

October 1, 2015

Steven L. Pfeiffer
SPfeiffer@perkinscoie.com
D. +1.503.727.2261
F. +1.503.346.2261**VIA HAND DELIVERY**Mayor Gary Wheeler
Medford City Council
City Hall
411 W 8th St
Medford, OR 97501RECEIVED
OCT 01 2015
PLANNING DEPT**Re: City of Medford Urban Growth Boundary ("UGB") Amendment
Response to Questions Regarding Landowner Commitments**

Dear Mayor Wheeler and Councilmembers:

This office represents Hillcrest Corporation ("Hillcrest"), the owner of approximately 246 acres of real property generally located east of Foothill Road and north of Hillcrest Road in the MD-4 urban reserve enclave surrounded by the City of Medford ("City"). The purpose of this letter is to address Councilmember Jackle's inquiry at the September 17, 2015, City Council meeting, about whether and how the City may, through the UGB amendment process, bind a landowner to commitments the landowner has testified would occur if the landowner's property is added to the UGB. For convenience, this letter is set forth in a question and answer format.

1. Does the City have the authority to bind landowners to commitments that are made during the UGB amendment process?

Yes. In fact, the City has an obligation to bind landowners to such commitments in two general instances. First, Section 4.1.8 of the Regional Plan Element of the City's acknowledged comprehensive plan requires the City to approve a Conceptual Land Use Plan addressing land use, transportation infrastructure, and density for each UGB amendment area before the area is added to the UGB:

"4.1.8. Conceptual Land Use Plans. A proposal for a UGB Amendment into a designated UR shall include a Conceptual Land Use Plan prepared by the City in collaboration with the Rogue Valley Metropolitan Planning

Organization, applicable irrigation districts, Jackson County, and other affected agencies for the area proposed to be added to the UGB as follows:

“a. Target Residential Density. The Conceptual Land Use Plan shall provide sufficient information to demonstrate how the residential densities of Section 4.1.5 above will be met at full build-out of the area added through the UGB amendment.

“b. Land Use Distribution. The Conceptual Land Use Plan shall indicate how the proposal is consistent with the general distribution of land uses in the Regional Plan, especially where a specific set of land uses were part of the rationale for designating land which was determined by the Resource Lands Review Committee to be commercial agricultural land as part of an urban reserve, which applies to the following URs: CP-1B, CP-1C, CP-4D, CP-6A, CP-2B, MD-4, MD-6, MD-7mid, MD-7n, PH-2, TA-2, TA-4.

“c. Transportation Infrastructure. The Conceptual Land Use Plan shall include the transportation infrastructure required in Section 4.1.7 above.

“d. Mixed Use/Pedestrian Friendly Areas. The Conceptual Land Use Plan shall provide sufficient information to demonstrate how the commitments of Section 4.1.6 above will be met at full build-out of the area added through the UGB amendment.”

These plans may incorporate commitments made by landowners during the UGB amendment process. Although not all UGB amendment areas have prepared Conceptual Land Use Plans, Hillcrest has prepared such a plan for MD-4. See memorandum from CSA Planning of today’s date addressing Regional Plan Element Section 4.1.8.

Second, to the extent the City relies upon a landowner commitment as part of the factual base for determining that a property, on balance, satisfies the Goal 14 locational factors and should be added to the UGB, the landowner’s commitment must constitute or be supported by substantial evidence, i.e., evidence a reasonable person would rely upon to conclude that the land satisfies the locational factors. See ORS 197.633. In

general, a reasonable person would be less likely to rely upon a commitment that is more vague in nature or is not incorporated into the City's comprehensive plan as evidence that a property satisfies the Goal 14 locational factors because such commitments are not legally binding.

2. How can the City bind landowners to these commitments?

There are three primary ways to ensure that landowners fulfill their commitments. First, as explained above, the City must approve a Conceptual Land Use Plan for a UGB amendment area before it is added to the UGB. To make a Conceptual Land Use Plan binding, the City can incorporate it within its acknowledged comprehensive plan. Once incorporated, the Conceptual Land Use Plan would have the force of law and would establish general development standards for the subject property. These standards would be implemented by more specific development permit applications once the property urbanizes. The Conceptual Land Use Plan standards would be specific enough to establish meaningful parameters for development but broad enough to allow for reasonable flexibility in implementation without the need for amending the comprehensive plan when a more specific development plan is made. These standards could be specific enough to address landowner's stated commitments to voluntarily contribute to future infrastructure improvements.

Second, as a supplemental measure, the City could consider entering a written agreement with a landowner to bind the landowner to specific commitments. The agreement could be recorded against the property and would bind any of the landowner's successors. There are challenges in doing so, including preparing a document that can stand the test of time when it is uncertain when the property will urbanize. As a result, these types of agreements are often drafted with extensive contingencies that can effectively undermine their very purpose. For example, the Gift Pledge Agreements submitted by the owners of MD-2 to reflect their commitment to dedicating land for a school and parks are fraught with contingencies that must be met within five years, including that their entire property be included in the UGB, or the commitment to gift the land terminates. See [City UGB Exhibit EEEE](#). Hillcrest further notes that these agreements would not appear to absolve the City of completing the concept planning requirement set forth in the Regional Plan Element.

Medford City Council
October 1, 2015
Page 4

Third, to the extent the City's Land Development Code requires that a developer demonstrate adequacy of services before developing, this requirement will serve as an additional control to bind landowners.

We hope that this letter has been helpful. Thank you for your attention to the points in this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SLP for', written in a cursive style.

Steven L. Pfeiffer

SLP:crl

cc: Jim Huber (via email)
Lori Cooper (via email)
Client (via email)