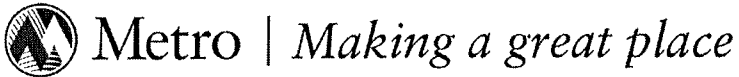


EXHIBIT G-8
LU 12-0032



October 19, 2012

Via Email

Brant Williams
Director of Economic and Capital Development
City of Lake Oswego
380 A Avenue
Lake Oswego, Oregon 97034

Re: LU 12-0032 / Foothills District and Title 3

Dear Brant:

Thank you for taking the time to bring your team to Metro for our meeting regarding the city's proposed exemption of part of the Foothills District from the "balanced cut and fill" requirements under the city code and Title 3 of the Metro Functional Plan. I think we all came away from the meeting with a better understanding of each other's positions and the options that may be available to the city moving forward. As discussed, this letter provides a more detailed analysis regarding the city's current approach, and also addresses two other options that could be available to the city. Please include this letter in the city's record of proceedings for this matter.

We understand the city's primary position to be that exempting the subject property from balanced cut and fill requirements complies with Title 3 because the Foothills District was "developed or committed to other uses" within the meaning of Metro Code (MC) 3.07.330.D at the time when the Title 3 Flood Management Area (FMA) map was adopted in 1998 and therefore the district must have been mapped in error. Because that area was mapped in error, the argument goes, the city's proposed removal of 9.5 acres from the Title 3 requirements can be deemed to be in substantial compliance with Title 3 requirements.

As indicated in our meeting, we do not believe the city's proposed approach is supported by the language or intent of Title 3. The purpose of MC 3.07.330.D is merely to set forth a list of reasons why some areas that "otherwise" might have been included on the Title 3 map were not included at the time of adoption in 1998, including areas that were "developed or committed to other uses." This descriptive language does not create an exclusion that can be applied after the fact to remove areas from the Metro map. If a case had been made in 1998 for not including the Foothills District on the Title 3 map because it was "developed and committed," then the district would now be one of the areas described by 3.07.330.D as having been "examined but not included" on the map. Instead, the district *was* examined and included on the map, and this code section does not provide a means for removing it 14 years later.

Similarly, there does not appear to be sufficient evidence to reach a conclusion that including the Foothills District on the Title 3 map was actually an “error.” Rather, as stated in the attached letter from Metro staff to Dennis Egner in 2002, this area is within the 100-year floodplain, and has a FEMA base flood elevation of 34 feet, while the 1996 flood elevation was 36.3 feet. The attached letter provides Metro’s response to the city’s previous proposal to exempt the Foothills District from balanced cut and fill requirements, and concludes that the city’s proposal does not “substantially comply” with Title 3. In the absence of compelling evidence to the contrary, Metro will stand by its prior conclusion in 2002.

We discussed what other avenues might be available to the city, and identified two possibilities. First, Title 8 of the Metro Code allows for exceptions from compliance with a functional plan requirement if the criteria set forth in MC 3.07.840.B are met. The city would need to submit an application to the Metro COO under that section and demonstrate, among other things, that meeting the balanced cut and fill requirement is “not possible ... due to topographic or other physical constraints or an existing development pattern.”

The other possible alternative would be to amend the Title 3 map. As we discussed at our meeting, Title 3 itself does not include provisions or criteria regarding amendments to the map (unlike Title 4). Although the Metro Council could conceivably undertake a legislative amendment to that map, it seems unlikely that such a process would fit within your schedule. We are exploring internally whether there might be another method for seeking a map amendment and will provide you with that information as soon as possible.

Sincerely,

Robin McArthur, AICP
Director
Planning and Development

Enclosure



METRO

December 23, 2002

Mr. Dennis Egner
City of Lake Oswego
P. O. Box 369
Lake Oswego, OR 97034-0369

Dear Mr. Egner:

Your letter, dated November 27, 2002, requests that Metro staff review the City's justification for not requiring balance cut for filling within the Oswego Lake and Foothills District floodplain areas. As you know, Metro staff has been monitoring the progress of the City's proposed floodplain ordinance (LU 00-0024) for the past several months. Based on our review of your letter and past submittals, Metro staff offers the following conclusions regarding compliance with Title 3, section 3.07.340 for the immediate area around Oswego Lake:

1. We agree with City staff that Oswego Lake is not a river or stream channel and does not have a riverine floodplain. The lake acts more as a detention facility, especially during flood events. During flood events, the maximum level the lake can rise is dictated by the elevation of the spillway.
2. We understand that reducing the capacity between the lake's normal water level and the height of the spillway is very limited due to the existing situation of dwelling units around the lake and the Lake Oswego Corporation policies and practices governing its holdings. Your example of a worst-case scenario of 100 property owners filling a 33' x 100' portion of their property, without a balanced cut, shows there would be a 1.9 percent loss in detention capacity. We understand that this scenario is very unlikely for the reasons stated above.
3. Based on the facts in this case, we conclude that the City's request to not require a balanced cut of material for a corresponding amount of fill for properties around Oswego Lake is in substantial compliance with the intent of Title 3 of the Urban Growth Management Functional Plan. In this case, the City's not meeting performance standard 3.07.340A(2)(b) is minor in nature for reducing the risk of flooding, preventing or reducing risk to human life and property and maintaining functions and values of floodplains.

The second section of your letter of November 27, 2002 addresses the Foothills District along the Willamette River. Based on our review of this letter, Metro staff offers the following conclusions regarding compliance with Title 3, section 3.07.340 for this area.

1. The FEMA base flood elevation for this area is 34' NGVD. The 1987 FEMA Flood Insurance Rate Map is still in effect for this area at that elevation. The City measured the 1996 flood elevation at 36.3 feet. We understand that the City of Portland Bureau of Environmental

Mr. Dennis Egner
City of Lake Oswego
December 23, 2002
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Services constructed a berm/concrete wall along the southern side of Tryon Creek; and that two pumps have been installed at low points within the district area. The pumps are designed to mitigate flooding by pumping floodwater into Tryon Creek.

2. Based on the information you submitted, Metro staff cannot make a determination that the City's request for this area is in substantial compliance with the intent of section 3.07.340 of Title 3 for the following reasons:
 - The FEMA map indicates that approximately 31 acres of the 50-acre site are within the 100-year floodplain, and Title 3 relies on the existing FEMA flood elevation.
 - The extent of the 1996 flood, as shown on the aerial maps used by Metro for the adopted Title 3 maps, includes approximately 25 acres of the 50-acre site; and Title 3 relies on the aerial photos for determination of that event.
 - There is no demonstrated evidence that the berm wall and pumps will prevent flooding within the FEMA 100-year area and the 1996 flood area. For example, the pumps would not be helpful by pumping water into the Tryon Creek system if the flood level on the Willamette River backs up water into the creek.

This letter serves as Metro's determination of whether the City is in substantial compliance with the performance standards of Title 3 for flood management. It does not relieve the City from its obligations to comply with the performance standards of Title 3 for water quality.

If you have any questions, please contact me by phone at 503-797-1808, or by email at valoner@metro.dst.or.us.

Sincerely,



Ray Valone
Senior Regional Planner
Planning Department

RV/srb
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cc: Brenda Bernards
Ken Helm
Mary Weber