

TO: City Council for August 1, 2016
FROM: Paul Bilotta, Community Development Director *PJB*
DATE: July 26, 2016
THROUGH: Mark W. Shepard, P.E., City Manager *MWS*
SUBJECT: Limited Public Meeting for the Kings Boulevard Extension (PLD15-3)



Action Requested:

Staff recommends the City Council adopt Remand Findings on the Kings Boulevard Extension denial decision to satisfy the City's obligations, as articulated in LUBA's remand.

Discussion:

On June 15, 2016, the Oregon Land Use Board of Appeals (LUBA) issued a Final Opinion and Order remanding the City Council's denial of the Kings Boulevard Extension application. This decision was attached to a memo included in Council's July 18, 2016 meeting materials. The remand related specifically to the third assignment of error, beginning on page 21 of the decision. The LUBA decision included the following language:

"The 2000 CDP is a final land use decision that is binding on the city. Given that prior decision, the city is obligated to give petitioner a better idea of how the city council would go about approving a road in the location shown in the 2000 CDP, either by choosing the road location from one of the alternatives proposed to the city engineer prior to the 2014 Dedication, by advising petitioner which protected natural features the city believes are most important and should be avoided, or by some other method. The city council may not simply conclude that petitioner's proposed alignment does not satisfy the applicable approval criteria, without providing better guidance to petitioner about an alignment that is both consistent with the 2000 CDP, and that would satisfy the applicable detailed development plan approval criteria."

To satisfy to the City's obligations articulated by LUBA above, Staff has drafted Findings (Attachment A) to provide the additional guidance LUBA directed. Staff note that LUBA upheld the City Council's denial decision on the first and second substantive issues raised by GPA1, LLC (appellant) in its Petition for review. No party appealed the issues resolved by LUBA and those issues are not subject to this remand proceeding. The issue before the City Council in this remand proceeding is to provide additional guidance to the appellant. Staff offers the attached findings for Council's consideration and adoption to guide appellant to the steps necessary to obtain approval. The additional guidance includes:

- Provide consistent testimony and argument.
- Utilize the priority of encroachments into natural features that is established in LDC § 4.11.50.04 (Attachment B) to demonstrate that the proposed alignment complies with CPP 13.13.32, minimizing negative impacts to natural features to the maximum extent practicable when compared to alternative alignments.
- Provide sufficient information to demonstrate how the organization of the uses on the site, including a third level water line and other backbone facilities and infrastructure, will interact with Kings Boulevard while minimizing negative impacts to natural features on the remaining undeveloped portion of Timberhill to the maximum extent practicable.

- Demonstrate that any benefit proposed to compensate for varying from the cut and fill standard, or for any requested variance, will provide protections or public benefits beyond those protections or public benefits afforded by the standard being varied.

Recommendation:

The following motion is recommended to adopt the attached Remand Findings required by LUBA's Final Opinion and Order following its review of the Council's decision denying the Kings Boulevard Extension Major Planned Development Modification and Detailed Development Plan application (PLD15-3):

MOTION: Move to adopt staff's proposed Remand Findings, attached to the July 26, 2016, memorandum from the Community Development Director to the Mayor and City Council, in response to LUBA's remand of the City Council's decision to deny the Kings Boulevard Extension Major Planned Development Modification and Detailed Development Plan Request (PLD15-3).

Budget Impact:

None.

Attachment:

- A. Recommended Remand Findings for the Kings Boulevard Extension Major Planned Development Modification and Detailed Development Plan Request (PLD15-00003) denial.
- B. LDC § 4.11.50.04 – Priority of Encroachments into Protected Natural Resource and Natural Hazard Areas

**BEFORE THE CITY COUNCIL
OF THE CITY CORVALLIS**

**REMAND FINDINGS – KINGS BOULEVARD EXTENSION MAJOR PLANNED DEVELOPMENT
MODIFICATION AND DETAILED DEVELOPMENT PLAN**

In the matter of a remand of the City Council denial of a Major Planned Development Modification and Detailed Development Plan Application)))	PLD15-00003 (LUBA No. 2016-013)
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PREAMBLE

This matter comes before the Corvallis City Council following an appeal of the Council’s denial of an application for a Major Planned Development Modification and Detailed Development Plan appealed to the Land Use Board of Appeals (“LUBA”). Pursuant to LUBA’s Final Opinion and Order (LUBA No. 2016-013) dated June 15, 2016, this matter is remanded to the Council for the adoption of findings adequate to inform GPA1, LLC (“appellant”) of the steps necessary to obtain approval. No party appealed LUBA’s Final Opinion and Order. Accordingly, all issues affirmed by LUBA are beyond review in this remand proceeding. This proceeding is limited to the sole issue of providing additional guidance as LUBA directed.

LUBA’s Decision

Appellant raised several issues in its Petition before LUBA. Those issues were organized into three assignments of error. LUBA affirmed the City Council on the two substantive issues appellant assigned as error. The issues, and corresponding subparts, are final and not subject to review. LUBA remanded the issue raised in the third assignment of error. Each of the three assignments of error, with its corresponding LUBA decision, is summarized below.

Assignment of Error 1.

LUBA summarized the central issue in this assignment of error as “the effect of the 2014 Dedication on the location of Kings Boulevard through the property.” Slip Opinion at 7. This assignment of error has seven (7) subparts. Each is summarized below. In affirming the Council’s decision, LUBA rejected each subpart.

1. In this subpart, LUBA affirmed the City Council’s denial decision when it agreed with the City that appellant had failed to establish that the City is precluded from requiring review of Kings Boulevard for compliance with applicable standards and criteria in the LDC, merely because the City

accepted the 2014 Dedication.

2. In this subpart, LUBA affirmed the City Council's denial decision when it rejected the appellant's argument that the City had no authority to review the application, because it failed to join the application. LUBA held that "the City is not the 'owner' for purposes of LDC 2.5.40.01 and 2.5.50.01 and was not required to join in or file the application." Slip Opinion at 11.

3. In this subpart, LUBA affirmed the City Council's denial decision when it rejected appellant's argument that LDC 2.5.10 does not apply to its proposal to more specifically locate Kings Boulevard, in accordance with a previously approved conceptual development plan. Slip Opinion at 12.

4. In this subpart, LUBA affirmed the City Council's denial decision when it rejected the appellant's argument that the City's acceptance of the 2014 Dedication makes the location of the right-of-way, as depicted in the 2014 Dedication, a "standard[]" within the meaning of ORS 227.178(3)(a)." Slip Opinion at 14.

5. In this subpart, LUBA affirmed the City Council's denial decision when it rejected the appellant's argument that the City's decision determines the "final engineering design" of a transportation facility, and is therefore not a land use decision subject to LUBA's jurisdiction. Slip Opinion at 16.

6. In this subpart, LUBA affirmed the City Council's decision when it rejected appellant's argument that the City's denial of appellant's application for a permit was a moratorium.

7. In this subpart, LUBA affirmed the City Council's decision when it rejected appellant's argument that the City erred in applying various comprehensive plan policies in considering appellant's application. Slip Opinion at 17.

Assignment of Error 2.

In this assignment of error, LUBA affirmed the City Council's denial decision when it rejected appellant's argument that the King's Boulevard extension was a "needed housing" application subject to clear and objective criteria, because it would one day serve residential development or other roads serving residential development. Slip Opinion at 20.

Assignment of Error 3.

In this assignment of error, LUBA rejected appellant's argument that the City Council "does not have discretion to deny the proposed alignment of King's Boulevard in a location that complies with the CTP, the NCAP and the 2000 CDP." Slip Opinion at 25. LUBA did, however, find the City's adopted Formal Findings insufficient to guide appellant to the steps necessary to obtain Council approval, and thus, LUBA remanded the case.

LUBA's Direction on Remand

In remanding this case to the City, LUBA, citing Oregon Court of Appeals (and its own) precedent, stated that “when a local government denies a permit application, a local government’s findings must be sufficient to inform the applicant either what steps are necessary to obtain approval or that it is unlikely that the application will be approved.” Slip Opinion at 21. LUBA noted it reviewed the City’s Findings and determined that they were not “adequate to inform petitioner what is required to obtain approval of the road that has already been given conceptual approval in the CTP, the NACP, and the 2000 CDP.” Slip Opinion at 23.

LUBA's Guidance:

LUBA said the “city is obligated to give petitioner a better idea of how the city council would go about approving a road in the location shown in the 2000 CDP, either by choosing the road location from one of the alternatives proposed to the city engineer prior to the 2014 Dedication, by advising petitioner which protected natural features the city believes are most important and should be avoided, or by some other method. The city council may not simply conclude that petitioner’s proposed alignment does not satisfy the applicable approval criteria, without providing better guidance to petitioner about an alignment that is both consistent with the 2000 CDP, and that would satisfy the applicable detailed development plan approval criteria.” Slip Opinion at 24.

Council's Remand Findings.

The City Council has considered the three options expressed by LUBA in its order. Because the primary factor leading to the Council’s denial was the application’s lack of information sufficient to allow the Council to fully evaluate the proposed alignment and detailed development plan for King’s Boulevard, the Council is unable to choose from among alternative alignments the applicant proposed to the City Engineer prior to 2014. The findings below do not attempt to replace or supplement the Incorporated and Supplemental Findings previously adopted by the Council that demonstrate that the application did not comply with applicable criteria. Rather, as directed by LUBA, these findings are directed to the primary reasons the Council denied the application and are offered to provide guidance to, and steps for, obtaining approval.

A. Detailed Development Plan for the whole site

Although the applicant is not required to do so, to ensure that sufficient information is provided to the Council, it could choose to file a complete Conceptual and Detailed Development Plan application along with sufficient information to demonstrate compliance with all the applicable criteria, including a demonstration of how the King’s Boulevard Extension would interact with all the backbone facilities and residential development on and over the undeveloped portion of the site. Alternatively, the appellant could take the steps identified in Section B. The Conceptual and Detailed Development plan could include a phasing plan that allows for securing the construction of King’s Boulevard through the site, but limits construction to occur consistent with phases of development.

B. Review of Supplemental Findings

1. In Denial Finding A., the Council noted that appellant provided testimony through several agents which “was, at times, inconsistent with or contrary to that of other agents. The Council notes that the Applicant did not communicate to the Council which agent's testimony, evidence or arguments should be preferred or relied upon. Consequently, the Council notes that where inconsistent or contrary evidence, testimony or argument was provided by the Applicant’s agents, the weight the Council gave the evidence, testimony or argument was affected, and the City Council found the evidence, testimony or argument less persuasive.”

- Accordingly, the Council finds that the first step necessary for appellant to obtain an approval is to provide consistent testimony and argument.

2. In Denial Finding A. III. 5, the Council identified the Comprehensive Plan Policy (“CPP”) 13.13.32 requirement that “careful consideration shall be given to natural features such as floodplains, riparian areas, and wetlands, minimizing negative impacts to these features to the greatest extent practicable, while continuing to address the facility needs of the area.” Due to the lack of substantial evidence in the record, the Council was not persuaded that the Application demonstrated that the alignment minimized negative impacts to natural features to the greatest extent practicable.

- Accordingly, the Council finds that the next step necessary for appellant to obtain an approval is to make an adequate demonstration of compliance with CPP 13.13.32. The Council acknowledges that there may be more than one way to make an adequate demonstration sufficient to allow the Council to conclude that a proposal complies with CPP 13.13.32. In an effort to provide guidance, the Council notes that the introduction of a natural features inventory for the site, along with an evaluation of the preferred alignment compared to the alternative (or other) alignments, with an evaluation of the negative impacts on natural features in light of the LDC 4.11.50.04 priority of encroachments into protected natural features, could provide an adequate basis for the Council to consider and find that the application satisfies the CPP 13.13.32 criterion.

3. In Denial Finding A. V., the Council concluded that LDC § 2.5.40.04.a.2 - Basic Site Design (the organization of Uses on a site and the Uses’ relationships to neighboring properties) was not met. The Council noted the intrinsic relationship of the various Compatibility Review Criteria in LDC § 2.5.40.04. Because the basic site design of the proposed detailed development plan relied upon a variance to cut and fill standards and the placement of certain public utility facilities in or on the site, which will be necessary to connect to the proposed arterial within significant natural features and riparian areas, the Council found it had insufficient information about how the balance between the cut and fill and the placement of facilities in this design (or an alternate design) provided greater protection for natural features, either within the road alignment or in the necessary connections (as future development occurs in neighboring properties) to the proposed arterial. Accordingly, the Council was not persuaded by the evidence in the record that this organization of uses within the site will also be compatible with the protection of natural features on neighboring properties, however they might develop.

- Accordingly, the Council finds that the next step necessary for appellant to obtain an approval requires providing sufficient information to demonstrate how the organization of the uses on the site will interact with King’s Boulevard. Included should be information that demonstrates where 29th Street, other collectors, and local streets, water, sewer, storm water and all other backbone facilities and infrastructure will intersect with King’s Boulevard, including location or extensions in, over or through protected natural features areas on the site. This information should include an analysis that shows that the arterial alignment and the backbone infrastructure will minimize negative impacts to natural features on the remaining undeveloped portion of the Timberhill Planned Development to the greatest extent practicable, while not creating unbuildable lots.

4. In Denial Finding A. VII, the Council concluded that there was insufficient evidence submitted with the application to evaluate how the proposed alignment and design of NW Kings Boulevard would ultimately interact with and affect future transportation facilities throughout the site. The Council concluded that the “ripple effects” emanating from the establishment of the proposed alignment were not addressed by the information in the record.

- Accordingly, the Council finds that the next step necessary for appellant to obtain an approval requires providing sufficient information concerning grading, location, and associated anticipated impacts to natural features outside of the identified road improvement area, based on the need to connect, and location for connecting, to infrastructure networks and developable areas on the larger site, in light of the LDC 4.11.50.04 priority of encroachments.

5. In Denial Finding A. VIII, the Council noted that the City’s Water Distribution System Facility Plan shows a third-level transmission main through the site that connects the third-level water line that is adjacent to the City’s North Hills Second Level Reservoir, to the Timberhill Third Level Reservoir. Council noted that the location of this transmission main should be within the alignment of future streets between the existing 20-inch line stubbed at the end of NW 29th Street, adjacent to NW Bunting Drive, and the 16-inch third level line adjacent to the North Hills Second Level Reservoir. The new transmission main will extend along the alignment of NW 29th Street to NW Kings Boulevard, continue south along the NW Kings Boulevard alignment, and then it will extend to the east within future local street alignments and tie into the existing 16-inch, third-level water line located adjacent to the North Hills Second Level Reservoir. This utility infrastructure is required to extend to and through the site. The Council found that there was insufficient evidence submitted with the application to evaluate how these extensions will occur.

- Accordingly, the Council finds that the next step necessary for appellant to obtain an approval requires providing sufficient information demonstrating this utility’s location in the proposed alignment, and how this utility infrastructure will extend to and through the site. The appellant could make this demonstration in a single detailed development plan, or in combination with a conditional development plan and detailed development plans showing phased development.

6. In Denial Finding A. IX, the Council considered LDC § 2.5.40.04.a.14 - Preservation and/or Protection of Significant Natural Features, consistent with Chapter 2.11 - Floodplain Development Permit, Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions. Streets shall also be designed along contours, and structures shall be designed to fit the topography of the site to ensure compliance with these Code standards. The Council found that, because of the narrow scope of the application, viewed from the perspective of the Compatibility factors, there was insufficient information to persuade the Council that these natural resources are being protected to the greatest extent practical.

- Accordingly, the Council finds that the next step necessary for appellant to obtain an approval requires providing sufficient information for the Council to conclude that natural features affected by the proposal are being protected to the greatest extent practical. The Council finds that the submission of a natural features inventory for the site, considered with an evaluation of how the preferred alignment (along with its connecting backbone infrastructure) would, in light of the LDC 4.11.50.04 priority of encroachments into protected natural features, protect natural resources to the greatest extent practical.

7. In Denial Finding A. X, the Council found the proposal to be seeking a variance from LDC § 4.14.70.04, Grading Regulations. The Council found that the cut and fill standards established by LDC § 4.14.70.04 are intended to limit impacts to natural features caused by excessive disturbance of topography, and that the appellant's proposal failed to demonstrate a sufficient offsetting benefit related to the requested variance beyond what is otherwise required with the construction of an arterial roadway. The Council concluded that the requested variation does not provide protections equal to or better than the specific standard requested for variation. Similarly, in Finding A. IV, 8, the Council rejected the proposed variance to cut and fill requirements, because the Council was "not convinced that providing any particular development can be a compensating benefit for a variance sought to allow that development."

- Accordingly, the Council finds that the next step necessary for appellant to obtain an approval requires the appellant to demonstrate that any benefit proposed to compensate for varying from the cut and fill standard, or for any requested variance, provide protections beyond those protections afforded by the grading regulation. The Council notes that there may be a near infinite number of proposals that could establish a compensating benefit for a requested variance. The appellant could make this demonstration by showing, for example, that the cut and fill disturbance and related impacts for its preferred alignment provides greater pedestrian, bicycle or vehicular safety, as well as a reduction in negative impacts to natural resources beyond what is required by municipal code. Similarly, the appellant could make this demonstration by showing that other significant natural features on the site are afforded more protection by this proposal than if the application met the standard, or the appellant could demonstrate some other public benefit that compensates for this or any other requested variance. Alternatively, the appellant

could demonstrate that its proposal provides greater natural features protection, in the aggregate (or in limiting encroachment into higher valued natural features) when viewed in light of LDC 4.11.50.04 encroachment priority.

SUMMARY AND CONCLUSION

As the body charged with review of this case on remand, the City Council, having reviewed the record associated with this proposed Major Planned Development Modification and proposed Detailed Development application, and having considered LUBA’s Final Opinion and Order, for the reasons expressed in these findings, affirms the Council’s denial of the proposed Kings Boulevard Extension Major Planned Development Modification and the proposed Detailed Development Plan application (case PLD15-00003) and provides these additional findings to guide appellant to the steps necessary to obtain approval.

Dated: _____

Biff Traber, Mayor

4.11.50.04 – Priority of Encroachments into Protected Natural Resource and Natural Hazard Areas

- a. Encroachments shall be allowed only to the minimum extent necessary to achieve the MADA.
- b. All unconstrained lands shall be used before encroachments can occur, with the exception of areas described in Section 4.11.50.01.b.
- c. Order of Encroachments - Encroachments shall occur sequentially into the areas of protected Natural Resources and Protected Natural Hazards based upon the priorities presented below, with encroachments into areas identified in Section 4.11.50.04.c.1 first, and Section 4.11.50.04.c.2.I last. Encroachments into areas described in each subsection shall also occur in the order presented, starting from the top of each list.
 1. **Access Encroachments** - Encroachments are allowed to provide access to areas that do not contain Natural Resources and Natural Hazards as defined in Chapter 2.11 - Floodplain Development Permit, Chapter 4.5 - Floodplain Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions, where such areas cannot be accessed and/or served with public utilities without encroaching into or crossing over the protected Natural Resources and Natural Hazards. Such access encroachments shall meet the following standards:
 - a) The access encroachment area shall be less than 25 percent of the non-constrained area being accessed via the access encroachment, unless "b," below applies;
 - b) The access encroachment area for an access driveway/roadway may be increased to 35 percent of the non-constrained area being accessed, if necessary to meet the maximum slope standards listed in Chapter 4.14 - Landslide Hazard and Hillside Development Provisions;
 - c) Access roadways/driveways shall provide shared access to the lots/parcels being developed; and
 - d) The access roadway serving four or more residential lots/parcels, six or more dwelling units, and/or any nonresidential sites shall use the minimum allowed street width with sidewalks on both sides, no landscape strips, and no on-street parking.
 2. **Development Encroachments** -
 - a) Partially Protected Significant Vegetation, in addition to that already allowed in Chapter 4.12 - Significant Vegetation Protection Provisions;
 - b) Highly Protected Significant Vegetation;
 - c) Highly Protected 100-yr. Floodway Fringe areas. However, all such development shall comply with Section 4.5.100 - Standards in Partial Protection Floodway Fringe Areas. See Sections 4.5.20.03, 4.5.90.05, and 4.5.100.03;
 - d) Proximate Wetlands - Jurisdictional Wetlands associated with Riparian Corridors, including Wetlands not determined to be Locally Significant;
 - e) Protected Locally Significant Wetlands;
 - f) Protected Locally Significant Wetlands of Special Concern;

- g) Riparian Corridors of the Marys River and the Willamette River;**
 - h) Riparian Corridors of local Streams with a corridor width of 100 ft. from Top-of-bank on each side of the stream, as shown on the Riparian Corridors and Wetlands Map;**
 - i) Riparian Corridors of local Streams with a corridor width of 75 ft. from Top-of-bank on each side of the stream, as shown on the Riparian Corridors and Wetlands Map;**
 - j) Riparian Corridors of local Streams with a corridor width of 50 ft. from Top-of-bank on each side of the stream, as shown on the Riparian Corridors and Wetlands Map;**
 - k) The 25-ft. setback/buffer within Partially Protected Riparian Corridors shown on the Riparian Corridors and Wetlands Map, but not in a manner that conflicts with Section 4.11.50.05.c; and then**
 - l) Areas with existing landslides, consistent with the development standards contained in Chapter 4.14 - Landslide Hazard and Hillside Development Provisions.**
- 3. Allowance under these provisions for development to encroach into otherwise protected Natural Resources and Natural Hazards does not remove the necessity that development shall comply with all other standards of this Code.**