

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
DIRECTOR’S DECISION ON CITY OF MCMINNVILLE
SEQUENTIAL URBAN GROWTH BOUNDARY AMENDMENT TASK SUBMITTAL**

DLCD Order 001943

August 1, 2024

Table of Contents

I.	DECISION	1
II.	REVIEW PROCEDURES AND CRITERIA	2
	Procedural Considerations	2
	Validity of Objections	3
III.	BACKGROUND AND DESCRIPTION OF SUBMITTAL	4
IV.	DEPARTMENT REVIEW	4
	A. Jurisdiction	4
	B. Scope of Review	5
	C. Standard of Review	5
	D. Applicable Law	5
	E. Director Evaluation	9
V.	ANALYSIS OF OBJECTIONS	14
	A. First Objection	14
	B. Second Objection	16
	C. Third Objection	17
	D. Fourth Objection	20
	E. Fifth Objection	20
	F. Sixth Objection	23
	G. Seventh Objection	23
	H. Eighth Objection	27
	I. Ninth Objection	28
	J. Tenth Objection	29
VI.	CONCLUSION	30

I. DECISION

For the reasons explained in this report, the Department of Land Conservation and Development (DLCD, or department) concludes that the submittal from the City of McMinnville (city),

containing a sequential Urban Growth Boundary (UGB) amendment work program task submittal and supporting comprehensive plan amendments (Ordinance No. 5141), complies with the requirements of the applicable statewide planning goals, statutes, and administrative rules, except that the city's submittal errs in calculating certain parks and recreation land needs as discussed in the Director Evaluation (section IV.E.2) and in response to Objection No. 7 (section V.G). As authorized by OAR 660-025-0150(1)(d) and OAR 660-025-0185(6), the director remands the submittal in part to resolve this error. The director approves the remainder of the city's submittal, consisting of the Buildable Lands Inventory (BLI) excluding the parks and recreation land inventory, the Housing Needs Analysis (HNA), and the Economic Opportunities Analysis (EOA).¹

II. REVIEW PROCEDURES AND CRITERIA

Procedural Considerations

As discussed in detail in Section III below, the city initiated the submittal in response to Work Task 1, as established through the city's election to enter into a sequential UGB work program, approved by DLCD Director on February 7, 2024. The city provided notice of the Task 1 submittal on May 6, 2024. As dictated by Task 1 of the work program, the city adopted the EOA, HNA, and BLI on February 27, 2024.

ORS 197.626(3) and OAR 660-025-0185 authorize the director's review of urban growth boundary amendment components. The director of DLCD has 90 days from the date of the city's submittal and notice to make a decision under ORS 197.626(3)(b)(A) and OAR 660-025-0185(6)(a). The director may approve the submittal, remand it, or refer the matter to the commission. ORS 197.626(3)(c); OAR 660-025-0150(1). The director elected to make a decision on this submittal.

¹ OAR 660-025-0160(1)(d) provides:

“The director may issue an order approving portions of the completed work task or plan amendment provided these portions are not affected by an order remanding or referring the completed work task.”

OAR 660-025-0185(6) provides:

“A director's decision on a submitted task and appeals of a director's task decision are subject to OAR 660-025-0150 and 660-025-0160 except:

“(a) Notwithstanding OAR 660-025-0150(3), the director must take an action, and the order or referral must be sent, within 90 days after the local government submits the task for review unless the local government waives the 90-day deadline or the commission grants the director an extension.

“(b) Notwithstanding OAR 660-025-0150(4), if the director does not issue an order or refer the task within the time limit set by subsection (6)(a), and the department did not receive any valid objections to the task, the task shall be deemed approved. In such cases, the department will provide a letter to the local government certifying that the task is approved.”

OAR 660-025-0150(5) provides: “If the department received one or more valid objections to the work task or plan amendment, the director must either issue an order...or refer the work task or plan amendment to the commission for review.” The department received two letters containing twelve total objections (10 in letter one and 2 in letter two). This order addresses the objections.

Validity of Objections

The department received two letters identifying twelve objections to the submittal. *See* Attachments A and B. The department received the first, listing ten objections from the Friends of Yamhill County and 1000 Friends of Oregon, on May 23, 2024. The department received the second, listing two objections from Mark Davis, on May 24, 2024. The objections raise a range of issues with the EOA, HNA, and BLI. The department received both objection letters within the 21-day period for filing objections following the date the city issued the notice of decision, May 6, 2024.

Regarding objections, OAR 660-025-0140 provides:

- “(2) Persons who participated orally or in writing in the local process leading to the final decision may object to the local government's submittal. To be valid, objections must:
 - “(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the local government sent the notice;
 - “(b) Clearly identify an alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;
 - “(c) Suggest specific revisions that would resolve the objection; and
 - “(d) Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.
- “(3) Objections that do not meet the requirements of section (2) of this rule will not be considered by the director or commission.”

As noted in their objection letter, Friends of Yamhill County and 1000 Friends of Oregon participated in the city's decision, providing testimony to the McMinnville Planning Commission. Record at 1706 and 2076. The second objector, Mark Davis, also participated in the city's decision. Record at 1653, 2126-2225 and Record Addendum #1 at 1. The department has reviewed the twelve filed objections and has determined that all clearly identify alleged deficiencies and suggest specific revisions to resolve the objections. The department has determined that all of the objections satisfy the requirements of a valid objection in OAR 660-025-0140(2) and may be considered by the director.

III. BACKGROUND AND DESCRIPTION OF SUBMITTAL

As prescribed in Task 1 of the approved City of McMinnville sequential UGB amendment work program, the McMinnville City Council adopted the EOA, HNA, and BLI on February 27, 2024. The city then transmitted a formal task submittal to DLCDC on May 3, 2024, and an associated notice of task decision to DLCDC and interested parties on May 6, 2024.

Passage of Ordinance No. 5141 resulted in the following:

1. *Adoption of the November 2023 McMinnville Urbanization Report*
2. *Updating the McMinnville Comprehensive Plan by adopting the November 2023 McMinnville Housing Needs Analysis*
3. *Adoption of the McMinnville Economic Opportunities Analysis, dated November 2023, as part of the McMinnville Comprehensive Plan.*
4. *Repealing Ordinances No. 4746 and 4976*

The city provided notice consistent with the requirements of OAR 660-025-0140. Based on the May 6, 2024 date the notice was sent, the deadline to file any objections to the local decisions on this matter was May 27, 2024.

Prior to the May 27, 2024 deadline, the department received a joint objection from Friends of Yamhill County and 1000 Friends of Oregon on May 23, 2024. Members from both groups had provided testimony at the public hearings held to consider the Task 1 materials adoption. The letter identifies ten Task 1 objections. The second objection was received from an individual, Mark Davis, on May 24, 2024, and had two distinct objections to the Task 1 submittal. Mr. Davis also participated in public hearings held to consider the Task 1 materials adoption.

McMinnville's submittal, constituting the record for this review, is in two parts. The city initially submitted its record on March 5, 2024. References to this document in this decision are labeled "Record." On March 8, 2024, the department replied to the city's submittal and noted that it did not include some material. Record at 1-2. On May 3, 2024, the city resubmitted the record, including the missing materials in a separate document. References to this document in this decision are labeled "Record Addendum #1."

IV. DEPARTMENT REVIEW

A. Jurisdiction

The director, and if appealed or referred by the director, the commission, has exclusive jurisdiction to review sequential UGB amendment work program task submittals pursuant to ORS 197.626, OAR 660-025-0140, OAR 660-025-0150, and OAR 660-025-0185(6). ORS 197.626(3)(b)(A) provides, in pertinent part:

“The director shall take action on each sequential phase of a work task described in paragraph (a) of this subsection not later than 90 days after the local

government submits the phase for review, unless the local government waives the 90-day deadline or the commission grants the director an extension.”

The city ordinance consist of a sequential UGB amendment work program Task 1 submittal for which the department received two separate letters of objection.

B. Scope of Review

Where the director reviews a work program task submittal under ORS 197.626, she does so “in the manner provided for [periodic review.]” ORS 197.626(1). That review is to determine whether the decision approving the work task and any related matters comply with the applicable statewide planning goals, their implementing rules, and applicable state statutes. OAR 660-025-0150(9) and 660-025-0160. The director confines the review of evidence to the records provided by the city. ORS 197.633(3).

C. Standard of Review

The standard of review for this decision is provided in ORS 197.633(3). That statute provides in part:

“(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government’s decision.

“(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

“(c) For issues concerning compliance with applicable laws, is whether the local government’s decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the * * * and land use regulations. The commission shall defer to a local government’s interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, ‘complies’ has the meaning given the term ‘compliance’ in the phrase ‘compliance with the goals’ in ORS 197.627.”

D. Applicable Law

Along with the rules surrounding sequential UGB amendment work programs, the principal legal provisions that govern this review and decision are related to Statewide Planning Goals 2 (Land Use Planning), 9 (Economic Development) and 10 (Housing), including relevant statutes and implementing rules. The city submitted the initial notices of proposed amendment for the EOA and for the HNA to the department on May 14, 2020 (DLCD file Nos. 003-20 and 001-20, respectively). An urban growth boundary evaluation is considered “initiated” on the date that it is submitted as a proposed post-acknowledgment plan amendment. OAR 660-024-0000(3)(b)

referencing OAR 660-018-0020. While the HNA and EOA are not, by themselves, urban growth boundary amendments, they are components of a sequential UGB evaluation approved by the director under OAR 660-025-0185. Consequently, this review will consider the decision based on the rules and statutes in place at the time of post-acknowledgment plan amendment submittal. Because the city's adoption of the EOA, HNA, and public land need analysis is the first step of the City of McMinnville's sequential UGB work plan, some of the rules and statutes implementing Goal 14 (Urbanization) are also relevant to this review.

1. Statewide Planning Goal 9

Statewide Planning Goal 9 is:

“To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens. Plans should provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies.”

Compliance with Goal 9 is guided by administrative rules regarding economic development (OAR chapter 660, division 9).

1. Statewide Planning Goal 10

Statewide Planning Goal 10 is:

“To provide for the housing needs of citizens of the state. Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.”

Compliance with Goal 10 is guided by administrative rules regarding housing (OAR chapter 660, division 8).

2. Oregon Revised Statutes

Former ORS 197.296 (since amended and relocated to ORS 197A.270) sets out requirements for cities to determine the amount of buildable residential lands within their urban growth boundaries (UGBs). These requirements address buildable lands inventories, housing needs analyses, and planning and zoning of residential lands. This statute directs how the city is to calculate its residential land needs.

Of most relevance from this statute are *former* ORS 197.296(5)(a) and (6) (as of May 15, 2020) as key criteria for the determination of residential land needs. In relevant part these provisions read as follows:

“(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

“(A) The number, density, and average mix of housing types of urban residential development that have actually occurred;

“(B) Trends in density and average mix of housing types of urban residential development;

“(C) Demographic and population trends;

“(D) Economic trends and cycles; and

“(E) The number, density, and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.”

and

(6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or both of the following actions to accommodate the additional housing need:

“(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary.

“(b) Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall adopt findings regarding the density expectations assumed to result from measures adopted under this paragraph based upon the factors listed in ORS 197.303(2) and data in subsection (5)(a) of this section. The density expectations may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures. For a local government located outside of a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing

capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region.”

3. Sequential Urban Growth Boundary (UGB) Rules

A city with over 2,500 population that changes its UGB to include more than 50 acres (*see* ORS 197.626(1)(b)) may elect to use the sequential UGB process as authorized in ORS 197.626(3) and OAR 660-025-0185. Conversely, any UGB amendment that would be subject to a LUBA appeal (*i.e.*, the amendment includes less than 50 acres, the city is smaller than 2,500, or the city used the simplified method) is not eligible for sequential review.

OAR 660-025-0185(1) provides that a city may “elect” to use the process and OAR 660-025-0185(2) provides that the city must “notify” the department of its election. The rule provides that the city may make this election when it determines “that the final urban growth boundary amendment is likely to exceed 50 acres.” OAR 660-025-0185(2). For the sequential review process, the city must submit a draft work program with its notification of election to notify the department of the scope of the UGB project (*i.e.*, residential land, employment land, or both) and the proposed planning period. The department must coordinate with the city when developing the work program. There is no public involvement requirement related to establishment of the work program. The director must issue the work program within 120 days of the city’s notice. The work program may not be appealed. OAR 660-025-0185(4).

The city followed this procedure and the director approved a sequential UGB amendment work program on February 7, 2024, with the planning time period of 2021-2041. Record at 3. Pursuant to ORS 197.626(3)(a) and OAR 660-025-0185(5), the city transmitted notice of Task 1 submittal on May 6, 2024. All of the rules for task submittal and review (content of submittal, notice, appeals, etc.) are the same for a sequential UGB submittal as they are for a standard UGB submittal under ORS 197.626 except that the director’s decision on a task is due within 90 days instead of 120 days. ORS 197.626(3)(b) and OAR 660-025-0185(6). The date of this decision is within 90 days after the date of submittal pursuant to OAR 660-025-0185.

On review, the director considers whether the submittal is consistent with the applicable statutes, statewide planning goals, administrative rules, the city’s comprehensive plan, and is supported by substantial evidence. OAR 660-025-0160(2)(a) and (c). The Task submittal was processed as a legislative land use decision.

Local ordinances, state statutes, and LCDC rules specify procedural and substantive requirements for applications, hearings, decisions, and preserving issues for appeal, and case law from LUBA and the appellate courts further define local and state law requirements. For legislative decisions, the record must be adequate to show that the legislative action is within the legal authority of the city. The record must show that the jurisdiction followed applicable procedures. Legislative decisions must be consistent with substantive requirements in state statutes and the statewide planning goals.

LUBA has explained that adequate findings identify the applicable law and the evidence relied upon and explain how the evidence led to the conclusion on compliance with approval standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).

Local governments may incorporate documents from the record into their decisions. But such incorporations must clearly specify which documents are incorporated. *Freedman v. City of Grants Pass*, 57 Or LUBA 385 (2008).

Findings must address all applicable statutes, administrative rules, and land use regulations and all of the elements in those individual authorities. If not, then the findings are inadequate to demonstrate compliance with all applicable law. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

Finally, the director also considers the objections. In reviewing objections, the director only need consider those that “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 268 (2011).

E. Director Evaluation

The director reviews the Task 1 submittal to determine whether Ordinance No. 5141 complies with the applicable statewide planning goals, statutes, and administrative rules, identified in Section IV.D. In reviewing for compliance with the applicable statewide planning goals, ORS 197.627 provides:

“[C]ompliance 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.”

The city submittal includes Exhibit “D” to Ordinance No. 5141, that presents the city’s determination that the Task submittal complies with all relevant statewide planning goals. Record at 348. The director has reviewed those findings and concludes that the Task submittal complies with the requirements of the applicable statewide planning goals, statutes, and administrative rules, except that the submittal errs in calculating park land needs as discussed in the Director Evaluation (section IV.E.2) and in response to Objection No. 7 (section V.G). To resolve this error, the director remands the parks and recreation buildable lands inventory portion of the submittal.

In support of that conclusion, the director makes the following focused findings:

1. Goal 2, Land Use Planning

Coordination

Goal 2 provides “[e]ach plan and related implementation measure shall be coordinated with the plans of affected governmental units.” As used in Goal 2, a comprehensive plan is “coordinated” once “the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible.” ORS 197.015(5).

The city findings related to Goal 2 are contained in the record submitted. Record at 353-355. In this situation the primary need for city coordination was with Yamhill County. Yamhill County's signature on the submitted notice of intent to proceed with a sequential UGB work program indicates that the city did coordinate with the county. Record at 1-2. The city also requested comments from various potentially affected state and local agencies, and special districts. Record at 350-353.

Reliance on Acknowledged Documents

Goal 2 requires as follows:

“City, county, state, and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.

“All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents.”

Regarding the HNA and the BLI, the city has prepared and updated an inventory of buildable residential lands and a HNA consistent with the applicable requirements of *former* ORS 197.295, *former* ORS 197.296, and OAR chapter 660, division 8. Record at 450-588. The city is required to update its HNA (also referred to as a “Housing Capacity Analysis”) by the end of 2024, per the 2024-2032 Housing Capacity Analysis- Housing Production Strategy Schedule updated on January 8, 2024.² This decision provides more detailed analysis regarding the sufficiency of the buildable land inventory and housing needs analysis in response to Objections 1, 2, 8, 9, and 10. In summary, the director's review finds the BLI and HNA comply with all applicable requirements, because the city inventoried existing residential land uses, projected suitable land needs by land use classifications, compared these needs with potentially suitable land within the McMinnville urban growth boundary, and used data from reputable sources such as the Census, City of McMinnville, and Yamhill County. Additionally, the city's Goal 10 conclusions provide more detailed information about the background analyses and inventories and rely on specific data to establish findings that provide a technical basis for developing policy recommendations.

Regarding the EOA, the director's review finds it complies with all applicable requirements because the city has primarily relied on safe harbor employment forecasting methods to estimate future job growth. Record at 777. For economic sectors for which the city exceeded safe harbor forecasts, the EOA relies on a locally adopted economic development strategy that includes community vision and community development aspirations. Record at 777-779. The city justifies its specific site needs included in the EOA through local interviews with appropriate

² See Exhibit A to OAR 660-008-0040. The city's “Housing Needs Analysis” is the same as a “Housing Capacity Analysis” discussed in this rule.

community members and feasibility studies. Record at 598, 738. The cited plans, methodology, and justification provided constitute an adequate factual basis for the conclusions of the EOA.

For the reasons cited above, the director concurs with the Goal 2 consistency findings included by the city in the submitted record. Record at 353-355.

2. Goal 8, Recreation Needs

The department has reviewed the submittal in relation to Goal 8. Record at 35. The department remands that portion of the submittal related to the parks and recreation lands buildable lands inventory, as described in section IV.E.2 of this report.

3. Goal 9, Economy of the State

McMinnville applies a combination of approaches in its EOA, estimating job growth based on the Portland State University (PSU) population growth forecast, adjusting the forecast in certain sectors, and additionally including specific target industries identified in the city's Economic Development Strategic Plan. Record at 589-758. EOAs that employ the target industries approach include site requirements for specific industries and sometimes specific site needs for existing businesses.

Specifically, the EOA builds upon the previously adopted EOA from 2013 with updated data on employment trends and commercial and industrial land needs. Record at 356. It then correctly carries out an updated buildable lands inventory, with supportable assumptions on land capacity and availability. Record at 357-359. It then documents the city's economic development potential. Record at 363. After first documenting land need using safe harbors, it then makes sufficient justification for additional, special land needs to address specific community needs for specific land uses and to address issues such as retail leakage. Record at 364-368. The EOA summary, expressed in the Record at 370, is supported by the analysis and is consistent with the requirements of Goal 9 and provisions of OAR chapter 660, division 9. Therefore, the director concurs with the Goal 9 consistency findings included by the city in the submitted record, Record at 356-370, and finds the Task submittal and Ordinance No. 5141 consistent with Goal 9, with addition of the Goal 9 specific findings included in section V of this report.

4. Goal 10, Housing

Goal 10 requires local jurisdictions to provide for the housing needs of its citizens and provide for the appropriate type, location and phasing of public facilities and services sufficient to support housing development in areas developed or undergoing development or redevelopment

Housing Needs Analysis

The city's adopted HNA accounts for housing needs for the 2021-2041 planning period. Record at 45. The HNA forecasts that McMinnville is planning for 4,657 dwelling units to accommodate an increase of 11,260 people over the 20-year period. Record at 102. McMinnville's housing needs are for more diverse housing types, with more attached and multifamily dwellings than in the city's current housing stock. Record at 81. In addition,

McMinnville needs more housing that is affordable to households with income below 120 percent of median family income, accounting for 59 percent of future housing needs. Record at 371.

McMinnville assumes that eight percent of the 4,657 dwelling units will be accommodated through infill and redevelopment (eight percent of new housing). Record at 48. That leaves need for 4,284 new units that require buildable land. Record at 96. McMinnville's vacant and partially vacant buildable residential land has capacity for 3,183 dwelling units. Record at 49. The result is a deficit of land for 1,101 dwelling units. Record at 49.

McMinnville has proposed to adopt its HNA prior to identifying land use efficiency measures or an UGB expansion to meet its land needs, based on ORS 197.626(3).

Buildable Lands Inventory

Former ORS 197.296(2) requires the city to “demonstrate that its comprehensive plan . . . provides sufficient buildable lands within the urban growth boundary . . . to accommodate estimated housing needs for 20 years.” The statutory requirement for a buildable lands inventory, along with direction concerning what lands are to be inventoried as “buildable,” is contained in *former* ORS 197.296(3) and (4) and in OAR chapter 660, division 8, which provides standards of compliance with Goal 10.

The buildable lands inventory starts by categorizing all residentially developed land, vacant or partially vacant with feasible additional development capacity, and then applies layers of appropriate constraints where appropriate to refine that capacity analysis. Record at 60-62. The city then layers on an analysis of redevelopment capacity which is grounded in reasonable and factual assumptions. Record at 71-73. The buildable lands inventory in the HNA meets the requirements of *former* ORS 197.296, and OAR chapter 660, divisions 8 and 24. Record at 60-73.

This decision addresses a specific objection to a part of the buildable lands inventory relating to institutional lands in Subsection V.8. below.

Planning Period and Population Forecast

Former ORS 197.296(2) requires that an affected city, when amending its UGB, must “demonstrate that its comprehensive plan * * * provides sufficient buildable [residential] lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years.” The statute continues, “the 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.” The planning period sets the foundation for forecasts and everything that follows. The sequential UGB process must be coordinated with the statute. The “date the UGB amendment is initially scheduled for completion” is heretofore undefined for UGB amendments outside periodic review. Specifically, for sequentially reviewed UGB amendments, the planning period will be established by the department in the work program. OAR 660-025-0185(3)(b). The

planning period the city used in the adopted HNA is consistent with the planning period in the approved work program.

OAR 660-024-0040 requires that the 20-year population forecast is the basis of the UGB land determination. OAR 660-032-0020 requires that, when a city uses population as a basis for forecasting employment, the city must use the most recent final forecast issued by PSU Population Research Center (PRC). McMinnville started the process for developing the HNA and EOA in 2018, completing a draft of the HNA in 2019 and the EOA in 2020. McMinnville used the 20-year planning period of 2021-2041, with the anticipation of adopting the HNA and EOA in 2021. Record at 3. McMinnville noticed the intention to adopt the HNA and EOA to the department on May 14, 2020 and held its first evidentiary hearing on May 20, 2021. Record at 4. Subsequently, the city elected to enter into the sequential UGB amendment process and received work program approval from DLCD in 2024. These actions are consistent with *former* ORS 197.296(2). McMinnville used the PRC forecast for June 30, 2017, which was the most recently completed forecast at the time of development of the HNA. The next forecast was finalized on June 30, 2020, after the HNA and EOA had been drafted and McMinnville provided notice to the department. Record at 362. The director therefore determines that the city has used an appropriate planning period and population forecast for its work to comply with Goal 10.

To summarize, for the reasons expressed above, the director concurs with the Goal 10 consistency findings included by the city in the submitted record (Record at 370-388) with addition of the Goal 10 specific findings included in section V of this report.

4. Goal 14, Urbanization

The director concurs with the Goal 14 consistency findings included by the city in the submitted record. Record at 389-390. However, because this is the first step in the sequential UGB process set forth in *former* ORS 197.296(4) and OAR 660-025-0185, the director will be reviewing later phases of the sequential UGB process, related to efficiency measures and an adopted UGB expansion, based upon the city's subsequent submittals.

5. City Comprehensive Plan Consistency

The city has addressed the consistency of this submittal with relevant provisions of its comprehensive plan. Record at 390-394. The city's findings address consistency with provisions related to:

- a. Natural resources, by excluding lands with natural resources and hazards constraints from its buildable lands inventory;
- b. Planning for future schools, by including an institutional land need calculation in its buildable land inventory;
- c. Planning for future economic growth, industrial development, and as a commercial center for Yamhill County, by adopting an EOA that implements these policies;
- d. Planning to ensure efficient use of commercial lands, by not assigning residential development capacity to commercially designated lands;

-
- e. Planning to provide a diversity of housing choices by the adoption of the HNA with increased assumptions for housing types that are not single-detached dwellings;
 - f. Planning for sufficient parks and recreation lands to serve McMinnville residents by including park land needs into the buildable lands inventory;
 - g. Providing for community input into the comprehensive plan and its provisions by conducting a far-reaching and inclusive public involvement process.

Consistent with OAR 660-025-0160(2)(c), the department defers to the city’s interpretation of its Comprehensive Plan policies (Record at 390-393), and finds that as provided in OAR 660-025-0160(2)(c), none of the alternative reasons for a finding of non-compliance with the city’s comprehensive plan contained in ORS 197.829 are met.³

V. ANALYSIS OF OBJECTIONS

The two objections presented twelve objections to the city’s Task 1 work program submittal. For valid objections, OAR 660-025-0140(6) requires that the department either sustain or reject each one based on the statewide planning goals, or applicable statutes or administrative rules. Having found the objections to be valid in Section II. B of this order, the department considers each objection below.

A. First Objection

Friends of Yamhill County and 1000 Friends of Oregon – Residential Land Density for Needed Housing (Housing Needs Analysis)

³ OAR 660-025-0160(2)(c) provides:

“For issues concerning compliance with applicable laws, whether the local government’s decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government’s interpretation of its comprehensive plan or land use regulation in the manner provided in ORS 197.829 * * *. For purposes of this subsection, ‘complies’ has the meaning given the term ‘compliance in the phrase ‘compliance with the goals’ in ORS 197.747.”

ORS 197.829(1) provides:

“The Land Use Board of Appeals shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

- “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- “(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- “(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
- “(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.”

Objectors argue that the city's average residential density assumption, 5.46 dwelling units per acre, is lower than the average density assumed in the existing comprehensive plan. Friends objection at 3. More specifically, Objectors argue that the methodology used to determine residential land capacity is not consistent with *former* ORS 197.296(5) or (7), because it does not consider "trends in density and the mix of housing types" and "market factors that will influence future development," in addition to data on historic development. Friends Objection at 4. Notably, Objectors also assert that the city should not have included a three-percent increase in assumed density because such an analysis should occur with the "efficiency measures" step required by *former* ORS 197.296(6)(b).⁴ Friends objection at 4.

Department Response:

McMinnville filed notices of proposed amendments regarding the HNA and EOA with the department on May 14, 2020. The version of ORS 197.296(5) in effect at that time provided in part as follows:

"(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity pursuant to subsection (3)(a) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last review under subsection (2)(a)(B) of this section. The data shall include:

"(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

"(B) Trends in density and average mix of housing types of urban residential development;

"(C) Market factors that may substantially impact future urban residential development; and

"(D) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section."

Per the approved sequential UGB workplan, the "efficiency measures" evaluation is to occur concurrent with the UGB expansion decision, following adoption of the housing needs analysis, economic opportunities analysis, and buildable land inventory.

McMinnville calculated achieved densities for residential development by zone for the time period between 2000 and 2018. Record at 149-151. The analysis includes data on gross and net densities, noting the amount of land on average, which is dedicated for rights-of-way prior to arriving at net densities. The information provides a factual basis to allow estimation of the city's residential land needs based on recent housing production data, consistent with *former* ORS 197.296(5)(a)(A) above. However, it does not factor in potential land use efficiency measures that the city must consider in the next phase of the sequential UGB process. The

⁴ The "three percent cap" was added into *former* ORS 197.296(6) with passage of HB 2001 (the "middle housing bill") in 2019, in part to account for additional residential capacity from middle housing development.

density estimates do include an assumed three percent increase in density assumptions consistent with *former* ORS 197.296(6)(b). However, it is important to consider the context of the “three percent cap,” which was established with passage of the “middle housing bill” (HB 2001 (2019)), effectively serves as a mandatory efficiency measure for the larger Oregon cities, such as McMinnville, which now allow middle housing in all zones where single detached dwellings had been allowed.

Given this context, it is important to note that the applicable statute applies a degree of skepticism to density assumptions made in HNAs as provided below in *former* ORS 197.296(7):

“Using the housing need analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.”

In other words, cities must document actions and analysis sufficient to justify density assumptions in a housing needs analysis. Although the city evaluates “trends in density and the mix of housing types” and “market factors that will influence future development,” in the housing need section of the HNA, the residential density assumptions are necessarily conservative and based on recent production data, as required by *former* ORS 197.296, reinforced by the recent inclusion of the “3 percent cap.” Record at 133-156. As the Objectors note, minimum lot sizes in McMinnville are relatively large, but changes to such provisions and other efficiency measures are appropriately considered at the next phase in the sequential UGB process. The department finds the city’s analysis complies with applicable statutes, including *former* ORS 197.296(7) and Goal 10 and rejects this objection.

B. Second Objection

Friends of Yamhill County and 1000 Friends of Oregon -Current Housing Needs (Housing Needs Analysis)

Objectors argue that the city’s HNA considers the housing needs only of future residents, but not the needs of current residents. Objectors note that OAR 660-008-0005(6) provides in part:

“‘Housing Needs Projection’ refers to a local determination, justified in the plan, of the mix of housing types, amounts and densities that will be:

“(a) Commensurate with the financial capabilities of present and future area residents or all income levels during the planning period;”

Objectors state that “The mix of housing types, amounts, and densities in the Housing Needs Projection purports to be adequate to meet the needs of future residents but is insufficient to meet the unmet needs of present residents.” Friends objection at 5. Objectors cite HNA analysis of the deficit of housing available to current households at specified income levels – those earning between \$10,000 and \$25,000 annually and those earning \$100,000 or more annually (Record at 956). Friends objection at 5-6.

Department Response:

The city’s HNA notes that McMinnville households in the low-income category are paying more for housing than they can afford and because of that, they are currently cost burdened. Record at 122-128. Those in the high-income category conversely are paying less than they can afford, which may be a matter of preference or due to a lack of higher cost, higher amenity housing in McMinnville. Record at 79. Based on this, the HNA finds a need for “all types of government-assisted housing, more affordable housing types (such as manufactured housing in parks and lots, small-homes, duplexes, triplexes, quadplexes, small-lots, and apartments); and housing types of higher values (such as high-amenity or executive housing). Record at 128.

Based on these needed housing types, we evaluate the city’s conclusions regarding meeting housing needs. The HNA finds that development between 2000 and 2018 in McMinnville achieved a housing mix of 62 percent single detached, eight percent single attached, and 31 percent multifamily. Record at 31. Based on evaluation of the city’s demographics and projected population characteristics, the HNA sets a target of 55 percent single detached, 12 percent single attached, and 33 percent multifamily to meet the community’s housing needs through 2041. Record at 144. As noted above, affordable housing for low-income households may be provided in any of these housing types, the question is the level of government subsidy that will be available to provide for McMinnville’s current and future low-income population. It is this question, and other tools and incentives that the city may use to promote affordable housing development that will be more appropriately addressed in the city’s upcoming housing production strategy report. The city has adequately considered the housing needs of current and future residents, and the city’s analysis complies with applicable rules and statutes. Based on this analysis, we find the Objectors have not demonstrated that the city’s HNA methodology violates Goal 10 or OAR 660-008-0005(6), and the director rejects this objection.

C. Third Objection

Friends of Yamhill County and 1000 Friends of Oregon -Lands Not addressed in Average Employment Densities (Economic Opportunities Analysis)

Objectors dispute the methodology used by the city to estimate employment land need for specific uses not included in the EOA employment forecast. The objector notes that the EOA “does not adequately explain why the employment forecast and average employment densities do not account for these uses.” Friends objection at 6. The objector contends that:

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- “The conference center, food hub, and innovation hub are not distinct from the sectors in Exhibit 49.”
 - “Several of the other added uses are more properly considered public uses and should be addressed in the parks and recreation plan or public land need analysis rather than the EOA”
 - “Expansion of the museum and water park are site-specific needs and therefore not appropriate justification for adding unspecified acreage to the urban land need.”
 - “Including the 49 acres in the land need is not justified, lacks an adequate factual base, and would result in greater than a 20-year supply of urban land, in violation of Goal 14 and Goal 2.”

Friends objection at 7.

Department Response:

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. Under this approach, population and job growth are assumed to be consistently proportional during the forecast period. Resulting job growth is translated to land need via an employment density methodology, which assumes an average number of employees per acre based on typical land use intensity of various industries. 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, which it identifies as “target industry sectors” identified in the MACTown 2032 Economic Development Strategic Plan. Record at 691-693. These additional sites include: 1) Community Center/Recreation Facility (10 acres), 2) Outdoor Stage/Amphitheater (5 acres), 3) Arts and culture focused event center (3.5 acres), 4) Evergreen Aviation and Space Museum (27 acres), 5) Wings and Waves (existing site, partially vacant), 6) Conference Center (5 acres), 7) Food hub and public market (3.5 acres), 8) Makerspace/innovation hub/fabrication center (2 acres). The total land need described for the above identified uses is 56 acres. Employment growth for these uses is calculated as a total of 153 anticipated new jobs and converted to seven acres of land need based on an average employment density of 23 employees per acre. The analysis accounts for these seven acres in its forecasted land demand derived through employment density. The remaining 49 acres are included in the analysis as land demand for “other needed sites.” Record at 694.

Based on this analysis, the director evaluates the methodology used in the EOA. To determine land need, cities typically begin with safe harbors identified in OAR to forecast local job growth,

and often subsequently choose to exceed the safe harbor by examining local economic development opportunities not accounted for by standard forecasts. Cities also commonly rely on a method of determining land need known as the “target industries approach.” The target industries approach considers the site requirements of specific industries or businesses (including site size) to reach a conclusion about land need, rather than utilizing an employment density calculation to translate forecasted job growth into land need. The target industries approach is not currently defined in OAR chapter 660, division 9, but the Oregon Court of Appeals did not question that method of estimating employment land needs in an EOA, so long as it did not result in a UGB amendment that exceeded a 20-year land supply.⁵

Cities that use the target industries approach normally combine this method with traditional employment growth forecasting, utilizing multiple methods of analysis to determine future employment land need. McMinnville applies a combination of approaches in its EOA, estimating job growth based on the PSU population growth forecast, adjusting the forecast in certain sectors, and additionally including specific target industries identified in the city’s Economic Development Strategic Plan. Although the objectors are correct in their assertion that anticipated job growth for the target industries may be considered as a part of the forecasted employment growth by industry sector, OAR chapter 660, division 9 does not require that all land need be identified through employment growth forecast and job density analyses. EOAs that employ the target industries approach include site requirements for specific industries and sometimes specific site needs for existing businesses. The objection on this point has no basis in rule.

OAR 660-0024-0040(5) provides that:

“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 estimate, but Goal 14 does not require that job growth estimates necessarily be proportional to population growth.”

The additional site needs included in the EOA cover a range of community and economic development objectives, including business growth, entrepreneurship support, tourism destinations, and community amenities that generate employment. Record at 691-693. The EOA accounts for additional expected jobs anticipated from these sites in Exhibit 58. Record at 1111. As justification for inclusion of these sites, the city includes in Appendix C of the EOA sources demonstrating need or feasibility, anticipated employment, and site size requirements for each additional site/use identified through the target industries approach. Record at 737-739. The department finds that this is an adequate factual basis for inclusion of the additional site needs in the EOA. The city’s effort to provide sites to accommodate its target industries would not result in a greater than 20-year supply of urban employment land. Based on this analysis, the

⁵ *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 224, 239 P3d 272 (2010).

director finds the Objectors have not demonstrated that the city's EOA methodology violates Goal 14 or Goal 2 and rejects this objection.

D. Fourth Objection

Friends of Yamhill County and 1000 Friends of Oregon - Retail Leakage (Economic Opportunities Analysis)

Citing the EOA's inclusion of additional job creation in the retail sector to remedy "retail leakage," the objectors dispute the city's characterization of its employment forecast as a "safe harbor" while also including additional job creation beyond the safe harbor forecast sources identified in OAR 660-024-0040(9). Friends Objection at 7. The objector does not directly object to the inclusion of additional forecasted job growth in the retail sector, nor does the objection examine the validity of the concept of "retail leakage" or its application in this EOA.

Department Response:

The objectors are correct in their argument that the city has not relied on a safe harbor to forecast employment growth. The city has exceeded the PSU population forecast safe harbor in aggregate through adjustments to several industry sectors that drive the overall employment growth upward. Record at 1101, 1111. In its review of this EOA, the department did not interpret the city's approach as a safe harbor forecast protected from scrutiny. OAR chapter 660, division 9 and OAR 660-024-0040(5) provide that cities may be aspirational in their employment growth forecasting methods and allow flexibility in how the employment growth forecast may be organized. The director finds that although the city has not used a safe harbor, objectors have not raised adequate grounds to determine that the city's approach is non-compliant with the applicable rule. As such, director rejects this objection.

E. Fifth Objection

Friends of Yamhill County and 1000 Friends of Oregon - Refill Development and Employment on Non-Employment Land (Economic Opportunities Analysis)

This objection is focused on two elements of the methodology through which the EOA assigns new employment growth to different types of land. The objectors assert that the EOA violates Goal 14 and Goal 2 (adequate factual base), because it fails to adequately consider the absorption of new jobs on: 1) non-employment land and 2) existing employment sites. The objection cites numerous instances in the record that show the city's assumptions regarding absorption of new jobs on non-employment land and on existing employment sites is too low. Friends objection at 8-9.

Department Response:

This objection is specifically directed to the EOA's consideration of: 1) allocation of new jobs to residential land, which would include people working from home as well as job creation in the

commercial sector that is allowed to develop on land zoned for residential uses; and 2) the rate of absorption of new jobs on existing employment lands through refill and redevelopment.

The EOA does not address in detail how new employment might be accommodated on residential land. Exhibit 53, *Estimate of employment on vacant land by demand use type, McMinnville UGB 2021-2041*, allocates 332 forecasted new jobs in the commercial and industrial sectors to “other land.” The analysis implies that this figure includes jobs located on both residential land and redevelopment/refill sites, as summarized in the narrative. Record at 1104. Although the EOA does not specify which portion of these jobs is allocated to residential land, it does account for this use type. The department’s *Industrial & Other Employment Lands Guidebook* (a resource of best practices for cities) recommends assignment of some jobs to residential or mixed-use zones but does not suggest a threshold or specific methodology for this analysis. The director finds that the objection does not demonstrate that the EOA is not in compliance with applicable rules and statutes related to the matter of employment likely to occur on residential land.

The objector further contends that employment in “assisted living facilities” is likely to occur on residential land, based on existing development trends in the city. Friends Objection at 9. The city’s code refers to this use as “Nursing/convalescent home” and allows it in several zones, including but not limited to commercial and mixed-use office/residential zones.

OAR 660-009-0010(5) provides:

“The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction’s planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.”

Although it is probable that a portion of future nursing/convalescent homes might develop on residential land, it is not practical for cities to attempt to forecast highly specific employment types and corollary land use outcomes to this degree of detail over a long-range planning horizon. The director finds the objection has not demonstrated that the city’s effort is inadequate on this matter.

The objectors also dispute the city’s assignment of new employment to existing employment sites through criticism of the EOA’s assumptions about refill and redevelopment rates. Refill refers to new jobs that may be accommodated in existing employment facilities, including through filled vacancies and employment densification. Redevelopment refers to sites within the UGB that are zoned for employment use but are not suited to accommodate new employment based on the condition of existing capital improvements. The EOA assumes that five percent of future employment will be accommodated through refill and redevelopment. The EOA applies

this factor across each of its anticipated use types: industrial, commercial retail, office & commercial services, and tourism services. Record at 314-316.

In Appendix B, *Employment on Other Land and Employment Density*, the EOA provides a comparison table containing information on rates at which employment is anticipated to be accommodated through refill, redevelopment and on non-employment land in a sample of cities throughout Oregon. Approaches cited vary from not accounting for non-vacant land at all, to up to 29 percent for future office employment. Although the assumed five percent factor may be perceived as on the lower end of possible employment accommodation rates on non-vacant land, the EOA provides a detailed analysis of why this is an appropriate assumption:

“The effect of applying refill and redevelopment rates to existing developed land is to implicitly increase the employment density on those lands. Employment density is discussed further in the next section but must be evaluated together with assumptions about refill and redevelopment. As discussed in the next section, the observed density of employment in commercial and industrial plan designations is currently about 10 employees/net acre in industrial plan designations (down slightly from the 2013 EOA) and 23 employees/net acre in commercial plan designations (up slightly from the 2013 EOA)...

“Both the industrial and commercial employment densities have remained nearly the same over time: from the 2001/03 EOA, the empirical calculations in the 2013 EOA, and the empirical calculations in the current analysis. Industrial densities have decreased slightly from about 11 employees/acre to about 10 employees/acre. Commercial densities have increased slightly from about 22 employees/acre to about 23 employees/acre.”

Record at 1141-1144.

Despite the city’s use of a higher factor for the rate of employment accommodated through refill redevelopment in the 2013 EOA (17 percent), this EOA demonstrates that employment densities in McMinnville have remained largely consistent over time. Record at 1141-1144.

McMinnville’s existing and planned average employment densities in commercial and industrial sectors are comparable to other Oregon cities. Record at 1144. Although the city may make a policy choice to attempt to further increase employment density on existing land, it has opted instead to use this EOA to describe the development pattern most likely to occur, based on historical trends. Efficiency of land use is inherently encouraged through the statewide planning program, but there is no requirement in OAR chapter 660, division 9 that a city endeavor to increase employment density by assuming increasing rates of refill, redevelopment, and employment on residential land through its EOA. Based on this analysis, the director finds the objector has not demonstrated that the city’s analysis violates Goal 14 or Goal 2 and rejects this objection.

F. Sixth Objection

Friends of Yamhill County and 1000 Friends of Oregon - Assumed Reduction on Commercial Jobs per Acre (Economic Opportunities Analysis)

Friends objects to the assumed job density applied to growth in commercial sector jobs by the city in its EOA, noting that it is a reduction to 23 jobs per acre from the 26 commercial jobs per acre applied in the 2013 EOA. Friends also notes that the EOA discloses that sample employment densities of 29 employees per acre in the office commercial sector and 19 employees per acre in the retail commercial sector have been observed in McMinnville. Friends objects that the use of an employment density of 23 jobs per acre across all commercial employment in the EOA is not in compliance with Goal 14 or Goal 2 (adequate factual base), on the grounds that the average employment density should be a result of a weighted proportion of jobs in each sector by those sectors' specific employment densities. Friends Objection at 9-10.

Department Response:

As noted in the Fifth Objection, this EOA demonstrates that employment densities in McMinnville have remained largely consistent over time, despite previous policy choices to include higher employment density figures in prior EOAs. Record at 1141-1144. McMinnville's existing and planned average employment densities in commercial and industrial sectors are comparable to other Oregon cities, and exceed the density levels provided as a best practice in *DLCD's Industrial and Other Employment Lands Analysis – Basic Guidebook*:

“Typical employment densities per net acre range from 8-12 jobs for industrial; 14-20 jobs for commercial; and 6-10 jobs for institutional/other jobs.”

Although the city did not elect to weight its expected employment density by sector to determine an average number to apply across all job growth, its expected employment density meets or exceeds the standard recommended by DLCD. Record at 1151. Based on this analysis, we find the objector has not demonstrated that the city's analysis violates applicable rules provided by OAR chapter 660, division 9, as well as Goal 2 and Goal 14 and we reject this objection.

G. Seventh Objection

Friends of Yamhill County and 1000 Friends of Oregon, Mark Davis - Land for Parks

Objectors raise a number of concerns with the park land needs identified in the adopted land need studies, as follows:

- Sub-objection 1: Objectors assert that the submitted plan amendments inflate overall parkland needs. Objectors note the city's assumptions are based upon a parks master plan adopted in 1999. This plan called for 14 acres of parkland per thousand people, but

lacked any funding mechanism for implementation and has proved unrealistic. Friends objection at 11; Davis objection at 1-2. The city did not include a revised parks master plan, currently under consideration, as part of the sequential UGB work program. Friends objection at 11. Objectors note that the city has fallen short of acquiring and constructing parks facilities at the rate called for in the Parks, Recreation, and Open Space plan, reportedly acquiring only 50 acres of park land in the period between 1999 and 2019 despite the park land needs expressed in the 1999 adopted parks master plan, and thus the 14 acres per 1000 population standard the city is setting is unrealistic and inflated.

- Sub-objection 2: Objectors object to two aspects of the city's math in determination of parks land need. First, the city's math actually provides park land need at a rate of 35 acres per 1000 population. Friends objection at 11. Second, the city did not count 76 acres of existing but undeveloped land in its calculation of existing park land inventory, thus inflating the amount of park land needed by 76 acres. Davis objection at 3.
- Sub-objection 3: Objectors argue that the city erred in assuming that all park land would be provided on buildable lands. They cite Comprehensive Plan Policy 163.05, which states as follows:

“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.”

Friends objection at 13; Davis objection at 2. The city's plan assumes that all 14 acres per 1000 population of needed parkland will be located on buildable lands, when in fact much of the land needed for linear parks, greenspaces, etc., totaling six of the 14 acres per 1000 of needed parkland, will be located on land that is considered unbuildable for other purposes, and even some of the land devoted to community and neighborhood parks will be located on lands otherwise unbuildable. Davis objection at 3; Friends objection at 14. The result of this miscalculation is an inflation of buildable land needs, both inside the existing UGB and on lands to be added to the UGB. Friends objection at 13-14.

Department Response:

Sub-objection 1: Inflated park land projections

Cities must rely on adopted land need analyses to plan for the community's future land needs and may not rely on non-adopted land need analyses.⁶ Consequently, the city may rely on the park land needs identified in the adopted parks master plan. Although the city might have chosen to wait and include adoption of the draft park plan in the sequential UGB work plan, the city is not required to update the parks master plan as a step in this process, as noted in OAR 660-025-

⁶ *Shamrock Homes LLC v. City of Springfield*, 68 Or LUBA 1 (2013)

0185(2) - “A city and a county may elect to submit a component of an urban growth boundary amendment under section (1) when the city and county determine that the final urban growth boundary amendment is likely to exceed 50 acres.” Because housing capacity analyses are the only type of land need analysis that may not be adopted without addressing an identified deficit in land needs,⁷ cities may adopt other land need analyses, such as economic opportunity analyses and public land need analyses, prior to the determination of the need for UGB expansion, and may be used to inform land needs for that expansion.

Regarding the city’s ability to achieve the goals of its adopted parks and recreation master plan, the director does not presume, as the objectors appear to presume, that the city’s lack of implementation of its 1999 parks and recreation master plan means that it must be assumed the city will be unable to achieve implementation of its assumptions going forward. McMinnville has stated a goal of providing 14 acres per 1,000 population of park land for its residents. There is no evidence in the record, nor do objectors provide any evidence, that this standard is oversized compared to other cities in Oregon or elsewhere, nor is there any numerical standard or guideline for such matters within Statewide Planning Goal 8: Recreation. The sub-objection does not provide a basis for remanding the submittal and is rejected.

Sub-Objection 2: Incorrect numerical calculation of park land need

The city’s calculation of park land need incorporates an error that results in a park land need that is 76 acres greater than justified. The city has 273 acres of developed park land and 76 acres of undeveloped park land, for a total of 349 acres. Record at 337. Based upon the goal of 14 acres per 1000 population set forth in the city’s comprehensive plan and parks and recreation master plan, the city should have 480 acres of park land for its existing population, which means that the city is short 131 acres of park land for its existing population within its existing UGB. Record at 337. However, the city does not count the 76 undeveloped acres of park land toward its existing park land supply, and thus inflates the shortage of existing park land within the existing city by 76 acres. This inflation is then carried forward throughout the city’s calculations, resulting in an overestimation of park land need. The director sustains this part of the objection and remands the parks and recreation buildable lands inventory to correct the calculation.

The director does not understand the basis for the assertion that the city is actually planning for 35 acres per 1000 population of park land rather than 14 acres per 1000 population. To get to 35 acres per 1000 population, the objectors do not include the existing park land deficit within the existing city boundaries and UGB in their calculations. Once those 131 acres (not 207 acres -see preceding paragraph) are included in the calculation, the city’s calculation of park land need is consistent with a 14 acres per 1000 goal for the entire city population, current and future. Therefore, the director rejects this portion of this sub-objection.

Sub-objection 3: Assignment of all park land needs to buildable lands

The analysis within Appendix E cites applicable comprehensive plan policies, including policy 163.05, which states, “The City of McMinnville shall locate future community and neighborhood

⁷ *DLCD v. City of McMinnville*, 41 Or LUBA 210, 224-227 (2001)

parks above the boundary of the 100-year floodplain.” Record at 337. Objectors note that this comprehensive plan policy goes on to add the following: “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.” Friends objection at 13, Davis objection at 2. Objectors note that some current park land areas within McMinnville are located within the 100-year floodplain or in other non-buildable land areas and argue that the public land needs analysis identifies all park land needs to be located on buildable lands, despite language in comprehensive plan policy 163.05 which notes that linear parks, greenways, open space, trails, and similar park lands may be an appropriate use of floodplain lands, if impacts to environmentally sensitive lands are minimized.

The director notes that comprehensive plan policy 163.05 is not a mandate, but an allowance for certain types of park lands to be located within the 100-year floodplain. Objectors ask that a remand require all greenway and open space park lands be located on unbuildable lands (six of the fourteen-acre per thousand population park land need), and indeed even for some of the remaining eight acres per thousand population devoted to community and neighborhood parks. Friends objection at 14. The director does not find that comprehensive plan policy 163.05 requires all such park lands to be non-buildable; however, it is reasonable to expect some park land areas to be on non-buildable lands.

One of the objectors notes that the city stated it would remove some of the six acres per 1000 population parkland devoted to greenway and open space park lands from the developable land total as an “efficiency” measure in a later phase of the sequential UGB process and objects to this methodology. The objector notes that “it is not an efficiency measure to fix something that is not legally justified in the first place.” Davis objection at 3.

However, the director determines that the city’s methodology is a way to start resolution of this issue; such resolution will require additional analysis by the city not only when it considers efficiency measures in a subsequent sequential UGB work task, but also when it considers any actual amendments to the UGB at the conclusion of the sequential UGB process. 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. Consequently, we expect the city to assume that a portion of identified park land needs will be met on non-buildable areas within the expanded UGB at the time of UGB expansion. At that time, the city will need to provide analysis to support allocation of an appropriate portion of park land to be located on non-buildable lands. Based upon this subsequent methodology during the sequential UGB process, at this time the objection has not demonstrated noncompliance and the director rejects this sub-objection.

In conclusion, the director sustains components of objection 7 related to errors in calculating land needs, as described above, based on inconsistency with Goal 2; adequate factual basis, Goal 14, and OAR 660-024-0050(4). The director rejects the remainder of the objections.

H. Eighth Objection

Friends of Yamhill County and 1000 Friends of Oregon - Exclusion of Buildable Land from Inventories Based on Ownership

Objectors raise concerns with the city's assumption that buildable lands owned by existing churches is not deemed to be available to meet identified land needs for churches in the future (38 acres through 2041 and 83 acres through 2067). Objectors assert that the record "does not include an adequate factual base to support the assumption that churches will not use their buildable land to meet the identified need for churches, or alternatively, sell it to other uses to meet other identified land needs." Friends objection at 14-15.

Objectors also raise concerns that the EOA has not included a 57-acre, commercially zoned, parcel owned by Linfield University in the inventory of buildable employment lands. Objectors note that the university's plans to retain the land for future expansion does not preclude future use of the land for student housing or employment uses, such as classrooms and offices. Friends objection at 15-16.

Department Response:

The city provides a database and aerial photographs of existing religious institutions and associated owned land in McMinnville. Record Addendum #1 at 55-60. The city developed this database in 2017 for the city's Affordable Housing Committee to determine if there was interest in partnering with churches to provide affordable housing development. All responded that they were not interested in using their land for that purpose. Record Addendum #1 at 15. Review of the aerial photographs suggests that many of these properties are developed with existing churches and related facilities. The city's land use consultant estimates that cumulatively, church properties on the residential BLI may contain two vacant unconstrained acres and 24 acres of partially vacant unconstrained lands. Record Addendum #1 at 72. On the employment land side, that estimate is two vacant unconstrained acres and two partially vacant unconstrained acres. Record Addendum #1 at 72. Another consideration is that carrying costs on tax-exempt lands such as these are relatively low, which enables churches to hold land for potential expansion needs for long periods with low costs. 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.

Regarding the 57-acre parcel retained by Linfield College, a letter from the college indicates they do not anticipate any new land needs over the planning period and state that "the City should not assume non-college use or sale of further property during the planning period." Record Addendum #1 at 439. Based on this response, it is reasonable to consider the 57-acre parcel to be not suitable and available for non-university housing or employment uses. 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. Objectors have not raised concerns with those analyses. Record at 133-134, 203-209. The director rejects this objection, based on the inclusion of information from Linfield College, which serves as an adequate factual basis for the consideration of college-owned land in the BLI.

I. Ninth Objection

Friends of Yamhill County and 1000 Friends of Oregon - Urban Reserves

Objectors have expressed concerns with “the use of the 2017 population forecast and other outdated data (vacancy rates, household size, etc.) that were used for McMinnville’s HNA and EOA.” They argue that “OAR 660-032-0020(1) requires use of the most recent Portland State University Population Research Center forecast ‘when changing a comprehensive plan or land use regulation that concerns [land outside Metro], when the change is based on or requires the use of a population forecast.’” Friends Objection at 16. Objectors note that the 2017 forecast anticipated a population of 62,803 in 2067, while the 2020 forecast anticipated a population of 54,552 in 2067. Friends Objection at 16. Objectors ask that this decision direct the city to remove references to the establishment of urban reserves from this decision and to disallow the use of the HNA and EOA to support the establishment of urban reserves in the future.

Department Response:

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). The draft HNA was dated June 2019 and the draft EOA was dated February 2020.

Regarding population forecasts, OAR 660-032-0020(5) provides as follows:

“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.”

It is not uncommon for cities to file a notice of proposed amendment with the department prior to the issuance of a new population forecast by PSU in order to preserve the validity of analyses of land needs based on the current forecast. Since the director approved use of the sequential UGB process as allowed by *former* ORS 197.296(4) and OAR 660-025-0185, these documents qualify as “concern[ing] an urban growth boundary” and the city is authorized to use the 2017 population forecast in its review. The objection does not demonstrate that the city’s decision to

proceed under the 2017 population forecast is inconsistent with OAR 660-032-0020(5). Based on this analysis, the director concludes that the city's decision to proceed under the 2017 population forecast is allowed consistent with the applicable population forecast requirements.

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 director finds the objector has not demonstrated that the city's analysis violates Goal 14, Goal 2, or OAR 660-032-0020(1) and rejects this objection.

J. Tenth Objection

Friends of Yamhill County and 1000 Friends of Oregon -McMinnville Urbanization Report

Objectors are unclear about the status of the Urbanization Report R and the HNA: the HNA finds 1,185 unconstrained buildable acres of residential land within the UGB while the UR finds only 763 acres of such land. Friends objection at 17, citing record at 11, 64.

Department Response:

The Urbanization Report may be found on pages 7-38 of the record. On page 9, the city explains the purpose of the report:

“The City of McMinnville is in the process of reviewing future land needs and sufficiency of its Urban Growth Boundary (UGB) to meet those needs for a 20-year planning period beginning in 2021, this report was updated in 2023 to account for development through 2021 and the 2020 UGB expansion.”

As we have noted, the HNA and EOA were both developed in 2019, but have yet to be adopted. Doubtless, part of the reason for the delay is the statutory “concurrency requirement” described in *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001). LUBA agreed that LCDC rules, Goal 14, and former ORS 197.296 require a city to address any identified residential land need identified in a housing needs analysis (whether or not it may be met within the current UGB) concurrent with adoption of the HNA. The city notes that time has passed since the preparation of the HNA and EOA, with some significant activities that should be addressed with updates to both buildable land inventories, based on development activity between 2019 and 2021; and to the land capacity within the UGB, which was expanded in 2020. As explained in Ordinance No. 5141 the Urbanization Report was adopted with the updated HNA and EOA, summarizing updates from both studies regarding changes to land inventory and land capacity that have occurred since 2019. Record at 4. Unlike the HNA and EOA, the city did not specifically adopt the UR as part of its comprehensive plan in the Ordinance and was just utilizing a summary/informational document for purposes of the public hearings and community outreach. As such, the city included the UR in the record considered at the public hearing prior to adoption of the updated HNA and EOA.

If there is any doubt about the necessity of updating the urbanization report, objectors need look no further than comparing conclusions from the 2020 draft report and the adopted 2023

Urbanization Report. Record at 36, 3628. The 2020 draft identified a need for 1,399 additional acres to meet McMinnville’s needs until 2041. The adopted 2023 Urbanization Report identifies a need for 422 additional acres.

Lastly, objectors identify an alleged discrepancy between data in the HNA (1,185 unconstrained buildable acres) and in the Urbanization Report (763 unconstrained buildable acres). Friends objection at 17. However, the reduction in acreage is explained in the same section of the HNA. The HNA explains this difference as follows:

“Exhibit 11 includes 383 acres of land in the Urban Holding plan designation that was brought into the UGB in 2020 for public and semi-public uses, such as parks and schools, and 39 acres for neighborhood serving commercial land uses. This accounts for about 422 acres of land in the Urban Holding plan designation.

“Exhibit 11 excludes the land in the Urban Holding plan designation for public and semi-public uses, and 39 acres of land for neighborhood-serving commercial land uses. It shows that McMinnville has 763 gross acres within its UGB for residential uses.”

Record at 67.

With this explanation the director finds that the alleged discrepancy has been accounted for and rejects this objection.

VI. CONCLUSION

The submittal from the City of McMinnville for Task 1 of the approved sequential UGB work program, and supporting comprehensive plan amendments, complies with the requirements of the applicable statewide planning goals, statutes, and administrative rules, except for the land need methodology inconsistencies regarding the parks and recreation buildable lands inventory outlined in the Director Evaluation (section IV.E.2) and Objection No. 7 (section V.G). Therefore, as authorized by OAR 660-025-0150(1)(d) and OAR 660-025-0185(6), the submittal is approved except for the parks and recreation buildable lands inventory, which is remanded.

DATED THIS 1st DAY OF AUGUST 2024

Brenda D Bateman

Brenda Bateman, Director
Department of Land Conservation and Development

ATTACHMENT A: OBJECTION LETTER FROM 1000 FRIENDS AND FRIENDS
OF YAMHILL COUNTY
ATTACHMENT B: OBJECTION LETTER FROM MARK DAVIS

CERTIFICATE OF SERVICE

I certify that on August 1, 2024, I served the attached **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT APPROVAL AND PARTIAL REMAND OF CITY OF MCMINNVILLE SEQUENTIAL UGB TASK SUBMITTAL (Ordinance No. 1514)** by mailing in a sealed envelope, with first-class postage prepaid, a copy thereof addressed as follows:

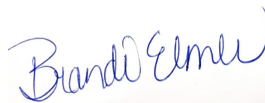
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