement during the building permit process. The PC finds that the HO did not error by correlating the

detention requirements of EC 9.8325(7)(j) to address the "…increased peak flow or velocity" test of criterion EC 9.8325(13).

The PC finds, however, that the HO did err in not addressing the eastern drainage basin. The PC modifies the HO's decision by adding the above findings that they applicant did not demonstrate compliance for the eastern drainage basin and establishing the condition that the eastern portion of the site be removed from the development, stated as condition of approval #3, below.

**Alternative:** The PC determines that the HO erred in finding compliance with the applicable standards at EC 9.8325(13), and therefore reverses his findings of compliance. The PC's denial under this criterion is based on the following reasons: _____.

***SEN Appeal Issue #10: Fence in 30' buffer***

***"The Hearings Official determined that a fence located at the outside edge of the PUD property is permissible because the code requires a buffer zone along the perimeter, but not on the perimeter. This interpretation is inconsistent with the plain meaning of the term perimeter and along."***

PC Findings: The approval criterion at EC 9.8325(3) requires that "The PUD provides a buffer area between the proposed development and surrounding properties by providing at least a 30 foot wide landscape area along the perimeter of the PUD according to EC 9.6210(7)." The SEN object to the allowance of a perimeter fence of the requisite 30 foot wide buffer between the proposed development and surrounding properties. The SEN disagree with the HO findings of compliance, stating that "a fence would negate that perimeter buffer and cause that property to become included in the PUD property." The PC does not agree that a fence would negate the required buffer or cause property to become part of the PUD that is not already, but finds that a fence is not expressly allowed under the provisions of EC 9.6210(7), and therefore is not allowed as proposed.

PC Decision: The PC finds that the HO erred in allowing the applicant's proposed fence in violation EC 9.8325(3), but this is not a sufficient basis for denial. To ensure compliance, the following condition is imposed:

- The final PUD plans shall be revised to note that fencing is not allowed on the perimeter of the PUD or within the required 30' landscape buffer under the provisions of EC 9.8325(3) and EC 9.6210(7).

The PC therefore modifies the HO's decision to find that the applicant's proposed fence does not comply with EC 9.8325(3), and adds the condition of approval noted above to ensure compliance. (The condition is added as #19 at the end of this Final Order).

***SEN Appeal Issue #11: 19-Lot Rule***

***"Because both the 75-lot and 47-lot Applications propose to use West Amazon Drive as the only***

***public road, the Hearings Official erred in his interpretation of the Code requirement."***

PC Findings: The code requirement in question is under approval criterion EC 9.8325(6), "The PUD provides safe and adequate transportation systems through compliance with all of the following…" Subsection (c) of this criterion is known as the "19-lot rule," which requires the following:

> The street layout of the proposed PUD shall disperse motor vehicle traffic onto more than one public local street when the PUD exceeds 19 lots or when the sum of proposed PUD lots and existing lots utilizing a local street as the single means of ingress and egress exceeds 19.

HO found compliance with this standard based on the interconnectivity of West Amazon Drive, as follows:

> The street layout disperses motor vehicle traffic onto more than one public local street, as all streets proposed within the development connect with West Amazon Drive, which extends beyond the development site to the north (connecting with Martin Street) and south (connecting with Fox Hollow Road). The applicant proposes to improve West Amazon Drive to provide this traffic dispersal; the PUD proposes no phasing of the development, which means that the street improvements will be in place prior to development of the lots, rather than on an incremental basis that would bring the 19-lot rule above into question.
>
> The applicant additionally notes that there are two dispersion points—one to the north, which sends traffic onto the portion of the Eugene street network leading to the 30th Ave./Hilyard grid, and one to the south connecting the portion of the Eugene street network comprised of Fox Hollow/Donald/ Willamette Street. The applicant states that the two street networks are sufficiently separated that if a blockage occurred on one, the other would not be affected. The hearings official concurs. (See page 20 of HO Decision.)

This standard stems from Fire Code about isolated access. The concern would be if West Amazon Drive dead-ended at the site. Instead, the Applicant proposes to improve West Amazon Drive between the existing street improvements at the north and south ends of the site. South of the site, West Amazon Drive has a paved driving surface that eventually connects with Fox Hollow Road. Fire staff has confirmed that this meets their requirements for providing two points of access.

The HO's finding of compliance is specific to the western portion of the site (the 47-lot plan). With respect to the eastern portion of the site (as shown on the 75-lot plan) the HO found that removal of the eastern portion of the proposed development would seem to resolve the Fire Marshal's access concerns, but his determination was not conclusive with respect to the approval criteria at EC 9.8325(6)(c). The PC finds that even if the eastern portion of the proposed

development were to remain, it would not cause a violation of the "19-lot rule" because the traffic from Canyon Drive would connect with West Amazon Drive and use the same two points of dispersion to the north and south.

The PC agrees with the HO's determination that the internal street design, connected with the proposed improvements to West Amazon Drive, will serve to disperse traffic onto more than one public local street as required. The PUD also provides street stubs to the south and west for additional street connections. This standard is really about dead-end streets, where there is only one way in or out. With the applicant's improvement of West Amazon Drive, the site can be accessed from the north via Martin Street or from the south via Fox Hollow Road. The issue here would have been if West Amazon Drive did not connect to Fox Hollow Road. The Applicant's improvements will complete the missing connecting link in the street system.

PC Decision: The PC agrees that the HO did not err in finding compliance with the above approval criterion at EC 9.8325(6)(c), but modifies the HO's decision to add a finding that even if the eastern portion of the proposed development were to remain, it would not cause a violation of the "19-lot rule" because the traffic from Canyon Drive would connect with West Amazon Drive and use the same two points of dispersion to the north and south.

**Alternative:** The PC determines that the HO erred in finding compliance with the applicable standard at EC 9.8325(6)(c), and therefore reverses his findings of compliance. The PC's denial under this criterion is based on the following reasons: _____.

## V. CONCLUSION

After consideration of the applicable law and all argument and evidence in the record, the Eugene Planning Commission finds that the subject application for Deerbrook PUD (PDT 12-1) meets all applicable PUD approval criteria from EC 9.8325, with additional findings and conditions of approval as described above. The HO's initial decision to deny the application is therefore reversed.

As a result of the PC's determinations on the appeal issues above, tentative PUD approval is only granted for development of the western portion of the subject site as illustrated on the applicant's 47-lot plan (see attached). This approval specifically excludes the development proposed on the eastern portion of the site as shown on the applicant's original 75-lot plans. As stated previously, in the event of any conflict between the HO's decision and this Final Order, this Final Order shall prevail.

For ease of reference, a comprehensive list of approval conditions is provided below. This list is comprised of conditions as modified or added in the Final Order above, as well as those recommended by the Hearings Official in the event that his a decision is reversed and the Planning Commission approves the application (as is the case here).

**Alternative:** Depending on the outcome of appeal issues above, the PC may decide to affirm he

Hearings Official's denial. In that case, the highlighted language above would be revised to reflect that outcome. The following list of approval conditions would also become unnecessary and could be removed from the Final Order.

## VI. CONDITIONS OF APPROVAL

1. The applicant shall submit a "Use Restriction" or "Codes, Covenants, and Restrictions" (CC&R's) to be recorded with the final plat that stipulates that the lots of the proposed subdivision shall be developed only with needed housing and uses accessory to that housing. The document shall be subject to prior review and approval by the City's Planning Director during the final plat review process. The document shall stipulate that the use restriction is enforceable by the City of Eugene and that any amendment to, or removal of, the established use restriction is subject to prior review and approval by the City's Planning Director.

2. The final PUD plans shall note the following: "The 30-foot perimeter buffer shall comply with EC 9.6210(7)(a)(1) through (5). The applicant may use existing vegetation to meet these requirements. The applicant shall show on its landscaping plan existing vegetation that it intends to reply on to comply with these requirements and proposed new landscaping that it intends to add to comply with these requirements."

3. The final PUD plans shall be revised to show the areas of 20% slope and removal of proposed development from the eastern portion of the site, consistent Applicant's illustrative 47-lot plan (Sheet L2.0 of the dated August 22, 2012). The following restriction shall also be noted: "The shaded areas of 20 percent slopes shall not be graded, pursuant to EC 9.8325(5). Construction site management shall include protective fencing of these areas. Utilities in these locations will need to be installed without grading, such as with boring or other construction technique."

4. The final PUD site plans shall show cut and fill slopes associated with the street improvements and shall delineate public slope easements for those slopes that fall outside of the right-of-way. Slope easements will be more precisely determined during the PEPI permit process and on the plat.

5. Final plans for West Amazon Drive will show retaining walls where necessary to ensure that road improvements will not require grading of slopes 20% or greater outside the right-of-way.

6. Prior to final PUD approval, the applicant shall obtain /WR Standards Review approval for all public improvements, utility and access crossings proposed in the conservation areas.

7. The applicant shall dedicate the right-of-way necessary to connect Senger Lane and St. Clair Lane to adjoining properties. The applicant shall show the dedication on the final PUD plans.

8. The final PUD site plans shall show Canyon Drive as: having 20 feet of pavement width with curbside sidewalks, within 45 feet of right-of-way. The public improvements shall be

constructed as part of the Privately-Engineered Public Improvement (PEPI) permit process.

9. The final PUD site plans shall show Senger Lane as: having 20 feet of pavement width with curbside sidewalks on the east side of the street only, within 45 feet of right-of-way; and terminating in a hammerhead turnaround, as proposed, within a temporary public easement. The public improvements shall be constructed as part of the Privately-Engineered Public Improvement (PEPI) permit process.

10. The final PUD plans shall note the following: "The structural design and construction inspection for private streets and alleys shall remain the developer's responsibility." Prior to final subdivision approval, the applicant shall submit certification by a licensed engineer that the structural design of the proposed private streets meets the applicable public design standards.

11. The final PUD plans shall provide a table identifying the lots that do not meet minimum lot standards, up to a maximum of 50% of the lots shown on final plans.

12. Acceptance of PUE is conditioned upon the applicant obtaining Standards Review approval for the proposed /WR resource area impacts and upon the infrastructure location being more precisely determined during the PEPI permit process. Approved PUE locations will be considered as part of the subdivision process.

13. The final PUD plans shall show the Exclusive Easement of the September 3, 1999 Purchase and Sale Agreement, including the Bridal Trail Easement.

14. Public improvements shall be constructed pursuant to EC 9.6505, subject to the design being approved by the City Engineer as part of the Privately Engineered Public Improvement (PEPI) permit process.

15. Prior to final subdivision approval, the applicant will be required to obtain a "Letter of Water Availability" from EWEB, which typically involves the design approval and improvement bonding with EWEB.

16. The final PUD plans and final subdivision plat shall note the following requirement: "At the time of development, each lot shall have its own filtration stormwater management system (e.g. flow-through planter) that is sized to meet the applicable stormwater development standards beginning at EC 9.6791, including Flow Control. Each lot owner will be responsible for maintaining its stormwater management system consistent with EC 9.6797 Stormwater Operation and Maintenance."

17. During the PEPI permit process, the public stormwater system shall include City-approved proprietary stormwater treatment technology that meets the requirements of EC 9.6792 Stormwater Pollution Reduction.

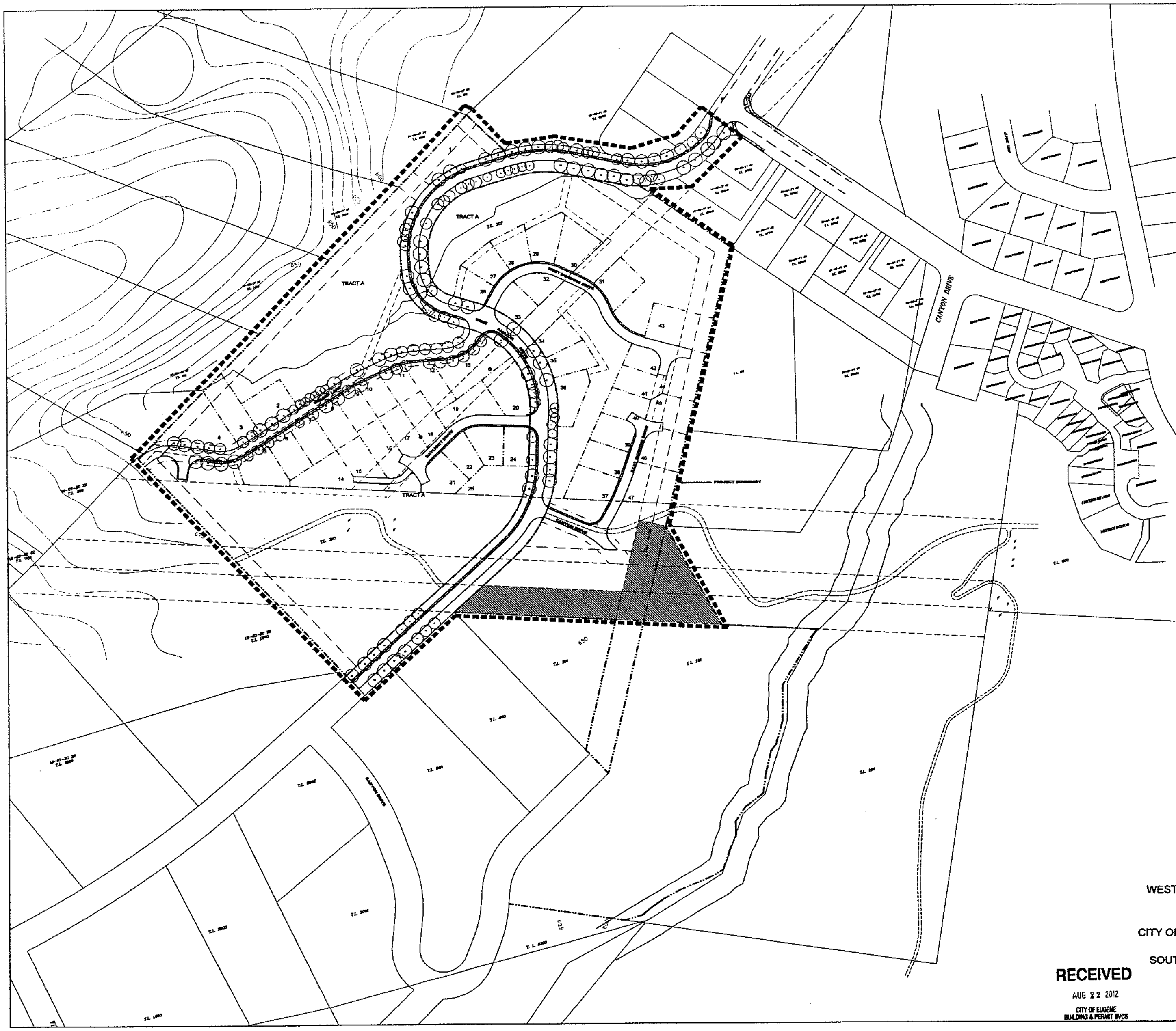
18. The final PUD plans shall state that the development will occur in accordance with the geotechnical recommendations provided in the GeoScience, Inc. report dated February 4, 2007.

19. The final PUD plans shall be revised to note that fencing is not allowed on the perimeter of the PUD or within the required 30' landscape buffer under the provisions of EC 9.8325(3) and EC 9.6210(7).

The foregoing findings and conclusions are adopted as the Final Order of the Eugene Planning Commission for Deerbrook PUD (PDT 12-1), on this 10th day of December, 2012.

_____

Randy Hledik, Chair
Eugene Planning Commission




RECEIVED
AUG 22 2012
CITY OF EUGENE
BUILDING & PERMIT SVCS

## PROJECT INFORMATION

MAP: 18 03 20 21
TAX LOT: 300, 302, PORTION OF 101
ZONING: R-1 /PD AWR

DENSITY: ALLOWED: 5 UNITS PER ACRE
PROPOSED: 47 LOTS ON 20.50 ACRES OR 2.29 UNITS PER ACRE

## SITE INFORMATION

| | | | |
|---|---|---|---|
| SIDEWALKS | 17,743 SF | 1.74 % | |
| BUILDINGS and DRIVEWAYS | 0 SF | 0 % | |
| PARKING / ROADS | 94,180 SF | 9.25 % | |
| OPEN SPACE | 524,243 SF | 51.50 % | |
| RESIDENTIAL LOTS | 301,072 SF | 29.57 % | |
| R/W - NOT PAVED OR OPEN SPACE | 80,770 SF | 7.94 % | |
| TOTAL | 1,018,006 SF | 100.00 % | (INCLUDES DEVELOPMENT SITE AND CITY OWNED R/W) |
| IMPERVIOUS SURFACE | | | |
| EXISTING | 0 SF | | |
| PROPOSED | 111,923 SF | | |

## SHEET INDEX

COVER SHEET L1.0
SITE PLAN (50 SCALE) L2.0
SITE PLAN (50 SCALE) L3.0
SITE DIMENSION PLAN (50 SCALE) L4.0
SITE DIMENSION PLAN (50 SCALE) L5.0
SLOPE PLAN (100 SCALE) L6.0
GRADING PLAN (50 SCALE) L7.0
GRADING PLAN (50 SCALE) L8.0
SOLAR PLAN (100 SCALE) L9.0
OPEN SPACE PLAN (100 SCALE) L10.0
UTILITY PLAN (50 SCALE) L11.0
UTILITY PLAN (50 SCALE) L12.0
LANDSCAPE PLAN / STREET TREE PLAN (100 SCALE) L13.0

## PLAN CERTIFICATION

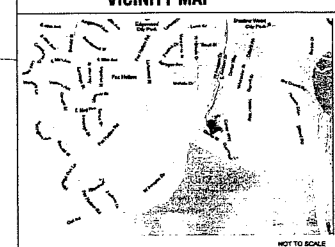
BY MY SIGNATURE BELOW I DECLARE THAT THE PORTION OF THE PROJECT IN WHICH I WAS INVOLVED COMPLIES WITH THE FOLLOWING:
1. MEETS THE STANDARDS OF MY PROFESSION
2. COMPLIES WITH THE TEXTATIVE PUD CRITERIA

CAROL SCHIRMER
SCHIRMER SATRE GROUP
LANDSCAPE ARCHITECT
PROJECT COORDINATOR

## SOLAR LOT STANDARDS

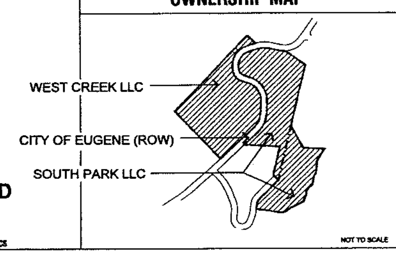
IN R-1 AND R-2, AT LAST 70% OF THE LOTS IN A SUBDIVISION SHALL BE DESIGNED AS "SOLAR LOTS" . . . .
80% OF THE LOTS IN THIS PUD DESIGNED AS SOLAR LOTS ARE EXEMPT AND ARE THEREFOR CONSIDERED SOLAR LOTS.
OF THE 10 LOTS THAT THAT DO NOT QUALIFY FOR EXEMPTIONS OR EXCEPTIONS, ONLY 2 ARE NOT SOLAR LOTS. THEREFOR 8 OF THE 10 LOTS MEET THE STANDARD OR 80%.

## VICINITY MAP




PROJECT AREA

## OWNERSHIP MAP




LANDSCAPE ARCHITECTS
SCHIRMER SATRE

375 West 4th, Suite 201, Eugene OR 97401
Phone: 541.686.4540 Fax: 541.686.4577
www.schirmersatre.com

REGISTERED LANDSCAPE ARCHITECT
CAROL E. SCHIRMER
OREGON
11-18-94

# COVER SHEET

## DEERBROOK PUD

EUGENE, OREGON

Revisions

| # | Date | Description |
|---|---|---|
| 1 | 5.11.12 | Completeness Review |
| 2 | 6.26.12 | Alternative Site Plan |
| 3 | 6.22.12 | Alternative Site Plan |

| | |
|---|---|
| Phase | Tentative PUD |
| Drawn By | CS |
| Checked | CS |
| Date | February 21, 2012 |
| File Name | |

L1.0

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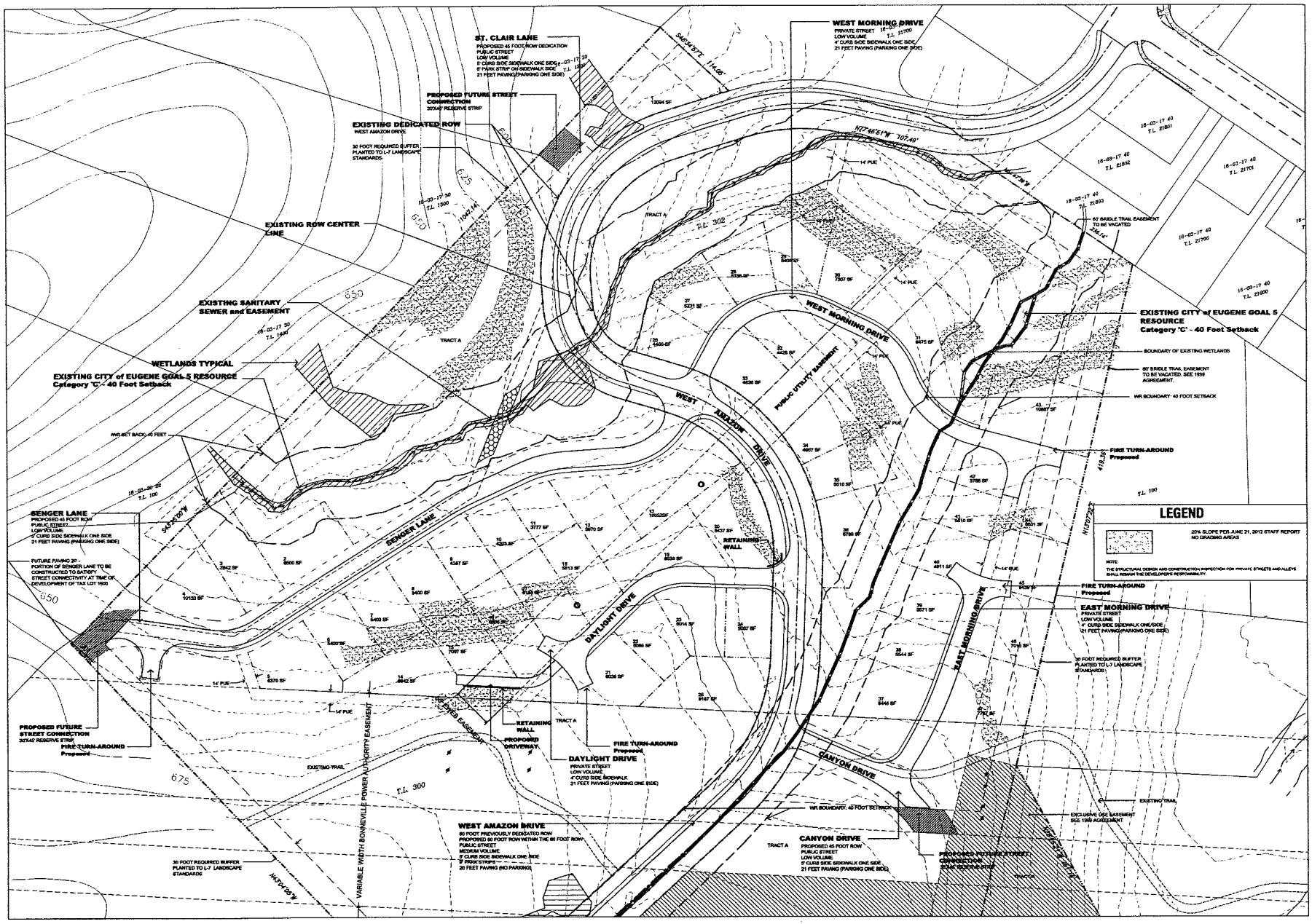


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REGISTERED LANDSCAPE ARCHITECT
CAROLE SCHIRMER
OREGON
11-18-84

# ALTERNATIVE SITE PLAN

## DEERBROOK PUD

EUGENE, OREGON

Scale: 1" = 50'-0"

| # | Date | Description |
|---|---|---|
| 1 | 5.11.12 | Completeness Review |
| 2 | 6.29.12 | Alternative Site Plan |
| 3 | 8.22.12 | Alternative Site Plan |

Phase: Tentative PUD
Drawn By: DB
Checked: DR
Date: February 21, 2013
File Name:

# L2.0

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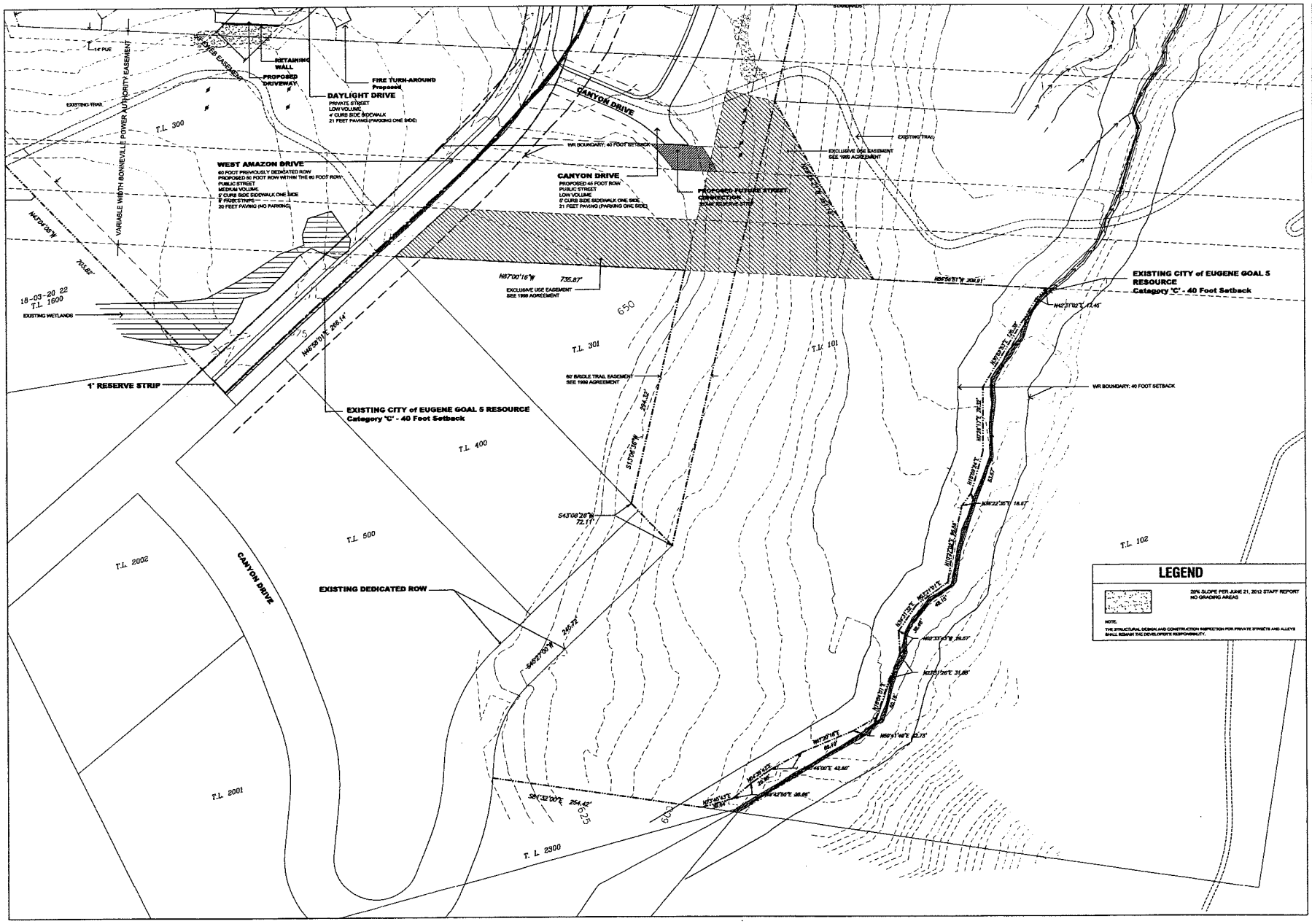


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REGISTERED LANDSCAPE ARCHITECT
CAROLE G. SCHIRMER
OREGON
11-16-94

# ALTERNATIVE SITE PLAN

DEERBROOK PUD

EUGENE, OREGON

Scale: 1" = 50'-0"

| Revisions | | |
|---|---|---|
| # | Date | Description |
| 1 | 5.11.12 | Comprehensive Review |
| 2 | 6.29.12 | Alternative Site Plan |
| 3 | 8.22.12 | Alternative Site Plan |

Project: Deerbrook PUD
Drawn By: cms
Checked: cms
Date: February 15, 2012
File Name:

L3.0

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**Attachment 2**

**Index of Planning Commission Record**
Planning Commission Final Order
Appeal of Hearings Official's Decision
Deerbrook PUD (City File PDT 12-1)

| NO. | ITEM DESCRIPTION | PAGE |
|---|---|---|

1. December 10, 2012 PC Deliberations and Action Agenda with the following attachments:
   a. Agenda Item Summary
   b. Draft Final Order

2. December 3, 2012 PC Deliberations Summary Minutes

3. December 3, 2012 PC Deliberations Agenda with the following attachments:
   a. December 3, 2012 Agenda Item Summary
   b. Attachment 1: Preliminary Issues
   c. Attachment 2: Appeal Issues and Staff Response
   d. Attachment 3: Staff Response to PC Questions

4. November 14, 2012 PC Public Hearing Summary Minutes

5. November 14, 2012 Hearing Exhibits:
   a. Exhibit A – November 14, 2012 letter from Bill Kloos
   b. Exhibit B-1 – November 14, 2012 letter from Lori Singels
   c. Exhibit B-2 – November 13, 2012 email from Shirley St. Clair
   d. Exhibit B-3 – November 14, 2012 letter from William and Dorothy Webber
   e. Exhibit B-4 – August 22, 2012 letter from Deborah Noble
   f. Exhibit B-5 -- November 14, 2012 letter from Elaine Weiss, Emily Fox, and Lora Byxbe
   g. Exhibit C – November 14, 2012 letter from Richard Satre
   h. Exhibit D – November 14, 2012 letter from Ed McMahon
   i. Exhibit E – November 14, 2012 "Matthews Slope Map" submitted by Dan Snyder (portions extracted from the record as being new evidence, per the Planning Commission's ruling on the "preliminary issues."

6. November 14, 2012 PC Public Hearing Agenda with the following attachments:
   a. November 14, 2012 Agenda Item Summary
   b. Attachment 1 - Appeal Issues and Staff Response
   c. Attachment 2 - Appeal Issues and Staff Response
   d. Attachment 3 - Appeal Forms and Appeal Written Statements
   e. Attachment 4 - Vicinity Aerial Map
   f. Attachment 5 - Site Plans

7. November 6, 2012 Notice of correction – PC PH location

8. November 5, 2012 Bill Kloos email confirmation of timeline extensions

9. November 4, 2012 Keith Sheldon email – public comments

10. November 2, 2012 Notice of PC PH and mailing list

11. October 31, 2012 Bill Kloos letter – Applicant/HBA Response to SEN Appeal Issues

12. October 11, 2012 Dan Snyder email with attached SEN reply

13. October 9, 2012 Bill Kloos email with attached Applicant/HBA Response to Motion to Strike parts of appeal

14. October 9, 2012 Bill Kloos email with attached Applicant/HBA Response to Motion to Dismiss HBA as Appellant

15. October 5, 2012 Dan Snyder email with two attached motions: strike & dismiss

16. October 3, 2012 Applicant/HBA Appeal and Statement
    a. Appeal forms
    b. Appeal Statement
    c. Attachments

17. October 3, 2012 Southest Neighbors Appeal and Statement

18. September 21, 2012 Notice of HO Decision

19. September 21, 2012 Hearings Official's Decision

20. September 12, 2012 Applicant's Final Argument – Carol Schirmer letter

21. September 7, 2012 Hearings Official Order Denying Reopening Evidentiary Record

22. September 5, 2012 Rebuttal Testimony – Applicant
    a. September 5, 2012 Letter from Carol Schirmer
    b. Exhibit FF Ordinance 20369
    c. Exhibit GG Notice Adoption AO 58-06-06-F
    d. Exhibit HH CC AIS June 23, 2003
    e. Exhibit II Ordinance 20297
    f. Exhibit JJ Stormwater Detention Map
    g. Exhibit KK Weber Engineering letter dated September 5, 2012
    h. Exhibit LL HO Decision Willow Springs (ST 04-12)

23. September 5, 2012 Rebuttal Testimony - Law Office of Charles Tebbutt for Southeast Neighbors

24. August 3 - August 22, 2012 Public Comments
    a. August 22, 2012 Shirley St Clair email
    b. August 22, 2012 Deborah Noble letter with attachments
    b. August 22, 2012 Tom Halferty letter
    c. August 22, 2012 Kevin Matthews email with attachment
    d. August 22, 2012 Eben Foder email with attachment "creek flooding"
    e. August 22, 2012 Eben Foder email with attachment "site photos"
    f. August 21, 2012 Michael Dreiling email
    g. August 21, 2012 Elaine Weiss email
    h. August 21, 2012 Tim Duy email
    i. August 20, 2012 Dan Snyder dropbbox with attached maps
    j. August 17, 2012 Dennis Casady letter
    k. August 17, 2012 Lori Singels letter with attached maps
    l. August 16, 2012 Ken Neubeck email
    m. August 16, 2012 Kent McIntosh email
    n. August 15, 2012 Charles Hapner letter
    o. August 14, 2012 Johh Pfeffer and Brandon Russell email
    p. August 14, 2012 Elisabeth and Edward Lake email and attached letter
    q. August 9, 2012 Michael Dreiling email
    r. August 3, 2012 Madronna Holden email with attached letter

25. August 22, 2012 Law Office Charles Tubbutt for Southeast Neighbors with attachments
    a. July 27, 2012 Southeast Neighbors original comments on application
    b. August 20, 2012 Kevin Matthews letter with attached slope information
    c. August 20, 2012 Michael James letter with attached geotech information

26. August 22, 2012 Bill Kloos Email with attached LCDC reports dated 1981-1982

27. August 22, 2012 Applicant Testimony and Evidence
    a. August 22, 2012 Letter from Richard Satre
    b. Exhibit S - O'Donnell memo dated August 15, 2008
    c. Exhibit T - Jerome memo dated November 20, 2007
    d. Exhibit U – Ordinance 20159 dated July 7, 1999
    e. Exhibit V – USGS Slope Map dated August 22, 2012
    f. Exhibit W – Nystrom email dated April 6, 2012
    g. Exhibit X – Geotech Report dated January 4, 2007
    h. Exhibit Y – Geotech Letter dated August 22, 2012
    i. Exhibit Z – DOGAMI Map dated August 22, 2012
    j. Exhibit AA – Natural Hazards Mitigation Plan dated October 2009
    k. Exhibit BB – EWEB letter dated August 8, 2012
    l. Exhibit CC – Supplemental Plan Set August 22, 2012
    m. Exhibit DD – Metro Waterways Study Map 12 dated December 2009

n. Exhibit EE – Email from T. Bishow to R. Satre dated August 21, 2012

28. August 22, 2012 Applicant's Alternate Site Plan (full set of plans showing 47 lots)

29. August 22, 2012 Staff Memo to Hearings Official with attachments
    a. Street Connectivity Map
    b. Miller Partition (PT 09-11)
    c. August 8, 2012 Referral from EWEB
    d. July 31, 2012 letter from planning, parks, and engineering division managers
    e. Ordinance 20351 and April 12, 1978 Scenic Sites Working Paper

30. August 1, 2012 Hearings Official Public Hearing Exhibit C: Southeast Neighbors Testimony

31. August 1, 2012 Hearings Official Public Hearing Exhibit B: Applicant's Testimony

32. August 1, 2012 Hearings Official Public Hearing Exhibit A: Public Comments
    a. July 24, 2012 letter from David Saul
    b. July 30, 2012 Email and attached letter from Marcus Lanskey
    c. July 30, 2012 Email from Kent McIntosh
    d. July 30, 2012 Email and attached letter from Rita Miller
    e. July 31, 2012 Email from Teressa O'Caer
    f. July 31, 2012 Email and attached letter from Keith Fuselier
    g. July 31, 2012 Email from Josh and Melissa Barbour
    h. August 1, 2012 Email and attached letter from Ross Williamson
    i. August 1, 2012 Letter from Shirley St. Clair

33. July 25, 2012 Supplemental Staff Report and Attachments
    a. Initial Staff Report (June 21, 2012)
    b. Applicant's Supplemental Materials (June 29, 2012)
    c. Additional Public Comments Received: July 17, 2012 Letter from Shirley St Clair

34. July 15 and 17, 2012 Public Comments
    a. July 17, 2012 Shirley St Clair
    b. July 15, 2012 Mark Barbour

35. July 2, 2012 mailing notice and parties list of August 1, 2012 HO PH

36. June 29, 2012 Applicant Response to June Staff Report
    a. June 29, 2012 Letter from Richard Satre
    b. Attachment B Lot Renumbering Index
    c. Plan Sheets L2 and L3 showing 47 lots and removal of east half of development

37. June 26, 2012 Email from Carol Schirmer requesting postponement of June 28, 2012 HO PH until August 1, 2012

38. June 26, 2012 Mailing of June 28, 2012 HO PH Cancellation

39. June 22 – June 28, 2012 Public Comments
    a. June 28, 2012 Email from Yvonne Braun
    b. June 27, 2012 Letter from Karla Snyder
    c. June 26, 2012 Letter from Cecelia Forrest
    d. June 26, 2012 Letter from David Saul
    e. June 23, 2012 Letter from Anita Sullivan
    f. June 22, 2012 Letter from Gerald Morsello

40. June (21) 2012 Staff Report with Attachments
    a. Vicinity Map
    b. Reduced Site Plans
    c. Staff's slope maps
    d. Excerpt of SE Land Capacity Map

41. June 4, 2012 Letter from Planning Director (Lisa Gardner) to Applicants (Leslie and Martin Beverly)

42. May 26, 2012 through June 20, 2012 Public Comments
    a. May 26, 2012 email from Judith Shapiro
    b. June 4, 2012 email from Sarah Winter
    c. June 11, 2012 letter from Mark Barbour
    d. June 11, 2012 letter from Ross Williamson
    d. June 17, 2012 letter from Keith Sheldon
    e. June 20, 2012 letter from Shirley St Clair

43. May 25 to June 14, 2012 Referral Comments
    a. June 18, 2012 Email from Neil Bjorklund, Parks and Open Space
    b. June 15, 2012 Referral from Ed Haney, Public Works
    c. June 14, 2012 Email from Doug Perry, Fire Marshal
    d. June 11, 2012 Referral from Kristie Brown, Land Use Management
    e. June 4, 2012 Email from Will Mueller, Lane Transit District
    f. May 25, 2012 Email from Carol Eggleston, EWEB

44. May 23, 2012 Mailing notice and parties list for June 28, 2012 HO PH

45. May 17, 2012 Email from Carol Schirmer forcing application complete

46. May 11, 2012 Application Materials: Letter and Statement responding to staff completeness review comments

47. April 18, 2012 Completeness Review

48. March 19, 2012 Application Materials
    a. March 19, 2012 Cover Letter from Applicant's representative (Carol Schirmer)
    b. March 19, 2012 Tentative PUD Application Form
    c. August 10, 2011 Title Report
    d. March 19, 2012 Written Statement and Exhibits
        1. Exhibit A: ALTA Survey
        2. Exhibit B: HO Decision South Park PUD (PDT 00-2)
        3. Exhibit C: PC Final Order South Park PUD (PDT 00-2)
        4. Exhibit D: Staff Report Deerbrook PUD (PDT 06-2)
        5. Exhibit E: CC Minutes April 18, 2007
        6. Exhibit F: Table of Plat Densities
        7. Exhibit G: Email from staff (Jason Dedrick) to Bill Kloos dated November 21, 2011
        8. Exhibit H: Purchase and Sale Agreement dated September 3, 1999
        9. Exhibit I: CC AIS dated May 21, 2007
        10. Exhibit J: Final Report Amazon Headwaters Acquisition June 12, 2008
        11. Exhibit K: January 10, 2012 Applicant/Neighborhood Meeting
        12. Exhibit L: HO Decision Code Interpretation (CI 04-4) July 29, 2004
        13. Exhibit M: LCDC Staff Report August 14, 1981
        14. Exhibit N: Illustrations of Slope Measurements
        15. Exhibit O: Letter from Gunnar Schlieder, Ph.D., CEG, dated February 15, 2012 with attached GeoScience Geotechnical Feasibility Study dated February 26, 2006
        16. Exhibit P: Hydrology Study dated February 27, 2007 by Doug Weber, Weber Elliott Engineers, PC
        17. Exhibit Q: Excerpt of LUBA No. 2001-059
    e. March 19, 2012 Application Filing Fee Receipt
    f. March 19, 2012 Site Plans (75 lots)

49. February 23, 2012 letter from the Home Builders Association of Lane County (Ed McMahon) to the Planning Director (Lisa Gardner)

50. December 20, 2011 letter from staff (Becky Taylor) to Applicant's representative (Carol Schirmer) regarding the pre-application conference (LC 11-78)