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VIA HAND DELIVERY

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

**Re: City of Medford Urban Growth Boundary ("UGB") Amendment
Response to Department of Land Conservation and Development ("DLCD")
Letter dated September 16, 2015**

Dear Mayor Wheeler and 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 of Medford ("City"). The purpose of this letter is to respond to the letter from the Department of Land Conservation and Development dated September 16, 2015. As explained in more detail below, DLCD's objections are misguided, inconsistent with applicable law, and will be detrimental to the City's economic development interests. Therefore, the City should deny DLCD's contention that the City should reduce its proposed land need estimates (and related UGB expansion area) by 60 acres.

Response to DLCD Objection 1. The City Council should deny DLCD's assertion that all land within future agricultural buffers should be counted as "buildable" because it can meet the City's open space needs. DLCD's contention confuses different categories of urban land needs. Goal 14 specifically lists residential, employment, and park uses separately from open space uses – all of which are additive to make up the City's urban land need. The residential, urban parks, and employment land needs described by the City's Housing and Economic Elements cannot reasonably be met by an agricultural buffer that does not allow structural development. None of the urban land development needs identified in the Comprehensive Plan are planned to be met by agricultural buffers.

Even if the City amended its code to allow for some low intensity recreation uses in these areas, this action would not transform these buffers into intensive urban uses that meet the definition of buildable land. See Record Exhibit QQQ for an actual analysis of the City's adopted code that does not even allow these areas to be used for light intensity recreational use or as transportation corridors. Finally, DLCD's contention relies solely upon "the conversation" during the development of the Regional Plan. It does not rely upon adopted codes.

Response to DLCD Objection 2. DLCD's contention that irrigation canals are buildable because they will either be placed underground (possibly with reduced easements) or within public rights-of-way and might also be used for open space or recreation is inconsistent with state law. Buildable lands do not include publicly owned lands:

"Buildable Land" means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. **Publicly owned land is generally not considered available for residential uses.**"

OAR 660-008-0005(2)(c) (emphasis added), which definition is incorporated by reference in the Goal 14/UGB expansion rules in OAR 660-024-0010(1). Irrigation canals are publicly owned by irrigation districts. Therefore, they are categorically exempted from "buildable lands" by the above definition.

Even if irrigation canals are placed underground in the future, there will remain an easement upon which no building can occur. DLCD's contention that the easements can be reduced in width is highly speculative and there is nothing that requires the irrigation districts to reduce the width of their existing easements. Additionally, easements for irrigation are intended to accommodate the facility itself *and* access to it for future maintenance and repairs. As such, the size/width of irrigation canal easements is not likely to be reduced.

DLCD also argues that the canals can be placed within public street rights-of-way. Although that might be possible in some instances, irrigation canals were located where they are to ensure the gravity flow of water. Public street rights-of-way are rarely if ever designed to accommodate gravity water flows.

DLCD relatedly contends that piping irrigation water and placing the same in public rights-of-way would have substantial value to the property owner/developer. While that may sometimes be true, if the cost to underground and/or relocate an irrigation canal exceeds the benefits, there is then no value in undergrounding or relocating them to a public right-of-way.

As to irrigation canals being useful for open space/recreation, these are linear facilities that would, as a best case, function only as potential trails. There was much testimony that trails are only important if they link travel destinations. DLCD does not explain how irrigation canals will link travel destinations.

Response to DLCD Objection 3. The City should deny DLCD's contention that an existing driving range and maintenance building should be counted as buildable.

The proposed plan designation where the golf course is located is designated for employment uses. With respect to classifying the land located on the Centennial Driving Range, the DLCD letter confuses built acreage with unbuildable land. Unbuildable land is not suitable for urban development (usually by reason of a physical constraint such as slope or wetlands). Built land is land that is not available as "net new supply" to be added to the UGB to serve employment uses. A reasonable person could take the position that the "buildable" status of such land should be based upon the definition of vacant land in the Economic Development rule and consistent with its treatment in the City's adopted comprehensive plan. The Administrative rule provides as follows:

"(14) 'Vacant Land' means a lot or parcel:

"(a) Equal to or larger than one half-acre not currently containing permanent buildings or improvements; or

"(b) Equal to or larger than five acres where less than one half-acre is occupied by permanent buildings or improvements."

OAR 660-009-0005(14). A reasonable person could conclude that the driving range is a permanent improvement; considering the existing capital and maintenance expenses

for a facility that has been in place for over ten years. The maintenance shop and yard and utility facilities are all permanent buildings and improvements. These lands can be reasonably inventoried as non-vacant. The City is not necessarily precluded from inventorying some employment land as built just because it may redevelop in the context of a UGB amendment. This is certainly true if replacement is expected elsewhere. Much of the testimony concerning inclusion of the Manor's property concerns the continuing viability of Centennial Golf Course. If the Council believes a practice range is likely a necessary facility for the continued operation of an 18-hole golf course of this type then that land will need to be supplied and redevelopment of that site does not represent a net-new supply of urbanizable lands.

Response to DLCD Objection 4. The City should deny DLCD's contention that lands encumbered by existing rural buildings should not be considered "built" because they will be redeveloped. DLCD's contention lacks merit because the Medford Land Development Code includes provisions that presume the opposite. The City's code includes provisions for reserve acreage. These code provisions exist to encourage transactions that allow larger lots on the "parent" parcel. This encourages efficient urban development because land owners are rarely developers, and property owners often want to stay in their homes with their existing rural buildings. The reserve acreage provisions provide a mechanism to execute transactions that support actual urbanization of urbanizable land. The reserve acreage provisions have been used numerous times since the last periodic review to create the land development pattern that DLCD presumes to be unlikely.

Response to DLCD Objection 5. The City should deny DLCD's contention that slopes of more than 25% near Coker Butte could be used to meet the regional plan's open space allocation and thus should be deemed "buildable." Under state law, lands with slopes of 25% or greater are not buildable:

(2) "Buildable Land" means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. **Land is generally considered "suitable and available" unless it:**

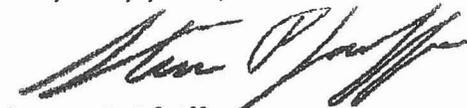
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(c) Has slopes of 25 percent or greater;

OAR 660-008-0005(2)(c) (emphasis added), which definition is incorporated by reference in the Goal 14/UGB expansion rules in OAR 660-024-0010(1). The City's proposed designation for the Coker Butte slope area is residential, and slopes in this area are of 25% or greater. Therefore, under state law, these lands are not "buildable."

Conclusion. For the reasons stated above, the City Council should deny DLCD's objections and should not reduce the City's identified land need by 60 acres. Thank you for your attention to the points in this letter.

Very truly yours,



Steven L. Pfeiffer

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