April 1, 2016

Eugene City Council
125 E. 8th Avenue, 2nd Floor
Eugene, OR 97401

Re: South Willamette Special Area Zone (SW-SAZ)
Multi-Modal Mixed-Use Area
City File: CA 15-1, MA 15-2, RA 15-1, Z 15-4
Our Client: Brian Wanty
Our File No. 12393

Dear Councilors:

On behalf of our client, Brian Wanty, we provide the following comments in opposition to the proposed South Willamette Special Area Zone (SW-SAZ). Please include these comments in the record of these proceedings and include our firm on the list of interested parties receiving notice of future actions associated with these files.

City planning has proposed that the City adopt a Multi-Modal Mixed-Use Area (MMA) for the area located within the Special Area Zone Boundary. The purpose of this designation is to allow increased density in Special Area Zone but without improving the transportation infrastructure necessary to meet the increase in traffic demands.

However, the Special Area Zone is not a Multi-Modal Mixed Use Area, and cannot be approved consistently with the Statewide Planning Goal 12 and the Oregon Transportation Planning Rule.

A. The Transportation Planning Rule and Multi-Modal Mixed-Use Areas.

Goal 12 (Transportation) requires the City engage in transportation planning:

“To provide and encourage a safe, convenient and economic transportation system.”

In order to implement this Goal, the State of Oregon has adopted its Transportation Planning Rule at OAR 660-012-0000 et seq.

This rule, in turn, requires that the City adopt a Transportation System Plan as a component of the comprehensive plan to “establish a system of transportation facilities and services adequate to meet identified transportation needs.” OAR 660-012-0015(3)(a). Within the City’s UGB, the determination of need is based on
"population and employment forecasts and distributions that are consistent with the acknowledged comprehensive plan." OAR 660-012-0030(3)(a). These same state regulations require that the City evaluate and select a transportation system that will meet these identified needs, and to put in place a financing program to supply needed transportation facilities and major improvements. OAR 660-012-0035 & 660-012-0040.

LCDC adopted OAR 660-012-0060 in order to ensure that comprehensive plan amendments or zone changes adopted after the approval of the Transportation System Plan are either consistent with it, or do not adversely affect the transportation facilities therein. This rule states that whenever an amendment to an “acknowledged comprehensive plan, or a land use regulation (including a zoning map)” significantly affects a transportation facility, the City is required to take measures to “ensure that allowed land uses are consistent with the identified function, capacity and performance standards of the facility.” OAR 660-012-0060(2).

In 2011, a Joint Subcommittee of LCDC and the Oregon Transportation Commission proposed a limited exemption to OAR 660-012-0060 for urban centers. The subcommittee sought to encourage development in “central locations” rather than on the “urban fringe” as a way to reduce trip lengths and increase options for walking, biking and transit. Joint-Subcommittee of LCDC & OTC – Recommendation on TPR 0060 & OHP, April 13, 2011, p. 4. However, the Subcommittee was quick to point out that it was critical to clearly define “the specific areas or types of areas to exempt” and to ensure that any upzoning actually "supports the transportation benefits." Id. at 4-5.

The resulting Multi-Modal Mixed Use Area (MMA) sets out specific requirements for “areas or types of areas to exempt” and incorporates specific requirements to support the upzoning. Unfortunately, the proposed MMA does not conform these specific requirements.

B. The Special Area Zone Contains Low-Density Residential Property that Is Unsuitable for an MMA.

The proposed Special Area Zone incorporates low-density, land-intensive residential development that is unsuitable for an MMA.

A Multimodal Mixed-Use Area as defined by state law is an area “which includes or is planned to include the following characteristics:

(A) A concentration of a variety of land uses in a well defined area, including the following:
(i) Medium to high density residential development (12 or more units per acre);” (Emphasis added)

However, more than half of the property in the Special Area Zone may be developed at residential densities of 12 or fewer units per acre. Low-Density Residential property classified as Single Family Options or SFO has no minimum net density, and Low
Density Residential Properties with the Row House Allowed Overlay may be developed at densities as low as 4 units per acre. Even the Mixed Use (MU) zone, which is also relied upon to provide the offices, retail stores, restaurants, etc., allows multi-family residential development with “no minimum...residential density.” EC 9.3858(3). This kind of traditional land-intensive residential development is not appropriate for an MMA. Since the proposed zoning within the Special Area Zone does not meet the minimum residential densities specified by state law, these low-density residential areas cannot be included in the MMA boundary.

C. The Special Area Zone Contains No Core Commercial Area

As the MMA concept is based on an urban center model, one of the requirements of an MMA is “[a] core commercial area where multi-story buildings are permitted.” OAR 660-012-0060(8)(b)(C). However, the Special Area Zone incorporates no commercial area at all. In fact, in place of the existing commercial zoning, the Special Area Zone proposes to incorporate a Mixed-Use Zone.

The City’s Mixed-Use Zone permits a variety of different uses, and critically, permits multi-family residential uses in both of its subdistricts. These would permit the development of apartments, retirement center apartments, and condominiums, throughout the MU area, and including the area at 29th and Willamette where a seven-story high-rise would be permitted. EC 9.3840(3). Under the proposed zoning, this area could be developed with another Ya-Po-Ah Terrace or Patterson Towers. As such, the Special Area Zone lacks a “core commercial area” and is not properly an MMA.

D. The Special Area Zone Does Not Require New Development Within the MMA to Conform to the Characteristics.

To qualify as an MMA, the Special Area Zone must “require new development to be consistent with the characteristics [of a pedestrian-friendly center or neighborhood] listed in paragraphs (8)(b)(D) through (H).” OAR 660-012-0060(10)(b)(C). These design standards include building entrances oriented to the street, street connections and crossings, and transit stops, and, critically, the requirement for:

“A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking.” (Emphasis added).

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1 In fact, the seven and eight-story high-rises permitted across the street would be located in an area that would be limited to multi-family development, and could not be “commercial” high-rises.
Unfortunately, the street design characteristics proposed under section 9.3850 do not comply with these requirements, nor do they ensure that new development will conform to these characteristics.

1. The street designs do not provide the design characteristics required for an MMA.

The City street design standards at section 9.3850(3)(b) consist of “location-specific” design standards at (3)(b)(1)-(2) and design standards for streets by type in section (3). Streets are required to be constructed to provide the “required design elements” set out in a series of conceptual drawings identified as figures 9.3850(3)(a) through (j). Each of these design standards are required to provide “wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking” to conform to the design characteristics of an MMA.

However, the conceptual drawings reflect that the Special Area Zone does not incorporate the required characteristics for an MMA. For example:

a. Figure 9.3850(3)(a) lacks on-street parking, and pedestrian-scale lighting.

b. Figure 9.3850(3)(c) lacks wide sidewalks or on-street parking.

c. Figure 9.3850(3)(d) lacks on-street parking.

d. Figure 9.3850(3)(g) lacks pedestrian-scale lighting.

e. Figure 9.3850(3)(h) lacks wide sidewalks.

f. Figure 9.3850(3)(i) lacks pedestrian-scale lighting.

As the Special Area Zone does not provide a network of streets meeting minimum design characteristics for an MMA, it cannot be approved as an MMA.

2. The proposed street design standards would not be applicable to new development.

The Special Area Zone also fails to require that new development be consistent with the characteristics required for an MMA.

The street design standards are only applicable to “development or redevelopment activity that results in reconstruction of 30 percent or more of the abutting sidewalk or curb.” EC 9.3850(3)(a)(2). This would exclude development that relies on existing curb cuts or driveway aprons, or which otherwise limits its impacts to curbs or sidewalks. It would also tend to exclude properties that lack curbs and sidewalks as there would be nothing to “reconstruct.”
It is currently unclear how this 30 percent limitation would be measured or applied. Would a linear measurement be made along the frontage of an entire property, or along a development site, or would it be a comparison of impacted or unimpacted square footage? Would existing curb cuts or driveway aprons be included or excluded from the analysis? Would impacts to curbs and sidewalks be evaluated separately? For corner lots, would the impact be measured independently along each street, or be aggregated based on all impacted streets? Would large lots with larger frontage, be less likely to supply improvements, than small lots or lots with limited curbs and sidewalks? What if the development accesses a street via an easement and does not abut the curbs or sidewalks that it impacts? This standard is intended to be applied to needed housing within the City. The lack of a clear and objective procedure and definitions results in a development restriction that cannot be applied consistently with ORS 197.307(4).

In any case, new development that falls below the 30 percent limitation will not be subject to the street design standards in the Special Area Zone. Accordingly, an MMA is not appropriate.

3. The planned improvements are not consistent with planned rights-of-way.

The conceptual design standards set out at figures 9.3850(f) through (j), also result in improvements that will not fit within planned rights-of-way.

Eugene Code section 9.6870 provides that:

“When a street segment right-of-way width is not designated on the Street Right-of-Way map, the required street width shall be the minimum width shown for its type in Table 9.6870 Right-of-Way and Paving Widths.” (Emphasis added).

The local streets within the Special Area Zone are not designated on the “Street Right-of-Way map.” Accordingly, the rights of way for the local streets would be determined by the minimum right-of-way width set out in Table 9.6870.

Table 9.6870 sets out a minimum right-of-way width of 45 feet for low volume residential streets, and a minimum right-of-way width of 50 feet for medium volume residential streets. However, the planned improvements would consume more of these rights-of-way than the travel lanes. For example:

a. 25th Avenue and other Type F local streets are planned to have a total of 38 feet of curb extensions, planters, sidewalks and parking areas. For a 50-foot right-of-way, that would leave a total of 12 feet of the right-of-way for two-way travel.

b. Oak Street and other Type H local streets are planned to have a total of 40 feet of curb extensions, planters, sidewalks and on-street parking areas.
Again, using a 50-foot right-of-way, that would be just 10 feet of right-of-way for the travel lanes.

c. Type I local streets like Ferry Street and Mill Street are planned to have a total of 34 feet of bulb outs, on-street parking and sidewalks. Using a 45-foot right-of-way for these low-volume streets, that would be just 12 feet of right-of-way for the travel lanes.

These planned rights-of-way may be adequate to accommodate one travel lane, but would not accommodate two. As the planned improvements would not accommodate two-way travel within the planned right-of-way, the Special Area Zone should be denied.

4. The Special Area Zone would allow drive-through uses that are not permitted in an MMA.

OAR 660-012-0060(8)(H) specifically requires that MMA’s “[l]imit or do not allow low-intensity or land extensive uses, such as...drive through services.” As is set forth above, the proposed Special Area Zone allows extensive low-density residential development in violation of the density requirements for an MMA. It also expressly allows “drive through facilities” as an outright permitted use. EC 9.3840(9). While it bars drive-through lanes between buildings and the street and imposes limits on menu boards and speakers, these restrictions do not impose a meaningful limit on the use of property for drive-through services. Again, the proposed Special Area Zone is not consistent with the requirements of an MMA.

E. MMA Designation is Optional and Inadvisable

In evaluating this proposal, it is important for the Council to question whether an MMA designation is even appropriate for the new Special Area Zone.

As set forth above, the Special Area Zone cannot be approved as an MMA, but even if the area conformed to the requirements, there is a policy question for the Council to answer: Will the City plan to meet the transportation needs of the people that live in Special Area Zone, or will the City abandon its performance standards and leave this area to unmitigated congestion and gridlock?

A 2011 AAA Report “Crashes vs. Congestion: What’s the Cost to Society?” found that the cost of congestion in the Eugene-Springfield area at that time was Thirty-Nine Million Dollars ($39,000,000). The Council would only exacerbate this cost were it to increase congestion within the Special Area Zone and not require new development to offset its traffic impacts. We submit that the cost in economic impacts and in the quality of life for area residents, is simply too high.
Conclusion

The proposed Special Area Zone is not a Multi-Modal Mixed Use Area. Contrary to the state Transportation Planning Rule, it incorporates substantial amounts of low-density residential development and lacks a core commercial area to support the designation. In addition, its proposed street standards would not meet minimum requirements in the state regulation, would not apply to new development, and are not consistent with unamended portions of the Eugene Code.

As the Special Area Zone is not suitable for this special exception, the City should undertake the transportation planning required by Statewide Planning Goal 12 and the Transportation Planning Rule. The Special Area Zone cannot be approved without ensuring that transportation needs of existing and future residents are satisfied.

Very truly yours,

HUTCHINSON COX

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ZPM/gcc
c: Client