

February 25, 2016

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VIA EMAIL

Mayor Gary Wheeler
Medford City Council
City Hall
411 W 8th St
Medford, OR 97501RECEIVED
FEB 25 2016
PLANNING DEPT.**Re: City of Medford ("City") Urban Growth Boundary ("UGB") Amendment –
Response to 1000 Friends of Oregon ("Friends") Letter**

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.

This letter responds to the letter from Friends dated February 22, 2016 ("Friends Letter"). As explained below, the City adopted its Housing Element as a post-acknowledgment plan amendment ("PAPA"), which has been acknowledged as a matter of law. The facts and law cited in the Friends Letter do not undermine this conclusion. Further, the City has correctly concluded that the required agricultural buffers should not be considered as "buildable land." Therefore, the City Council should deny the contentions in the Friends Letter.

- 1. The evidence cited by Friends does not undermine the conclusion that the City's Housing Element amendment was a PAPA that has been acknowledged as a matter of law.**

The Friends Letter erroneously contends that the City's amended Housing Element was never acknowledged because it was a periodic review work task and the Department of Land Conservation and Development ("DLCD") never affirmatively acknowledged it. Friends are mistaken because the City processed and adopted the Housing Element as a post-acknowledgment plan amendment ("PAPA"), not a periodic review work task. See City's Notice of Adoption attached to Exhibit LLLLL in the record. Further, DLCD subsequently processed and noticed the City's amendment as a PAPA. See DLCD Notice attached to Exhibit LLLLL in the record. No one timely appealed the City's decision, so it

became acknowledged as a matter of law. ORS 197.625(1)(a). No further action is necessary by DLCD.

Friends do not refute this evidence nor do they take issue with Hillcrest's explanation of the PAPA acknowledgment process. Instead, they claim that the Housing Element is not an acknowledged PAPA for two reasons. First, Friends claim that DLCD was authorized by *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001) ("*McMinnville*") to, after the expiration of the applicable appeal period, deem the City's amendment incomplete because it was not accompanied by measures to address the land needs identified in the amendment. But, *McMinnville* does not grant DLCD this authority; rather, *McMinnville* provides that, if DLCD desires to challenge a local government's adoption of a PAPA without other measures, DLCD must timely appeal that PAPA to LUBA. It is undisputed that DLCD did not timely appeal the City's adoption of the Housing Element to LUBA. Therefore, the City Council should deny Friends' contention on this issue.

Second, Friends contend that the City's Housing Element is not acknowledged because City staff and DLCD have expressed their mutual desire that DLCD review the Housing Element and potentially acknowledge it as part of the UGB amendment process. With due respect, the statements by City staff and DLCD, made long after acknowledgement occurred under Oregon law, have no legal effect. The City's Housing Element is acknowledged and is not subject to further review by DLCD as part of the UGB amendment process. The City Council should deny Friends' contention on this issue.

2. *Hummel v. LCDC* does not support Friends' contention that the City can simply rewrite the Housing Element based upon the UGB amendment.

The Friends Letter erroneously contends that *Hummel v. LCDC*, 152 Or App 404, 409, 954 P2d 824, *rev den*, 327 Or 317 (1998) stands for the proposition that DLCD can require amendments to the City's Housing Element based upon the outcome of the City's UGB expansion. In fact, the holding in *Hummel* is limited to the periodic review context, where there are multiple work tasks at issue, and the legality of all work tasks is measured once all tasks are completed. *Id.* The *Hummel* Court expressly distinguished periodic review from adoption of a PAPA, which is final when completed and is not evaluated at a later date based upon other amendments:

“Unlike the periodic review process, plan amendments involve specific and limited changes to existing plans that are otherwise in compliance with the goals. An amendment is complete when approved and must, therefore, meet all requirements at that time.”

Hummel, 152 Or App at 411. As explained above, the City adopted its Housing Element as a PAPA, not as a periodic review work task. DLCD and Friends cannot belatedly convert that PAPA into a periodic review work task. Therefore, the City’s adoption of its Housing Element was final when completed, and *Hummel* does not authorize DLCD to re-evaluate the City’s Housing Element based upon the UGB amendment. The City Council should deny Friends’ contention on this issue.

3. The City has correctly concluded that required agricultural buffers are not “buildable land.”

The Friends Letter further contends that the required agricultural buffers constitute “buildable land.” The City Council should deny Friends’ contention for two reasons.

First, the agricultural buffers do not constitute “buildable land” because they are not “suitable, available and necessary” for residential uses as required by ORS 197.295(1); OAR 660-008-0005(2). Applicable rules recognize that lands that are subject to development restrictions in order to protect resource lands are not generally considered “buildable.” In general, these buffers must remain undeveloped in order to minimize the impacts of urban development on agricultural production activities. Medford Land Development Code 10.801 and 10.802. Therefore, it is reasonable for the City to conclude that the agricultural buffers are not “buildable land.”

Second, although Friends contend that classifying the agricultural buffers as not “buildable” is inconsistent with the Regional Plan, Friends do not adequately develop this argument for review by the City Council. In fact, the requirement to adopt and apply agricultural buffers arose from the Regional Plan, and the City’s planning actions are consistent with the Regional Plan requirements. Friends have not identified any legal error on this issue.

For these reasons, Friends’ contention lacks merit and should be denied.

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4. Conclusion.

The City Council should deny the contentions in the Friends Letter. 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)
John Adam (via email)
Lori Cooper (via email)
Client (via email)