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August 21, 2024

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

SENT VIA EMAIL

**RE:** Appeal of DLCD Order 001943, 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. Please accept this letter as a valid appeal of the director's decision on McMinnville's comprehensive plan updates relating to compliance with Goals 9, 10 and 14.

### **PROCEDURAL REQUIREMENTS**

OAR 660-025-0150(6) provides requirements pertaining to this appeal. This rule section provides:

(6) Appeals of a director's decision are subject to the following requirements:

- (a) A director's decision approving or partially approving a work task or plan amendment may be appealed to the commission only by a person who filed a valid objection.
- (b) A director's decision remanding or partially remanding a work task or plan amendment may be appealed to the commission only by the local government, a person who filed a valid objection, or by another person who

participated orally or in writing in the local proceedings leading to adoption of the local decision under review.

(c) Appeals of a director's decision must be filed with the department's Salem office within 21 days of the date the director's action was sent;

(d) A person, other than the local government that submitted the work task or plan amendment and an affected local government, appealing the director's decision must:

(A) Show that the person participated in the local proceedings leading to adoption of the work task or plan amendment orally or in writing;

(B) Clearly identify a deficiency in the work task or plan amendment sufficiently to identify the relevant section of the submittal and the statute, goal, or administrative rule the local government is alleged to have violated; and

(C) Suggest a specific modification to the work task or plan amendment necessary to resolve the alleged deficiency.

Subsections (a) and (b) address who is eligible to appeal the decision. In this case, subsection (a) applies, as the decision was a partial approval and a partial remand, and it is the partial approval we appeal here. The rule allows only those who submitted a valid objection to appeal the decision. We submitted valid objections to the submittal (see p. 3 of Order 001943).

Subsection (c) requires appeals to be submitted within 21 days of the decision, which was made on August 1, 2024. The deadline for appeal submittal is therefore August 22, 2024, and this appeal is timely filed.

Subsection (d) provides specific requirements for the content of the appeal. Regarding paragraph (A), local participation, Order 001943 recognizes that we participated orally and in writing on multiple occasions at city hearings. The requirements of paragraphs (B) and (C) are addressed in subsequent sections of this letter.

## **BASES OF APPEAL**

We appeal several of the determinations made by the director in Order 001943 relating to McMinnville's submitted housing needs analysis (HNA) and economic opportunities analysis (EOA).

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

As explained in the Order 001943 at 18:

The city uses a combination of approaches in its EOA to determine its future employment land need. The majority of land need described in the EOA is derived from a “medium-growth” scenario adopted by the city. Record at 364-365. The city based this growth scenario on the 2021 PSU PRC population growth forecast, which is one of two safe harbor approaches provided by OAR 660-0024-0040(9) for the purpose of estimating employment growth... This analysis results in a total land demand of 405 gross acres to accommodate 6,333 new jobs forecasted for the 2021-2041 planning horizon. Record at 366.

The city also asserts land need for an additional 49 acres of employment land across eight sites...

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.

OAR 660-024-0040(9) provides the following safe harbor that a city may use to project employment growth over the planning period:

(9) The following safe harbors may be applied by a local government to determine its employment needs for purposes of a UGB amendment under this rule, Goal 9, OAR chapter 660, division 9, Goal 14 and, if applicable, ORS 197.296 (Factors to establish sufficiency of buildable lands within urban growth boundary).

(a) A local government may estimate that the current number of jobs in the urban area will grow during the 20-year planning period at a rate equal to either:

(A) The county or regional job growth rate provided in the most recent forecast published by the Oregon Employment Department; or

(B) The population growth rate for the urban area in the appropriate 20-year coordinated population forecast determined under rules in OAR chapter 660, division 32.

In this rule, the safe harbor is described as and designed to supplant *all* the analysis a city would otherwise be required to do under Goal 9, Goal 14, and the related cited laws. The rule does not say that the safe harbor is a substitute for only some parts of these laws.

However, the director's decision characterizes the safe harbor as merely a starting point, saying that cities “typically begin with safe harbors identified in rule to forecast local job growth, and often subsequently choose to exceed the safe harbor” by adding to it through various methods the director’s decision then describes, including “local economic development opportunities,” “target industries approach,” and “adjusting the forecast in certain sectors” (Order 001943 at 18-19).

None of these other “methods” is defined or provided for in the rules and all are quite vague. In fact, the current ambiguity and inconsistency around use of the “target industries” approach has caused the department to establish an advisory committee to define and standardize its use. In its [memo](#) establishing the advisory committee, the department describes the current use of the target industries approach as “an informal, undefined method that cities are increasingly using [that] fail[s] to connect expected local employment growth to land demand in a meaningful way” (memo, [Goal 9 Target Industries Approach Rulemaking Initiation](#), p. 1).

In that same memo, the department defines the Goal 9 safe harbor as “a methodology set forth in an LCDC-adopted administrative rule that, if used by a local government, will result in department acknowledgment of the outcome and will provide the local government immunity from legal challenge to the outcome.” This reinforces that the OAR 660-024-0040(9) safe harbor entirely substitutes for the complete Goal 9, etc. analysis the city would otherwise have to do; it is not the floor on which a city can add more.

This is also reinforced by the contrasting Goal 10 safe harbor, which appears just prior to this in in OAR 660-024-0090(8). There, the rule provides for multiple safe harbors to address discrete parts of the Goal 10 analysis that a city must otherwise do to project its housing needs. For example, this rule provides discrete safe harbors for estimating persons per household, government assisted housing, manufactured dwellings, and more.

Therefore, a city could use one or more of the safe harbors (such as for projecting manufactured housing need) and then add to that for other housing needs not covered by that safe harbor. This is not how the employment safe harbor is structured.

Therefore, 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.

## **2. Retail Leakage**

This was Objection 4 in our May 23, 2024, objection and addressed on p. 20 in Order 001943. 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 customized employment forecast.

Order 001943, on p. 20, states, "The objectors are correct in their argument that the city has not relied on a safe harbor to forecast employment growth." This misstates our position. We contend the EOA *does* rely on the safe harbor, but then impermissibly adds more jobs to the forecast rather than including the jobs assigned to "retail leakage" in the safe-harbor total.

The EOA states (Record at 1100-1101):

**Medium-growth scenario (1.36%).** The medium-growth option is another safe harbor, based on the rate of growth from the current population projections from Portland State University. \* \* \*

\* \* \*

The PAC recommended using the medium-growth option (1.36% AAGR) for the employment forecast for the 2021-2041 planning period. The results of the employment forecast presented in the EOA reflect this growth rate.

OAR 660-024-0040(5) provides, in part: "Employment land need may be based on an estimate of job growth over the planning period; local government must provide a reasonable justification for the job growth..."

OAR 660-024-0010(7) provides, in part: "'Safe harbor' means an optional course of action that a local government may use to satisfy a requirement of Goal 14. Use of a safe harbor prescribed in this division will satisfy the requirement for which it is prescribed."

These provisions combine to require that an employment land need calculation based on job growth may be based on "reasonable justification" *or* a safe harbor. 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. Neither of these were done in this case.

Order 001943 cites to the record at 1101 and 1111 to support the contention that the city did not use a safe harbor employment forecast. The record at 1100-1101 says that the EOA *does* rely on the safe harbor (quoted above). The order erred when it stated the EOA is not based on the safe harbor employment projection when, by its own terms, it is.

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.

### **3. 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. 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. In rejecting our objection, Order 001943 misconstrues both the record and the city’s submittal.

Not all new jobs require new, vacant employment land. Many jobs locate on residential land, or are absorbed on existing employment sites through refill and redevelopment. Significant employment occurs on residential land. This includes, but is not limited to, people working in assisted living facilities, in day care centers, churches, home occupations, and other people who work from home. McMinnville’s new EOA fails to adequately account for this employment, especially with respect to jobs in residential zones, which was the focus of this objection.

McMinnville’s existing, acknowledged EOA assumed that 83 percent of new jobs will require new vacant employment land and 17 percent of new jobs will either locate on non-employment land or be accommodated through refill and redevelopment (Record at 276). In contrast, the new EOA assumes that 95 percent of jobs will require new vacant employment land and that five percent of new jobs will be accommodated through refill and redevelopment on developed employment land, but the new EOA does not account for the additional new jobs that have historically located, and will continue to locate, on residential land.

The new EOA asserts that the 17-percent rate in the acknowledged EOA was merely aspirational, and hasn’t been observed historically. There is no evidence to support this conclusion. It fails to recognize that the 17-percent rate in the acknowledged EOA

includes not just refill and redevelopment on existing employment land, but also jobs that will be accommodated on residential land.

As explained below, all the evidence in the record demonstrates that the 17-percent rate in the acknowledged EOA is at least what is already occurring in McMinnville today.

The empirical evidence in the EOA, evidence in the city's response to our objections, and other evidence in the record supports the city's assumption that five percent of new jobs will be accommodated through refill and redevelopment on employment land. It *does not* support a conclusion that this also adequately accounts for the considerable amount of jobs that will be accommodated on residential land, including on residential land that is not yet developed.

*In addition* to the five percent of new jobs that are currently accounted for through refill and redevelopment on employment land, an even greater percentage of employment occurs today in residential zones, and that will continue in the future. In total, the percentage of new jobs that don't require new, vacant, employment land, is very close to and may exceed the 17-percent rate assumed in the acknowledged EOA:

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

First, with respect to the five-percent rate, the EOA makes clear that the actual analysis of empirical data only considered refill and redevelopment on developed employment lands. It did not consider employment on residential land (Record at 315-318). Despite conclusory statements added to the EOA, there is no contrary *evidence* in the record. Nothing suggests that it also considered employment on residential land:

The effect of applying refill and redevelopment rates *to existing developed land* is to implicitly increase the employment density on those lands... Exhibits 3A-3C show the effective densities resulting from applying 17%, 10%, and 5% of new employment *to developed commercial and industrial sites.*" (Emphasis added.)

An assumption of 5% industrial refill/redevelopment would result in an increase in employment density from about 10 emp/ac to about 11 emp/ac *on existing developed sites.* This is generally consistent with McMinnville's historic trends." (Emphasis added.)

Exhibit 3C. Effective Employment Densities with 5% Refill/Redevelopment Assumption on Current Developed Commercial and Industrial Sites

Plan Designation	Covered Employment by Plan Des.	Total Emp. Calc. by Plan Des.	Net Unconstrained Developed Acres in Plan Designation	Effective Employment per Net Acre on Current Developed, Non-Vacant Sites						
				Current Calc Emp Density	5% of Add'l Emp to 2041	Tot Emp Exist Sites by Plan Des. In 2041	Emp. Density Exist Sites with 5% of emp to 2041	5% of Add'l Emp to 2067	Tot Emp Exist Sites by Plan Des. In 2067	Emp. Density Exist Sites with 5% of emp to 2067
Industrial	3,422	4,485	428	10	96	4,581	11	191	4,676	11
Commercial	6,245	8,184	357	23	295	8,479	24	619	8,803	25

It is clear that the analysis the EOA relied upon only considers refill and redevelopment on current developed commercial and industrial sites, and *does not* include consideration of additional employment on residential and other non-employment land. Nothing in the city’s response to this objection provides evidence to the contrary.

Second, as the city’s response to our objections concedes, additional new jobs will be accommodated on residential land, beyond what is accommodated through refill and redevelopment on developed commercial and industrial sites. The question is, “how much?” (McMinnville Response to Friends objections at 9.)

The new jobs that will be accommodated on residential land include people working from home, including home occupations, and people working at assisted living facilities, in day care centers, churches, etc. McMinnville did not include this employment in its estimate of the percentage of new jobs that will not require new vacant employment land.

With respect to the first category, people working from home, we submitted census data from 2010, 2012 and 2017, including data on people working *exclusively* from home. (Record at p. 2084). It shows that 8.2 to 12.5 percent of employment is people who work from home. There is no contradictory evidence in the record:

- Home Occupations – Nationally, the percentage of persons working exclusively at home climbed from 4.8 in 1997 & to 6.6% in 2010.<sup>6</sup> This grew to 9.7% in the most recent census data.<sup>7</sup> In Oregon, 12.5% of all workers worked from home and in McMinnville, the figure was 8.2%.<sup>8</sup> Home occupations alone far surpass the 5% rate the EOA used for refill, redevelopment, *and* jobs on non-employment land.

<sup>6</sup> <https://www.census.gov/library/publications/2012/demo/p70-132.html>

<sup>7</sup> <https://www.census.gov/acs/www/about/why-we-ask-each-question/commuting/>

<sup>8</sup> <https://www.census.gov/acs/www/about/why-we-ask-each-question/commuting/>

We are puzzled by the city’s assertion in its response to our objections that this data is from 2023 and is outside of the data years included in their analysis. As shown above, this is not correct. The city further asserts that it relied on the data structure that was available at the time in 2017 (McMinnville Response to Friends objections at 8-9). The census data we cited above was all available in 2017.



Therefore, the evidence shows that just accounting for the five percent refill and redevelopment rate on developed commercial and industrial sites, and the 8.2 to 12.5 percent of current jobs that are people working from home, the 17 percent of future jobs allocated in the old EOA to refill, redevelopment, and non-employment land is close to what is occurring today. It is not aspirational. This still doesn't include the significant and growing percentage of jobs that occur in specific businesses that are located on lands zoned residential.

Specifically, people also work in residential zones at assisted living facilities and other care facilities, day care centers, churches, etc., all of which are permitted outright or conditionally in McMinnville's residential zones, and all of which are principally located on residential land in McMinnville.

McMinnville's code refers to Assisted Living Facilities, and Nursing/Convalescent homes separately (Chapter 17.06). Assisted Living Facilities are an outright permitted use in all residential zones.

The undisputed evidence in the record shows that every current assisted living facility in McMinnville is located on residential land and so are almost all of McMinnville's memory care and skilled nursing facilities (Record at 2098). The submitted plan amendments forecast a growing demand for these facilities (Record at 140-141).

Order 001943 at p. 21 agrees that the continued development of these facilities on residential land is probable. The same is true for employment at day care centers and churches. There is no factual base for a different conclusion.

The department asserts that accounting for what is probable requires an unreasonable degree of detail over a long-range horizon. However, that statement is inconsistent with the fact that the EOA forecasts highly specific employment types and corollary land use outcomes when it added specific low-density employment uses at eight sites specific (see section 1 above regarding Friends Objection 3), which the department allowed. There is no basis to distinguish between these. It is reasonable to require what cities and consultants do all the time: estimate total employment at the city's assisted living facilities and for the other uses, estimate how much of that is occurring on residential land, and carry that percentage forward as a percentage of total employment.

To summarize, 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
- 8.2 to 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

Because the new EOA failed to account for employment that is currently located on residentially zoned lands, and failed to account for new jobs that will locate on residentially zoned land in the future, it significantly overestimates the amount of new, vacant, employment land it will need over the planning period. Therefore the director's decision on Objection 5 is in error because it is not supported by the evidence in the record.

Our proposed remedy is for the commission to remand the EOA with instructions to:

- (a) Allocate at least five percent of new employment to refill and redevelopment, as supported by the empirical data;
- (b) Allocate at least 8.2 to 12.5 percent of new jobs to home-based employment, as supported by the census data, or in the alternative justify some other rate
- (c) Estimate the percentage of additional jobs in residential zones at assisted living facilities, day care centers, etc. and allocate that additional percentage of employment to residential land.

#### **4. Land for Parks**

This was Objection 7 in our May 23, 2024, objection and addressed on pp. 23-26 in Order 001943. 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 EOA projects a need for approximately 392 additional acres of buildable land for parks through 2041 (Record at 190).

We support parks, and we support funding mechanisms for the city to acquire parks. Merely inflating the overall need for buildable land with unrealistic parkland assumptions and without a funding plan does nothing to achieve these goals.

Just three years ago, the city added close to 1,000 acres of land to its UGB, including 804 acres in the Urban Holding zone. The submitted amendments assume, without an adequate factual basis or funding strategy, that about one-third of this *buildable*, vacant land will be consumed by parks (Record at 1665).

The submitted plan amendments also assume that *none* of the identified need for parkland will be met on unbuildable land. There is no evidentiary justification provided for this assumption, it is contrary to an existing plan policy, and it is contrary to what has occurred and continues to occur in McMinnville.

***Friends Sub-Objection A (formerly sub-objection 2): Inflated parkland need.*** The submitted plan amendments are based in part on a parks master plan that was adopted in 1999 and covered a 20-year time span; i.e. through 2019 (Record at 2091, 2092). That parks plan called for 14 acres of parkland per thousand people, including eight acres per thousand of neighborhood and community parks and 6 acres of greenways, greenspaces, and natural areas (Record at 2149). The parks plan lacked anything close to an adequate funding mechanism (the city does not assess anything close to full Systems Development Charges for parks) and proved to be wildly unrealistic.

The city's findings state (Record at 767):

The analysis of Public Land Need (in Appendix E of the EOA) uses the 14 acres/1,000 people level of service to determine park land need *for the forecast of 11,260 person growth* in McMinnville over the 2021-2041 period. (Emphasis added.)

All parties seem to agree that this is not what the city actually did. Rather than apply the 14 acres per thousand standard to the forecast of 11,260 person growth, the city instead added the very large city-wide park land deficit to the forecast of population growth, and projected a parkland need that works out to about 35 acres per thousand of new population (Friends objection at 13, Order 001943 at 25, McMinnville Response to Friends objections at 11-12).

For the purposes of a projecting a future UGB expansion, the EOA identifies a land need sufficient to not only meet the increment of population growth, but also to meet the city-wide deficit. There is nothing in the record or the city's history that would suggest the city can acquire anything remotely close to 35 acres per thousand of new population over the 20-year planning horizon. The assumption lacks an adequate factual base. The record demonstrates that the city has been unable to meet the 14/acres per thousand standard. Even if the city could acquire 35 acres of parkland per thousand of new population, this would not result in parks located where the current deficit exist – parks that serve the needs of current residents in existing neighborhoods.

The city has no mechanism to ensure that the land it says will be parks, are actually used for parks, rather than developed by landowners for other uses permitted in the zone. This will result in a significantly larger than 20-year supply of residential land, in violation of Goal 14.

Order 001943 rejected this sub-objection based on the conclusion that the 14 acres per thousand standard is reasonable. The department misconstrued our objection. We did not argue that use of the 14 acres thousand standard was impermissible; in fact, one of our proposed remedies was to apply that standard to the 11,260 person increment of

population growth. That is what the city's findings assert the EOA did, but as explained above, that is not what it actually did.

Our proposed remedy is for the commission to remand the HNA and EOA with instructions to do what the city's findings said it did: Apply the 14 acres per thousand persons standard to the forecasted increment of 11,260 new population to determine parkland need.

***Friends Sub-Objection B (formerly sub-objection 3): The city wrongly assigns all quantified parkland needs to buildable land.*** The city assumes that all of its quantified future park needs will be met on buildable land. We objected on both legal and factual grounds: this is not supported by the city's comprehensive plan and the record demonstrates that many of the city's park needs are already met on non-buildable land. The record also demonstrates that this will continue to be the case in the future. The director rejected this objection.

Comprehensive Plan Policy 163.05 states:

163.05 The City of McMinnville shall locate future community and neighborhood parks above the boundary of the 100-year floodplain. *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.)

Despite this explicit plan policy, and despite lacking any factual basis for doing so, the submitted plan amendments assign all quantified parkland needs to buildable land, in violation of Goal 2. This includes 168 acres of buildable land for greenways and natural areas, which constitute about 43 percent of the quantified land need. Assigning all quantified parkland needs to buildable land is not only inconsistent with the comprehensive plan, it is also inconsistent with the existing park distribution in McMinnville and the planned location of future parks (see Framework Plan Map below).

This significantly inflates overall land needs in at least two ways and therefore also violates Goal 14 and OAR 660-024-0050(4), which requires a showing that "estimated needs cannot reasonably be accommodated on land already inside the UGB."

First, it results in a vast underestimation of the availability of buildable land for housing and other development within the existing UGB, by assuming away much of the existing buildable land supply.

Second, 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. This violates Goal 14's requirement that any boundary amendment be based upon demonstrated need.

The city's comprehensive plan explicitly identifies unbuildable land as an appropriate location for up to 43 percent of the quantified need for parkland. A very large portion of McMinnville's existing parks are on unbuildable land. This includes portions of existing community parks, greenways, and natural areas, including Joe Dancer, Discovery Meadow, and City Park; the Cozine Creek Greenway; and the Kiwanis Park, Airport Park and Rotary (Tice) Park natural areas (Record at 27 and 2211-2212). The department finds that "it is reasonable to expect some park land areas to be on non-buildable land" (Order 001943 at 26).

The department erred rejecting our objection, despite the foregoing. In doing so, it apparently misconstrued the record and misread our objection. It concluded (Order 001943 at 26):

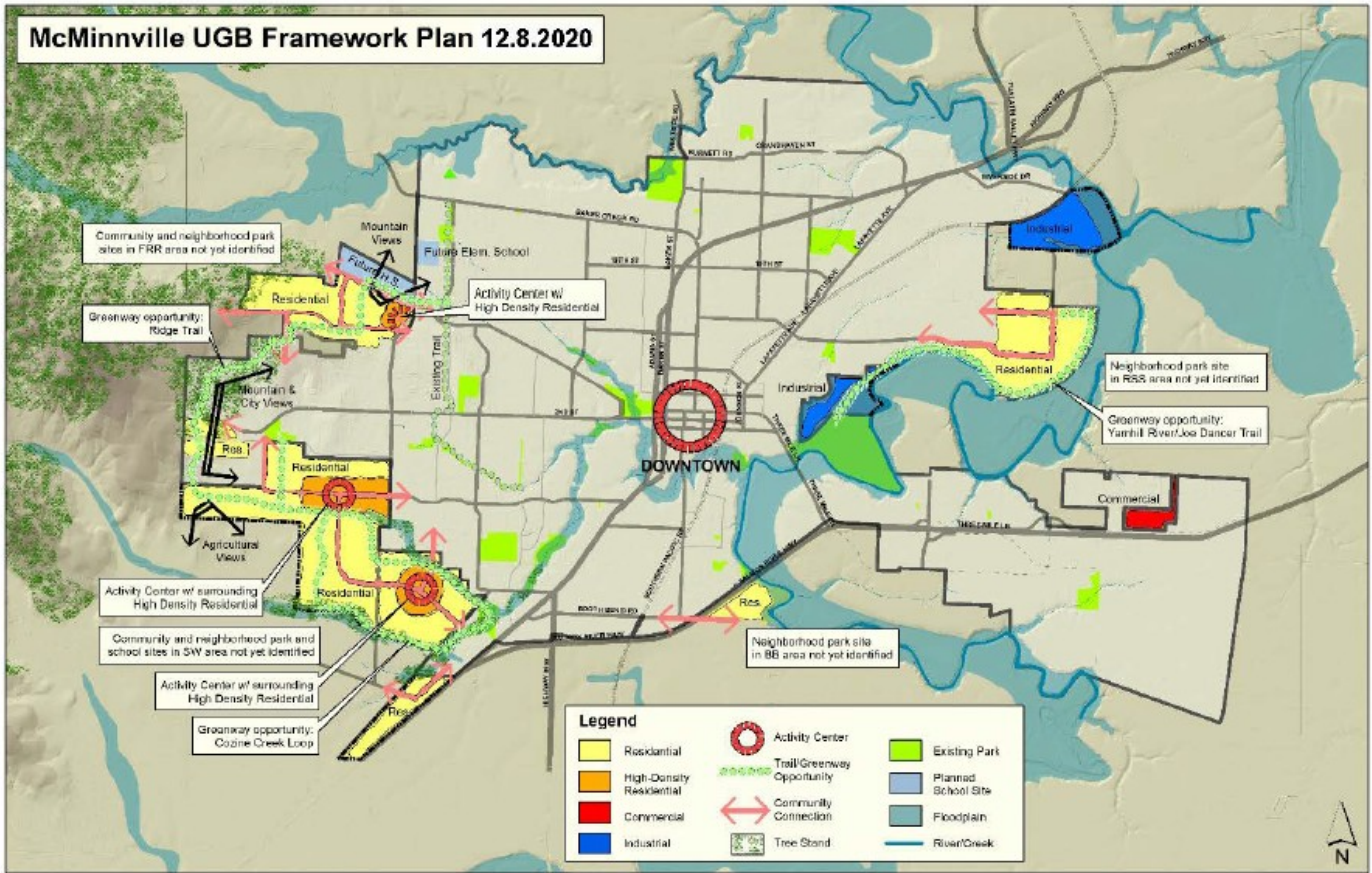
The director determines that the city's methodology is a way to start resolution of this issue... Without knowing which lands would be added into the UGB and which steps the city might take to accommodate identified parks need in future, it is premature to determine the appropriate proportion of park lands that should be located on non-buildable lands.

This misses the point. The city has applied its assumption to hundreds of acres of undeveloped land in the existing UGB, thereby heavily discounting its capacity to accommodate other uses, especially housing. The EOA projects a need for approximately 392 additional acres of buildable land for parks through 2041. It assigns 254 of these acres to vacant buildable residential land that was recently added to the UGB. (Record at 1665)

The record does not support the director's conclusion. The city already knows where these lands are. As noted in the McMinnville Response at 14:

The City adopted a McMinnville Growth Management and Urbanization Plan (MGMUP), and a Framework Plan for its current UGB expansion lands identifying the future location of linear parks, trails, greenways and greenspaces with these goals in mind.

The framework plan is an acknowledged element of McMinnville's comprehensive plan and is reproduced below. It locates most the future greenway network (43 percent of the parkland need) on unbuildable floodplain or unbuildable steep slopes. It also shows that much of McMinnville's existing parks are located on unbuildable floodplain.



Goal 2 requires the various elements of a comprehensive plan to be consistent with one another. The allocation of all parkland to buildable land in the submitted EOA is inconsistent with the adopted and acknowledged Framework Plan and inconsistent with Plan Policy 163.05. As set forth in our objections, it is also inconsistent with the adopted and acknowledged Fox Ridge Road Plan, which locates most of the Neighborhood Park and Greenways to unbuildable natural hazard areas.

The department’s conclusion quoted above is in legal and factual error. This portion of the work task is non-compliant. The Commission should not acknowledge non-compliant work tasks.

Our proposed remedy is for the commission to remand the HNA and EOA with instructions to allocate a portion of the quantified parkland to unbuildable land consistent with plan policy 163.05 and the acknowledged Framework Plan and acknowledged Area Plans.

**5. 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. We objected to the city’s exclusion of buildable land from its inventories

based on ownership. Order 001943 failed to adequately address our objection and erred in concluding that the city's exclusion of certain buildable lands from the buildable lands inventories is permissible.

An accurate assessment of capacity within the existing UGB is essential to a properly sized boundary and, in turn, to ensuring both an adequate supply of urban land and an adequate land base to support our farm and forest industries. This assessment begins with accurate land inventories. The inventories in the city's submittal fail to meet this standard.

The inventories of buildable land in the HNA and employment land in the EOA improperly exclude some 87 acres of buildable land in private ownership. This equates to over 20 percent of the 422 acre deficit identified by the city (Record at 761). The excluded land includes:

- a) 30 buildable acres of vacant and partially vacant land owned by churches, of which 26 acres are residentially zoned, and 4 acres are commercially zoned (Record Addendum #1 at 72); and
- b) 57 buildable acres in a vacant parcel owned by Linfield University that is commercially zoned (Record Addendum #1 at 72).

With respect to the vacant and partially vacant land owned by churches, the EOA projects a 38-acre church-land need through 2041 and an 83-acre church land need through 2067 (Record at 189). Order 001943 concludes that:

*It is certainly likely that some of these lands will serve church expansions in the future, but less certain that the lands will be put to other uses, as indicated from the results of the 2017 survey. The degree to which existing churches are likely to make surplus lands available to churches wishing to locate in McMinnville is very difficult to estimate. Consequently, the director finds that the city's assumption that these church properties will not *redevelop* during the planning period to be reasonable. (Emphasis added.)*

(Order 001943, p. 27).

First, it appears the department may have misunderstood the city's assumption. The excluded land is not developed land that could potentially redevelop. It is undeveloped vacant and partially vacant buildable land that the department itself concedes is likely to serve *existing* church expansions, thus meeting a portion of the identified need for church land.

Second, buildable land that is "certainly likely" to develop should not, and cannot legally, be excluded from the inventory simply because it is difficult to estimate whether the

owners will use it for their own expansions or sell it to other users. Neither the city nor the Department contends that future religious needs can only be met by new churches wishing to locate in McMinnville and cannot be met through expansion of existing churches.

With respect to the exclusion of the commercially zoned vacant 57-acre parcel owned by Linfield, our objection notes that the city itself states that “the College has consistently told the City that its plans are to use the land it owns for future expansions” (Record Addendum #1 at pp. 15 and 72). This expansion will accommodate population (student housing), employment (classrooms, administrative offices, etc.) or some combination of the two. The record contains no evidence to the contrary. As the city itself states in attempting to justify its exclusion:

The BLI... does not include land owned by Linfield College, which is about 57 acres, because the College has consistently told the City that its plans are to use the land it owns for future expansions and has no plans to sell land.

(Record Addendum #1 at 72)

We do not know if this land will be developed as housing or employment. It could be used for athletic fields, open space, and other campus amenities.

(McMinnville Response to Friends objections at 15)

Order 001943 (p. 27) incorrectly states that the letter from Linfield in the record “indicates they do not anticipate any new land needs over the planning period.” This characterization is inaccurate. The 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.)

Order 001943 (pp. 27-28) also states:

Additionally, the housing and employment analysis within the HNA and EOA has considered group quarters and college employment opportunities serving the college over the planning period within those respective studies. Record at 133-134, 203-209.

The department does not explain why “consideration” of group quarters and college employment opportunities justifies the exclusion of unconstrained buildable land from



the inventory and the pages in the record that the director's decision cites to do not support such a conclusion. The HNA does not separately allocate population or housing to group quarters (Record at 134) and the EOA considered employment in health care, social assistance, and private education as a single undifferentiated category. The exclusion of this land from the inventory excludes land that is expected to accommodate population and/or employment.

Our objection alleged violations of OAR 660-008-05(2) and OAR 660-009-0015(3), as well as Goal 2, Goal 14 and OAR 660-024-0050(4). Order 001943 fails to address these provisions of law in its consideration of this objection.

OAR 660-008-05(2) and OAR 660-009-0015(3) govern inventories of residential and employment lands, respectively, and are reproduced below. The Order 001943 erred in failing to consider their requirements.

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.

OAR 660-009-0015(3):

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 87 acres of buildable land in private ownership that the city has excluded from the inventories is comprised of residential land and employment land.

The vacant and partially vacant residential land is "suitable and available" under OAR 660-008-05(2). The department has determined that it is "certainly likely" that some of these lands will develop in a manner that will meet some of the identified church land need. (Order 001943 at 27)

There is not an adequate factual base for its exclusion, as required by Goal 2 and its exclusion violates OAR 660-008-05(2). Because Goal 14 and OAR 660-024-0050(4)

require a showing that “estimated needs cannot reasonably be accommodated on land already inside the UGB,” its exclusion violates these provisions as well.

The owner of the 57 acres of vacant and partially vacant commercial land has said it plans to use the land for future expansions. These expansions are likely to accommodate housing, employment, or both. There is not an adequate factual basis for its exclusion, as required by Goal 2. Its exclusion is also impermissible under OAR 660-009-0015(3).

As a remedy, we ask that the commission remand the HNA and EOA with instructions 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. 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.

Our objection letter stated (at p. 16):

The plan amendments adopt a URA land need for the year 2067 to accommodate a population of 62,803, based on the 2017 PSU population forecast. PSU released a new population forecast for McMinnville on June 30, 2020, over three years before the adoption of the plan amendments.

And

The city was allowed to use the outdated forecast for its HNA and EOA because the city had submitted its Notices of Proposed Action under OAR 660-018-0020 prior to release of the updated forecast in 2020. Those notices did not, however, include establishment of the urban reserves...

Order 001943 confirmed this. It states:

On May 14, 2020, city staff filed two notices of proposed amendments: one for the adoption of a HNA and residential buildable land inventory (Post Acknowledgement Plan Amendment (PAPA) #001-20), and the other for the adoption of an EOA, employment land buildable land inventory, and other land needs (PAPA #003-20).

To be clear, we do not object to the city’s use of the 2017 population forecast for the purposes of the current UGB amendment study. But there has been no notice of proposed action for establishment of an urban reserve as that subsequent land use action was not included in PAPA notices 001-20 or 003-20.

The Order goes on to state: “Objectors ask the department to disallow the use of the HNA and EOA to establish urban reserves in the future. The director finds no basis in rule or statute to do so.” The basis is in OAR chapter 660, division 32:

OAR 660-032-0020(1) 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...

\* \* \*

(5) If a local government outside the Metro boundary initiates a periodic review or any other legislative review of its comprehensive plan that concerns an urban growth boundary or other matter authorized by OAR 660-032-0040(2) after the Portland State University Population Research Center issues a final population forecast for the local government, but prior to the issuance of a final forecast by PRC in the subsequent forecasting cycle described in OAR 577-050-0040(7), the local government may continue its review using the forecast issued in PRC’s previous forecasting cycle. (Emphasis added.)

**OAR 660-032-0010** (3) “Initiates” means that the local government either:

(a) Issues a public notice specified in OAR 660-018-0020, including a notice to the department, for a proposed plan amendment that concerns a subject described in 660-032-0040(2); or

(b) Receives the Director’s approval, as provided in OAR 660-025-0110, of a periodic review work program that includes a work task concerning a subject described in 660-032-0040(2).

These combine to say that the city must use the latest PSU population forecast that was in effect *at the time the city sent its notice of proposed action* for the comprehensive plan change. In this case, the city submitted the notices for the HNA and EOA, but not for urban reserves – a separate comprehensive plan change under OAR 660-032-0020(1). There has already been one new PSU population forecast, and there could be another

before the city “initiates” establishment of an urban reserve. We ask the commission to apply the rules as they are written.

The Urban Reserves Rule, OAR chapter 660, division 21, provides what local governments must demonstrate when establishing urban reserves:

660-021-0030(1) 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.

There is no requirement, or even suggestion, that establishment of urban reserves must rely solely on 20-year land-need analyses such as an HNA or EOA. While the analysis under this rule must *be consistent with* the acknowledged plan, the estimate for the urban reserve land need is a separate action and subject to an updated population forecast.

Our proposed remedy is for the commission to either remand the HNA and EOA with instructions for the city to remove references to a 47-year planning horizon and urban reserves based on the 2017 population forecast or to, at the very least, make it clear that those parts of the HNA and EOA will not provide substantial evidence for subsequent establishment of urban reserves. This will prevent future objections when the city initiates the urban reserves comprehensive plan change.

### **OTHER COMMENTS**

In Objection 1 in our May 23, 2024 letter (pp. 3-4), we objected to the city’s determination of “needed density.” The city based “needed density” on the city’s historical density, rather than on an analysis of the density needed to provide housing commensurate with the financial capabilities of present and future residents.

Order 001943 rejected our objection, stating that the analysis in the HNA, “does not factor in potential land use efficiency measures that the city must consider in the next phase of the sequential UGB process,” and “changes to [minimum lots sizes] and other efficiency measures are appropriately considered at the next phase in the sequential UGB process” (Order 001943 at 15-16).

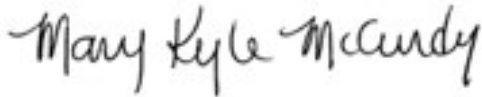
We understand that the director's decision rejected our objection because the residential density issue will be addressed in the next phase of the sequential UGB process in efficiency measures. However, we think it is important to raise this issue now, even if the solutions are to come in the next phase, because it provides an important part of the context for why the city has failed to meet the housing needs of its citizens. We want to ensure that when the city moves to the stage of crafting efficiency measures, they are

aimed at meeting the city's current and future housing needs and are not based on past development at densities that do not reflect that need and were artificially constrained by zoning limitations.

**CONCLUSION**

We appreciate the opportunity to make our case before the commission and look forward to your decision on these important 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