

January 20, 2023

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RE: Leeper Development - Veranda at Pleasant Valley Subdivision
File No. SD/MIS 20-26000343 (MPLAN 21-00652)

Dear Jim and Kevin:

As you know, our firm represents Leeper Development including in its application for Veranda at Pleasant Valley Subdivision (“**Veranda**”). Veranda has been stalled by the City for over a year, primarily because a misunderstanding from City staff regarding the application of certain provisions of the City’s former Environmentally Sensitive Resource Area (“**ESRA-PV**”) code, including whether Kelley Creek can or should be considered locally significant. Earlier this week, the City received a copy of a technical report and analysis by Stacey Reed, PWS, Senior Wetland Scientist, from AKS Engineering & Forestry (“**AKS Report**”). This letter supplements the AKS Report because, independent of that report, Oregon’s strongly needed housing laws require the City to approve Veranda.

The Veranda application was submitted while the ESRA-PV code was in effect. As far as we are aware, the City never applied the ESRA-PV “locally significant” code to another project or to determine that a Kelley Creek or other waterways were locally significant. As is described in the AKS Report, Kelley Creek should not be considered locally significant. The AKS Report provides substantial evidence to make that determination. No other evidence has been submitted to rebut this analysis. Confounding, the City has previously refused to make such a finding or provide actual evidence for why Kelley Creek should be considered as locally significant – a finding that would be in contrast to both the Code and state law.

Jim Wheeler
Kevin McConnell
January 20, 2023
Page 2

Since the City received the Veranda application, it has adopted a new code to replace the ESRA-PV code. The new code removes the City's ability to make this discretionary finding. This is likely because changes to Oregon law, including to ORS 197.307¹, requires that the City only apply clear and objective standards to needed housing projects. The Veranda project undisputedly qualifies as a needed housing project. Despite the fact that the ESRA-PV code applies, ORS 197.307(4) nevertheless precludes the City from applying code standards that are not clear and objective. This means that the discretionary finding related to local significance cannot be applied to determine that Kelley Creek is locally significant. However, the City need not reach that issue as the AKS Report clearly demonstrates that the creek does not warrant such a determination.

Leeper Development has made best efforts to provide staff the necessary evidence to approve Veranda or to provide a recommendation of approval to the Planning Commission. Leeper Development has yet to appeal a decision by the City in more than 20-years of development, more than \$40 million of investment to support City infrastructure, and creation of in excess of 550 residential lots with 450+ in various phases of planning. However, should the Veranda still receive challenge by staff or approval is not granted despite meeting all code criteria – which Veranda does – an appeal to LUBA will follow a denial or the imposition of conditions that violate ORS 197.307. LUBA's grant of attorney fees to a project is mandatory when a City violates the needed housing laws.

As of the date of this letter, we request an expedited review of the "locally significant" analysis by AKS and Leeper Development will immediately submit our final response to the existing staff report pending review of the AKS Report.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.



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¹ ORS 197.307(4) is the controlling law. ORS 227.173(2) is also relevant as it applies to city ordinance adoption.