

DRAFT CODE AMENDMENTS – TESTIMONY SUMMARY

Proposed text in ***bold italic***

Proposed deletions in [bracketed strike-out]

Proposed corrections/staff clarifications in ***highlighted bold italic***

Summary of Testimony and Staff Response (immediately following associated code section)

Definitions

9.0500 **Definitions**. As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

Pedestrian. Any person afoot or using any type of wheelchair.

Commercial Zones

9.2181 **Special Standards for Table 9.2180.**

(1) Lot area, frontage, and width minimums may be adjusted in accordance with the provisions of EC 9.8030(1). Modifications may be approved through a planned unit development. (For planned unit development procedures refer to EC 9.7300 General Overview of Type III Application Procedures and for approval criteria refer to EC 9.8320 Tentative Planned Unit Development Approval Criteria - General/Discretionary or EC 9.8325 ***Tentative Planned Unit Development Approval Criteria – Housing/Clear and Objective.***)

Employment and Industrial Zones

9.2471 **Special Standards for Table 9.2470.**

(1) Lot area, frontage, and width minimums may be adjusted pursuant to the provisions of EC 9.8030(1) of this land use code. Modifications may be approved through a site review or planned unit development. (For planned unit development procedures refer to EC 9.7300 General Overview of Type III Application Procedures and for approval criteria refer to EC 9.8320 Tentative Planned Unit Development Approval Criteria – General/Discretionary.)

Natural Resource Zone

9.2520 **Natural Resource Zone Land Use and Permit Requirements.** The provisions of the NR zone do not exempt a person or property from state or federal laws and regulations that protect water quality, wetlands, or other natural areas. In cases where the NR zone overlaps with the /WB wetland buffer overlay zone or the /WP waterside protection overlay zone, only the provisions of the NR zone are applied.

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- (2) **Uses Subject to a Conditional Use Permit.** The following uses are permitted conditionally in the NR zone:
- (a) Nature interpretive centers and wetland research facilities, when such centers or facilities are specified in or consistent with adopted plans or policies.
 - (b) Maintenance facilities for storage of equipment and materials used exclusively for maintenance of wetlands and other natural resource areas.
- Conditional use permit approval shall be based upon conformance with EC 9.2530 Natural Resource Zone Development Standards (2) through (19), in addition to EC 9.8090 Conditional Use Permit Approval Criteria -General/Discretionary.

Public Land Zone

9.2687 Special Standards for Table 9.2686.

- (1) Lot area, frontage, and width minimums may be adjusted pursuant to the provisions of EC 9.8030(1) of this land use code. Modifications may be approved through a planned unit development. (For planned unit development procedures refer to EC 9.7300 General Overview of Type III Application Procedures and for approval criteria refer to EC 9.8320 Tentative Planned Unit Development Approval Criteria - General/Discretionary or EC 9.8325 Tentative Planned Unit Development Approval Criteria – Housing/Clear and Objective.)

Residential Zones

9.2751 Special Development Standards for Table 9.2750.

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- (2) Maximum building height, minimum building setbacks, and maximum building dimensions may be modified with an approved planned unit development permit. (For planned unit development procedures refer to EC 9.7300 General Overview of Type III Application Procedures and for approval criteria refer to EC 9.8320 Tentative Planned Unit Development Approval Criteria - General/Discretionary or EC 9.8325 Tentative Planned Unit Development Approval Criteria – Housing/Clear and Objective.)

9.2761 Special Standards for Table 9.2760.

- (1) **Lot Standards.**

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- (c) Lot area, frontage, and width minimums may be modified with an approved cluster subdivision in R-1 or Planned Unit Development (PUD) in any zone, ***or adjustments may be made if consistent with the criteria in EC 9.8030(1) and reviewed and approved concurrently with a planned unit development in any zone, except that for applications proposing housing to be reviewed with clear and objective approval criteria these standards may not be adjusted within 50 feet of any property line that abuts property zoned R-1.***

Testimony: Request for clarification on why perimeter lots are not adjustable.

Response: The reason for restricting adjustments within 50 feet of any R-1 zoned property is to foster a good transition between new PUDs and low-density residential areas. 50 feet was chosen because it

corresponds to the minimum width for a standard R-1 lot. Currently, clear and objective PUDs are required to provide a 30-foot perimeter buffer. That requirement is proposed to be removed and this limitation in addition to the new transition standards would replace that requirement.

Testimony: Why will the PUD require an adjustment as well as the current allowance to make modifications?

Response: The allowance to adjust lot standards with an adjustment review fits within the Clear and Objective requirement (applicant opts into the discretionary review) vs. using the typical PUD allowance for modification to lot standards by demonstrating consistency with the PUD purposes allowed by EC 9.8325(11), which is being removed. The adjustment option replaces the modification option for clear and objective applications. The adjustment(s) would be processed concurrently with the PUD and only if the applicant chooses to adjust the standards. The General PUD track ability to modify lot standards without a separate adjustment will remain in place.

Downtown Westside Special Area Zone

9.3216 Special Development Standards for Table 9.3215.

- (1) Maximum building height, minimum building setbacks, and maximum building dimensions may be modified with an approved planned unit development permit. (For planned unit development procedures refer to EC 9.7300 General Overview of Type III Application Procedures and for approval criteria refer to EC 9.8320 Tentative Planned Unit Development Approval Criteria - General/Discretionary or EC 9.8325 Tentative Planned Unit Development Approval Criteria – Housing/Clear and Objective.)

9.3221 Special Standards for Table 9.3220.

- (1) Lot area, frontage, and width minimums may be modified with an approved planned unit development permit. (For planned unit development procedures refer to EC 9.7300 General Overview of Type III Application Procedures and for approval criteria refer to EC 9.8320 Tentative Planned Unit Development Approval Criteria - General/Discretionary or EC 9.8325 Tentative Planned Unit Development Approval Criteria – Housing/Clear and Objective.)

Jefferson Westside Special Area Zone

9.3626 Special Development Standards for Table 9.3625.

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- (9) Maximum building height and minimum building setbacks may be modified with an approved planned unit development permit. (For planned unit development procedures refer to EC 9.7300 General Overview of Type III Application Procedures and for approval criteria refer to EC 9.8320 Tentative Planned Unit Development Approval Criteria - General/Discretionary or EC 9.8325 Tentative Planned Unit Development Approval Criteria – Housing/Clear and Objective.)

Riverfront Park Special Area Zone

9.3725 S-RP Riverfront Park Special Area Zone Review Procedures. The master site plan for developments proposed within the S-RP zone shall be reviewed through the conditional use permit process provided in this land use code. For the purpose of this review, the following

criteria shall be applied in lieu of the criteria provided in EC 9.8090 Conditional Use Permit Approval Criteria - General/Discretionary.

Wetland Buffer Overlay Zone

9.4830 WB Wetland Buffer Overlay Zone Land Use and Permit Requirements. Within the /WB overlay zone, there are 2 categories of uses: those allowed by the base zone or special area zone outside of the /WB area, and a more restrictive list of uses allowed within the /WB area.

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(2) Within /WB Areas:

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(c) Uses Permitted Conditionally. The following uses are permitted conditionally in the /WB overlay zone:

1. Nature interpretive centers, when specified in or consistent with adopted plans or policies.
2. Maintenance facilities for storage of equipment and materials used exclusively for maintenance and management of wetlands and natural areas.

Conditional use permit approval shall be based upon conformance with EC 9.2530 Natural Resource Zone Development Standards (2) through (19) in addition to the conditional use criteria contained in EC 9.8090 Conditional Use Permit Approval Criteria – General/Discretionary.

Telecommunication Facilities

9.5750 Telecommunication Devices-Siting Requirements and Procedures.

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(2) Siting Restricted. No telecommunication facility, as defined in this land use code, may be constructed, modified to increase its height, installed or otherwise located within the city except as provided in this section. Depending on the type and location of the telecommunication facility, the telecommunication facility shall be either an outright permitted use, subject to site review procedures, or require a conditional use permit.

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- (b) Site Review. A telecommunication facility which, pursuant to subsections (3) through (5) of this section, is subject to site review shall be processed in accordance with the site review procedures of this land use code. The criteria contained in this section, as well as the criteria contained in EC 9.8440 Site Review Approval Criteria – General/Discretionary, shall govern approval or denial of the site review application. In the event of a conflict in criteria, the criteria contained in this section shall govern. No development permit shall be issued prior to completion of the site review process, including any local appeal.
- (c) Conditional Use Permit. A telecommunication facility which, pursuant to subsections (4) or (5) of this section, requires a conditional use permit shall be processed in accordance with the conditional use permit procedures of this land use code, except that the variance provisions shall not apply. The criteria contained in EC 9.8090 Conditional Use Permit Approval Criteria –General/Discretionary and subsections (6) and (7) of this section shall govern approval

or denial of the conditional use permit application. In the event of a conflict in criteria, the criteria contained in subsections (6) and (7) of this section shall govern. No development permit shall be issued prior to completion of the conditional use permit process, including any local appeal.

Special Development Standards for Certain Uses

9.5860 Transition Standards for Housing/Clear and Objective Applications.

- (1) ***Applicability of Transition Standards. The transition standards at EC 9.5860(2) shall apply to land use applications proposing housing to be reviewed with clear and objective approval criteria under EC 9.8100 Conditional Use Permit Approval Criteria – Housing/Clear and Objective, EC 9.8325 Tentative Planned Unit Development Approval Criteria – Housing/Clear and Objective, or EC 9.8445 Site Review Approval Criteria – Housing/Clear and Objective. The transition standards at EC 9.5860(2) apply to all new buildings and any building additions that increase the square footage of livable floor area by 20 percent or more for any of the following:***
- (a) ***Multiple-family development on property abutting or directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR except where the multiple-family development consists of:***
1. ***a single tri-plex on one lot.***
 2. ***a single four-plex on one lot.***
 3. ***structures that are less than 30 feet in height.***

Testimony: Clarification on whether abutting means separated by a street and suggestion to add a definition.

Response: Rights-of-way are unzoned (see [EC 9.1070\(3\)](#)) and this standard is written relative to abutting zones. The standards would apply to the types of development listed in subs (a) and (b) when/where the development site will abut (touch) property zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR. Since right-of-way is unzoned, we added the phrase ‘or directly across a public alley’ to also apply the standards along alleys as they are much narrower than streets and may not provide a similar buffer through distance alone. Additionally, there are over 180 uses of “abut” or “abutting” in the land use code. Given the numerous references, staff would need to make sure there would not be any unintended consequences from adding a definition if the Planning Commission recommends doing so.

- (b) ***Assisted care, boarding and rooming house, campus living organization, university or college dormitory, or single room occupancy (SRO), proposed on property abutting or directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR.***
In cases where the standards in subsection (2) apply to building additions, they shall be applicable between the addition and any property line abutting or directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR.
- (2) ***Standards. The following standards apply to new buildings and building additions identified in subsection (1) and must be applied along the portion of any property line that abuts or is directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR:***
- (a) ***Height and Setback Options. The proposed development must comply with one of the following four options:***
1. ***Option 1. The maximum building height of a new building or building addition shall be limited to 35 feet. In addition, at least one of the***

following must be provided along the entire portion of any property line that abuts or is directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR:

- a. **A 6-foot high, 100 percent sight-obscuring wooden fence or masonry wall.**
- b. **Landscaping with a minimum plant bed width of 7 feet meeting EC 9.6210(3) High Screen Landscape Standard (L-3).**

Driveways off an alley may intersect the required screening within 30 degrees of perpendicular, as measured from the centerline of the driveway to the centerline of the alley right-of-way, and are limited to a maximum width of 15 feet for one-way access or 28 feet for two-way access.



Testimony: Questions regarding whether there is a maximum distance from the property line that the 35-foot height limit applies. One suggestion to use 50 feet as indicated by other code sections and another suggestion to use 25 feet from interior property lines or 10 feet from property lines along alleys. Testimony at the public hearing requested adding a third alternative with a metal fence and hedges.

Response: This option was written as a straightforward building height limitation, so the 35-foot limitation would apply to the whole site. This approach may work better for smaller development sites where the tradeoff in vertical housing units is less. Larger developments may have more flexibility to provide more housing units using one of the other options. If Planning Commission wishes to refine the applicability, staff recommends revising the language under sub (2) to ‘must be applied **within 50 feet** along the portion of any property line...’ This approach would allow development to occur according to the base zone standards in the interior of the property, while creating a 50-foot buffer more similar to the height limit in the low density residential zone. Regarding adding a third option to allow a metal fence with hedges, if Planning Commission recommends adding the option, a possible amendment would be to add the following option: “A 6-foot high metal fence with high shrubs planted every 6 feet. Required shrubs must be in at least 5-gallon containers at the time of planting. Chain link or cyclone fences are not allowed.”

2. **Option 2. The minimum interior yard setback shall be 10 feet from the portion of any property line that abuts or is directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR. In addition:**

- a. ***At a point that is 25 feet above grade, the interior yard setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from that property line until a point 50 feet away from the property line.***
- b. ***For new buildings or building additions within 30 feet of R-1, R-1.5, S-C/R-1, or S-RN/LDR zoned property, trees growing to a mature height of at least 20 feet shall be planted at a minimum interval of 15 feet, parallel to the property line, between buildings and any property line that abuts or is directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR. In addition, one of the following shall be provided along the portion of any property line that abuts or is directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR:***
 - (1) ***A 6-foot high, 100 percent sight-obscuring wooden fence or masonry wall.***
 - (2) ***Landscaping with a minimum plant bed width of 7 feet meeting EC 9.6210(3) High Screen Landscape Standard (L-3).***

Driveways off an alley may intersect the required screening within 30 degrees of perpendicular, as measured from the centerline of the driveway to the centerline of the alley right-of-way, and are limited to a maximum width of 15 feet for one-way access or 28 feet for two-way access.



Testimony: Request to clarify slope setback with a Figure. One request to remove the requirement for a fence/wall or landscape buffer.

Response: If the Planning Commission recommends, staff can create and include a Figure when moving forward to the Council public hearing process.

Testimony: Comments that 15-foot interval for trees seems dense, that it could result in an “accumulation of trees that would impact the shade and/or solar lot setbacks of neighbors” and concern over the cost. Suggestion to use 25-foot spacing interval.

Response: The 15-foot spacing was vetted with internal staff with arborist training. Given trees that reach 20 feet tall (minimum required), this spacing would provide a closing of the canopies. Staff supports leaving the requirement as is or changing the spacing interval. Spacing of 20 feet might result in canopies touching slightly and a greater interval distance may allow gaps between the trees

depending on the tree species provided. All of these are factors for consideration and staff is supportive of fine-tuning the requirement and suggests the required interval be between 15 feet and 30 feet based on the former being feasible and the latter being consistent with the spacing requirement for canopy trees (larger than 20-feet) in the general landscape standards (e.g., see [EC 9.6210\(2\)](#)).

Testimony: Request to remove the requirement for a fence/wall or landscape buffer.

Response: Staff supports removal of the fence/wall or landscape requirement from Option 2. This option includes a separate requirement for planting trees between buildings and property lines when the building will be within 30 feet, so that will provide some landscape screening when applicable.

Testimony: Is there a limit to how big a bite has to come out of the building?

Response: This option includes a sloped setback that extends up to 50 feet from the property line and limits the building height. The sloped portion will extend no more than 50 and depending on the base zone, the maximum building height will be reached within that 50 feet. The R-4 zone (max building height of 120 feet) is the only zone where this limitation would have much impact on the building height; however, given that the intention is to provide a transition buffer between high intensity development and low intensity developments, the limitation is consistent with the intent as it would only apply to property lines abutting low density residential zones. There are few instances where R-4 abuts low density residential and these standards would only apply to developments that require a site review, conditional use, or planned unit development—by-right developments would not be subject to the transition standards.

Testimony: Flagged potential Fire code conflict with the dimensional standards for access off alleys.

Response: Staff checked with the Fire Marshall’s office to clarify access requirements. They review access requirements on a case-by-case basis and the narrowest allowed by Fire Code is 12 feet, but they often require more and prefer a 20-foot access. Given this and other concerns brought up about the feasibility and effectiveness of applying the transition standards along alley property lines, staff asks Planning Commission to provide additional guidance. Solutions include: 1) changing the maximum one-way access to 20 feet, 2) revising the transition standards so they do not apply “across a public alley” or 3) removing the alley access maximums and revising the transition requirements when along an alley. If the third approach is chosen, one suggestion would be to rely solely on a reduced transition setback that factors in the width of the alley (e.g., as suggested under Option 4 comments below). Staff prefers solutions 2 or 3 since these options would also address related concerns about providing landscaping along the alley and potential conflicts.

3. ***Option 3. A minimum 30-foot setback shall be provided between a new building or building addition and the portion of any property line that abuts or is directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR. The 30-foot setback area may be used for open space, vehicle use area, pedestrian circulation, bicycle parking, stormwater quality facilities, or landscaping and must contain trees growing to a mature height of at least 20 feet, spaced at a minimum interval of 25 feet, parallel to and within five feet of the property line, in the setback area.***



Testimony: Possible conflict brought up between the planting requirement and head-in parking off the alley.

Response: Planning Commission could recommend that staff make changes to address this conflict. One option would be to waive the tree planting requirement when applying the standard along alley property lines. As discussed under the previous response section, this conflict could also be addressed if Planning Commission recommends to either revise the transition standards so they do not apply “across a public alley” (solution 2 from above) or remove the alley access maximums and revising the transition requirements when along an alley (solution 3 from above).

4. ***Option 4. A new building or building addition shall be set back at least 50 feet or a setback equal to the height of the tallest building on the development site, whichever is less, from the portion of any property line that abuts or is directly across a public alley from land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR. The 50-foot setback area may be used for open space, vehicle use area, pedestrian circulation, bicycle parking, stormwater quality facilities, or landscaping.***



Testimony: Suggestion to change setback from 50 feet to 25 feet and to reduce the setback to 20 feet when directly across an alley.

Response: This option was intended to provide a simple, straight forward setback option. The tradeoff for the enhanced setback is that there are no other screening requirements. Any landscaping provided would be either at the applicant’s discretion or to meet other existing code requirements, for example to meet any required parking area landscape standards. Regarding the suggested reduction to the setback when applied along an alley, staff supports this requested change as the presence of an alley provides additional spatial separation (14-foot alley right-of-way plus 5-foot setbacks on each property will provide at least 28 feet of separation between buildings on separate development sites).

- (b) Allowed intrusions into setbacks. In lieu of the permitted setback intrusions provided at EC 9.6745(3) the following intrusions are allowed within the interior yard setback area described in EC 9.5860(2)(a)2 through 4:**
- 1. Eaves and chimneys may intrude a maximum of 2 feet into the vertical plane of the interior yard sloped setback area. No other intrusions are allowed into the vertical plane of the setback.**
 - 2. Dormers may intrude into the sloped portion of the interior yard sloped setback area provided each dormer is no more than 10 feet wide and the total width of all dormers on a given wall does not exceed 30 percent of the linear length of the building wall.**
 - 3. Architectural screens or arbors serving an upper floor balcony may protrude a maximum of 6 feet into the sloped portion of the interior yard sloped setback area.**

Testimony: Possible conflict brought up between sub 1. and subs 2. and 3.

Response: No conflict. Sub 1. addresses allowed intrusions into the *vertical* portion of the sloped setback whereas subs 2. and 3. discuss intrusions allowed in the *sloped* portion of the sloped setback.

Testimony: Request to strike the clause “each dormer is no more than 10 feet wide and” and to increase the percentage of linear wall length allowed for dormers from 30 to 50 percent.

Response: Staff developed the draft language in an attempt to reduce potential “loopholes” to get around the transition standard height and setback requirements. The limitations to width and percentage of the wall that can include dormers intruding into setback areas are to prevent a situation where a dormer-in-name-only is used. Staff worked with urban design staff to develop the proposed limitations accordingly. If Planning Commission feels these limits need fine-tuning, they can recommend alternative limitations.

- (c) Balconies, decks and other outdoor spaces located above the ground floor shall be setback at least 20 feet from any property line that abuts land zoned R-1, R-1.5, S-C/R-1, or S-RN/LDR.**
- (d) Tree Exception. An exception to the tree planting required by subsections (a)(2) and (3) is allowed if the applicant provides a signed and notarized letter from the abutting property owner stating that the abutting property owner does not desire the trees required by this section. This exception does not apply to trees required by other applicable standards. Future development proposals subject to the standards in this section will need to obtain a separate exception from the tree planting requirements of this section.**

General Standards for All Development

9.6010 Applications Proposing [Needed] Housing.

- (1) As used in EC chapter 9.6000, the term “applications proposing [~~needed~~] housing **to be reviewed with clear and objective approval criteria**” includes:
 - (a) Applications that are proceeding (or have proceeded) under EC 9.8100, 9.8220, 9.8325, 9.8445, or 9.8520; or
 - (b) Applications for **housing** developments [~~permits~~] for **residential** uses permitted outright in the subject zone that are **entitled to clear and objective standards pursuant to state statutes** [~~proposed housing is needed housing as defined by state statutes~~].

9.6710 Geological and Geotechnical Analysis.

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- (6) **[Needed] Clear and Objective Housing.** 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 **to be reviewed with clear and objective approval criteria** shall include a certification from an Oregon licensed Engineering Geologist, **an Oregon licensed Geotechnical Engineer**, or an Oregon licensed Civil Engineer with geological experience, **prepared within five years of the date of application, that includes the following information**[~~stating~~]:

Testimony: Questions on the need for a timeframe for the preparation of the Geotech report and a request to increase the time limit from 5 years to 10 years.

Response: Given the requirement for clear and objective requirements and past experience from staff in receiving reports that were arguably dated, staff felt the five-year` requirement was justified. While soils typically do not change, as pointed out in testimony, other factors needing consideration by the engineer may change. Springs or seeps can develop, new fill can be placed, excavation can occur, new mapping information can become available (e.g., the new DOGAMI maps released in 2019), and other industry/professional best practices can change. Staff recommends keeping this limit and if Planning Commission recommends adjusting the amount of time, staff recommends keeping it between 5 – 10 years.

- (a) **Identification of any portion of the proposed development site that is located in an area of moderate or high landslide susceptibility as shown on the city’s adopted Eugene Landslide Hazard Map.**
- (ab) **A statement t[~~r~~] that the proposed development [activity] will not be impacted by existing or potential stability problems or any of the following site conditions: slopes 20 percent or greater, springs or seeps, depth of soil bedrock, soil types, variations in soil types, open drainage ways, fill, or a combination of these conditions.**
- (bc) If proposed development [activity] **will be located in an area identified as moderately or highly susceptible to landslides pursuant to (a), or will be impacted by existing or potential stability problems or any of the site conditions listed in (ab), the certification must also include:**
 1. **A review of the suitability of the proposed lot layout, street locations, and proposed locations for utilities, driveways, parking areas, and buildings given the landslide hazards, stability problems, and/or site conditions identified in the certification;**

2. **Any recommended modifications to the proposed lot layout, street locations, and proposed locations for utilities, driveways, parking areas, and buildings that in the engineer’s opinion, would mitigate the landslide hazards, stability problems, and/or site conditions identified in the certification;**
3. Methods for safely addressing the **landslide hazards and/or site conditions identified in (a) and (b)**; and,
4. **Recommendations, if any, for additional geotechnical analysis for future buildings or improvements on the development site.**
5. **Recommendations, if any, for additional geotechnical analysis for future buildings or improvements on proposed lots or parcels.**

If [a statement] **certification** is submitted under (6)(b)(c), the application shall include the applicant’s statement that it will develop in accordance with the Engineer’s [statement] **certification**.

Testimony: Flagging the presence of subjective terms such as “impact” and “potential.”

Response: The geotechnical requirements were intentionally made more robust to be more effective and to support removal of the prohibition on grading slopes over 20 percent (applicable to PUDs and Subdivisions). This section can be confusing because the actual clear and objective requirement is to provide *certification* from an Oregon licensed professional geotechnical engineer and a *statement* from the applicant that they will develop in accordance with that certification. City staff will not exercise judgement by evaluating the certification/recommendations made by the licensed professional; however, the standards outline various risk factors and other considerations that the engineer must address. Staff also notes that the terms pointed out are in the existing code language.

9.6810 Block Length.

- (1) **Except as provided in subsections (2) and (3) of this section, b[B]lock length for local streets shall not exceed 600 feet.[;]**
- (12) **Applications not proposing housing to be reviewed with clear and objective approval criteria, [unless an exception is] may be exempt from the block length requirements in subsection (1)[granted] based on one or more of the following:**
 - (2a) Physical conditions preclude a block length 600 feet or less. Such conditions may include, but are not limited to, topography or the existence of natural resource areas such as wetlands, ponds, streams, channels, rivers, lakes or upland wildlife habitat area, or a resource on the National Wetland Inventory or under protection by state or federal law.
 - (3b) Buildings or other existing development on adjacent lands, including previously subdivided but vacant lots or parcels, physically preclude a block length 600 feet or less, considering the potential for redevelopment.
 - (4c) An existing public street or streets terminating at the boundary of the development site have a block length exceeding 600 feet, or are situated such that the extension of the street(s) into the development site would create a block length exceeding 600 feet. In such cases, the block length shall be as close to 600 feet as practicable.
 - (5d) As part of a Type II or Type III process, the developer demonstrates that a strict application of the 600-foot requirement would result in a street network that is no more beneficial to vehicular, pedestrian or bicycle traffic than the proposed street network and that the proposed street network will accommodate necessary emergency access.
- (23) **Applications proposing housing to be reviewed with clear and objective**

approval criteria, must comply with the block length requirements in subsection (1) unless existing slopes would result in a street grade that exceeds the grade allowed under current adopted street design standards when measured along the centerline of the proposed streets to the existing grade of the subdivision boundary or abutting property under separate ownership.

- (4) Block length may be adjusted in accordance with EC 9.8030(37) for applications proposing housing to be reviewed with clear and objective approval criteria.**

Testimony: Concern about the ambiguous terms “preclude” and “may be exempt.”

Response: The terms called out are under the exemption section that applies to General/Discretionary tracks.

Testimony: Suggestion to allow a clear and objective exemption for the alignment of existing streets.

Response: Staff requested more information and is looking into the possibility of adding a clear and objective exemption for the situation described and will present our findings at the time of deliberations. It appears that one option would be to include a similar exception as (2)(c) above with minor revision to remove the “as close to 600 feet as practicable” language and instead provide a cap such as “...shall not exceed 800 feet.” Staff is checking with public works staff to see if they have a suggested cap.

9.6815 Connectivity for Streets.

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(2) Street Connectivity Standards.

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- (e) Except for applications proposing [~~needed~~] housing **to be reviewed with clear and objective approval criteria**, all applicants shall show that the proposed street alignment shall minimize excavation and embankment and avoid impacts to natural resources, including water-related features.

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- (g) **Except for applications proposing housing to be reviewed with clear and objective approval criteria**, [1]in the context of a Type II or Type III land use decision, the city shall grant an exception to the standards in subsections (2)(b), (c) or (d) if the applicant demonstrates that any proposed exceptions are consistent with either subsection 1. or 2. below:

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- (h) **For applications proposing housing to be reviewed with clear and objective approval criteria, exceptions to street connectivity standards may be granted if one of the following conditions exists:**
 - 1. Existing buildings on land abutting the development site and under separate ownership obstruct the extension of the planned street;**

Testimony: Requests to remove “and under separate ownership” and to allow exception for existing buildings on the development site.

Response: The intent is to allow a clear and objective exception when there is an off-site obstruction that the developer has no control over. Due to the clear and objective requirement, staff cannot make a judgement call on whether preservation of a specific building justifies missing an opportunity to provide connectivity of our street system (e.g., discerning between a small shed, which by definition is a building, and a house). Part of writing clear and objective code language, is being mindful not to create unintentional loopholes. The language is very literal, stripped of discretionary assumptions such as that the building has significant monetary value. Staff recommends keeping this exception as

written. If the Planning Commission wishes to increase the allowance for an exception when the abutting land is under the same ownership or when existing buildings located on the development site justify a waiver, staff recommends revising the proposed adjustment review criteria to address these situations.

2. **Existing slopes would result in a street grade exceeding current adopted street design standards when measured along the centerline of the proposed streets to the existing grade of the subdivision boundary or abutting property under separate ownership;**
3. **Provision of an intersecting street would require dedication of 25 percent or more of the total development site area.**

Testimony: Suggestion to reduce 25 percent to 10 percent.

Response: Staff has not had time to analyze this request in depth, but in a back of the envelope example of a simple subdivision with 9 lots and a minimum 40' wide access lane, rough calculations showed the street to be approximately 18 percent of the development site. This was a simplified example, but illustrative enough for staff to conclude that 10 percent would be too low of a threshold for an outright exception. Staff also notes that these exceptions are necessarily straight forward and therefore they will not always work for every situation. This is why the adjustment option was also added and, of course, if still more flexibility is needed then the General/Discretionary track might work best to achieve the level of development or desired design.

4. **Abutting residential land cannot be further divided under current development standards.**
 - (i) **Street connectivity standards may be adjusted in accordance with EC 9.8030(37) for applications proposing housing to be reviewed with clear and objective approval criteria.**

9.6820 Cul-de-Sacs or Emergency Vehicle Turnarounds.

* * *

- (5) As part of a Type II or Type III process, an exception may be granted to the requirements of (1), (3) and (4) of this section. **For applications proposing housing to be reviewed with clear and objective approval criteria, exceptions may only be granted as provided in subparagraph (c). For all other applications, exceptions may be granted** because of the existence of one or more of the following conditions:

* * *

- (c) **For applications proposing housing to be reviewed with clear and objective approval criteria, an exception to the requirements of subsections (1), (3) and through (4) may be granted if the applicant provides certification from an Oregon licensed civil engineer stating that a cul-de-sac or emergency vehicle turnaround cannot be constructed to meet current standards according to the adopted Design Standards and Guidelines for Eugene Streets, Sidewalk, Bikeways and Accessways;**

Testimony: Question about whether sub (2) should be included under the exceptions in sub (c).

Response: Great catch! Thank you! The change highlighted above removes the option to get an exception from subsection (2).

- (6) ***Cul-de-sacs or emergency vehicle turnarounds standards may be adjusted in accordance with EC 9.8030(37) for applications proposing housing to be reviewed with clear and objective approval criteria.***

9.6845 **Special Safety Requirements.** Except for applications proposing [needed] housing ***to be reviewed with clear and objective approval criteria***, where necessary to insure safety, reduce traffic hazards and promote the welfare of the general public, pedestrians, bicyclists and residents of the subject area, the planning director or public works director may require that local streets and alleys be designed to discourage their use by non-local motor vehicle traffic and encourage their use by local motor vehicle traffic, pedestrians, bicyclists, and residents of the area.

9.6865 **Transit Facilities.**

- (1) Except for applications proposing [needed] housing ***to be reviewed with clear and objective approval criteria***, the city manager may require provisions, including easements, for transit facilities where future transit routes are required on streets extending through or adjacent to the area of the development, and where a need for bus stops, bus pullouts or other transit facilities within the development has been identified, provided the city makes findings to demonstrate consistency with constitutional requirements.
- (2) Except for applications proposing [needed] housing ***to be reviewed with clear and objective approval criteria***, where the provision of transit stops, bus pullouts or other facilities along a public street requires a right-of-way or paving width greater than that listed in Table 9.6870 Right-of-Way and Paving Widths and where a need for transit service within the development has been identified, the planning director or public works director, depending upon the type of application being processed, may require that additional right-of-way or paving be provided.

9.6885 **Tree Preservation and Removal Standards.**

* * *

- (2) ***Tree Preservation and Removal Standards. The standards in this subsection apply only to land use applications processed under EC 9.8100, EC 9.8325, EC 9.8445, and EC 9.8520. Unless exempt under subparagraph (b) below, [N]no permit for a development activity subject to this section shall be approved until the applicant [submits plans or information, including a written report by a certified arborist or licensed landscape architect, that] demonstrates compliance with the [following] standards in this subsection.[:]***
- (a) ~~The materials submitted shall reflect that consideration has been given to preservation in accordance with the following priority:~~
- ~~1. Significant trees located adjacent to or within waterways or wetlands designated by the city for protection, and areas having slopes greater than 25%;~~
 - ~~2. Significant trees within a stand of trees; and~~
 - ~~3. Individual significant trees.]~~

Testimony: Clarification on whether these standards apply to more than just these application types.

Response: These standards will only apply to clear and objective applications as listed in sub (2).

General/Discretionary applications have tree preservation requirements embedded in the approval criteria.

- (a) **Definitions.** *For the purposes of this subsection (2), the following definitions apply:*
1. ***Critical Root Zone (CRZ).*** *That area surrounding a tree that has a radius of 12 inches multiplied by the diameter breast height expressed in inches of the tree trunk or trunks.*
 2. ***Tree Removal.*** *To fell or sever a tree or to use any procedure the natural result of which is to cause the death or substantial destruction of the tree. Substantial destruction includes actions that destroy more than 15% of the critical root zone of a tree, or topping, or severing the cambial material on 50% or more of the circumference of the tree trunk. Remove does not in any context include those pruning standards as defined in the edition of American National Standards Institute (ANSI) Section A300, Tree, Shrub and Other Woody Plant Maintenance Standard Practices in effect at the time the pruning occurs.*

Testimony: Request to strike “or severing the cambial material on 50% or more of the circumference of the tree trunk” and questions about why 15% instead of 30%.

Response: This language is from the main definition for Tree Removal under [EC 9.0500](#), with the exception of changing the allowable percentage of impact to the critical root zone (CRZ). Regarding the reduction to the percentage of impact to the CRZ that constitutes a technical fell, going from 1.5:1 to 1:1 on the critical root zone is a reduction, so the allowable impact to the CRZ was also reduced. Previous feedback from members of the development community suggested that a smaller CRZ, even with a reduced impact allowance, would be more workable in the field and could reduce the number of technical fells (when more than 30% of the CRZ is damaged and it meets the Tree Removal by definition). When staff originally drafted the change, we reduced the allowable impact by 50%. Upon looking closer at the numbers, staff determined that the reduction to the CRZ area is actually by a third. Staff intended a proportional adjustment to the allowable impact. Therefore, a one-third reduction would be 20% instead of 15% and staff supports a recommendation to revise accordingly.

- (b) ***For the purposes of this subsection (2), the South Hills Area is defined as all property located within the City’s adopted Urban Growth Boundary, above an elevation of 500 feet, and:***
1. ***South of 18th Avenue,***
 2. ***South of Franklin Boulevard and East of the intersection of 18th Avenue and Agate Street, or***
 3. ***If 18th Avenue were extended from the intersection of 18th Avenue and Willow Creek Road directly west to the Urban Growth Boundary, the area south of that extension of 18th Avenue.***
- (c) **Exemptions.** *A proposed development shall be exempt from the requirements of EC 9.6885(2) if any of the following apply:*
1. ***Except as provided in subparagraph 4., the area of the development site is less than 20,000 square feet.***
 2. ***Five or fewer significant trees exist on the development site prior to development.***
 3. ***The development site is zoned R-1.5 Rowhouse zone, R-3 Medium Density Residential, R-4 High Density Residential, GO General Office, C-2 Community Commercial, or C-3 Major Commercial zones.***

Testimony: Question as to why the R-2 zone was excluded.

Response: These standards are intended to apply to low-to-medium density residential developments. This was discussed previously, and the intent was to exempt higher-density developments to relieve the tension between housing and tree preservation. It was acknowledged that multi-family developments often provide significant tree plantings as part of meeting other landscaping requirements that apply. There is a minimum lot size of 1,600 square feet for R-1.5 rowhouse lots, which makes tree preservation not practical.

4. **Notwithstanding subparagraph 1., development sites that include property at or above 900 feet elevation are subject to the requirements of EC 9.6885(2), regardless of the area of the development site.**
- (d) **Tree Preservation Requirements. Unless adjusted per EC 9.8030(13), significant trees must be preserved in accordance with the requirements of Table 9.6855(2)(c). Minimum preservation is based on the total existing Diameter Breast Height (d.b.h.) of significant trees within each specific location category prior to development. Maximum mitigation is the percentage of the minimum preservation that may be mitigated according to subsection 2. below.**

Table 9.6885(2)(ed) Tree Preservation and Mitigation

<i>Location Category</i>	<i>Minimum Preservation</i>	<i>Maximum Mitigation</i>
<i>Outside the South Hills Area</i>	40%	50%
<i>Within the South Hills Area, between 500 feet and 900 feet elevation</i>	50%	50%
<i>Within the South Hills Area, at or above 900 feet elevation</i>	50%	0%

Testimony: Clarification on how multi-stemmed trees would be measured for d.b.h. and how maximum mitigation is calculated.

Response: The existing definition of Significant Tree includes clarifying language that states the d.b.h. when there are multiple trunks is measured using the 2 largest trunks measured at 4.5 feet. Regarding how mitigation is calculated, as stated in sub (d), “maximum mitigation is the *percentage of the minimum preservation.*” Therefore, first you determine the minimum preservation in d.b.h. and then you multiply that by the allowable mitigation. For example, if you have 1000 inches of total d.b.h. on a lot outside the south hills area, then your minimum preservation would be 400 inches of d.b.h. and up to 50% of that, or 200 inches of d.b.h. could be mitigated.

1. **A Tree Preservation and Removal Plan is required except as provided in EC 9.6885(2)(bc) or EC 9.6885(2)(ed)3. The plan must be prepared by a certified arborist or licensed landscape architect and shall provide the following:**
 - a. **A table, organized by the location categories listed in Table 9.6885(2)(ed), listing all significant trees on the development site and including the following information for each listed tree:**
 - (1) **Diameter Breast Height (d.b.h.)**

- (2) **Preservation, removal, or mitigation status**
- (3) **Common name, genus and species**
- b. **A site plan that includes the following information:**
 - (1) **The locations of all significant trees on the development site, the Diameter Breast Height (d.b.h.) for each significant tree, whether each significant tree is to be preserved, removed, or mitigated according to EC 9.6885(2)(c)2, and the location of the critical root zone (CRZ) for each significant tree to be preserved.**

Testimony: Request adding “with the exception of all trees that are located more than 30 feet outside the nearest proposed lot line.”

Response: While staff understands this request is to prevent the cost of inventorying “acres” of trees that will not be part of the developed portion, we would point to the Tree Preservation Area Alternative if there will be a significant portion of a development site preserved. The inventory method may be best for smaller sites or those with fewer trees. This was the reasoning for adding the non-inventory alternative that the Tree Preservation Area provides.

Testimony: Clarifying question on whether the site plan can be provided by an engineer or surveyor and whether the table can be on the plan or separate and cross referenced.

Response: Nothing prohibits an arborist or landscape architect from collaborating on the site plan.

- (2) **The location of all existing and/or proposed public and private utility easements, driveways, and areas of grading or excavation on the development site.**
- (3) **The location of all existing development on the site as well as the location of development proposed in the land use application that triggers the requirement for a Tree Preservation and Removal Plan.**
- (4) **Proposed lot or parcel boundaries.**
- (5) **For development sites with any portion located within the South Hills Area, identification of areas at or above 500 feet elevation and areas at or above 900 feet elevation.**
- c. **A statement by the preparer that the Tree Preservation and Removal Plan meets EC 9.6885(2)(cd) Tree Preservation Requirements.**

Testimony: Request to remove sub c. because when a professional seals a drawing with their license/stamp and signature they are effectively saying this.

Response: Requiring a statement from the professional to ensure they have reviewed/designed according to the applicable code requirements is used elsewhere in the code, for example with the geotechnical analysis. Staff review stamped plans frequently yet still need to point out missed or misinterpreted code requirements and therefore support this requirement. Including a statement by the preparer does not create an undue burden on the applicant and has value in making it clear that the standards were fully considered and compliance privately certified.

- 2. **Mitigation. An applicant may elect to mitigate a portion of the minimum preservation of significant trees on the development site as provided below:**
 - a. **The maximum d.b.h. that can be mitigated shall be based on location category as provided in Table EC 9.6885(2)(cd) Tree Preservation and Mitigation.**

- b. Installation and Maintenance. Each significant tree designated for mitigation must be replaced with one tree selected from the approved species listed in Table 9.6885(2)(cd)2 within one year from the date of removal or prior to final occupancy, whichever is later. At the time of planting, deciduous trees used for replacement must have a minimum diameter of 2 inches and evergreen trees used for replacement must be a minimum of 6 feet in height as measured according to the 2014 edition of the American Standard for Nursery Stock (ANSI Z60.1), published by the American Nursery and Landscape Association.**

Testimony: Requests to reduce the minimum height requirement for evergreens from 6 feet to 5 feet.

Response: The 6-foot height requirement comes from the landscape standards (see [EC 9.6235](#)). That said, if Planning Commission chooses to, they can recommend changing it to 5 feet with the understanding that it would be limited to applications reviewed under these standards.

Testimony: Request to allow additions to the planting list to be submitted by a landscape architect or arborist.

Response: The list is necessary given the clear and objective requirement. Allowing submissions would introduce discretion in determining whether the addition is acceptable. Staff recommended that additions be provided now as part of the testimony process in order to be incorporated to the list as part of the adoption process. A plant list with additional tree species was provided and staff will be prepared to discuss the requested additions at deliberations. In addition, some capitalization errors were identified in testimony and those corrections have been made.

- c. The maximum mitigation allowance may be adjusted in accordance with EC 9.8030(13).**

Table 9.6885(2)(cd)2. Approved Species List

Genus and Species	Common Name
<i>Abies koreana</i>	Silver Korean f Fir
<i>Abies pinsapo</i>	Spanish f Fir
<i>Acer circinatum</i>	Vine Maple
<i>Acer ginnala</i>	Amur Maple
<i>Acer glabrum var. douglasii</i>	Rocky Mountain Maple
<i>Acer griseum</i>	Paperbark Maple
<i>Acer macrophyllum</i>	Big Leaf Maple
<i>Alnus rhombifolia</i>	White Alder
<i>Alnus rubra</i>	Red Alder
<i>Amelanchier alnifolia</i>	Pacific Serviceberry
<i>Arbutus menziesii</i>	Pacific Madrone
<i>Arbutus unedo</i>	Strawberry Madrone
<i>Arbutus 'Marina'</i>	Marina Strawberry Tree
<i>Betula nigra</i>	River Birch
<i>Calocedrus decurrens</i>	Incense Cedar
<i>Carpinus betulus</i>	European Hornbeam
<i>Carpinus caroliniana</i>	American Hornbeam

Table 9.6885(2)(cd)2. Approved Species List

Genus and Species	Common Name
<i>Castanopsis cuspidata</i>	Japanese Chinquapin
<i>Catalpa speciosa</i>	Northern Catalpa
<i>Cedrus atlantica</i>	Atlas Cedar
<i>Cedrus deodara</i>	Deodar Cedar
<i>Cedrus libani</i>	Cedar of Lebanon
<i>Celtis occidentalis</i>	Common Hackberry
<i>Chrysolepis chrysophylla</i>	Golden Chinquapin
<i>Cinnamomum chekiangense</i>	Camphor Tree
<i>Cornus nuttallii</i>	Pacific Dogwood
<i>Corylus colurna</i>	Turkish Filbert
<i>Cupressus arizonica</i>	Arizona cCypress
<i>Cupressus bakeri</i>	Modoc cCypress
<i>Fraxinus latifolia</i>	Oregon Ash
<i>Fraxinus ornus</i>	Flowering Ash
<i>Ginkgo biloba (fruitless cultivars only)</i>	Ginkgo
<i>Koelreuteria paniculata</i>	Goldenrain Tree
<i>Maackia amurensis</i>	Maackia
<i>Nyssa sylvatica</i>	Tupelo, Black Gum
<i>Ostrya virginiana</i>	American Hophornbeam
<i>Oxydendrum aroboreum</i>	Sourwood
<i>Parrotia persica</i>	Persian Ironwood
<i>Picea smithiana</i>	Morinda sSpruce
<i>Pinus ponderosa</i>	Ponderosa pPine
<i>Pinus ponderosa var. benthamania</i>	Willamette Valley Ponderosa Pine
<i>Pinus wallichiana</i>	Himalayan Pine
<i>Pistacia chinensis</i>	Chinese Pistachio
<i>Platanus acerifolia</i>	London Plane
<i>Prunus virginiana</i>	Chokecherry
<i>Pseudotsuga menziesii</i>	Douglas Fir
<i>Quercus acutissima</i>	Sawtooth Oak
<i>Quercus agrifolia</i>	Coast Live Oak
<i>Quercus bicolor</i>	Swamp White Oak
<i>Quercus chrysolepis</i>	Canyon Live Oak
<i>Quercus douglasii</i>	Blue Oak
<i>Quercus frainetto</i>	Hungarian Oak
<i>Quercus gambelii</i>	Gambel Oak
<i>Quercus garryana</i>	Oregon White Oak
<i>Quercus hypoleucoides</i>	Silver Oak
<i>Quercus ilex</i>	Holly Oak

Genus and Species	Common Name
<i>Quercus kelloggii</i>	California Black Oak
<i>Quercus lobata</i>	Valley Oak
<i>Quercus macrocarpa</i>	Bur Oak
<i>Quercus myrsinifolia</i>	Chinese Evergreen Oak
<i>Quercus phellos</i>	Willow Oak
<i>Quercus shumardii</i>	Shumardii Oak
<i>Quercus suber</i>	Cork Oak
<i>Quercus wislizeni</i>	Interior Live Oak
<i>Rhamnus purshiana</i>	Cascara Buckthorn
<i>Salix lucida ssp. Lasiandra</i>	Pacific Willow
<i>Salix scouleriana</i>	Scouler's Willow
<i>Sciadopitys verticillata</i>	Japanese Umbrella Pine
<i>Sequoia sempervirens</i>	Coast Redwood
<i>Sequoiadendron giganteum</i>	Giant Sequoia
<i>Styrax japonicus (japonica)</i>	Japanese Snowbell
<i>Taxodium distichum</i>	Bald Cypress
<i>Taxus brevifolia</i>	Pacific Yew
<i>Thuja plicata</i>	Western Red Cedar
<i>Tilia americana</i>	American Linden
<i>Tilia tomentosa</i>	Silver Linden
<i>Tsuga canadensis</i>	Canadian hHemlock
<i>Tsuga heterophylla</i>	Western Hemlock
<i>Tsuga mertensiana</i>	Mountain hHemlock
<i>Tsuga sieboldii</i>	Southern Japanese hHemlock
<i>Ulmus americana</i>	American Elm
<i>Ulmus carpinifolia</i>	Smoothleaf Elm
<i>Ulmus parvifolia</i>	Chinese Elm
<i>Ulmus propinqua</i>	Japanese Elm
<i>Umbellularia californica</i>	California Bay Laurel

3. **Tree Preservation Area Alternative.**
 - a. **A Tree Preservation and Removal Plan is not required if the applicant chooses to preserve at least 50 percent of the total existing d.b.h. of significant trees on the development site within one or more tree preservation area(s) and the following requirements are met:**
 - (1) **Tree preservation area(s) must be delineated and shown on a site plan submitted for approval by the City.**
 - (2) **Applicant must provide written certification from a certified arborist or licensed landscape architect stating that the area(s) designated for tree preservation include(s) at least**

- 50 percent of the total existing d.b.h. of significant trees on the development site.**
- b. Mitigation is not allowed when the Tree Preservation Area Alternative is used to meet tree preservation requirements, except as approved through an adjustment review according to EC 9.8030(13).**

Testimony: Clarifications on the reason for this option and why mitigation would be discouraged.

Response: This option was provided as an alternative for large and/or heavily forested sites. For those developments, providing a full tree-by-tree survey can be very expensive. A clear and objective mitigation option was not provided given the lack of details required to be provided with this approach, which makes a mathematical approach difficult. Approving mitigation through an adjustment review allows greater flexibility. For context, most heavily wooded sites fall within the South Hills Area and typically require a PUD to develop. The existing Needed Housing PUD criteria require sites in the South Hills to cluster development and preserve at least 40% of the site in common open space areas. That requirement is proposed for removal, but the original intent was to encourage preservation of significant vegetation by clustering development where there is the least vegetation. This alternative approach also supports that policy direction and the removal of the 40% open space criterion. 50% preservation requirement should not require a comparable amount of the site to be dedicated to preservation (try this thought experiment: for half the site to be required for tree preservation, the entire development site would have to be occupied by one gigantic tree covering the whole site!) Even a heavily forested site has space between the trees. The actual percentage of the development site required to be preserved to save half the d.b.h. will realistically never be 50% and will likely be well below 40%.

In discussing this issue with stakeholders, it came to our attention that the adjustment review criteria may need to be revised to address allowed mitigation as intended on sites under 900 feet elevation. See related comments under EC 9.8030(13)(d) and (e).

- 4. Protection Standards. The following notes must be included on the final plan set submitted for approval by the City and shall apply at the time of development:**
- a. “Protective fencing for trees identified to be preserved shall be installed by the applicant and inspected by the City prior to beginning any development activities. All protective tree fencing must remain in place until completion of all construction activities; any relocation, removal, or modification of the protective fencing shall only occur under the direction of a certified arborist and a written explanation of the reason for the relocation, removal, or modification of the protective fencing from the certified arborist must be provided to the City.”**
 - b. “At the time of building permit, a site plan in compliance with the approved tree preservation and removal plan is required.”**
 - c. “No excavation, grading, material storage, staging, vehicle parking or other construction activity shall take place within protective tree fencing areas.”**
 - d. “The removal of trees not designated to be preserved is optional; removal may occur at the owner’s discretion.”**
 - e. “Any tree designated for mitigation must be replaced with one tree selected from the approved species listed in Table 9.6885(2)(ed)2 within one year from the date of removal or prior**

to final occupancy, whichever is later. At the time of planting, deciduous trees used for replacement must have a minimum diameter of 2 inches and evergreen trees used for replacement must be a minimum of 6 feet in height as measured according to the 2014 edition of the American Standard for Nursery Stock (ANSI Z60.1), published by the American Nursery and Landscape Association. Maintenance of replacement trees is the ongoing responsibility of the property owner.”

- f. **“In the event a tree designated to be preserved must be removed because it is dead, diseased, dying, or hazardous, documentation of the tree’s dead, diseased, dying, or hazardous condition by a certified arborist must be provided to the City prior to tree removal. The tree must be replaced with one replacement tree selected from the approved species list in Table 9.6885(2)(cd)2. At the time of planting, deciduous trees used for replacement must have a minimum diameter of 2 inches and evergreen trees used for replacement must be a minimum of 6 feet in height as measured according to the 2014 edition of the American Standard for Nursery Stock (ANSI Z60.1), published by the American Nursery and Landscape Association. Maintenance of replacement trees is the ongoing responsibility of the property owner.”**

(be) Street Tree Removal. If the proposal includes removal of any street tree(s), removal of those street trees has been approved, or approved with conditions according to the process at EC 6.305 Tree Felling Prohibition.

~~[(3) **Adjustment to Standards.** [Except for applications being processed under EC 9.8100 Conditional Use Permit Approval Criteria – [Needed] Housing/**Clear and Objective**, EC 9.8325 Tentative Planned Unit Development Approval Criteria – [Needed] Housing/**Clear and Objective**, EC 9.8445 Site Review Approval Criteria – [Needed] Housing/**Clear and Objective**, or EC 9.8520 Subdivision, Tentative Plan Approval Criteria – [Needed] Housing,/**Clear and Objective**.] [a] Adjustments to these standards may be made, subject to compliance with the criteria for adjustment in EC 9.8030(13) Tree Preservation and Removal Standards Adjustment.]~~

Application Procedures

9.7007 **Neighborhood/Applicant Meetings.**

- (1) This section applies to the following types of applications:
 - (a) Type II: 3-lot partitions, tentative subdivisions, tentative cluster subdivisions and design reviews, **except for 3-lot partitions and tentative subdivisions that implement an approved tentative planned unit development,**

Testimony: Support for removing redundant Neighborhood/Applicant meetings and requests to remove requirement for 3-lot partitions.

Response: Staff understands the concerns noted and would support removal of this requirement as it would be consistent with the goal of removing barriers to housing, especially for small-scale infill development. These meetings add additional time and cost to a project, and typically the development plan for each parcel is not known at the time of tentative partition. Staff notes that this requirement applies to both General and Needed Housing (Clear and Objective) applications.

Application Requirements and Criteria

9.8030 Adjustment Review - Approval Criteria. The planning director shall approve, conditionally approve, or deny an adjustment review application. Approval or conditional approval shall be based on compliance with the following applicable criteria.

* * *

~~[(13) **Tree Preservation and Removal Standards Adjustment.** [Except as otherwise provided in EC 9.6885(3) Adjustments to Standards, the tree preservation and removal standards of EC 9.6885(2) may be adjusted[, and the number of trees amount of existing d.b.h. required to be preserved may be reduced] based on compliance with all of the following criteria [of (a), (b), (c), and (d), and one of the conditions of (e) exists:~~

- ~~(a) The proposed adjustment to the tree preservation and removal standards is the minimum necessary to implement the development proposal.~~
- ~~(b) The proposal includes an approved replanting or restoration program or plan that mitigates the loss of trees or impacts to other natural features.~~
- ~~(c) The proposal is otherwise in compliance with all applicable standards.~~
- ~~(d) Alternative proposals have been evaluated, and there is no feasible alternative.~~
- ~~(e) One of the following conditions exists:~~
 - ~~1. Compliance with tree preservation and removal standards is not feasible, or would result in degradation of steep slopes, significant wildlife habitat, or water bodies due to the topography or other natural features of the development site; or~~
 - ~~2. An adjustment to the tree preservation and removal standards is necessary in order to achieve the minimum residential density under this land use code; or~~
 - ~~3. The existing trees required to meet the minimum preservation standard are unlikely to survive the level and type of anticipated development due to susceptibility to windthrow or other natural causes of failure.]~~

(13) *Tree Preservation and Removal Standards Adjustment. The minimum tree preservation requirement and maximum mitigation allowance of EC 9.6885(2) may be adjusted if one of the conditions listed in subparagraph (a) below applies and the proposed design complies with the criteria in subparagraphs (b) through (e):*

- (a) *Conditions. To qualify for an adjustment, one of the following conditions must apply:***
 - 1. *Strict compliance with tree preservation and removal standards is not feasible due to other requirements of this code or existing site constraints such as topography or other natural features; or,***
 - 2. *An adjustment to the minimum tree preservation and/or mitigation requirement is necessary in order to achieve a net density greater than 75 percent of the maximum allowed under this land use code; or,***
 - 3. *The existing trees required to meet the minimum preservation requirement are unlikely to survive the level and type of anticipated development due to susceptibility to windthrow or other natural causes of failure.***
- (b) *The proposed reduction to the minimum tree preservation requirement or increase in mitigation allowance is necessary to accommodate a reasonable level of development. In no case shall minimum tree***

preservation for areas at or above 900 feet elevation be reduced below 30%.

- (c) *The proposed project shall be designed and sited to preserve significant trees to the greatest degree practicable, with trees having the following characteristics given the highest priority consideration for preservation:*
1. *Healthy trees that have a reasonable chance of survival;*
 2. *Trees located within vegetated corridors and stands;*
 3. *Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;*
 4. *Trees that provide a buffer between potentially incompatible land uses;*
 5. *Trees located along the perimeter of the lot(s) and within building setback areas;*
 6. *Trees and stands of trees located along ridgelines and within view corridors;*
 7. *Trees with significant habitat value;*
 8. *Trees adjacent to public parks, open space and streets;*
 9. *Trees along water features;*
 10. *Heritage trees.*

Testimony: Concerns over the use of this code language (from the existing General/Discretionary PUD and Subdivision approval criteria) as an approval criterion for adjustment. Suggestion to remove or changing the phrase “to the greatest degree practicable” along with flagging other problematic terms.

Response: Staff supports revising this language. It was originally added to provide some parity between the discretionary track criteria and the allowed adjustment to clear and objective tree standards. That said, the phrase “to the greatest degree practicable” is a high bar for an adjustment to a standard (considering this is the unadjusted language under the discretionary track). Staff has highlighted possible revisions above for the Planning Commission to consider in making a recommendation.

- (d) *Except for areas at or above 900 feet elevation, proposals that include a Tree Preservation and Removal Plan per EC 9.6885(2)(cd)1. may mitigate up to 100% of the minimum tree preservation requirement if the following requirements are met:*
1. *For proposed subdivisions, new trees must be planted so that lots up to 7,000 square feet in area will contain a minimum of two trees and lots 7,000 square feet or more will contain a minimum of three trees.*
 2. *For all other developments, the proposed design must either:*
 - a. *Provide one tree per dwelling unit; or,*
 - b. *Provide one replacement tree per 8 inches of d.b.h. reduced below the minimum preservation requirement. For example, if the minimum preservation is 80 inches d.b.h., then 10 replacement trees are required.*

New trees planted to meet subsection 1. or 2. above are subject to the requirements at EC 9.6885(2)(cd)2.b. Installation and Maintenance. Trees planted to meet applicable landscape standards may count toward these requirements. Existing trees on the development site that are under 8-inches Diameter Breast Height (d.b.h.) and listed in Table 9.6885(2)(cd)2. Approved Species List may be designated for preservation and counted

- toward these requirements (in lieu of planting new trees).**
- (e) **For areas at or above 900 feet elevation or applications using the Tree Preservation Area Alternative at EC 9.6885(2)(cd)3., mitigation is limited to 10% of the minimum preservation requirement.**

Testimony: In discussing the proposed amendments and related testimony with stakeholders, staff realized an inadvertent omission in the adjustment review criteria above. EC 9.6885(2)(d)3.b. states that mitigation is only allowed through an approved adjustment review under the Tree Preservation Area Alternative. The adjustment criterion at sub (d) addresses the extra mitigation allowance for areas under 900 feet elevation (900') but only when the Tree Preservation and Removal Plan approach is used; whereas, sub (e) addresses extra mitigation over 900' regardless of which approach is used. This left a gap where extra mitigation for sites under 900' and using the Tree Preservation Area Alternative is not addressed.

Response: Staff thinks this was missed when the preservation area was added and suggests the revisions to subs (d) and (e) (highlighted above) to ensure the adjustment option to allow greater mitigation is available to development sites under 900' using the preservation area alternative. If the outcomes stipulated in sub (d) are acceptable, whether the proposal uses the inventory approach or the preservation area should not matter since the intention of the major revisions to the tree preservation standards was to allow up to 100% mitigation through adjustment for sites under 900'. If Planning Commission agrees, they can recommend the staff-proposed changes provided.

* * *

(37) Street Standards Adjustment. Where this land use code provides that street standards may be adjusted, the standards may be adjusted upon a demonstration by the applicant that the requested adjustment is consistent with the following:

- (a) **The applicant has submitted a report prepared by an Oregon licensed civil engineer that demonstrates it is not technically or financially feasible to construct the street in accordance with adopted plans and policies, and adopted "Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways, and Accessways."**
- (b) **The adjustment is necessary due to at least one of the following conditions:**
1. **Existing on-site or off-site geologic or topographic conditions, or existing wetlands designated for protection by the City of Eugene; or**
 2. **Existing development on lands abutting the development site.**

9.8045 Applicability of Cluster Subdivisions. Cluster subdivision provisions shall be applied when requested by the property owner and when the proposed subdivision meets the definition of cluster subdivision in section 9.0500 of this land use code. A subdivision application proposing [needed housing, as defined in state statutes,] **housing to be reviewed with clear and objective approval criteria** shall be processed pursuant to EC 9.8520 Subdivision, Tentative Plan Approval Criteria – [Needed] Housing/Clear and Objective. No development permit shall be issued by the city prior to approval of the cluster subdivision.

9.8055 Cluster Subdivision- Approval Criteria – General/Discretionary. The planning director shall approve, approve with conditions, or deny a proposed cluster subdivision. Approval or approval with conditions shall be based on the following:

- (1) The proposed subdivision complies with:
 - (a) EC 9.8515 Subdivision, Tentative Plan Approval Criteria- **General/Discretionary** except for the standards related to EC 9.2760 Residential Zone Lot Standards; and

9.8085 Conditional Use Permit Application Requirements.

- (3) If the proposal includes [~~needed housing, as defined by state law~~] **housing**, the written statement submitted with the conditional use permit application shall clearly state whether the applicant is electing to use the [~~general~~] **discretionary** approval criteria in EC 9.8090 Conditional Use Permit Approval Criteria – **General/Discretionary** instead of the approval criteria found in EC 9.8100 Conditional Use Permit Approval Criteria – [~~Needed~~] Housing/**Clear and Objective**.

9.8090 Conditional Use Permit Approval Criteria – General/Discretionary. A conditional use permit shall be granted only if the proposal conforms to all of the following criteria:

9.8100 Conditional Use Permit Approval Criteria- [~~Needed~~] Housing/Clear and Objective. The hearings official shall approve, conditionally approve, or deny the conditional use permit application. Unless the applicant elects to use the [~~general~~] **discretionary** criteria contained in EC 9.8090 Conditional Use Permit Approval Criteria – General/Discretionary, where the applicant proposes [~~needed housing, as defined by the State statutes~~] **housing**, the hearings official shall approve or approve with conditions a conditional use based on compliance with the following criteria:

- (1) [~~The applicant has demonstrated that the proposed housing is needed housing as defined by State statutes.~~] **The proposal complies with EC 9.5860 Transition Standards.**

- (3) For areas not included on the city’s acknowledged Goal 5 inventory, the proposal will preserve existing natural resources by compliance with [~~all of the following~~]:
 - (a) ~~The proposal complies with~~ **the provisions of** EC 9.6880 to EC 9.6885 Tree Preservation and Removal Standards.
 - ~~[(b) Natural resource areas designated on the comprehensive plan diagram as “Natural Resource” are protected. Protection shall include the area of the resource and a minimum 50 foot buffer around the perimeter of the natural resource area.]~~
- (4) The proposal complies with [~~all applicable standards, including, but not limited to~~]:
 - (a) **EC 9.2000 through EC 9.4170 regarding lot dimensions and density requirements for the subject zone and overlay zone.**
 - (b) **EC 9.6500 through EC 9.6505 Public Improvement Standards.**
Renumber remaining subsections

 - (i) **EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways.**
 - (j) **All other applicable development standards for features explicitly included in the application.**
 - (ik) 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.

Testimony: Questioned whether there are discretionary standards included.

Response: These standards already apply to other clear and objective review tracks and are being added under the clear and objective Conditional Use track for consistency and effectiveness.

- (5) Public improvements as required by this land use code or as a condition of [tentative plan] approval **will be** [have been] completed **prior to issuance of a development permit**, or:
 - (a) A performance bond or suitable substitute as agreed upon by the city has been filed with the city finance officer in an amount sufficient to assure the completion of all required public improvements; or
 - (b) A petition for public improvements and for the assessment of the real property for the improvements has been signed by the property owner seeking the conditional use permit, and the petition has been accepted by the city engineer.
- (6) **If the standards addressed under EC 9.8100(4) require a public street, or if the applicant proposes the creation of a public street, the proposal will provide pedestrian and bicycle circulation to adjacent residential areas, transit stops, neighborhood activity centers, parks, schools, commercial centers, office parks, and industrial parks located within ¼ mile radius of the development site, provided the city makes findings to demonstrate consistency with constitutional requirements.**

Testimony: Questioned the use of “adjacent” and “within ¼ mile” as being two measures for the same thing.

Response: Staff supports removing the word “adjacent” and relying on the measurable “within ¼ mile radius” language to determine whether pedestrian and bicycle circulation to the nearby uses listed is required (assuming constitutional requirements are met and supported by findings).

9.8105 Conditional Use Permits within the NR Natural Resource Zone or /WB Wetland Buffer Overlay Zone.

* * *

- (2) **Criteria for Hearings Official Approval.** Applications for conditional use permits within the NR natural resource zone or /WB wetland buffer overlay zone shall be processed and scheduled for public hearings in the same manner as other conditional use permit applications, except that NR standards (2) through (19) listed in EC 9.2530 Natural Resource Zone Development Standards shall be considered as additional criteria along with the criteria listed in EC 9.8090 Conditional Use Permit Approval Criteria – General/Discretionary.

9.8205 Applicability of Partition, Tentative Plan Applications. Requests to create 2 or 3 parcels shall be subject to the partition provisions of this land use code, following a Type II application procedure.

- (1) A **tentative plan application to partition land** [application that also involves a PUD request] may **be submitted and reviewed concurrently with the** [not be submitted until a decision on the] tentative PUD **application following a Type III application procedure** [approval is final]. **If a partition application that also involves a PUD request is not submitted concurrently with the tentative PUD, the partition application may not be submitted until a tentative PUD is approved.** (Refer to EC 9.8305 Applicability.)
- (2) **If the partition tentative plan application is not reviewed concurrently with the tentative PUD, A**no development permit shall be issued by the city prior to approval of the tentative partition application. **If the tentative partition is reviewed concurrently**

with the tentative PUD application, no development permit shall be issued by the city prior to approval of the final PUD application.

Testimony: Questioned the need for tentative land division applications when developments also include a PUD application.

Response: When the Key Issues were being identified and Preferred Concepts developed in the earlier phases of the project, the direction was to allow concurrent review of the applications. While there is a lot of overlap in the criteria for approval, staff does not know the legal feasibility or other consequences of making this big of a procedural change. Staff does not have capacity at this time to adequately vet this request but is happy to add this as a potential change for a future code amendment project.

9.8210 Partition, Tentative Plan Application Requirements. In addition to the provisions in EC 9.7010 Application Filing, the following specific requirements apply to partition tentative plan applications:

* * *

- (4) If the proposal includes ~~[needed housing, as defined by State statutes]~~ **housing**, the written statement submitted with the partition application shall clearly state whether the applicant is electing to use the ~~[general]~~ **discretionary** approval criteria in EC 9.8215 Partition, Tentative Plan Approval Criteria- **General/Discretionary** instead of the approval criteria found in EC 9.8220 Partition, Tentative Plan Approval Criteria- ~~[Needed]~~ Housing/**Clear and Objective**.

9.8215 Partition, Tentative Plan Approval Criteria- General/Discretionary. The planning director shall approve, approve with conditions, or deny a partition, with findings and conclusions. Approval, or approval with conditions, shall be based on compliance with the following criteria:

9.8220 Partition, Tentative Plan Approval Criteria- ~~[Needed]~~ Housing/Clear and Objective.**** ~~**Unless the applicant elects to use the discretionary criteria contained in EC 9.8215 Partition, Tentative Plan Approval Criteria- General/Discretionary, for housing applications entitled to clear and objective review pursuant to state statute,**~~ the planning director shall approve, conditionally approve, or deny the partition application]. ~~Unless the applicant elects to use the general criteria contained in EC 9.8215 Partition, Tentative Plan Approval Criteria- **General**, where the applicant proposes needed housing, as defined by State statutes, the planning director shall approve or approve with conditions a partition]~~ based on compliance with the following criteria:

- ~~[(1) The applicant has demonstrated that the proposed housing is needed housing as defined by State statutes.] *Renumber remaining subsections*~~
- (21)** The proposed partition complies with all of the following:
- (a) ~~[Lot standards of]~~ EC 9.2000 through ~~[9.3980]~~ **9.4170** regarding applicable parcel dimensions and density requirements **for the subject zone and overlay 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:

Testimony: Question as to why not all of the overlay zones are included in this range and suggestion related to the 33% maximum /WR overlay zone coverage for new lots.

Response: The range stops at 9.4170 /CL Clear Lake Development Standards because that is the last overlay zone with *lot standards* and the criterion requires compliance with lot standards related to parcel

dimensions. Regarding the limit to the amount the /WR overlay zone can impact new lots, this is an existing requirement applicable to both the General/Discretionary and Needed Housing/Clear and Objective tracks that was not identified for change. Note that these comments were also brought up under the analogous criteria for the other application types. To simplify this reference document, the Testimony/Response commentary is only provided here, at the first occurrence.

* * *

(k) ~~[EC 9.6880 through EC 9.6885 Tree Preservation and Removal Standards.]~~
~~*Renumber remaining subsections*~~

~~[(4) Partitions abutting collector and arterial streets comply with access management guidelines of the agency having jurisdiction over the street.] *Renumber remaining subsections*~~

(53) If the provisions of EC 9.8220(2) require a public street, or if the applicant proposes the creation of a public street, the following criteria also apply:

* * *

~~[(c) The street layout of the proposed partition shall disperse motor vehicle traffic onto more than one public local street when the sum of proposed partition parcels and the existing lots utilizing a local street as the single means of ingress and egress exceeds 19.]~~

9.8310 Tentative Planned Unit Development General Application Requirements.

(5) [Needed] Housing. If the proposal includes ~~[needed housing, as defined by State statutes]~~ **housing**, the written statement submitted with the PUD application shall clearly state whether the applicant is **proceeding under: (a)**~~[electing to use]~~ the ~~[general]~~ approval criteria in EC 9.8320 Tentative Planned Unit Development Approval Criteria- **General/Discretionary**; or (b) ~~[instead of]~~ the approval criteria ~~[found]~~ in EC 9.8325 Tentative Planned Unit Development Approval Criteria-**Needed** Housing/**Clear and Objective**.

9.8320 Tentative Planned Unit Development Approval Criteria- General/Discretionary. The hearings official shall approve, approve with conditions, or deny a tentative PUD application with findings and conclusions. Decisions approving an application, or approving with conditions, shall be based on compliance with the following criteria:

9.8325 Tentative Planned Unit Development Approval Criteria – [Needed] Housing/Clear and Objective. **Unless the applicant elects to use the discretionary criteria contained in EC 9.8320 Tentative Planned Unit Development Approval Criteria- General/Discretionary, for housing applications entitled to clear and objective review pursuant to state statute,** ~~the~~ hearings official shall approve, conditionally approve, or deny the PUD application ~~[with findings and conclusions. Unless the applicant elects to use the general criteria contained in EC 9.8320 Tentative Planned Unit Development Approval Criteria- General, where the applicant proposes needed housing, as defined by the State statutes, the hearings official shall approve or approve with conditions, a PUD]~~ based on compliance with the following criteria:

(1) ~~The applicant has demonstrated that the proposed housing is needed housing as defined by state statutes.]~~ **The proposal complies with EC 9.5860 Transition Standards.**

Testimony: Comment that the transition standards can be redundant on large sites or burdensome on small sites and request to take into consideration the size of the site.

Response: Some of the suggested changes to the transition standards address this concern. For example, in response to testimony, staff recommended a change to Option 1 that would limit the required height limit to apply 50 feet from the property line as opposed to the whole site as originally drafted. See the Transition Standards for other suggested changes.

* * *

- (3) ~~[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).]~~
- (43) For areas not included on the city's acknowledged Goal 5 inventory, the PUD preserves existing natural resources by compliance with ~~[all of the following:~~
 - ~~(a) ¶] the provisions of EC 9.6880 to EC 9.6885 Tree Preservation and Removal Standards, [(not subject to modifications set forth in subsection (11) below)].~~
 - ~~[(b) Natural resource areas designated on the comprehensive plan diagram as "Natural Resource" are protected.]~~
- (5) ~~[There shall be no proposed grading on portions of the development site that meet or exceed 20% slope.]~~
- (64) The PUD provides safe and adequate transportation systems through compliance with all of the following:

* * *

~~[(c) 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 the existing lots utilizing a local street as the single means of ingress and egress exceeds 19.]~~

- (75) The PUD complies with all of the following:
 - (a) EC 9.2000 through ~~[9.3980]~~ **EC 9.4170** regarding **applicable** lot dimensions and density requirements for the subject zone **and overlay 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:

* * *

(k) All applicable development standards explicitly addressed in the application.

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.

Renumber next section

* * *

- (97) ~~[All proposed dwellings within the PUD are within 1/4 mile radius (measured from any point along the perimeter of the development site) of an accessible recreation area or open space that is at least 1 acre in size and will be available to residents.]~~ **PUDs proposed on development sites that are two acres or larger must comply with either subsection (a) or subsection (b) below:**
 - (a) **The PUD is located within 1/2-mile of a public park, public recreation facility, or public school (determined using the shortest distance as measured along a straight line between a point along the perimeter of the development site and a point along a property line of a public park, public recreation facility, or public school); or**
 - (b) **Except as provided in EC 9.8325(8)(b)1, the PUD shall provide common**

open space within the development site equal to a minimum of 10 percent of the development site or 14,500 square feet, whichever is greater.

Testimony: Request to have the standard apply to net acres of the development site.

Response: The purpose of revising the existing one-acre open space requirement was to make it scalable only applicable to larger sites. Previously, if a development site was not located within ¼ mile of an accessible recreation or open space area, the only option to meet the criterion was to provide one acre of accessible open space on site. The revised standards will apply to fewer properties given the adjustment from ¼ to ½ mile proximity to parks or open space, will only apply to development sites over two acres in area, and are scalable based on the size of the lots. While this added complexity and specificity to the criterion, the result is much less impactful to developable area. Given this, staff feels using the development site’s gross area is more straightforward for regulatory purposes.

1. ***If the PUD includes lot areas smaller than the minimum lot area allowed in the base zone, then common open space must be provided as follows:***
 - a. ***If the average lot area is within 10 percent of the minimum lot area of the base zone, then the PUD shall provide common open space within the development site equal to a minimum of 15 percent of the development site or 14,500 square feet, whichever is greater.***
 - b. ***If the average lot area is more than 10 percent below the minimum lot area of the base zone, then the PUD shall provide common open space within the development site equal to a minimum of 20 percent of the development site or 14,500 square feet, whichever is greater.***

Testimony: Question as to why lot size should determine the size of the open space and assertion that the standards will discourage developers from building compact development.

Response: As mentioned before, the Preferred Concept’s purpose/direction was to make this requirement scalable and proportionate to development. The logic behind requiring more open space for smaller lots is that smaller lots will have less enjoyable space which may lead to a higher demand for common open space area to enjoy. One of the unfortunate but inherent side effects of writing clear and objective requirements is that there can often be threshold points such as pointed out in one of the comments. Planning Commission could recommend taking the scaling factor out and simplifying the requirement as a flat percentage of the development site area. Staff is neutral on this approach and neither feels it is necessary nor problematic to do so – it is a policy call for the Planning Commission and City Council. Also, a reminder that most developable lots in Eugene are within ½ mile from a public park, public recreation facility, or public school – sub (7)(a) will typically apply. The change to the distance from a public park for the standards to apply was specifically to fine-tune this standard and reduce the impact to developable land. Staff advises commissioners to take into consideration the relative change with respect to the existing one-acre open space requirement when evaluating the impact of the revised standards.

2. ***Common open space shall be provided in one separate tract of land, except that developments providing more than 29,000 square feet of common open space may include up to three common open space tracts provided no tract is less than 14,500 square feet.***
3. ***Ownership of the common open space tract(s) must be dedicated to all lot or parcel owners within the development site.***

Testimony: Question as to whether the use of the term “dedicated” is appropriate here given an understanding/assumption that dedication implies dedication to the public.

Response: Staff checked on this and found that the term is used when tracts of land must be dedicated on the final plat. The language used clarifies that the dedication is to “all lot or parcel owners within the development site” and therefore, staff feels the usage is appropriate. Requiring common ownership along with the access requirement under sub 5. below is a *clear and objective* way to ensure all residents will have access to the common open space area(s).

4. Each common open space tract must include a portion with minimum dimensions of 70 feet by 70 feet.

Testimony: Question as to why require a portion with minimum dimensions and requests for flexibility and to reduce the minimum to 50 feet by 50 feet.

Response: The reason for requiring each tract to include a minimum dimension for at least one portion is two-fold. First, due to the clear and objective nature of these standards, without a requirement such as this, an absurd design with a long and winding strip of common open space could be provided if the square footage met the requirements of sub (b) above. Second, the intent of the on-site open space requirement is to provide residents with a usable area for outdoor enjoyment when the development is more than ½ mile from public open space. For these reasons, staff prefers keeping the requirement but is supportive of Planning Commission recommending a different dimensional standard such as the one suggested. This is a great example of a chance to fine-tune a requirement that conceptually was moved forward. For reference, badminton courts are typically 43 feet by 17 feet, tennis courts 78 feet by 27 feet, and basketball courts 91 feet by 49 feet.

5. Common open space tracts must have a minimum of 20 feet of lot frontage along an existing or proposed public way or private street.

Testimony: Question as to why the common open space can’t be surrounded by lots with access if not all lots front on it.

Response: The reason for this requirement is to ensure all residents have access to the common open space area. If Planning Commission recommends a revision to address the comment, a suggested change to accomplish this is to add the phrase “Except where each lot or parcel in the development abuts one or more of the common open space area(s),” to the beginning of the sentence.

6. Common open space tracts do not have to meet lot standards.

Testimony: Question as to whether the entire common open space may contain storm water facilities and natural resource habitats or whether there is a limit similar to [EC 9.5500\(9\)\(a\)1.b.](#)

Response: There is no limitation on how much of the open space area can contain natural resource habitats. Regarding whether stormwater facilities are allowed, this standard is not as specific in prescribing what can be in the common open space as the cluster subdivision requirement referenced at [EC 9.8055\(3\)](#). As such, there is no prohibition on stormwater facilities being placed within these areas.

~~(10) [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)].~~

~~(118) [The PUD complies with all applicable development standards explicitly addressed in the application except where the applicant has shown that a modification is consistent with the purposes as set out in EC 9.8300 Purpose of Planned Unit Development.]~~

- (1298)** For any PUD located within or partially within the boundaries of the South Hills Study, the following additional approval criteria apply:
- (a) ~~[No development shall occur on land above an elevation of 900 feet except that one dwelling may be built on any lot in existence as of August 1, 2001.]~~
Development on any portion of the development site located above 900 feet elevation is limited by the following:
 1. **The sum of all building area, measured using building footprints, shall not exceed 5,000 square feet on proposed new lots or parcels.**

Testimony: Clarification on whether the sum is per lot/parcel or the whole PUD.

Response: Limitation applies to new lots or parcels.

2. Driveways shall not exceed 20 feet in width on proposed new lots or parcels.

- (b) Development **on any portion of the development site located above 900 feet elevation** shall be setback at least 300 feet from the ridgeline unless there is a determination by the city manager that the area is not needed as a connection to the city's ridgeline trail system. For purposes of this section, the ridgeline ~~[trail]~~ shall be considered as the line indicated as being the urban growth boundary ~~[within the South Hills Study plan area]~~.

Testimony: Question as to whether the phrase "unless there is a determination by the city manager" is ok.

Response: The clear and objective approach is that the setback applies to any portion of the development site above 900 feet elevation. The applicant can recognize the applicable setback area (clear and objective) or opt into a discretionary call by the city manager. The clear and objective requirement is still met similar to how an applicant can meet the clear and objective standards and criteria or *optionally* seek adjustments when allowed. Staff also notes that this is part of the existing criterion's language and not a new amendment.

- (e) ~~[Development shall cluster buildings in an arrangement that results in at least 40% of the development site being retained in 3 or fewer contiguous common open space areas. For purposes of this section, the term contiguous open space means open space that is uninterrupted by buildings, structures, streets, or other improvements.]~~
Renumber remaining subsections
- (dc) Residential density is limited as follows:
 1. In the area west of Friendly Street, the maximum level of new development per gross acre shall be 8 units per acre.
 2. In the area east of Friendly Street, the maximum level of new development per gross acre shall be limited to 5 units per acre.
 3. Housing developed as Controlled Income and Rent Housing shall be exempt from the density limitations in subsections 1 and 2 above, but are subject to the other applicable development standards and review procedures.
 4. **For any portion of the development site located above 900 feet elevation, the maximum density shall be 2.5 units per gross acre, or one dwelling per legal lot in existence as of August 1, 2001, whichever is greater. This subsection does not preclude the addition of an accessory dwelling on any legal lot.**

Testimony: Question as to how "or one dwelling per legal lot in existence as of August 1, 2001, whichever is

greater” relate to PUDs?

Response: This limitation is to stay consistent with applicable South Hills Study policy and is being modified to be more generous than the existing limit – the existing limit was kept and ‘whichever is greater’ was added to ensure we are not reducing what can be achieved compared to the existing Needed Housing PUD requirement. Staff recommends the highlighted change above to bring consistency with Senate Bill 1051 related to the allowance for accessory dwellings. Staff also notes that this section will be reviewed as part of potential amendments related to implementation of HB 2001 and staff is tracking this issue.

9.8360 Planned Unit Development, Final Plan Application Requirements. In addition to the provisions in EC 9.7010 Application Filing, the following specific requirements apply to PUD final plan applications:

* * *

- ~~[(4) Public improvements as required by this land use code or as a condition of tentative plan approval have been completed, or:~~
 - ~~(a) A performance bond or suitable substitute as agreed upon by the city has been filed with the city finance officer in an amount sufficient to assure the completion of all required public improvements; or~~
 - ~~(b) A petition for public improvements and for the assessment of the real property for the improvements has been signed by the property owner seeking the subdivision, and the petition has been accepted by the city engineer.]~~

9.8365 Final Planned Unit Development Approval Criteria. The planning director shall approve, approve with conditions, or deny a final PUD application, ***based on compliance with the following criteria:*** ~~Approval shall include a finding that the final PUD plan conforms with the approved tentative PUD plan and all conditions attached thereto.]~~

- (1) *The final PUD plan conforms with the approved tentative PUD plan and all conditions attached thereto.***
- (2) *For final PUDs not associated with a land division, public improvements as required by this land use code or as a condition of tentative plan approval will be completed prior to issuance of a development permit, or:***
 - (a) *A performance bond or suitable substitute as agreed upon by the city has been filed with the city finance officer in an amount sufficient to assure the completion of all required public improvements; or***
 - (b) *A petition for public improvements and for the assessment of the real property for the improvements has been signed by the property owner seeking the subdivision, and the petition has been accepted by the city engineer.***

9.8440 Site Review Approval Criteria- General/Discretionary. The planning director shall approve, conditionally approve, or deny the site review application. Approval or conditional approval shall be based on compliance with the following criteria:

9.8445 Site Review Approval Criteria- [Needed] Housing/Clear and Objective. Unless the applicant elects to use the discretionary criteria contained in EC 9.8440 Site Review Approval Criteria- General/Discretionary, for housing applications entitled to clear and objective review pursuant to state statute, [F] the planning director shall approve,

conditionally approve, or deny the site review application. ~~[Unless the applicant elects to use the general criteria contained in EC 9.8440 Site Review Approval Criteria – General, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve, or approve with conditions, a site review]~~ based on compliance with the following criteria:

- (1) ~~[The applicant has demonstrated that the proposed housing is needed housing as defined by state statutes.]~~ ***The proposal complies with EC 9.5860 Transition Standards.***
- (3) For areas not included on the city’s acknowledged Goal 5 inventory, the proposal will preserve existing natural resources by compliance with ~~[all of the following:~~
 - (a) ~~The proposal complies with~~ ***the provisions of EC 9.6880 through EC 9.6885 Tree Preservation and Removal Standards.***
 - (b) ~~Natural resource areas designated on the comprehensive plan diagram as “Natural Resource” are protected.]~~
- (4) The proposal complies with all of the following ~~[standards]:~~
 - (a) EC 9.2000 through ~~[9.3980]~~ ***EC 9.4170*** regarding ***applicable*** lot dimensions and density requirements for the subject zone ***and overlay zone.***
 - (b) ***EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways.***

Renumber remaining subsections
- (5) Public improvements as required by this land use code or as a condition of ~~[tentative plan]~~ approval ***will be*** ~~[have been]~~ completed ***prior to issuance of a development permit***, or:
 - (a) A performance bond or suitable substitute as agreed upon by the city has been filed with the city finance officer in an amount sufficient to assure the completion of all required public improvements; or
 - (b) A petition for public improvements and for the assessment of the real property for the improvements has been signed by the property owner seeking the subdivision, and the petition has been accepted by the city engineer.
- (6) ***If the standards addressed under EC 9.8100445(4) require a public street, or if the applicant proposes the creation of a public street, the proposal will provide pedestrian and bicycle circulation to adjacent residential areas, transit stops, neighborhood activity centers, parks, schools, commercial centers, office parks, and industrial parks located within ¼ mile radius of the development site, provided the city makes findings to demonstrate consistency with constitutional requirements.***

Testimony: Question about whether off-site improvements can be required.

Response: Yes, but only if constitutional findings can be provided to support the requirement, consistent with other required public improvements.

9.8505 Applicability of Subdivision, Tentative Plan Applications.

Requests to create 4 or more lots shall be subject to the subdivision provisions of this land use code under a Type II application process.

- (1) ***A tentative plan application to subdivision land may be submitted and reviewed concurrently with the*** ~~[application that also involves a PUD request may not be submitted until a decision on the]~~ tentative PUD ***application following a Type III application procedure*** ~~[approval is final].~~ ***If a subdivision application that also involves a PUD request is not submitted concurrently with the tentative PUD, the subdivision application may not be submitted until a tentative PUD is approved.*** (Refer to EC 9.8305 Applicability.)

- (2) ***If the subdivision tentative plan application is not reviewed concurrently with the tentative PUD, no development permit shall be issued by the city prior to approval of the tentative subdivision tentative plan application. If the tentative subdivision is reviewed concurrently with a PUD application, no development permit shall be issued by the city prior to approval of the final PUD application.***

9.8510 **Subdivision, Tentative Plan Application Requirements.** In addition to the provisions in EC 9.7010 Application Filing, the following specific requirements shall apply to tentative subdivision plan applications:

* * *

- (5) If the proposal includes ~~[needed housing, as defined by State statutes]~~ **housing**, the written statement submitted with the subdivision application shall clearly state whether the applicant is electing to use the ~~[general]~~ **discretionary** approval criteria in EC 9.8515 Subdivision, Tentative Plan Approval Criteria- General/Discretionary instead of the approval criteria found in EC 9.8520 Subdivision, Tentative Plan Approval Criteria- [Needed] Housing/Clear and Objective.

9.8515 **Subdivision, Tentative Plan Approval Criteria – General/Discretionary.** The planning director shall approve, approve with conditions, or deny a proposed subdivision. Approval, or approval with conditions shall be based on compliance with the following criteria:

* * *

- (2) Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the development of the remainder or any adjoining land or access thereto, based on the provisions of this land use code. For subdivisions involving phasing, it shall be demonstrated that each sequential phase will maintain consistency with the provisions of EC 9.8515 Tentative Subdivision Approval Criteria – General/Discretionary.

9.8520 **Subdivision, Tentative Plan Approval Criteria – [Needed] Housing/Clear and Objective. Unless the applicant elects to use the discretionary criteria contained in EC 9.8515 Subdivision, Tentative Plan Approval Criteria- General/Discretionary, for housing applications entitled to clear and objective review pursuant to state statute,** ~~the~~ the planning director shall approve, conditionally approve, or deny the subdivision application. ~~[Unless the applicant elects to use the general criteria contained in EC 9.8515 Subdivision, Tentative Plan Approval Criteria- General, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve or approve with conditions a subdivision]~~ based on compliance with the following criteria:

- ~~[(1) The applicant has demonstrated that the proposed housing is needed housing as defined by State statutes.]~~

Renumber remaining subsections

- (32) The proposed subdivision complies with all of the following, unless specifically exempt from compliance through a code provision applicable to a special area zone or overlay zone:
- (a) EC 9.2000 through ~~[9.3980]~~ **EC 9.4170** regarding **applicable** lot dimensions and density requirements for the subject zone **and overlay 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:

Renumber remaining subsections

- ~~(5) [There shall be no proposed grading on portions of the development site that meet or exceed 20% slope.]~~

Renumber remaining subsections

- ~~(64) The proposed subdivision provides [safe and adequate transportation systems through compliance with the following:]~~ **for the**

~~[(a) P] p~~ provision of pedestrian, bicycle and transit circulation among buildings located within the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.

~~[(b) The street layout of the proposed subdivision shall disperse motor vehicle traffic onto more than one public local street when the subdivision exceeds 19 lots or when the sum of proposed subdivision lots and the existing lots utilizing a local street as the single means of ingress and egress exceeds 19.]~~

- ~~(75) For areas not included on the city's acknowledged Goal 5 inventory, the subdivision will preserve existing natural resources by compliance with [all of the following:~~

~~(a) The proposal complies with] the provisions of EC 9.6880 through EC 9.6885 Tree Preservation and Removal Standards.~~

~~[(b) Natural resource areas designated on the comprehensive plan diagram as "Natural Resource."]~~

Renumber remaining subsections