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December 17, 2015

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VIA EMAIL

Mayor Gary Wheeler
Medford City Council
City Hall
411 W 8th St
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RECEIVED

DEC 17 2015

Planning Dept.

**Re: City of Medford ("City") Urban Growth Boundary ("UGB") Amendment –
Response to City Attorney Memorandum**

Dear Mayor Wheeler and Medford City 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.

We have received and reviewed the City's memorandum dated December 16, 2015 ("City Memorandum"), which responds to our letter dated December 1, 2015. Based upon our experience and understanding of the law, we continue to reach a different conclusion on the issues addressed in the City Memorandum. As a result, we respectfully disagree with the City Memorandum for the three reasons stated below.

First, the case law cited by the City Memorandum—*DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001)—does not support the position that DLCD has the authority, after a post-acknowledgment comprehensive plan amendment ("PAPA") has been acknowledged by operation of state law, to determine that the amendment is not actually a PAPA and is not actually acknowledged, as occurred here. Instead, *McMinnville* stands for the proposition that if DLCD believes that a city has acted prematurely in adopting a PAPA that identifies a residential land need without taking a contemporaneous action to address that identified need, DLCD's remedy is to timely appeal the city's adoption of the PAPA to LUBA. That is not what occurred here. Therefore, we do not believe that *McMinnville* supports the conclusion that the City's Housing Element is not acknowledged.

Second, the City's own actions over the past five years belie the new stance that the Housing Element has not yet been acknowledged. In fact, we understand the City has

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treated the Housing Element as being acknowledged and has applied the amended Housing Element to land use applications since 2011. To the extent the Housing Element has not been acknowledged, the City should not have applied the Housing Element in making its land use and limited land use decisions. Instead, the City should have applied the Statewide Planning Goals directly to such decisions. ORS 197.175(2)(e). The City's failure to do so places in peril all improvements authorized by permits and zone changes made over the last five years on the basis of the approved but unacknowledged Housing Element, in the event the Housing Element is not ultimately acknowledged as drafted. ORS 197.625(5).

Third, even if the City Memorandum is correct and the Housing Element is not acknowledged, we believe the City's UGB amendment still fails to comply with *McMinnville* and ORS 197.296 because the UGB amendment does not address the need for 153 acres in residential lands identified in the Housing Element. Stated another way, if the City adopts the Planning Commission's recommendation for the UGB amendment and then submits that together with the Housing Element to DLCD, the City's submittal will be internally inconsistent because it identifies a need in one amendment that is not addressed by the other. Accordingly, the entire submittal will be deficient.

To address these concerns, the City Council should revise the pending UGB amendment to include an additional 153 gross acres to serve the City's identified residential land needs. If the City fails to do so, the City's decision will be subject to reversal and/or remand. Further, for the reasons explained on the record, the prime location to accommodate these residential land needs is on MD-4.

Thank you for your consideration of the points in this letter.

Very truly yours,


Steven L. Pfeiffer


Seth J. King

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