

## **CITY OF McMinnville Response to Director's Report in Appeal of City's Sequential UGB Work Task 1**

Pursuant to OAR 660-025-0160(5), the City of McMinnville respectfully submits the following response to the Director's Report in this matter. As an initial matter, it is important to note that the City fully supports the Director's Decision Order 001943 dated August 1, 2024, and the Land Conservation and Development Commission (LCDC) staff report, dated October 3, 2024, partially approving the documents adopted by the City via Ordinance No. 5141 (November 2023 Housing Needs Analysis (HOA), November 2023 Economic Opportunities Analysis (EOA), and November 2023 McMinnville Urbanization Report. The Director remanded the City's calculation of existing park land acreage to the City for re-evaluation. Upon further review, the City adopted Ordinance No. 5148 on September 24, 2024 correcting the existing park land acreage per the Director's remand in Decision Order 001943. With that correction, the City has become fully compliant with all applicable law, including all Goals and regulations for its needs analysis and buildable lands inventory per the City's Sequential UGB Work Task 1. Accordingly, LCDC should uphold the Director's Decision Order 001943.

### **I. BACKGROUND.**

This proceeding involves the two appeals seeking review of the Director's Decision Order 001943, partially approving Work Task I in the City's sequential UGB amendment, acknowledging the City of McMinnville's November 2023 Housing Needs Analysis, Economic Opportunities Analysis and Buildable Lands Analysis adopted via Ordinance No. 5141 on February 27, 2024. In particular, the two appeals (one appeal jointly filed by 1000 Friends of Oregon and the Friends of Yamhill County, the second appeal filed by Mark Davis) challenge the City's adoption of an Economic Opportunities Analysis (EOA), Housing Needs Analysis (HNA), and Buildable Lands Inventory (BLI).

The City's efforts on these analyses began in 2018 after the City had experienced ten years of significantly reduced new housing permits due to an increasingly low volume of buildable acreage within the City's urban growth boundary. This housing deficit was contributing to exponentially increasing housing prices, displacement of lower and moderate-income households, increasing homelessness, gentrification, declining school enrollment, and increasing difficulties for local businesses to recruit and retain workforce. The City had spent approximately 20 years starting in 1994 with a periodic review task, trying to work on growth planning, with every milestone challenged and appealed by Friends of Yamhill County, 1000 Friends of Oregon and a few select county and city residents. This led to burnout and a 2013 decision from the City to not continue

to invest the staff time and financial resources in the needed growth planning in 2013, as it had not yielded any significant successes.

By 2018 the City was facing a crisis of need and a lack of buildable land supply and the City decided it needed to update its buildable lands inventory, housing needs analysis, and economic opportunities analysis. The City notified DLCD, formed local Project Advisory Committees, and hired a consultant to help guide the work. Soon it was apparent that this work would also be challenged by the same stakeholders that had challenged the previous work. Desperate for a resolution to the emerging housing crisis in McMinnville, the City decided to resume the work that was started in 1994 and remanded back to the City in 2013 as a more expeditious pathway towards buildable land supply, while at the same time noticing a future public hearing for the current work underway to preserve the investment of time and financial resources that had been invested in that work. This resulted in a UGB amendment adopted by the City in December, 2020 and acknowledged by the state in April, 2021. This UGB amendment was based on a 2003 buildable lands inventory, housing needs analysis, and economic opportunities analysis and was for the planning horizon of 2003-2023.

In 2020, the City learned that HB 2003 (2019) would require the City to submit an updated Housing Capacity Analysis by December 31, 2023. Working with legal counsel and DLCD staff, the City elected to utilize the work started in 2018 for this state mandate, updating the buildable lands inventory with the amended UGB that was a result of the previous growth planning for 2003 – 2023 that was acknowledged in April 2021.

The Project Advisory Committees for this work met over a dozen times from 2018 to 2024 to guide this effort. Public engagement and outreach was conducted, including the adoption of a City Strategic Plan and Strategic Economic Development Plan, as well as multiple public hearings before the City's Planning Commission prior to final adoption by the City Council on February 27, 2024.

Knowing that the City could not accomplish both the needs analysis and the resulting solutions needed to accommodate the need within the short time horizon allowed in the HB 2003 performance metric, the City chose to take part in a new process authorized in ORS 197.626(3) and OAR 660-025-0185, allowing for the "sequential" development of an urban growth boundary amendment (if needed after completing the needs analysis and land-use efficiencies). In consultation with DLCD staff, both the City and DLCD staff concurred that the sequential review path was the reasonable path forward to comply with the new mandates and associated deadlines. The work plan was submitted to DLCD and approved by DLCD staff.

In accordance with the approved work plan, in this first phase, the City has adopted the EOA, HNA, and BLI for approval. Once that approval is achieved, the next step is for the City to evaluate land use efficiency measures that could reduce the City's land needs, followed by the establishment of a preliminary study area, an evaluation of those areas, and then a proposed UGB amendment, if needed. In other words, this is not a complete UGB expansion package that the Commission may be used to, but only a first step in that process. Should the Commission affirm the Director's Decision – as the City hopes it will – the City still has multiple steps before it will propose any potential UGB expansion. However, the City is not able to embark on the next step of its growth planning until the first task of the work plan is fully acknowledged. And thus, the City is once again at a standstill in its growth planning as it awaits resolution of the challenges and appeals to this first task of the work plan.

## **II. SUMMARY OF RESPONSE TO APPELLANTS OBJECTIONS:**

Throughout this process, the only objections to the City's growth planning work has come from Friends of Yamhill County/1000 Friends of Oregon and Mark Davis. They testified at the public hearings conducted by the Planning Commission outlining their concerns. Staff responded with a detailed memorandum, acknowledging where the concerns expressed made sense including adjusting the parks buildable lands inventory to include a 62-acre floodplain that was adjacent to the City's Joe Dancer Park which was added to the UGB with the April 2021 UGB amendment as a potential extension of that community park, and identifying for the Planning Commission what was legally required of the City and what was persuasive argument by the plans' opponents but not legal requirements that the City needed to follow.

Friends of Yamhill County/1000 Friends of Oregon and Mark Davis then submitted objections to the DLCD Director regarding the documents adopted by the McMinnville City Council via Ordinance No. 5141. The City provided detailed responses to those objections. And now, Friends of Yamhill County/1000 Friends of Oregon and Mark Davis have appealed the Director's Decision to LCDC. The DLCD Director has provided a detailed response to those appeals and the City is supportive of that response.

Just like the arguments provided initially to the McMinnville Planning Commission, there is a difference between what is legally required of the City and what Friends of Yamhill County/1000 Friends of Oregon and Mark Davis would like to see the City do. Cities in Oregon have the legal right to plan their cities within the framework of the Oregon Land Use system established by statute and in the Commission's rules, based on what the elected local officials believe is best for the city and its current and future residents. Individuals and specialty land-use advocacy groups have the right to appeal those decisions, but that does not mean that just because the

appellants do not like the final outcomes of the decisions, that the final outcomes of the decisions that the City makes on behalf of its residents (current and future) is not legally compliant.

### III. REVIEW CRITERIA.

Before turning to the specific issues identified in the two appeals, it is important to remember the Commission's role in reviewing the City's submittal. As noted in the Director's Report, the Commission's standard of review is provided in OAR 660-025-0160(2). Generally, speaking the standard of review is fairly straightforward and requires that the City decision be supported by substantial evidence and that the City's procedures not prejudice any party to the proceeding.

However, the critical determination in most of the appeal issues is whether the City's submission "on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, . . . and land use regulations." In other words, is the City's submittal consistent with the Goals and this Commission's regulations.

It is important to note that, in reviewing that question, OAR 660-025-0160(2)(c) requires that the "[f]or purposes of this subsection, 'complies' has the meaning given the term 'compliance' in the phrase 'compliance with the goals' in ORS [197.627]." ORS 197.627 specifically defines what it means for a City's submittal to be in "compliance with the Goals":

*"compliance with the goals' means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature."* (Emphasis added.)

Thus, this Commission reviews to ensure that the City's submittal "on the whole" conforms with the purposes of the Goals. The City's submission need not be perfect; it must, on the whole, conform with the purposes of the Goals and the presence of technical or minor issues does not require reversal or remand. Moreover, as set forth on OAR 660-024-0040(1), the Commission's rules note that the needs determinations included in documents such as the EOA, HNA, and BLI are only estimates and should not be held to a high level of precision:

*"The 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."* (Emphasis added.)

As the Director properly determined, the City's submittal conform to the purposes of the Goal and meet the necessary level of precision and the Director's Decision must be affirmed.

#### **IV. RESPONSE TO APPEAL ISSUES.**

##### **1. Additional Employment Sites for Specific Uses.**

The Friends first objection involves a misunderstanding of what occurred and the City's process. Friends argue that the City's methodology was flawed by using a "safe harbor" approach and then adding additional employment lands; essentially, Friends argues that the methodology identified in the safe harbor provisions may only be used as part of the safe harbor and for nothing else. As explained in the Director's Report, that position is not supported by Goal 9 or the implementing regulations and the City's EOA is fully consistent with all requirements.

- Friends is correct that OAR 660-024-0040(9) provides for a "safe harbor;" however, the City did not use the safe harbor – the City used the same underlying methodology and assumptions as used in the safe harbor as a starting point and made rational adjustments to some parts of the underlying assumption using methods that are well documented in the adopted plan and based on empirical analysis. The City understands that it does not qualify for safe harbor protections, but the underlying assumptions as modified are well documented and justified.
- On page 4 of its appeal, Friends notes that DLCD has established an advisory committee to define and standardize the "target industries" approach, but that the rulemaking has not been finalized. While the City is interested in the outcome of that rulemaking process, it is not relevant to the question before LCDC as to whether there is anything improper with using the methodology identified in the safe harbor and then reviewing whether there is justification for additional employment land needs.
- For a remedy, Friends argues that the Commission should remand the EOA with instructions to either strictly apply the safe harbor approach or "use the traditional employment forecast and average employment densities." Appeal p 5. Neither approach is required by the Goal or rules; in fact, as noted in the Director's Report, the "traditional" approach is "not prescribed anywhere under Goal 9, Goal 14, or the related cited laws or rules." Director's Report, p 6.

- In short, the use of the term “safe harbor” in this objection is a red herring; the City did not use the safe harbor provision. The City used the methodology described in the safe harbor provision to provide a generalized projection regarding employment needs and made adjustments not otherwise captured by the methodology, including both subtractions and additions, using a rational methodology that is well-documented in the submittal.
- As explained in the Director’s Report at page 7:

“The commission’s rules do not require that cities rely on safe harbor employment growth, nor do they explicitly require that employment land need be derived from employment forecasts. Staff review of EOAs focuses on justification provided by the city for asserted land need.”

- Friends’ argument in their First Objection focuses entirely on the methodology and not on the justification provided by the City for its land needs. Because the methodology used by the City is fully consistent with the applicable laws, rules, and Goals, the Commission should affirm the Director’s decision regarding Friends’ Objection 1.

## 2. Retail Leakage.

The Friends’ second objection is the same as their first objection – they argue that, if the City uses the methodology identified in the “safe harbor” provision, they are locked into that methodology and can do nothing else. The objection makes no challenge to the justification for the identified need, it only challenges the methodology. The Commission should reject this objection for the same reason in rejected the Friends first objection.

## 3. Refill, Redevelopment, and Employment on Non-Employment Land.

The Friends’ third objection centers on how the City dealt with the potential for new jobs that will be located on non-employment land, such as residential land. In particular, the Friends argue that the City did not adequately anticipate the number of people who will work from home and people who will be employed at facilities on residential land, in particular, residential care facilities. The Director’s Report properly concluded that the appeal had identified no error in the submission.

- The City undertook an extensive analysis of this issue that can be found in Appendix B to the City’s EOA, and that analysis fully supports the City’s position, as also explained in the September 2023 City memorandum found at Addendum p 69. As explained in those documents, the available data supports the conclusions used in the City’s EOA.
- The Friends argue that the City’s EOA does not properly account for what it perceives as new employment that will occur on residential lands through remote work and other residential sites, such as assisted living facilities, churches, and day care centers. As explained in the September 2023 memorandum, remote work typically takes place in a “hybrid” environment, meaning a percentage of time working remotely and a percentage in the office. Because that work still requires an office, it does not reduce the demand for employment lands. As far as the other work on residential land, as explained in the September 2023 memo, the evidence does not reflect any increase in the amount of such employment.
- Ultimately, the Director’s Report correctly finds that the City’s EOA fully meets all requirements from the statutes, Goals, and rules and should be affirmed by the Commission.

#### 4. Land for Parks.

The objection by Mark Davis echoes the Friends’ arguments in this objection and, accordingly, the two objections will both be addressed in this response. This objection consists of two separate sub-objections. First, that the City was required to apply its adopted park land standard only to its new residents and, second, that the City ignored a policy that allows park land to occupy unbuildable land. As explained in the Director’s report, neither sub-objection withstands scrutiny.

- Regarding the first sub-objection, the City’s Comprehensive Plan contains a standard requiring the City to provide 14 acres of park land per 1,000 residents. As noted in the Director’s Report, state law requires the City to rely on its existing standards to plan for future land needs and, accordingly, the City was required to use the 14-acre standard in its analysis.
  - Friends’ arguments would require the City to ignore that standard for its existing residents and apply it only for new residents. That approach is not consistent with common sense but, more importantly, is not required by the Goals or any other regulation. The City has an adopted standard and is required to use that in analyzing future needs.

- Friends’ argument fails to address the problems with past practices, also purporting that they must represent best future practices. The argument further relies on the fact that a single large community park is located in the floodplain and floodway in a way that is misleading regarding “a very large portion” of parks being in the floodplain and floodway. This single park skews the average acreage suggested in this statement and is vague as to whether “portion” means number of parks or total acreage. This example reflects a past practice for siting community parks that is inconsistent with current policy.
- Regarding the second sub-objection, the City agrees with the underlying premise that its Comprehensive Plan includes polices that allow for certain types of parks to be sited on floodplains. However, the City’s adopted Parks, Recreation, and Open Space plan also has levels of service and comprehensive plan policies that address equitable access and proximity to parks for all households. Geographical local is first determined by those policies of equitable access and proximity and not the policy that would allow for certain types of parks to be sited on floodplains.
- The City disagrees that this Work Task is the appropriate place to evaluate what parks go where. As noted in the Director’s Report, the appropriate location for those parks will be addressed in the next work task, during which the City will look at its locational policies for parks through a lens of equity and access, and evaluate what proportion of the City’s park needs can be met using otherwise unbuildable land.
- The assumption underlying this sub-objection is that the City is prohibited from locating any greenspace, greenway, or any natural area, or any portion thereof, on buildable land. This assertion is inconsistent with the City’s adopted plans and would preclude the City from allocating any buildable land for these uses as part of the Task 1 work. This is not what Policy 163.05 requires, and would put the City in a position of non-compliance with its adopted Parks, Recreation and Open Space plan for equitable locational access and proximity.
- The Davis objection asserts that “[t]he record clearly shows that all 6 acres/thousand of Greenspace/ Greenways/ Natural Area are intended to be located on unbuildable land.” This is an incorrect understanding of the City’s Comprehensive Plan Policy. Policy 163.05 states, in pertinent part, as follows:

“Linear parks, greenways, open space, trails, and special use parks are appropriate recreational uses of floodplain land to



connect community and other park types to each other, to neighborhoods, and services, *provided that the design and location of such uses can occur with minimum impacts on such environmentally sensitive lands.*” (Emphasis added.)

The policy recognizes that the particular categories of parks may be appropriate in floodplain areas, but only in certain circumstances. In this situation, the appropriate response is to review those circumstances as part of the City’s efficiency analysis, as identified in the City’s submission, and as affirmed in the Director’s Decision.

#### 5. Exclusion of Land Based on Ownership.

Friends’ fifth objection is about the exclusion of land from the City’s buildable land inventory when the owners of the land have made clear that the land will not be developed. As explained in the Director’s Report, this outcome is fully consistent with the Goal and all applicable regulations.

- Friends’ argument ignores the text of the rule. OAR 660-008-0050(2) provides that “land is **generally** considered ‘suitable and available’” unless it meets certain criteria. In other words, there is a presumption that land should be considered suitable and available, but that presumption can be overcome.
- In this case, the City contacted Linfield University and, as discussed in the September 2023 memo, and as shown in Exhibit E to the City’s EOA, Linfield University indicated that its land would not be available for any further commercial or residential development. In particular, as shown on page 23 of the supplemental record, Linfield’s campus master plan does not include plans for any additional dormitories or development of the open land.
- As far as churches, as explained in the September 2023 memo, the City contacted all of the churches in the City with vacant or partially vacant land. All of those churches located in residential areas indicated that they were not interested in residential development on their property. As far as additional church needs, as explained in the September 2023 Memo, this approach is consistent with how church property has typically been addressed, as it is unlikely that a church will allow a new church to open on the land it owns.

## 6. Urban Reserves.

The Friends final argument is that the extensive work the City has done in creating its BLI, HNA and EOA cannot be used for the City's subsequent establishment of its urban reserves. Such a result is contrary to common sense and would undermine the City's efforts to create a consistent and coherent Comprehensive Plan governing the City's Future.

- The Director's Report properly dismisses the Friends argument, noting that OAR 660-021-0030 allows urban reserves to be established only after the City establishes its 20-year supply of land embodied in the Urban Growth Boundary.
- Following the Friends proposed course would result in an urban reserve that is uncoordinated with the City's UGB. Any evaluation of the City's land supply requires extensive study and public outreach, which requires a lengthy process. If a city cannot rely on the data that was identified at the beginning of the process, any urban growth boundary or urban reserve analysis will be thrown into chaos.
- Friends' arguments cite no basis in law to require the City to remove data from its submittal. The City fulfilled the requirements of law to submit its documents to DLCD based on the PSU forecast in effect at the time of its original submittal.
- In any event, as the Director's Report notes, the current process is seeking to amend the City's urban growth boundary; although the buildable lands inventory was created in anticipation of the urban reserves process, the City is not seeking approval of its urban reserves at this time.

## V. CONCLUSION.

In short, the Director correctly applied the applicable law to the City's submittal – the City's analysis met the level of precision required by OAR 660-024-0040(1) and conform, on the whole, the requirements of the Goals. The arguments in this appeal:

- Mis-state the methodologies and assumptions employed by the City.
- Selectively cite the record without citing other portions of the record that relate to the issues on appeal and which support the methodologies employed by the City.
- Mis-state requirements of the City's Comprehensive Plan Policies.

- Purport that the City should utilize methodologies and/or use assumptions that are not required by law that would be counter to the City's adopted strategic planning and community visioning.
- Cite examples of past practices that are now inconsistent with adopted policies as an argument in support of future practices that are not required by law.

The Director's Decision approving the City's submission is fully consistent with all applicable Goals and laws and must be affirmed.