



April 18, 2024

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VIA E-MAIL

Darren Wegener
Planning Commission Chair
City of Sandy
39250 Pioneer Blvd.
Sandy, OR 97055

RE: Proposed Land Use Extension Ordinance
Our File No.: 126769-255102

Dear Chair Wegener and Commissioners:

This office represents Roll Tide Properties Corporation, which in 2022 received approval of a plan amendment, zone change, and subdivision known as Bull Run Terrace. We are writing in support of the proposed Land Use Extension Ordinance (Ord. 2024-09) and recommend two minor revisions that will make the Ordinance more effective and comply with state law.

Since Bull Run Terrace was approved, a perfect storm of high interest rates and reticent financing has forestalled its construction. Critically, much of this is due to lenders' hesitancy to issue construction loans on property located within a city under a development moratorium. Stated plainly, the limitation of development to a certain number of equivalent residential units ("ERUs") has effectively scared away many construction lenders because there is no guarantee that any of these ERUs will be available when projects reach the permitting stage. Thus far, the City has refused to allocate or reserve ERUs for particular projects, and so this problem remains a critical barrier to starting construction. As the Planning Commission knows well, this situation is in no way the fault of Roll Tide or similarly-situated developers, who have invested a great deal of time, money, and effort in reliance on the City's land use process.

For these reasons, Staff's proposal to allow an additional one-year extension for developments under review prior to the original moratorium is very much appreciated and Roll Tide supports it.

Roll Tide also believes the Ordinance can and should be improved in two respects.

First, the extension period should be two years, not one. While the one-year extension will provide Roll Tide some breathing room, the history of the City's interactions with the Oregon Department of Environmental Quality has proven time and again that removal of the moratorium

and the allowance of additional ERUs will take more time than anticipated. Most, if not all, of the current approvals were granted when subdivision tentative plats were valid for only one year, which was far shorter than in most jurisdictions. The City has since increased this to two years, but that new allowance does not pertain to Roll Tide's project, which was submitted before the revised code became effective. The City's current extension allowance provides only a single, one-year extension, which Roll Tide has already used.

This proposed Ordinance will get Roll Tide through December 2025, but unless the moratorium is either lifted or the City is willing to commit to reserving an adequate number of ERUs for Roll Tide's project, it still leaves the very real possibility that Roll Tide will be in the same position in 18 months. Given these realities, we believe that the proposed Ordinance should provide a two-year extension. At least in Roll Tide's case, this is quite reasonable because as noted before, the code now allows for a two-year initial validity period. That is, a two-year extension will provide Roll Tide the same total number of years to complete its project as are now allowed under the City's current code, if extended under this Ordinance. As the Ordinance will only apply to those approved applications submitted prior to October 3, 2022, this longer extension will not be available to future projects.

Second, the Ordinance should be revised slightly to remove discretion for the class of extensions it proposes to allow. Under the "needed housing statutes" in ORS 197A.400 (formerly ORS 197.307(4)), ordinances governing the development of housing must be "clear and objective." The proposed Ordinance language is arguably not clear and objective, and while we do not believe discretion was intended in these extensions, we respectfully request that the operative terms of the proposed Ordinance be revised to comply with the needed housing rules as follows:

"An owner, as that term is defined in Sandy Municipal Code 17.10.30, whose property has received land use approval based on an application which was submitted prior to October 3, 2022, may apply for one-year extension of such approval, as provided herein. Such application shall be granted if an owner submits an application and pays the required fee. This extension will add one year-will be added to the current expiration date of the land use approval. This extension is shall be in addition to any other extension which may be available under the Sandy Municipal Code. The Development Services Director will review and approve an extension request pursuant to a Type I process under Sandy Municipal Code 17.12.10 if an applicant satisfies the clear and objective criteria above."

With these two proposed changes, we believe that the proposed Ordinance will do much to give Roll Tide and similarly-situated developers the confidence they need to continue their pre-

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development activities. Regardless, we greatly appreciate Staff's efforts to provide some relief to this difficult situation, and hope the Commission will recommend adoption of an additional extension period.

Best regards,

SCHWABE, WILLIAMSON & WYATT, P.C.



Garrett H. Stephenson

GST:jmhi

cc: David Vandehey
Carey M. Sheldon
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Josh Soper