

City of Eugene

Clear and Objective Housing Approval Criteria Update

Land Use Code Audit

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1. Introduction

Project Background and Goals: The City of Eugene is planning for development of 15,000 new homes by 2032 within the current Urban Growth Boundary (UGB). The City has prioritized housing affordability, balanced with the community's values related to neighborhood livability, public health and safety, and natural resource protections, expressed through the adopted Envision Eugene pillars. Zoning and development standards will be used to guide future residential development to manage scale, compatibility and impacts.

State law implementing Oregon's Statewide Planning Goal 10 (Housing) requires that cities adopt and apply only "clear and objective standards, conditions and procedures" to residential development. (ORS 197.307(4).) These standards may not, either individually or cumulatively, have the effect of discouraging residential development through "unreasonable cost and delay." (ibid.) While previously the clear and objective requirement applied to standards for "needed housing"—already a broad term encompassing most housing types—recent 2017 legislation expanded the requirement to apply to all residential development. (SB 1051, amending ORS 197.303(1) and 197.307(4).) The importance of having effective and efficient criteria that are clear and objective is thus further increased given their applicability to all future housing development.

The Eugene Code (EC), last substantially revised in 2001, establishes parallel residential review tracks: a "Needed Housing" track with clear and objective criteria in compliance with state requirements in ORS 197.307, and a "General" track which includes more discretionary review criteria and allows for more design flexibility to meet those criteria. Throughout this audit, these two tracks will be referred to as the "clear and objective track" and the "discretionary track." There are two sets of criteria for the five land use reviews most commonly applied to residential development: Conditional Use Permits (CUPs), Partitions, Planned Unit Developments (PUDs), Site Reviews, and Subdivisions. While the two tracks are not identical in their scope, they are each intended to provide effective review opportunities for proposed development.

The need to understand and improve the City's review criteria for housing is, if anything, more important now than ever. Communities across the state and the nation, including Eugene, are struggling with rising housing costs and growing community demands for more housing options. This project is intended to facilitate future residential development through clear and objective review criteria that are effective and efficient.

Project Scope: The project scope focuses on the clear and objective approval criteria for housing development reviewed through conditional use permits (CUPs), partitions, planned unit developments (PUDs), site review, and subdivisions. Primary criteria reviewed for this project included:

- EC 9.8100 Conditional Use Permit Approval Criteria – Needed Housing
- EC 9.8220 Partition, Tentative Plan Approval Criteria – Needed Housing
- EC 9.8325 Tentative Planned Unit Development Approval Criteria – Needed Housing
- EC 9.8445 Site Review Approval Criteria – Needed Housing
- EC 9.8520 Subdivision Tentative Plan Approval Criteria – Needed Housing

The criteria for the clear and objective tracks were also reviewed against the discretionary track criteria for the same review type. The discretionary criteria themselves will not be updated as part of this project, however, the discretionary criteria were used as an important comparison to the clear and objective criteria to evaluate the relative breadth and reach of the two sets of criteria, and to identify any additional issues from the discretionary criteria that could potentially be addressed through additional clear and objective criteria. Precise equivalency between the two tracks is not desired due to additional flexibility inherent in the discretionary track.

To the extent that development standards elsewhere in the code are referenced in the approval criteria for said land use reviews, those standards were also reviewed, limited to their relationship to the effective and efficient development of residential projects.

Audit Methodology: This audit was developed through review and analysis of the development code and related background materials provided by the City including but not limited to the City's long-range plans, recent land use decisions including appeals, previous public comments, permitting history for residential development, and City staff's observations about residential development review processes. The code criteria and standards were evaluated to determine their contribution to an effective and efficient development review process, and how effectively they implement community priorities for diverse housing opportunities, neighborhood livability, and environmental protection as embodied in the Envision Eugene pillars. The code criteria and standards were also evaluated relative to best practices around the state and professional experience of the auditor.

The code audit was conducted in concert with public involvement consistent with the project's public involvement plan, and informed by stakeholder observations. This specific task within the larger Clear and Objective project included stakeholder focus groups including housing developers and homebuilders, neighborhood advocates, nonprofits, development professionals such as land use consultants and architects, and local advocacy groups. Additional comments were received from stakeholders over email following the focus groups. While this audit represents the consultant's own analysis with stakeholder comments from the focus groups and emails summarized in full in supporting documents, the specific topics identified by stakeholders are addressed herein to the extent the consultant determined their relevance to the audit.

The audit findings here represent the professional opinions of the auditor, Elizabeth Decker, based on her experience as a practicing planner. This audit is not a legal analysis of the land use code, and does not incorporate a thorough review of recent case history that may affect specific criteria and standards. Where specific examples of land use cases were highlighted during focus groups and conversations with staff, they were incorporated as additional background. Further review with the Eugene City Attorney is recommended as part of the Issue Identification phase.

2. Conditional Use Permits (CUPs)

Where used: CUPs are required for a limited number of specialized residential types, including assisted care (six or more people living in facility), boarding and rooming houses, campus living organizations including fraternities and sororities, and single room occupancy (SROs).

Process and Timing: CUPs require a Type III review and must be approved prior to submittal of any other development permit. (EC 9.8085.) Consider whether CUPs often require additional development permits, and whether reviews could be combined for greater efficiency. Applicants may elect to obtain approval through the Planned Unit Development process in lieu of a conditional use permit. (EC 9.2160 and EC 9.2740.)

Criteria: EC 9.8100 establishes the clear and objective approval criteria for CUPs, as analyzed in the following table.

Sub	Topic	Audit Comments
(1)	Needed housing	State law requires that all housing have to option for review under clear and objective standards, so criterion to demonstrate project is needed housing is no longer needed.
(2)	Multiple-family standards	See analysis in Referenced Standards section.
(3)(a)	Tree preservation	See analysis in Referenced Standards section.
(3)(b)	Natural resource protection	No comments.
(4)	All applicable standards, including but not limited to...	Consider expanding list to include additional development requirements, including compliance with lot dimensions and density requirements for the subject zone in EC 9.2000 through 9.3980, overlay zones in EC 9.4000 through 9.4980, public improvement requirements in EC 9.6500 through 9.6505, and street requirements in EC 9.6800 through 9.6875, all of which are required under the discretionary track.
(4)(a)	Floodplain standards	See analysis in Referenced Standards section.
(4)(b)	Geotech	See analysis in Referenced Standards section.
(4)(c)	Pedestrian circulation	See analysis in Referenced Standards section.
(4)(d)	Public access required	See analysis in Referenced Standards section.
(4)(e)	Special setbacks	See analysis in Referenced Standards section.
(4)(f)	Underground utilities	See analysis in Referenced Standards section.
(4)(g)	Vision clearance	See analysis in Referenced Standards section.
(4)(h)	Stormwater	See analysis in Referenced Standards section.
(4)(i)	Adjustments	No comments.

(5)	Provide public improvements	Consider revising the timing specified in this criterion to construct or bond for required public improvements. As written, improvements must be constructed or bonded for at the time of application and review, when those improvements are not required or specified in the conditions of approval until issuance of the CUP decision. Criterion is also used in the final subdivision plan approval criteria which suggests it is more appropriate to a final review. Criterion has no equivalent in the discretionary track; a revised criterion to ensure timely completion of required public improvements after issuance of CUP approval may be of benefit in both tracks.
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There are several discretionary CUP criteria that do not have an equivalent in the clear and objective criteria:

- Consistency with adopted plans (EC 9.8090(1).) Because plan language is generally aspirational and general, it is not recommended to require demonstrated consistency with adopted plans for the clear and objective track.
- Design and character compatibility. (EC 9.8090(2) and (3).) Though assessing compatibility can be discretionary, there are specific elements listed in these criteria (building locations, mass and scale, screening, noise, glare and odors) that could be reviewed for applicability in a clear and objective context.
- Protect public health and safety. (EC 9.8090(7).) Many of the specific items listed as potential risks including soil erosion or flood hazard are addressed through compliance with standards for those topics under the clear and objective track. Criterion also lists impediment to emergency response as a potential risk to public safety, and there does not appear to be an equivalent criterion in the clear and objective track.
- Lot dimensions/solar standards/density standards. (EC 9.8090(8)(a) and (f).) Compliance with these standards is required for many other clear and objective tracks; it could be added to list of relevant standards in subsection (4) of the clear and objective criteria. As discussed in Section 7, it may not be necessary to require compliance with solar standards for CUPs because they rarely include development subject to those standards.
- Provision of safe and adequate transportation systems. (EC 9.8090(8)(e).) Compliance with standards for streets, alleys and other public ways in EC 9.6800 through 9.6875 and standards for pedestrian, bicycle and transit circulation are approval criteria for many of the other clear and objective tracks; consider adding to the criteria for clear and objective CUP review as well under subsection (4) of the

clear and objective criteria.

- Traffic Impact Analysis Review required. (EC 9.8090(9).) See discussion of TIA in Section 7 below.

Overall: Perhaps because there have been few such projects, there has been little concern voiced about the CUP clear and objective approval criteria. The clear and objective CUP criteria are largely cross-references to other chapters, with limited provisions for traditional consideration of the compatibility of the proposed conditional use and surrounding properties, such as is provided through the discretionary review track in EC 9.8090(2). Because the clear and objective CUP track requires limited review beyond compliance with existing standards in these limited residential cases, either changing these use types away from conditional uses or developing more robust, clear and objective criteria to address compatibility concerns may be warranted.

3. Partition, Tentative Plan

Where used: Partitions are a land division process to create three or fewer lots for development, typically used for smaller parcels or infill situations.

Process and Timing: Tentative partitions are a Type II review, followed by a Type I review of the final partition plan. Applications must be prepared by a licensed land surveyor. (EC 9.8210.)

Criteria: EC 9.8220 establishes the clear and objective approval criteria for tentative partition plans, as analyzed in the following table.

Sub	Topic	Audit Comments
(1)	Needed housing	State law requires that all housing have to option for review under clear and objective standards, so criterion to demonstrate project is needed housing is no longer needed.
(2)	Compliance with standards, or approved adjustment	No comments. Provides option to comply with standards, or obtain adjustment through separate process.
(2)(a)	Lot dimensions/density for the subject zone	Criterion could be expanded to require compliance with overlay zones as well as base zones. No concerns about the /WR and /WQ lot requirements. The 33% threshold appears reasonable: ensuring 67% of the lot area is buildable land ensures lots can accommodate the 50% maximum lot coverage allowed in EC Table 9.2750 on the buildable portion of the lot without impacts to the /WR and /WQ areas.
(2)(b)	Streets/alleys/public ways	See analysis in Referenced Standards section.

Sub	Topic	Audit Comments
(2)(c)	Public Improvements	See analysis in Referenced Standards section.
(2)(d)	Floodplain standards	See analysis in Referenced Standards section.
(2)(e)	Geotech	See analysis in Referenced Standards section.
(2)(f)	Public access required	See analysis in Referenced Standards section.
(2)(g)	Special setbacks	See analysis in Referenced Standards section.
(2)(h)	Underground utilities	See analysis in Referenced Standards section.
(2)(i)	Vision clearance	See analysis in Referenced Standards section.
(2)(j)	Stormwater	See analysis in Referenced Standards section.
(2)(k)	Tree Standards	See analysis in Referenced Standards section. Note that the tree preservation standards are not referenced in the discretionary track, creating an additional criterion in the clear and objective track.
(2)(l)	All applicable standards for features explicitly included	No comments.
(3)	Does not create nonconformity	Greater detail could be provided about which “applicable standards in this land use code” should be reviewed. Review nonconforming development standards beginning at EC 9.1200 and cross-reference if appropriate.
(4)	Access management for arterial/collector streets	Unique criterion not found in any other land use review types. Consider whether it overlaps with the requirements in EC 9.6735 for public access, triggered in subsection (2)(f) already, or if there are additional aspects of this requirement that provide value.
(5)(a)	If public street required: Consistency with adopted plans for land uses and densities	See analysis in Referenced Standards section.
(5)(b)	If public street required: Pedestrian/bicycle/transit access	No comments. This criterion is generally limited to circulation requirements within the project boundaries, with limited off-site improvement requirements because of constitutional requirements around takings.
(5)(c)	If public street required: Street layout	Requirement to “disperse” motor vehicle traffic onto more than one local public street has been found by LUBA to be discretionary. Consider whether street connectivity standards in EC 9.6815 accomplish the same access and connectivity goals as this criterion, allowing this criterion to be removed, or develop alternative

Sub	Topic	Audit Comments
		criteria here to supplement connectivity standards.
(6)	Future divisibility of large remainder lots	No comments; effectively requires a rough draft of a future land division of the remainder parcel subject to many of the same connectivity criteria as the proposed partition.

There are several partition criteria in the discretionary track that do not have an equivalent in the clear and objective track:

- Compliance with overlay zones. (EC 9.8215(1)(a).) Investigate why compliance with overlay zones is only required for the discretionary track, and not in the equivalent standard for the clear and objective track.
- Compliance with adopted plan policies. (EC 9.8215(1)(l).) Because plan language is generally aspirational and general, it is not recommended to require demonstrated consistency with adopted plans for the clear and objective track. In contrast, clear and objective criterion is limited to compliance with land uses and densities in adopted plans. (See EC 9.8220(5)(a) above.)
- Side lot lines perpendicular to streets. (EC 9.8215(5).) Criterion language for lot lines to run at right angles “as far as is practicable” may not be appropriate for the clear and objective track, but alternative language addressing the same issue could be developed if warranted.

Additionally, protection of designated natural resource areas is not required for partitions under either the discretionary or clear and objective tracks, compared to other reviews including subdivisions in EC 9.8520(7)(b). Consider whether standard is appropriate for partitions as well.

Overall: Few concerns noted about the partition clear and objective track, though interestingly, City staff reported that many applicants prefer to use the discretionary track. This may be because the clear and objective track includes the criterion to comply with tree preservation standards, which is not required for the discretionary track.

4. Planned Unit Development (PUD), Tentative Plan

Where used: Planned Unit Development provisions apply for some properties subject to the South Hills Study located south of 18th Avenue above 500 feet depending on the project size and elevation, where a /PD overlay zone is applied, based on use, or at the request of the property owner. (EC 9.8305.) The South Hills requirement is significant because by mandating PUD review for a defined geographic area, there is then the need for a clear and objective review track to ensure all properties can be developed under clear and objective criteria. In many other cities, the subdivision process provides a clear and objective review option for all residential development, complemented with an optional PUD process with

discretionary criteria. PUDs are typically meant to provide “a high degree of flexibility in the design of the site and mix of land uses,” as stated in the purpose statement in EC 9.8300, requiring a more holistic, discretionary review rather than straight application of land use standards such as in a subdivision, so clear and objective PUD criteria can be more challenging to develop and implement.

Process and Timing: Tentative PUDs are a Type III review, followed by final PUD approval in a separate Type II review. A PUD also requires a subdivision for all residential development that creates new lots, which is the majority of projects. The tentative PUD must be finalized prior to review of the tentative subdivision plan. (EC 9.8305 and 9.8505.) Together this means three stages of review for many developments: tentative PUD review, final PUD and tentative subdivision plan review combined, and final subdivision plan review. There may be opportunity to consolidate these reviews into two stages for greater efficiency, tentative PUD and subdivision followed by final PUD and subdivision, given that the clear and objective review criteria for tentative PUD and subdivision have significant overlap and could feasibly be reviewed concurrently.

Tentative PUDs require a professional design team to include a licensed arborist, architect, civil engineer, landscape architect and land surveyor. (EC 9.8310(2).) The requirement for both an arborist and landscape architect may be duplicative, considering that tree preservation can be reviewed by either an arborist or landscape architect, as specified in the tree preservation report requirements in EC 9.6885(2).

Criteria: EC 9.8325 establishes the clear and objective approval criteria for tentative PUD, as analyzed in the following table.

Sub	Topic	Audit Comments
(1)	Needed housing	State law requires that all housing have to option for review under clear and objective standards, so criterion to demonstrate project is needed housing is no longer needed.
(2)	Consistency with adopted plans for land uses and densities	Criterion limited to demonstrating that land uses and densities are consistent with the plans’ land use designation(s), in contrast to criterion in the discretionary track requiring consistency with adopted plan policies. See further analysis in Referenced Standards section.
(3)	Screening/buffer	Requirement for 30-foot buffer between the PUD and surrounding properties may not be a preferred strategy to enhance compatibility between properties, or an efficient use of land. Additional detail defining “surrounding properties,” which has been interpreted to exclude public right-of-way, would be useful for

Sub	Topic	Audit Comments
		<p>clarity and consistent application.</p> <p>Dedication of a 30-foot perimeter buffer requires a significant amount of land, and a disproportionate amount of land on smaller and/or narrow sites that could decrease development potential of many PUDs by putting land into a buffer that could otherwise be developed with housing.</p> <p>The potential need for and benefit of the 30-foot buffer is also unclear. Presumably it buffers the PUD from neighboring properties to improve compatibility. However, in cases where it buffers a residential PUD from existing residential properties, it is not clear that there are significant differences between residential development within the PUD site and residential development surrounding the PUD site to warrant buffering over and above the typical setbacks for the base zone. The 30-foot setback may instead isolate the PUD development, making it less compatible and less integrated into the neighborhood. Buffers or screening may be more appropriately limited to PUDs abutting different zones.</p> <p>In comparison, the discretionary approval criterion requires that the PUD provide “adequate” screening from surrounding properties considering building setbacks, bulk and height, which could potentially be met through adherence to setbacks in the underlying zone or some other setback less than 30 feet. (EC 9.8320(3).) Consider reviewing the screening provided for such projects to identify other successful approaches, as potential models for revising the clear and objective criterion.</p>
(4)(a)	Tree preservation	See analysis in Referenced Standards section.
(4)(b)	Natural resource protection	Protection of natural resources is required, but consider expanding criterion to include details that protection includes the area of the resource itself and a buffer, similar to specificity in the natural resources criterion for CUPs. (See EC

Sub	Topic	Audit Comments
		9.8100(3)(a.)
(5)	No Grading on $\geq 20\%$	<p>It appears that intention is to prevent geological instability on and off-site, retain natural topography, limit impacts to natural resources, and generally prevent development on steep slopes. Concern that this criterion may not be the most effective and efficient way to address such concerns because the criterion does not allow any way for the applicant to demonstrate whether such impacts are likely to occur on the specific development site or whether they can be mitigated. It may have the effect of entirely precluding development under the clear and objective track for sites with significant slopes, particularly for properties subject to the South Hills Study, or sites with unusual configurations where a portion of the site over 20% slope effectively cuts across the site cutting off access through the site and limiting development potential.</p> <p>The 20% threshold should be reviewed to understand the scope of lands affected and rationale, and compared to maximum slopes presumed buildable in long-range plans. For example, state standards presume that up to 25% slopes are developable for purposes of calculating buildable lands for development (OAR 660-008-0005(5)), and the local Buildable Lands Inventory (BLI) classifies lands up to 30% slopes as potentially developable. There may be an opportunity to increase the 20% slope threshold for PUDs to ensure that all lands presumed developable in the BLI have the option to develop under a clear and objective track. A geological report is required under criterion (7)(d) to evaluate slope impacts. In comparison, there is no maximum slope where grading is prohibited under the discretionary track and slope impacts are reviewed through a geological report.</p> <p>It may be desirable to exempt some defined grading activities, limited to small amounts of</p>

Sub	Topic	Audit Comments
		cut and fill, or as needed for specific site improvements such as utilities and access roads. There is additional concern that the required measurement at 5-foot contour lines increases the amount of 20% or greater slopes, further limiting the sites that may develop under clear and objective criteria.
(6)(a)	Streets/alleys/public ways	See analysis in Referenced Standards section.
(6)(b)	Pedestrian/bicycle/transit circulation	No comments. This criterion is generally limited to circulation requirements within the project boundaries, with limited off-site improvement requirements because of constitutional requirements around takings.
(6)(c)	Street layout (19 lot rule)	Requirement to “disperse” motor vehicle traffic onto more than one local public street has been found by LUBA to be discretionary. Consider whether street connectivity standards in EC 9.6815 accomplish the same access and connectivity goals as this criterion, and remove criterion or modify to cover any additional goals.
(7)	Compliance with standards, or approved adjustment	No concern about options to comply with standards, or obtain adjustment through separate process, however, note potential overlap and inconsistency with subsection (11) below.
(7)(a)	Lot dimensions/density for the subject zone	The criterion explicitly requires compliance with only lot dimensions and density in the base zone and not overlay zones, compared to requirement to meet lot dimensions and density for both the subject zone and overlay zones in the discretionary track. See further analysis of base zone standards in Referenced Standards section. Note also the PUD-specific density standards in EC 9.8310(4), which modify how density is calculated to meet the base zone standards in EC 9.2750 by allowing inclusion of some open space or easements. Consider developing additional criteria for whether such areas may be counted in residential density calculations to

Sub	Topic	Audit Comments
		supplement current standards.
(7)(a)	33% limitation of lot area with /WR or /WQ overlay zoning	No concerns about the /WR and /WQ lot requirements. The 33% threshold appears reasonable: ensuring 67% of the lot area is buildable land ensures lots can accommodate the 50% maximum lot coverage allowed in EC Table 9.2750 on the buildable portion of the lot without impacts to the /WR and /WQ areas.
(7)(b)	Provide public facilities/improvements	See analysis in Referenced Standards section.
(7)(c)	Floodplain standards	See analysis in Referenced Standards section.
(7)(d)	Geotech	See analysis in Referenced Standards section.
(7)(e)	Pedestrian circulation on-site	See analysis in Referenced Standards section.
(7)(f)	Public access required	See analysis in Referenced Standards section.
(7)(g)	Special setbacks	See analysis in Referenced Standards section.
(7)(h)	Underground utilities	See analysis in Referenced Standards section.
(7)(i)	Vision clearance	See analysis in Referenced Standards section.
(7)(j)	Stormwater	See analysis in Referenced Standards section.
(8)	Provide timely public facilities/improvements	No comments. This criterion addresses timing of the required improvements, to ensure funding is committed; requirements for said improvements are covered by criteria in subsections (6)(a), (7)(b) and (7)(j).
(9)	Accessible recreation/open space	Concern that this criterion might not be the most effective and efficient way to ensure access to recreation and open space for residents. Requirement for space to be located within ¼ mile of the site limits development to sites near existing open spaces such as public parks, which may reduce those areas of the city that can be developed under the clear and objective track. Alternatively, open spaces may be provided internally to the development, however, the minimum one-acre size may represent a significant land dedication, particularly for smaller sites, and decrease housing development potential of the site.
(10)	Solar lot standards	See discussion of standards themselves in Referenced Standards section, but note that they explicitly apply to subdivisions so review whether it is effective to require compliance as

Sub	Topic	Audit Comments
		a PUD approval criterion.
(11)	Modifications to development standards	This opportunity to modify development standards that apply to the PUD, consistent with the PUD purposes in EC 9.8300, appears to overlap with option to modify standards that apply to the PUD through an approved adjustment pursuant to EC 9.8015. Clarify which process applies to which standards, or consider option to combine into a single process to modify standards.
(12)(a)	South Hills development limits above 900-foot elevation	Review the amount of land and lot patterns above 900 feet to determine how broadly this standard applies, and potential impacts on residential development feasibility. Consider whether the limitation meets the underlying goals of the South Hills Study. The intent may have been to prevent changes to the natural environment in sensitive areas with high visibility, but concern whether this criterion is the efficient and effective way to address those or other underlying concerns.
(12)(b)	South Hills 300-foot ridgeline setback	300-foot setback can impact residential development feasibility of subject sites by reducing site area that may be developed. Consider whether criterion effectively addresses the underlying goals of the South Hills Study, such as preservation of views and open space along the ridgeline, or could be modified to balance residential development feasibility and South Hills Study goals. Consider conducting additional long-range planning to more precisely identify future trail system needs and location along the ridgeline in lieu of uniform setback.
(12)(c)	South Hills clustering and 40% contiguous common open space	The 40% open space requirement can impact residential development feasibility by limiting area available for development. Consider how to balance clustering of residences with open space dedication to more effectively meet South Hills Study goals. Also consider relationship to subsection (9),

Sub	Topic	Audit Comments
		and potential opportunity to combine open space requirements to achieve similar objectives.
(12)(d)	South Hills density limits	No comments; it appears that recent developments subject to the South Hills Study are generally below these density limits owing to topography and other development considerations.

There are several tentative PUD criteria in the discretionary track that do not have an equivalent in the clear and objective criteria:

- Traffic Impact Analysis Review required. (EC 9.8320(5)(c).) See discussion of TIA in Section 7 below.
- Protection of public health and safety. (EC 9.8320(6).) Many of the specific items listed as potential risks including soil erosion, slope failure, stormwater or flood hazard are addressed through compliance with standards for those topics under the clear and objective track. Criterion also lists impediment to emergency response as a potential risk to public safety, and there does not appear to be an equivalent criterion in the clear and objective track.
- Compliance with lot dimensions and density requirements of overlay zone standards, in contrast to clear and objective criterion limited to compliance with base zones. (EC 9.8320(10)(a).)
- Minimize off-site impacts. (EC 9.8320(11).) The specific impacts (traffic, noise, stormwater runoff, and environmental quality) are partially addressed in the clear and objective track through compliance with standards for stormwater, tree preservation and natural resource protection. Traffic and noise impacts could be adapted into clear and objective criteria if warranted.
- Compatibility with surrounding uses. (EC 9.8320(12).) Though assessing compatibility can be discretionary, clear and objective criteria could be developed to assess some discrete elements of compatibility such as building locations, mass and scale.
- Future land division compliance. (EC 9.8320(13).) Although included as a criterion, the requirement for compliance with state and local surveying requirements for future land divisions of PUD sites is not one that applicants or staff can demonstrate compliance with at the time of PUD application, since it applies to future actions. It may be more appropriately addressed as a statement in the PUD applicability standards to apply to all PUDs developed under either track.
- Consistency with purpose of special area zone. (EC 9.8320(14).) In comparison, the clear and objective criterion is limited to consistency with lot dimensions and density requirements of special area zones. (EC 9.8325(7)(a).)
- Compliance with site-specific /SR criteria. (EC 9.8320(15).) The site-specific /SR

criteria are a historical legacy and generally discretionary in nature. Development standards adopted since 2001 appear to address similar issues as applied to projects reviewed under the clear and objective track already.

Overall: The cumulative requirements of the clear and objective criteria may limit development feasibility of many sites under this track, particularly those properties subject to the South Hills Study subject to additional criteria in subsection (12). The 30-foot buffer, 20% slope grading limitation, 1-acre accessible open space, and South Hills Study criteria for high elevation development limitation, 300-foot ridgeline setback, 40% common open space and clustering, and density criteria have the potential for the greatest impacts on development feasibility. By requiring site area to be reserved for setbacks and open spaces, the available area for residential development, and the resulting residential units, is proportionally reduced. Fixed criteria, such as the 30-foot buffer, compared to scaled criteria such as the 40% open space, merit particular review given the potential for disproportionately large impacts on smaller sites.

5. Site Review

Where used: In the residential context, site review is primarily triggered by the Site Review (/SR) overlay zone, applied for sites with greater need to “maintain or improve the character, integrity, and harmonious development of the area,” or required by a refinement plan. (EC 9.4400.) In practice this includes some sites that have been developed with multiple-family residential, but many such sites are not subject to the /SR requirements. Applicants may elect to obtain approval through the Planned Unit Development process in lieu of site review. (EC 9.8430.)

Process and Timing: Site review is a Type II review. Applications must be prepared by one or more professionals, including licensed architects, civil engineers, landscape architects and/or planners. (EC 9.8435.)

Criteria: EC 9.8445 establishes the clear and objective approval criteria for site review, as analyzed in the following table.

Sub	Topic	Audit Comments
(1)	Needed housing	State law now requires that all housing have to option for review under clear and objective standards, so requirement to demonstrate project is needed housing is no longer needed.
(2)	Multiple Family standards	See analysis in Referenced Standards section.
(3)(a)	Tree preservation	See analysis in Referenced Standards section.
(3)(b)	Natural resource protection	Protection of natural resources is required, but consider expanding criterion to include details that protection includes the area of the resource itself and a buffer, similar to specificity in the natural resources criterion for CUPs. (See EC

		9.8100(3)(a.)
(4)	Compliance with standards, or approved adjustment	No comments.
(4)(a)	Lot dimensions/density for subject zone	Compare to requirement to meet lot dimensions and density for both the subject zone and overlay zones the discretionary track.
(4)(b)	Provide public improvements	See analysis in Referenced Standards section.
(4)(c)	Floodplain standards	See analysis in Referenced Standards section.
(4)(d)	Geotech	See analysis in Referenced Standards section.
(4)(e)	Pedestrian circulation on-site	See analysis in Referenced Standards section.
(4)(f)	Public access required	See analysis in Referenced Standards section.
(4)(g)	Special setbacks	See analysis in Referenced Standards section.
(4)(h)	Underground utilities	See analysis in Referenced Standards section.
(4)(i)	Vision clearance	See analysis in Referenced Standards section.
(4)(j)	Stormwater	See analysis in Referenced Standards section.
(4)(k)	All applicable standards for features explicitly included	No comments.
(5)	Provide public improvements	Consider revising the timing specified in this criterion to construct or bond for required public improvements. As written, improvements must be constructed or bonded for at the time of application and review, when those improvements are not required or specified in the conditions of approval until issuance of the site review decision. Criterion is also used in the final subdivision plan approval criteria which suggests it is more appropriate to a final review. Criterion has no equivalent in the discretionary track; a revised criterion to ensure timely completion of required public improvements after issuance of site review approval may be of benefit in both tracks.

There are several site review criteria in the discretionary track that do not have an equivalent in the clear and objective track:

- Design and character compatibility. (EC 9.8440(1).) Though assessing compatibility can be discretionary, there are specific elements listed in this criterion (building locations, bulk and height, noise, glare and odors) that could be reviewed for applicability in a clear and objective context. In particular, building location, bulk and height standards could be developed to manage transitions between sites, particularly along the boundaries of zoning districts, that are not currently addressed through the multiple-family standards.

- Provision of safe and adequate transportation systems. (EC 9.8440(3).) Compliance with standards for streets, alleys and other public ways in EC 9.6800 through 9.6875 and standards for pedestrian, bicycle and transit circulation are approval criteria for many of the other clear and objective tracks; consider adding to the criteria for clear and objective site review as well.
- Protection of public health and safety. (EC 9.8440(4).) Many of the specific items listed as potential risks including soil erosion, slope failure, stormwater or flood hazard are addressed through compliance with standards for those topics under the clear and objective track. Criterion also lists impediment to emergency response as a potential risk to public safety, and there does not appear to be an equivalent criterion in the clear and objective track.
- Compliance with overlay zone standards. (EC 9.8440(5)(a).) Discretionary standard requires compliance with overlay zone standards for lot dimensions and density as well as base zone requirements, whereas clear and objective track does not address overlay zones.
- Consistency with adopted plans. (EC 9.8440(6).) Because plan language is generally aspirational and general, it is not recommended to require demonstrated consistency with adopted plans for the clear and objective track.
- Complies with site-specific /SR criteria. (EC 9.8440(7).) The site-specific /SR criteria are a historical legacy and generally discretionary in nature. Development standards adopted since 2001 appear to address similar issues as applied to projects reviewed under the clear and objective track already.

Overall: Site review has limited applicability for residential projects, triggered by site-specific /SR overlay rather than a blanket requirement for certain types of housing. Many multi-family residential projects are by-right development, reviewed for compliance with code standards such as Multiple Family Standards at the time of building permit review, and are not required to complete site review. Because the clear and objective site review criteria are fairly limited in scope compared to the discretionary track, largely relying on compliance with other code standards, consider what additional benefit site review provides for residential projects. Consider whether additional criteria could be applied through site review to provide a more thorough review designed to “maintain or improve the character, integrity and harmonious development of an area,” beyond straight compliance with code standards, and/or consider whether to continue to require site review for residential projects. (Site review purpose statement, EC 9.8425.)

6. Subdivisions

Where used: Subdivisions are required for land division creating four or more lots, often used to create new lots for development of single-family homes. In many cities, subdivisions are the clear and objective option for land divisions and development, compared to a discretionary PUD process.

Process and Timing: Tentative subdivisions are a Type II review. They require tentative and final plan approvals in two separate reviews; final review is a Type I review. A subdivision that also involves a PUD may not be submitted until a decision on the tentative PUD is final, requiring separate review of tentative PUD and tentative subdivision. (EC 9.8505.) There may be an opportunity for greater efficiency by allowing simultaneous review of tentative subdivision and tentative PUD because the clear and objective review criteria for subdivisions and PUDs are reasonably similar and could feasibly be reviewed concurrently.

Criteria: EC 9.8520 establishes the clear and objective approval criteria for subdivisions, as analyzed in the following table.

Sub	Topic	Audit Comments
(1)	Needed housing	State law requires that all housing have to option for review under clear and objective standards, so criterion to demonstrate project is needed housing is no longer needed.
(2)	Consistency with adopted plans for land uses and densities	See analysis in Referenced Standards section.
(3)(a)	Compliance with lot dimensions/density of base zones	The criterion explicitly requires compliance with only lot dimensions and density in the base zone and not overlay zones, compared to requirement to meet lot dimensions and density for both the subject zone and overlay zones in the discretionary track. Consider whether compliance with solar lot standards in EC 9.2790 should be included in the criterion, given that it explicitly applies to new subdivisions. See further analysis in Referenced Standards section.
(3)(a)	33% limitation of lot area with /WR or /WQ overlay zoning	No concerns about the /WR and /WQ lot requirements. The 33% threshold appears reasonable: ensuring 67% of the lot area is buildable land ensures lots can accommodate the 50% maximum lot coverage allowed in EC Table 9.2750 on the buildable portion of the lot without impacts to the /WR and /WQ areas.
(3)(b)	Streets/alleys/public ways	See analysis in Referenced Standards section.
(3)(c)	Provide public facilities/improvements	See analysis in Referenced Standards section.
(3)(d)	Floodplain standards	See analysis in Referenced Standards section.
(3)(e)	Geotech	See analysis in Referenced Standards section.
(3)(f)	Pedestrian circulation on-site	See analysis in Referenced Standards section.
(3)(g)	Public access required	See analysis in Referenced Standards section.

Sub	Topic	Audit Comments
(3)(h)	Special setbacks	See analysis in Referenced Standards section.
(3)(i)	Underground utilities	See analysis in Referenced Standards section.
(3)(j)	Vision clearance	See analysis in Referenced Standards section.
(3)(k)	Stormwater	See analysis in Referenced Standards section.
(4)	Does not create nonconformity	Greater detail could be provided about which “applicable standards in this land use code” should be reviewed to improve usability. Review nonconforming development standards beginning at EC 9.1200 and cross-reference if appropriate.
(5)	No Grading on $\geq 20\%$	Same concerns as those noted for this criterion in the PUD; see Section 4.
(6)(a)	Pedestrian/bicycle/transit access	No comments. This criterion is generally limited to circulation requirements within the project boundaries, with limited off-site improvement requirements because of constitutional requirements around takings.
(6)(b)	Street layout (19 lot rule)	Requirement to “disperse” motor vehicle traffic onto more than one local public street has been found by LUBA to be discretionary. Consider whether street connectivity standards in EC 9.6815 accomplish the same access and connectivity goals as this criterion, and remove criterion or modify to address any additional goals.
(7)(a)	Tree preservation	See analysis in Referenced Standards section.
(7)(b)	Natural resource protection	Protection of natural resources is required, but consider expanding criterion to include details that protection includes the area of the resource itself and a buffer, similar to specificity in the natural resources criterion for CUPs. (See EC 9.8100(3)(a).)
(8)	Future divisibility of large remainder lots	No comments; effectively requires a rough draft of a future subdivision of the remainder parcel subject to many of the same standards as the proposed subdivision.
(9)	Compliance with development standards explicitly addressed	No comments; notes opportunity to apply for modifications to development standards in lieu of compliance, providing project-level flexibility through established adjustment review in EC 9.8015.

Sub	Topic	Audit Comments
(10)	PUD requirements for properties subject to the South Hills Study	No comments; criterion is consistent with language in the PUD chapter, though it could be simplified with cross-reference to the PUD applicability standards in EC 9.8305(1).

There are several discretionary subdivision approval criteria that do not have an equivalent in the clear and objective criteria:

- Future best use. (EC 9.8515(2).) Discretionary criterion may not translate well to a clear and objective standard.
- Protect public health & safety. (EC 9.8515(5).) While prevention of “unreasonable risk” of fire, flood, geological hazards or other public health concerns in subsection (a) may be discretionary, required compliance with flood standards and geological standards in the clear and objective criteria partially addresses these issues. (See EC 9.8520(3)(d) and (e).) Requirement for “adequate” transportation and utility systems in subsection (b) is addressed in clear and objective criteria to comply with street and public improvement standards. (See EC 9.8520(3)(b) and (c).) Requirement to “not hamper” provision of public open space in subsection (c) is not specifically addressed by any of the clear and objective criteria.
- Traffic Impact Analysis Review required. (EC 9.8515(11).) See discussion of TIA in Section 7 below.
- Consistency with PUD. (EC 9.8515(12).) There is a considerable overlap between the subdivision and PUD approval criteria, so PUDs and subdivisions should generally be consistent by design even without this additional criterion requiring consistency.

Additionally, compliance with solar lot standards in EC 9.2790 is not explicitly required in either the discretionary or clear and objective track for subdivisions; the solar lot standards themselves, however, explicitly apply to subdivisions. Consider adding requirement to comply with solar lot standards to clear and objective criterion in subsection (3)(a) regarding lot dimensions and density requirements.

Overall: There are limited concerns noted for the subdivision criteria, and they largely overlap with concerns noted for the PUD, e.g. 20% slope grading limitation and street layout for more than 19 lots. The significant overlap between approval criteria for subdivisions and PUDs should simplify subdivision review, whether completed following tentative PUD review as is currently required or concurrently with PUD review as could be considered, since projects that have met the PUD standards in large part already meet the subdivision standards.

7. Referenced Standards

There are development standards referenced in the clear and objective approval criteria that apply to some or all of the five review types. These were reviewed with a lesser degree of

scrutiny, but specific concerns identified through analysis and public comments are addressed below.

- Land use designation(s) in the Comprehensive Plan and any applicable refinement plan for land uses and densities
 - No comments. There is a full list of adopted plans in EC 9.8010; the South Hills Study is cited frequently in connection with PUD requirements.
 - Note that review is limited to consistency with land use and densities in subject plans for projects under the clear and objective track, while projects under the discretionary review track must show consistency with all policies.
- Base zone standards for lot dimensions and density requirements. EC 9.2000 through 9.3980
 - Development density responds to site-specific conditions and varies widely on R-1 sites from 2 units per acre up to the maximum 14 units per acre net density permitted.
 - Generally the clear and objective criteria do not require compliance with the overlay zones under EC 9.4000 through 9.4980, whereas most of the discretionary criteria require compliance with both base zones and overlay zones.
- Solar standards. EC 9.2780 through 9.2795
 - Solar lot standards in EC 9.2790 explicitly apply to creation of lots in subdivisions of land zoned R-1 or R-2, and include exceptions and exemptions to the requirements. Require compliance with these standards only for tentative subdivision, based on the applicability standards in this section, because standards relate to creation of lots which is not accomplished through CUP, PUD or site review. Compliance with standards for partitions is explicitly not required under these standards, and does not need to be required as an approval criterion for partitions.
 - Solar setback standards in EC 9.2795 apply to one and two-family residential structures on R-1 and R-2 lots greater than 4,000 SF, and are applied at the time structures are proposed. These standards generally cannot be applied until individual buildings are proposed, and may not be triggered at land use review. Compliance with these standards is not recommended as an explicit approval criterion for any of the land use reviews.
- Multiple-Family Standards. EC 9.5500
 - No comments.
- Public Improvement Standards. EC 9.6500 through 9.6505
 - No comments; these standards reference engineering standards elsewhere in the code.
- Flood Plains and Flood Hazard Areas Standards. EC 9.6706 through 9.6709
 - No comments. These standards implement the City's eligibility in the National Flood Insurance Program and are derived from standards codified in the Code of Federal Regulations.

- Geological and Geotechnical Analysis. EC 9.6710(6)
 - Standards for geological review for projects developed under clear and objective criteria are “one-size-fits all,” requiring certification from a licensed engineer that the development activity either will not be impacted by geological instability problems, or that design methods may be used to safely address any such impacts. In contrast, review standards for discretionary projects include three levels of review with increasing complexity depending on potential for impacts. Consider the level of detail needed for geological review with each of the five review types, whether multiple levels of review could be developed as review options for clear and objective projects, and applied based on the level of detail needed at the time of land use review compared with that needed with building permit when final structures are fully designed.
- Pedestrian Circulation On-Site. EC 9.6730
 - No comments.
- Public Access Required. EC 9.6735
 - No comments.
- Special Setback Standards. EC 9.6750
 - No comments
- Underground Utilities. EC 9.6775
 - No comments.
- Vision Clearance Areas. EC 9.6780
 - No concerns noted.
- Stormwater standards. EC 9.6791 through 9.6797
 - No concerns noted.
- Standards for Streets, Alleys and Other Public Ways. EC 9.6800 through 9.6875
 - Consider options to allow modification to numerical standards in these standards. Projects currently can vary stated maximums for block length, street connectivity, and cul-de-sac/emergency vehicle turnarounds where physical conditions, such as topography or natural resources, or existing physical development “precludes” compliance with the standard. (EC 9.6810, 9.6815(2)(g), and 9.6820 respectively.) Consider additional standards to bolster “preclude” language, and/or consider requiring modifications to these standards to be reviewed through adjustment review beginning at 9.8015.
 - Housing projects reviewed under clear and objective tracks are exempt from EC 9.6845, Special Safety Requirements, so the reference to the chapter should be removed from the approval criteria list of applicable standards.
- Tree Preservation and Removal Standards. EC 9.6880 through 9.6885
 - Written report required from a certified arborist or licensed arborist, which must only show that “consideration has been given to preservation,” prioritizing significant trees (defined term). (EC 9.6885(2)(a).) Consider additional standards to bolster requirement to show “consideration” more effectively, such as by including specific preservation requirements particularly for the types of significant trees identified in the standard. Standards for those

priority tree categories could be developed to better support tree protection or other equivalent measures to support tree canopy development.

- Traffic Impact Analysis (TIA) Review. EC 9.8650 through 9.8680
 - Compliance with TIA review is explicitly required as an approval criterion under the discretionary tracks for CUP, PUDs and subdivisions, but not for projects under the clear and objective tracks. Separate TIA review can also be triggered by projects meeting the TIA applicability standards, including generating over 100 peak hour vehicle trips. (EC 9.8670.) Consider clarifying whether projects developed under the clear and objective tracks that meet the existing TIA applicability standards do or do not require TIA review.
 - If TIA review is not required for any projects under the clear and objective tracks, consider developing additional clear and objective approval criteria in lieu of compliance with existing criteria in EC 9.8680 to ensure review of potential traffic impacts. Standards could either be located within the TIA chapter or within the individual land use review chapters.