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June 27, 2017

Eugene City Council
c/o Terri Harding
99 W. 10th Avenue
Eugene, OR 97401

Lane County Board of Commissioners
c/o Lydia McKinney
125 E. 8th Avenue
Eugene, OR 97401

Re: Envision Eugene Adoption Hearing
Comments of Home Builders Association of Lane County (HBA)

Councilors and Commissioners:

Please accept this letter, along with the accompanying Summary Table of Issue and supporting exhibits, on behalf of the HBA.

The HBA has been involved in this process from the beginning. The issues raised here have been discussed with the city in letters, emails, reports and meetings multiple times since 2008.

The HBA seeks to promote affordable housing for the city's residents. Making housing more affordable is good for Eugene citizens and good for HBA members.

The bulk of the issues discussed here point to details of the zoning code that need to be fixed in order to comply with state law related to housing. We now have 15 years' experience with the new zoning code that was adopted in 2001. HBA members have been developing housing under the code for all that time, so the HBA knows what parts of the code need fixing.

If every change requested by the HBA here were to be made by the City, it would help with Eugene's housing problem, but just a little bit. The code as a whole is hostile to making housing affordable. With respect to housing, Envision Eugene proposes to continue with the same urban growth boundary, the same comprehensive plan, and the same zoning code. Nothing of substance is getting fixed. There are no changes being made that are demonstrably intended to make the code more friendly to developing affordable housing.

The adoption and appeal process gives the HBA the opportunity to point out where the city program does not comply with state law. The state standards at issue here are found in ORS 197.296, Goal 10, the Goal 10 Rule, and the Needed Housing statute. To summarize the issues most generally, the HBA would say:

> The City is obligated to make vacant residential land available for approval of housing under clear and objective standards. The city program does not do that. A lot of residential acreage is available for possible development under discretionary standards, but it is not assured of development under clear and objective standards.
>
> The City may not apply standards and processes that result in unreasonable cost and delay of needed housing. The current code does not comply with that state standard. The City has not taken the opportunity to clean up the code and eliminate aspects that contribute to unreasonable cost and delay.

The issues raised by the HBA are listed in a summary table. The balance of this discussion is organized according to the issues in the table.

I. Shortcomings in the plan that add ambiguity and unreasonable cost and delay:

A. Lack of a parcel-specific plan diagram for residential land unreasonably increases cost and delays needed housing.

The City has refused to adopt a plan diagram for the City that is parcel-specific, that is, which shows which parcels or portions of parcels have a particular plan designation. It made the Metro Plan Diagram parcel specific in <u>some areas</u> in 2004, but in large parts of the City the plan designation must be determined using an officially "generalized" diagram on which one inch is about 7,000 feet on the ground. This is why, when you look up a parcel on RLID, which is the official database for the Metro Plan Diagram, the data base tells you to consult the City about what plan designation you have.

Not knowing for certain whether a site is plan designated Residential, or what part of it is plan designated residential, increases the cost and delays the development of housing. That is because one has to get zoning to match the plan before developing housing, and getting the zoning is a lot slower and a lot more expensive if one does not know exactly what the plan designation is. There is no reason for not having a city plan diagram that is parcel specific for vacant residential lands.

Exhibit A is a case study of recent litigation seeking to get a 121-acre tract in the South Hills zoned for residential use consistent with the generalized Metro Plan Diagram. City staff would not take a position on the exact location of the boundary between the Residential and the Parks and Open Space plan designations on the property because they could not tell where the line was either. They told the owner to guess; more accurately staff told the owner it had the burden to prove where the residential plan boundary was on the property. Before the matter was resolved, the application for rezoning went to the Hearing Official three times, to the Planning Commission twice, to LUBA twice, and to the Court of Appeals once. That has taken four years and has cost the owner more than $600,000. Even at this late date, City staff are struggling to translate the third Hearing Official decision on the plan boundary line into a metes and bounds description that the owner can use to make a residential development application.

The City needs to do what other cities managed to do many years ago – adopt a plan diagram, or a list of the BLI residential parcels, that identifies which parcels and portions of parcels are definitively residential plan designated.

B. Lack of a parcel-specific plan diagram for residential land violates owners' right to clear and objective standards for development of needed housing.

The plan designation of a parcel is a standard for development of residential lands. The residential plan designation always drives the residential zoning of a parcel. Sometimes the plan designation also applies directly to a development application. The goal, the rule and the statute guarantee a right to develop under clear and objective standards. The lack of a parcel-specific plan diagram for residential land means that the plan designation can be ambiguous, and that means the owner is being denied their right to clear and objective standards for development.

An ambiguous plan designation is not clear and objective. Two aspects of the city plan create ambiguity in violation of state law. **First** is the absence of a plan diagram that is parcel-specific. The LaurelRidge rezoning case study discussed above is an example. The four years of litigation were about trying to determine how much of the site is planned residential when the Metro Plan Diagram is explicit that the Plan Diagram in that area is generalized. See discussion above.

Second is the ambiguous relationship between the Metro Plan Diagram and refinement plan diagrams. To recap, about half of the Eugene UGB acreage is in the footprint of an area refinement plan. Neighborhood "refinement plans" are part of the Metro Plan. Refinement plans make the Metro Plan more specific. However, the Metro Plan is explicit that "refinement plans and policies must be consistent with the Metro Plan. Should inconsistencies occur, the Metro Plan is the prevailing policy document." Metro Plan at I-5.

The relationship between Metro Plan designations and refinement plan designations is ambiguous because it is not clear what it means for a refinement plan to be "consistent with the Metro Plan."

If the relationship between the Metro Plan designations and refinement plan designations was clear, reasonable people would look at those plans for a site and always agree on the plan designation. Frequently just the opposite happens.

In the recent LaurelRidge matter, the applicant relied upon the refinement plan, which indicated the entirety of the site as being planned Residential, as making the generalized Metro Plan Diagram more specific. The City looked to the generalized Metro Plan Diagram as confirming that some part of the site was Parks and Open Space; hence, the refinement plan conflicted. LUBA said that the City had the correct reading of the relationship between the plans.

> "To the extent the refinement plan map can be understood to indicate that the subject property proposed for rezoning to R-1 is entirely designated LDR, the refinement plan map conflicts with the 2004 Metro Plan Diagram, which includes

> sufficient referents to allow the city to determine that some portion of the subject property is designated POS." LUBA decision at 21.

In the Knutson Family LLC matter from 2005, in contrast, the City looked to the Metro Plan Diagram and concluded that the entire 2-acre site was planned Residential, not Commercial. LUBA reversed that reading of the Metro Plan, saying that the Metro Plan Diagram was too ambiguous to support that conclusion, and the plan designation was Commercial, as shown on the refinement plan diagram. *Knutson Family LLC v. City of Eugene*, 48 Or LUBA 399, *aff'd* 200 Or App 292, 114 P3d 1150 (2005) (June 22, 2005).

In the LaurelRidge matter, LUBA summarized the difficulties inherent in using both the Metro Plan and the refinement plans to determine the plan designation.

> "Further, the practical problem in the present case is just a single instance of a larger issue. Some areas of the city are not subject to any refinement plan. Some refinement plans, such as the Laurel Hill Refinement Plan, do not have parcel-specific maps, or maps informative about the designation of particular properties. Some refinement plan maps will conflict with the Metro Plan Diagram. In all such circumstances, the designation of specific properties must be determined based on the Metro Plan Diagram, and there may be no straightforward way to do so." LUBA Decision at 20-21.

The examples above show that, when trying to decipher the plan designation for residential land, when both the Metro Plan and the refinement plan must be consulted, both the city and the applicant can guess wrong, due to the ambiguity in the relationship between the two. The relationship needs to be made clear and objective.

The City needs to adopt a plan diagram, or a list of the BLI residential parcels, that identifies which parcels and portions of parcels are definitively residential plan designated.

C. Lack of a parcel-specific plan diagram creates ambiguity about a property's plan designation, which undermines validity of the BLI.

The Envision Eugene ordinances purport to show a residential BLI with enough land for 20 years growth. This means that the City is asserting that the acreage in the residential BLI is plan designated Residential. That conclusion, however, is not supported in the adopted plan documents.

No part of the Envision Eugene package explains that all land in the residential BLI is plan designated Residential. Instead, the contrary is true. The text of the Metro Plan explains that the Metro Plan Diagram is parcel-specific only in four situations. Metro Plan at II-G-2. In all other locations the Metro Plan Diagram is generalized. For example, the text is explicit that the Diagram is not parcel specific for parcels that "border more than one Plan designation" on the plan Diagram. *Id.* Thus, one cannot determine from the Metro Plan Diagram that a parcel is Residential plan designated.

If one cannot be certain from the plan diagrams that all the parcels in the BLI are actually plan designated Residential, then the City's assertion that it has a residential BLI with a 20 year supply of acreage is not supported.

The City needs to adopt a plan diagram, or a list of the BLI residential parcels, that identifies which parcels and portions of parcels are definitively residential plan designated.

II. Code provisions that infringe on the right to develop under clear and objective standards.

The Needed Housing Statute and the Goal 10 guarantee the owner of residential land in the BLI the right to get development approval under clear and objective standards. This right is explicit in the statute and the rule. ORS 197.307(6); OAR 660-008-0015.

The LCDC recently affirmed this right in its enforcement order against Corvallis. See LCDC Order, Exhibit B hereto. As LCDC explained, state law guarantees that the property owner "retains the option of proceeding" with review of her development proposal under only clear and objective standards. This is true even if the property is encumbered with zoning standards or review processes that are not clear and objective.

In 2001 the City of Eugene adopted parallel residential review tracks to try to comply with the state law. One track (the "General" track) has many discretionary standards. The other track (the "Needed Housing" track) is supposed to have only clear and objective standards. The property owner chooses one or the other track.

The city findings that address Goal 10 compliance for the Envision Eugene package summarize the state law above and attempt to explain why the city program complies. The HBA believes that the city program and the city findings fall short. In a number of particular ways, discussed below, the city program fails to ensure that land in the BLI is actually developable for residential uses under clear and objective standards at the density allowed by the plan designation.

In general, the code standards are designed to seriously discourage or even prohibit owners from developing their property at plan densities under clear and objective standards. Some "clear and objective" standards are punishing in nature; they leverage the owner into the discretionary track. Other clear and objective standards simply make some lands undevelopable under clear and objective standards. In some situations, stringent clear and objective standards combine to make a site undevelopable at all, much less at the density allowed by the plan.

Below we discuss specific standards in the code that violate this aspect of the state program.

A. Code limits development under clear and objective standards above 900-foot elevation to just one dwelling per existing legal lot, not the density allowed by the plan.

The code standards for PUD development in the South Hills fail to comply with the statutes, goal and rule because they allow only one dwelling unit per legal lot in the BLI if the owner elects to develop under clear and objective standards.

EC 9.8325(12)(a)(Preliminary PUD):

> ***For any PUD located within or partially within the boundaries of the South Hills Study, the following additional approval criteria apply:***
>
> ***(a) No development shall occur on land above an elevation of 900 feet except that one dwelling may be built on any lot in existence as of August 1, 2001.***

There are several legal shortcomings with this approach.

First, the BLI must be calculated based upon development potential under clear and objective standards that allow the plan density, not under discretionary standards that might allow the plan density.

The City has calculated its compliance with the 20-year BLI requirement based upon land being developed under discretionary standards, not under clear and objective standards. For example, above the 900 foot elevation in South Hills, an owner opting for discretionary standards may seek permission to develop to the density allowed by the plan – either 5 or 8 du/a, depending on the location. However, an owner who invokes clear and objective standards for needed housing is limited to just one unit per existing legal lot, based on the code language quoted above. This, of course, drives owners to the discretionary standard track. For example, a South Hills owner of five acres above 900 feet and east of Friendly Street can get one unit approved under clear and objective standards but up to 40 units approved under discretionary standards.

The statutes and the rule anticipate that the BLI will be calculated based on the capacity of land that can be developed under clear and objective standards. This is plain from the text and context of the state scheme. The City must demonstrate it has enough buildable land for the 20-year planning period. ORS 197.296(2). "Buildable land" is land that is "available * * * for residential uses." OAR 660-008-0005(2). Land that is developable under discretionary standards is not "truly available" for residential development; it just "might be available" for development, depending on how the local government feels about the specific proposal. LUBA has explained this in the context of required industrial inventories. See *Opus Development v. City of Eugene (Opus I)*, 28 Or LUBA 670, 691 (1995).

Discretionary development applications can be denied repeatedly, because the applicant did not guess correctly about what the local government or the neighbors would support. As an example, see the decisions and staff reports in Exhibit C hereto, relating to the Deerbrook development proposal on a 26-acre South Hills site. After denials or recommendations for denial of three different PUD development proposals under discretionary standards over a period of 15 years, the fourth application was finally approved, because it was filed under the "Needed Housing" track of the current code. That approval was affirmed at LUBA. See *Southeast*

Neighbors' Neighborhood Assoc. v. City of Eugene, 68 Or LUBA 51 (2013), *aff'd without opinion* 259 Or App 139, 314 P3d 1004 (A154841, Oct. 23, 2013).

The saga of the Deerbrook proposals under discretionary standards is pretty grim. To summarize, with reference to the staff reports and decision in Exhibit C:

> **PD 98-12 (1998): West Creek PUD**. This was filed under the former zoning code. It requested tentative PUD approval for a 20-lot, single-family residential subdivision on TL 300 of the subject property. Staff recommended denial due to lack of compliance with the discretionary PUD approval criteria, in particular those related to resource preservation. The application was withdrawn on the day of the scheduled hearing, April 7, 1999.
>
> **PD 00-2 (2000); South Park PUD.** This was also filed under the former zoning code. It requested tentative PUD approval for a 57-lot, single-family residential PUD on about 26 acres. The Hearing Official denied the application, based on lack of compliance with several discretionary PUD criteria. See Findings of the Hearing Official (PDT 00-2)(July 20, 2000). The denial was appealed to the Planning Commission, which approved the denial. See Final Order of the Planning Commission (PDT 00-2)(September 5, 2000).
>
> **PDT 06-2 (2006); SDR 06-1.** This application was filed under the new zoning code, which provides for a "General Standards" review track and a "Needed Housing Standards" review track. Staff encouraged the owner to file under the highly discretionary General Standards track. The proposal was for tentative PUD and tentative subdivision approval for 81 single-family lots. A Staff Report was issued on April 16, 2007, recommending denial, again for lack of compliance with a range of discretionary PUD criteria.

The fourth application, filed in 2012 under the Needed Housing track, was approved by the Planning Commission under clear and objective standards, and then affirmed by LUBA and the Court of Appeals. See LUBA citation above.

In summary, the Deerbrook case study shows that to be counted as land that is truly available for residential development, the land must be developable under clear and objective standards.

Second, limiting all land above 900 feet elevation to just one unit per existing legal lot is contrary to the guarantee in the statute and the rule that an owner always has the option of "proceeding under the approval process" that has only clear and objective standards. ORS 197.307(6)(a). An owner who opts into the discretionary standards of the General track can ask permission to develop up to the density allowed by the plan. The owner who asks for clear and objective standards gets only one unit per existing legal lot, providing she can get access to the legal lot. "Proceeding under the approval process" means proceeding with the development proposal consistent with the plan, not proceeding with the one dwelling unit the code per existing legal lot. An owner with five acres might get permission to divide into 25 lots under the General

track; an owner starting with the same five acres cannot subdivide at all under the Needed Housing track; she just gets one unit.

Limiting the density to one unit per legal lot also violates the basic prohibition in ORS 197.307(4) against standards that "have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay." The statute prohibits regulations that result in unreasonable cost. Using the example above, the owner of a five-acre legal lot gets one dwelling unit if he invokes the Needed Housing Statute, rather than up to 25 if he elects discretionary standards. Development costs get spread over one unit rather than 25 units, which greatly increases the costs per unit. It also causes delay. If one unit is developed on a five-acre legal lot under clear and objective standards, the other units anticipated by the status of the site in the Buildable Land Inventory are being delayed, at least until some owner elects to take her chances on developing the balance of the site under discretionary standards. Units not allowed by the code under clear and objective standards are units delayed by the code.

The City needs to amend the code to allow the owner of land residential BLI land above the 900-foot elevation to have a clear and objective path to develop to the density allowed by the plan.

B. Code imposes 300 foot development setback for needed housing adjacent to the South Hills ridgeline.

The code standards for PUD development in the South Hills fail to comply with the statute because the 300 feet of land adjacent to the Urban Growth Boundary is off limits to development if the owner wants to develop under clear and objective standards.

EC 9.8325(12)(b):

> ***For any PUD located within or partially within the boundaries of the South Hills Study, the following additional approval criteria apply:***
> **** * * ****
> ***(b) Development shall be setback at least 300 feet from the ridgeline unless there is a determination by the city manager that the area is not needed as a connection to the city's ridgeline trail system. For purposes of this section, the ridgeline trail shall be considered as the line indicated as being the urban growth boundary within the South Hills Study plan area.***

The South Hills ridgeline stretches along the city's entire south line of the UGB. It is miles long. In this area, if the owner invokes her rights under the Needed Housing Statute, any residential development must be set back 300 feet from the ridgeline. That is a football field setback. The same limitation is not imposed on owners who develop under discretionary standards.

The City has not calculated the potential number of units foregone if development proceeds under clear and objective standards. However, it plainly reduces the potential density, as compared to proceeding under discretionary standards. See discussion under the item immediately above.

For small sites adjacent to the UGB, the 300 foot development setback could preclude any development at all. For example, a site in the BLI that is 300 feet by 300 feet, a little over 2 acres, would be precluded from development under this standard.

Under the Needed Housing Statute, ORS 197.307(6)(c), land that is developable under discretionary standards also must be developable under clear and objective standards. This code standard makes the 300-foot strip of land, which might be developable under discretionary standards, undevelopable under clear and objective standards. This is contrary to ORS 197.307(6)(c).

If the City wishes to allow development in the 300 feet adjacent to the UGB under discretionary standards, then it must amend the code to drop the prohibition on development in this area under clear and objective standards.

C. Code imposes a 30 foot landscape buffer around perimeter of any PUD needed housing development site.

The code standards for PUD development throughout the City fail to comply with the Needed Housing Statute because the code requires a 30-foot landscape buffer around the perimeter if the owner wants to develop under clear and objective standards.

EC 9.8325(3) (Preliminary PUD):

> ***The PUD provides a buffer area between the proposed development and surrounding properties by providing at least a 30 foot wide landscape area along the perimeter of the PUD according to EC 9.6210(7).***

If an owner invokes clear and objective standards for a required PUD, anywhere in Eugene, a 30-foot landscape buffer is required around the perimeter of the project. This area may have no structures. In 2004 the City interpreted this standard as even prohibiting fences. See Hearing Official Code Interpretation CI 04-4 (July 29, 2004), Exhibit D hereto. The City has interpreted the standard at not applying to adjacent to streets, which is necessary to get access to sites. *Walter v. City of Eugene*, __ Or LUBA __ (LUBA No. 2016-024), *aff'd without opinion* 281 Or App 461 (2016) (No. A162680, Sept 16, 2016). And it also has interpreted the standard as requiring any backyard fence to be <u>inside</u> the 30-foot buffer, thus ensuring the buffer area is available to benefit the neighbor, not the owner. See *Southeast Neighbors' Neighborhood Assoc. v. City of Eugene,* 68 Or LUBA 51 (2013), *aff'd without opinion* 259 Or App 139 (No. A154841, Oct. 23, 2013). However, if the owner opts into the discretionary standards for a PUD, then there is no buffer requirement, and the 30-foot area is potentially available for housing.

Attached as Exhibit E is a graphic of the Site Plan for "The Farm," a 2.08-acre R-1 PUD that was approved under discretionary standards at the allowed 14 du/acre. The colored area reflects the 30-foot landscape buffer that would have been off limits to development had the owner invoked

his rights to clear and objective standards. One can see impact the buffer has on the density that is possible.

Also attached to this letter as Exhibit F is a graphic of the Site Plan for the "Piper Lane PUD," a 2.0 acre R-1 project also approved under discretionary standards. The yellow colored area reflects the 30-foot landscape buffer that would have been off limits to development had the owner invoked his rights to clear and objective standards.

The 30-foot setback is land that is not available for development, contrary to ORS 297.307(6)(c).

On small infill sites, and there are lots of these in the proposed BLI, imposing the buffer setback can prevent achieving the density allowed by the plan designation, allowed by the zoning, and assumed in calculating the BLI. On the smallest sites in the BLI it can prevent development of a site altogether.

The reduction in potential density also can unreasonably increase the cost of developing needed housing. The reduced density that is possible on the site increases the cost of the housing that is developed on the site with similar infrastructure costs. ORS 197.307(4).

The City needs to remove the mandatory 30-foot landscape buffer; in the alternative, it needs to calculate the BLI without the buffer acreage on land subject to Planned Development .

D. Code imposes a 40% mandatory open space requirement on any needed housing development site

EC 9.8325(12)(c)(Preliminary PUD).

> ***For any PUD located within or partially within the boundaries of the South Hills Study, the following additional approval criteria apply:***
> **** * * ****
> ***Development shall cluster buildings in an arrangement that results in at least 40% of the development site being retained in 3 or fewer contiguous open space areas. For purposes of this section, the term contiguous open space means open space that is uninterrupted by buildings, structures, streets, or other improvements.***

An owner in the South Hills who wants to develop under clear and objective standards must keep 40 percent of the site in big chunks of contiguous open space. Owners who let the City impose discretionary standards do not have to do this. For those who develop under the discretionary track, the South Hills Study, an area refinement plan, imposes a generalized "clustering" requirement, among other discretionary standards to be balanced, but there is no minimum required open space. Because of the 40 percent open space requirement, a site that is developed under clear and objective standards has substantially less land available for actual development. This violates the requirement that land developable under discretionary standards must also be

available for development under clear and objective standards. ORS 197.307(6)(c).

As an example, a 10-acre R-1 site in the South Hills, which is allowed 8 du/a by the zoning, would have to put all 80 units on 6 acres in order to comply with the 40 percent open space standard. That would boost the density on the remaining 6 acres to more than 13.3 single family du/a. That can't be done in the R-1 zone.

Making 40% of the land off-limits to development, and thereby reducing the development potential, increases the cost of housing because it reduces the number of units available to spread the costs.

The City should amend the code to ensure that the entirety of any BLI site is developable under clear and objective standards.

E. Code imposes a 20% slope grading limitation for any proposal to develop Needed Housing under Clear and Objective Standards, which limits what land can be developed.

EC 9.8325(5) (Tentative PUD); EC 9.8520(5) (Tentative subdivision):

> ***There shall be no proposed grading on portions of the development site that meet or exceed 20% slope.***

Under this standard an owner seeking to develop under clear and objective standards may not grade any portion of the site on which the slope is 20% or steeper. Although not explicit in the code, the City requires slope to be measured based on 5-foot contour intervals. The City also applies the limitation to artificially-created features on a site; for example, a 20% slope on a golf course sand trap may not be regraded in conjunction with the subdivision of the site. LUBA has upheld the five-foot contour staff-mandated mapping methodology. See *Southeast Neighbors' Neighborhood Assoc. v. City of Eugene*, 68 Or LUBA 51 (2013), *aff'd without opinion* 259 Or App 139, 314 P3d 1004 (A154841, Oct. 23, 2013).

The 20% grading limitation insulates from development any part of the site that is 20% or steeper based on 5-foot contour intervals, and also any parts of a site that cannot be reached without grading something that is 20% or steeper, including proposed building sites. On the other hand, if an owner opts into discretionary standards, there is no slope grading limitation at all. State law in the Goal 10 Rule presumes that anything up to 25% is developable. OAR 660-008-0005(5).

The practical effect of the 20% grading limitation standard is to reduce dramatically the acreage that can be developed under clear and objective standards. The 2014 Deerbrook PUD decision in Eugene's South Hills is a recent example. There the owner of a 26-acre site, having been defeated in three earlier attempts in 15 years to develop under discretionary standards, as discussed above, finally applied under the Needed Housing provisions. The owner was able to secure an approval, and defend it at LUBA, but only for a portion of the northern 18 acres of the site. The southern 8 acres could not be reached without grading a road up a slope that was 20%

or steeper. Hence, those 8 acres were completely lost to development under clear and objective standards. See *Southeast Neighbors*, supra. This limitation is significant. Starting with the base zoning density of 5 du/a, the 20% grading limitation reduced the potential density of the Deerbrook site from 130 units to 90 units. Furthermore, large areas of the balance of the site were off limits to development due to the 20% slope.

See the two graphics of the Deerbrook site at Exhibits G and H. One graphics shows the 20% slopes on the site, with the mapping done using the 20-foot contour intervals on the USGS map for the site. The other graphic shows 20% slopes on the site with the mapping done using 5-foot contour intervals required by the City Staff. The 5-foot contour mapping shows much more acreage off limits to grading than does the map using 20-foot contour intervals. Furthermore, if 20-foot intervals are used, the southern 8 acres of the site can be reached for development at all.

The issue of what contour interval to use when mapping slope for purposes of determining grading limitations is critical to quantifying what part of the BLI is off-limits to development under clear and objective standards. The 20-foot versus 5-foot examples are discussed above; the different sized bites out of the BLI associated with these two methodologies is shown in the graphics. Then there is the issue of whether the limitation applies to 20% slopes on manmade topography, such as golf course sand traps or excavated dirt piled on a site in the recent past; examples of both have been the subject of discussions with city staff about when the limitation applies. The graphic at Exhibit I uses cartoons to show how arcane this issue can become. How do you handle a tree that has fallen, leaving a slope at the root ball greater than 20% slope? How about the hole dug by a dog? How about the 50% slope left by taking a shovel full of dirt?

The grading limitation also forces some developers into the discretionary standards track because the 20% slopes on the site preclude development consistent with the grading limitation. A recent example is The Retreat project in Laurel Valley. That was a 162-unit multi-family proposal on 22 acres in 49 buildings. See PDT 13-3, TIA 13-5, and SDR 13-1. The project was denied by the Hearings Official for failure to comply with many of discretionary PUD standards. The Planning Commission affirmed the denial. See Hearings Official decision (Feb. 7, 2014) and Planning Commission decision (May 5, 2014). That would-be developer left town; the site remains vacant.

The 20% grading limitation operates to make land developable only under discretionary standards, which is contrary to ORS 197.307(6), as both The Retreat and Deerbrook case studies show. How much land in the BLI is off-limits to development under clear and objective standards due to this standard? The City does not know. It has not done the calculations. The calculations need to be done. When the City does the calculations, the City math needs to be sensitive to:

> The fact that the City requires mapping using five-foot contour intervals.
>
> The fact that for some sites, like the Deerbrook site, large areas of the site below 20% slope may be off limits to development because they can't be reached without grading 20% slopes.

> Articulating a policy, for purposes of applying the standard, about dealing with anomalies in the topography, such as golf course features, stockpiles of excavated materials, fallen root balls, and the like.

If residential land with a 20% or steeper slopes, or that can't be reached without grading 20% slopes, is to remain in the BLI, then the code must be amended to allow its development under clear and objective standards.

F. Code provisions cumulatively preclude any development of some BLI sites under clear and objective standards.

The city's proposed findings supporting compliance with Goal 10 make the following statement at page 18:

> "In other words, the code imposes the same minimum and maximum densities, regardless of whether an applicant is proceeding under the subsection (4) process or the subsection (6) alternative approval process."

This statement is a critical finding for the City to make. It means that the City is asserting that a property owner is not penalized in terms of density if she chooses to invoke state law and proceed with development review under clear and objective standards. However, the finding is not accurate, in two respects. First, it is not accurate on the face of the code. Second, it is not an accurate conclusion when the development restrictions that are unique to the Needed Housing development track are actually applied to sites.

Face of the code: The code, on its face, penalizes an owner of land above the 900 foot elevation who invokes her rights under state law. As discussed above, such an owner of five acres of land may not subdivide. Instead of developing her five acres at the 5 du/a limit in the plan and the code, that owner is prohibited from subdividing and gets only one unit per existing legal lot. That is not the "same maximum density" referenced in the city finding.

Application of needed housing code restrictions to sites: As discussed above, the code standards are more punishing for owners who invoke their rights under state law. The bite of these restrictions can be appreciated more when they are applied in the real world.

Piper Lane PUD example: Attached as Exhibit F is a graphic of the Site Plan for the "Piper Lane PUD," a 2.0 acre R-1 project also approved under discretionary standards. The application had to be processed as a PUD to develop at the 14 du/a density allowed by the code in the R-1 zoning district. The graphic shows the 20% slopes in purple color. There are two areas of 20% slope. One is a long band in a swale across the property. The other is a small patch at the end of the road that abuts the property and provides the only access. The owner would have proceeded in the Needed Housing PUD track to avoid the raft of discretionary standards applied by the City, which changed the site plan dramatically for the worse. However, the 20%

grading limitation precluded proceeding under clear and objective standards because getting access to the site required grading that little patch of 20% slope at the entrance.

Capitol Hill PUD example: This is a proposed PUD in the South Hills (City file PDT 17-3) on a 13-acre site, now pending at the city. Several code standards that apply to needed housing (30-foot landscaping buffer; 20% slope grading limitation; and development restriction above 900-foot elevation) combine to preclude any development approval under clear and objective standards. As a result, the application was filed under the General track with its discretionary standards. If the application had been filed under the Needed Housing track, no development could be approved.

Here we describe how the Needed Housing track standards in the code would regulate development on this site. This discussion shows that no development would be allowed if the standards in the Needed Housing track in the code, EC 9.8325, are applied.

The attached graphic in Exhibit J shows for the site: property boundaries; presumed legal lots; the protected 30-foot landscape buffer on the perimeter; areas that have slopes that are 20% or steeper; existing contours including the contour at the 900 foot elevation; and existing dwellings. Here is how these standards apply to preclude any development approval.

30-foot landscape buffer: As discussed above, the code requires a 30-foot landscape buffer adjacent to the perimeter of the site. EC 9.8325(3). The graphic shows in green where the 30-foot buffer would be required on this site.

No grading on 20% slopes: As discussed above, the code prohibits any grading on slopes of 20% or steeper. EC 9.8325(5). The city has interpreted that slope is measured based on 5-foot contour elevations, which are required to be shown on the application documents. On the graphic we show in purple the areas of the site that are 20% or steeper, as measured between 2-foot contours. In these areas there can be no development because grading is prohibited.

900-foot elevation development limitation: As discussed above, the code limits development above the 900-foot elevation to just one dwelling unit on any legal lot that existed on August 1, 2001. EC 9.8325(12)(a). This means that the area above the 900-foot contour may not be subdivided for housing. The presumed legal lots above the 900 foot elevation are shown. There are thought to be just 5 legal lots. Of these, three already contain one or more dwellings. That leaves the potential for only 2 more dwellings above the 900-foot elevation. However, these two legal lots can't be accessed for development because the land adjacent to the road that would provide the only access is prohibited from development by the 20% grading limitation.

In summary, this 13-acre site, which is zone R-1 and is in the proposed BLI, and is entitled to 5 du/a under the plan, is prohibited from any residential development under the various code standards that apply to an application to develop under clear and objective standards.

G. Code subjects only needed housing applications to "19-Lot Rule." EC 9.8325(6)(c) (Preliminary PUD); EC 9.9520(6)(b); (Tentative Subdivision)

EC 9.8325(6)(c) (Preliminary PUD); EC 9.9520(6)(b); (Tentative Subdivision)

> ***The street layout of the proposed partition shall disperse motor vehicle traffic onto more than one public local street when the sum of proposed partition parcels and the existing lots utilizing a local street as the single means of ingress and egress exceeds 19;***

This standard for Needed Housing PUDs and subdivisions is subjective because, as LUBA held in *Walter v. City of Eugene*, __ Or LUBA __ (No. 2016-024, June 30, 2016), the operative phrase "disperse motor vehicle traffic" can be interpreted to either approve or deny an application. LUBA held this subjective standard violates the statute and may not be applied. It should, therefore, be amended out of the code.

In the *Walter* litigation at LUBA the City argued unsuccessfully that the standard requires secondary access. The City might be tempted to keep the standard in the code after amending it to explicitly require secondary access. This also would violate the statute, because the 19-Lot standard would prohibit Needed Housing development on land where housing would be allowed under discretionary standards. The legislative history of the current code shows that in 2002 the City consciously decided to drop the 19-Lot Standard for discretionary applications, but it left the limitation in the code for Needed Housing applications. As LUBA noted, the legislative history is silent about reasoning, but the discrepancy is contrary to the statute. ORS 197.307(6)(a). That is because it renders sites that are developable under discretionary standards undevelopable under clear and objective standards.

The City should amend the 19-Lot Rule out of the code.

H. Code limits needed housing PUDs to areas of the City that are within ¼ mile of "accessible recreation area or open space." EC 9.8325(9)

EC 9.8325(9)(Preliminary PUD).

> ***All proposed dwellings within the PUD are within 1/4 mile radius (measured from any point along the perimeter of the development site) of an accessible recreation area or open space that is at least 1 acre in size and will be available to residents.***

This standard applies to Needed Housing applications but not to discretionary applications. This makes smaller sites on the BLI, that are remote from open space, undevelopable if the owner wants clear and objective standards. For larger sites that are remote from available open space, the open space can be provided on site, but that acre is lost to Needed Housing. The code may not require converting an acre of housing into an acre of open space as a penalty for an owner choosing clear and objective standards. ORS 197.307(6)(c).

The proximity to open space requirement that applies only to needed housing applications should be amended out of the code.

I. Whether PUD process is needed on South Hills land between 500 and 701 foot elevation is ambiguous. EC 9.8305(1)(a).

EC 9.8305(1)(a)(Applicability of PD process).

> ***PUD provisions shall be applied when any of the following conditions exist: (1) The proposal is subject to review and approval through the PUD process according to an adopted refinement plan, including but not limited to, property within the boundary of the South Hills Study where all or a portion of a development site is:***
>
> > ***(a) Between an elevation of 500 feet and 701 feet, and the development site is at least 4 acres with areas of the development site containing slopes that exceed 20***%.

The Director has discretion to decide whether PD standards and processes apply to review of a development proposal because the Director has discretion to decide how to determine whether the development site contains "slopes that exceed 20%." The methodology is not stated in the code or in any administrative rule. The Director has unfettered discretion to pick a methodology for making that call about slopes; thus the Director has discretion to decide whether an owner gets caught in the PD net. Is the determination made based on 20' contour intervals, 5' contour intervals, or 2' contour intervals?" Or, as illustrated in the graphics in Exhibit I, the Director can look to a particular feature on the site, whether it be a root ball from a windthrow tree or a hole dug by a dog or the divot left by a shovel and determine that the site has a slope slopes that exceed 20% or more.

The City should remove this standard from the code or amend the code to negate discretion by the Director in its application.

J. City applies the discretionary TIA standards to needed housing applications. (EC 9.8650)

EC 9.8650 to EC 9.8680 requires study of traffic impacts (TIA) of development applications in certain situations. If that study shows certain levels of impact, then the code anticipates implementing solutions in connection with approval of the project.

The purpose of Traffic Impact Analysis is stated in EC 9.8650, which says in part:

> ***The purpose of Traffic Impact Analysis Review is to ensure that developments which will generate a significant amount of traffic, cause an increase in traffic that will contribute to traffic problems in the area, or result in levels of service of the roadway system in the vicinity of the development that do not meet***

> ***adopted level of service standards provide the facilities necessary to accommodate the traffic impact of the proposed development.***

The triggers for doing a Traffic Impact Analysis are stated in EC 9.8670. The most likely trigger that would apply to a subdivision or PUD proposal appears in EC 9.8670(1), which says:

> ***(1) The development will generate 100 or more vehicle trips during any peak hour as determined by using the most recent edition of the Institute of Transportation Engineer's Trip Generation. In developments involving a land division, the peak hour trips shall be calculated based on the likely development that will occur on all lots resulting from the land division.***

The approval criteria for the results of a study are stated in EC 9.8680. The most relevant standard for this project is in EC 9.8680(1), which says:

> ***(1) Traffic control devices and public or private improvements as necessary to achieve the purposes listed in this section will be implemented. These improvements may include, but are not limited to, street and intersection improvements, sidewalks, bike lanes, traffic control signs and signals, parking regulation, driveway location, and street lighting.***

The standard quoted above is discretionary. "As necessary;" "to achieve the purposes;" these are inherently judgment calls.

The City's position is that the TIA requirements apply to needed housing applications.

The language of the code indicates that the TIA requirements do not apply to applications for approval of Needed Housing. The TIA requirement of EC 9.8650 does not appear in the list of approval standards for tentative subdivisions reviewed under the Needed Housing standards of EC 9.8520. In contrast, the TIA requirement does appear in the list of approval standards for tentative subdivisions that are processed under the "General Standards" that appear at EC 9.8515. Specifically, EC 9.8515(11) lists:

> ***(11) The proposal complies with the Traffic Impact Analysis Review provisions of EC 9.8650 through 9.8680 where applicable.***

If compliance with the TIA is listed as required for one approach to subdivision approval, but it is not listed as required for another approach to subdivision approval, that is context indicating an intention to not require it for the latter approach.

Notwithstanding the fact that the TIA requirement is explicitly listed in the standards for the General Track, and it is not listed in the standards for the Needed Housing track, city staff have made clear that it applies even to Needed Housing applications, for the reason that the TIA requirements are independently stated at EC 9.8650, which is among standards that the staff says applies to all development. See Exhibit K, Email from city staff.

The position of the City, as stated in the staff email, is incorrect. That email would read the code as applying the discretionary TIA standards to applications for needed housing.

The City should amend the code to clarify that the discretionary TIA process and standards in EC 9.8650 through 9.8680 do not apply to needed housing applications.

K. The City applies discretionary, unacknowledged land use regulations to tree removal in needed housing developments approved by conditional use permits, Planned Unit Development, Site Review, and Tentative Subdivisions. EC 9.8100(3)(CUPs); EC 9.8325(4)(PUDs); EC 9.8445(3)(Site Review); and EC 9.8520(7).

This issue has bubbled to the surface recently in connection with the 2017 Wendell Canyon subdivision approval, ST 17-4, which was approved under the Needed Housing criteria for tentative subdivision approval in EC 9.8520. A copy of the Director approval and related plans are Exhibits M and N hereto.

The relevant code language is at EC 9.8520(7), which provides in part:

> ***(7) For areas not included on the city's acknowledged Goal 5 inventory, the subdivision will preserve existing natural resources by compliance with all of the following:***
> ***(a) The proposal complies with EC 9.6880 through EC 9.6885 Tree Preservation and Removal Standards.***

Similar language appears in the code sections for the other three approaches for developing needed housing – Conditional Use Permits, Planned Unit Developments, and Site Review.

The application for Wendell Canyon was required to include a report on the condition of trees on the site and also a tree preservation plan. Those items were submitted. The plans reflected a proposed tree removal plan based on an arborist's report. See plans in Exhibit N, especially Plan Sheets C 5.0 and C5.1.

The City, however, has taken the position that the land use approval for the subdivision does not include an approval to remove any trees, and that the developer must obtain city approval to remove trees under the "Tree Preservation" regulations of Chapter 6 of the Eugene Code. See Exhibit O, email from City of Eugene.

There are several legal shortcomings with the city's position on tree regulation under these code standards.

First, the City position does not honor the structure of Eugene Code. With respect to the regulation of trees removal, the relationship between the tree preservation standards in the zoning code (Chapter 9) and the tree preservation standards in environment and health code (Chapter 6) was changed fundamentally in 2001. Both chapters were amended at that time, and both

decisions were appealed to LUBA and remanded to the City for corrections. See *Home Builders Assn. of Lane County v. City of Eugene*, 41 Or LUBA 370 (2002)(appeal of Chapter 9 changes); *Home Builders Assn. of Lane County v. City of Eugene*, 41 Or LUBA 453 (2002)(appeal of Chapter 6 tree regulations). As LUBA explained in Chapter 6 decision, the new structure of the code provides that when an application for a land use approval is made, the tree removal issue is resolved in conjunction with that decision. When a proposal to remove trees is made outside of land use application, the decision is made under the Chapter 6 standards. LUBA explained, 41 Or LUBA at 454-455:

> "Prior to the challenged decision, the City of Eugene regulated all tree removal provisions through chapter 6 of its municipal code, titled Environment and Health. Land use development was regulated by chapter 9, the land use code. The city recently completed an update to chapter 9, the Land Use Code Update (LUCU), and as part of the LUCU the city changed the way it regulates tree removal. The city amended chapter 6 so that any tree removal proposals relating to land use development are now governed by the chapter 9 land use code, while tree removal proposals not involving development applications are regulated by chapter 6. This bifurcation was accomplished through two ordinances. One ordinance added to chapter 9 a set of tree removal provisions applicable to land use development applications. That ordinance is the subject of a separate opinion issued this day in LUBA Nos. 2001-059/063. A second ordinance added to chapter 6 a set of tree removal provisions not associated with land use development."

Simply put, the position the City is taking now violates the structure of the code, as described by LUBA above.

Second, by referring need housing land developers to Chapter 6 to get tree removal approval, the City is telling applicants that it intends to apply unacknowledged land use regulations to make decisions about their land use applications. In its decision remanding the Chapter 6 amendments, LUBA determined that those tree removal regulations are land use regulations, contrary to the city's view, that they need to be acknowledged before they may be applied, and that the 2001 amendments were not acknowledged. 41 Or LUBA at 458-459. As best the HBA can determine, the current Chapter 6 tree removal regulations remain unacknowledged. Therefore, they may not be applied to regulate tree removal.

Third, the tree removal regulations in Chapter 6 are not clear and objective. Getting a city approval under Chapter 6 to remove the trees on this development site consistent with the tentative subdivision plans would involve the most subjective of value judgments on the part of city staff, contrary to ORS 197.307.

The City must change its interpretation of the Eugene Code or change the language of the Eugene Code to ensure that tree removal plans for the types of land use approvals listed above are resolve under Chapter 9 of the Code, not Chapter 6 of the code, as Chapter 6 is not acknowledged and applies standards that are not clear and objective.

III. Code processes that unreasonably increase the cost and delay needed housing development.

A. Code requires any application for needed housing approval to also go through the Site Review process. EC 9.8430(3).

(Note: In response to complaints by the HBA and others, this provision was amended out of the code by Ordinance No. 20569 (Nov. 16, 2016) section 31. The discussion about the issue remains here, to illustrate the city's ability to make code amendments necessary to comply with state law.)

EC 9.8430 (Site Review):

> **Site review provisions shall be applied when any of the following conditions exist:**
> *** * * ***
> **(3) The application proposes needed housing, as defined by State statutes. Applications proposing needed housing shall be reviewed through the Type II site review procedures utilizing the criteria at EC 9.8445 <u>Site Review Approval Criteria - Needed Housing</u> unless the applicant specifically request in the application that the city apply the criteria at EC 9.8440 <u>Site Review Approval Criteria – General.</u>**

When an owner wants to develop under clear and objective standards, the code section above requires that she <u>also</u> go through the Site Review process. This code language was enacted in 2001, when the City adopted the two-track processes for developing housing. It is one of a handful of code provisions adopted at that time that effectively discourage landowners from applying under the Needed Housing track. Requiring Site Review in conjunction with any Needed Housing development is wholly duplicative of the substantive standards for land division; it increases the cost of housing; it also delays housing because the Site Review and land division processes can't be wholly consolidated.

The Site Review for Needed Housing process standards appear at EC 9.8445. Each of these standards is wholly duplicative of other standards in the code that would otherwise apply to the land development. Those other standards are found either in the standards for subdivisions or with the standards for multi-family development.

One site review standard for needed housing, EC 9.8445(5), precludes fully consolidating the site review process with the subdivision process.

> **(5) Public improvements as required by this land use code or as a condition of tentative plan approval have been completed, or:**
> **(a) A performance bond or suitable substitute as agreed upon by the city has been filed with the city finance officer in an amount**

> **sufficient to assure the completion of all required public improvements; or**
> **(b) A petition for public improvements and for the assessment of the real property for the improvements has been signed by the property owner seeking the subdivision, and the petition has been accepted by the city engineer.**

This standard requires having subdivision improvements installed or bonded for at the time Site Review is approved. However, public improvements cannot be installed until after Tentative Subdivision approval and after PEPI plan approval. (One can't bond for what has to go in the ground until one knows what has to go in the ground.) Because the City can't make a finding of compliance with this standard until after the Tentative Subdivision is approved, and public improvements are designed, and either installed or bonded for, Site Review can't be started until months after the Tentative Subdivision is approved.

The relationship between the substantive standards for Tentative Subdivision and Needed Housing Site Review also conflicts with EC 9.8005(2), which guarantees the owner the right to have the Tentative Subdivision and the Site Review applications processed at the same time.

The City should amend out of its code the requirement for Site Review approval in conjunction with any review for approval of needed housing.

B. Code requires needed housing proposals to go through serial, duplicative review processes that can't be consolidated. EC 9.8325 (Preliminary PUD); EC 9.8520(Preliminary Subdivision)

When the City restructured it code in 2001 to provide separate tracks for Needed Housing review (clear and objective) and General review (discretionary), it did not at the same time collapse duplicative process for needed housing review into a single review process.

Much of the land in the proposed BLI requires both PUD and subdivision review and approval. When both a PUD and Subdivision process is required, the sequence is: Tentative PUD ($17,309 base fee), Final PUD ($4,316 base fee), Tentative Subdivision ($6,900 base fee), Final Subdivision ($4,892 base fee). The $20,000+ in PUD fees are exceeded, by at least several times, by the private professional fees needed to get through the process. The delay in requiring multiple review processes in series is also significant. City data show that for all the residential PUDs finally platted in Eugene from 2004 through 2010, the average number of months in process was 11. That does not include the time between tentative approval and application for the final. See Summary Table of projects completed under the 2001 code, Exhibit L hereto.

If the standards to be applied are clear and objective, where is the utility in keeping serial process – the utility that outweighs the extra cost and delay of having discrete, serial review processes? None is apparent in the code; none is explained in the city's proposed findings. The HBA believes that there is no increment of utility that would make the additional time and cost "reasonable" as required by the statute and the goal.

The City should amend its code to collapse into a single process the clear and objective standards that apply to needed housing development proposals. To comply with the statute and the goal the City must afford needed housing developers a path that is "one time through one set of standards."

C. Code limits property line adjustments in several neighborhoods to just five-foot increments; EC 9.8415(6).

Landowners use property line adjustments to reconfigure residential lots to facilitate infilling of units. It is a valuable tool to increase density at a reasonable cost. In 2014 the City changed the rules for three neighborhoods in the City to discourage infill. The City limited any property line adjustment in these neighborhoods to just five feet. EC 9.8415(6) says:

> ***Within the R-1 zone in the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association, property lines may only be adjusted up to 5 feet, measured perpendicularly from the current location of the property line. A Property Line Adjustment allowed under this section may be up to 10 feet if the adjustment is necessary to accommodate an encroachment that existed as of April 12, 2014.***

Because the code generally allows only two moves of a property line in a calendar year, the code amendment discourages needed housing through unreasonable cost and delay. A property owner who needs to move a property line 30 feet to create a buildable lot now needs three years and six property line adjustment applications to create the developable lot. The city policy reflected in this code amendment can be summarized as: We are not going to stop you from putting a new infill house on your vacant land, but we are going to seriously discourage you by making it very expensive and slow process. This new policy, and the residual policy of allowing only two property line adjustments per calendar year, both amount to unreasonable cost and delay.

The City should amend out of the code the restrictions on the number of property line adjustments and the size of property line adjustments that can be done in calendar year.

IV. Unsubstantiated assumptions about what land is developable for housing.

A. BLI assumes that land between 25% and 30% slope is developable, without an empirical basis.

The city's BLI is based on the assumption that land up to 30% slope is "suitable and available" for development." See Residential Land Supply Study Draft, page 5 note 6. The City, has failed to carry its burden to show that land between 25% and 30% slope is in fact suitable and available for development.

The Goal 10 Rule states a presumption that land with slopes 25% or greater is <u>not</u> suitable and available. OAR 660-008-0005(2)(c). The City is assuming just the opposite.

The Residential Land Supply and its supporting Housing Needs Analysis simply assume that land between 25% and 30% slope is "buildable land" because "some residential development occurs above 25%." Residential Land Supply Study Draft, page 6 note 6. This bare fact, standing alone, is not sufficient to rebut the contrary presumption stated in the Goal 10 Rule. Looking at the entirety of the Residential Land Supply and its supporting Housing Needs Analysis documents, the HBA would point out:

> The City has not explained how many acres are in the 25% to 30% slope range it considers to be in its BLI.
>
> The City has not explained where these acres are located.
>
> The City has not explained why these lands should be considered buildable. Merely noting that some land somewhere has been developed in the past is not an empirically sound basis for rebutting the presumption that land with 25% and greater slope will be developed.

The City needs to either honor the 25% slope presumption in the Goal 10 Rule, or it must empirically rebut the presumption and demonstrate that the land between 25% and 30% slope will be developable based on where that land is located, its actual slope, and the history of development and density of similarly sloped land in the same vicinity.

V. Amendments needed to Public Facilities Plans to support proposed BLI

The city's proposal is to add tens of thousands of new residents to the existing UGB and serve them with transportation facilities, sanitary services, storm water services, and water for domestic consumption and fire protection. Statewide Planning Goals 2 and 11 require the City to demonstrate that these facilities and services will be available to serve the development of all land in the BLI at the end of the planning period. The city has not made such findings, much less show that such findings are supported by the evidence.

VI. Amendments needed to plan Eugene Comprehensive Plan housing element

The City is relying on the existing residential policies in the Metro Plan. For the reasons above, these policies fall short of demonstrating compliance with the state law discussed above that applies to housing. To ensure compliance with state law, the City should add to the plan and

code, the following policy language:

> The plan and code shall be interpreted and applied to ensure that all vacant land in the UGB plan designated for residential use shall be entitled to development review under clear and objective standards for residential use at the density allowed by the plan.

Sincerely,

Bill Kloos

Bill Kloos

Cc: Ed McMahon, HBA Lane County

Attachments:

Exhibit	**Title**
A	LaurelRidge rezoning case study
B	LCDC Order 17-ENF-001881 – 3.31.2017
C	Deerbrook Staff Reports and Decisions
D	Hearing Official Code Interpretation CI 04-4 – 7.29.2004
E	Graphic - Site Plan for The Farm PUD
F	Graphic - Site Plan for Piper Lane PUD
G	Graphic - Deerbrook Site – 20 percent slopes 5 foot contours
H	Graphic – Deerbrook Site – 20 percent slopes 20 foot intervals
I	Graphic – Different ways to think about 20 percent slopes
J	Graphic – Capitol Hill PUD Site – PDT 17-3
K	Email from city staff relating to TIA code language
L	Summary Table showing PUD processing times
M	Wendell Canyon, Tentative Subdivision Approval (May 18, 2017)
N	Wendell Canyon Tentative Subdivision Plans
O	City Email re Wendell Canyon and Tree Removal (June 23, 2017)