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Veneta Planning Commission
City of Veneta
88184 Eighth Street
Veneta, OR 97487

Re: Draft Additional Standards for Hillside Development
File A-1-07

Dear City of Veneta:

Please accept these comments and materials on behalf of Frontier Resources, LLC, McDougal Bros. Investments. The proposed amendments will be a post-acknowledgment amendment to the city's zoning code, in the meaning of ORS 197.610. As required by ORS 197.615(2)(a)(A), I request written notice of the final adoption of the proposed amendments. My clients above object to the proposed amendments in their current form.

I expect that you will be receiving many written comments critiquing the proposed draft – some of a technical nature, and some more general. I will not try to either repeat or summarize all of those here. Rather, with this short letter, I hope to hit some of the high points of what the city should do with this proposed ordinance if it wants the final product to be in compliance with state law.

1. Once only through the gauntlet, please: The full regulatory scheme is triggered by a long list of actions. The result is that, in order to go from a raw land situation to the development of a house in a subdivision, one would have to endure the full regulatory review many times. For example, under section (3), the full bite of the regulatory review would be experienced at the following discrete stages of development: Planned unit development or master plan; tentative plat; road construction; final plat; dwelling construction; expansion of the dwelling by more than 500 square feet. The ordinance needs to include protections that prevent any particular development having to run the regulatory gauntlet more than once. Absent that, the ordinance would violate the prohibition in ORS 197.307 against “unreasonable cost or delay” in development of housing.

2. Judgment of the City Engineer as to when to apply: Under subsection 3(i) of this draft the City Engineer has discretion to drop this process on any activity. This level of discretion itself violates the requirement in Goal 10, the Goal 10 Rule, and the Needed Housing Statute (ORS 197.307(6), that only clear and objective standards be applied to review of needed housing.

3. Scope of things triggering need for geotechnical report: Section 5(iv) says the a

geotechnical report is required for any “land use application” or building permit in a hillside area. The scope of things that require such a report needs to be tied tightly to the list of things that are regulated by section (3). Otherwise, reports may be triggered for things that are not regulated. By definition, requiring reports for activities that are not regulated violates ORS 197.307(6). *Home Builders Assoc. of Lane County v. City of Eugene*, 41 Or LUBA 370 (2002).

4. Scope of things triggering regulation: Section 6(a) says that the standards in the chapter shall be applied to “all land use applications.” This may conflict with the more limited list of things in section (3) that are subject to regulation. This may be a conflict in the code, or may just be fuzzy language that needs to be clarified. The key point is that the ordinance needs to be clear as when it is triggered and when it is not.

5. Building permits as a land use decision: Section 6(a) seems to treat building permit issuance differently from other kinds of land use decisions, allowing some to be issued administratively and some to be bumped up to the Planning Commission at the discretion of the staff. If a building permit is subject to this ordinance, then its issuance becomes a “permit” decision in the meaning of ORS 227.160. The city needs to adopt a decision and appeal process, as for any other land use decision, that complies with the requirements in ORS 227.170 and .175. In short, the city must have code provisions that provide for public notice, and opportunity to comment, and an opportunity to appeal and get a full hearing on any building permit that is subject to the ordinance.

Similarly, section 6(b) distinguishes between situations where the ordinance is applied in land use decisions and where it is applied and there is no land use decision. This assumes a distinction that does not exist. Due the discretionary nature of the review that is conducted, any decision that applies the ordinance will be a land use decision.

6. Discretionary nature of city review: Under section 6(f), the city will review the recommendations of the private geotechnical analysis and determine whether they are “reasonable.” This is a highly discretionary review. This is one among many standards in this draft that call for the city to make a discretionary determination about the development proposal. This is contrary to Goal 10, the Goal 10 Rule, and ORS 197.307(6), which require only clear and objective approval standards and conditions.). *Home Builders Assoc. of Lane County v. City of Eugene*, 41 Or LUBA 370 (2002).

It is worth noting that the city amended its code for housing during the periodic review process to inject new discretionary standards, including for steep slope development. These were objected to. The DLCD upheld the objections and required to City to amend the code to delete the discretionary standards. The same shortcoming is apparent here. I am enclosing, only with the original copy of this letter, a set of the key documents relating to the DLCD’s review of the residential amendments during periodic review.

7. Open wallet condition: Section 6(h) calls for a review of the applicant’s geotechnical report, with the costs of the review to be paid by the applicant. Presumably this

language would authorize the city to hire a second expert to review or redo the work of the first expert, and to pay the cost of that work. The scope of the review is unclear; there is no requirement on the reasonableness of the fees that the applicant would have to reimburse. The city cannot justify the open ended nature of this financial obligation under the prohibition in ORS 197.307(6) against “unreasonable cost or delay” in development of housing.

8. Duplicative and Conflicting Standards: Section (6) anticipates that an applicant will develop in compliance with the recommendations in the geotechnical report. Section 10(a) states the city’s own standards for grading. These may conflict with one another. Or the geotechnical report may say that a lesser or greater standard than what the city has set is appropriate for the site. There is a potential for duplication and conflict here. The city should decide whether it wants to go with a model for grading that is based on the geotechnical report, or go with a model that is based on generic standards.

9. Fuzzy standards for house color and foundation style: The standards in section 10(b)1.(a) and (b) for color selection and foundation design are highly discretionary in nature. This is contrary to Goal 10, the Goal 10 Rule, and ORS 197.307(6), which require only clear and objective approval standards and conditions.).

10. Fuzzy drainage standards: Section 13(b) gives the City Engineer lots of discretion to determine what is “feasible” in the way of locating drainage facilities. Section 13(c) requires to applicant to be responsible for conveying the 100-year flood to an “acceptable” disposal point off-site. This affords the city discretion to determine what is acceptable. It also could require the applicant to control drainage ways that are off-site. This is contrary to Goal 10, the Goal 10 Rule, and ORS 197.307(6), which require only clear and objective approval standards and conditions.).

Sincerely,

Bill Kloos

Cc: Clients