



### TYPE IV APPLICATION AND REMAND STAFF REPORT AND RECOMMENDATION

*May 7, 2018*

**FILE NUMBER:** PZ 15-01: Comprehensive Plan Amendment  
ZC 15-03: Zone Change

**APPLICANT/  
OWNER:** Historic Properties  
1300 John Adams Street, Oregon City, Oregon 97045

**REPRESENTATIVE:** Sisul Engineering, c/o Tom Sisul  
375 Portland Avenue, Gladstone, Oregon 97027

**REQUEST:** Review Planning files PZ 15-01 and ZC 15-03, a request for a zone change from “R-3.5” Dwelling District, “R-6” Single-Family Dwelling District and “R-10” Single-Family Dwelling District to “MUC-2” Mixed-Use Corridor 2 and an amendment to the Oregon City Comprehensive Plan Map from Low Density Residential and Medium Density Residential to “MUC” Mixed Use Corridor. The scope of this review is limited to argument and evidence related to whether the proposed amendment allows uses that could conflict with Newell Creek or any other designated Goal 5 resource on the site.

**LOCATION:** 14228, 14268, 14275, 14289, 14297, 14338 & 14362 Mapelane Ct, 14375 Mapelane Rd, 3391 Beaver Creek Rd  
Clackamas County Map 32E04C, Tax Lots 700, 702, 900, 1201, 1300, 1400, 1500, 1600 and Clackamas County Map 32E04CD, Tax Lots 3300, 5900, 6000

**REVIEWERS:** Laura Terway, AICP, Community Development Director  
Aleta Froman-Goodrich, P.E., City Engineer

**RECOMMENDATION:** Approval with Conditions

**PROCESS:** Type IV decisions include only quasi-judicial plan amendments and zone changes. These applications involve the greatest amount of discretion and evaluation of subjective approval standards and must be heard by the city commission for final action. The process for these land use decisions is generally controlled by ORS 197.763; however, as this application is on remand from LUBA, there are some differences from the initial hearing. At the evidentiary hearing held before the planning commission, the issues will be limited to those that were the reasons for the remand. If the planning commission denies the application, any party with standing (i.e., anyone who appeared before the planning commission either in person or in writing) may appeal the planning commission denial to the city commission. If the planning commission denies the application and no appeal has been received within ten days of the issuance of the final decision then the action of the planning commission becomes the final decision of the city. If the planning commission votes to approve the application, that decision is forwarded as a recommendation to the city commission for final consideration. In either case, any review by the city commission is on the record and only issues raised before the planning commission may be raised before the city commission. The city commission decision is the city's final decision and is appealable to the land use board of appeals (LUBA) within twenty-one days of when it becomes final.





## 2. Project Description

The City approved Planning files PZ 15-01: Comprehensive Plan Amendment and ZC 15-03: Zone Change to amend the Comprehensive Plan Map from Low Density Residential and Medium Density Residential to “MUC” Mixed Use Corridor and a Zone Change from “R-3.5” Dwelling District, “R-6” Single-Family Dwelling District and “R-10” Single-Family Dwelling District to “MUC-2” Mixed-Use Corridor 2 for properties located near the northeast corner of Highway 213 and Beavercreek Road. The City’s approval was appealed to the Land Use Board of Appeals (LUBA) whom remanded the decision back to the City for additional findings relating to Goal 5: Natural Resources. LUBA determined that the City must determine if the new uses allowed by the application could conflict with the Goal 5 resources and if the new uses would result in increased volume and velocity of stormwater or the possibility of increased levels of contaminants.

The LUBA decision was subsequently appealed to the Court of Appeals, which affirmed LUBA's decision, and the State Supreme Court, which declined to hear the case. The City Commission remanded the application to the Planning Commission for the Planning Commission hold a public hearing limited to the remand issues. All parties will have an opportunity to submit argument and additional evidence limited to the issues on remand before the Planning Commission.

3. **Existing Zoning/Permitted Uses:** The subject site is currently utilized with a variety of uses including six (6) residences, a church and the School District bus facility. There are single-family residences on the opposing (east) side of Maplelane Road, a large commercial development on the opposing (southwest) side of Beavercreek Road and land owned by Metro and a few large lots occupied by a single residences is northwest of the site.

Adjacent properties are zoned R-2 (southeast across Maplelane Road and south of Thayer), R-8 (northwest), and R-6 and R-10 (east). Land to the south across Beavercreek Road is zoned General Commercial.

Figure 4: Current Zoning Map

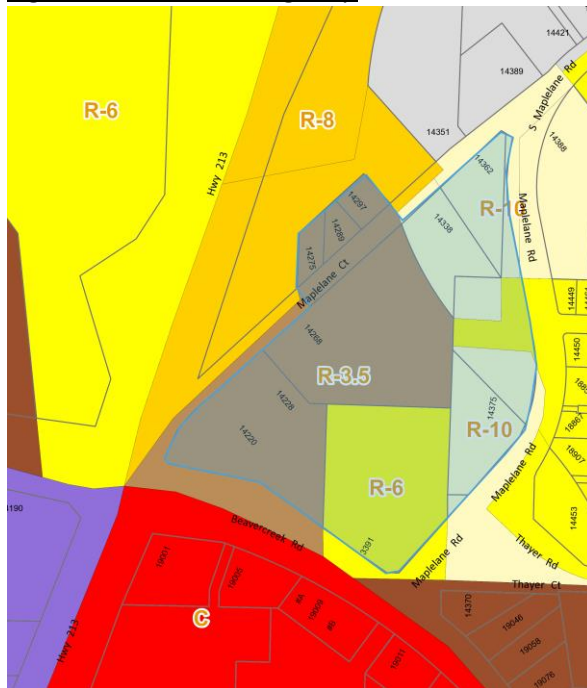
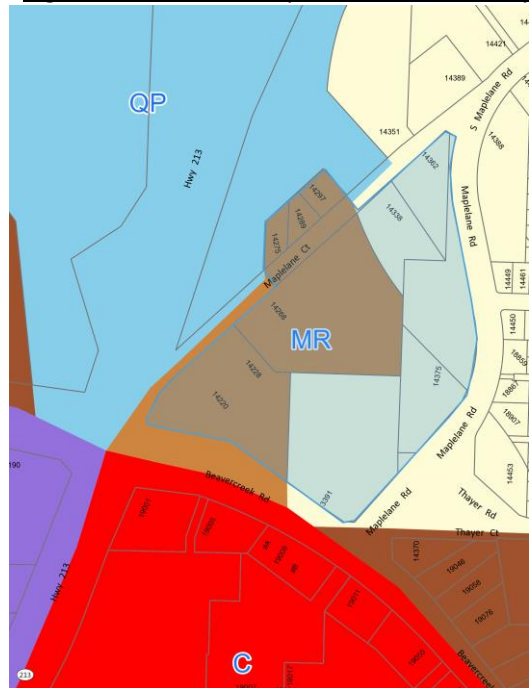


Figure 5: Current Comprehensive Plan Map



## II. ANALYSIS AND FINDINGS:

**17.68.020.A** *The proposal shall be consistent with the goals and policies of the comprehensive plan.*

### **Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources**

**Finding: Complies.** The Oregon City Municipal Code provides equal protection for all Goal 5 resources.

### Stormwater

Tom Sisul, P.E, of Sisul Engineering submitted documentation indicating that:

The City of Oregon City, being a part of the Metro Portland area, must meet the Environmental Protection Agency's (EPA) requirements for a National Pollutant Discharge Elimination System – Municipal Separate Storm Sewer System (MS4) Phase I (for populations greater than 100,000) Discharge Permit. In Oregon City's case, a permit between Oregon's Dept. of Environmental Quality (DEQ) and Clackamas County, the City of Oregon City and a number of other cities in the metro urban area of Clackamas County was last updated in 2012.

In response to the 2012 MS4 permit, the City of Oregon City updated its stormwater standards to comply with the MS4 permit, of which the Stormwater and Grading Design Standards, adopted by the City in 2015, was the result. All future improvements on the subject site must comply with the MS4 permit, as encompassed and addressed in the City's Stormwater and Grading Design Standards. While the City's Stormwater and Grading Design Standards does provide for some exceptions for very small scale development and areas within or near the floodplains, the size of the development for the subject site, based on the proposed zoning, will exceed those exceptions as the subject site is well outside any floodplain exception. Therefore, the development on the subject site must fully comply with the standards, or the building permits



will not be issued. We also note that the requirements for water quality and water quantity control are the same, per the City's stormwater standards, for all zoning designations with respect to development or redevelopment. There is some small latitude allowed in methods used for treatment and water quantity control, to account for differing site conditions and development types, but the basic standards and requirements are the same, regardless of the type of facilities used. The water quantity discharge when designed in accordance with the City's standards, as any development on the subject site will be required to do, must be designed so that the *duration of peak flow rates from post-development conditions shall be less than or equal to the duration of peak flow rates from pre-development conditions for all peak flows between 42 percent of the 2-year peak flow rate up to the 10 year peak flow rate.*

To meet the City's standard any development on the subject site will need to construct water quality / water quantity control facilities. These facilities, will be designed in accordance with the City's BMP Sizing Tool Method or the Engineered Method, or other alternative acceptable to the City. When designed in accordance with the City's standards, the water quality facilities are designed to capture and treat 80% of the average annual rainfall runoff volume with a goal of 70% removal of total suspended solids. The water quality and water quantity facilities, are sized according to impervious area created or redeveloped.

Under R-3.5 zoning the maximum coverage (roof and pavement) permitted is 55% of the parcel. For the MUC-2 zoning, the maximum lot coverage is 90%. Therefore, for possible uses under the rezoning, that would create more impervious area (roofs or pavement), as compared to land that developed as residential subdivision, the stormwater facilities sizes will be larger as well.

Therefore, all permits and standards are required to be followed for any development to occur, assuring there will be no negative impact on Newell Creek, in terms of water quality or water quantity, based on the intensity of development on the subject site.

It should be noted the lot coverage for the "R-6" Single-Family Dwelling District and "R-10" Single-Family Dwelling District are limited to a maximum of 40%.

In addition, Aleta Froman-Goodrich wrote a memorandum to provide information about the City of Oregon City's stormwater management requirements for new development and how these requirements ensure for water quality protection to the downstream waterways.

#### Natural Resources Overlay District

As identified in Chapter 17.49.010 of the Oregon City Municipal Code:

*The Natural Resource Overlay District designation provides a framework for protection of Metro Titles 3 and 13 lands, and Statewide Planning Goal 5 resources within Oregon City. The Natural Resource Overlay District (NROD) implements the Oregon City Comprehensive Plan Natural Resource Goals and Policies, as well as Federal Clean Water Act requirements for shading of streams and reduction of water temperatures, and the recommendations of the Metro ESEE Analysis. It is intended to resolve conflicts between development and conservation of habitat, stream corridors, wetlands, and floodplains identified in the city's maps.*

Oregon City is in compliance with Metro Title 3 and Title 13 according to Metro's 2017 Compliance Report. Oregon City Municipal Code Chapter 17.49 provides equal protection of resources through the use of vegetated corridors that limit development. The width of the vegetated corridor is dependent on the type of feature, drainage basin, slope, and presence of anadromous fish, and not dependent on the use of the development. The only situation in which the code distinguishes between land uses is under the maximum disturbance allowance for highly constrained lots of record in OCMC 17.49.120. In this application, the property located at 3-2E-04CD, Tax Lot 5900, may fall within this category and may be subject to less disturbance within the MUC zoning designation than a residential zoning designation.

The code allows up to 2,000 square feet of disturbance within the NROD for residential zoning designation and limits the percentage of disturbance for properties in mix use zoning designation, thus allowing less disturbance on a 1,742 square foot site in the MUC district.

The applicant submitted documentation from John McConnaughey of Environmental Technology Consultants which includes a report addressing many components of Goal 5. Overall, the report indicates:

*The proposed zone change will not have negative impacts environmental impacts on Newell Creek, for the following reasons. 1) Within the Newell Creek channel, associated wetlands and buffer area, any future development is significantly limited and regulated by Chapter 17.49 "Natural Resources Overlay District" of the Oregon City Zoning Code, as outlined and discussed in this letter. 2) Development on the remainder of the subject site, of which the zone change is proposed, must meet the water quality and quantity standards of the Oregon City Stormwater Standards as outlined in the letter by Mr. Thomas J. Sisul, P.E. dated April 16, 2018. 3) Any cut or fills within Newell Creek, or associated wetlands, must be permitted by the Oregon Dept. of State Lands and the US Corps of Engineers and must meet the regulations of other state and federal agencies through the two permitting agencies. While the proposed zone change (to mixed use corridor zoning MUC-2) will allow different uses than what is allowed under the current zoning (residential zonings R-3.5, R-6, and R-10), any future development, regardless of the zoning, must meet those protection requirements required under Chapter 17.49 and the Oregon City stormwater standards. Both of which have been put into place to specifically provide protection to Goal 5 resources, including Newell Creek, as well as those of state and federal agencies, for any permitting that may be required from such agencies.*

#### Flood Management Overlay District

As demonstrated in the attached map, the subject site is not within the 100-year floodplain nor the 1996 flood area which exceeded the 100-year floodplain in some locations.

#### Scenic, Historic Areas, or Open Spaces

No scenic, historic areas, or open spaces are identified in the project area. The City has not designated any portion of the property within a scenic area or as open space. Further as demonstrated on the property zoning reports, the site is not within a historic district nor does it contained a designated structure outside of a district.

**17.68.020.D** *Statewide planning goals shall be addressed if the comprehensive plan does not contain specific policies or provisions which control the amendment.*

#### **Statewide Planning Goal 5: Open Spaces, Scenic and Historic Area, and Natural Resources.**

*Goal 5 covers more than a dozen natural and cultural resources such as wildlife habitats and wetlands. It establishes a process for each resource to be inventoried and evaluated. If a resource or site is found to be significant, a local government has three policy choices: preserve the resource, allow proposed uses that conflict with it, or strike some sort of a balance between the resource and the uses that would conflict with it.*

**Finding:** Please refer to the analysis in Goal 5 of the Comprehensive Plan. The Oregon City Comprehensive Plan was written to mirror that of the State Goals and thus the findings are also reflective of the state goals as well.

#### **CONCLUSION AND RECOMMENDATION:**

Based on the analysis and findings as described above, Staff concludes that the proposed Zone Change and Comprehensive Plan Amendment located at Clackamas County 32E04C, Tax Lots 700, 702, 900, 1201, 1300, 1400, 1500, 1600 and Clackamas County Map 32E04CD, Tax Lots 3300, 5900, 6000, can meet the requirements as described in the Oregon City Municipal Code by complying with the

Conditions of Approval provided in this report. Therefore, the Community Development Director recommends the Planning Commission and City Commission approve ZC 15-03 and PZ 15-01 with conditions, based upon the findings and exhibits contained in this staff report.

**EXHIBITS:**

1. Applicant's Submittal
2. Vicinity Map
3. Statewide Planning Goal 5
4. Oregon City Comprehensive Plan
5. Metro ESEE Analysis
6. Metro's 2017 Compliance Report
7. Natural Resources Overlay District Compliance Letter
8. Letter from Aleta Froman-Goodrich, City Engineer
9. Property Tax Lot Reports
10. Natural Resources Overlay District Map
11. Flood Management Overlay District Map
12. Historic Districts Map
13. Willamette River Greenway Overlay District Map
14. Oregon City Municipal Code Chapter 8.08
15. Oregon City Municipal Code Chapter 13.12
16. Oregon City Municipal Code Chapter 17.40
17. Oregon City Municipal Code Chapter 17.42
18. Oregon City Municipal Code Chapter 17.47
19. Oregon City Municipal Code Chapter 17.48
20. Oregon City Municipal Code Chapter 17.49
21. 2015 Stormwater and Grading Design Standards
22. Land Use Board of Appeals Final Opinion and Order