

P.O. Box 1083  
McMinnville, Oregon 97128



133 SW 2nd Ave, Ste 201  
Portland, Oregon 97204

October 11, 2024

Brenda Bateman, Director  
Oregon Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, Oregon 97301-2540

SENT VIA EMAIL

**RE:** Exceptions to DLCDC October 3, 2024 Appeal Report  
McMinnville Sequential Urban Growth Boundary Amendment Task 1

1000 Friends of Oregon is a non-profit, charitable organization dedicated to working with Oregonians to support livable communities. Friends of Yamhill County (FYC) works to protect natural resources through the implementation of land use planning goals, policies, and laws that maintain and improve the present and future quality of life in Yamhill County for both urban and rural residents. This letter details our exceptions to the report responding to our appeal of the director's partial approval of McMinnville's Housing Need and Economic Opportunities Analyses under Task 1 of its sequential urban growth boundary (UGB) amendment work program.

### **PROCEDURAL REQUIREMENTS**

OAR 660-025-0160(5) provides requirements pertaining to this appeal. This rule section provides:

(5) The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to the director's report within 10 days of the date the report is sent. Objectors may refer to or append to their exceptions any document from the local record, whether or not the local government submitted it to the department under OAR 660-025-0130.

The persons specified in OAR 660-025-0085(5)(c) includes, "(C) Persons who filed a valid appeal of the director's decision in the case of a commission hearing on an

appeal...” Our appeal was determined to be valid in DLCD Order 001943.” This letter is submitted less than 10 days after October 3, 2024 report.

## **EXCEPTIONS**

We disagree with several of the determinations made by the director in the October 3, 2024 appeal report (hereafter “director’s report”).

### **A. Additional employment sites for specific uses**

This was Objection 3 in our May 23, 2024, objection and addressed on pp. 17-20 in Order 001943, pp. 3-5 of our August 21, 2024 appeal letter (hereafter “appeal”), and pp. 6-7 in the director’s report. Our objection concerned the methodologies used by the city to estimate employment land. We objected to using the safe harbor for employment growth allowed by OAR 660-024-0040(9), but then adding more employment and land to it through various methods. This is a misuse of the whole purpose of safe harbors. As described in OAR 660-024-0040(9), the safe harbor is designed to entirely supplant all the analysis a city would otherwise be required to do under Goal 9, Goal 14, and the related cited laws.

This issue also arises in our objection regarding additional land for retail leakage, which we address in the following section.

Our appeal did not address how to translate employment growth to land need, so that part of the director’s report is immaterial.

The director’s report states: “Staff regularly review EOAs that rely *either* on safe harbor employment forecasts *or* those that exceed the employment safe harbors with aspirational employment growth projections” (p. 7) (emphasis added). That is our point: the EOA may use a safe harbor employment projection *or* develop a new, presumably more precise, forecast from scratch. In this case, the city did neither, it used a safe harbor and then supplemented it *ad hoc*.<sup>1</sup>

---

<sup>1</sup> The city’s findings (Record at 366) describe its approach as follows:

The City used the safe harbor in 660-024-0040(9)(a)(B) to forecast employment growth...

The EOA includes a forecast for additional land needed to address retail leakage and other site needs not accounted for in the forecast of employment growth and land needs. The land needs in this section are beyond those identified in the [safe harbor] employment forecast described in the prior section of this report.

The director's report goes on to state:

Section (2) provides “[c]ities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that may be needed for expansion.” McMinnville’s EOA incorporates specific feedback from existing employers to reach a well-justified conclusion about sites needed for future employment included as “other needed sites.”

We agree that this describes what the EOA did. What the EOA does *not* do is accommodate the employment generated by these uses within the safe-harbor employment forecast. See our appeal for more detail on this argument.

The commission should remand McMinnville’s EOA with instructions to either only use the safe harbor approach in OAR 660-024-0040(9) to project its employment needs, or to use the traditional employment forecast and average employment densities.

### **B. Retail Leakage**

This was Objection 4 in our May 23, 2024, objection and addressed on p. 20 in Order 001943, pp. 5-6 of our appeal, and pp. 7-8 of the director’s report. We objected to the city’s use of the employment forecast safe harbor and then adding more employees to the forecast to account for “retail leakage.” We contended that the city needed to either use the safe harbor or prepare a new employment forecast.

The director’s report states on p. 7: “As stated in the director’s order, the department did not review this EOA as a safe harbor analysis protected from scrutiny.” We cannot understand why the department did not do so when the EOA, by its own terms, relies on a safe harbor (see footnote 1). If a city chooses the safe harbor path it must in fact use it. Alternatively, it may prepare a new employment forecast, but it must be developed according to accepted practices in the field in order to be a reasonable justification to be used as the basis for the EOA. Simply padding the safe-harbor forecast is not such a practice.

Our proposed remedy is for the commission to remand the EOA to the city with instructions to remove the additional jobs beyond the safe harbor forecast allocated for “retail leakage” or perform a new, fact-based employment forecast in compliance with the administrative rule.

### **C. Refill, Redevelopment and Employment on Non-Employment Land**

This was Objection 5 in our May 23, 2024, objection and addressed on pp. 20-22 in Order 001943, pp. 6-10 in our appeal, and pp. 8-9 in the director’s report. We objected to the EOA’s assumption that 95 percent of all new employment will require new vacant,

employment land, because it fails to adequately account for new jobs that locate on residential land.

McMinnville's EOA fails to account for the additional future employment that will be accommodated on residentially zoned land. This includes, but is not limited to, people working in home occupations and people working in other businesses located in residential zones, such as assisted living facilities, day care centers, and churches.

With respect to people working exclusively from home, the city is wrong to assert, and the director is wrong to accept, that because "most remote workers work from an office at least part time," there is no data available to indicate how many jobs are entirely remote. The city's arguments regarding those who work partially from home and partially from an office are a red herring. Neither our objections nor our appeal letter involve these hybrid workers.

We submitted census data into the local record from 2010, 2012 and 2017, including data on people working *exclusively* from home (home occupations). In 2010, 6.6 percent of all workers nationally worked exclusively from home. This grew to 9.7 percent in 2017.<sup>2</sup> In McMinnville and Oregon, respectively, 8.2 and 12.5 percent of all workers worked at home in 2017 (Record at p. 1710, 2084). There is no contradictory evidence in the record.

We have pointed the department to this unrebutted evidence in our objections and in our appeal letter, but neither Order 001943 nor the director's report addresses it.

Regarding people working in businesses located in residential zones, it is beyond dispute that some additional portion of new jobs will occur at employers located in residential zones, such as assisted living facilities, day care centers, and churches. There is no factual base to support a contrary assumption and to the best of our knowledge, no party argues that this will not occur. The director's report (p. 9) errs in asserting that an estimate of job absorption by employers located on residential land requires an unreasonable level of research and expense and therefore an assumption of zero is legally compliant.

The argument that these estimates are too burdensome is not credible, nor could it serve as a legal justification to disregard what all parties agree will occur – employment on residential land.

The same consulting firm that put together this EOA made the following assumptions for refill, redevelopment, and employment on residential land in EOAs it prepared for other cities.

---

<sup>2</sup> The percentage for 2022 has climbed to 11.7% <https://data.census.gov/table/ACSDP5Y2022.DP03>

- Ashland 20 percent combined rate for refill, redevelopment, and employment on residential land
- Corvallis 11 to 29 percent combined rates
- Redmond’s EOA uses rates of 9.9 to 10.4 percent for jobs *on residential land only, exclusive of jobs that will be accommodated on existing employment sites.*
- Grants Pass 10 percent combined rate
- Newberg’s EOA uses a combined rate of 25.8 percent for commercial jobs (15.8 percent on residential land and an additional 10 percent accommodated on existing employment sites).

(Record at 2085)

Statewide Planning Goal 2 requires that all plan amendments have an adequate factual base.

McMinnville’s assumption that 95 percent of all new jobs will require new vacant employment land lacks an adequate factual base. The evidence in the record shows that:

- Five percent percent of new jobs will be accommodated through refill and redevelopment on employment land, based on empirical evidence in the record
- An additional 8.2-12.5 percent of new jobs will work from home, based on census data
- An additional percentage of new jobs will work at care facilities, etc. on residential land

There is no contrary evidence in the record.

For these reasons, the commission should remand the EOA with instructions to account for employment on residential land, based on the evidence in the record as laid out above.

#### **D. Land for Parks**

This was Objection 7 in our May 23, 2024, objection and addressed on pp. 23-26 in Order 001943, pp. 10-14 in our appeal, and pp. 9-12 in the director’s report. This multi-part objection contends the city inflated the amount of overall parkland needed over the planning period and wrongly assigns all quantified need for parkland to buildable land. We contend this violates Goal 2 (factual base) and Goal 14 (20-year supply).

#### **The city wrongly assigned all quantified need for parks to buildable land.**

The submitted plan amendments project a need for 392 acres for parks over the 20-year time span of 2021-2041 (Record at 189). The city assigns 100 percent of this acreage to buildable land and zero percent to unbuildable land. There is no factual basis in the

record or the city’s comprehensive plan to support this assumption and none is identified by either the city or the department. Assigning all parkland need to buildable land is also inconsistent with acknowledged city documents. By assigning all quantified parkland needs to buildable land, the submitted plan amendments inflate the amount of buildable land (and hence, overall land) needed in any future UGB expansion.

As explained in detail in our objections and appeal letter, this zero-percent assumption is:

- Inconsistent with the acknowledged comprehensive plan, which identifies unbuildable land as an appropriate location for certain park types (plan policy 163.05);
- Inconsistent with the historical distribution of parks in the city – a very large portion of McMinnville’s existing parks are on unbuildable land – and;
- Inconsistent with other elements of the acknowledged comprehensive plan *that identify on maps* unbuildable lands as the location of some future parks.

The director’s report discusses the improper assignment of all quantified park need to buildable land on pp. 11-12. It does not address our arguments and the facts in the record. Instead, the director’s report merely states that the city’s allocation of a large portion of the land added to the UGB in 2020 is acknowledged. We do not dispute that. But that has nothing to do with whether 100 percent of that acreage will be buildable land. Again, acknowledged maps within McMinnville’s comprehensive plan show that will not be the case. See Friends appeal letter at pp 13-14 and McMinnville Response to objections at p. 14.<sup>3</sup>

The director’s report goes on to conclude that “the department would not expect McMinnville to come to an overly precise determination of park lands to be located on unbuildable land.” This misconstrues our objection. We are not asking for an overly precise determination. We are asking for a determination that has *some* factual basis, and is legally consistent with other elements of the city’s acknowledged comprehensive plan, as required by statewide planning goal 2.

The assumption that none of the identified land for park land will be met on unbuildable land has *no* factual basis. It is clearly wrong and the commission should not acknowledge it. Instead, the commission should remand the EOA with instructions to allocate a portion of the identified need for future park land to unbuildable land, consistent with the city’s comprehensive plan polices, the maps contained in other elements of the city’s comprehensive plan, and the historical distribution of parks within the city.

---

<sup>3</sup> See also Fox Ridge Road Area Plan at [https://www.mcminnvilleoregon.gov/sites/default/files/fileattachments/community\\_development/page/23617/3-fox\\_ridge\\_road\\_area\\_plan\\_2-14-2024\\_1-22pm\\_with\\_appendices.pdf](https://www.mcminnvilleoregon.gov/sites/default/files/fileattachments/community_development/page/23617/3-fox_ridge_road_area_plan_2-14-2024_1-22pm_with_appendices.pdf)

### **E. Exclusion of Buildable Land from Inventories Based on Ownership**

This was Objection 8 in our May 23, 2024, objection and addressed on pp. 27-28 in Order 001943, pp. 14-18 of our appeal, and pp. 12-13 of the director’s report. We objected to the city’s exclusion of some 87 acres of buildable land from its inventories based on ownership. This vacant and partially vacant land is owned by churches (30 acres of primarily residential land) and by Linfield College (57 acres of employment land). The EOA identifies significant deficits of land for both churches and employment.

Order 001943 and the director’s report fail to adequately address our objection and appeal letter. They err in concluding that the city’s exclusion of these privately owned buildable lands from the inventories based on ownership is permissible.

Inventories of buildable residential land and employment land are governed by OAR 660-008-05(2)<sup>4</sup> and OAR 660-009-0015(3).<sup>5</sup> These provisions of law mandate inclusion of these unconstrained privately owned lands. It is our primary argument, but neither Order 001943 nor the director’s report address these provisions or even acknowledge them.

OAR 660-008-05(2) and OAR 660-009-0015(3) do not allow the exclusion of land from the inventories based on ownership or a determination of whether or not it is likely to develop. In this case, however, both the city and the department concede that they are *likely* to develop:

“It is certainly likely,” that some of these lands will serve church expansions in the future. ” (Order 001943, p. 27).

“[t]he College has consistently told the City that its plans are to use the land it owns for future expansions...” (City of McMinnville at Record Addendum #1, 72)

“We do not know if this land [Linfield parcel] will be developed as housing or employment. (McMinnville Response to Friends objections at Record 15)

---

<sup>4</sup> OAR 660-008-05(2): Land is generally considered “suitable and available” unless it: (a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7; (b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18; (c) Has slopes of 25 percent or greater; (d) Is within the 100-year flood plain; or (e) Cannot be provided with public facilities.

<sup>5</sup> 660-009-0015(3): Inventory of Industrial and Other Employment Lands. Comprehensive plans for all areas within urban growth boundaries *must include* an inventory of vacant and developed lands within the planning area designated for industrial or other employment use. (Emphasis added)

The exclusion of land that will likely meet employment, housing, and/or religious land needs results in a greater than 20-year land supply, in violation of Goal 14. The excluded 87 acres of buildable land equates to over 20 percent of the 422 acre deficit identified by the city (Record at 761).

Both Order 001943 and the director's report mischaracterize the record and our arguments. Both incorrectly state that the letter from Linfield in the record "indicates they do not anticipate any new land needs over the planning period." The Linfield letter actually states:

Linfield College doesn't anticipate any new land needs *beyond their current ownership* over the planning period. (Emphasis added) (Record at 347.)

Our objection is focused on the exclusion of lands currently owned by Linfield College.

The director's report concludes on pp. 12-13 by stating:

Pertaining to land need, OAR 660-024-0040(1) provides in part, "[t]he 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision." Friends insist that the city must predict the portion of 26 acres of residential land owned by churches and four acres of employment land owned by churches that will serve church expansions over the next 20 years. Friends also insist that the city must estimate the extent to which Linfield University will utilize its surplus lands for residential and employment purposes over the next 20 years. This expectation rises to the level of "an unreasonably high level of precision," in conflict with OAR 660-024-0040(1).

The first sentence is correct; the director has accurately quoted a portion of OAR 660-024-0040(1). The rest of the paragraph, however, is a complete misreading of our position. Neither our objection nor our appeal letter even hinted that the city should predict how much of this 87 acres of unconstrained, vacant and partially vacant buildable land will develop over the next 20 years.<sup>6</sup> Our position has been consistent. All 87 acres of this land must be included in the inventories, pursuant to the administrative rules that govern inventories of buildable residential land and employment land: OAR 660-008-05(2) and OAR 660-009-0015(3).

This is the remedy that we clearly stated in our objection and our appeal letter, and we repeat it here: We ask that the commission remand the HNA and EOA with instructions

---

<sup>6</sup> We note that the EOA concludes, and the city's position is, that none of this land needs to be "counted" through 2067.



to include the approximately 87 acres of omitted land in the inventories, as required by law, and make a corresponding reduction in the deficit of land it has identified in the UGB.

## **6. Urban Reserves**

This was Objection 9 in our May 23, 2024, objection and addressed on pp. 28-29 in Order 001943, pp. 18-20 of our appeal, and pp. 13-14 of the director’s report. The submitted HNA and EOA contain analyses intended to justify both the current (sequential) UGB amendment and future establishment of an urban reserve. We objected to the use of the 2017 population forecast and other outdated data (vacancy rates, household size, etc.) that were used for this HNA and EOA as the basis for an urban reserve.

OAR 660-032-0020(1) requires that a local government use the most recent population forecast for UGB and urban reserve decisions.<sup>7</sup> Establishment of an urban reserve for McMinnville has not yet been initiated and, when it is, it must be based on “the most recent final forecast.” The 2017 population forecast used in the recent HNA and EOA already does not qualify.

It appears the city believes that the data in the subject submittal will satisfy the requirements to justify urban reserves. This is not the case and we included this objection simply to head off future arguments over the population forecast.

If we understand director’s report, it contends that using a population forecast for the urban reserve that is different from that used for the UGB would conflict with OAR 660-021-0030(1).<sup>8</sup> We don’t see any portion of this rule that addresses the question of what population forecast to use, while using an obsolete forecast would clearly conflict with OAR 660-032-0020(1).

The director’s report goes on to state, at p. 14: “Also, the department notes that the sequential urban growth boundary program approved by the director does not include a component addressing urban reserve areas... This issue is not before the commission for review at this time.” We have never contended that establishment of the urban reserve is

---

<sup>7</sup>OAR 660-032-0020(1) provides: “A local government with land use jurisdiction over land that is outside the Metro boundary shall apply the most recent final forecast issued by the PRC under OAR 577-050-0030 through 577-050-0060, when changing a comprehensive plan or land use regulation that concerns such land, when the change is based on or requires the use of a population forecast...”

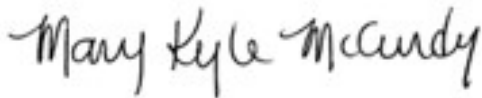
<sup>8</sup>OAR 660-021-0030(1) provides: “Urban reserves shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary. Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land.”

before the commission, but the subject Task 1 submittal includes data and information purported to support such a plan amendment in the future. It should be removed.

**CONCLUSION**

Thank you for the opportunity address these important issues. We continue to disagree with the director on several points and ask the commission to consider our position on these matters.

Sincerely,



Mary Kyle McCurdy  
Deputy Director  
1000 Friends of Oregon



Rob Hallyburton  
Vice President  
Friends of Yamhill County

cc: Kevin Young and Melissa Ahrens, DLCD  
Heather Richards, City of McMinnville