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VIA HAND DELIVERY

Mayor Gary Wheeler
Medford City Council
City Hall
411 W 8th St
Medford, OR 97501

Re: **City of Medford ("City") Urban Growth Boundary ("UGB") Amendment – Supplemental Explanation of Mechanisms and Process for Binding Landowners to Commitments**

Dear Mayor Wheeler and Councilmembers:

This office represents Hillcrest Corporation ("Hillcrest") in the City's UGB amendment proceedings. The purpose of this letter, which we prepared in conjunction with CSA Planning, Ltd., is to supplement our October 1, 2015 letter by explaining in more detail the available mechanisms and process the City can utilize to bind landowners to commitments made during the UGB amendment process. Specifically, this letter discusses some of the options identified in the October 1, 2015 letter that the City can utilize to implement landowner proposals. Further, this memo outlines the process for the City to determine how to bind landowners to specific commitments.

A. Options for Binding Landowners

The key mechanisms that can be used to secure the implementation of written and oral commitments for development offered by property owners include the following:

1. Existing Medford Land Development Code (MLDC) Provisions

Several landowners have stated they will make street improvements. The MLDC requires street improvements along property frontages. If the street is a higher order collector or arterial, the frontage improvement only improves a street to lower order residential (or commercial or industrial) standard. No changes to the MLDC are needed

to ensure frontage street improvements at the time of development. The City also collects a Transportation SDC fee on each building permit, which funds additional improvements, although not necessarily improvements specific to the site paying the fee. If the landowner builds a qualified public improvement as a condition of development, the City will grant credits against the Transportation SDCs in the amount of the approved costs for constructing the qualified public improvement.

Existing MLDC provisions also require the payment of Park SDCs and the extension of public sanitary sewer, water and storm drainage facilities, and the installation of sidewalks and street lights.

2. New MLDC and Comprehensive Plan Provisions

Other landowners stated they would complete trails, although it is not clear whether the full cost of the improvement is covered by the amount charged for Park SDCs. The City can address this circumstance in multiple ways. First, the City can adopt a trail system map into the comprehensive plan (as part of this UGB amendment) and amend the MLDC to require that an adopted trail that passes through a property becomes that owner's responsibility. The United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304, 1994 U.S. establishes a two-part test to ensure that any government exaction (such as requiring a trail) is lawful. The first test is whether there is a *rational nexus* between the required exaction [trail] and the government interest. Second, *Dolan* requires that any exaction (in this instance, a requirement to dedicate land and built a trail) be *roughly proportional* to the impacts a development would create. In order to implement the trail system map, the City must adopt the appropriate *Dolan* findings when applied to a particular land use permit application.

New MLDC provisions can also be used to ensure that future rights-of-way (that are not to be initially built to their ultimate standard) are not compromised with avoidable urban development. This is accomplished by identifying future higher order street extensions and establishing (in the MLDC) greater setbacks that acknowledge a wider future street right-of-way.

As noted in the October 1, 2015 letter, the concept plans offered by some landowners (as required by the RPS Plan) should be adopted into the comprehensive plan as

neighborhood plans, which will make the plan provisions binding on future development. 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 dated October 1, 2015, and included in the record. To the extent that the City amends the UGB to include only a portion of the MD-4 property, Hillcrest does so with the understanding that this excluded acreage will be utilized to demonstrate compliance with any applicable RPS open space standard that would otherwise apply to the MD-4 property.

3. Owner/Development Agreements

The City can enter agreements with individual landowners to address more intangible matters such as:

- **Housing Affordability.** Some landowners pledged that housing on their properties would be affordable or more affordable than housing elsewhere in the community. While the affordability of housing has little to do with which lands are selected (for UGB inclusion) the City Council will be left with deciding whether to require housing to be “affordable” or dismissing the promise altogether as being speculative or unattainable in the context of a UGB amendment.
- **Land Donations/Dedications for Schools, Parks, Fire Stations and other public uses.** Some owners have already proffered dedication agreements. For these, the City Council will need to ensure that the promises are desirable and that the costs do not outweigh the benefits. As noted in our October 1, 2015 letter, many agreements are so burdened by contingencies that they thwart the very public policy they are designed to achieve. Once determined, any existing agreement can be modified or eliminated. Others have made promises that are not secured and which are best dealt with through an owner agreement with the City.
- **Unique Site Planning or Architecture.** Some property owners proffered detailed plans that go to unique and attractive site planning or architecture. The City Council should determine whether these are promises that should in some way be secured or otherwise dismissed.

4. Restrictive Covenant(s)

In some instances, particularly if the obligations/commitments are unilateral or ongoing in nature, the City can require landowners to record a restrictive covenant that runs with the land, binds the landowner, and is enforceable by the City.

However, as the City reviews the various promises, it should keep in mind that many landowner statements do not rise to the level of a binding covenant at all but are merely observations (e.g., "Housing is more affordable in west Medford."). In these instances, these non-binding observations cannot be relied upon as substantial evidence sufficient to demonstrate compliance with applicable UGB expansion criteria/factors.

B. Process

The process set forth below represents one approach the City could take to ensure that property owner proposals and commitments are achieved in fact. This particular process identifies the circumstances under which the mechanisms described above could be best implemented:

1. Catalog all proposals and associated commitments made orally or in writing according to the lands to which they relate. Determine which aspects of what proposals and commitments are sufficiently important to the City that they intend to base the UGB boundary location, at least in part, on the implementation of the proposals or commitments tendered by certain owners. For those proposals or commitments the City deems required to provide substantial evidence to support a finding of consistency with the Goal 14 factors or Regional Plan provisions, the City should proceed to implementation under Step 2. For any proposals or commitments not required by these criteria or provisions, the City should not give any weight in the UGB review decision-making and the review should simply assume development will proceed according to the City regulations that otherwise apply.
2. Determine which proposals and associated commitments are likely to be achieved through application of the existing land use regulatory system

and codified municipal infrastructure finance programs as they currently exist. For the remaining proposals or commitments, proceed to Step 3.

3. Determine which proposals and associated commitments are likely to be achieved through *amendments* to the current land use regulatory system (the comprehensive plan or code) and/or changes to the codified municipal infrastructure finance programs. The City will want to identify the needed amendments at least at a policy level. For the remaining proposals or commitments, proceed to Step 4.
4. For the remaining proposals or associated commitments that are unlikely to be achieved through the land use regulatory system and/or changes to the codified municipal infrastructure finance programs, the City should provide a more formal “opt-in” procedure to allow property owners to more clearly state their intentions before the record closes. A more formal “opt-in” procedure will reduce exposure to potential legal issues by making clear that owners who do not “opt-in” will *not* be evaluated negatively under the UGB boundary location factors but only that “opting-in” may result in some additional positive consideration as the Council weighs and balances the Goal 14 boundary location factors. Generally, the remaining proposals and commitments of this type will come in two forms — certain specific infrastructure construction funding and/or land dedication commitments and other planning proposals or commitments like an affordable housing guarantee for example. For infrastructure or land dedication proposals or commitments proceed to Step 5 for ‘other planning proposals or commitments’ proceed to Step 6.
5. Committing to certain infrastructure improvements and/or land dedications is relevant to two Goal 14 factors- the ESEE analysis and the Orderly and Economic Extension of Public Facilities and Services. Delivery of infrastructure or amenities may produce the potential for positive ESEE consequences. This infrastructure or amenity may also be more economical if it is developer-funded as part of the project. For property owners who opt in to this type of commitment, some form of legal agreement (like a DDA) or deed restriction will needed to executed to

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assure the commitments. The legal agreement should take a similar form for all property owners so that the decision to opt-in can be reasonably compared when considering various properties. One challenge that will arise is for commitments that involve entities other than the City, such as a school district. Where there is an additional third party, the commitment should still be between the City and the property owner under the City's standard agreement with an additional attachment that makes clear the third party's terms under which they would accept the land dedication or infrastructure. The third party's terms should specify the condition of the land or infrastructure at the time of acceptance (improved or unimproved), financial responsibilities for needed improvements not completed at the time of a land dedication and a statement of willingness to accept long-term maintenance obligations.

6. Any remaining other planning proposals or commitments the City would seek to secure would likely be more of a one-off agreement that is specific to the proposal or commitment. This would likely require a Disposition and Development Agreement. It is expected that there would be relatively few proposals or commitments that would fall in this category.

Should the City Council decide to pursue this approach, the next step would be for City staff to identify the various development commitments offered to date or as may be solicited by the City Council and then proceed through the listed steps accordingly.

Thank you for the opportunity to provide this supplemental testimony, and we welcome the opportunity to answer any questions you may have.

Very truly yours,



Steven L. Pfeiffer

SLP:rsr

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