

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

THOMAS HANNAH, HELEN MARTZ )  
and DIANE DMOCHOWSKY, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
CITY OF EUGENE, )  
 )  
Respondent. )

LUBA No. 97-211  
  
FINAL OPINION  
AND ORDER

Appeal from City of Eugene.

Anne C. Davies, Eugene, filed the petition for review and argued on behalf of petitioners.

Glenn Klein and Emily N. Jerome, Eugene, filed the response brief and argued on behalf of respondent. With them on the brief was Harrang Long Gary Rudnick P.C.

GUSTAFSON, Board Chair; HANNA, Board Member, participated in the decision.

AFFIRMED 08/05/98

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city decision granting tentative  
4 subdivision approval.

5 **FACTS**

6 The proposed subdivision is located within a neighborhood  
7 that is bounded by Harlow Road to the south and Willakenzie  
8 Road to the north. Harlow Road is an east-west minor  
9 arterial. Willakenzie Road is an east-west local road.  
10 Arcadia Drive is an existing north-south, dead-end local road  
11 that extends north from Harlow Road and ends at the southern  
12 boundary of the subject property. Petitioners are neighbors  
13 located along Arcadia Drive. The central dispute in this  
14 appeal is whether Arcadia Drive should be extended north  
15 through the neighborhood to connect with Willakenzie Road.  
16 Petitioners object to extending Arcadia Drive to provide a  
17 north-south connection, based on concerns that traffic will  
18 increase on Arcadia Drive.<sup>1</sup>

19 The proposed subdivision includes 49 lots on 14.7 acres.  
20 The subdivision was originally approved by the city planning  
21 director. On appeal, the city hearings official affirmed the  
22 planning director's decision. As approved, Arcadia Drive

---

<sup>1</sup>At the point where the proposed extension of Arcadia Drive would connect with Willakenzie Road, Willakenzie Road is a local street. However, a short distance west, Willakenzie becomes a collector. According to the Willakenzie Area Plan (WAP) description of "Functional Classifications," local streets "typically carry fewer than 500 vehicles per day." WAP 83. Collectors "may carry more than 10,000 vehicles per day." Id. Minor arterials "usually carry between 1,500 and 5,000." Id.

1 would extend north through the proposed subdivision to a "T"  
2 intersection with King Edwards Court, an existing east-west  
3 local street that will be extended east through the proposed  
4 subdivision. Approximately 150 feet east of the proposed "T"  
5 intersection King Edwards Court would turn sharply north and  
6 become Kingston Way. Kingston Way would continue north  
7 through a previously approved subdivision and connect with  
8 Willakenzie Road.

9 **PRELIMINARY ISSUE**

10 At oral argument petitioners challenged the city's  
11 argument in its brief that the findings supporting the city's  
12 decision in this matter include: (1) the hearings official's  
13 decision; (2) a planning staff memorandum to the hearings  
14 official; and (3) the findings adopted by the city planning  
15 director. Record 5-12, 14-21, 144-58. Petitioners contend  
16 the city hearings official did not adopt the staff memorandum  
17 or planning director's decision as findings.

18 The hearings official specifically incorporated the other  
19 documents into his decision:

20 "\* \* \* In addition to the particular points  
21 specifically addressed below, the memorandum of the  
22 Planning and Development Department of September 10,  
23 1997 and the Planning Director Findings of July 31,  
24 1997 are incorporated in these findings by  
25 reference." Record 8.

26 The practice of incorporating other decisions or  
27 documents as findings can present problems, and local  
28 governments that do so run the risk of adopting inconsistent  
29 findings. Wilson Park Neigh. Assoc. v. City of Portland, 24

1 Or LUBA 98, 106 (1992); Gonzalez v. Lane County, 24 Or LUBA  
2 251, 259 (1992). In Gonzalez, we described some of the  
3 difficulties local governments face in effectively  
4 incorporating other documents or portions of other documents  
5 as findings.<sup>2</sup> However, in this case, there is no question  
6 that the hearings official incorporated the other two  
7 documents as findings.

8 **SECOND ASSIGNMENT OF ERROR**

9 The criteria governing tentative subdivision plan  
10 approval are set forth at Eugene Code (EC) 9.035(4).<sup>3</sup> Among

---

<sup>2</sup>The standard established in Gonzalez for determining whether a local government decision incorporates another document by reference as findings is as follows:

"[The decision] must clearly (1) indicate its intent to do so, and (2) identify the document or portions of the document so incorporated. A local government decision will satisfy these requirements if a reasonable person reading the decision would realize that another document is incorporated into the findings and, based on the decision itself, would be able both to identify and to request the opportunity to review the specific document thus incorporated." Gonzalez v. Lane County, 24 Or LUBA at 259.

<sup>3</sup>As relevant to this appeal, EC 9.035(4) requires:

"(a) The proposed subdivision will comply with all applicable platting standards.

"\* \* \* \* \*

"(c) The proposed subdivision will be consistent with applicable adopted plans.

"(d) The proposal will not cause unreasonable street congestion, risk of fire, flood, geological hazards, pollution, or similar dangers, hamper adequate provision for transportation, water supply, sewage disposal, drainage, education, recreation, and other public services and facilities, or result in inadequate light and air or overcrowding of land.

"(e) Streets and roads are laid out so as to provide for the extension of public streets to adjoining undeveloped properties and provide for eventual connection with the

1 the "platting standards" made applicable to the challenged  
2 decision by 9.035(4)(a) and (e) are the "Street Connectivity  
3 Standards for Local Residential Streets" set out at EC  
4 9.045(4). The street connectivity standard at issue here is  
5 EC 9.045(4)(b)(2), which provides as follows:

6 "A public street connection shall be provided to any  
7 existing or approved public street or right-of-way  
8 stub abutting the development, unless it is  
9 demonstrated that a connection cannot be made  
10 because of the existence of one or more of the  
11 following conditions:

12 "a. Physical conditions that preclude development  
13 of a public street. Such conditions may  
14 include, but are not limited to, topography or  
15 the existence of natural resource areas such as  
16 wetlands, ponds, streams, channels, rivers,  
17 lakes or upland wildlife habitat area, or a  
18 resource on the National Wetland Inventory or  
19 under protection by state or federal law; or

20 "b. Buildings or other existing development on  
21 adjacent lands, including previously subdivided  
22 but vacant lots or parcels, physically preclude  
23 a connection now or in the future, considering  
24 the potential for redevelopment."

25 There is no dispute that Arcadia Drive is an "existing  
26 \* \* \* public street or right-of-way stub abutting the  
27 [proposed] development." Therefore EC 9.045(4)(b)(2) requires

---

existing public street system as specifically required by  
the street connectivity standards of section 9.045. \* \* \*

"(f) The proposed subdivision is laid out to provide safe,  
convenient, and direct bicycle and pedestrian access to  
and from nearby and adjacent residential areas, transit  
stops, neighborhood activity centers, commercial areas,  
and industrial areas, and to provide safe, convenient and  
direct transit circulation. At a minimum, 'nearby' is  
interpreted to mean uses within 1/4 mile which can  
reasonably be expected to be used by pedestrians, and  
uses within one to two miles which can be reasonably be  
expected to be used by bicyclists.

"\* \* \* \* \*"

1 that it be connected with Willakenzie Road, unless one of the  
2 two exceptions stated in EC 9.045(4)(b)(2) applies. The city  
3 found that neither exception applies:

4       "\* \* \* The exceptions provided in [EC  
5 9.045(4)(b)(2)] are not applicable. There are no  
6 physical conditions or existing development[s] that  
7 prevent the connection." Record 7-8.

8       Petitioners appear to argue the city should have adopted  
9 more extensive findings concerning physical conditions and  
10 development to explain why it found that the above exceptions  
11 do not apply. In performing this interpretation, petitioners  
12 contend the city should interpret EC 9.045(4)(b)(2)  
13 consistently with the purpose and intent provisions in EC  
14 9.045(4)(a).<sup>4</sup>

15       The city applied EC 9.045(4)(b)(2) and required the  
16 extension and connection of Arcadia Drive that is required by  
17 that criterion. While EC 9.045(4)(b)(2) provides that the  
18 required connection need not be made if it is shown that one  
19 or both of two circumstances exist, that provision does not  
20 obligate the city to find those circumstances do not exist.  
21 See Chambers v. Clackamas County, 19 Or LUBA 355, 362 (1990)  
22 (where applicant bases request for exception only on "physical  
23 development" and "irrevocable commitment," county is not  
24 required to adopt findings explaining why a "reasons"  
25 exception is not justified).

---

<sup>4</sup>The purpose and intent provisions of EC 9.045(4)(a) include 10 numbered paragraphs addressing a variety of planning objectives. Petitioners do not identify what particular interpretive guidance the purpose and intent provisions would provide.

1 In any event, the city did adopt findings that neither  
2 physical conditions nor existing development preclude the  
3 street connection. Petitioners do not identify any physical  
4 conditions or existing development that they contend precludes  
5 the connection. If petitioners are suggesting the city was  
6 obligated to attempt to use the unspecified purpose and intent  
7 provisions to interpret its way around the clear mandate of EC  
8 9.045(4)(b)(2), we reject the suggestion.

9 The second assignment of error is denied.

10 **FIRST ASSIGNMENT OF ERROR**

11 In their first assignment of error, petitioners present  
12 two arguments. First they contend the mandatory connectivity  
13 requirement stated in EC 9.045(4)(b)(2) conflicts with  
14 "applicable adopted plans" that must be considered under EC  
15 9.035(4)(c). See n3. Second, petitioners argue that certain  
16 provisions of OAR chapter 660 division 12, the transportation  
17 planning rule (TPR), apply directly and conflict with the  
18 street connectivity standard in EC 9.045(4)(b)(2).  
19 Petitioners argue the connectivity requirement should  
20 therefore have been interpreted as being nonmandatory, to  
21 avoid conflicting with the plan and TPR provisions that  
22 petitioners contend mandate preserving the function of local  
23 roads. See Waker Associates, Inc. v. Clackamas County, 111 Or  
24 App 189, 194-96, 826 P2d 20 (1992) (discussing the obligation  
25 to harmonize approval criteria if possible).

1           The city first contends that petitioners waived the issue  
2 they attempt to raise under this assignment of error because  
3 they failed to raise the issue below. ORS 197.835(3). We do  
4 not agree. Petitioners adequately raised the issue of whether  
5 Arcadia Drive would lose its ability to function as a local  
6 street if it is connected to Willakenzie Road. Record 62-63.  
7 Petitioners were not obligated to identify the TPR and  
8 Willakenzie Area Plan (WAP) as the source of the legal  
9 requirements that might be violated if Arcadia Drive became a  
10 de facto collector. Boldt v. Clackamas County, 107 Or App  
11 619, 623, 813 P2d 1078 (1991) (ORS 197.763(1) "requires no more  
12 than fair notice to adjudicators and opponents, rather than  
13 the particularity that inheres in judicial preservation  
14 concepts.")

15           The WAP is an "applicable adopted plan" within the  
16 meaning of EC 9.035(4)(c).<sup>5</sup> The WAP includes a provision  
17 requiring "preservation of existing neighborhoods" and  
18 "preservation of the use of local streets for local traffic."<sup>6</sup>

---

<sup>5</sup>Petitioners also identify as applicable plans the Eugene/Springfield Metro Area Plan and the Eugene/Springfield Metropolitan Area Transportation Plan, but do not identify any particular provisions of those plans in their argument under the first assignment of error. The Eugene Local Street Plan (ELSP) has not been adopted as a "plan" by the city. Portions of the ELSP were adopted as "findings" in support of the ordinance that adopted EC 9.045(4)(b)(2).

<sup>6</sup>Among the WAP policies and proposed actions for major streets is the following:

- "1. The transportation network within the Willakenzie area shall be planned and designed to ensure: a) preservation of existing neighborhoods; b) an adequate system of arterials and collectors for efficient movement of

1 OAR 660-12-045(2) requires that local governments take action  
2 to "protect transportation facilities \* \* \* for their  
3 identified functions."<sup>7</sup> Petitioners argue:

4 "In this case, a strict application of the  
5 connectivity requirement creates an unintended  
6 result. The application of the connectivity  
7 provisions [is] in direct conflict with the practice  
8 of designating streets by functional classifications  
9 and the concept of controlling the level of service  
10 on a particular street. If respondent applies the  
11 connectivity standards as was done in this case,  
12 with absolutely no discretion, and without looking  
13 to other policies and criteria, then it loses any  
14 ability to regulate the functioning of its streets.  
15 No amount of traffic calming devices will be  
16 sufficient to regulate the flow of traffic in a  
17 situation where connections are required in every  
18 direction in every instance." Petition for Review  
19 7.

20 We do not agree that the TPR and WAP provisions conflict  
21 with EC 9.045(4)(b)(2). The city has adopted a process for  
22 reviewing and imposing conditions on development proposals, as  
23 required by OAR 660-12-045(2)(e). The city utilized that  
24 process in this case. Petitioners simply state as a truism  
25 that requiring that streets be connected will inevitably

---

through traffic; and c) the preservation of the use of  
local streets for local traffic."

<sup>7</sup>OAR 660-12-045(2) provides in part:

"Local governments shall adopt land use or subdivision  
ordinance regulations, consistent with applicable federal and  
state requirements, to protect transportation facilities,  
corridors and sites for their identified functions. Such  
regulations shall include:

"\* \* \* \* \*

"(e) A process to apply conditions to development proposals in  
order to minimize impacts and protect transportation  
facilities, corridors or sites;

"\* \* \* \* \*"

1 prevent local streets from operating consistently with their  
2 functional classifications. Petitioners apparently recognize  
3 that there are measures and devices that can be used to  
4 discourage non-local traffic on local streets, but dismiss  
5 such "traffic calming" measures as ineffective without  
6 explaining why.<sup>8</sup>

7 Because we fail to see that EC 9.045(4)(b)(2) and the  
8 cited TPR and WAP provisions are inconsistent, we do not agree  
9 the city was obligated to attempt to interpret the  
10 connectivity requirement as imposing something other than the  
11 mandatory requirement the city interpreted it to be.<sup>9</sup>

12 The first assignment of error is denied.

13 **THIRD ASSIGNMENT OF ERROR**

14 Petitioners argue the city erred by failing to adopt  
15 findings addressing the WAP provisions "requiring a

---

<sup>8</sup>The ELSP specifically recognizes that a more connected street system promotes the ability to ensure that streets function as intended. ELSP 9. The ELSP explains that "properly designed, interconnected street systems can minimize the use of local streets for through traffic movements." Id. at 9-10. The ELSP goes on to explain that even though a street system may be more connected, there are a number of techniques available to discourage non-local use of local streets. Id.

<sup>9</sup>We also agree with the city that any contention that the mandatory connectivity requirement of EC 9.045(4)(b) conflicts with the WAP language cited in n6, must be rejected as a matter of law because the WAP and EC 9.045(4)(b) are acknowledged. The WAP is an acknowledged "comprehensive plan," and EC 9.045(4)(b) is an acknowledged "land use regulation," as those terms are defined by ORS 197.015. Under Goal 2 (Land Use Planning), the city is required to ensure that its comprehensive plan and land use regulations are consistent, when those documents are adopted and amended. Champion International v. Douglas County, 17 Or LUBA 1223 (1989). Because the WAP and EC 9.045(4)(b) are acknowledged, petitioners may not challenge the consistency of the plan and land use regulation criteria in this proceeding, which challenges the city's application of those provisions to the disputed subdivision. See Byrd v. Stringer, 295 Or 311, 666 P2d 1332 (1983); McArthur v. Lane County, 31 Or LUBA 309, 317 (1996). The time and place to make that challenge was through an appeal to LUBA of the ordinance adopting EC 9.045(4)(b).

1 transportation network that preserves the use of local streets  
2 for local traffic and preserves the existing neighborhoods."  
3 Petition for Review 10.<sup>10</sup>

4 The only findings adopted by the city specifically  
5 addressing the WAP are findings addressing the WAP's "low  
6 density residential designation for the property." Record  
7 147. Although the city did not adopt findings specifically  
8 identifying the WAP provision petitioners refer to under this  
9 assignment of error, the city did specifically find Arcadia  
10 Drive will continue to operate as a local street. Record 152-  
11 53. In reaching that conclusion the city adopted findings  
12 that explain why the design of the extension of Arcadia Drive  
13 and the conditions imposed on the subdivision will protect the  
14 existing neighborhood from unreasonable traffic impacts.  
15 Record 151-53. Other findings explain how pedestrian and  
16 bicycle circulation in the neighborhood will be enhanced.  
17 Record 153-54. Petitioners do not explain why these findings  
18 are inadequate to demonstrate compliance with the cited WAP  
19 requirement.

20 As explained above and in the remaining portion of this  
21 opinion, the city's findings address all the concerns  
22 expressed by petitioners based on the cited WAP provision.  
23 Therefore, the city's failure to adopt findings specifically

---

<sup>10</sup>We assume petitioners are referring to the WAP provision quoted at n6.  
We do not agree with the city that the petitioners waived this issue by  
failing to raise the issue below.

1 addressing the WAP provision is not error. See Doob v.  
2 Josephine County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 96-132, March 25,  
3 1997) (failure to adopt Goal 14 findings is not error where the  
4 findings address Goal 14 in substance and petitioner fails to  
5 explain how Goal 14 is violated).

6 The third assignment of error is denied.

7 **FOURTH ASSIGNMENT OF ERROR**

8 Under this assignment of error, petitioners challenge the  
9 city's findings concerning compliance with EC 9.035(4)(d).  
10 That provision is quoted above in full at n3. As relevant to  
11 this assignment of error, EC 9.035(4)(d) requires that the  
12 city find the challenged subdivision "will not cause  
13 unreasonable street congestion." Petitioners contend the  
14 city's findings express a faulty interpretation of EC  
15 9.035(4)(d) and are inadequate to demonstrate compliance with  
16 that criterion. Petitioners also contend the city's findings  
17 are not supported by substantial evidence and that the city  
18 improperly shifted the burden of proof from the applicant to  
19 petitioners.

20 **A. Misconstruction of EC 9.035(4)(d) and Improper**  
21 **Shifting of the Burden of Proof**

22 Petitioners contend the city misconstrued EC 9.035(4)(d)  
23 as only requiring that the city consider traffic that would be  
24 generated by the approved subdivision and not requiring that  
25 the potential for new through-traffic be considered.  
26 Petitioners rely entirely on one sentence in the hearings  
27 official's decision, where he states, "First it is not shown

1 that the 'proposed subdivision' will, itself, cause any level  
2 of street congestion on Arcadia Drive if the street  
3 connectivity plan is approved." Record 9.

4 While in isolation that sentence can be read to express  
5 the narrow interpretation petitioners challenge, when read in  
6 context with the balance of the decision it is clear that the  
7 hearings official did not interpret and apply EC 9.035(4)(d)  
8 in the manner petitioners allege.

9 Petitioners cite the same finding quoted above as  
10 demonstrating the hearings official improperly shifted the  
11 burden of proof from the applicant to the petitioners.  
12 However, again, that finding is a small part of the city's  
13 decision addressing this criterion. Other findings explain  
14 why the hearings official found the evidence demonstrated the  
15 criterion was met. In view of these other findings, it is not  
16 error for the hearings official also to point out that  
17 petitioners have not presented evidence adequate to  
18 demonstrate the subdivision will cause unreasonable  
19 congestion. Washington Co. Farm Bureau v. Washington Co., 21  
20 Or LUBA 51, 63-64 (1991). The hearings official did not  
21 improperly shift the burden of proof to petitioners.

22 This subassignment of error is denied.

23 **B. Adequacy of the Findings**

24 The challenged decision explains that, as a result of the  
25 Arcadia Drive/Willakenzie connection, traffic levels will  
26 increase at the intersection of Arcadia Drive and Harlow Road.

1 However, the findings go on to explain the city is relying on  
2 traffic calming devices to ensure that Arcadia Drive will  
3 continue to operate as a local street. The findings explain  
4 "the subdivision has been designed to discourage through  
5 traffic by means of a 'T' intersection and an acute corner."  
6 Record 9. The findings go on to explain that other traffic  
7 calming devices "may be implemented by the Transportation  
8 Division to reduce traffic and the possibility of congestion  
9 at the Harlow Road and Arcadia Drive intersection." Id.  
10 Moreover, condition 9 requires that a "[b]rick area shown on  
11 the site plan at the south end of Arcadia will be raised and  
12 designed to provide traffic calming." Record 156. Condition  
13 10 requires that a "[p]edestrian crossing identified at the  
14 intersection of Rosemont and Arcadia, on Arcadia and on the  
15 north side of the intersection will be raised and designed to  
16 provide traffic calming." Id. The city specifically finds  
17 that Arcadia Drive will "function as a local street for those  
18 residents located between Willakenzie Road to the north and  
19 Harlow Road to the south." Record 152-53. The decision goes  
20 on to identify a number of other traffic calming devices such  
21 as "speed bumps and humps" that presumably could be added  
22 later if necessary to ensure Arcadia Drive continues to  
23 operate as a local road. Record 153.

24 As petitioners argue, the city did not estimate the  
25 expected number of daily trips on Arcadia Drive that are  
26 anticipated after it is connected with Willakenzie Road.

1 Neither does the city estimate the level of service at which  
2 Arcadia Drive will operate. However, we do not believe the  
3 city was required to do so in order to demonstrate compliance  
4 with a code provision that requires that the proposed  
5 subdivision "will not cause unreasonable street congestion."  
6 The above described findings explain that the city finds the  
7 traffic calming features that are incorporated into the  
8 approved subdivision are sufficient to ensure there will not  
9 be unreasonable congestion.

10 The city's findings do not really dispute that the nature  
11 of the traffic on Arcadia Drive will change somewhat. Indeed  
12 the findings specifically recognize that one of the purposes  
13 of the connectivity requirement is to provide more options for  
14 travel. However, simply adding another option for travel does  
15 not automatically mean it will become a preferred option for  
16 non-local traffic and result in "unreasonable congestion." As  
17 has already been noted, the findings discuss at some length  
18 the traffic calming measures that are incorporated into the  
19 approved design. We believe that the city's findings are  
20 adequate to demonstrate compliance with EC 9.035(4)(d) and  
21 that the record supports the findings.

22 This subassignment of error is denied.

23 The fourth assignment of error is denied.

24 **FIFTH ASSIGNMENT OF ERROR**

25 EC 9.035(4)(f) provides as follows:

26 "The proposed subdivision is laid out to provide  
27 safe, convenient, and direct bicycle and pedestrian

1 access to and from nearby and adjacent residential  
2 areas, transit stops, neighborhood activity centers,  
3 commercial areas, and industrial areas, and to  
4 provide safe, convenient and direct transit  
5 circulation. At a minimum, 'nearby' is interpreted  
6 to mean uses within ¼ mile which can reasonably be  
7 expected to be used by pedestrians, and uses within  
8 one to two miles which can be reasonably be expected  
9 to be used by bicyclists."

10 Petitioners quote the following findings adopted by the  
11 hearings official to address this criterion:

12 "First, [EC 9.035(4)(f)] speaks of how the  
13 subdivision is 'laid out' and should be construed to  
14 be a standard for the design of the subdivision  
15 relative to providing safe pedestrian/bicycle means  
16 from within the subdivision to surrounding  
17 connections to the various areas. There is no  
18 evidence to suggest that the subdivision itself is  
19 not laid out internally to provide good access for  
20 residents of the subdivision." Record 11.

21 Petitioners contend the above-quoted finding demonstrates  
22 the hearings official improperly shifted the burden of proof.  
23 Petitioners also argue the hearings official misinterpreted EC  
24 9.035(4)(f). Petitioners contend "the criterion was designed  
25 to apply not just to safe access to the connections that would  
26 connect the subdivision to areas ¼ mile or two miles distant,  
27 but to the safety on those connections as well." Petition for  
28 Review 16.

29 In its brief the city identifies findings that describe  
30 the pedestrian and bicycle facilities and circulation system  
31 in the general area in detail. Record 153-54. The hearings  
32 official also found "[t]he layout of the subdivision will  
33 provide safe, convenient and direct bicycle and pedestrian  
34 access to a number of activity centers, transit stops and

1 commercial areas." Record 11. The findings go on to describe  
2 the access from the subdivision to the following: (1) transit  
3 stops, a community center and a high school on Willakenzie  
4 Road; (2) commercial and retail facilities at Willakenzie Road  
5 and Coburg Road; (3) a middle school to the southwest; and (4)  
6 an elementary school to the south on Harlow Road. Record 11.  
7 The findings also describe how the sidewalks that will be  
8 required for the new streets within the subdivision and as  
9 part of the improvements to Arcadia Drive will improve bicycle  
10 and pedestrian safety. Finally, in its brief, the city points  
11 to conditions of approval requiring raised brick for traffic  
12 calming, 28-foot pavement widths and sidewalk setbacks as  
13 conditions imposed to address pedestrian and bicycle safety  
14 concerns.

15         Petitioners make no attempt to challenge the adequacy of  
16 the above-described findings. When the findings petitioners  
17 challenge are viewed in context with the above-described  
18 findings, we do not agree that the city misinterpreted EC  
19 9.035(4)(f) in the way petitioners allege or that the city  
20 improperly shifted the burden of proof. The city's findings  
21 are adequate and are supported by the record.

22         The fifth assignment of error is denied.

23         The city's decision is affirmed.