



City of Medford

Planning Department

Working with the community to shape a vibrant and exceptional city

MEMORANDUM

Subject: UGB Amendment Supplemental Findings

To: Jackson County Board of Commissioners

From: Matt Brinkley, Planning Director

Date: June 19, 2017

Dear Commissioners:

We appreciated the opportunity to present Medford's Urban Growth Boundary Amendment application to you on May 17, 2017. We also appreciate the opportunity to respond to oral and written testimony that was taken during the public hearing portion of that meeting.

The following information is provided in response to that testimony, and to provide additional clarification of important issues.

1. Public noticing during the City's Planning Commission and City Council processes

As Chair Roberts pointed out during the proceedings on May 17th, our citizens are important partners in this process. The Urban Growth Boundary Amendment was processed as a "Class A" legislative action. As such, public hearings were held by both Planning Commission and City Council. Notices of the public hearings were published in the Medford Tribune, as required by Section 10.157 of the Medford Land Development Code. For Class A legislative actions, this is the only notice required by the Medford Land Development Code. As a matter of law, the City fulfilled its responsibilities to public notice according to its land development code.

In addition to this, the City also directly notified owners of properties located within the Urban Reserve Areas where expansion of the Urban Growth Boundary was under consideration during Planning Commission proceedings. The first set of notifications were mailed to 336 property owners and, in a few instances, other interested parties who had already been involved in the UGB amendment process.

Prior to this phase of the UGB amendment process, the City engaged in significant public outreach and notification throughout Phase I. During the Phase I "ISA" or Internal Study Area process, notices were mailed to 1,690 property owners and interested parties inviting them to participate in that process.

2. Further clarification of the minimum density requirements established by the Regional Plan

It has come to our attention that the wording in the previous supplemental findings dated May 17, 2017, may not have been clear. In responding to question #1 “How will the proposed Urban Growth Boundary satisfy the minimum density requirements established by the Regional Plan?”, we stated that the “average density across ISAs [Internal Study Areas] and within the unincorporated portions of the City’s current UGB and within proposed UGB expansion areas will reach 6.2 dwelling units per gross acre if average density for each residential zone were applied to these lands”. As a point of further clarification, it should be understood that all residential lands that would be included in Medford’s future Urban Growth Boundary as it has been proposed by 439-16-00008-LRP would have an average density of 6.2 dwelling units per gross acre. It should be noted that this density is consistent with the overall residential density of 6.3 dwelling units per acre that was established in the City’s 2010 Housing Element for residential that has and will occur during the UGB planning period (2010 Housing Element, page 66). The residential density for land in ISAs, unincorporated portions of the current UGB, and land proposed to be included in the UGB is actually 6.9 dwellings units per gross acre.

This is considerably higher than the average planned city-wide density of 6.2 dwelling units per gross acre over the planning period and reflects the significant effect of the ISA process which increased planned densities in parts of the City that are more suitable for higher density and capable of most efficiently supporting it. Discussion of the ISA process and its effect on density is presented on pages 119 – 123 of the County Planning Commission packet as well in the two Power Point presentations City staff made to the JCPC and JCBOC.

Mr. Holmes, in his May 17, 2017 letter, has expressed a concern that the ISA process failed to sufficiently increase average densities in certain parts of the proposed expansion area, particularly those on the east side of Medford. He relies on a statement made by Planning Department staff in the staff report that was presented to the City Planning Commission at the beginning of its deliberations:

“With the revised ratios of residential land types in the UGB expansion area the average density of the residential land types alone will not result in a density of 6.6 units per acre [...]” (March 12, 2015 Staff Report to the Planning Commission, page 27).

But this statement refers only to the average planned density of Urban Reserve land into which the UGB is proposed to expand, and does not account for the relationship between increased density in ISAs and lower density residential land at the edge of the proposed UGB (what will be the edge of the City of Medford for many decades after the UGB amendment has been approved). As stated above,

when planned densities of the three types of land addressed by Phase I of the UGB amendment process are considered together, and in isolation from other residential in the current UGB, the overall effect is 1) to meet the planned densities recommended in the Housing Element for the 20 year planning period, and 2) to exceed the minimum density of 6.6 dwelling units per gross acre required by the Regional Plan and 3) to reduce a net total need for urban land (both residential and employment land) by 92 acres. The Regional Plan itself anticipates that minimum RPS densities could be met by shifting density from urban reserve and existing unincorporated UGB lands to land within current City boundaries. Performance Indicator 2.5 of the Regional Plan states unequivocally that minimum densities “can be offset by increasing the residential density in the City Limit” (Regional Plan, Volume 1, page 5-5).

Documenting and enforcing this provision will be achieved through “urbanization plans” that will be required at the time of annexation into the City. These plans must demonstrate compliance with, among other things, minimum densities and the proportions of various land types required by the Regional Plan. Mr. Holmes dismisses this strategy summarily and without any real explanation, stating that the urbanization plans will only “allow” rather than “require” compliance with this requirement—implying that developers would be able to achieve lower residential densities. The proposed language for the “Urbanization Element” that will establish process and standards for these plans states “The urbanization plan must demonstrate how the planned residential development will meet the minimum density requirement of 6.6 units per gross acre [...]” (JCPC packet, page 52).

It is our belief that urbanization plans are the best way to meet the City’s obligations under the Regional Plan, implement good planning practices, and accommodate the needs of private property owners and developers who will most certainly encounter development constraints and market forces that will influence what they are actually able to develop. The approach suggested by Mr. Holmes, whereby less land would hypothetically be included in the proposed UGB by forcing developers to meet a single rigidly constructed standard, would eliminate the flexibility allowed for by the Regional Plan, and could even result in a deficiency of needed buildable land. Urbanization Plans, furthermore, provide yet another (and arguably more meaningful) opportunity for public involvement as each plan is reviewed through a public process with the Planning Commission and City Council.

3. Clarification of the size of the proposed UGB

In his letter dated May 17, 2017, Greg Holmes of 1,000 Friends of Oregon asserts that there are “inconsistencies even in the City’s Application to the County around exactly how much land is being proposed for what purposes [...]” (p. 2). To begin, the total extent of the UGB as proposed is 4,046 acres, as presented to you at the public hearing on May 17. This includes 511 acres of already developed and unbuildable lands; 1,877 acres for Prescott and Chrissy

parks; 1,039 acres for residential development; and 618 acres for employment land. Mr. Holmes may be confusing calculated “need” for land with what is actually proposed. There is a difference between the two: Table 3.4 on page 121 of the Jackson County Planning Commission packet shows that 1,032 acres were determined to be “needed” to accommodate residential development outside of the current UGB, whereas the proposal before the Jackson County Board of Commissioners identifies 1,039 acres of residential land—7 acres more than calculated need. Likewise, Table 3.8 on page 123 of the Planning Commission packet shows that 637 acres are needed to accommodate employment land development outside of the current UGB. The proposal, on the other hand, identifies 618 acres for that purpose—19 acres less than calculated need.

The discrepancy between both sets of numbers can be explained by the fact that “need” is a mathematically derived estimate that must be translated into a real world where property lines do not exactly correspond with mathematical abstraction. City staff, members of its Planning Commission and City Council, and numerous stakeholders worked to reconcile estimated need for various types of urban land with the reality that parcels of land are often irregularly shaped, unequally and uniquely situated, and almost never come in standard sizes. As the State Planning Goals allow for and require, the Medford City Council did its best to provide sufficient land for each and every stated need while recognizing that the final result could never be perfect or mathematically exact.

4. Medford’s UGB amendment in context

Commissioner Roberts asked an important question that was not addressed in our presentation: what is the size of Medford’s UGB amendment relative to the current UGB? Medford’s current UGB, which has been unchanged since 1990, is a little over 28 square miles or 18,076 acres. Of that, 936 acres are used by the airport leaving 26.80 square miles or 17,140 acres for residential and employment land. The City of Bend, which does not have an airport within its Urban Growth Boundary, is 33.27 square miles or 21,293 acres.

The proposed UGB would add another 1,658 acres of buildable urban land and 1,877 acres of wildland parks to the City’s current UGB (another 511 acres that is included as already developed or unbuildable). A detailed list of the different types of land included in the proposed UGB can be found on page 45 of the Jackson County Planning Commission packet and is also included on Map Exhibit C. Excluding the wildland parks, the proposed UGB represents a 9% increase over the current UGB’s total land area; if the airport is removed from the total, the increase would be close to 10% of its current area.

5. 1000 Friend’s concern about the “politicization” of the process

Mr. Holmes states in his May 17 letter that, “our observation is that the City Council’s process quickly became a politicized process of finding ways to include

as many property owners as wanted into the UGB and, when it became apparent that that could not be justified given the record, became an exercise in finding ways to add more land to the proposal.” UGB amendments are by their very nature “political”: whatever the merits or deficiencies of urban growth boundaries as a mechanism for managing the urbanization of land, they necessarily have the effect of distributing costs and benefits to private property owners depending on whether a property is located inside or outside a UGB. As is probably true for every Urban Growth Boundary Amendment undertaken, the City of Medford has considered the preferences and needs expressed by individual property owners in their relation to the overall goals of a UGB amendment. This process, wherein different parties hold different opinions concerning those choices, is unavoidably political. In this case, however, the proposal before the Board of Commissioners represents a consensus among parties that own property in the proposed expansion area. Testimony was provided by several individuals during the County Planning Commission and Board of Commissioners hearings explaining the process through which these property owners agreed to a proposed boundary configuration where many, if not all, of them allowed land to be removed from consideration for inclusion in the proposed UGB in order to meet the calculated need for urban land. It needs to be emphasized that this process of negotiation and compromise did not involve the estimation of urban land demand. Demand was established in the 2010 Housing Element.

In his May 17 letter, Mr. Holmes insinuates that the proposal was engineered by City Council to meet the needs of property owners at the expense of the integrity of the proposal, but this is not supported by the record that demonstrates relatively little difference between the preferred configuration of the UGB as recommended by staff, Planning Commission, and City Council. (See previous discussion of “Excess Land” on beginning on page 125 of the Jackson County Planning Commission packet on in the Supplemental Findings letter from the City of Medford Planning Department, dated May 17, 2017). The record also documents significant portions the lengthy proceedings wherein City Council considered many factors in reaching its final decision, not just the opinions of property owners and developers with a direct stake in the outcome of this UGB amendment Jackson County Planning Commission packet, pages 170 – 191).

The City of Medford suggests, furthermore, that direct involvement and open conversation with Urban Reserve Area property owners is a practice that is consistent with State Planning Goal 1.

6. Status of the City Council’s hearing process and record

The City’s special counsel for this UGB amendment, Jeff Condit, has provided the attached letter dated June 12, 2017 responding, in part, to this allegation. In summary, he finds that “large-scale UGB amendment proceedings are legislative, not quasi-judicial, proceedings”, and are, therefore, governed by more permissive rules that would allow, for example, “members of the community” to “lobby to Council outside of the public hearing process and to submit information

directly to Council.” During a legislative process, a council need only demonstrate that it made a decision based on an “adequate factual basis.” Even if the record was not in fact closed, and a procedural error was committed, the error would have to “prejudice a party’s substantial rights.” Mr. Holmes does not provide any analysis in his May 17, 2017 that would explain how, in this case, such a procedural error would cross this threshold. Additional analysis regarding this issue is provided in Mr. Condit’s letter.

7. Purported “inefficient” land use pattern caused by configuration of unbuildable agricultural buffer land

Before examining this issue in detail, a factual error in Mr. Holmes’ May 17 letter should be corrected. He incorrectly states that “City Council created a need for an additional 44 acres of land to be dedicated to agricultural buffers” based on “figures provided on Exhibit QQQQQ of the City’s record [...]” (page 5). The total acreage for agricultural buffers is not specified in this exhibit, and it is understandable how Mr. Holmes may have arrived at an incorrect total. He also relied on an earlier analysis of the Planning Commission’s recommended UGB configuration, which was thought to have had 87 acres of agricultural buffers. That number was not the correct, final total agricultural buffer acreage. GIS analysis performed by the City confirms a smaller difference in the total number of acres of land needed for agricultural buffers between the City Council proposed UGB and Planning Commission recommended configurations. The Planning Commission configuration included 114 acres of agricultural buffers; the City Council’s configuration 124. The correct difference in the amount of agricultural buffer land between these two configurations is 10 acres. This is important to know insofar as Mr. Holmes states that 1000 Friends had been supportive of the Planning Commission process and its recommendation. In terms of agricultural buffer land, the two proposals vary by less than 10%.

Mr. Holmes alleges in his May 17 letter, as he had previously, that

“by cutting properties out of larger blocks to create enough acres to accommodate property owners who wanted into the UGB this round and then adding back only pieces of multiple urban reserve areas, the City Council has created an inefficient land use pattern that is exacerbated when combined with the decision to treat the agricultural buffers as ‘unbuildable land.’ The result will create long and narrow strips of land that in the future may not connect with anything but will likely remain undeveloped in perpetuity.”

Mr. Holmes’ contention that the proposed configuration of the UGB is somehow more inefficient due to the presence of more agricultural buffers is not substantiated. He has not provided any measurement by which the alleged inefficiency can be objectively evaluated, unless it is his contention that inefficiency results from the mere inclusion of additional land within the UGB for the purposes of protecting adjacent agricultural land. He does not claim, for example, that agricultural buffers would somehow impair the efficient delivery of

urban services and urban infrastructure in the proposed expansion areas, nor does he provide any analysis to explain why agricultural buffers would not be able to be developed at some future time after the UGB is expanded again and those buffers are no longer needed.

Mr. Holmes' assertion the proposed UGB configuration will result in undevelopable remnant lands in the future makes some sense when considered in isolation: agricultural buffers will tend to be long strips of land separating urban from rural. The ability to develop those buffers at some point in the future, however, will largely be determined in the future when more is known about the nature of development on what is now, and will remain for several decades, agricultural land located in Medford's remaining Urban Reserve Areas adjacent to the buffers. One could easily envision a scenario where land that was once used for agricultural buffering could be repurposed as public right of way for roads, trails and linear parks, and other urban infrastructure that will serve development that occurs decades from now. One could just as easily envision development of buffer land for housing and employment uses. Mr. Holmes acknowledges this in his own letter, stating in a footnote at the bottom of page that "We believe that if selected with some care the buffers created in this round of UGB expansion may in fact be developable in the next UGB expansion" but that "This issue does not appear to have been addressed by the City Council decision." We believe that this issue is best addressed by policy-makers in the future when they assess the City's need for additional urban land at that point.

In the current case, Mr. Holmes provides no analysis to explain why, even in broad terms, the particular configuration of agricultural buffers in the proposed UGB would be any less developable than some other configuration in the future—he simply relies on the fact that there would be more of them.

Finally, in his letter dated June 12, 2017, Mr. Condit addresses Mr. Holmes argument that agricultural buffers should be considered "buildable land" and that these buffers can and should be used when considering the location of the UGB. His finds, just as the City has argued throughout this process, that agricultural buffers cannot be considered as "buildable" because, by their very function, they are not "suitable" or "available" for residential development. Mr. Condit further clarifies that although agricultural buffers are required by the Regional Plan, there is no legal requirement to consider the amount of agricultural buffer land when evaluating the proposed UGB.

8. What is the legal status of the 2010 Housing Element? Has the Housing Element been acknowledged by the State of Oregon?

Throughout this process, 1000 Friends of Oregon and representatives from the Department of Land Conservation and Development (DLCD) have questioned whether or not the Housing Element of the City's Comprehensive Plan was

acknowledged by the State of Oregon, and whether or not the City should use its findings as a basis for this UGB amendment proposal. Mr. Holmes implies in his May 17 letter that the City's findings that were submitted to the County as a part of its application merely attempt to provide a legal defense of the alleged error rather than "fix" it. To the contrary, Council's findings do directly address his concerns, though obviously not to his satisfaction. It continues to be the City's position that the 2010 Housing Element may be used through this process as a matter of law. Without belaboring the issue, which was addressed by Mr. Condit during the Jackson County Planning Commission hearing and is explained in detail on pages 64-67 of the Jackson County Planning Commission packet, the City has found that neither DLCDC nor any other party "challenged the enactment of or assumptions contained in the Housing Element" when it was appropriate and legally acceptable to do so in 2010—when the Housing Element was in fact adopted.

This leads to the question of policy, which is also addressed in Council's findings despite Mr. Holmes' claim to the contrary. Those findings identify four separate reasons that compelled City Council to decide to use the 2010 Housing Element, not just because it was legally permissible to do so, but because it represented a better policy choice than revisiting it:

1. The UGB amendment process began with this and other planning documents, all of which are interrelated, all of which underwent significant public process, including the involvement of 1000 Friends of Oregon, DLCDC, members of the community, local officials, and other stakeholders. Mr. Holmes suggests that the City simply "fix" alleged errors in the Housing Element as if it were merely a matter of changing a few numbers within the document. His conclusion seriously understates what would be involved in that process. For example, Phase I of the UGB process (the ISA process) began in earnest in 2013 and concluded in 2014 and the Council's deliberation on the UGB lasted an entire year. During the time it would take to "fix" any alleged errors, new population projections and other factual information will emerge. Without the ability to proceed through the UGB amendment process with an integrated and internally consistent set of assumptions, applicants (cities) would be forced to chase a constantly moving target.
2. The "risk" of including too much land in this UGB proposal is mitigated by the fact that the alleged excess land is relatively small compared to the size of the proposed UGB and that there are uncertainties "inherent in a twenty-year need projections" (Jackson County Planning Commission packet, page 66). City Council made findings that explain and justify the inclusion of these lands into this UGB proposal.
3. The only lands considered for expansion of the UGB are in Urban Reserve Areas, which were identified through the Regional Problem Solving process for urbanization over the next 50 years. As a matter of policy, the future of

- these lands has been decided, and the current proposal, would consume less than 40% of the 4,488 acres of Urban Reserve land intended for urban development (i.e. not including the two wildland parks).
4. Finally, Council found that 1000 Friends concerns only consider one part of the Housing Element and not the element as a whole. For example, in determining need for residential land, the Housing Element used a much higher average net density for the planning period than had been observed in the past. Doing so had the effect of reducing overall need for residential land than would have been the case if the City had used development densities that were closer to historical averages.

9. Housing Affordability

The benefit of the Phase I ISA process should not be underestimated, as it is by Mr. Holmes when in his May 17 letter he both “commends” the City for undertaking that process and then trivializes its impact by stating “that action did not create any more higher density housing options than would have been created otherwise—it simply moved some of those acres from potentially being the outside edges of the city closer into the core and nearer to transportation” (page 6).

“Simply moving” density created opportunities for higher density housing in parts of the City where urban services and infrastructure—not just “transportation”—are already available. Providing housing in closer proximity to jobs, services, and amenities reduces dependence on travel by automobile, which is a significant, hidden cost of housing—particularly for households with middle and lower incomes. These parts of the City also tend to be more economically developable, compared to areas with more environmental constraints and greater infrastructure needs. As such, housing developed in these areas tends to be more affordable, and a stronger business case can be made for the development of housing that is affordable to broad segment of the community. This directly refutes Mr. Holmes other assertion that “Despite the evidence in the record, the City Council’s plan removed land in the Planning Commission’s recommendation from neighborhoods that are relatively more affordable and added it and more to the most expensive areas of the city.”

Mr. Holmes is also dismissive of testimony provided during the Planning Commission hearing when staff described current actions being taken by the City of Medford to address housing affordability. Among these is the development of a Regional Housing Strategy. Mr. Holmes observes that “It cannot be relied upon as demonstrating how the city will meet current and future documented needs for more housing availability” (page 3). We believe that this is an important action that demonstrates the City’s commitment to addressing housing availability and affordability. It is a requirement of the Regional Plan that has been adopted has an element of the City’s comprehensive plan. The City,

therefore, believes that this initiative can be relied on as evidence of its commitment to addressing affordability and availability of a range of housing types.

Mr. Condit also addresses this issue in terms of its Goal 10 implications, concluding that the City in its application has complied with Goal 10 requirements “to determine the needed housing types and provide for sufficient land and a mix of densities to meet those needs over the planning period.” Goal 10 does not require, as Mr. Holmes implies, that jurisdictions include detailed plans describing measures to provide affordable housing.

10. Response to Exhibit 26, dated May 15, 2017, from the Conrads and Matsons

Based on this letter, City Planning staff recognizes that the Conrads, Matsons, and other neighbors are opposed to the Urban High Density Residential (UH) General Land Use Plan (GLUP) designation proposed in northeast MD-5. Per the Regional Plan, MD-5 in its entirety (and over the entire 50-year period) is required to provide 56% of its land use allocation to residential development.

The City’s residential GLUP designations fall into three categories: Urban Low Density, Urban Medium Density and Urban High Density. Each of the proposed MD-5 areas includes the Urban Low Density component as well as either Urban Medium or Urban High Density. Each subarea of MD-5 proposed for inclusion shares in balancing the needs of different housing types over the planning period and creating a range of housing options to meet residents’ changing needs. The UH designation on the property in question was offered by the property owners and is documented in a letter submitted by their land use consultant dated February 5, 2016, (Exhibit RRRRR) in the City’s record.

An original concept plan developed by Planning staff in 2015 showed this area of MD-5 as a Commercial GLUP designation, which could be argued to be more intense than the proposed UH designation. As the Urban Growth Boundary process evolved through the City Council hearings, certain lands were included or excluded and as such a re-allocation of GLUP designations had to occur in order to meet the Regional Plan requirements.

The City’s proposal seeks to include 4,046 acres into the Urban Growth Boundary. Of this amount 1,877 acres is the City owned wildland parks (Prescott and Chrissy) and will remain as parks. Another 511 acres is identified as being developed or unbuildable and the remaining 1,658 acres is proposed to accommodate residential, commercial, and industrial uses. The letter implies that all 4,000 plus acres are for future development, which is inaccurate. The letter indicates that the projections used by the City are overstated, but it does not provide findings or an explanation to support this claim. As such, it is difficult for staff to respond meaningfully to such an allegation. It is interesting to note that Mr. Conrad himself moved to Medford a year ago, and chose to live in a

neighborhood that includes 41 higher density, single family attached townhomes. Medford needs land for residential development precisely because people like Mr. Conrad and his neighbors find it to be a desirable place to live. The City has a statutory obligation to accommodate that demand in as reasonable and efficient manner as possible. Nothing in Mr. Conrad's testimony explains exactly why the City has failed in that responsibility.

Environmental impacts and the need for urban infrastructure and services to support future development have been evaluated extensively for this level of planning (for example, see page 127 – 165 of the Jackson County Planning Commission packet for discussion of urban infrastructure needs scoring). The inclusion of lands in the UGB is not an automatic approval to be annexed or to develop to urban level standards. An evaluation of needed street infrastructure, environmental constraints and requirements to protect or mitigate impacts, and utility extensions are part of the property owner's and City's responsibility to analysis and prove it can be satisfied at the time development occurs. In this particular case, the property has committed itself to necessary infrastructure upgrades, including improvements to Cherry Lane. The Hansons, the property owners, have also worked closely with a consultant to develop a Wildlife Impact Mitigation Plan to address potential impacts to Roosevelt Elk habitat. For additional discussion of these issues and additional explanation for inclusion of this property in the UGB, please refer to the attached Exhibit RRRRR from the City Council UGB hearings.