

**ICS Task Team  
Needed Housing Committee  
Final Report and Recommendations**

April 3, 2009

This is the final report produced by the Infill Compatibility Standards (ICS) Task Team Needed Housing Committee. This report presents our description and analysis of issues related to “needed housing” and infill compatibility standards.

The report also includes recommendations for motions to be considered by the ICS Task Team.

This report is respectfully submitted by the Needed Housing Committee members:

- Steve Baker, Chair
- Paul Conte
- Deborah Healey
- Mike Howard
- Marilyn Mohr
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### **Key action items**

- All proposals for code amendments that implement infill compatibility standards should have one set of approval criteria that are completely clear and objective and include discretionary standards only in alternative approval criteria. (See recommendation III.1.)
- The Eugene Code’s current “General” and “Needed Housing” approval criteria should be fixed so that the general code provisions are completely clear and objective and discretionary standards are only in alternative approval criteria. (See recommendation III.2.)
- All adopted plan policies that are intended as approval criteria and that are not already stated in clear and objective terms should be implemented with adequate clear and objective approval standards and, optionally, discretionary standards in alternative approval criteria. (See recommendation III.3.)
- The Eugene Comprehensive Lands Assessment (ECLA) process should provide an adequate structure and data to enable determination of the impact of proposed infill compatibility code amendments on residential buildable land supply and capacity. (See recommendation III.4.)

# I. Introduction

## A. Background

State statutes and state administrative rules, including statewide planning goals, establish a number of requirements on local jurisdictions' planning processes and land use code. Among these requirements are ones that relate to housing. Statewide Planning Goal 10 on Housing sets the foundation and provides a definition of "needed housing":

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

*Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density. ...*

*Needed Housing Units – means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels.*

Note the way "needed housing" is defined in a circular fashion and requires a jurisdiction to determine what "need" there is for housing at particular price ranges and rent levels. The only guidance as to what is meant by "need" is the implication each household "needs" housing that is "commensurate" with the household's financial capabilities. Although statutes, administrative rules and Land Use Board of Appeals (LUBA) decisions have attempted to clarify the process by which a jurisdiction determines need, and thus resolve the definition of "needed housing," significant questions remain as to how housing "need" is derived from projections of population growth and the resulting "demand" for housing.

Oregon Revised Statute (ORS) Chapter 197 and Oregon Administrative Rules (OAR) 660 Division 8 contain most of the State requirements related to needed housing as they apply to Eugene. In basic terms, there are several critical requirements that bear on the Infill Compatibility Standards project goal to create and adopt land use code standards and processes that would prevent significant negative impacts from incompatible residential infill:

- A jurisdiction must adopt a plan (i.e., as part of the Eugene Springfield Metro Plan) that identifies "buildable land," which is defined as land that is suitable and available for housing. The buildable land must provide the capacity (and be necessary) to meet the jurisdiction's projected "need" for housing.

What's more, once the required plan is adopted, a jurisdiction cannot subsequently adopt code amendments that would reduce development potential to a degree that would cause noncompliance with the jurisdiction's plan. For example, if a jurisdiction's plan relies on a thousand acres of buildable land that is planned for development at 35 dwelling units per net acre, the jurisdiction cannot then apply zoning that limits development on this area to a

maximum of 20 dwelling units per acre, if the resulting reduction in capacity would mean there was insufficient capacity for the plan’s projected housing needs. (In some cases, a jurisdiction can, however, maintain compliance by taking compensating action at the same time, e.g., by upzoning other areas to increase those areas’ development potential.)

- For any development proposal for “needed housing,” there must be at least one “path” through applicable code standards and approval processes that relies entirely on “clear and objective” approval criteria, i.e., this path has no discretionary approval criteria.
- These code standards and approval processes also must not have the effect of discouraging “needed housing” through unreasonable cost or delay.

The first requirement is the most challenging and is largely dependent on the specific structure of the Metro Plan sections that describe Eugene’s housing plan.

The other two requirements have implications in two ways:

- All ICS Task Team recommendations for infill compatibility standards must satisfy both requirements.
- Current Eugene Code includes explicit “need housing” approval criteria, which were added to address these requirements, but which have significant consequences related to infill. As this report recommends, Eugene’s “needed housing” provisions should be revised to prevent unintended gaps in development standards.

The following sections of this report address the three aspects of needed housing as they affect the ICS project:

- Implications of the Eugene Comprehensive Lands Assessment (ECLA) and subsequent City Council decisions on Metro Plan amendments related to “needed housing.”
- Requirements that must be met by new ICS standards.
- Problems created by Eugene Code’s current “needed housing” approval criteria.

Before addressing these issues, we first provide more detailed legal background.

## ***B. Legal background***

As stated above, the foundation of “needed housing” is Statewide Planning Goal 10 – Housing, which was adopted by the Land Conservation and Development Commission (LCDC) in 1974 and amended in 1988. This goal includes the following definition:

*Needed Housing Units – means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing units” also includes government-assisted housing. For*

*cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, “needed housing units” also includes (but is not limited to) attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters.*

This definition confusingly equates housing *units* to housing *types* and then states the types are those determined to meet the “need” for housing within a UGB, without ever defining “need.” Other sections under Goal 10 are no more helpful, for example:

*2. Plans should be developed in a manner that insures the provision of appropriate types and amounts of land within urban growth boundaries. Such land should be necessary and suitable for housing that meets the housing needs of households of all income levels.*

Again, there is no clue as to how “housing *needs*” are to be determined. The reference to “all income levels” is particularly problematic; for example, there is no explanation of how a jurisdiction should determine the housing *need* (as opposed to housing *demand* or *desire*) of higher-income households. (Various legal decisions have held that higher-priced housing is *not* necessarily excluded from “needed housing.”)<sup>1</sup>

ORS addresses “Needed Housing” mainly in sections 197.295 through 197.314 – “Needed Housing in Urban Growth Areas,” and also in the section of ORS 197.685, which relates to farm worker housing.

A definition is found at ORS 197.303(1); however, this definition is qualified by a phrase limiting the scope: “As used in ORS 197.307, ...” Furthermore, ORS 197.303(3) provides for a local government to take exception to the definition in ORS 197.303(1). The definition reads:

**197.303 “Needed housing” defined.** (1) *As used in ORS 197.307, until the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing” means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing” also means:*

*(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;*

*(b) Government assisted housing;*

*(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and*

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<sup>1</sup> Note also the requirement that “[s]uch land should be *necessary* ... for housing that meets the housing needs.” This is one basis for the argument that land use actions on parcels that are *not* necessary to meet housing needs should not qualify as “needed housing” actions. See LUBA decision [2].

*(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.*

This definition is similar to the one found in Goal 10 and isn't any clearer as to how "need" is determined.

OAR 660 Divisions 8 and 24 provide additional details on how jurisdictions are to assess housing needs. An important section is found at:

*OAR 660-008-0010 Allocation of Buildable Land*

*The mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection. The local buildable lands inventory must document the amount of buildable land in each residential plan designation.*

This section states that it is the local jurisdiction that determines "the mix and density of needed housing" and must specifically designate sufficient buildable land on the comprehensive plan map. Thus, the final determination of what constitutes "needed housing" is up to the jurisdiction, which must follow other applicable ORS and OAR rules in adopting a housing needs projection.

From the definitions and legal decisions, it's clear the needs projection cannot entirely exclude any of the enumerated, broad categories of housing types (e.g., single-family, multiple family, mobile homes, and manufactured homes). And it's also clear the needs projection must cover both rental and owner-occupied housing, including government-assisted housing. However, these requirements don't necessarily preclude sub-categories of housing type, including by price or more fine-grained housing form (e.g., duplex, row house, etc.). There's also no prohibition against a jurisdiction's housing plan designating different geographic areas for different types or subcategories of housing, as long as the plan provides for some flexibility of housing location, type and density. This latitude should be clear from the fact that State law allows jurisdictions to exclude multi-unit development from some zones. As another example, row houses may be allowed in some zones and not others.

And thus, State requirements to plan for the enumerated, broad categories of housing types also do not necessarily mean that *all* land use or building permit applications related to residential development should be considered "needed housing" in the context of Eugene Code.

As required by State law, Eugene periodically assesses its housing needs and adopts a plan to assure there's an adequate supply of buildable land to meet the projected housing needs. Some categories of residential land are *not* included in the buildable land supply that is identified to meet the projected housing needs. For example, in the 1999 Eugene Buildable Lands Study, lots designated as "low density" that were not larger than 1/3 acre or had improvements valued at least \$100,000 or had a slope of at least 25 percent, were not considered as potentially dividable

for additional single-family development. Thus, an application to partition such a lot might *not* be considered as qualifying as “needed housing” because the City did not include creation of such lots in its plan to meet housing needs. (See LUBA decision [2], below.)

With this background in mind, we turn now to the three major implications of State requirements related to “needed housing.”

## **II. Implications for the ICS project**

### ***A. How adopted Metro Plan sections on “needed housing” constrain infill standards***

As mentioned above, a local jurisdiction must determine how “needed housing” will be provided for projected increases in population, as required by Goal 10 and ORS and OAR. In the case of Eugene, House Bill 3337 requires that Eugene conduct an analysis and develop a plan for the area within Eugene’s portion of the UGB (i.e., west of I-5).

In simple terms, Eugene must estimate the size and demographics of its projected population for a twenty-year planning horizon. City Council must then adopt a plan that describes the types of housing (e.g., single-family detached, multi-unit attached, etc.) that will accommodate the projected population and where that housing will be located.<sup>2</sup> This process must take into account a variety of factors, including demographics on household income. The latest cycle of this planning work is currently being addressed through the Eugene Comprehensive Lands Assessment (ECLA) process initiated last year.

While ECLA provides potential assessments of housing “need” and buildable lands supply, the final decisions are made by City Council as to what estimates should be adopted as part of the Metro Plan and specifically where and how the projected housing “need” will be met. Once these decisions are made, significant constraints on subsequent land use code are effectively locked in place. In a “worst-case” scenario, a poorly-structured housing plan could make it very difficult for City Council to subsequently adopt any infill compatibility standards that could potentially reduce development potential – even to a slight degree.<sup>3</sup>

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<sup>2</sup> HB 3337 actually mandates only the assessment by the end of this year; Metro Plan amendments are the next step in the overall process and the schedule for those is not yet clear.

<sup>3</sup> LUBA has held that noncompliance with Goal 10 requirements for adequate buildable lands by even small amounts is not allowed.

The ECLA planning process has to grapple with the meaning of “housing need” as used in Goal 10 and ORS.<sup>4</sup>

The way in which ECLA structures the analysis of housing need and buildable land supply will be *critical* to how new development standards can be applied via code amendments to different areas within the UGB because the designated lands, their zoning, and the applicable development standards *must* allow the housing quantities and types that are allocated in the final plan that City Council must adopt.

For example, if Council adopts a plan in which some portion of the overall housing needs will be met by multi-unit apartments of a certain density and rental cost built in certain areas, then the zoning of those areas and the applicable development standards must allow the kind of development that’s part of the plan. The City could not, for example, zone the area as single-family or limit density below what’s incorporated into the plan (unless some compensating revisions were made to other sections of the code or the plan itself were amended).

Two key elements of ECLA and the resulting plan adopted by Council are how projected housing supply from “infill” and “redevelopment” are determined. Again, areas that are planned for a high degree of projected infill or redevelopment may be seriously constrained in what standards can be adopted without conflicting with State requirements for Goal 10 compliance regarding buildable lands.

Because the assessment process currently underway is so critical to future land use code amendments, the ICS Task Team should coordinate closely with the ECLA project team to be sure the analyses and potential plans that come out of ECLA don’t preempt standards the ICS Task Team recommends for adoption. Similarly, the ICS Task Team Co-chairs and ICS staff should be sure the ECLA project team is aware of the implications of standards recommended, or being considered for recommendation, by the ICS Task Team.

In specific terms, the ECLA analyses and the plan adopted by Council must be fine-grained in three key dimensions:

- The types of housing identified in the “needs” analysis
- The geographic areas identified as providing development capacity, most importantly, for residential infill and redevelopment
- The factors used to categorize land and determine “capacity,” again particularly for residential infill and redevelopment.

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<sup>4</sup> In the past, some highly simplified (and debatable) assumptions were used to map projected population growth and demographics into a very limited set of housing types. This aspect of ECLA is still being discussed.

## ***B. Requirements that must be met by new ICS standards***

Setting aside for a moment the question of what actually constitutes “needed housing,” the essential legal requirement for land use code is specified in ORS 197.307. The most important subsections are as follows:

*(3)(b) A local government shall attach only clear and objective approval standards or special conditions regulating, in whole or in part, appearance or aesthetics to an application for development of needed housing or to a permit, as defined in ORS 215.402<sup>5</sup> or 227.160<sup>6</sup>, for residential development. The standards or conditions may not be attached in a manner that will deny the application or reduce the proposed housing density provided the proposed density is otherwise allowed in the zone.*

...

*(3)(d) In addition to an approval process based on clear and objective standards as provided in paragraph (b) of this subsection, a local government may adopt an alternative approval process for residential applications and permits based on approval criteria that are not clear and objective provided the applicant retains the option of proceeding under the clear and objective standards or the alternative process and the approval criteria for the alternative process comply with all applicable land use planning goals and rules.*

...

*(6) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.*

Although there are exceptions (some of which are set out in ORS subsections not included above), as a general rule, ORS requires there be at least one set of approval criteria for “needed housing” that includes only clear and objective standards. ORS also clearly allows a jurisdiction to adopt an *alternate* set of criteria or approval processes that have *discretionary* elements.

Because “needed housing” will encompass most, if not all, land use actions and permit applications, for practical purposes, the ICS Task Team should develop recommendations for standards that meet the requirements for “needed housing,” which requires that all standards for the “basic” approval process (i.e., not an “alternative” process):

- Are clear and objective
- Do not reduce the effective density below what’s allowed in the zone
- Do not discourage permitted housing through *unreasonable* cost or delay

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<sup>5</sup> ORS Chapter 215 deals with county land use and housing.

<sup>6</sup> ORS Chapter 227 deals with City planning and zoning.

Any proposals for standards that would not meet all three criteria should be included only in alternative standards, for example, as allowable adjustments.

For new standards to withstand appeals based on Goal 10 requirements it's also essential that there be clear and substantial "findings" for *all* of the proposed standards that may limit development. In preparing their ordinances for development standards, Portland has done an excellent job and has withstood LUBA appeals (see LUBA decision [3]). In contrast, Eugene lost on a variety of appeal issues raised when the 2001 Land Use Code Update was adopted simply because there were inadequate findings. It's easy to make the mistake of treating the "findings" that accompany code amendments as so much bureaucratic "boilerplate," but solid findings are every bit as essential as properly crafted code language.

### ***C. Current Eugene "Needed Housing" provisions***

We consider now the final way that State statutes and administrative rules affect Eugene code.

#### **1. Current Eugene "Needed Housing" provisions**

Current Eugene Code defines a number of *land use actions*<sup>7</sup>; for example: code amendment, conditional use permit, tentative lot partition, tentative subdivision, zone change, etc. For each land use action, the code defines an approval process and enumerates a specific set of *approval criteria*. For example, the criteria for a tentative lot partition include a requirement that the proposed new lots meet established standards for minimum lot size, frontage, and width.

For the following land use actions, the code provides two alternative sets of approval criteria:

- Conditional Use Permit
- Partition, Tentative Plan
- Planned Unit Development, Tentative Plan
- Site Review
- Subdivision, Tentative Plan (including cluster subdivisions)

One set of criteria is called the *general* approval criteria; the other set is called the *needed housing* approval criteria. The general approval criteria include both *clear and objective standards* (for example, minimum lot size), as well as *discretionary* standards, which are not considered clear and objective (for example, that a development must not create a "significant risk to public health and safety"). For each respective type of land use action in the list above, the needed housing approval criteria exclude any general approval criteria standards that aren't

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<sup>7</sup> Technically, State statutes define some of the actions as "land use actions" (e.g., zone change) and others as "limited land use actions" (e.g., lot partition). Some rules are different for the two categories. For simplicity, in this document "land use actions" includes both categories.

considered to be clear and objective. In some cases, the needed housing approval criteria also exclude some of the clear and objective standards that are included in the general approval criteria, as well; and some needed housing approval criteria include some clear and objective standards not found in the general approval criteria.

When there are both general and needed housing approval criteria (i.e., for the five types of land use actions listed above), an applicant can always choose to have the application evaluated according to the general approval criteria. If the proposal qualifies as “needed housing,” the applicant has the option of having the application evaluated according to the needed housing approval criteria, rather than the general approval criteria.

Currently, Planning staff interpret Eugene Code so that *all* applications (for the land use actions listed above) on land designated for residential use qualify as “needed housing,” and consequently an applicant can always choose whichever set of approval criteria the applicant prefers.<sup>8</sup>

Eugene Code (at EC 9.6000) also defines general development standards, including such things as geotechnical analysis (e.g., for buildings on sloped sites). An application for a development permit (e.g., for a new residential structure) must meet applicable general development standards. The following categories of general development standards have exceptions or alternative standards for permit applications proposing needed housing:

- Geological and Geotechnical Analysis
- Connectivity for Streets
- Special Safety Requirements
- Transit Facilities
- Tree Preservation and Removal Standards

A permit application for development under a conditional use permit or site review, or on a partitioned lot, PUD, or subdivision, that was approved under the needed housing approval criteria is also evaluated against the needed housing general development standards. Even when none of these situations apply, an applicant can choose to have the permit application evaluated against the needed housing general development standards for a residential use that’s allowed outright in the zone, as long as the proposed development qualifies as “needed housing.”<sup>9</sup> As mentioned earlier, Eugene Planning staff consider all housing “needed housing.”

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<sup>8</sup> To our knowledge, this interpretation of Eugene code has not been tested by a LUBA appeal, and there is at least one argument that this interpretation is overly broad. See prior discussion in this report.

<sup>9</sup> See EC 9.6010(1)(b).

## 2. Problem statement

The current needed housing approval criteria exclude or weaken important standards that are part of the general approval criteria. Similarly, the needed housing development standards exclude or weaken important general development standards. Here are a few examples of the type of criteria and standards that are excluded or weakened:

- Compliance with applicable Metro Plan provisions<sup>10</sup>
- Compliance with adopted policies of other applicable plans, including local refinement plans.
- “Reasonable compatibility” with surrounding development under site review
- Avoiding significant risks of fire, flood, geological hazards, etc.
- Protection of natural resources

Attachment A provides a side-by-side comparison of the alternative approval criteria for the land use actions listed above. Attachment B lists the alternative sections of the general development standards.

As the code is currently being interpreted, *all* residentially-related applications can qualify as “needed housing,” and therefore *any* of the residential land use actions listed above can avoid compliance with the general approval criteria that aren’t part of the needed housing approval criteria. Likewise *any* proposed development (e.g., for a residential building) can avoid compliance with significant elements of the general development standards listed above.

The problem statement can be summarized as:

*Current Eugene Code provisions for “needed housing” (as they are being interpreted) render important residential standards inapplicable entirely at the discretion of the applicant and thereby exacerbate the potential for infill that would have significant negative impacts on neighborhoods.*

Note that, as long as “needed housing” is interpreted as “all housing,” no purpose specifically related to a special category of “needed housing” is served by the current code’s alternative sets of criteria. Thus, the needed housing approval criteria provide no “benefit” to a targeted category of housing (e.g., affordable housing for lower income households).

The functional result of the current code is simply to establish alternative approval criteria which can be selected by the applicant for any application (of the listed types). While having alternative approval criteria (as well as alternative approval processes) may be a useful approach to development standards, Eugene Code’s “needed housing” alternatives provide generally weaker

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<sup>10</sup> Although the Eugene Code excludes this criterion, State law may nonetheless require compliance.

standards with no accompanying design review or other discretionary approval mechanism to assure appropriate development.

### **3. Why does Eugene Code have “needed housing” criteria that weaken land use and development standards?**

A natural question arises: Why does Eugene Code have “needed housing” provisions that apply to *all* housing and that create the problem identified above? The alternative criteria were apparently added as a reaction to a Land Use Board of Appeals (LUBA) appeal decision (see LUBA decision [4]) requiring Eugene to have approval criteria for “needed housing” that were entirely clear and objective, as explained in the introduction of this report. The “solution” was to create the alternate approval criteria mostly by removing some items from the existing set of criteria (which had been challenged in the appeal) without making adequate adjustments to fully maintain the intended functional requirements of the original criteria.

Although the term “needed housing” intuitively suggests some *subset* of all housing (see ORS 197.307, discussed in the “Legal background” section, above), no specific definition was added to Eugene Code, other than a reference to the definition in ORS, which doesn’t provide clear requirements for determining whether or not a particular application should be considered “needed housing”. The net result is a generally weaker set of standards that could be applied to *any* application of the listed types.

### **4. Proposed solutions**

The general approval criteria for the land use actions that have a “needed housing” alternative (listed above) include a significant number of non-clear and objective standards, either directly or by reference to plan policies. For that reason, it may be advisable to take an incremental approach to fixing the problem and correcting the structural flaw in Eugene Code’s approach to requirements for “needed housing.” The following lists types of code amendments to consider in increasing level of effort:

1. Provide at least a completely clear and objective form of all newly proposed infill compatibility standards. (Where appropriate and feasible, an alternative set of discretionary criteria might also be proposed.)

If the current dual-tracks (“general” and “needed housing”) for approval criteria and development standards still exist when infill compatibility standards are adopted, be sure the new clear and objective standards are incorporated in *both* sets of criteria. This would assure the “needed housing” alternative doesn’t bypass new infill standards.

2. Identify unnecessary inconsistencies and omissions in the current “needed housing” criteria and make these criteria parallel the “general” criteria in content and form as

closely as permissible. This would strengthen the “needed housing” alternatives and make them more consistent with the “general” alternatives.

3. Identify the most critical deficiencies in the “needed housing” standards (due to omitted non-clear and objective standards) and develop the necessary clear-and-objective standards to add to the “needed housing” criteria and replace the corresponding non-clear and objective standards in the “general” criteria. This would further strengthen both alternatives.
4. Replace remaining non-clear and objective standards in the “general” criteria and rename these as the “standard” criteria. At this point, the “needed housing” alternative can be deleted. As appropriate, add “alternate” discretionary criteria; for example, under “adjustments.”

These steps would produce a code structure that is consistent with the approach used by other jurisdictions<sup>11</sup> and which would altogether avoid the issue of determining what is “needed housing” during the approval process. In our discussion with Oregon Department of Land Conservation and Development staff, the committee was advised that this would be a better approach than the current code’s “needed housing” alternative.

#### ***D. A related problem – adopted refinement plan policies***

There are other parts of the Eugene Code that aren’t explicitly identified as “needed housing” provisions, but that are nonetheless affected by State requirements for clear and objective standards. This report does not analyze these related issues in detail, but highlights one important example as a significant code deficiency that should be addressed by subsequent ICS Task Team or Planning Commission action.

Many types of land use actions<sup>12</sup> must meet an approval criterion that requires the proposal to comply with applicable adopted plan policies beginning at section 9.9500 of Eugene Code. Site Review is one of the land use actions where this requirement is supposed to provide criteria specific to the neighborhood or other identified area around the subject parcel.

Many of the policies at section 9.9500 of Eugene Code are taken verbatim from one of the refinement plans adopted by City Council. For example, the following policy is found at EC 9.9680(1)(a):

*Prevent erosion of the neighborhood’s residential character.*

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<sup>11</sup> Eugene seems to be unique in its approach, probably because the “needed housing” alternative approval criteria were added as a “quick fix” after losing the LUBA appeal. Unfortunately, the result has been to substantially undermine the intent of the code.

<sup>12</sup> And “limited land use actions.”

This policy is directly out of the *Westside Neighborhood Plan*, and covers an area totally within the Jefferson Westside Neighbors (JWN) boundaries. Yet despite a formal vote by the JWN membership and direct testimony from one of the members of the planning team that wrote the refinement plan, local officials and LUBA ruled against the neighborhood association's interpretation.

This policy is representative of many refinement plan policies that are (at least to some officials) not adequately clear. And, as the JWN experience illustrates, any ambiguity in a refinement plan policy provides an opportunity for applicants to argue an interpretation that is not consistent with what the community or City Council actually intended when the refinement plan was adopted.

In large part, the problem with arises because Eugene has not created clear and objective code to implement refinement plan policies. The result is the *appearance* that such policies are part of the approval standards because they're explicitly referenced in approval criteria, but the *reality* is that the policies are not effectively applied.

As we explain next, other jurisdictions have approached both the "needed housing" requirements and refinement plan policies in a simpler and less confusing way.

## **1. Proposed solutions**

It turns out that the limitations of adopted refinement plan policies, can be addressed in a conceptually simple way following a strategy similar to that proposed for the "needed housing" approval criteria. All that's required is for the standard set of approval criteria to be *complete*, as well as entirely clear and objective. There are two essential elements of this approach:

1. Eugene Springfield Metro Plan policies and other adopted plan policies must be implemented with corresponding clear and objective standards in the Eugene Code, rather than just citing the policy language itself. Since all applications could be evaluated under the code that implements these policies, the code must be adequate to prevent approval of an application that conflicts with the corresponding policy(ies).
2. For those policies where some discretion is desired, a set of alternative standards should be adopted in the code.

A very simple example will illustrate. To implement basic standards for building height limits, the criteria can be expressed in clear and objective terms (as is currently the case for building height) in the base zones (e.g., R-1 through R-4).

In those cases where there's an applicable local refinement plan policy that may bear on height limits, that policy must be implemented as a clear and objective standard, either through an overlay zone, a special area zone, or through additional, area-specific specifications in the base zone standards.

For example, to implement the *Westside Refinement Plan* policy that requires development not erode the neighborhood's character, an overlay zone (such as the proposal under consideration) could generally limit building heights in the older, single-family/duplex residential areas to the prevailing maximum height of two-story structures (e.g., 30 feet). This and other such code provisions would unambiguously implement the refinement plan policy and could be stated in clear and objective language that applied to development *within the area encompassed by the policy*.

In addition, to allow for those cases where a well-designed structure would be compatible despite exceeding the clear and objective height limitation applicable in this area, an alternative set of criteria: "no more than two stories and compatible with surrounding development" could also be part of the code. We leave to other discussions how to determine "compatibility"; our purpose here is to explain the structural elements of this alternative way to address both the ORS requirements for clear and objective standards and the need for discretionary standards in some cases.

### ***SIDEBAR: Where did Eugene Code go wrong?***

Our investigation into the "needed housing" problem included valuable discussions with DLCD staff that helped shed light on what's at the heart of the problems with Eugene's "needed housing" provisions and related issues. The fundamental problem is that Eugene Code leaves unresolved in many cases how Metro Plan and other adopted plan policies should be applied during the approval process. Instead, there are numerous cases where ambiguous or inconsistent policies must be resolved around a particular land use action, and there is no clear interpretation of how such policies should be applied during the approval process.

Essentially, to correct this structural flaw in Eugene Code requires that City Council amend the code to include clear and objective interpretations of the applicable policies. Fortunately, much of what's required is very closely related to the work of the ICS Task Team. Building height, for example, is a good example of a standard that is important in assuring compatible development. Policies, such as the example used earlier from the *Westside Refinement Plan*, must be implemented as clear and objective standards, rather than as the current code does by referencing a policy that isn't clear and objective.

The critical implication for the ICS Task Team's work is that non-clear and objective standards must be eliminated from the standard approval criteria so that all the "needed housing" sets of criteria can be entirely eliminated. Otherwise, some (or all) standards that are included in the current "General" approval criteria may be circumvented via the "needed housing" criteria.

### III. Recommended ICS Task Team actions

The following recommendations are supported by all Needed Housing Committee members:

1. Committee advisory (no motion) on proposed code amendments for infill compatibility standards:

*All proposals for code amendments that implement infill compatibility standards should have one set of approval criteria that are completely clear and objective and include discretionary standards only in alternative approval criteria.*

2. Committee recommended motion on existing "needed housing" sections in Eugene Code:

*The ICS Task Team recommends that city staff and the Planning Commission scope and plan a process to correct problems with, and eventually eliminate, the "needed housing" sections in the Eugene Code, as outlined in section II.C and Attachments A and B of the committee report.*

3. Committee recommended motion on implementation of adopted plan policies:

*The ICS Task Team recommends that city staff and the Planning Commission scope and plan a process to effectively implement all adopted plan policies that are intended to control approval of land use actions, limited land use actions, and development permits, as outlined in section II.D of the committee report.*

4. Committee recommended motion on Eugene Comprehensive Lands Assessment:

*The ICS Task Team directs the ICS Task Team Co-chairs to ensure the Eugene Comprehensive Lands Assessment (ECLA) project team is aware of the implications of standards recommended, or being considered for recommendation, by the ICS Task Team.*

*Further, the ICS Task Team recommends the ECLA staff and Planning Commission make a concerted effort to ensure the ECLA assessment and subsequent Metro Plan amendments provide an adequate structure and data to enable determination of the impact of proposed infill compatibility code amendments on residential buildable land supply and capacity with respect to Statewide Planning Goal 10, ORS, and OAR requirements for "needed housing."*

## **IV. References and resources**

### ***A. Department of Land Conservation and Development Web Site***

The DLCDC Web site has State Planning Goals, as well State Statutes and Administrative Rules,.  
<http://www.lcd.state.or.us/>

### ***B. Land Use Board of Appeals Web site***

The Land Use Board of Appeals Web site has State Statutes and Administrative Rules, as well as LUBA decisions, posted.

<http://www.oregon.gov/LUBA>

“Headnotes” (brief descriptions) of LUBA decisions related to housing and Goal 10:

<http://www.oregon.gov/LUBA/docs/Headnotes/14.pdf>

### ***C. State Goals***

*Goal 10 – Housing*

<http://www.lcd.state.or.us/LCD/docs/goals/goal10.pdf>

*Goal 14 -- Urbanization*

<http://www.lcd.state.or.us/LCD/docs/goals/goal14.pdf>

### ***D. State Statutes and Administrative Rule***

*ORS Chapter 197 — Comprehensive Land Use Planning Coordination*

<http://www.leg.state.or.us/ors/197.html>

See “Needed Housing” sections beginning at 197.295

*OAR 660 – Division 8 — Interpretation of Goal 10 Housing*

[http://arcweb.sos.state.or.us/rules/OARS\\_600/OAR\\_660/660\\_008.html](http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_008.html)

Calculation of residential “buildable lands”.

#### **660-008-0015 Clear and Objective Approval Standards Required**

Local approval standards, special conditions and procedures regulating the development of needed housing must be clear and objective, and must not have the effect, either of themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

## ***E. LUBA decisions***

The following LUBA decisions are among those that are significant for “needed housing.” (The bracketed numbers are for citations elsewhere in this document.)

[1] *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998).

[2] *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

Together, these two decisions address the meaning of “needed housing” and clearly tie it to the jurisdiction’s comprehensive plan (e.g., the Metro Plan). From [2]: “Where a local government’s acknowledged comprehensive plan identifies a need “for housing within an urban growth boundary at particular price ranges and rent levels,” any housing types that are determined to be necessary to meet that need are considered “needed housing,” within the meaning of ORS 197.303(1).” Also suggests that housing that is *not* “needed” according to the comprehensive plan may not be covered by the State’s “needed housing” requirements.

This is the basis for the important link between the ECLA and ICS processes.

[3] *Homebuilders Association v. City of Portland*, 37 Or LUBA 707 (2000).

A critical decision in favor of Portland: “A petitioner’s arguments that amended land use regulations violate a comprehensive plan policy by increasing housing costs and discouraging infill development provide no basis for remand, where the plan policy encourages both infill and preserving neighborhood livability and the city’s findings explain that the regulations are needed to ensure that infill housing development can be accommodated in neighborhoods without eroding livability.” Also deals with housing standards that are appealed on the basis they create “unreasonable cost or delay” or limit “housing types.” Also deals with interpretation of “neighborhood diversity.”

[4] *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 370 (2002).

A collection of decisions from the HBA’s appeal of Eugene’s Land Use Code Update (LUCU) of 2001. Illustrates critical need to have adequate findings and appropriate code structure that provides clear-and-objective standards as the basic approval criteria. Requires jurisdiction to demonstrate that any standards likely to reduce development potential do not cause noncompliance with jurisdictions plan for land supply. Limits challenges to local jurisdiction code amendments based on “unreasonable” cost or delay. Addresses requirements for coordination with other local governments when certain ordinances affect allocation of housing types and densities.

**ICS Task Team  
 Needed Housing Committee Final Report  
 Attachment A**

**Needed Housing – Eugene land use code**

Items in *red italics* are differences between the general criteria and needed housing criteria. A Neighborhood Refinement Plan does not apply when using the needed housing route. The definition of “needed housing units” from OAR 660-015-0000(10) is below. You will notice that the needed housing criteria seem far less rigorous and generally include less protection for natural areas.

**State Land Use Goal 10: Needed housing units definition - OAR 660-015-0000(10)** (from <http://www.oregon.gov/LCD/docs/goals/goal10.pdf>)

**Needed Housing Units** -- means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing units" also includes government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, "needed housing units" also includes (but is not limited to) attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters.

See also a related document from the Dept of Land Conservation and Development at [http://arcweb.sos.state.or.us/rules/OARS\\_600/OAR\\_660/660\\_008.html](http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_008.html)

**9.6010 Applications Proposing Needed Housing.**

- (1) As used in EC chapter 9.6000, the term “applications proposing needed housing” 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 development permits for uses permitted outright in the subject zone if the applicant has demonstrated that the proposed housing is needed housing as defined by state statutes.
- (2) The term does not include an application that could have proceeded under EC 9.8100, 9.8220, 9.8325, 9.8445, or 9.8520, but the applicant elected to proceed under the discretionary approval process.

(Section 9.6010, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.) – p279

**Comparison of Needed Housing and General routes**

<p><b>9.8100 <u>Conditional Use Permit Approval Criteria- Needed Housing.</u></b>          The hearings official shall approve, conditionally approve, or deny the conditional use permit application. Unless the applicant elects to use the general criteria contained in EC 9.8090 <u>Conditional Use Permit Approval Criteria - General</u>, where the applicant proposes needed housing, as defined by the State statutes, the hearings official shall approve or approve with conditions a conditional use based on compliance with the following criteria:</p>	<p><b>9.8090 <u>Conditional Use Permit Approval Criteria - General.</u></b>          A conditional use permit shall be granted only if the proposal conforms to all of the following criteria:  <i>(1) The proposal is consistent with applicable provisions of the Metro Plan and applicable refinement plans.</i>  <i>(2) The location, size, design, and operating characteristics of the proposal are reasonably compatible with and have minimal impact on the livability or appropriate development</i></p>
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<p>(1) <i>The applicant has demonstrated that the proposed housing is needed housing as defined by State statutes.</i></p> <p>(2) <i>If applicable, the proposal complies with the standards contained in EC 9.5500 <u>Multiple-Family Standards</u>.</i></p> <p>(3) <i>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:</i></p> <p>(a) <i>The proposal complies with EC 9.6880 to EC 9.6885 <u>Tree Preservation and Removal Standards</u>.</i></p> <p>(b) <i>Natural resource areas designated on the Metro 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.</i></p> <p>(4) <i>The proposal complies with all applicable standards, including, but not limited to:</i></p> <p>(a) <i>EC 9.6706 <u>Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas - Standards</u>.</i></p> <p>(b) <i>EC 9.6710(6) <u>Geological and Geotechnical Analysis</u>.</i></p> <p>(c) <i>EC 9.6730 <u>Pedestrian Circulation On-Site</u>.</i></p> <p>(d) <i>EC 9.6735 <u>Public Access Required</u>.</i></p> <p>(e) <i>EC 9.6750 <u>Special Setback Standards</u>.</i></p> <p>(f) <i>EC 9.6775 <u>Underground Utilities</u>.</i></p> <p>(g) <i>EC 9.6780 <u>Vision Clearance Area</u>.</i></p> <p>(h) <i>EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.</i></p> <p>(i) <i>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.</i></p> <p>(5) <i>Public improvements as required by this land use code or as a condition of tentative plan approval have been completed, or:</i></p> <p>(a) <i>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</i></p> <p>(b) <i>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.</i></p>	<p><i>of surrounding property, as they relate to the following factors:</i></p> <p>(a) <i>The proposed building(s) mass and scale are physically suitable for the type and density of use being proposed.</i></p> <p>(b) <i>The proposed structures, parking lots, outdoor use areas or other site improvements which could cause substantial off-site impacts such as noise, glare and odors are oriented away from nearby residential uses and/or are adequately mitigated through other design techniques, such as screening and increased setbacks.</i></p> <p>(c) <i>If the proposal involves a residential use, the project is designed, sited and/or adequately buffered to minimize off-site impacts which could adversely affect the future residents of the subject property.</i></p> <p>(3) <i>The location, design, and related features of the proposal provides a convenient and functional living, working, shopping or civic environment, and is as attractive as the nature of the use and its location and setting warrant.</i></p> <p>(4) <i>The proposal demonstrates adequate and safe circulation exists for the following:</i></p> <p>(a) <i>Vehicular access to and from the proposed site, and on-site circulation and emergency response.</i></p> <p>(b) <i>Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on 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.</i></p> <p>(5) <i>The proposal is designed and sited to minimize impacts to the natural environment by addressing the following:</i></p> <p>(a) <u><i>Protection of Natural Features.</i></u></p> <p>1. <i>For areas not included on the city’s acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:</i></p> <p>a. <i>Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under state or federal law), and</i></p>
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(Section 9.8100, see chart at front of Chapter 9 for legislative history from 2/26/01 to 6/1/02; amended by Ordinance No. 20297, enacted August 11, 2003, effective September 10, 2003; and amended by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.) – p455-56

- b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under state or federal law).*
  - c. Prominent topographic features, such as ridgelines and rock outcrops.*
  - d. Wetlands, intermittent and perennial stream corridors and riparian areas.*
  - e. Natural resource areas designated in the Metro Plan diagram as “Natural Resource” and areas identified in any city-adopted natural resource inventory.*
- 2. For areas included on the city’s acknowledged Goal 5 inventory, the preservation of natural features shall be consistent with the acknowledged level of preservation provided for the area.*
- (b) Tree Preservation. The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:*
- 1. Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria*
  - 2. Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow.*
  - 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.*
- (c) Restoration or Replacement.*
- 1. For areas not included on the city’s acknowledged*

	<p><i>Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:</i></p> <ul style="list-style-type: none"> <li><i>a. Planting of replacement trees within common areas; or</i></li> <li><i>b. Re-vegetation of slopes, ridgelines, and stream corridors; or</i></li> <li><i>c. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.</i></li> </ul> <p><i>To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320.</i></p> <p><i>2. For areas included on the city's acknowledged Goal 5 inventory, any loss of natural features shall be consistent with the acknowledged level of preservation provided for the resource.</i></p> <p><i>(d) <u>Street Trees</u>. If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305 of this code.</i></p> <p><i>(6) The proposal provides adequate public facilities and services including, but not limited to utilities, streets, and other infrastructure.</i></p> <p><i>(7) The proposal does not create any significant risk to public health and safety, including but not limited to soil erosion and flood hazard, or an impediment to emergency response.</i></p> <p><i>(8) The proposal complies with all applicable standards, including but not limited to:</i></p> <ul style="list-style-type: none"> <li><i>(a) EC 9.2000 through 9.3915 regarding lot dimensions, solar standards, and density requirements for the subject zone;</i></li> <li><i>(b) EC 9.6500 through EC 9.6505 Public Improvement Standards;</i></li> <li><i>(c) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance; and</i></li> <li><i>(d) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and other Public Ways;</i></li> <li><i>(e) Where the proposal is to establish non-residential uses</i></li> </ul>
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*subject to residential density requirements on development sites in the residential zone category, it shall achieve the minimum and maximum density requirements in accordance with Table 9.2750 Residential Zone Development Standards, unless specifically exempted elsewhere in this code or granted a modification through an approved conditional use permit. For purposes of calculating “net density,” the acreage of land considered shall include the entire development site and exclude public property, such as public streets, parks, and other public facilities. In considering whether to grant a modification to the density requirements, the hearings official shall evaluate the following factors:*

- 1. The availability of the development site for residential use on August 1, 2001. The term “availability” in this section shall include consideration of whether the site was already developed with non-residential uses or had other site constraints impacting its suitability for residential use.*
- 2. The necessity of the development site to be developed with residential uses to be able to achieve the minimum residential density for the area designated on the Metro Plan Land Use Diagram for either medium- or high-density residential use.*
- 3. Adopted plan policies indicate the suitability and appropriateness of the site for non-residential use.*

*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. Additional criteria may also be required based on the applicability of other sections of this land use code.*

- (9) The proposal complies with the Traffic Impact Analysis Review provisions of EC 9.8650 through 9.8680 where applicable.*

*(Section 9.8090, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20353, enacted November 28, 2005, effective January 1, 2006; and Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.)*

<p><b>9.8220 <u>Partition, Tentative Plan Approval Criteria- Needed Housing.</u></b>  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 <u>Partition, Tentative Plan Approval Criteria- General</u>, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve or approve with conditions a partition based on compliance with the following criteria:</p> <p><i>(1) The applicant has demonstrated that the proposed housing is needed housing as defined by State statutes.</i></p> <p>(2) <i>The proposed partition complies with all of the following:</i></p> <ul style="list-style-type: none"> <li>(a) Lot standards of EC 9.2000 through 9.3915 regarding applicable parcel dimensions and density requirements. Within the /WR Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).</li> <li>(b) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways.</li> <li>(c) EC 9.6500 through EC 9.6505 Public Improvement Standards.</li> <li>(d) EC 9.6706 <u>Development in Flood Plains</u> through EC 9.6709 <u>Special Flood Hazard Areas - Standards</u>.</li> <li>(e) EC 9.6710(6) <u>Geological and Geotechnical Analysis</u>.</li> <li>(f) EC 9.6735 <u>Public Access Required</u>.</li> <li>(g) EC 9.6750 <u>Special Setback Standards</u>.</li> <li>(h) EC 9.6775 <u>Underground Utilities</u>.</li> <li>(i) EC 9.6780 <u>Vision Clearance Area</u>.</li> <li>(j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.</li> <li>(k) EC 9.6880 through EC 9.6885 Tree Preservation and Removal Standards.</li> <li>(l) All other applicable development standards for features explicitly included in the application.</li> </ul> <p>An approved adjustment to a standard pursuant to the provisions beginning at EC 9.8015 of this land use code</p>	<p><b>9.8215 <u>Partition, Tentative Plan Approval Criteria- General.</u></b> 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:</p> <p>(1) <i>The proposed partition complies with all of the following:</i></p> <ul style="list-style-type: none"> <li>(a) Lot standards of EC 9.2000 through 9.3915 regarding applicable parcel dimensions and density requirements. Within the /WR Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).</li> <li>(b) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways.</li> <li>(c) EC 9.6500 through EC 9.6505 Public Improvement Standards.</li> <li>(d) EC 9.6706 <u>Development in Flood Plains</u> through EC 9.6709 <u>Special Flood Hazard Areas - Standards</u>.</li> <li>(e) EC 9.6710 <u>Geological and Geotechnical Analysis</u>.</li> <li>(f) EC 9.6735 <u>Public Access Required</u>.</li> <li>(g) EC 9.6750 <u>Special Setback Standards</u>.</li> <li>(h) EC 9.6775 <u>Underground Utilities</u>.</li> <li>(i) EC 9.6780 <u>Vision Clearance Area</u>.</li> <li>(j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.</li> <li>(k) All other applicable development standards for features explicitly included in the application.</li> </ul> <p><i>(l) The applicable adopted plan policies beginning at EC 9.9500.</i></p> <p>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.</p> <p>(2) <i>The proposed partition will not create a new nonconforming situation.</i></p> <p>(3) Partitions abutting collector and arterial streets comply with access management guidelines of the agency having jurisdiction over the street.</p>
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<p>constitutes compliance with the standard.</p> <p>(3) <i>The proposed partition will not cause any existing improvements on proposed lots to be inconsistent with applicable standards in this land use code.</i></p> <p>(4) Partitions abutting collector and arterial streets comply with access management guidelines of the agency having jurisdiction over the street.</p> <p>(5) 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:</p> <p>(a) <i>The proposed land uses and densities within the partition are consistent with the land use designation(s) shown on the <u>Metro Plan Land Use Diagram</u>, as refined in any applicable refinement plan.</i></p> <p>(b) 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.</p> <p>(c) <i>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.</i></p> <p>(6) On R-1 zoned property, if the partition results in a parcel greater than 13,500 square feet in size based on EC 9.2761(5)(b), the application shall indicate the location of parcel lines and other details of layout that show future division may be made without violating the requirements of this land use code and without interfering with the orderly extension of adjacent streets, bicycle paths, and accessways. Any restriction of buildings within future street, bicycle path, and accessway locations shall be made a matter of record in the tentative plan approval.</p> <p>(Section 9.8220, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20285, enacted March 10, 2003, effective April 9, 2003; administratively corrected July 9, 2003; amended by Ordinance No. 20297, enacted August 11, 2003, effective</p>	<p>(4) If the provisions of EC 9.8215(1) require a public street, or if the applicant proposes the creation of a public street, all of the following criteria also apply:</p> <p>(a) <i>The proposal will 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.</i></p> <p>(b) <i>The proposed partition will:</i></p> <ol style="list-style-type: none"> <li>1. <i>Not result in significant risk of fire, flood, geological hazards, or other public health and safety concerns;</i></li> <li>2. <i>Provide adequate transportation systems, water supply, sewage disposal, drainage, and other public utilities;</i></li> <li>3. <i>Not hamper the adequate provision of publicly owned open space for recreation needs.</i></li> </ol> <p>(c) The proposed partition provides direct bicycle and pedestrian access to nearby and adjacent residential areas, transit stops, neighborhood activity centers, commercial areas, and industrial areas, and provides safe, convenient and direct transit circulation, 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 be reasonably expected to be used by bicyclists.</p> <p>(5) <i>As far as is practicable, lot side lines run at right angles to the street upon which the lots face, except that on curved streets they are radial to the curve.</i></p> <p>(6) On R-1 zoned property, if the partition results in a parcel greater than 13,500 square feet in size based on EC 9.2761(5)(b), the application shall indicate the location of parcel lines and other details of layout that show future division of the parcel may be made without violating the requirements of this land use code and without interfering with the orderly extension of adjacent streets, bicycle paths, and accessways. If the planning director deems it necessary for the purpose of future land division, any restriction of buildings within future street, bicycle path, and accessway locations shall be made a matter of record in the tentative plan approval.</p> <p>(Section 9.8215, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20285, enacted March 10,</p>
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<p>September 10, 2003; amended by Ordinance No. 20351, enacted November 14, 2005, effective January 1, 2006; amended by Ordinance No. 20353, enacted November 28, 2005, effective January 1, 2006; and by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.) – p466</p>	<p>2003, effective April 9, 2003; amended by Ordinance No. 20351, enacted November 14, 2005, effective January 1, 2006; amended by Ordinance No. 20353, enacted November 28, 2005, effective January 1, 2006; and by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.)</p>
<p><b>9.8325 <u>Tentative Planned Unit Development Approval Criteria - Needed Housing.</u></b> 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 <u>Tentative Planned Unit Development Approval Criteria - General</u>, 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:</p> <ol style="list-style-type: none"> <li>(1) <i>The applicant has demonstrated that the proposed housing is needed housing as defined by State statutes.</i></li> <li>(2) <i>The proposed land uses and densities within the PUD are consistent with the land use designation(s) shown on the Metro Plan Land Use Diagram, as refined in any applicable refinement plan.</i></li> <li>(3) <i>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).</i></li> <li>(4) 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: <ol style="list-style-type: none"> <li>(a) <i>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).</i></li> <li>(b) Natural resource areas designated on the Metro Plan diagram as “Natural Resource” are protected.</li> </ol> </li> <li>(5) <i>There shall be no proposed grading on portions of the development site that meet or exceed 20% slope.</i></li> <li>(6) The PUD provides safe and adequate transportation systems through compliance with all of the following: <ol style="list-style-type: none"> <li>(a) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).</li> <li>(b) 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</li> </ol> </li> </ol>	<p><b>9.8320 <u>Tentative Planned Unit Development Approval Criteria- General.</u></b> 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:</p> <ol style="list-style-type: none"> <li>(1) <i>The PUD is consistent with applicable adopted policies of the Metro Plan.</i></li> <li>(2) <i>The PUD is consistent with applicable adopted refinement plan policies.</i></li> <li>(3) <i>The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.</i></li> <li>(4) <i>The PUD is designed and sited to minimize impacts to the natural environment by addressing the following:</i> <ol style="list-style-type: none"> <li>(a) <u>Protection of Natural Features.</u> <ol style="list-style-type: none"> <li>1. <i>For areas not included on the City’s acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:</i> <ol style="list-style-type: none"> <li>a. <i>Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under State or Federal law), and native plant communities.</i></li> <li>b. <i>All documented habitat for all rare animal species (those that are proposed for listing or are listed under State or Federal law).</i></li> <li>c. <i>Prominent topographic features, such as ridgelines and rock outcrops.</i></li> <li>d. <i>Wetlands, intermittent and perennial stream corridors, and riparian areas.</i></li> <li>e. <i>Natural resource areas designated in the Metro Plan diagram as “Natural Resource” and areas identified in any city-adopted natural resource inventory.</i></li> </ol> </li> <li>2. <i>For areas included on the City’s acknowledged Goal 5 inventory:</i> <ol style="list-style-type: none"> <li>a. <i>The proposed development’s general design and character, including but not limited to</i></li> </ol> </li> </ol> </li> </ol> </li> </ol>

<p>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.</p> <p>(c) <i>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.</i></p> <p>(7) The PUD complies with all of the following:</p> <p>(a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).</p> <p>(b) EC 9.6500 through 9.6505 Public Improvement Standards.</p> <p>(c) EC 9.6706 <u>Development in Flood Plains</u> through EC 9.6709 <u>Special Flood Hazard Areas - Standards</u>.</p> <p>(d) EC 9.6710(6) <u>Geological and Geotechnical Analysis</u>.</p> <p>(e) EC 9.6730 <u>Pedestrian Circulation On-Site</u>.</p> <p>(f) EC 9.6735 <u>Public Access Required</u>.</p> <p>(g) EC 9.6750 <u>Special Setback Standards</u>.</p> <p>(h) EC 9.6775 <u>Underground Utilities</u>.</p> <p>(i) EC 9.6780 <u>Vision Clearance Area</u>.</p> <p>(j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.</p> <p>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.</p> <p>(8) The applicant has demonstrated that wastewater service, transportation service, stormwater service, water service, and electrical service will be provided to the site prior to the need for those facilities and services. Where the facility or service</p>	<p><i>anticipated building locations, bulk and height, location and distribution of recreation space, parking, roads, access and other uses, will:</i></p> <p>(1) <i>Avoid unnecessary disruption or removal of attractive natural features and vegetation, and</i></p> <p>(2) <i>Avoid conversion of natural resource areas designated in the Metropolitan Area General Plan to urban uses when alternative locations on the property are suitable for development as otherwise permitted.</i></p> <p>b. <i>Proposed buildings, road, and other uses are designed and sited to assure preservation of significant on-site vegetation, topographic features, and other unique and worthwhile natural features, and to prevent soil erosion or flood hazard.</i></p> <p>(b) <i><u>Tree Preservation</u>. The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:</i></p> <ol style="list-style-type: none"> <li><i>1. Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;</i></li> <li><i>2. Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;</i></li> <li><i>3. Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;</i></li> <li><i>4. Trees that provide a buffer between potentially incompatible land uses;</i></li> <li><i>5. Trees located along the perimeter of the lot(s) and within building setback areas;</i></li> <li><i>6. Trees and stands of trees located along ridgelines and within view corridors;</i></li> <li><i>7. Trees with significant habitat value;</i></li> <li><i>8. Trees adjacent to public parks, open space and streets;</i></li> <li><i>9. Trees located along a water feature;</i></li> </ol>
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is not already serving the site, this demonstration requires evidence of at least one of the following:

- (a) Prior written commitment of public funds by the appropriate public agencies.
- (b) Prior acceptance by the appropriate public agency of a written commitment by the applicant or other party to provide private services and facilities.
- (c) A written commitment by the applicant or other party to provide for offsetting all added public costs or early commitment of public funds made necessary by development, submitted on a form acceptable to the city manager.

- (9) *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.*
- (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).
- (11) 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.
- (12) *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.*
  - (b) *Development 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.*
  - (c) *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*

*10. Heritage trees.*

(c) Restoration or Replacement.

- 1. *For areas not included on the city's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:*
  - a. *Planting of replacement trees within common areas; or*
  - b. *Re-vegetation of slopes, ridgelines, and stream corridors; or*
  - c. *Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.*

*To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320.*

- 2. *For areas included on the city's acknowledged Goal 5 inventory, any loss of significant natural features described in criteria (a) and (b) above shall be consistent with the acknowledged level of protection for the features.*

(d) Street Trees. *If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305.*

- (5) The PUD provides safe and adequate transportation systems through compliance with the following:
  - (a) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).
  - (b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on 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.

<p><i>open space means open space that is uninterrupted by buildings, structures, streets, or other improvements.</i></p> <p>(d) <i>Residential density is limited as follows:</i></p> <ol style="list-style-type: none"> <li>1. <i>In the area west of Friendly Street, the maximum level of new development per gross acre shall be 8 units per acre.</i></li> <li>2. <i>In the area east of Friendly Street, the maximum level of new development per gross acre shall be limited to 5 units per acre.</i></li> <li>3. <i>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.</i></li> </ol> <p>(13) Stormwater runoff from the PUD will not damage natural drainage courses either on-site or downstream by eroding or scouring the natural drainage courses or by causing turbidity, or the transport of sediment due to increased peak flows or velocity.</p> <p><i>(Section 9.8325, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; administratively corrected April 18, 2003; amended by Ordinance No. 20297, enacted August 11, 2003, effective September 10, 2003; administratively corrected August 13, 2003; amended by Ordinance No. 20351, enacted November 14, 2005, effective January 1, 2006; by Ordinance No. 20353, enacted November 28, 2005, effective January 1, 2006; and Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.) –p475-476</i></p> <p><b>9.8430</b> <b>Applicability.</b> Site review provisions shall be applied when any of the following conditions exist:</p> <ol style="list-style-type: none"> <li>(1) Property is zoned with the /SR overlay zone and the proposal would result in either of the following:       <ol style="list-style-type: none"> <li>(a) New development of vacant sites (excluding partitions and any development that consists only of new or expanded parking areas).</li> <li>(b) An expansion of 20 percent or more of the total existing building square footage on the development site.</li> </ol> </li> <li>(2) The proposed use on the property is identified as a use which requires site review under other provisions of this land use code and the proposal would result in either of the following:       <ol style="list-style-type: none"> <li>(a) New development of vacant sites (excluding development that consists only of new or expanded parking areas).</li> </ol> </li> </ol>	<p>(c) <i>The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.</i></p> <ol style="list-style-type: none"> <li>(6) <i>The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.</i></li> <li>(7) Adequate public facilities and services are available to the site, or if public services and facilities are not presently available, the applicant demonstrates that the services and facilities will be available prior to need. Demonstration of future availability requires evidence of at least one of the following:       <ol style="list-style-type: none"> <li>(a) Prior written commitment of public funds by the appropriate public agencies.</li> <li>(b) Prior acceptance by the appropriate public agency of a written commitment by the applicant or other party to provide private services and facilities.</li> <li>(c) A written commitment by the applicant or other party to provide for offsetting all added public costs or early commitment of public funds made necessary by development, submitted on a form acceptable to the city manager.</li> </ol> </li> <li>(8) <i>Residents of the PUD will have sufficient usable recreation area and open space that is convenient and safely accessible.</i></li> <li>(9) Stormwater runoff from the PUD will not create significant negative impacts on natural drainage courses either on-site or downstream, including, but not limited to, erosion, scouring, turbidity, or transport of sediment due to increased peak flows or velocity.</li> <li>(10) Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 <u>Solar Lot Standards</u> or as modified according to subsection (11) below.</li> <li>(11) The PUD complies with all of the following:       <ol style="list-style-type: none"> <li>(a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).</li> <li>(b) EC 9.6500 through EC 9.6505 Public Improvement</li> </ol> </li> </ol>
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(b) An expansion of 20 percent or more of the total existing building square footage on the development site.

*(3) The application proposes needed housing, as defined by State statutes. Applications proposing needed housing shall be reviewed through the Type II site review procedures utilizing the criteria at EC 9.8445 Site Review Approval Criteria - Needed Housing unless the applicant specifically request in the application that the city apply the criteria at EC 9.8440 Site Review Approval Criteria - General.*

No development permit shall be issued by the city prior to approval of the site review application.

(Section 9.8430, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; and amended by Ordinance No. 20269, enacted November 25, 2002, effective December 25, 2002.)-p485

Standards.

- (c) EC 9.6706 Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas - Standards.
- (d) EC 9.6710 Geological and Geotechnical Analysis.
- (e) EC 9.6730 Pedestrian Circulation On-Site.
- (f) EC 9.6735 Public Access Required.
- (g) EC 9.6750 Special Setback Standards.
- (h) EC 9.6775 Underground Utilities.
- (i) EC 9.6780 Vision Clearance Area.
- (j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.
- (k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.

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.

- (12) The proposed development shall have minimal off-site impacts, including such impacts as traffic, noise, stormwater runoff and environmental quality.*
- (13) The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.*
- (14) If the tentative PUD application proposes a land division, nothing in the approval of the tentative application exempts future land divisions from compliance with state or local surveying requirements.*
- (15) If the proposed PUD is located within a special area zone, the applicant shall demonstrate that the proposal is consistent with the purpose(s) of the special area zone.*

(Section 9.8320, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20266, enacted November 12, 2002, effective December 12, 2002; amended by Ordinance No. 20351, enacted November 14, 2005, effective January 1, 2006; by Ordinance No. 20353, enacted November 28, 2005, effective January 1, 2006; and by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.)

<p><b>9.8445 Site Review Approval Criteria- Needed Housing.</b> 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 <u>Site Review Approval Criteria - General</u>, 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:</p> <p>(1) <i>The applicant has demonstrated that the proposed housing is needed housing as defined by State statutes.</i></p> <p>(2) For a proposal for multiple family developments, the proposal complies with the standards contained in EC 9.5500 <u>Multiple Family Standards</u>.</p> <p>(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:</p> <p>(a) The proposal complies with EC 9.6880 through EC 9.6885 <u>Tree Preservation and Removal Standards</u>.</p> <p>(b) Natural resource areas designated on the Metro Plan diagram as “Natural Resource” are protected.</p> <p>(4) <i>The proposal complies with all of the following standards:</i></p> <p>(a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone.</p> <p>(b) EC 9.6500 through 9.6505 <u>Public Improvement Standards</u>.</p> <p>(c) EC 9.6706 <u>Development in Flood Plains</u> through EC 9.6709 <u>Special Flood Hazard Areas - Standards</u>.</p> <p>(d) EC 9.6710 (6) <u>Geological and Geotechnical Analysis</u>.</p> <p>(e) EC 9.6730 <u>Pedestrian Circulation On-Site</u>.</p> <p>(f) EC 9.6735 <u>Public Access Required</u>.</p> <p>(g) EC 9.6750 <u>Special Setback Standards</u>.</p> <p>(h) EC 9.6775 <u>Underground Utilities</u>.</p> <p>(i) EC 9.6780 <u>Vision Clearance Area</u>.</p> <p>(j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.</p> <p>(k) All other applicable development standards for features explicitly included in the application.</p> <p>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.</p>	<p><b>9.8440 Site Review Approval Criteria-General.</b> 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:</p> <p>(1) <i>The site review plan’s general design and character is reasonably compatible with surrounding properties, as it relates to building locations, bulk and height, noise, glare and odors.</i></p> <p>(2) <i>Proposed lots, buildings, streets, parking lots, recreation areas, and other proposed uses are designed and sited to minimize impacts to the natural environment by addressing the following:</i></p> <p>(a) <i>Protection of Natural Features.</i></p> <p>1. <i>For areas not included on the City’s acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:</i></p> <p>a. <i>Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under State or Federal law), and native plant communities.</i></p> <p>b. <i>All documented habitat for all rare animal species (those that are proposed for listing or are listed under State or Federal law).</i></p> <p>c. <i>Prominent topographic features, such as ridgelines and rock outcrops.</i></p> <p>d. <i>Wetlands, intermittent and perennial stream corridors, and riparian areas.</i></p> <p>e. <i>Natural resource areas designated in the Metro Plan diagram as “Natural Resource” and areas identified in any city-adopted natural resource inventory.</i></p> <p>2. <i>For areas included on the City’s acknowledged Goal 5 inventory the applicant shall show that it has given due consideration to the preservation of attractive and distinctive historical and natural features.</i></p> <p>(b) <i>Tree Preservation. The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:</i></p>
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<p>(5) Public improvements as required by this land use code or as a condition of tentative plan approval have been completed, or:</p> <p>(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</p> <p>(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.</p> <p>(Section 9.8445, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20297, enacted August 11, 2003, effective September 10, 2003;and Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006 .) –p488-89</p>	<ol style="list-style-type: none"> <li>1. <i>Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;</i></li> <li>2. <i>Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;</i></li> <li>3. <i>Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;</i></li> <li>4. <i>Trees that provide a buffer between potentially incompatible land uses;</i></li> <li>5. <i>Trees located along the perimeter of the lot(s) and within building setback areas;</i></li> <li>6. <i>Trees and stands of trees located along ridgelines and within view corridors;</i></li> <li>7. <i>Trees with significant habitat value;</i></li> <li>8. <i>Trees adjacent to public parks, open space and streets.</i></li> <li>9. <i>Trees along water features.</i></li> <li>10. <i>Heritage trees.</i></li> </ol> <p>(c) <u>Restoration or Replacement.</u></p> <ol style="list-style-type: none"> <li>1. <i>For areas not included on the city’s acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:</i> <ol style="list-style-type: none"> <li>a. <i>Planting of replacement trees within common areas; or</i></li> <li>b. <i>Re-vegetation of slopes, ridgelines, and stream corridors; or</i></li> <li>c. <i>Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.</i></li> </ol> <p><i>To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.335 and rules adopted thereunder.</i></p> </li> <li>2. <i>For areas included on the city’s acknowledged Goal 5 inventory, any loss of significant natural features described in criteria (a) and (b) above shall be consistent with the acknowledged level of protection for the features.</i></li> </ol>
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- (d) *Street Trees.* If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305 of this code.
- (e) *Parking.* There is a need for parking in the area and the proposed parking area will provide shared parking.
- (3) The proposal provides safe and adequate transportation systems through compliance with all of the following:
  - (a) *Compliance with EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways.*
  - (b) *Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on 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.*
- (4) The proposal will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.
- (5) The proposal complies with all of the following standards:
  - (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone.
  - (b) EC 9.6500 through 9.6505 Public Improvement Standards.
  - (c) EC 9.6706 Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas - Standards.
  - (d) EC 9.6710 Geological and Geotechnical Analysis.
  - (e) EC 9.6730 Pedestrian Circulation On-Site.
  - (f) EC 9.6735 Public Access Required.
  - (g) EC 9.6750 Special Setback Standards.
  - (h) EC 9.6775 Underground Utilities.
  - (i) EC 9.6780 Vision Clearance Area.
  - (j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.
  - (k) All other applicable development standards for features

	<p>explicitly included 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.</p> <ul style="list-style-type: none"><li>(6) The proposal complies with applicable adopted plan policies beginning at EC 9.9500.</li><li>(7) Any additional specific factors applied at the time the /SR designation was applied.</li></ul> <p>(Section 9.8440, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20285, enacted March 10, 2003, effective April 9, 2003; Ordinance No. 20353, enacted November 28, 2005, effective January 1, 2006; and Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.)</p>
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ICS Task Team  
Needed Housing Committee Final Report  
Attachment B

**(1) General Standards for All Development**

**9.6000 Purpose and Applicability.** Unless otherwise provided in sections 9.6000 through 9.6870 of this land use code, those sections describe the general standards that apply to the entire development site at the time of any development. When an area is zoned S Special Area, as indicated on the Eugene Zoning Map, the general development standards set forth in this land use code shall govern, except when they conflict with the special standards applicable specifically in the special area zone. In cases of conflict, the standards specifically applicable in the special area zone shall control.

**9.6010 Applications Proposing Needed Housing.**

- (1) As used in EC chapter 9.6000, the term “applications proposing needed housing” 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 development permits for uses permitted outright in the subject zone if the applicant has demonstrated that the proposed housing is needed housing as defined by state statutes.
- (2) The term does not include an application that could have proceeded under EC 9.8100, 9.8220, 9.8325, 9.8445, or 9.8520, but the applicant elected to proceed under the discretionary approval process.

**9.6710 Geological and Geotechnical Analysis.**

- (6) **Needed 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 shall include a certification from an Oregon licensed Engineering Geologist or an Oregon licensed Civil Engineer with geological experience stating:

**9.6815 Connectivity for Streets.**

**(2) Street Connectivity Standards.**

- (e) **Except for applications proposing needed housing**, all applicants shall show that the proposed street alignment shall minimize excavation and embankment and avoid impacts to natural resources, including water-related features.

**9.6845**     **Special Safety Requirements.** Except for applications proposing needed housing, 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, 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, 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.**

- (3) **Adjustment to Standards.** Except for applications being processed under EC 9.8100 Conditional Use Permit Approval Criteria - Needed Housing, EC 9.8325 Tentative Planned Unit Development Approval Criteria - Needed Housing, EC 9.8445 Site Review Approval Criteria - Needed Housing, or EC 9.8520 Subdivision, Tentative Plan Approval Criteria - Needed Housing, 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.

**(2)**     **Cluster Subdivision**

**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, shall be processed pursuant to EC 9.8520 Subdivision, Tentative Plan Approval Criteria - Needed Housing. No development permit shall be issued by the city prior to approval of the cluster subdivision.