



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

08/31/2009

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Medford Plan Amendment
DLCD File Number 005-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, September 11, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

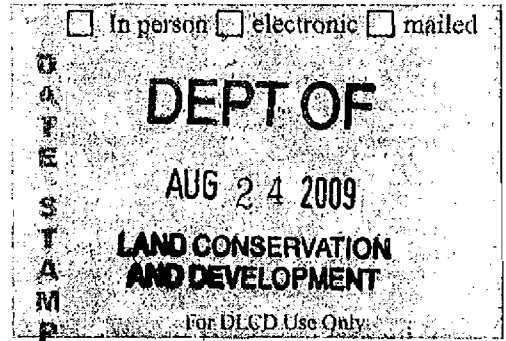
***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Kathy Helmer, City of Medford
Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
Bill Holmstrom, DLCD Transportation Planner
Chris Shirley, DLCD Regional Representative

<paa> YA

Notice of Adoption

**THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18**



Jurisdiction: **Medford**

Local file number: **DCA-09-001**

Date of Adoption: **August 20, 2009**

Date Mailed: **August 21, 2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: 3/24/09

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

An ordinance amending the Medford Land Development Code to add Sections 10.396, 10.397, 10.398, 10.399 and 10.400 to establish a Hillside Ordinance with supplementary procedural requirements and development standards for lands containing slopes 15% or greater, and amending Section 10.727 Plans and Specifications, and Section 10.728 Information to be Conveyed on the Grading Plan and in the Specifications.

Does the Adoption differ from proposal?

No

Plan Map Changed from: **NA**

to:

Zone Map Changed from: **NA**

to:

Location: **NA**

Acres Involved:

Specify Density: Previous: **NA**

New:

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Jackson County

Local Contact: **Kathy Helmer**

Phone: (541) 774-2380 Extension: 2375

Address: 200 S. Ivy St.

Fax Number: 541-618-1708

City: Medford, OR

Zip: 97504-

E-mail Address: khelmer@cityofmedford.org

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:
**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **twenty-one (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **larry.french@state.or.us** - **Attention: Plan Amendment Specialist**.

Updated March 17, 2009

EXHIBIT A
HILLSIDE ORDINANCE
August 12, 2009

10.396 Purpose; Applicability.

Sections 10.396 to 10.400 establish procedural requirements for development on Slopes in excess of fifteen percent (15%) to decrease soil erosion and protect public safety. Sections 10.396 to 10.400 apply in addition to all other requirements set forth by ordinance. In the case of conflict between Sections 10.396 to 10.400 and other requirements set forth by ordinance, Sections 10.396 to 10.400 shall govern.

10.397 Definitions.

When used in Sections 10.396 to 10.400, the following terms shall have the meanings herein ascribed:

Slope. The natural earth's surface expressed as a ratio of the change, i.e. the delta (Δ) in horizontal (H) distance to the change (Δ) in vertical (V) distance. Slopes are expressed as a percentage. Slope refers to a given rise in elevation over a given run in distance, multiplied by 100, i.e. $(\Delta V \div \Delta H) \times 100 = \text{Slope}$. For example, a 40-foot rise in elevation over a distance of 100 feet is a 40% Slope, i.e. $(40' \div 100') \times 100 = 40\% \text{ Slope}$.

Slope Analysis. A topographical contour map to scale of the lot or parcel which depicts the slope, and which satisfies the following requirements:

1. Contours are depicted at no greater than ten-foot (10') intervals and the map differentiates between areas of a lot or parcel with Slopes of: (a) between fifteen percent (15%) and thirty-five percent (35%); and (b) Slopes greater than thirty-five percent (35%).
2. Slopes shall, as near as practical, be measured perpendicular to the map's contour lines.
3. Land or natural features comprising less than two hundred (200) horizontal square feet with Slopes greater than of fifteen percent (15%) shall not be included in the Slope Analysis.
4. Man-made features including, but not limited to, ditches, canals, existing retaining walls, and existing buildings, which necessarily will be relocated, placed underground, or otherwise removed as part of future urban development, shall not be included in the Slope Analysis.
5. Portions of lots or parcels which are undevelopable, including (but not limited to) jurisdictional wetlands and riparian setback areas, shall not be included in the Slope Analysis.

10.398 General Standards.**A. Application of Provisions.**

1. Sections 10.396 to 10.400 apply to any proposed development containing an area of at least one-thousand (1,000) square feet with Slopes in excess of fifteen percent (15%), if the Slope Analysis demonstrates that development, including streets, will occur on those portions of the proposed development area with Slopes in excess of fifteen percent (15%).
2. Sections 10.396 to 10.400 shall not apply to any proposed development containing an area of less than one-thousand (1,000) square feet with Slopes in excess of fifteen percent (15%), or if the Slope Analysis demonstrates that development on that proposed development area, including streets, will not occur on Slopes in excess of fifteen percent (15%).
3. Class 'C' applications (except for zone changes) shall comply with Sections 10.396 to 10.400; building permit applications shall comply with Sections 10.396 to 10.398.

120.2(6)

B. Requirement for Slope Analysis.

For parcels containing Slopes greater than fifteen percent (15%), as shown on the 2009 City of Medford Slope Map, a copy of which is maintained on file in the Planning Department, a Slope Analysis is required to be submitted with:

1. Class 'C' applications (except for zone changes); and,
2. Building permit applications, if a Slope Analysis of the parcel was not previously submitted with a development application.

The Slope Analysis shall be reviewed by the City Director of Public Works or designee.

C. Pre-Existing Approvals of Development on Slopes of Fifteen Percent (15%) or Greater.

1. Unexpired Class 'C' Approvals. Unexpired Class 'C' approvals granted prior to enactment of Sections 10.396 to 10.400 ("Pre-Existing Approvals") shall not be subject to Sections 10.396 to 10.400. Subsequent Class 'C' applications related to a Pre-Existing Approval and filed after enactment of Sections 10.396 to 10.400 shall be subject to Sections 10.396 to 10.400, provided that the application of Sections 10.396 to 10.400 to the subsequent Class 'C' application does not result in an irreconcilable conflict with the Pre-Existing Approval. For purposes of this Section, an irreconcilable conflict includes, but is not limited to, the following:

- (i) the creation of unbuildable lots; or,
- (ii) the reduction in density for the subject phase of five percent (5%) or more.

2. Previously Submitted Development Applications. Development applications submitted prior to enactment of Sections 10.396 to 10.400 shall be governed by the *Land Development Code* in effect on the date of submission of the development application.

D. Excavation and Grading Permits.

Issuance of an Excavation and Grading permit shall be required prior to any excavation or grading, except for the types of excavation or grading exempted in Appendix J of the 2007 *Oregon Structural Specialty Code*, a copy of which is maintained on file in the Planning Department. The permit application shall be reviewed and approved by the City Building Official or designee. An application for an Excavation and Grading Permit shall be subject to the requirements set forth in Sections 10.727 and 10.728.

E. Standards for Streets, Private Access Drives and Other Vehicular Ways.

1. Grading on Slopes in excess of fifteen percent (15%) for streets, private access drives, and other vehicular ways shall be designed to reduce the extent of cuts and fills necessary for installation of the roadways, curbs, gutters, planter strips, sidewalks and utilities. Landscaping and other design elements may be incorporated to accomplish this objective where the approving authority finds the proposed design elements will serve this end.

2. For streets other than arterial or collector streets in areas with Slopes in excess of fifteen percent (15%), the approving authority may modify public street improvement standards to solve special hillside functional problems. Modifications may include:

- a. Narrower streets;
- b. Streets that provide access to the downhill side only;
- c. Planter strip waivers;
- d. Modification of surface drainage treatment standards;
- e. Modification of sidewalk standards;
- f. Allowing through-lots abutting any street classification if the approving authority approves streets that provide access to the downhill side only; or,
- g. Placing utilities within the public right-of-way.

3. Modifications to public street improvement standards shall comply with the following:

a. Minimum curb-to-curb paved width for residential streets, with the exception of Residential Lanes, shall be no less than twenty-eight feet (28') if including parking on only one side of the street.

b. When sidewalks are authorized to be provided on only one side of the street, they shall be provided on the side of the street where parking is provided.

c. Street Slopes shall comply with standards in the 2004 American Association of State Highway Transportation Officials' manual, *A Policy on Geometric Design of Highways and Streets*, a copy of which is maintained on file in the Planning Department.

4. To request modifications to street improvement standards, the applicant shall submit proposed findings addressing:

a. Why the modifications are needed; and,

b. How the proposed modifications are safe and function properly; and

c. How the proposed modifications minimize soil erosion and protect the natural character of the site.

5. To approve modifications to street improvement standards, the approving authority shall, based on findings addressing 10.398(E)(4), conclude that:

a. The proposed modifications are needed; and,

b. The proposed modifications will be safe and function properly; and

c. The proposed modifications will minimize soil erosion and protect the natural character of the site.

F. Standards for Erosion Control.

All disturbed soil surfaces on Slopes in excess of fifteen percent (15%) shall be covered from November 1 to April 1. If planned impervious surfaces (i.e., streets, access drives, etc.) are not installed prior to November 1, a temporary treatment adequate to prevent erosion shall be installed on disturbed soil surfaces until the impervious surfaces are installed or April 1, whichever is sooner. Alternatively, for disturbed soil surfaces in areas in which impervious surfaces are not planned to be installed, a temporary treatment adequate to prevent erosion shall be installed on disturbed soil surfaces or such surfaces shall be replanted with plants and/or trees with erosion control characteristics that are listed in the August 2006 version of the Oregon State University Extension Service publication *Fire-Resistant Plants for Oregon Home Landscapes*, a copy of which is maintained on file in the Planning Department.

10.399 Pre-Application Conference Requirement.

A pre-application conference is required for all Class 'C' applications, except for zone changes, for development on Slopes of greater than thirty-five percent (35%). In addition to the items listed on the pre-application conference form, the following additional items shall be submitted: a Constraints Analysis required by Section 10.400; a Slope Analysis required by Section 10.398(A); and a conceptual site plan. A pre-application conference shall be conducted by the Planning Department within twenty-eight (28) business days of receipt of the pre-application conference form and additional materials required by this Section. The Planning Department shall notify the applicant of the recommendations regarding the development proposal within ten (10) business days following a pre-application conference.

10.400 Constraints Analysis

Prior to submitting a Class 'C' application (except for zone changes), a Constraints Analysis identifying physical constraints and proposing mitigation measures shall have been submitted and deemed "complete" by the City Engineer or designee within ten (10) business days of

120.2(8)

submission. A "complete" Constraints Analysis is one that contains all items in Sections 10.400(A) (1)-(7) and 10.400(B) (1)-(4).

A. Geology and Soils Report.

A Geology and Soils Report shall be prepared by an Oregon licensed geologist or engineering geologist and shall include:

1. The purpose and scope of the investigation;
2. A description of the geological characteristics of the site;
3. A description of the nature, distribution, and strength of the existing soils on the site relative to their adequacy for the proposed development;
4. A determination of the suitability of the geology and soils on the site for the proposed development;
5. A determination of geological hazards that present a risk to life and property or adversely affect the use or stability of a public facility or utility;
6. A determination of grading procedures needed to assure minimal disturbance to the natural state of the soils on the site;
7. Conclusions and mitigation measures, if necessary.

B. Hydrology and Grading Report.

A Hydrology and Grading Report shall be prepared by an Oregon registered civil engineer and shall include:

1. A description of the hydrological conditions of the site;
2. A determination of the effect of the hydrologic conditions on the proposed development and adjoining lands;
3. A determination of hydrological and erosion hazards that present a risk to life and property or adversely affect the use or stability of a public facility or utility; and,
4. A grading plan as required by Sections 10.727 and 10.278, including proposed grades, and cuts and fills for streets.

EXHIBIT H

GRADING, EXCAVATION AND DRAINAGE REQUIREMENTS. (10.727 - 10.728)

10.727 ~~Plans and Specifications.~~ **Excavation and Grading Permit.**

When an excavation and grading permit is required by this Chapter or by Chapter 9 as a condition of a development permit, an the application for a grading the permit shall be accompanied by ~~three (3) sets of Grading and Drainage Plans and specifications~~ reviewed and approved by the City of Medford Building Safety Director or designee. When a permit is required, no grading or excavation shall occur prior to issuance. The permit shall not be issued until a grading plan as per 10.728 Information to be Conveyed on the Grading Plan and in the Specifications has been reviewed and approved. Additional supporting data consisting of a soils engineering report and engineering geology report may also be required. The plans and specifications shall be signed and prepared by a registered engineer.

10.728 **Information to be Conveyed on the Grading Plan and in the Specifications.**

The proposed grading and drainage plan may shall include the following information:

- (1) The general location of the work to be shown on a vicinity map.
- (2) The name and address of the owner/developer and the person who prepared the plans.
- (3) Property limits and accurate contours of the existing terrain, utilizing contours at two-foot (2') intervals ~~2-ft intervals~~ for slopes of less than fifteen percent (15%) ~~10%~~ and ten-foot (10') ~~5-ft intervals~~ for slopes exceeding fifteen percent (15%) ~~10%~~ of the existing ground and details of terrain and area drainage the location of existing drainage and direction of flow.
- (4) The plan shall also indicate, when applicable, all existing wetlands, existing natural streams, intermittent and permanent; areas of high, moderate and slight stability hazard; excessively steep slopes (15% to 35% & 35% and greater); flood-prone areas and designated flood plains, showing elevations of the 100-year flood and poorly drained areas; and areas previously used as a land fill.
- (5) Street improvements and existing and proposed public storm sewer water facilities.
- (6) Finished contours to be achieved by the grading along with the proposed drainage channels and related construction. Areas of cut and fill shall be identified in some a manner to be easily identifiable.
- (7) For grading and drainage plans concerning land development, the proposed lot configurations with finished elevations at all corners are to be shown. Proposed contours will indicate necessary grading for street improvements, delineating edge of earth work for sidewalk construction.
- (8) Detailed plans of all subsurface and surface drainage devices, walls, cribbing, dams, and other protective devices to be constructed with, or as part of the proposed work.
- (9) For building permits, the location of any existing or proposed buildings or structures, including retaining walls, on the property where the work is to be performed, and the location of any proposed or existing buildings or structures, including retaining walls, on land adjacent to the project which are within 15 feet of any area affected by the proposed grading operations.
- (10) Specifications shall contain information covering construction and material requirements; describing, but not limited to, soil compaction requirements, measures to

mitigate soil erosion along with the background computations made for the sizing of drainage facilities. The specifications shall describe the maintenance responsibilities of all private storm sewer water systems.

(11) **Plans for depositing the excavated soil at a particular on-site location or transporting it from the site.**

STAFF REPORT

Date: August 12, 2009
To: City Council
Reviewed By: Suzanne Myers, A.I.C.P., Principal Planner
By: Kathy Helmer, Planner IV
Subject: Hillside Ordinance (DCA-09-001)
City of Medford, Applicant

BACKGROUND

Proposal

Consideration of adding Sections 10.396, 10.397, 10.398, 10.399 and 10.400 to the *Medford Land Development Code* to establish a Hillside Ordinance with requirements for development on slopes of greater than fifteen percent (15%), and amending Section 10.727 Plans and Specifications and Section 10.728 Information to be Conveyed on the Grading Plan and in the Specifications.

Ordinance Provisions

The proposed amendment (Exhibit A) establishes requirements for development on slopes in excess of fifteen percent (15%) for purposes of protecting public safety and decreasing erosion. These requirements would apply throughout the City. This ordinance aims to provide more flexibility in certain practices and standards, such as street improvement standards, and more review of certain practices, such as development on slopes greater than thirty-five percent (35%). Among other provisions, the ordinance:

- Requires that an analysis of geologic and hydrologic site constraints be submitted and deemed complete *before* a development application is submitted;
- Allows for modifications to certain street improvement standards;
- Requires an excavation and grading permit prior to most types of excavation/grading;
- Requires a Pre-Application Conference for development on slopes greater than thirty-five (35) percent.

Development of the Ordinance

The proposed ordinance is derived from a draft ordinance considered, but not adopted, by City Council on November 20, 2008, namely, the Hillside Protection Overlay District (DCA-04-229). At that time, City Council directed staff to consult further with stakeholders regarding the proposal.

Staff from the Planning, Building, Public Works and Legal Departments subsequently consulted extensively with stakeholders (Exhibit B) in a refinement process. A summary

of points made by stakeholders during the February - March 2009 stakeholder consultations is provided under Goal 1 in the Findings of Fact and Conclusions of Law (Exhibit G).

The draft ordinance was considered at a Planning Commission study session on March 23, 2009. Commissioners' comments are also included in Exhibit G under Goal 1.

The draft ordinance was placed on the City's website on March 24, 2009. It was sent to Referral Agencies for a 30-day Comment Period on April 10, 2009.

Consideration of the Hillside Ordinance at a public hearing before the Planning Commission was continued from May 14, 2009, to June 11, 2009, and again to June 25, 2009. The continuances provided the time necessary to incorporate additional stakeholder input.

Comments Received

Written comments received since November 20, 2009, have been placed in Exhibits C and D.

The Citizen Planning Advisory Committee discussed the draft ordinance at their June 9, 2009, meeting. One member noted that a previous version had included some good architectural standards which were not in this proposal, but he supported the ordinance. No recommendations were made as a group.

Barbara Tice, her lawyer Gary Shepherd, and Dr. Lee Murdoch expressed concerns about the proposal's reduced scope. City Engineer Beskow's letter (Exhibit D) addresses these concerns. The reduction in scope was accomplished in part by deciding to address some concerns in future, separate ordinances.

At the June 25, 2009, Planning Commission meeting (Exhibit E), there was oral testimony in support of the ordinance, and concerns expressed about how to incorporate documents which will change over time and the need to better define phrases used in the draft ordinance. Staff members have agreed to these suggestions and revised the ordinance accordingly.

Proposed Legislative Amendment and related attachment

Exhibit A provides the proposed code language.

Exhibit I contains the 2009 City of Medford Slope Map to which the draft ordinance refers.

Approval Criteria

Medford Land Development Code, Section 10.182 Application Form (Exhibit F).

Findings

The Proposed Findings of Fact and Conclusions of Law (Exhibit G) are, by this reference, incorporated as a part of this report. A discussion of the proposal relative to

the approval criteria listed above is included in the Findings. The Findings substantiate that the proposal meets the approval criteria for a Land Development Code Amendment.

Issues/Analysis

Stakeholder perspectives have been divided on this proposal. Some have encouraged a reduction in ordinance scope; others have wanted additional ordinance sections to address items such as the preservation of native vegetation, hillside architectural standards, etc. Staff has tried to strike a balance among diverse perspectives by limiting the focus of this particular proposal and identifying future opportunities to address other issues.

RELATED PROPOSED AMENDMENTS

Amendment of Sections 10.727 and 10.728

Rather than create a new section within the Hillside Ordinance on Grading and Drainage Requirements, this amendment aims to reinforce an existing section (Exhibit H). Proper drainage is particularly important on hillsides where there is more runoff, moving more rapidly, than on the valley floor. Controlling excavation and grading practices is essential to prevent erosion and maintain stable slopes. The proposed amendment requires additional information, including: the mapping of existing drainage and direction of flow; a slope analysis of the project area at ten-foot (10') intervals for slopes exceeding fifteen percent (15%); information on retaining walls; and information on existing and proposed structures, on and/or adjacent to the project. Lastly, it requires a plan for depositing excavated soils.

Exhibit H contains this amendment. Words to be deleted are ~~struck through~~ and words to be added are **bolded**.

RECOMMENDED ACTION

The Planning Commission considered the draft ordinance at their June 25, 2009, meeting and forwarded a positive recommendation to the City Council (Exhibit E).

Staff recommends that the City Council adopt the ordinance for DCA-09-001, as per the Staff Report dated August 12, 2009, including Exhibits A through I.

EXHIBITS

Exhibit A	Proposed Hillside Ordinance, dated June 12, 2009
Exhibit B	Memo to File regarding Work with Stakeholders to Revise Draft Hillside Ordinance
Exhibit C	Comments received
Exhibit D	Letter to Shepherd, dated June 16, 2009, from the City Engineer
Exhibit E	Excerpt, Minutes of the June 25, 2009, meeting of the Planning Commission
Exhibit F	Approval Criteria

Hillside Ordinance
(DCA-09-001)
Staff Report to the City Council

August 12, 2009

- Exhibit G Findings of Fact and Conclusions of Law, dated August 12, 2009
- Exhibit H Proposed Amendments to Section 10.727 Plans and Specifications and
Section 10.728 Information to be Conveyed on the Grading Plan and
in the Specifications
- Exhibit I 2009 City of Medford Slope Map

CITY COUNCIL AGENDA: AUGUST 20, 2009

EXHIBIT G

PROPOSED FINDINGS

BEFORE THE PLANNING COMMISSION
AND CITY COUNCIL
FOR THE CITY OF MEDFORD
JACKSON COUNTY, OREGON

IN THE MATTER OF ADDING NEW)	FINDINGS OF FACT
SECTIONS 10.396, 10.397, 10.398, 10.399)	AND CONCLUSIONS
and 10.400, CREATING A HILLSIDE)	OF LAW
ORDINANCE IN THE MEDFORD LAND)	File No. DCA-09-001
DEVELOPMENT CODE)	Exhibit G
)	August 12, 2009

City of Medford, Applicant

PROCEDURAL BACKGROUND

This is a request to amend the *Medford Land Development Code (MLDC)*. It is classified as a Class 'A' legislative action in *MLDC 10.150 General Procedural Requirements*. *MLDC* Sections 10.180 through 10.184 provide the process and standards for such amendments.

RELEVANT APPROVAL CRITERIA

For Class 'A' Major Amendments, *Medford Land Development Code* Section 10.182 *Application Form* requires the City to prepare an application with the following information:

- (1) Identification of all applicable Statewide Goals.
- (2) Identification and explanation of the goals and policies of the *Comprehensive Plan* considered relevant to the decision.
- (3) Statement of the facts relied upon in rendering the decision, if any.
- (4) Explanation of the justification for the decision based on the criteria, standards, and facts.

COMPLIANCE WITH STATEWIDE PLANNING GOALS

For this request, the applicable statewide planning goals are: Goal 1 Citizen Involvement; Goal 2 Land Use Planning; Goal 6 Air, Water and Land Resources Quality; Goal 7 Areas Subject to Natural Disasters and Hazards; Goal 11 Public Facilities and Services; and Goal 12 Transportation.

Upon investigation, it has been determined that Statewide Planning Goals 3, 4, 5, 8, 9, 10, 13, and 14 are not applicable to this action. Goals 15, 16, 17, 18, and 19 are not applicable in Medford as these pertain to the Willamette River Greenway and ocean-related resources.

STATEWIDE PLANNING GOAL 1: CITIZEN INVOLVEMENT. - *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

FINDINGS OF FACT

Goal 1 requires the City to have a citizen involvement program that sets the procedures by which a cross-section of citizens will be involved in the land use planning process, including

EXHIBIT G
DCA-09-001

participation in identifying public goals, developing policy guidelines, and evaluating alternatives in the revision of the *Comprehensive Plan*, and in the inventorying, mapping, and analysis necessary to develop the plan content and implementation strategies. They must also be given the opportunity to participate in the development, adoption, and application of legislation to carry out a comprehensive plan. Goal 1 requires providing an opportunity to review proposed amendments prior to the public hearing, and any recommendations must be retained and receive a response from policy-makers. The rationale used to reach land use policy decisions must be available in the written record.

The City of Medford has an established citizen involvement program consistent with Goal 1 that includes review of proposed legislative *Land Development Code* amendments by the Citizens Planning Advisory Committee, the Planning Commission, and the City Council in study sessions, regular meetings, and public hearings. Affected agencies and interested persons are also invited to review and comment on such proposals, and meeting and hearing notices are published in the local newspaper. As detailed below, this process has been followed in the development of the proposed amendment.

Citizens from the private sector participated in development of the proposed ordinance. Contributions to an earlier version of the ordinance were made by members of the Ad Hoc Committee who met with staff to discuss the draft on a monthly basis from July 2007 through November 2007. Since November, 2008, approximately thirty (30) people from the private sector have been directly involved in ordinance development.

In summary those property owners, lawyers and developers made the following general comments during meetings and conference calls in February and March 2009:

- The ordinance is too broad; it should be broken into a series of smaller ordinances for purposes of comprehension and clarity.
- The original intent was to provide flexibility in the standards for street improvements on the hillsides. This ordinance goes far beyond that.
- This should be applied city-wide; it should not be an overlay. It's not clear why some properties are in and some are out. This is an equal protection issue.
- Why prohibit the construction of streets on slopes over 35% or limit the construction of homes above 35%? Proper engineering can make it safe.
- The overlay needs a better definition of boundary. A "metes and bounds" approach would be better.
- The ordinance language is not specific enough. It leaves "wiggle room" for interpretation by different staff. Who decides when there is an "irreconcilable conflict"?
- There has never been a good problem definition explaining why we need this ordinance.
- Complying with the Hillside Ordinance will create significant new development costs, e.g., the Tree Inventory. It will be more difficult to produce affordable homes. In this market, we need to cut costs and build less expensive homes.

A review of the current proposal demonstrates that these comments have been instrumental in reshaping the proposed Hillside Ordinance.

The draft ordinance was placed on the City's website on March 24th, 2009 and again on June 17, 2009. It was sent to Referral Agencies for a 30-day Comment Period on April 10, 2009. Comments received during that period, and all others received since November 20, 2008, are in Exhibits C and D.

At the March 23, 2009 Planning Commission study session, Commissioners expressed concerns about the changes made to the ordinance, including the elimination of certain sections, such as the Tree Inventory. A Commissioner said that a more comprehensive hillside ordinance was needed, especially one that preserved trees. Staff proposed to address those issues in future amendments. Another Commissioner suggested that the section regarding the ordinance's applicability to pre-existing approvals should be placed in the code outside the Hillside Ordinance sections, since it applies in the instance of all pre-existing approvals, rather than simply in instances related to application of the Hillside Ordinance. Since 2008, no City Council study sessions have been held on the proposal.

The amendment does not place new limitations on permitted uses, and is therefore not subject to Measure 56 noticing requirements.

CONCLUSIONS OF LAW

In accordance with Statewide Planning Goal 1, the City of Medford has an established citizen involvement program and followed it to provide opportunities for citizens to be involved in the development of the proposed ordinance. The general public, the development community, affected agencies, the Citizens Planning Advisory Committee, the Planning Commission and City Council were all consulted in the development of this proposal, as per that program. The City followed the process in Medford's acknowledged *Comprehensive Plan* and *Medford Land Development Code*. In conclusion, the process being followed for this proposal is consistent with Statewide Planning Goal 1.

STATEWIDE PLANNING GOAL 2: LAND USE PLANNING - To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

FINDINGS OF FACT

Goal 2 and its implementing *Oregon Administrative Rules (OAR)* and *Oregon Revised Statutes (ORS)* require City land use actions to be consistent with the adopted *Comprehensive Plan*. The *Comprehensive Plan* must include identification of issues and problems, inventories, and other factual information for each applicable Statewide Planning Goal, and evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. Comprehensive plans must state how the Statewide Planning Goals are to be achieved. The plan must contain specific implementation strategies that are consistent with and adequate to carry out the plan, and which are coordinated with the plans of other affected governmental units. Implementation strategies can be management strategies such as ordinances, regulations and project plans, and/or site or area-specific strategies such as construction permits, public facility construction, or provision of services. Comprehensive plans and implementation ordinances must be reviewed and revised

on a periodic cycle to take into account changing public policies and circumstances. "Major" (legislative) revisions occur when changes are proposed that affect a large area, many different ownerships, or the entire City. Goal 2 calls for "an adequate factual base for such decisions and actions" made within the context of the land use planning process.

Per *MLDC 10.102 Plan Authorization*, proposals to amend the *Medford Land Development Code* undergo the planning and development review process specified for Class 'A' legislative actions. This proposal to amend the code will apply city-wide, affecting many different ownerships; thus, the procedural requirements for a Class 'A' action are being followed, consistent with the *Medford Land Development Code* and the Comprehensive Plan.

This proposal implements existing *Comprehensive Plan* policies and Implementation Strategies related to controlling erosion and addressing the hazards associated with slopes. The proposal requires developers to produce an analysis of geologic and hydrologic constraints, prior to submission of a land division or PUD application. In this way, constraints are understood before a plat is designed and the plat can be laid out accordingly. Decision makers can then consider information on constraints as part of the approval process.

CONCLUSIONS OF LAW

The City's efforts in this proposed legislative amendment will assure that the planning and authorization of development on slopes over fifteen percent (15%) is based on adequate technical information, including a slope analysis and a Constraints Analysis which identifies hydrologic and geologic concerns. This proposal will support an effective, fact-based land use planning and decision process. This proposal will also assure that *Land Development Code* provisions properly implement the adopted Goals and Policies of the acknowledged *Medford Comprehensive Plan* and the Statewide Planning Goals. In conclusion, this proposal complies with Statewide Planning Goal No. 2.

STATEWIDE PLANNING GOAL 6: *Air, Water and Land Resources Quality - To maintain and improve the quality of air, water and land resources of the state.*

FINDINGS OF FACT

Goal 6 provides that jurisdictions control waste and process discharges to ensure that they will not violate state or federal environmental quality statutes, rules and standards. It emphasizes the importance of not exceeding the carrying capacity of air, water and land resources in the long range, of not degrading natural resources and not threatening their availability. Plans should separate or buffer uses whose requirements conflict with those resources. Plans should target the maintenance and improvement of air, land and water resources. Development actions should not exceed the carrying capacity of such resources.

The Hillside Ordinance focuses on finding a workable balance between developing slopes and maintaining features that preserve water quality and slope stability. The proposal has measures to control the erosion that degrades slopes and hillsides and lowers water quality by producing sediment in water. The proposal protects slopes by regulating construction practices, requiring excavation and grading permits, limiting cuts and fills required by the construction of streets and other vehicular ways, and most importantly, requiring a Constraints Analysis prior to submission of an application.

CONCLUSIONS OF LAW

The preservation of water and land resources is targeted by Statewide Planning Goal 6. A main purpose of this proposal is to control the erosion which can destabilize land resources and lower water quality. By regulating certain development on steeper slopes, the proposal respects the carrying capacity of hillside land resources and the waterways that ultimately channel stormwater to the Rogue River, a major source of City drinking water during summer months. In conclusion, this proposal complies with Statewide Planning Goal 6.

STATEWIDE PLANING GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS - To protect life and property from natural disasters and hazards.

FINDINGS OF FACT

Goal 7 requires jurisdictions to inventory areas prone to natural disasters or hazards and provide safeguards for development that occurs on or near those areas. Natural disasters are events that can result in death and/or endanger the built environment. Flooding, erosion, landslides, earthquakes and weak soils are types of natural disasters and hazards. Cities are to evaluate the degree of risk associated with each hazard and limit or regulate development on or near those hazards according to that risk. The goal states that the density or intensity of development should be limited by the degree of the natural hazard. The goal also states that if natural hazards could result from the impact of new development, e.g. runoff, soil slippage, etc., then those effects should be evaluated and addressed.

The City's efforts in the proposed Hillside Ordinance are based, in part, on the inventory of natural hazards conducted during development of the City's Pre-Disaster Mitigation Plan which was accepted by the Federal Emergency Management Administration (FEMA) in 2004. As part of that plan, the City identified a number of mitigation measures it could take to proactively deal with natural disasters and hazards. One mitigation measure was to develop a hillside development ordinance to reduce adverse development impacts on steep slopes. The proposed Ordinance applies City-wide; thus, it covers the hillsides. The proposal addresses some concerns related to the stability of slopes and the quality of soils by requiring a study of constraints posed by the hydrologic and geologic characteristics of a site, and the mitigation of such constraints.

CONCLUSIONS OF LAW

As demonstrated above, this proposal responds to the requirements of Goal 7 by addressing the natural hazards of slope stability and erosion on City lands with steeper slopes. It regulates development on slopes in order to provide for public safety and welfare. This proposal implements aspects of a mitigation measure identified in the City's Pre-Disaster Mitigation Plan, namely, the establishment of a hillside ordinance that addresses hillside hazards. In conclusion, this proposal is consistent with Statewide Planning Goal 7.

STATEWIDE PLANING GOAL 11: PUBLIC FACILITIES AND SERVICES - To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

FINDINGS OF FACT

According to Goal 11, urban public facilities should be designed such that the appropriate type and level needed by urban areas are delivered. Plans should ensure the type, location and

delivery of public facilities and services in a way that supports the existing and proposed land uses. Urban facilities and services include, among others, police, stormwater drainage facilities, planning, and others. Plans providing for those facilities and services should see the carrying capacity of the air, land and water resources as a significant factor. Development should not be allowed to exceed the carrying capacity of those resources.

Several measures in the proposed Hillside Ordinance will mitigate the effect of development on stormwater drainage facilities by better controlling erosion and regulating practices which result in increased runoff. Some examples are: requiring an excavation and grading permit for most types of excavation; allowing modifications of lower order street design standards, thereby decreasing the area disrupted; and limiting cuts and fills. By allowing utilities to be within the right of way and by not requiring planter strips, the amount of grading would decrease significantly.

CONCLUSIONS OF LAW

The Hillside Ordinance is consistent with Goal 11 because it will decrease the amount of runoff and erosion in the Overlay District, thereby supporting the proper functioning of the stormwater drainage system. Improper development on steeper slopes, especially in the eastern hills, could have a deleterious effect on that system. The proposal supports proposed land uses on hillside slopes by allowing modifications to street design standards that facilitate construction while decreasing the risk of erosion, damage to the stability of slopes, and the severity of cuts and fills, etc. In conclusion, the proposal is consistent with Goal 11.

STATEWIDE PLANING GOAL 12: TRANSPORTATION - To provide and encourage a safe, convenient and economic transportation system.

FINDINGS OF FACT

According to Goal 12, a jurisdiction's transportation plan shall: cover all modes; be based on an inventory of needs; consider social consequences related to different combinations of modes; avoid reliance on one mode; minimize negative social, environmental and economic effects and costs; conserve energy; serve the disadvantaged; strengthen the economy; and conform with local and regional land use plans. Plans for transportation systems should consider the carrying capacity of the land as a decisive factor and development actions should not exceed the capacity.

Concerns for negative environmental impacts and costs are evident in the proposed Hillside Ordinance which would provide greater flexibility in the design of lower order streets. Per the proposal, the approving authority would be able to modify City of Medford street design standards and allow designs such as the use of split roadways, one-way streets, the waiver of planter strips, the modification of sidewalk design and surface drainage treatment. Utilities may be placed within the public right-of-way. These options aim to minimize the amount of land consumed by the transportation network on hillsides, thereby lessening the amount of grading, the number and severity of cuts and fill, and the overall disturbance of hillside slopes and soils. The proposal will affect streetscape design, but the capacity of the street network and public safety will not be harmed.

CONCLUSIONS OF LAW

Goal 12 identifies the significant role of the transportation plan in serving the area's need for a network to move goods and people, while minimizing negative effects on society, the

environment, and the economy. Transportation system plans must consider the carrying capacity of the land as a decisive factor and ensure that development actions do not exceed the capacity. The proposed Hillside Ordinance adjusts the design standards for lower order streets on slopes over fifteen percent (15%) in order to mitigate the effect of development on hillsides which have more sensitive ecologies than valley floors with respect to erosion, slope stability, and runoff.

COMPLIANCE WITH THE CITY OF MEDFORD COMPREHENSIVE PLAN

This proposal is in compliance with the *Medford Comprehensive Plan*, as described below. The Environmental Element and the Public Facilities Element of the Comprehensive Plan contain Goals, Policies and Implementations that identify the need for measures contained in the proposed ordinance.

The Environmental Element: Natural Resources - Soils

Goal 8: To minimize erosion and hazards relating to slope and soil characteristics by assuring that urban land use activities in Medford are planned, located, and conducted consistently with prevailing soil limitations.

Policy 8-A: The City of Medford shall guide new development, particularly within the foothills, by the soil characteristics and natural features of the landscape, and shall grant development permits only after a determination that potential problems relating to soil limitations, if any, have been identified, and will be adequately mitigated prior to development.

Implementation 8-A (2): Prepare a hillside development ordinance for consideration by the City Council that requires subdivision and site design to be compatible with, and complementary to, sloping sites, and that preserves appropriate hillside open space and viewsheds.

FINDINGS OF FACT

Goal 8 of the Environmental Element identifies erosion, slope-related hazards and soil characteristics as constraints to be factored into the planning, locating and practical process of development. Policy 8-A specifies that the City shall grant development permits, particularly in the foothills, only after the identification and mitigation of soil limitations. Implementation 8-A (2) calls, in part, for a hillside development ordinance that requires subdivision site design to be compatible with sloping sites. The Hillside Ordinance proposal responds to these items. Its purpose is to decrease soil erosion and safeguard public safety by requiring the thorough assessment of potential hazards related to soils and slopes. Per the proposal, Class 'C' applications would not be submitted until an analysis of geologic and hydrologic constraints had been submitted and deemed complete.

CONCLUSIONS OF LAW

This proposal establishes a set of procedural requirements and standards that will mitigate the natural hazards associated with hillside development, minimize erosion and protect water quality. With this proposal, the City will be better equipped to implement adopted Goals and Policies of the acknowledged *Medford Comprehensive Plan* and the Statewide Planning Goals

with the *Land Development Code*. The proposed amendment complies with these Comprehensive Plan Goals, Policies and Implementations.

The Public Facilities Element: Stormwater Management

Goal 2: To achieve and maintain a high level of water quality in Medford's waterways and groundwater.

Policy 2-D: The City of Medford shall strive to eliminate sediment entering waterways consistent with Environmental Element - Soils Section - Goal 8 and its policies and implementation strategies.

FINDINGS OF FACT

Goal 2 of the Stormwater Management section of the Public Facilities Element, as well as its associated Policy 2-D, address concerns about the detrimental effect of sediment on water quality in Medford. Policy 2-D states that the City shall strive to eliminate sediment entering the waterways. Sediment is produced by water (runoff) moving over soil and collecting particles which eventually enter the waterways and are deposited.

The proposal requires the issuance of Excavation and Grading permits prior to most types of excavation/grading for development on slopes greater than fifteen percent (15%). This requirement will better control erosion and its resulting sedimentation. The proposal also requires the covering of disturbed soils during the winter rainy season.

CONCLUSIONS OF LAW

A main purpose of the proposal is to control and minimize the erosion which results from construction activities on slopes. These activities create erosion which then produces sediment in waterways. This proposal responds directly to the Stormwater Management Goal and Policy cited above which concern water quality and sedimentation. As such it is consistent with the *Comprehensive Plan*.

SUMMARY

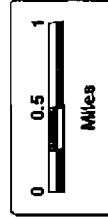
As demonstrated in the findings above, the City's proposed Hillside Ordinance is consistent with pertinent Statewide Planning Goals 1, 2, 6, 7, 10, 11, and 12. The provisions of the proposed draft ordinance have also been shown to be in compliance with the above-noted *Comprehensive Plan* Goals, Policies, and Implementation Strategies.

The proposed *Land Development Code* amendment implements policies and strategies adopted into the *Comprehensive Plan* that aim to protect water quality, minimize natural hazards to the public, and preserve natural resources. It does so, in part, by ensuring that development on slopes greater than fifteen percent (15%) is compatible with its natural setting and does not occur to the detriment of that setting, its natural constraints and functional characteristics. The proposal is intended to ensure that the review of development on those slopes occurs in an objective manner and with the benefit of specially suited technical standards.

2009 City of Medford Slope Map

LEGEND

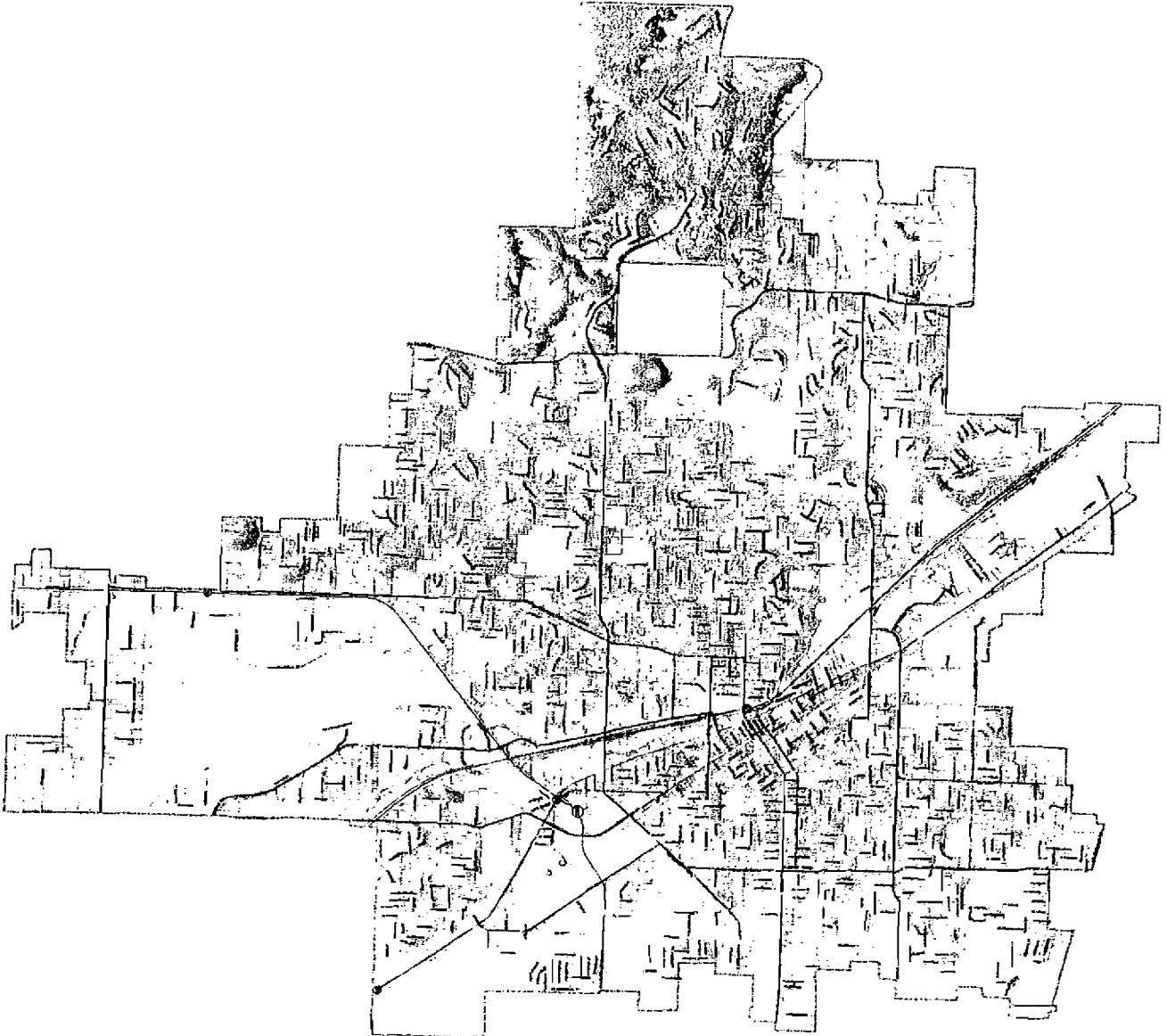
- Slopes 15%-35%
- Slopes >35%
- UGB
- Taxlots
- Freeway
- Freeway Ramp
- State Highway
- Major Road



No warranty is made by the City of Medford as to the accuracy of the data used in this map. This product is provided as a public information service and is not intended to be used for engineering or other professional purposes.



8.6.09



CITY OF MEDFORD

EXHIBIT I

DCA-09-001

REGISTERED MAIL



7007 0710 0001 0567 2456

ATTN: Plan Amendment Specialist
Dept. of Land Conser. & Develop.
635 Capitol St. NE, Ste. 150
Salem, Or 97301-2540



Master

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