

  
**CABLE HUSTON<sub>LLP</sub>**

TOMMY A. BROOKS

[tbrooks@cablehuston.com](mailto:tbrooks@cablehuston.com)  
[www.cablehuston.com](http://www.cablehuston.com)

August 13, 2015

**RECEIVED****AUG 13 2015****Planning Dept.****VIA HAND DELIVERY**

Medford City Council  
200 South Ivy Street  
Lausmann Annex, Room 240  
Medford, OR 97501

**RE: UGB Amendment Project – Support for Inclusion of MD-5**

Dear Mayor and City Councilors:

This firm represents Mahar Homes, Inc. (“Mahar Homes”). Mahar Homes has been an active participant in the City’s UGB Amendment Project. As part of that participation, Mahar Homes has advocated for the inclusion of the MD-5 area into the expanded UGB, which the Planning Commission included as part of its recommendation to the City Council. On August 6, 2015, the City received a letter from Dorothy Cofield on behalf of Dunbar Carpenter (Record Exhibit HH, hereinafter the “Cofield Letter”). The Cofield Letter asserts that the Planning Commission erred by including MD-5 in its recommendation. Mahar Homes has asked that we respond, which is the purpose of this letter. Please place this letter in the record for the UGB Amendment Project.

The primary complaint in the Cofield Letter is a statement that the findings supporting the Planning Commission’s decision are inadequate, because they are not based on evidence in the record, and that this inadequacy necessitates removing MD-5 in favor of including the Carpenter property in MD-3. While we acknowledge the fact that the City’s ultimate findings on this matter can and should be strengthened as part of the City Council’s decision, the assertion that the Planning Commission’s decision to include MD-5 is not based on any evidence in the record is simply without merit.

The primary error in the Cofield Letter is its hyper-focus on the initial scoring of the MD-5 area with respect to sewer services. As the City Council is no doubt aware, the decision to amend the UGB requires a multi-faceted analysis that weighs several factors as required by Goal 14 and its implementing rules. Not only does nothing in Goal 14 state that a single public facility shall be the sole determinant for UGB inclusion, OAR 660-024-0060(3) expressly provides that “[t]he boundary location factors of Goal 14 are not independent criteria,” and “[w]hen the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.”

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The City's scoring process really addresses only one of the Goal 14 location factors – the orderly and economic provision of public facilities and services. Goal 14 also requires the City to consider the efficient accommodation of identified land needs, the comparative environmental, energy, economic and social (“ESEE”) consequences, and the compatibility of the proposed urban uses with nearby agricultural and forest activities. Even if the City were to focus just on the provision of public facilities and services, sewer service is only one of the services to be taken into consideration. The City must also consider water, stormwater, and transportation facilities.

Applying the full array of Goal 14 location factors, the Planning Commission's decision to include MD-5 is supported by the evidence in the record, and the City Council should continue to include MD-5 in its final decision. As one basis for its decision, the City can rely on the ESEE factors to show that MD-5 has greater benefits and fewer negative consequences than the MD-3 area that the Cofield Letter asserts was improperly excluded. For example, the record reveals that the MD-3 area includes a large wetland. Development completely surrounding that wetland area would result in a negative environmental consequence compared to leaving that area undeveloped and outside of the UGB. Similarly, the Carpenter property in MD-3 is currently occupied by an active orchard, which is a more productive use than the vacant fields that currently make up the MD-5 area. Inclusion of MD-5, therefore, will limit the negative social and economic consequences that would otherwise be associated with the loss of the orchards in the MD-3 area if MD-3 were brought into the UGB instead of MD-5.

As a separate basis for its decision, the City could also rely on the compatibility component of the Goal 14 location factors. As the record demonstrates, the City has a long history of expanding east toward the foothills, which is away from higher value farmlands. By concentrating development in that area, the City has helped to ensure compatibility of its urban areas with nearby agricultural activities. Inclusion of MD-5 continues this approach and allows the City's urban development to be concentrated in an area that encompasses the foothills on the east side of the City.

The Cofield Letter does nothing to undermine the above-stated bases for accepting the Planning Commission's recommendation with respect to MD-5. First, the Cofield Letter implies the Planning Commission committed some procedural error when it considered additional evidence and testimony related to sanitary sewer and opportunities to create better trail system connectivity that provides recreational and transportation benefits as a result of a UGB boundary alternative. To the contrary, neither the Planning Commission nor the City Council is bound by the staff's scoring analysis or recommendation. The purpose of having public hearings is to take additional evidence and to hear different points of view. If staff's analysis were the only relevant analysis, there would be no need for the Planning Commission or the City Council to weigh in at all. The Planning Commission and City Council can and must consider additional evidence and testimony, and such evidence and testimony should shape the ultimate decisions made by the City.

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The Cofield Letter also implies that the idea for the trail is “new” and that a trail extension is an improper consideration when considering UGB boundary location factors. Trails serve important purposes from both a Goal 8 (Parks) and Goal 12 (Transportation) perspective. In the Willamette Valley, the Willamette Greenway has its own Statewide Planning Goal. Considering a trail extension and connectivity is perfectly appropriate (arguably required) as part of a Goal 14 boundary location analysis. Moreover, the trail extension is far from “new.” The City has long had an objective in its existing plans to create non-motorized connectivity; these objectives are laid out in Medford’s TSP as well as the City’s Parks and Leisure Services Plan. The Southeast Plan includes important planned trails as does the adopted Master Plans for Chrissy Park and Prescott Park. The fact that the inclusion of MD-5 helps implement those plans should be a strong consideration for its inclusion in the UGB.

Finally, the Cofield Letter mischaracterizes the facts related to sewer extension to serve lands already within the UGB. The Cofield Letter asserts the City’s reasoning relied heavily on System Development Charges raised by the development of MD-5 to extend that service. This assertion is inconsistent with the evidence in the record. Sewer will be extended in an orderly and economic fashion through development of MD-5 directly. Specifically, Mahar Homes intends to develop land that will create new streets that will extend east to Cherry Lane. Those new streets will have new sewer lines in them built and paid for by Mahar Homes. This will facilitate the connection of lands within the existing UGB to the City’s gravity feed sewer system that are not currently feasible.

Similarly, the Cofield Letter raises concerns regarding the provision of sewer in the portion of the City where MD-5 is located. Sewer is obviously an important issue and one that must be addressed for the entire City to have a successful UGB amendment. This is true not just for MD-5 but for several areas of the City. The City of Medford apparently agrees and is hiring a consultant for a full update to the Sewer Master Plan. While planning an adequate sewer service for the City is necessary, the analysis for a UGB amendment is one of relative costs. Because upgrades are identified in the Sewer Master Plan to serve the MD-5 area, the marginal cost to size those upgrades to serve all of MD-5 is relatively low (on the order of less than \$100,000). This evidence has been provided in the record by Randy Jones. Even at current sewer SDC rates, the SDC revenue generated by the additional area of MD-5 would exceed \$500,000. This far exceeds the marginal cost associated with the upsizing to serve the area. This will create additional net revenues that are needed for upgrades to serve the existing City.

Other concerns raised in the Cofield Letter are simply irrelevant. For example, challenges faced by the City of North Plains and the City of Damascus are not a good analogy for Medford. The City of Damascus has a population of 10,743 in 2013. The City of North Plains has a population of 2,029 in 2013. In contrast, the City of Medford has a population of 77,677 in 2013. Medford has very different resources than either of those two small cities. Moreover, all cities with a population over 25,000 in Oregon have heightened levels of responsibility for public facility planning and delivery and Medford can reasonably be expected to have the resources to plan and deliver needed facilities and services.

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In summary, the Planning Commission did not err by recommending the inclusion of the MD-5 area in the UGB expansion. The record contains substantial evidence to which the City can apply the appropriate Goal 14 location factors, and we urge the City Council to adopt the Planning Commission's recommendation regarding MD-5. Cable Huston and Mahar Homes' consultant CSA Planning would welcome the opportunity to coordinate with City staff to strengthen the Council's ultimate findings in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Brooks', with a long horizontal flourish extending to the right.

Tommy A. Brooks