

File

**Exhibit D**

Re: File No. LDC-14-09, Revisions to Chapter 17.70 of the BMC, Master Plan Development District

Enclosed: Memo from Dianne Morris, with copy of Exhibit B from this same file, with the Planning Director's comments on the issues raised.

Doc. ID	Received:	From	# pgs	Description
D	1/15/2010	Dianne Morris	4	1 page memo, 3 pg Attachment A



# City of Brookings

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## MEMO

To: City Council  
Gary Milliman, City Manager

FROM: Dianne Morris, Planning Director

DATE: January 14, 2010

SUBJECT: File LDC-14-09 – Continued hearing to consider revisions to Chapter 17.70, Master Plan Development District (MPD).

At the Council's initial hearing on this matter, Jan. 11, 2010, the revisions as proposed in the advance packet were outlined by Staff. Exhibit B was provided to you with suggested revisions from Councilor Hedenskog. Staff is in agreement with these additional revisions although Staff prefers that the language found in 17.70.070 (E), "...standards equally or better meet..." be left in. Although removing them doesn't alter the meaning, leaving them in seems to provide better understanding of the required outcome.

At the Jan. 11<sup>th</sup> hearing the Council was also given Exhibit C from Catherine Wiley with stated concerns. I have attached a copy (Attachment A) and inserted responses.

On Jan. 25<sup>th</sup> this hearing will be continued. The public testimony portion of the hearing is still open. Written or oral testimony can still be given at that time.

**STAFF RESPONSES IN BOLD TYPE TO  
EXHIBIT C, LDC-14-09, REVISIONS TO CHAP. 17.70, MPD**

Catherine Wiley  
96370 Duley Creek Rd.  
Brookings, OR 97415

541-469-1962

January 11, 2010

To:	Brookings City Council From Catherine Wiley
Re:	File No. <b>LDC-14-09</b> , Chapter 17.70 Master Plan of Development

As a plaintiff in the LUBA appeal of the Brookings Master Plan of Development, I am registering my opposition and significant concerns to the proposed changes in the MpoD under review for legislative decision tonight.

It is clear that the wording, "conditions have not changed" is in need of revision for the purposes of clarification, objectivity, and reasonable means of measure.

However, I have spent significant time in review of the proposed changes, and I view the proposed language revision to the "conditions have not changed" component to obfuscate and confuse the issue of the definition of "change" further. (17.70.120 "The Applicant has the opportunity to apply for an extension of time prior to the expiration of the approval. Where the Planning Commission finds that the circumstances have not changed such that the findings addressing the criteria in BMC 17.70.070, adopted at the time of the approval, would be invalidated by the delay and extension of time for development, the Commission may grant the extension." (WHEW!!!)

**Response at the end where this is again discussed.**

Further, the numerous additional changes proposed are far from mere "housekeeping changes". The "simple clarifications" referenced are, in fact substantive, in many instances, totally altering parameters, changing or deleting BMC codes in place at the time of the MpoD, and reducing or eliminating safeguards for adjacent property owners and the general public.

It is abundantly clear that, were this Master Plan of Development BMC proposed initially, the public comments, concerns and LUBA appeal itself would have been significantly different.

Without exhaustive detail, the following examples will reference components of concern:

- Page 5, B, #1 deleted. The requirement provided relevant maps to the public and adjacent land owners.

**Response: Deleted because notification and process are covered in a separate Chapter in the Code.**

- Page 6, 2.b. deletes the requirement for slope *analysis*. Certainly an analysis provides more information and safeguards to the public than a “geologic hazard report.”

**Response: A geologic hazard report, as described in the Code (17.100) covers slope analysis and much more. Councilor Hedenskog’s revisions suggested including the citation, 17.100, BMC.**

- Page 7, 17.70.050, A. There are significant and substantive differences in Chapter 17.04 BMC, Development Permit Procedures, which are proposed for deletion, to BMC 17.80.050 Site Plan Approval, proposed as revision.

**Response: 17.04 has been revised since 17.70 was adopted. 17.80 is the correct citation to cover City Staff reviewing a submittal to determine if it is complete.**

- Page 8, 17.70.070 Review Criteria, B. The proposed language revision deletes all specific timelines and means of measure with language that is unacceptably broad, open to potential for bias & discrimination, etc.

**Response: The current language has a 10 year time limit but also allows the Planning Commission to approve a different phasing time line. This change requires the Applicant to suggest a time line appropriate to the specific project and approval is at the discretion of the Commission.**

- Page 8, E The use of the term “existing regulations” could be misinterpreted. The regulations required for compliance with the MpoD are those in force at the time of MpoD approval.

**Response: “Existing regulations” describes the Code that is in force when the Applicant is applying. This is required, as stated by Ms. Wiley above.**

- Page 8, 17.70.090, A. The proposed change does not reflect Code 17.70.090.

**Response: The current wording is complicated and the Oregon Revised Statutes (ORS) controls time limits to conduct hearings and reach a decision.**

- Page 9, 17.70.100 Deleting Chapter 17.04, BMC, Development Permit Procedures eliminates, yet another reference to compliance and safeguards.

**Response: 17.04 doesn’t address the “notice of decision” as stated in the current language. Legal requirements, spelled out here in general terms, are found in the ORS.**

- Page 9, 17.70.120 The entire proposed revision is confusing. (“The Applicant has the opportunity to apply for an extension of time prior to the expiration of the approval. Where the planning Commission finds that the circumstances have not changed such that the findings addressing the criteria in BMC 17.70.070, adopted at

the time of the approval, would be invalidated by the delay and extension of time for development, the Commission may grant the extension.”) In addition, the definition of “substantial construction” does not even agree with the definition of “construction” itself. Obtaining permits at the time of DDP review was a stipulated remand issue from LUBA. Permits and construction are not synonymous.

**Response: The City’s Land Use Attorney, Mr. Spickerman, has reviewed the LUBA decision which agreed with the Councils interpretation of “conditions have not changed”. That interpretation is stated in this revision as proposed by Mr. Spickerman.**

**“Substantial construction” has been defined within, and for, this Section. It is not possible to obtain permits for structures or infrastructure until after approval of a DDP is given.**

The specific examples provided above are just that. Each page has significant and substantive recommendations for alterations to the specifications and safeguards of the Brookings MPoD.

It is requested that the plaintiffs, and legal entities involved in the LUBA appeal have an additional period of two weeks for an opportunity to address these, and hopefully mediate some of the changes proposed.

Thank you.

Sincerely, Catherine Wiley