



Kent Taylor Civic Hall  
230 NE Second Street  
McMinnville, OR 97128

### City Council Meeting Agenda

Tuesday, April 14, 2020

5:30 p.m. – Work Session

7:00 p.m. – Regular Council Meeting

**REVISED 04/10/2020**

***\*Agenda packet has been revised, agenda has not changed\****

*Welcome! The public is welcome to attend, however if you are not feeling well, please stay home and take care of yourself. In accordance with Governor Kate Brown's Executive Order 2020-12 we are limiting the amount of people at Civic Hall and if we meet capacity we may ask you to leave.*

- The public is strongly encouraged to relay concerns and comments to the Council in one of two ways:*
- *Email at any time up to 12 p.m. the day of the meeting to [Claudia.Cisneros@mcminnvilleoregon.gov](mailto:Claudia.Cisneros@mcminnvilleoregon.gov).*
    - *Join the zoom meeting; send a chat directly to City Recorder, Claudia Cisneros, to request to speak and use the raise hand feature in zoom to request to speak, once your turn is up we will announce your name and unmute your mic.*

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*You can live broadcasts the City Council Meeting on cable channels Xfinity 11 and 331, Frontier 29 or webstream here:*

<http://schedule.mcm11.org/CablecastPublicSite/watch/2?channel=1>

*You may join online via Zoom Meeting:*

<https://mcminnvilleoregon.zoom.us/j/383138756?pwd=cHI1VHlIS3dwTTJFdK9zOGRtcDVpQT09>

*Zoom ID: 383-138-756*

*Zoom Password: 701465*

*Or you can call in and listen via zoom: 1-253- 215- 8782*

*ID: 383-138-756*

#### **5:30 PM – COUNCIL WORK SESSION – COUNCIL CHAMBERS**

1. Call to Order & Roll Call
2. 2003 UGB Submittal Review for Direction
3. Adjournment

#### **7:00 PM – REGULAR COUNCIL MEETING – COUNCIL CHAMBERS**

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PROCLAMATION
  - a. Arbor Day

4. INVITATION TO CITIZENS FOR PUBLIC COMMENT – *The Mayor will announce that any interested audience members are invited to provide comments. Anyone may speak on any topic other than: a matter in litigation, a quasi-judicial land use matter; or a matter scheduled for public hearing at some future date. The Mayor may limit comments to 3 minutes per person for a total of 30 minutes. The Mayor will read comments emailed to City Recorded and then any citizen participating via Zoom.*
5. PRESENTATION
  - a. League of Oregon Cities Presentation
6. ADVICE/ INFORMATION ITEMS
  - a. Reports from Councilors on Committee & Board Assignments
  - b. Department Head Reports
7. CONSENT AGENDA
  - a. Authorize City Manager to sign the Airport Property Lease Amendment with Van Holland Farms.
  - b. Customers Helping Customers Program
8. RESOLUTION
  - a. Consider **Resolution No. 2020-20**: A resolution to award a contract for the McMinnville Municipal Airport Jet A Fueling System, Project No. 2019-8, to Mascott Equipment.
  - b. Consider **Resolution No. 2020-21**: A resolution to award a contract for the 2020 Spring Street Repair, Project No. 2020-1, to K&E Paving Inc., dba H&H Paving.
  - c. Consider **Resolution No. 2020-22**: A Resolution authorizing an interfund loan from the Wastewater Capital Fund to the General Fund and Consider **Resolution No. 2020-23**: A Resolution making a budgetary transfer of resources and appropriation authority for fiscal year 2019-2020 in the Wastewater Capital Fund and General Fund budgets.
  - d. Consider **Resolution No. 2020-24**: A Resolution authorizing the closure of one fund, the Ambulance Fund, and authorizing the change of the Building Fund from an enterprise fund to a special revenue fund and Consider **Resolution No. 2020-25**: A Resolution authorizing a budgetary transfer of resources and appropriation authority for FY2019-20 of the Ambulance Fund to the General Fund – Fire Department.
9. ORDINANCE
  - a. Consider First Reading of **Ordinance No. 5092**: Adopting New Requirements and Regulations relating to Campaign Finance.
10. ADJOURNMENT

# STAFF REPORT

**DATE:** April 14, 2020  
**TO:** Mayor and City Councilors  
**FROM:** Heather Richards, Planning Director  
**SUBJECT:** Work Session – Growth Planning

## STRATEGIC PRIORITY & GOAL:



**GROWTH & DEVELOPMENT CHARACTER**  
Guide growth & development strategically, responsibly & responsibly to enhance our unique character.

**OBJECTIVE/S:** Strategically plan for short and long-term growth and development that will create enduring value for the community



**HOUSING OPPORTUNITIES** [ACROSS THE INCOME SPECTRUM]  
Create diverse housing opportunities that support great neighborhoods.

**OBJECTIVE/S:** Conduct thorough and timely planning and forecasting to ensure that regulatory frameworks for land supply align with market-driven housing needs



**ECONOMIC PROSPERITY**  
Provide economic opportunity for all residents through sustainable growth across a balanced array of traditional and innovative industry sectors.

**OBJECTIVE/S:** Accelerate growth in living wage jobs across a balanced array of industry sectors



**COMMUNITY SAFETY & RESILIENCY**  
Proactively plan for & responsibly maintain a safe & resilient community.

**OBJECTIVE/S:** Provide exceptional police, municipal court, fire, emergency medical services EMS), utility services and public works

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## Report in Brief:

This is a work session to follow up on the direction provided by the McMinnville City Council at a work session on January 22, 2020, relative to what path the City would like to pursue in planning for future growth.

At the January 22, 2020 work session, staff provided a matrix of several different paths available to the City to consider, and City Council asked staff to research and evaluate two paths: 1) responding to the February 29, 2012, Land Conservation and Development Commission (LCDC) Remand (Remand Order 12-WKTASK-001814) of the City's McMinnville Growth Management and Urbanization Plan (MGMUP) following a decision of the Court of Appeals on July 13, 2011 (effective on January 31, 2012), and/or 2) pursue a legislative fix to McMinnville's historic struggle for growth planning.

This work session will focus on exploring what is involved in responding to the remand order from LCDC versus pursuing a new urban growth boundary expansion effort.

## **Background:**

Issue Statement: Per Goal 14 of the Oregon Land Use System, the City needs to submit plans to the State of Oregon on how it will accommodate twenty years of population growth within the city's urban growth boundary. The City's only approved population growth plan was acknowledged in 1981 for a planning period of 1980-2000. Since that time, the City of McMinnville has been working on the next twenty year planning horizon of population growth over a series of efforts with the most recent effort that was submitted in 2003 for a planning horizon of 2003-2023.

The submittal in 2003 was challenged by local individuals and special interest groups resulting in an amended submittal in 2006. This submittal was eventually approved by the State of Oregon Land Conservation and Development Commission and was then subsequently appealed to the Court of Appeals by 1000 Friends, Friends of Yamhill County and Ilsa Perse. In 2011, the Court of Appeals reversed and remanded the decision to LCDC based upon one assignment of error. In 2012, LCDC then remanded that one assignment of error to the City of McMinnville. And then in 2013, after depleting its resources the City of McMinnville elected to further delay a response to the remand and took a hiatus on growth planning.

With limited land availability, increasing housing unaffordability and increasing homelessness, the City of McMinnville started to evaluate its growth needs once again in 2018.

The decision for the City of McMinnville is whether or not to build upon the investment made earlier in the 2003 McMinnville Growth Management and Urbanization Plan by responding to the Court of Appeals remand or to invest in a new process that could be strife with years of challenges and opposition.

## **Attachments:**

Attached are the following documents to help with the discussion:

- **Ordinance No. 4796** adopting the McMinnville Growth Management and Urbanization Plan (MGMUP), appendices and findings as part of the McMinnville Comprehensive Plan. (October 13, 2003).
- **Ordinance No. 4841**, adopting certain amendments to the McMinnville Growth Management and Urbanization Plan (MGMUP), supporting Findings, Economic Opportunity Analysis and Comprehensive Plan and implementing ordinances. (January 11, 2006)
- **Court of Appeals Decision by J. Sercombe**, 1000 Friends of Oregon, Friends of Yamhill County and Ilsa Perse (Petitioners) versus Land Conservation and Development Commission and the City of McMinnville. (July 13, 2011)
- **Remand Order 12-WKTASK-001814** from the Land Conservation and Development Commission of the State of Oregon in the matter of periodic review Task 1 and the amendment of the urban growth boundary for the City of McMinnville. (February 29, 2012).
- **Ordinance No. 4961**, amending certain portions of Ordinance No. 4796 related to the adoption of the McMinnville Growth Management and Urbanization Plan (MGMUP) and MGMUP – Findings document and repealing Ordinance No. 4841 in its entirety.

ORDINANCE NO. 4796

An ordinance adopting the "McMinnville Growth Management and Urbanization Plan," appendices, and supporting findings as part of the McMinnville Comprehensive Plan.

RECITALS:

In August of 2000, the McMinnville Planning Department contracted with ECONorthwest to prepare a residential buildable lands and land needs analysis that would provide a legislative review of its comprehensive plan in order to determine if adequate land exists within the McMinnville urban growth boundary sufficient to support future residential growth. The analysis would also serve to update elements of the McMinnville Comprehensive Plan, Volume I related to housing, community facilities, and urbanization.

The first draft of the "McMinnville Residential Land Needs Analysis" was completed in January of 2001, and was presented to the McMinnville Planning Commission and City Council at a public work session held on January 23, 2001. Joint public hearings before the Planning Commission and City Council were held on February 27, 2001, and April 10, 2001, at which considerable public testimony was received regarding the draft analysis. In addition, a public hearing before the Citizens' Advisory Committee (CAC) was held on March 20, 2001, at which additional public testimony concerning the draft analysis was received. A final public hearing on this analysis was held before the Planning Commission and City Council on May 22, 2001, at which time the "McMinnville Residential Land Needs Analysis" was adopted. Subsequent to that action, the Oregon Department of Land Conservation and Development appealed the City's decision to the Oregon Land Use Board of Appeals (LUBA). On December 19, 2001, LUBA remanded the City's decision.

In response to this remand, the City conducted community-wide public forums on June 3, 2002, and July 8, 2002, in an effort to solicit input as regard McMinnville's future growth and how it should best be managed. Following those public forums, at which over 150 people participated, a joint work session was held on September 17, 2002, with the City Council, Planning Commission, McMinnville Urban Area Management Commission, Citizens' Advisory Committee, and Yamhill County Board of Commissioners to review the results of those forums and to provide direction to staff regarding the preparation of the "McMinnville Growth Management and Urbanization Plan."

The draft "McMinnville Growth Management and Urbanization Plan" was presented to the reviewing bodies noted in the preceding paragraph at a public work session held on June 18, 2003. An additional joint public work session was held regarding this plan on July 21, 2003. Joint public hearings with these same reviewing bodies were held on August 4 and 5, 2003, to receive public testimony regarding the draft plan.

At a final joint public hearing, held on August 12, 2003, and after studying the testimony provided, and the contents of the draft plan, the McMinnville Citizens' Advisory Committee, Planning Commission, McMinnville Urban Area Management Commission, and Yamhill County Board of Commissioners recommended to the City Council that the plan be adopted, subject to certain amendments, and that findings be prepared for their adoption on October 14, 2003. The amendments to the draft plan included the following: 1) That the "Thompson Property" be added to the proposed urban growth boundary expansion; 2) that an amount of land similar to that contained in the Thompson property be excluded from the Southwest sub-area; 3) that all maps and text be revised accordingly; and, 4) that the changes recommended by staff in the memorandum entitled "Response to comments received during McMinnville Growth Management and Urbanization Plan public hearings," dated August 12, 2003, be incorporated into the plan, with the exception of the recommendation pertaining to the exclusion of floodplain land from the proposed boundary expansion (include such land in boundary expansion).

The McMinnville City Council met on October 14, 2003, to review and adopt the findings and statement of reasons in support of the "McMinnville Growth Management and Urbanization Plan" as provided herein; now therefore,

#### THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

Section 1. That the "McMinnville Growth Management and Urbanization Plan," dated May 2003, as described and amended in the following description, a copy of which is attached hereto and incorporated herein by this reference, is hereby adopted as part of the McMinnville Comprehensive Plan, Volume I. Further:

- (a) Appendix A, "Population and Employment Justification," is adopted as an update to the "McMinnville Residential Land Needs Analysis," dated May 2001, and the "McMinnville Economic Opportunities Analysis," dated November 2001.
- (b) Appendix B, "Revised Buildable Land Analysis," is adopted as an update to the "McMinnville Residential Land Needs Analysis," dated May 2001, and the "McMinnville Economic Opportunities Analysis," dated November 2001. Table 13 of Appendix B is further amended to reflect revised employment forecasts, and Table 24 is amended to reflect adjustments to public and semi-public land needs as described in the Planning Department's "Response to comments received during McMinnville Growth Management and Urbanization Plan public hearings memorandum dated August 12, 2003.

- (c) Appendix C, "Alternative Sites Analysis," is adopted to satisfy the requirements of ORS 197.298 and the requirements of Statewide Planning Goals 2 and 14.
- (d) Appendix D, "Proposed Plan Policy Amendments," is adopted, amending chapters IV (Economy of McMinnville), V (Housing and Residential Development), VI (Transportation System), and IX (Urbanization) of Volume II of the McMinnville Comprehensive Plan that are required in order to implement the "McMinnville Growth Management and Urbanization Plan." Plan policies 31.00, 33.00, 36.00(3), 45.00, and 188.02 are further amended as follows:
1. Amend plan policy 31.00 to read as follows:  

"31.00 Commercial developments shall be designed in a manner which minimizes bicycle/pedestrian conflicts . . ."
  2. Replace plan policy 33.00 with the following:  

"33.00 Encourage efficient use of land for parking; small parking lots and/or parking lots that are broken up with landscaping and pervious surfaces for water quality filtration areas. Large parking lots shall be minimized where possible. All parking lots shall be interspersed with landscaping islands to provide a visual break and to provide energy savings by lowering the air temperature outside commercial structures on hot days, thereby lessening the need for inside cooling."
  3. Amend plan policy 36.00(3) to read as follows:  

36.00 The City of McMinnville shall encourage a land use pattern that: [. . .]

(3) Provides efficient use of land for adequate parking areas."  
. . .]
  4. Amend plan policy 45.00 to read as follows:  

"45.00 The City of McMinnville shall ~~study the feasibility of developing~~ provide for bicycle and pedestrian paths and/or lanes between residential areas and designated Neighborhood Activity Centers and between residential areas and downtown McMinnville."
  5. Amend plan policy 188.02 to read as follows:

"188.02 The following uses ~~should~~ shall be avoided in a neighborhood activity center: [ . . ]

- (e) Appendix E, "Proposed Zoning Ordinance Amendments," is adopted, thereby amending Chapters 17.06, 17.12, 17.15, 17.18, 17.21, 17.33; creating a new Chapter 17.22; and, implementing a new "Neighborhood Activity Center Planned Development Overlay." Sections 17.12.060, 17.15.060, 17.18.060, and 17.21.060 of the McMinnville zoning ordinance are further amended by adding the following sentence to the existing text:

"This requirement does not apply to accessory dwelling units."

- (f) Appendix F, "Proposed Comprehensive Plan Map Amendments and Zone Changes," is adopted, thereby amending the City's comprehensive plan map and zone map and implementing certain planned developments as follows:

1. That the properties described as parcels 1 and 2 as shown on Figure 1, which is attached hereto and incorporated herein by this reference, be amended from an industrial designation to a commercial designation.
2. That the properties described as parcels 3, 4, 5, 6 and 18 as shown on Figure 2, which is attached hereto and incorporated herein by this reference, be amended from an industrial designation to a residential designation.
3. That the property described as parcel 7 as shown on Figure 3, which is attached hereto and incorporated herein by this reference, be amended from an industrial designation to a residential designation.
4. That the property described as parcel 9 as shown on Figure 4, which is attached hereto and incorporated herein by this reference, be amended from a mixed use designation to a residential designation.
5. That the property described as parcel 10 as shown on Figure 5, which is attached hereto and incorporated herein by this reference, be amended from a mixed use designation to a residential designation; and that the properties described as parcels 11, 12, 13 and 14 as shown on Figure 5 be amended from a mixed use designation to a commercial designation.



6. That the property described as parcel 8 as shown on Figure 6, which is attached hereto and incorporated herein by this reference, be amended from a mixed use designation to an industrial designation; and that the properties described as parcels 15 and 16 as shown on Figure 6 be amended from a mixed use designation to a residential designation.
7. That the property described as parcel 17 as shown on Figure 7, which is attached hereto and incorporated herein by this reference, be amended from a residential designation to a commercial designation; and that the properties described as parcels 19 and 20 as shown on Figure 7 be amended from an industrial designation to a residential designation.
8. That the properties described as parcels 1 and 2, as shown on Figure 1 of this Ordinance are hereby rezoned from an M-1 (Light Industrial) zone to a C-3 (General Commercial) zone.
9. That the property described as parcel 3, as shown on Figure 2 of this Ordinance is hereby rezoned from an M-1 PD (Light Industrial Planned Development) zone to an R-3 (Two-Family Residential) zone. That the properties described as parcels 4, 5 and 6, as shown on Figure 2 of this Ordinance are hereby rezoned from an M-1 PD (Light Industrial Planned Development) zone to an R-4 PD (Multiple-Family Residential Planned Development) zone subject to the following conditions:
  - i. Residential density shall be limited to no more than a total of 25 dwelling units for these three parcels, combined, unless an approved secondary access is provided to the satisfaction of the McMinnville Fire Department.
  - ii. Prior to development of these parcels, the owner(s) shall submit a master plan to the McMinnville Planning Department for review and approval. The master plan shall clearly depict proposed land uses, density, circulation, and other details deemed necessary by the City. The plan shall include all three parcels. To the extent practicable, the master plan shall be consistent with the goals, principles, and design concepts contained in the "Brickworks Property Redevelopment Study," May 1999.
10. That the property described as parcel 18, as shown on Figure 2 of this Ordinance is hereby rezoned from an M-2 (General Industrial)

zone to an R-4 PD (Multiple-Family Residential Planned Development) zone. Vehicular access to this property shall be limited to Chandler Avenue.

11. That the property described as parcel 7, as shown on Figure 3 is hereby rezoned from an M-2 (General Industrial) zone to an R-4 PD (Multiple-Family Residential Planned Development) zone.
12. That the property described as parcel 9, as shown on Figure 4 of this Ordinance is hereby rezoned from an AH (Agricultural Holding) zone to an R-4 PD (Multiple-Family Residential Planned Development) zone subject to the following conditions:
  - i. Vehicular access shall be coordinated through adjacent properties.
  - ii. High-density housing shall be encouraged.
  - iii. Development shall require buffering from adjacent industrially zoned land to the west and from adjacent commercially zoned land to the south.
13. That the property described as parcel 10, as shown on Figure 5 of this Ordinance is hereby rezoned from an AH (Agricultural Holding) zone to an R-1 PD (Single-Family Residential Planned Development) zone. That the properties described as parcels 11, 12 and 14, as shown on Figure 5 of this Ordinance are hereby rezoned from an AH (Agricultural Holding) zone to a C-3 (General Commercial) zone. That the property described as parcel 12, as shown on Figure 5 of this Ordinance is hereby rezoned from an AH (Agricultural Holding) zone to a C-3 PD (General Commercial Planned Development) zone, subject to the following conditions:
  - i. No direct access onto Highway 18 is permitted.
  - ii. All business, service, repair, processing, and merchandise displays shall be conducted wholly within an enclosed building except for off-street parking and loading, temporary display and temporary sales provided it is undercover of a projecting roof and does not interfere with pedestrian or automobile circulation, and outside storage of non-retail goods, provided it is screened from visibility beyond the property line.
  - iii. That a minimum of 20 percent of the site shall be landscaped.

- iv. That uses shall be limited to those permitted by Chapter 17.45.030(A) and (C) (farming, and sewage pump station), and Chapter 17.45.040(A), (C), and
14. That the property described as parcel 8, as shown on Figure 6 of this Ordinance is hereby rezoned from an AH (Agricultural Holding) zone to an M-2 PD (General Industrial Planned Development) zone.
15. That the property described as parcel 17, as shown on Figure 7 of this Ordinance is hereby rezoned from an R-4 (Multiple-Family Residential) zone to a C-3 PD (General Commercial Planned Development) zone. That the properties described as parcels 19 and 20, as shown on Figure 7 of this Ordinance are hereby rezoned from an M-2 (General Industrial) zone to an R-4 (Multiple-Family Residential) zone.

Section 2. That the "McMinnville Growth Management and Urbanization Plan – Findings," dated October 14, 2003, a copy of which is attached hereto and incorporated herein by this reference, is hereby adopted as part of the McMinnville Comprehensive Plan, Volume I.

Section 3. That the McMinnville comprehensive plan map is amended to reflect a revised urban growth boundary consistent with the boundary contained in the "McMinnville Growth Management and Urbanization Plan," as amended by the addition of the Thompson property and deletion of parcels in the southern portion of the Southwest sub-area, a copy of which is attached hereto and incorporated herein by this reference.

Section 4. That the "McMinnville Growth Management and Urbanization Plan" is further amended to reflect changes to certain information, text, tables, and maps as caused by the inclusion of the Thompson property into the proposed urban growth boundary, and removal from the proposed boundary the two parcels located in the southern portion of the Southwest Sub-area. These changes are summarized in the document entitled "McMinnville Growth Management and Urbanization Plan – Addendum," dated October 14, 2003, a copy of which is attached hereto and incorporated herein by this reference.

Section 5. That this ordinance shall be subject to the terms and conditions of Ordinance No. 3823 entitled, "Initiative and Referendum," for a period of thirty (30) days.

Passed by the Council this 14th day of October 2003, by the following votes:

Ayes: Aleman, Hansen, Olson, Springer

Nays: \_\_\_\_\_

Approved this 14th day of October 2003.

  
\_\_\_\_\_  
MAYOR

Attest:

  
\_\_\_\_\_  
RECORDER

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY

ORDINANCE NO. 4841

An Ordinance adopting certain amendments to the McMinnville Urban Growth Management and Urbanization Plan (MGMUP), supporting Findings, Economic Opportunities Analysis, and Comprehensive Plan and implementing ordinances.

RECITALS:

On October 14, 2003, the McMinnville City Council adopted the "McMinnville Growth Management and Urbanization Plan" and appendices (MGMUP), and Findings (ORD No. 4796), and the "Economic Opportunities Analysis," (ORD No. 4795), as part of the McMinnville Comprehensive Plan, Volume I. These documents were prepared in response to an analysis of the city's buildable lands and future land needs, which determined that there exists a shortfall of both residential and commercial land necessary to accommodate projected growth needs through the year 2023.

On October 20, 2003, the City provided notice of the ordinance adoptions and periodic review work task submittal to DLCD and interested parties. On April 20, 2004, the Director of the Department of Land Conservation and Development (DLCD) issued a response to written objections and exceptions filed by participants and the City pursuant to OAR 660-025-0160(3).

At the April 22 and September 10, 2004, Land Conservation and Development Commission (LCDC) hearings, the Commission heard oral argument from the City, DLCD staff and objectors and acknowledged certain elements of the MGMUP while remanding others. Portions of the MGMUP that pertain to efficiency measures and lands to be included within the urban growth boundary yet remain to be reviewed by the Commission.

In response to DLCD staff's position as regard these remaining elements, and consistent with the directives of the LCDC Remand Order, staff finds it prudent to propose certain amendments to the MGMUP, its supporting Findings document, the Economic Opportunities Analysis, and Comprehensive Plan and implementing ordinances. Those amendments are specific to the following issues: Removal of floodplain lands from the 2004 urban growth boundary; use of floor area ratio for projecting future land needs; transit (residential) corridor enhancement policies; Neighborhood Activity Centers (NACs); support areas of illustrative plans; and, reduction of buildable land need for parks.

A joint public work session was held with the City Council, Yamhill County Board of Commissioners, and the McMinnville Urban Area Management Commission (MUAMC) on October 25, 2005, at 6:00 p.m. at which these proposed amendments were presented and discussed. Subsequent to that work session a public hearing was held with these same review bodies on December 6, 2005, after due notice had been given in the local newspaper. At that hearing, the review bodies received written and oral testimony, and having considered this testimony, the MUAMC recommended the adoption of the floodplain, floor area ratio, NAC, and alternative lands recommendations of City staff. The Council and Board closed this hearing and convened a second public to consider further these recommendations on January 11, 2006. At this hearing, having received written and oral testimony relevant to these recommendations and draft ordinance, the City Council found the amendments as herein described to be appropriate. Now therefore,

THE CITY OF McMinnville Ordains as follows:

Section 1. That the McMinnville Growth Management and Urbanization Plan (MGMUP) shall be amended as follows:

- (a) That Figure 5 ("Resource Land Subareas") be amended to exclude lands within the 100-year floodplain from the Three Mile Lane, Norton Lane (not to include the area within Joe Dancer Park), and Grandhaven subarea perimeters.
- (b) That page 6-13 (Resource Land Sub-Area Capacity) be modified as follows:  

"Inclusion of the Grandhaven, Norton Lane, Three Mile Lane, Southwest, West Hills South, and Northwest sub-areas will provide an additional ~~653.15~~ 663.4 acres of buildable land for urban development as detailed in Table 13 below."
- (c) That Table 13 ("Resource land sub-area capacity analysis") be amended to reflect the removal of flood plain land from the Three Mile Lane, Norton Lane, and Grandhaven subareas; and the removal of certain parcels from the Northwest and Southwest subareas and addition of lands in the "West Hills South" subarea, as follows. Table 15 ("Sub-area capacity analysis, proposed UGB expansion areas") and Table 16 (Summary of land supply and capacity, existing McMinnville UGB and proposed UGB expansion areas) shall be amended to be consistent with Table 13, as modified:

Norton Lane	8	<del>256.2</del> <u>142.24</u>	<del>489.93</del> <u>75.97</u>	66.27	6.3	414
Three Mile Lane	14	<del>321.25</del> <u>165.15</u>	<del>463.62</del> <u>7.52</u>	157.63	6.3	985
Northwest	<del>5</del> <u>2</u>	<del>444.53</del> <u>75.90</u>	<del>4.34</del> <u>1.83</u>	<del>140.22</del> <u>74.07</u>	6.3	<del>876.4</del> <u>463</u>
Grandhaven	8	<del>227.63</del> <u>151.43</u>	<del>90.57</del> <u>14.37</u>	137.06	6.3	857
Southwest	41.8	<del>194.62</del> <u>133.66</u>	<del>42.65</del> <u>27.67</u>	<del>151.97</del> <u>118.99</u>	6.3	<del>949.8</del> <u>744</u>
West Hills South*	2	125.23	15.85	109.38	6.3	684
<b>Resource Area Subtotals</b>	<b>48.42</b>	<b><del>1144.23</del> <u>793.61</u></b>	<b><del>491.08</del> <u>130.21</u></b>	<b><del>653.15</del> <u>663.4</u></b>	<b>6.30</b>	<b><del>4082</del> <u>4146</u></b>

\* The West Hills South Sub-area includes the parcel previously identified as the Thompson Property.

- (d) Page 7-28 shall be amended by adding the following to immediately proceed Table 16, as follows:  

"With the amendments to the 2003 boundary, as described in this plan, there exists a match in acres of land need and gross vacant buildable acres (891.1 acres vs. 890.9 acres, respectively)."
- (e) That Figure 6 ("UGB Expansion Proposal") be amended as follows:
  - a. The boundaries of the Norton Lane, Three Mile Lane, and Grandhaven subareas shall be consistent with the amended Figure 5, relative to the exclusion of floodplain land.

- b. Tax Lots R4418-00900, R4418-01000, R4418-01001, and a portion of R4418CC-00200 shall be removed from the Northwest subarea and adopted 2003 urban growth boundary.
  - c. Tax Lots R4430-01000 and R4430-01100 shall be removed from the Southwest subarea.
  - d. Tax Lots R4514-01300 (the "Thompson" property) and R4524-02000 shall be added to the urban growth boundary expansion proposal and be identified as "West Hills South" on the map.
- (f) That Figure 7 (Proposed Activity Centers), Figure 12 (Proposed Comprehensive Plan and Zoning Changes), and Figure 13 (Proposed Comprehensive Plan) shall be amended consistent with Section 1 (e) of this ordinance.
  - (g) That the illustrative plans for the Northwest, Grandhaven, Three Mile Lane, and Southwest Neighborhood Activity Centers be deleted from the MGMUP (Figures 8, 9, 10, and 11, respectively).

Section 2. That Volume II of the McMinnville Comprehensive Plan (Goals and Policies) shall be amended as follows:

- (a) Policy 187.00 shall be amended to read as follows:

"187.00 The City of McMinnville shall adopt additional implementation ordinances and measures to carry out the goals and policies of the McMinnville Comprehensive Plan. These shall include, but not be limited to, Zoning Ordinance and Map, Annexation Ordinance, Mobile Home Development Ordinance, and Land Division Ordinance. In addition, the City shall, as funding permits and generally in the following order, prepare and implement plans for the Northwest, Grandhaven, Southwest, and Three Mile Lane Neighborhood Activity Centers (NACs).<sup>1</sup> Such plans shall be consistent with the draft concepts, policies, and implementation ordinance contained in the McMinnville Growth Management and Urbanization Plan, as amended. The plans shall require, at a minimum, that all development be consistent with the requirements of the Transportation Planning Rule. The preparation and adoption of such plans shall occur within the current planning period (years 2003 – 2023).

- (b) Policy 188.03 shall be amended to read as follows:

"188.03 Neighborhood activity centers ~~shall~~ should be located and arranged according to the following guidelines: [...]

Maximum distance that nonresidential uses should ~~may~~ radiate outwards from the center of the activity center (along streets):[...]"

<sup>1</sup> The size and configuration of the Northwest NAC has been modified in consideration of advisory comments and objections submitted by DLCD and 1000 Friends of Oregon during the review process of this project. In addition, as some three years have passed since the date of the buildable lands inventory (and more than two years since the adoption of the MGMUP), some opportunities originally envisioned within this NAC have now been lost due to ongoing development within this area. As such, the ability to implement the recommended NAC plan for the Northwest area should be assessed as part of the future planning for this area.

- (c) Policies 188.10, 188.18, 188.26 and 188.34 are amended to read as follows:

"The overall residential density of this neighborhood is ~~targeted~~ at a minimum of 7.5 dwelling units per net acre.

Section 3. That the MGMUP Findings document shall be amended as follows:

- (a) That the second paragraph on page 7 be amended to read as follows:

"The findings contained in this document support an expansion of the present UGB by approximately ~~4,539~~ 1,188 gross acres of which one-quarter --- nearly 300 acres --- are unbuildable due to environmental constraints or existing development.. This equates to a 15 percent increase in the gross land area contained within the present urban growth boundary to accommodate a 55% increase in population, and a 50% increase in employment for the period 2003-2023. This is the first significant amendment to the City's urban growth boundary to occur in the ~~22~~ 25 years since its adoption in 1981."

- (b) That Table 8 (McMinnville vacant land and new built space needed for employment by land use type, 2003-2023) be amended by deleting in its entirety the column titled "Sq. Ft. of building space."
- (c) That Table 11 (Effect on proposed land redesignations on buildable land supply), Table 12 (Revised buildable land supply with land redesignations, McMinnville UGB, December 2002), and Table 14 (Comparisons of land supply and demand, McMinnville UGB, 2003-2023), and text which follows Table 10 (pages 14 – 17) be amended as follows:

**Table 11. Effect of proposed land redesignations on buildable land supply**

<b>Plan Designation</b>	<b>Change in buildable acres</b>
Commercial	<del>0.49</del> <u>0.0</u>
Industrial	<del>(13.82)</del> <u>(12.77)</u>
Mixed Use	<del>(2.85)</del>
Residential	<del>46.18</del> <u>15.62</u>

Source: City of McMinnville



Table 12. Revised buildable land supply with land redesignations, McMinnville UGB, December 2002

Plan Designation	Gross Buildable Acres (Jan 2003)	Proposed land redesignations	Gross Buildable Acres (w/ redesignations; Jan 2003)
Residential	864.9	<del>16.2</del> <u>15.6</u>	<del>881.4</del> <u>880.5</u>
Commercial	<del>401.9</del> <u>102.4</u>	<del>0.5</del> <u>0.0</u>	<del>102.4</del>
Industrial	339.8	<del>-13.8</del> <u>-12.8</u>	<del>326</del> <u>327.1</u>
Mixed Use	2.9	<del>-2.9</del> <u>0.0</u>	<del>0.0</del> <u>2.9</u>
<b>Total Buildable Land</b>	<b><del>1309.5</del> <u>1310.0</u></b>	<b><del>0.0</del> <u>2.9</u></b>	<b><del>1309.5</del> <u>1312.9</u></b>

Source: City of McMinnville

Page 15: "At an average density of 5.9 dwelling units per gross residential acre, the proposed land redesignations would accommodate approximately 9592 new dwelling units."

Table 14. Comparison of land supply and demand, McMinnville UGB, 2003-2023

Plan Designation	Land Need (2003-2023)	Gross Buildable Acres (Jan 2003)	Deficit (Surplus)
Residential <sup>a</sup>	1,538.4	<del>881.4</del> <u>880.5</u>	<del>1019.2</del> <u>1019.8</u>
Commercial	219.1	102.4	106.0
Industrial	269.7	<del>326</del> <u>327.1</u>	<del>(44.7)</del> <u>(46)</u>
<b>Total Buildable Land Need Outside UGB</b>	<b>2,027.2</b>	<b><del>1309.5</del> <u>1312.9</u></b>	<b><del>1125.2</del> <u>1125.8</u></b>

Source: ECONorthwest, 2003

<sup>a</sup> Application of residential carrying capacity analysis produces an unmet residential need of 537 acres and does not allow a simple supply/demand calculation to occur.

"Notes: [...] McMinnville will maintain a 46 acre surplus of industrial land during the planning period."

- (d) That pages 50 – 53 be supplanted with the text contained in the "Goal 14, factor 6 Supplemental Findings," identified as Exhibit "A," a copy of which is attached hereto and incorporated herein by this reference.
- (e) That the following text be added to page 58 ("Resource Areas Recommended for Inclusion"), specific to the West Hills South subarea:

## West Hills South

### Sewer:

While there are topographic conditions that serve to make extending public sanitary sewer service to this sub-area costly, there are no other known reasons that would preclude the provision of such service. There currently exists a public sanitary sewer line in Redmond Hill Road, which borders the subject site at the northeast corner. The topography of the subject site would allow gravity flow to the east and south; the eastern portion of the site may require a pump station due to its elevation, however. According to the City of McMinnville Engineering Department, costs associated with providing public sanitary sewer service to this sub-area are estimated to be slightly above average.

### Water:

Individual, private wells currently serve as the source of domestic water for the lands within this sub-area. As described in the McMinnville Water and Light "Water System Master Plan," with the exception of the extreme western edge of this subject site, this area is located within the current water service area and could be provided public water without construction of an upper level system. Public water currently extends to the Hillsdale residential subdivision, a relatively short distance to the northeast.

### Electric:

McMinnville Water and Light estimates the costs for providing electric service to the West Hills South sub-area as low (ranging from \$0 to \$200,000). Existing feeders on Hill Road may have to be upgraded to accommodate the additional projected load, however.

### Transportation:

As noted previously, Redmond Hill Road is the only public road serving this sub-area. This Yamhill County road extends west from Hill Road and through the Hillsdale residential subdivision a distance of approximately 2,600 feet where it then crosses the sub-area's northern edge. As it fronts the subject site, this road is gravel surfaced and has a right-of-way dimension of thirty feet and is under the jurisdiction of Yamhill County. No other public roads or rights-of-way exist within this sub-area. Extending from both Redmond Hill Road and Hill Road are narrow private drives that afford access to the parcels that are located within the sub-area.

- (f) That the following text be added to page 68 ("Factor 5; Environmental, energy, economic and social consequences"), specific to the West Hills South subarea:
- West Hills South. Development of this area will require provision of water, sewer and transportation systems. The inclusion of this area within the UGB would have economic impacts by removing lands from agricultural production and converting them to urban uses.

Section 4. That the McMinnville Comprehensive Plan Map shall is amended to reflect a revised urban growth boundary consistent with the boundary as depicted in Exhibit "B," a copy of which is attached hereto and incorporated herein by this reference. The plan map is further

amended to designate lands within the newly adopted urban growth boundary for residential, commercial, or industrial purposes, as depicted in Exhibit "C," a copy of which is attached hereto and incorporated herein by this reference. The plan map is also amended to add a "Neighborhood Activity Center" planned development overlay to the Grandhaven, Norton Lane, Southwest, Northwest, and Three Mile Lane subareas, as depicted on Exhibit "C," a copy of which is attached hereto and incorporated herein by this reference.

Section 5. That, for purposes of administering the provisions of ordinance, the amendments described herein shall not take effect until and unless approved by the State of Oregon as part of the City's current periodic review work program related to the expansion of the McMinnville Urban Growth Boundary.

Section 6. That this ordinance shall be subject to the terms and conditions of Ordinance No. 3823 entitled "Initiative and Referendum" for a period of thirty (30) days.

Passed by the Council this 11<sup>th</sup> day of January, 2006, by the following votes:

Ayes: Hansen, Hill, Menke, Olson, Yoder

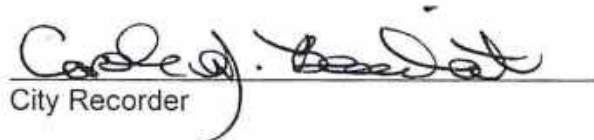
Nays: \_\_\_\_\_

Approved this 11th day of January, 2006.



\_\_\_\_\_  
COUNCIL PRESIDENT

ATTEST:



\_\_\_\_\_  
City Recorder

Approved as to form:



\_\_\_\_\_  
CITY ATTORNEY

# **Exhibit A**

## **Addendum to the McMinnville Growth Management and Urbanization Plan Findings Document**

An Element of the City of McMinnville  
Comprehensive Plan  
January 2006

## EXHIBIT A

**Amend the Findings Document by supplanting the "Goal 14, factor 6" findings (pages 50 – 53) with the following:**

Goal 14, factor 6, requires consideration of the following:

*Retention of agricultural land as defined; with Class I being the highest priority for retention and Class VI the lowest priority.<sup>1</sup>*

In addition, ORS 197.298(2) requires that land of "lower capability as measured by the [U.S. Natural Resources Conservation Service (NRCS) agricultural soil] capability classification system or by cubic foot site class, whichever is appropriate for the current use," be given higher priority for inclusion in a UGB. Also, ORS 197.298 (3) allows land of lower priority to be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land needed for one or more of the following reasons:

- (a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;
- (b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or
- (c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.

**Findings:** In 2003, the Council carefully considered impacts on agricultural and forestlands when deciding which direction to expand the UGB. The methods used in conducting this analysis, and the findings of this analysis, are detailed in the MGMUP and in the Findings document (pages 50 – 53).<sup>1</sup> In its review of the MGMUP in March

<sup>1</sup> In its 2003 analysis, the City looked first at all resource lands within one mile of the current urban growth boundary that met the following criteria:

1. Resource lands that are surrounded by the existing urban growth boundary, and the Yamhill River, Baker Creek, or Panther Creek;
2. Resource land surrounded on at least three sides by the existing UGB and/or non-resource lands, and/or other significant natural or man-made edge (e.g., slope, floodplain, arterial street);
3. Resource land needed to allow extension of public facilities to serve land within the existing UGB; and
4. Resource land held by public entities.

Lands not meeting these criteria were assumed to be less appropriate for meeting the City's identified land needs due primarily to their greater distance from existing and planned public facilities (more expensive to serve), and surrounding uses (surrounded almost entirely by other resource land, thereby increasing the potential for urban and agricultural conflict). This prioritization scheme is consistent with the guiding principles described in the *McMinnville Growth Management and Urbanization Plan*—specifically, principles #2, *Historical Development Patterns -- Respect existing land use and development patterns and build from*

and April of 2004, the Oregon Department of Land Conservation and Development (DLCD) concluded that the City's analysis was deficient and recommended to its commission (LCDC) that additional work be done to support the prior decisions relative to which resource lands should be included --- or excluded --- from the proposed urban growth boundary. Specifically, the DLCD recommended the following:

"Using maps provided by the US Natural Resource Conservation Service and the Oregon Department of Agriculture, identify areas with class 3 and 4 agricultural soils and either (1) include them in the UGB instead of areas with class 1 and 2 soils, if any, or (2) explain why they should not be included based on the standards in ORS 197.298(3). Areas with class III and IV soils east of the airport are excluded from this requirement."

Consistent with this recommendation, the City has mapped areas surrounding the McMinnville urban area, extending outward a distance of one mile from its 1981 urban growth boundary, for the purpose of identifying the existence and location of soils rated by the US Natural Resource Conservation Service as Class III or Class IV. The locations of these soils were depicted at the October 25, 2005, joint City Council, Yamhill County Board of Commissioners, McMinnville Urban Area Management Commission, public work session on slide 18 ("Soil Class") of a PowerPoint presentation and in the work session packets provided to decision makers.

Generally, lands composed predominantly of Class II soils surround McMinnville's urban area. In lesser proportions, there exists a linear band of Class I soil that parallels Baker Creek in northwest McMinnville; threads of Class III soils, which appear to follow historical creek and drainage courses are found in various isolated locations around the city's perimeter; Class III, IV, and VI and VIII soils primarily in the moderately to steeply sloped hills of west McMinnville; and some additional Class IV soils found east and north of the McMinnville Municipal Airport.

Further direction is provided in Statewide Planning Goal 14 (Urbanization), which states that the location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:<sup>2</sup>

- (1) Efficient accommodation of identified land needs;
- (2) Orderly and economic provision of public facilities and services;
- (3) Comparative environmental, energy, economic and social consequences; and

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*them, and #7, UGB Expansions -- Contain urban expansion within natural and physical boundaries, to the extent possible.*

Application of criteria 1-4 listed above, as well as the guiding principles described in Section III of the *McMinnville Growth Management and Urbanization Plan*, resulted in resource lands north of Baker Creek and the North Yamhill River, east and south of the South Yamhill River, and south of Highway 18 being excluded from initial consideration. This left five geographically distinct resource sub-areas for analysis: Grandhaven; Norton Lane; Three Mile Lane; Southwest; and, Northwest. As a result of testimony provided during the public hearing process regarding this plan amendment, a sixth resource land sub-area was added, referred to as the "Thompson" property. To accommodate this addition, the southern third of the Southwest sub-area was removed from further consideration.

<sup>2</sup> Responses to these factors are found in pages 66 – 73 of the Findings document.

(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

That Goal continues by stating that in determining need, local governments may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.<sup>3</sup>

Specific to the MGMUP, McMinnville's future land needs specific to commercial and residential uses (to include parks, schools, and similar "residential" uses) are described at some length in the plan, the key elements of which are summarized in the following:

Residential Land Need –

- At its core, the MGMUP proposes the use of "Neighborhood Activity Centers" to promote pedestrian-friendly, compact development. These centers are selected due to their location, distribution, proximity to vacant buildable lands, ability to accommodate higher intensity and density development, and their context and ability to foster the development of a traditional, or complete, neighborhood. These centers need to be located at major street intersections.
- To address issues of land use efficiency and minimizing rural / urban conflict, the MGMUP is based in part upon urban containment and the concentration of development in areas that have adequate carrying capacity to support Neighborhood Activity Center development. Urbanization of areas that are contrary to these principles should be avoided.
- The MGMUP encourages the principles of "smart growth" to create walkable, mixed-use communities. This means smaller single-family lot sizes, a higher percentage of multi-family housing, and mixing of neighborhood scale commercial uses.
- All planning should be in the form of complete and integrated communities containing housing, shops, work places, schools, parks and civic facilities essential to the daily life of the residents.
- Future development should respect the area's historical development patterns and natural and man-made constraints that have --- and are proposed to continue to --- shape McMinnville's growth and sense of place. In so doing, potential urban and rural land use conflicts are kept to a minimum, as is the speculative pressure to develop rural lands beyond the urban edge for urban uses. To the extent possible, urban expansion should:
  - Stay west and north of the South Yamhill River;

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<sup>3</sup> Beyond the requirements of law, for purposes of good planning, land should be suitable for the intended use. Both the Oregon Land Use Board of Appeals and the Oregon Court of Appeals have indicated that where the need identified by the local government can be satisfied only by land with certain characteristics, only lands that have those characteristics should be evaluated under ORS 197.298. As DLCD stated in its staff report to its Commission in May of 2002, regarding the City of North Plains Periodic Review Task: "[...] to require a local government to do otherwise would be to require it to evaluate (and possibly include within its UGB) lands that can't satisfy the identified land need for additional lands. Neither the statutes nor Goal 14 require or even suggest this result."

- Stay south and west of the North Yamhill River;
  - Stay south of Baker Creek; and
  - Not cross south of Highway 18, west of the South Yamhill River.
- Housing mix will shift markedly toward historically higher percentages of multi-family housing (duplexes, commonwalls, and apartment complexes). Larger concentrations of such housing types, and in particular, apartment development, will require locations on arterial or collector streets, consistent with adopted plan policy.<sup>4</sup> Further, based upon long-standing policy (since 1978), multi-family housing will not be concentrated in any one neighborhood, but will, instead, be distributed throughout the city.
- Based upon recent experience, City polices propose to limit future neighborhood and community park types to lands outside of the 100-year floodplain.

Commercial Land Need –

- Commercial land uses should not extend in a manner that would promote auto-oriented, commercial “strip” development.
- Commercial uses should form the center, or active component, of planned Neighborhood Activity Centers.

The City finds three geographic areas within one mile of the McMinnville urban growth boundary that exhibit Class III or Class IV soils. These areas are shown in Figures 1, 2 and 3, and are identified as:

- o Lands North and East of the McMinnville Municipal Airport;
- o Lands in the McMinnville West Hills; and
- o Lands West of Old Sheridan Road (Southwest McMinnville).

A description of each area follows.

**Lands North and East of the McMinnville Municipal Airport**

To the north and east of the approximately 500-acre McMinnville Municipal airport are areas of Class III and Class IV soils that immediately abut the existing McMinnville urban growth boundary. They are generally described as follows:

Lands North of Olde Stone Village –

To the immediate north of Olde Stone Village, a manufactured home park constructed in the mid-1980’s, are found two parcels that are predominantly composed of Class III soils. These parcels are identified as Assessor Map R4414-03601 and R4423-00400 and total approximately 197 acres. Topographically, this land is relatively flat and is absent any physical development. The properties are

<sup>4</sup> The McMinnville Residential Land Needs Analysis concluded that McMinnville’s housing need is for 25 percent multi-family housing (tri-plex and larger).



owned by Evergreen Agricultural Enterprises, and Dora Bansen; each property has a long history of active farm use. The parcels are bordered to the north, west and east by other lands that are actively farmed. The previously described manufactured home park, and the Evergreen Aviation Museum campus border the parcels to the south. Reid Road, an unimproved County road that has a right-of-way dimension of 40 feet in width, provides access to this area. This property borders the existing McMinnville urban growth boundary along its southern edge.

This property sits immediately west of the protection zone for Runway 17/35, a zone used to minimize incompatible development within the area critical for safe aircraft landings and departures. A portion of this property lies within the downwind leg of the Runway 4 traffic pattern.

#### Lands North of McMinnville Municipal Airport

There exists to the north of the airport, south of the Evergreen Aviation Museum property, and west of Olde Stone Village, some 35 acres of land that is comprised of predominantly Class III soils. The property is owned by Evergreen Agricultural Enterprises and is actively farmed. Cirrus Avenue terminates at the site's southwest corner; no other improvements are found within the site.

#### Lands East of McMinnville Municipal Airport

Situated east and parallel to Runway 17/34 a distance of approximately 800 feet is an area of Class IV soils, which are surrounded by Class II soils. This land is actively farmed and borders the McMinnville city limits and urban growth boundary to the west.

For the following reasons, the City finds that the above-described lands are inappropriate for use in satisfying the identified residential and commercial land needs. As such, they are not included in the amended McMinnville urban growth boundary.

#### Land use compatibility –

"Aviation is a nearly \$50 billion national industry that provides a vital transportation and economic element to our country. However, this essential service is continually threatened by the perpetual encroachment of incompatible land uses."<sup>5</sup>

The City finds that inclusion of this land would result in further residential encroachment adjacent to the airport; some of this land is less than ¼ mile of Runway 17/34, while other land is immediately adjacent to the airport approach zone or under the downwind leg of the Runway 4/22 traffic pattern. Development of these lands at urban residential densities would be incompatible with the long range plans for the airport, as described in the McMinnville Municipal Airport Master Plan, and

<sup>5</sup> Excerpts relative to airport safety and land use compatibility are taken from the Oregon Department of Aviation's, "Airport Land Use Compatibility Guidebook," dated January 2003.

would potentially threaten the airport's viability and ability to serve the local and regional economy. According to the McMinnville Municipal Airport Master Plan, updated December 2004, aircraft operations are forecast to increase from 65,961 (2003 levels) to 109,440 by the year 2023.

#### Safety –

"Safety issues are a significant consideration for pilots, airports, and land uses surrounding airports. From an off-airport land use planning perspective, the characteristics of accidents near airports are of the greatest concern. [...] three geographic areas should be considered when addressing incompatible land use: land use under the airport traffic pattern, within one-quarter mile of an airport, and off the approach ends to the runways."<sup>3</sup>

The City finds that aircraft on the downwind leg of Runway 4 fly directly over the subject land. Placing residential development on this property would potentially jeopardize the safety of those on the ground and pilots and passengers in the aircraft (need for open space in which to land in the event of emergency). In addition, noise from such aircraft operations would not be conducive to residential development within the subject site. This property is also immediately adjacent to the airport approach zone for Runway 17. Limiting development within the zone, and on lands adjacent to it, is critical for safe operation of the airport.

As noted in the airport master plan, within the planning period (extending to the year 2023) there will be increased numbers of aircraft based at this facility, as well as increased numbers of aircraft operations. The City finds it prudent and responsible to take measures necessary to minimize risk to individuals in the vicinity of the airport, especially given the expected increase in activity. The City, therefore, does not believe it to be good planning to include this property within the urban growth boundary.

#### Agricultural land compatibility –

This land, if brought into the urban growth boundary, would be bordered by actively farmed land on three of its four sides. Its inclusion would also increase the perimeter of land that would be in direct proximity to farmed land. Extension of public utilities to serve residential or commercial development within these lands would add pressure to urbanize adjacent resource lands in the future.

#### Complete neighborhoods –

"A primary means of limiting the risks of damage or injury to persons or property on the ground due to near-airport aircraft accidents is to limit the density of land use development in these areas."<sup>3</sup>

The cornerstone of the MGMUP is the creation of complete neighborhoods that are achieved through the implementation of Neighborhood Activity Centers. Densities within these centers are expected to be higher than historically realized in McMinnville and

would include higher percentages of multi-family housing. Needed low-density residential development can be accommodated within the existing McMinnville urban growth boundary and in exception land areas recently added to the boundary (Fox Ridge Road, Redmond Hill Road, and Riverside South). To address safety concerns, higher density housing is not an appropriate use for the subject site.

For the above noted reasons, the City concludes that specific types of land needs as identified in the MGMUP cannot be reasonably accommodated on the lands north and east of the McMinnville Municipal Airport, on which are found predominantly Class III or Class IV soils. The City, therefore, has not included these lands in its expanded urban growth boundary, as permitted by ORS 197.298 (3)(a).

### Lands West of Hill Road

Specific to the hills west of McMinnville, this area is steeply sloped, and is further marked by several ravines that cross through the area. The area is largely vacant any physical development, covered in native grasses and trees, and has a history of primarily forest related use (tree farms, open space). Generally, agricultural soils within this area decrease in quality (from Class III to Class VIII) the greater the distance west of the current McMinnville UGB.

Topographically, there exists to the immediate north, west and south of the current urban growth boundary a wide band of steeply sloping land that forms a crescent touching on the Fox Ridge Road at its northern tip and the Redmond Hill Road area to the south. Slopes within this crescent shaped area are 25 percent and greater; soil types are predominantly comprised of Yamhill silt loam (YaE and YaF) and Willakenzie silty clay loam soil (WeE), which have severe slopes, ranging from 20 percent to 50 percent. These soils, and others found within this crescent, are Class IV, VI, VII, and VIII agricultural soils. Although not highly rated for agricultural use, the Willakenzie soil and Yamhill soil have woodland capability class ratings of II (high) and III (moderately high), making them significant Goal 4 (Forest Land) resource lands.

Parcels of predominantly soil class III and above located farther west, northwest, and southwest of the above described steeply sloping lands were found to be inappropriate for use in meeting McMinnville's identified future residential land needs due primarily to the following reasons:

- **Expensive to provide with public services**  
McMinnville's current water distribution system is designed as a single-level pressure system providing service to those properties situated between 100 feet and 275 feet in elevation. These areas are situated at elevations that extend upward from some 320 feet. Provision of public water to this area will require considerable expense, estimated to exceed \$3.4 million.
- **Physically separated from other planned urban development**  
For purposes of conducting a buildable lands analysis, lands with slopes 25 percent or greater would be excluded from further consideration. As such, in this case, there would exist a wide continuous band of "unbuildable land" that, by its location and topography, would physically separate this area from lands within the current (and

proposed) UGB. This separation would not be conducive to development patterns that are efficient, economical, or consistent with the City's MGMUP.

- **Resource use**

These lands exhibit qualities and physical characteristics of forest resource lands as evidenced by the presence of Yamhill silt loam and Willakenzie silty clay loam soils, tree cover, and historical use (tree farms). Use of this area for residential or commercial development would be incompatible with management of this area for forest related uses.

Within the balance of the west hills outside of the current UGB and east of the previously described steeply sloping lands are lands that are comprised predominantly of Class III agricultural soils. Generally, these areas are located immediately north of the Fox Ridge Road subarea, west of the Redmond Hill Road subarea; and south and west of the "Thompson Property" subarea. These areas are depicted on the attached map, and are described in further detail in the following text.

#### Area North of Fox Ridge Road –

Three parcels, which abut the existing urban growth boundary north of Fox Ridge Road, are dominated by Class III and IV soils. The westerly parcel is Assessor Map No. R4513-00100, a 94.73-acre piece owned by the Abrams family and is part of their larger farm and timber operation. The central parcel is a 16-acre portion of the larger tax lot 200, the southern portion of which is a former exception area that was approved for addition to the urban growth boundary in 2004 by LCDC. The easterly parcel is the approximately 34-acre parcel (Assessor Map R4418-00700, owned by Mark Smith.

Topographically, this area immediately adjacent to Hill Road is generally flat, but rises abruptly at the southwest where it merges with the foothills (the "West Hills"), which rise up to the west along Fox Ridge Road. The Class III and IV soils comprise the flat portions of the Smith parcel, and a small portion (northern edges) of the other parcels. Predominantly, these Class III and IV soils are consistent with the steeply sloped areas in the southern portions of the westerly two parcels where gradients can exceed 25 percent.

The flatter portions of these parcels have historically been farmed for field crops, although the sloped areas at the south are managed for timber production, and a small area within the unincorporated portion of tax lot 200 has been cultivated for Christmas trees. The parcels border the current McMinnville urban growth boundary at the south, southwest, and east.

The abutting parcels to the southwest are under County jurisdiction and tend to be small acreage residential properties, with mixed oak/Douglas fir forest and some livestock pasture. The McMinnville Water and Light reservoirs are within this cluster of parcels. At the west and to the north of the central parcel are additional parcels within the Abrams farm operation. At the north, tax lot 701 is a 42-acre piece, which was just recently approved by the State for inclusion to the urban growth boundary; this parcel is owned by the McMinnville School District No. 40 and is slated as a future high school site.

For the reasons discussed below, the City finds that tax lot R4418-00700 (Smith parcel) is appropriate for use in satisfying the identified residential land needs, but the City finds that the northern portion of tax lot R4418-00200 and the entirety of tax lot R4513-00100 are inappropriate for satisfying future land needs.

Land use compatibility –

Tax lot 700 lies between low-density residential housing to the south and southwest and a future high school site to the north. Because this parcel abuts the school property, it would be ideal for medium to high-density residential development, which would also provide a reasonable transition between the school and the low-density development to the south/southwest. In addition, medium-density residential development on this parcel would be consistent with ongoing development on the east side of Hill Road, which includes a future elementary school site and a mixture of medium- and low-density residential development.

Agricultural land compatibility –

Tax lot 700, if brought into the urban growth boundary, would be bordered by actively farmed land (the northern portion of tax lot 200) along an approximately 350-foot length of its western boundary, but would otherwise abut the school site at the north, Hill Road at the east, Fox Ridge Road at the south, and the urban growth boundary at the southwest. Development of tax lot 700 would remove farmland from production which is a long, narrow piece wedged between the school site and the existing urban growth boundary; the City believes there is more likelihood of conflicts between urban and farm uses if tax lot 700 is left as agricultural land. The preliminary plans for the future high school site indicate that the westerly portion will be used for outdoor activities and athletic events; these uses can provide a buffer between agricultural activities to the west and north and residential development on tax lot 700.

If the northern portion of tax lot 200 were brought into the urban growth boundary, it would abut the agricultural tax lot 100 at the west for a distance of approximately 1,100 feet, and tax lot 1000 at the north for about 500 feet. Although the southern portion of this piece of land would be unlikely to develop due to the steepness of the slopes, the northern portion could develop, resulting in a "prong" of residential development between the agricultural uses to the north and west, and the school property at the east.

Tax lot 100, if brought into the urban growth boundary, would be bordered by actively farmed land on two sides and along a portion of a third. This would leave an island of farm parcels bordered by the school property at the south, residential development at the southwest and west, Hill Road at the east, and Baker Creek Road at the north. This would also cut off tax lots R44 18 1000 and 1100, also owned by the Abrams family, from the remaining portions of the farm operation.

Complete neighborhoods –

Tax lot 700 lies within the preliminary boundaries of the Northwest Neighborhood Activity Center (NAC). As discussed elsewhere in this document, NACs are intended to provide medium- and high-density housing close to neighborhood scale commercial development and transit corridors, because low-density housing needs are already met

within the existing urban growth boundary. Hill Road is designated as a transit corridor and planned transit route in the MGMUP; since tax lot 700 abuts Hill Road at the east; this provides an excellent opportunity to plan for development that can take full advantage of transit opportunities. The NAC plan in the MGMUP (Figure 8) calls for medium-density (R-3 and R-4) residential development on tax lot 700; the City stands by this recommendation.

Tax lot 100 and the northern portion of tax lot 200 also lie within the Northwestern NAC boundaries. However, the City now finds that these two properties should be excluded from the urban growth boundary and the NAC because they will have limited connectivity with Hill Road and with development of tax lot 700 (absent the addition of other lands to the north and west, as proposed in the 2003 MGMUP): the steep slopes in the southern portions of these two properties leave only perhaps a 200-foot wide buildable corridor extending across tax lots 700, 200 and 100. Although such a corridor could potentially be developed with a 60-foot wide local street right-of-way lined by homes on each side, the City finds that this would be an inefficient use of tax lots 200 and 100. Since the street could not make a connection to the north, it would have to be designed as a dead-end street, which would be an inefficient system.

For the reasons cited above, the City concludes that specific types of land needs as identified in the MGMUP cannot be reasonably accommodated by the areas of Class III and Class IV soils within tax lot R4513-00100 or the northern portion of tax lot R4418-00200. The City, therefore, has not included these lands in its expanded urban growth boundary, as permitted by ORS 197.298 (3) (a).

However, the City also concludes that identified residential land needs can be accommodated by tax lot R4418-00700, which is predominately Class III and Class IV soils. The City, therefore, recommends its inclusion into the expanded urban growth boundary.

#### West Hills Area west of Fox Ridge Road and Redmond Hill Road –

It should be noted that the Fox Ridge Subarea proposed in the MGMUP was acknowledged by LCDC for inclusion into the urban growth boundary in 2004, as was the Redmond Hill Road Subarea at the terminus of Redmond Hill to the south. Adjacent to the west of this newly expanded westerly urban growth boundary is a concentration of Class III and IV soils. This area is characterized by moderate to steeply sloping terrain, with slopes ranging from approximately seven percent to more than 25 percent.

Class IV soils in the West Hills Area are essentially confined to the most severe slopes including those over 25 percent gradient; these soils tend to be located further west and do not adjoin the existing urban growth boundary. Class III soils dominate the area adjacent to the urban growth boundary. The concentration of Class III soils adjacent to the westerly urban growth boundary is approximately 200 acres.

The parcels in the West Hills area have been managed primarily for timber production, although farming of field crops and Christmas trees is also evident. These lands,

because of their elevation and tree cover, give visual form and edge to the City's western perimeter.<sup>6</sup>

For the following reasons, the City finds that the above-described lands are inappropriate for use in satisfying the identified residential and commercial land needs. As such, they are not included in the amended McMinnville urban growth boundary.

#### Development constraints -

##### *Slopes*

This area of Class III soils abuts the existing urban growth to the east. The City's housing needs are for medium- and high-density; it is generally accepted that higher elevation lands with views, such as the West Hills area, tend to be developed for low-density residential housing. This has been the case in McMinnville, as is evident elsewhere in the west hills. Further, in conversations with local engineers, City staff are advised that sloped land areas can cost anywhere from \$5,000 to \$15,000 per lot in additional development costs, depending on site-specific conditions. They also note that the construction of multi-family housing on such sloped land is problematic, from an environmental perspective, in that it requires extensive grading to accommodate the larger building footprint and off-street parking areas. This is not consistent with the housing type (more affordable) or density needed, as described in the MGMUP.

##### *Water*

As discussed elsewhere in the MGMUP, McMinnville's current water distribution system is designed as a single-level pressure system that can only provide service to those properties situated between 100 feet and 275 feet in elevation. The West Hills area west of the urban growth boundary has a low elevation of approximately 300 feet, and rises westward to a high of 560 feet and sits entirely above the current water service level. Provision of public water to this area would require considerable expense. It appears from the McMinnville Water & Light Water Master Plan that the agency has contemplated construction of an additional pressure zone system that could provide water service up to a high elevation of 415 feet; this elevation occurs at roughly the mid-point of the Class III soils in the West Hills area. However, even if an additional pressure system were constructed at some point in the future, for reasons of slope and market, the City envisions that it would only enable the development of low-density single-family residential within the West Hills area. Since the City is in need of medium- and high-density residential development, construction of an additional pressure system will not help in this endeavor.

##### *Transportation*

Two public streets stub to the existing urban growth boundary at the east edge of the West Hills area: Fox Ridge Road at the north terminates in a series of private driveways and easements serving residences on acreages; Redmond Hill Road at the south is a

---

<sup>6</sup> Development of the West Hills area that is situated inside the current McMinnville urban growth boundary is encumbered by the West Hills Planned Development Overlay Ordinance. In part, this overlay was established in recognition of the "scenic values unique to this area, and topographical features which are not conducive to the standard development practices normally employed in residential designs in the City."

public street all the way through to its existing stub at the urban growth boundary. For development to occur in the West Hills area west of the current urban growth boundary, Redmond Hill Road could be extended, but a secondary access road would have to be created in order to provide reasonable circulation and needed emergency vehicle access. For extension of Fox Ridge Road, right-of-way dedication would have to occur either along the existing privately held driveways or along a new alignment. A third option would be the extension of West 2<sup>nd</sup> Street, which currently stubs approximately 3,000 feet to the east of the existing urban growth boundary. Of further consideration, Peavine Road lies to the southwest of the West Hills area; however, a wide band of severe slopes (exceeding 25 percent gradient) lies between Peavine Road and the area of Class III soils, which are adjacent to the existing urban growth boundary, creating an impediment to a street connection. Extension of any of these three streets would require expensive design and construction measures because of the relatively steep grades present across this area.

The City finds that the relatively steep grades of the Class III and IV soils in the West Hills area, coupled with distance from services and from the city center, will make the provision of public access and transportation more difficult and expensive; public transportation will be integral to the medium- and high-density housing which the City is planning for.

#### Land use compatibility –

The area within the western portion of the existing urban growth boundary is above the 275-foot elevation mark for service under the existing municipal water system. To the east of that elevation marker, the area is rapidly undergoing development with low-density single-family residential subdivisions. Preliminary indications are that this development pattern will continue. If needed medium- and high-density housing were placed in the West Hills area through westward expansion of the urban growth boundary, it would lie between low-density housing at the east and resource land at the west. From a planning perspective, this is not a logical scenario as it increases the potential for conflicts between residential uses and farm/forest resource management.

This area's distance to commercial development also adds to its infeasibility for medium- and high-density residential development. The goal of higher-density residential development is that residents will not have to travel far to obtain services, and that public transportation will be most accessible. The West Hills area is a significant distance (more than a mile and a half) from any existing or proposed concentration of services.

#### Agricultural land compatibility –

The West Hills area borders on farm and forestry lands to the north, west, and south. If brought into the urban growth boundary and developed with needed medium- or high-density housing, the potential for conflicts between the residential development and surrounding farming or forestry operations would increase significantly: the expansion would increase the number of dwelling units and residents adjacent to these farm and forestry operations.

Further, the bulk of the Class III soils within this portion of the West Hills are parts of larger parcels which are managed for farm or forestry uses, and comprise the best soils



of those parcels; development on these soils would leave the residual parcels dominated by Class IV or lesser quality soils.

#### Complete neighborhoods –

The Class III soils adjacent to the existing urban growth boundary at the west edge of McMinnville are concentrated outside the boundaries of the nearest Neighborhood Activity Center (NAC). Development of medium- to high-density housing in this area would create a "satellite" area extending out into the resource land areas.

In accordance with ORS 197.298 (3) (a), (b), and (c), the City concludes that the concentration of Class III soils within the West Hills area adjacent to the existing westerly urban growth boundary are inadequate to accommodate the specific types of land needs identified in the MGMUP, for the reasons cited above. Accordingly, the City has not included these lands within its expanded urban growth boundary.

#### **West Hills South**

This area consists of two parcels which adjoin the south edge of the existing westerly urban growth boundary south of Redmond Hill Road, and which are predominantly Class III soils. The more easterly of these two parcels, tax lot R4524-01300 (hereafter referred to as "the Thompson property"), is approximately 37.23 acres and is almost entirely composed of Class III soils; two small inclusions of Class II soils are located at the extreme east edge of this parcel. The westerly of the two parcels is tax lot R4424-02000, which is 88 acres in size. This parcel includes pockets of Class II soils as well as pockets of Class IV and VIII soils.

Topographically, these two parcels lie at the base of the West Hills (Coast Range foothills). The western portion of tax lot 2000 exhibits a seven percent slope where it rises upward toward the West Hills; however, the bulk of the parcel is essentially flat. The Thompson property is flat throughout, with the exception that a portion of the base of a small knoll on the neighboring parcel to the east extends within the extreme east edge of the parcel. These parcels are situated within the current limits of the McMinnville Water and Light water service area, unlike the majority of other West Hills properties described previously.

#### Development constraints –

Both parcels feature intermittent streams: two streams converge at the northeast corner of tax lot 2000 and a single stream flows to the east across the site; a single drainage ditch flows from north to south across the eastern portion of the Thompson property. Intermittent streams such as these are considered as linear wetlands pursuant to the Division of State Lands (DSL) classification system; assuming a 25-foot no-build buffer along each side of these stream segments within these two parcels in accordance with DSL guidelines, this would remove approximately 12.6 acres from the buildable land area of tax lot 2000 and approximately 2.0 acres from the buildable land area of the Thompson property. The resulting gross buildable acreages would tentatively be estimated at approximately 75 acres for tax lot 2000 and 34 acres for the Thompson property.

Land use compatibility –

Inclusion of these two parcels into the urban growth boundary would enable their development with medium- and high-density housing in keeping with the City's identified land use needs.

Agricultural land compatibility –

The inclusion of these two parcels would reduce slightly the length of perimeter that would abut actively farmed land.

Based upon the above findings, the City also concludes that identified residential land needs can be accommodated on these two parcels (R4524-01300, referred to as "the Thompson property," and R4424-02000, which are predominately Class III and Class IV soils. The City, therefore, recommends their inclusion into the expanded urban growth boundary.

**Lands West of Old Sheridan Road**

Forming a crescent in the area southwest of McMinnville are lands comprised of Class III soils identified as Dayton Silt Loam, thick surface ("Dc" on US Department of Agriculture soil maps). This band generally parallels Old Sheridan Road to the northwest and Durham Road to the south; Highway 18 crosses through the subject site's geographic mid-point. These lands appear to follow historic drainage ways, which is consistent with the description for Dayton soils. Topographically, the area is relatively flat; physical improvements are few and consist of single-family residences on large-parcel, actively farmed holdings. The northern most tip of these lands is situated several hundred feet southwest of the existing McMinnville urban growth boundary (it does touch, however, on a portion of the Southwest subarea, which is proposed to be added to the urban growth boundary) and extends to the south a distance of nearly two miles. Of note, a portion of the Redmond family Century farm is located within this area.

This geographic area also includes a small, isolated area of Class IV soils, identified as Dayton silt loam ("Da").

For the following reasons, the City finds that the above-described lands are inappropriate for use in satisfying the identified residential and commercial land needs. As such, they are not included in the amended McMinnville urban growth boundary.

Agricultural land compatibility –

This land, if brought into the urban growth boundary, would be bordered by actively farmed land on all sides, and would include lands that are an integral part of the Redmond family Century farm. Its inclusion would also increase significantly the perimeter of land that would be in direct proximity to farmed land. Extension of public utilities to serve residential or commercial development within these lands would add pressure to urbanize adjacent resource lands in the future.

### Residential use limitations –

The Soil Survey for Yamhill County classifies the Dayton soils as "severe" for the siting of residences and playgrounds, noting poor drainage, and high water table in winter and spring.<sup>7</sup> Further, this survey states that, for foundations for low buildings the soil has "low shear strength; medium to high compressibility; high shrink-swell potential in subsoil; water table may rise to surface in winter; 12 to 24 inches depth to claypan; and very slow permeability." For "highway location," it notes that the "water table may rise to surface in winter; high shrink-swell potential in subsoil; and difficult to excavate." Because of these characteristics, the City finds that it is poor planning to direct future urban development to such lands.

### Neighborhood Activity Centers –

A cornerstone of the MGMUP is to apply "activity center" planned developments in appropriate locations in order to create support for neighborhood scale commercial and transit supportive development. Under this concept, neighborhoods are each centered or organized around a center that would provide a range of land uses within walking distance of neighborhoods --- preferably within a one-quarter mile area --- including neighborhood scale retail, office, recreation, civic, school, day care, places of assembly, public parks and open spaces, and medical offices. These centers have been selected due to their location, distribution, proximity to vacant buildable lands, ability to accommodate higher intensity and density development, and their context and ability to foster the development of a traditional, or complete, neighborhood. These centers have been equally spaced around the edge of the McMinnville urban area, with the downtown serving as the geographic hub. These centers need to be located at major street intersections.

As to this particular area, the area is not contiguous to the existing urban growth boundary. Major streets that currently exist to serve this area include Peavine Road and South Hill Road, both of which are under Yamhill County jurisdiction. Peavine Road is located more than one-half mile from the current urban growth boundary; Hill Road is a short distance south of the boundary. The nearest existing urban residential development is located more than one mile from where Peavine Road crosses through the Class III soil lands. It may be possible to locate an activity center upon these Class III soil lands, but it would be relatively isolated from other existing McMinnville residential development and services.

Based upon these distribution and location criteria, and the physical form that such an expansion would take, the City finds that these lands are not supportive of a "neighborhood activity center" and, as such, should not be included in the expanded urban growth boundary.

### Existing Development Patterns –

Urban development in this area has been kept east of Hill Road, north of the North Fork of Cozine Creek, and east of Old Sheridan Road due to the presence of the McMinnville urban growth boundary, adopted in 1981. As noted previously, this area of Class III and

<sup>7</sup> As regard siting for residences, a "severe" rating is associated with soils that exhibit poor stability, or that are poorly drained or subject to flooding, and have high shrink-swell potential and low shear strength.

Class IV soils is not contiguous to the existing urban growth boundary and extends away from the boundary in a relatively narrow band to the southwest before turning eventually to the east. In order to permit this area's urbanization, and for reasons of efficiency, some amount of land with Class II soils would need to be included in order to make it contiguous to the existing McMinnville urban growth boundary. Even so, the City finds that such a boundary --- a finger extending into actively farmed lands --- would not be conducive to an efficient development pattern, nor to the criteria supportive of the activity center concept, as summarized previously and described more fully in the MGMUP. It would also partially, or completely, surround other actively farmed areas, thereby putting increased pressure on them for future urbanization, and, in the meantime, creating rural / urban conflict.

The City has considered the lands west and southwest of the existing UGB and is recommending that some of them be included in the proposed expansion (Northwest, Southwest, and the Thompson property sub-areas), as well as sub-areas to the north and southeast (Grandhaven and Three Mile Lane, respectively). The other areas referenced are located farther to the west and southwest and are not included for reasons related to the cost and feasibility of providing necessary urban services (elevation and distance), transportation, distance to planned and existing services (schools, commercial development), and housing need (elevation, slope, and cost of development will make it less likely that these would support smaller lot development). Also, lands east of the airport were not given consideration due to their location adjacent to the airport and weapons training facility and their land use incompatibilities with urban residential development

For the above noted reasons, the City concludes that specific types of land needs as identified in the MGMUP can be accommodated within lands south of the future high school site, and south of the Redmond Hill subarea. The City concludes that all other resource lands of predominantly Class III or greater soils cannot reasonably accommodate such land needs. The City, therefore, has not included these lands in its expanded urban growth boundary, as permitted by ORS 197.298 (3)(a - c).

Consistent with ORS 197.298, and other applicable planning laws and goals, the City next analyzed Class II lands to determine their suitability to accommodate identified land needs. The details of this analysis are found in the MGMUP, and Appendix C of the MGMUP. Such soils are generally contained within the following geographic subareas:

- o Grandhaven;
- o Three Mile Lane;
- o Norton Lane;
- o Southwest; and
- o Northwest.

A summary of soil types for each of these sub-areas follows.

- Norton Lane. Soil classification within the eastern portion of this sub-area (the portion east of Joe Dancer Park) was field investigated and mapped in 1999 by a private soil scientist.<sup>8</sup> That investigation found that some 1.9 percent (3.73 acres) of the soils within the area are classified as SCS Class I. This soil is located primarily

<sup>8</sup> Jack Parcell, Certified Soil Scientist, #19574 CPSC – June, 1999. (MGMUP, Appendix C, Attachment 3)

west of the location of the milking barns of the Shurig Dairy that was in operation on this site in the recent past. Class II soils comprise nearly 75 percent of the site. The balance of this area is composed of Class III (14.5 percent), Class IV (1.8 percent), and Class VI (7 percent) soils. The majority of the western portion of this sub-area (Joe Dancer Park area) is identified as Class II and contains no Class I soils.

- Three Mile Lane. Soils within this sub-area are almost entirely Class II with a small amount of Class III and Class VI found mainly within the 100-year floodplain of the South Yamhill River. A relatively small occlusion of Class I soil extends east from the Lawson Lane sub-area.<sup>9</sup>
- Northwest. Soils within this sub-area are predominantly Class III and IV with a smaller amount of Class II soils located along the area's northern perimeter. There are no Class I soils within this sub-area.<sup>10</sup>
- Grandhaven. Soil classification within this sub-area is almost entirely Class II and Class III. There also exist a few isolated areas of Class IV soil located throughout the sub-area.<sup>11</sup>
- Southwest. Soil classification within this sub-area is almost entirely Class II soil with a very small amount of Class IV and Class VI along the edge of and within the 100-year floodplain of the adjacent waterways.<sup>12</sup>
- West Hills South. Soil classification within this sub-area is almost entirely Class III. Lesser amounts of Class II and Class IV soils are found in the southern, and extreme western edges of the site, respectively.

### **Conclusion:**

Based upon the above findings, the City has concludes that resource lands within the Northwest, Southwest, Grandhaven, Norton Lane, Three Mile Lane, and West Hills South subareas are, on balance, best suited to accommodate the residential and commercial land needs as identified in the MGMUP. In summary, other areas analyzed and not included were found to be unable to reasonably accommodate such needs for reasons related to the cost and feasibility of providing necessary urban services (elevation and distance), transportation, distance to planned and existing services (schools, commercial development), potential rural/urban conflict, public safety, and inconsistency with growth management planning concepts and goals, as stated in the MGMUP.

The Council concludes that ORS 197.298(2) and (3) and Factor 6 are satisfied because areas with higher capability agricultural land are being retained outside the UGB and other areas with lower capability agricultural are proposed for inclusion. Where higher priority lands are proposed for inclusion, the City has provided sufficient reasons to satisfy ORS 197.298 (3) (a – c).

<sup>9</sup> Natural Resources Conservation Service (NRCS) - <http://www.nrcs.usda.gov>

<sup>10</sup> Natural Resources Conservation Service (NRCS) - <http://www.nrcs.usda.gov>

<sup>11</sup> Natural Resources Conservation Service (NRCS) - <http://www.nrcs.usda.gov>

<sup>12</sup> Natural Resources Conservation Service (NRCS) - <http://www.nrcs.usda.gov>

# ALTERNATIVE LANDS DISCUSSION AREAS - EAST

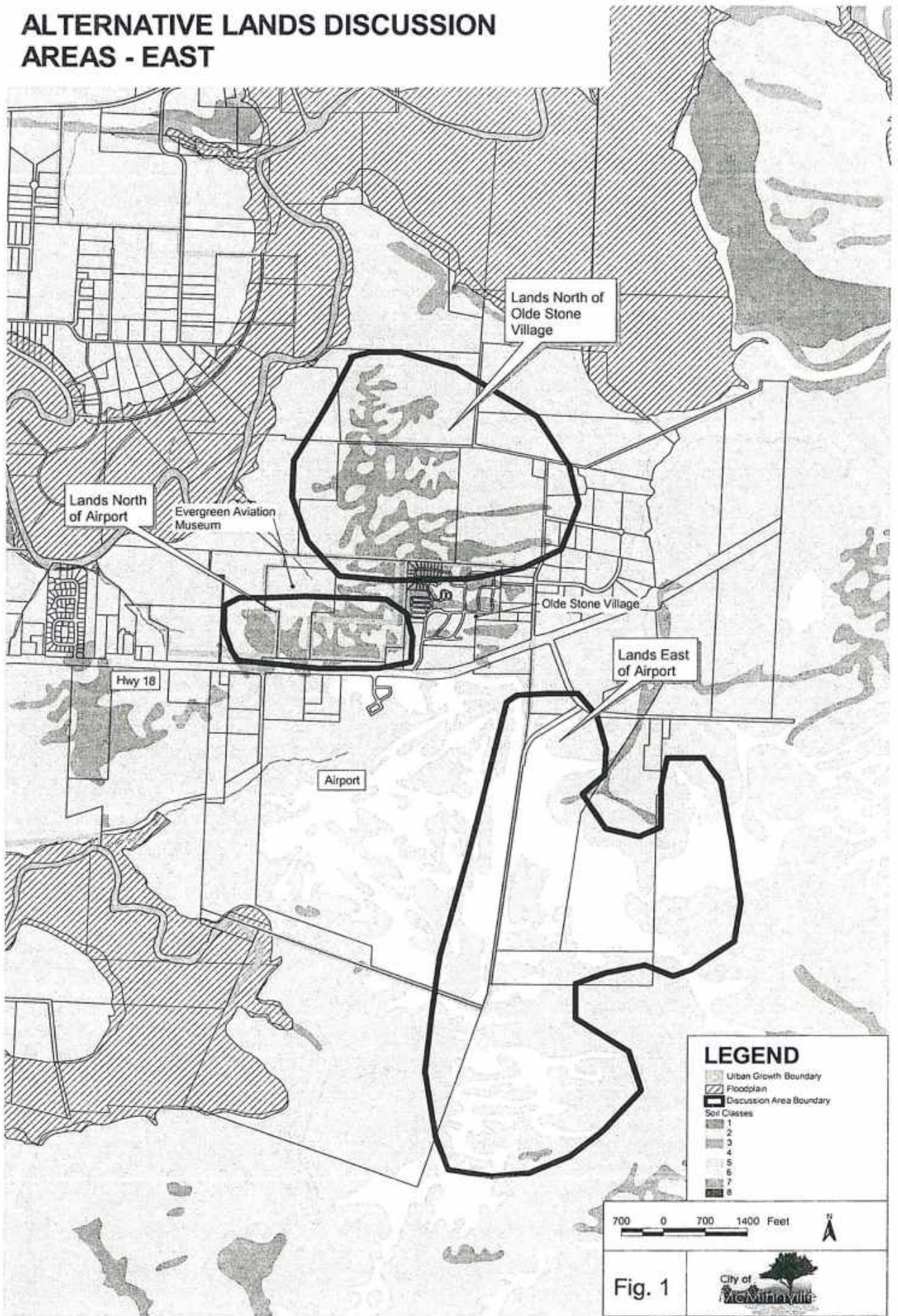
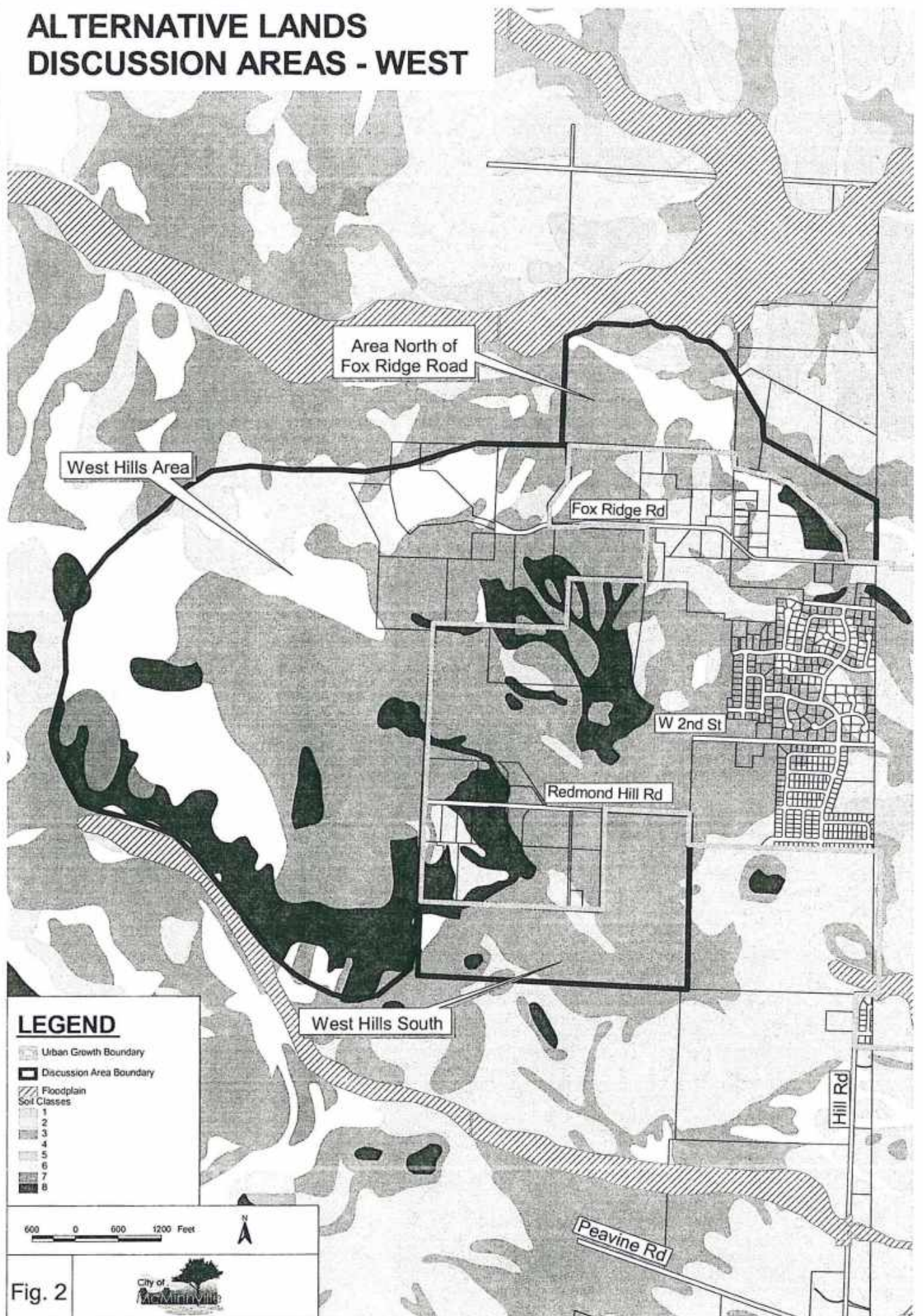


Fig. 1



# ALTERNATIVE LANDS DISCUSSION AREAS - WEST



## LEGEND

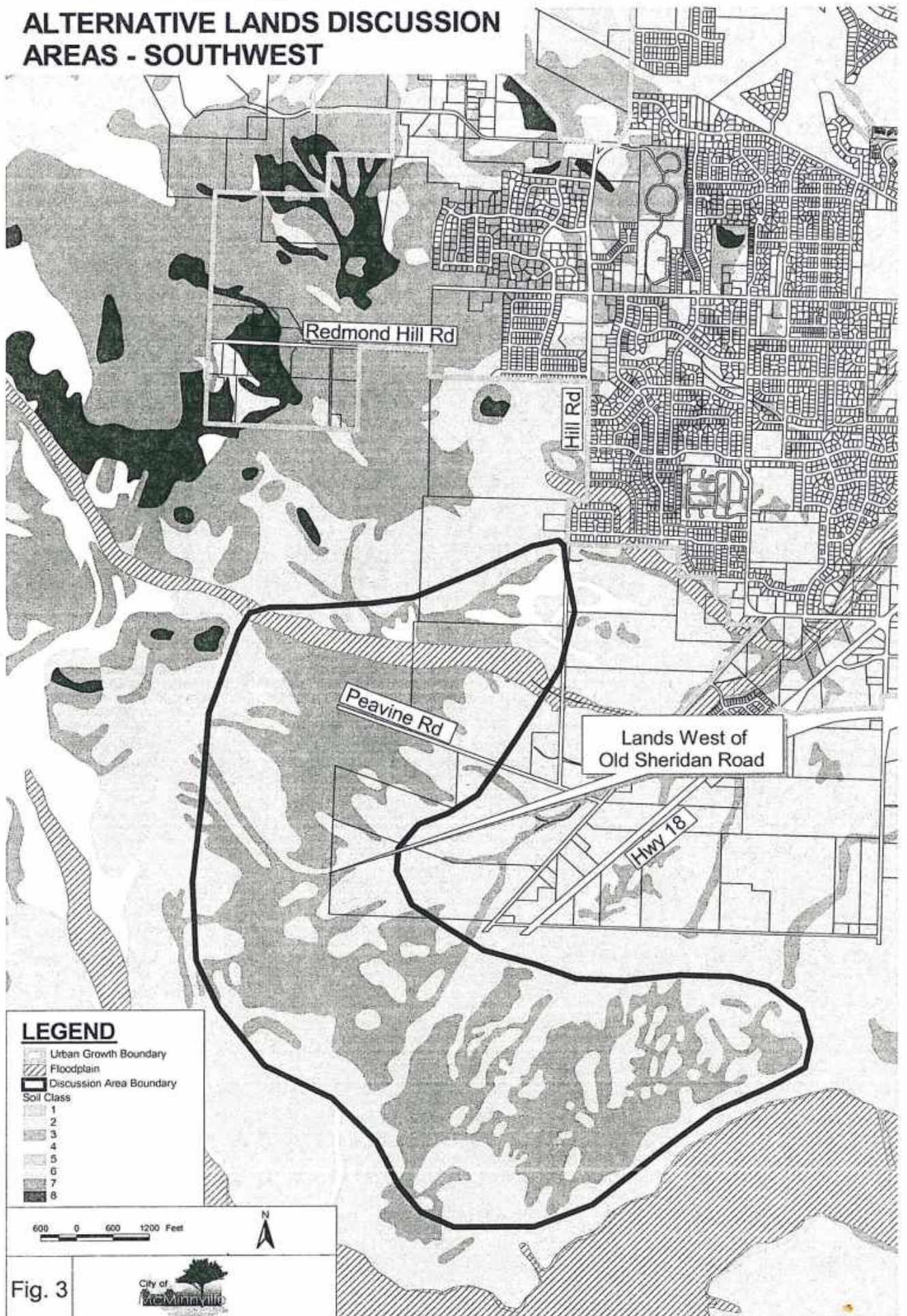
- Urban Growth Boundary
- Discussion Area Boundary
- Floodplain
- Soil Classes**
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8



Fig. 2



# ALTERNATIVE LANDS DISCUSSION AREAS - SOUTHWEST



## LEGEND

- Urban Growth Boundary
- Floodplain
- Discussion Area Boundary
- Soil Class**
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

600 0 600 1200 Feet



Fig. 3





**FILED: July 13, 2011**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, FRIENDS OF YAMHILL COUNTY  
and ILSA PERSE,  
Petitioners,

v.

LAND CONSERVATION AND DEVELOPMENT COMMISSION  
and CITY OF MCMINNVILLE,  
Respondents.

Land Conservation and Development Commission  
06WKTASK001709, 08WKTASK001760

A134379

Argued and submitted on September 28, 2010.

Mary Kyle McCurdy argued the cause and filed the briefs for petitioners.

Steven Shipsey, Assistant Attorney General, argued the cause for respondent Land Conservation and Development Commission. On the brief were John R. Kroger, Attorney General, Jerome Lidz, Solicitor General, and Denise G. Fjordbeck, Attorney-in-Charge Civil/Administrative Appeals.

Jeffrey G. Condit argued the cause for respondent City of McMinnville. With him on the brief was Miller Nash LLP.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Landau, Judge pro tempore.

SERCOMBE, J.

Reversed and remanded.



1 begin by describing the legal framework for regulation of the future uses of land around  
2 an incorporated city and the periodic review planning process used to adopt those  
3 regulations. ORS 197.175(1) requires cities and counties to exercise their planning and  
4 zoning responsibilities in accordance with state land use statutes and special rules (goals)  
5 approved by LCDC. ORS 197.175(2) specifically directs that each city and county  
6 "adopt, amend and revise comprehensive plans in compliance with goals approved by  
7 [LCDC]." The LCDC goals, in turn, set out substantive standards for the content of  
8 comprehensive plans. However, a city or county can take an "exception" to the  
9 application of a goal to particular property regulated by the comprehensive plan.

10 We recently described the relationship of the goals and the exception  
11 process in [Waste Not of Yamhill County v. Yamhill County](#), 240 Or App 285, 287-89, 246  
12 P3d 493 (2010), [adh'd to as modified on recons](#), 241 Or App 199, \_\_\_ P3d \_\_\_ (2011):

13 "Some of those goals require plans to restrict the use or development of  
14 different types of resource lands, *e.g.*, Goal 3 (Agricultural Lands), OAR  
15 660-015-0000(3), and Goal 4 (Forest Lands), OAR 660-015-0000(4).  
16 When a city or county wishes to adopt a property-specific plan provision  
17 that is inconsistent with a goal requirement, it approves an exception to that  
18 goal requirement as part of the comprehensive plan. \* \* \*

19 "ORS 197.732(2) [and Goal 2, Part II] \* \* \* describe[ ] three types  
20 of exceptions: for physically developed land that is not available for the  
21 goal use; for land that is 'irrevocably committed' to a nongoal use; and for  
22 land needed for a use not allowed by a goal policy. The latter type of  
23 exception, a 'reasons' or 'need' exception is allowed by ORS 197.732(2)(c)  
24 [and Goal 2]:

25 "'A local government may adopt an exception to a goal if:

26 ""\* \* \* \* \*

27 ""(c) The following standards are met:

1           "(A) Reasons justify why the state policy embodied in the  
2 applicable goals should not apply;

3           "(B) Areas that do not require a new exception cannot reasonably  
4 accommodate the use;

5           "(C) The long term environmental, economic, social and energy  
6 consequences resulting from the use at the proposed site with measures  
7 designed to reduce adverse impacts are not significantly more adverse than  
8 would typically result from the same proposal being located in areas  
9 requiring a goal exception other than the proposed site; and

10           "(D) The proposed uses are compatible with other adjacent uses or  
11 will be so rendered through measures designed to reduce adverse impacts."

12 Thus, when a city amends its comprehensive plan, including any amendment to its UGB,  
13 the city must justify the change as being consistent with the LCDC goals, except to the  
14 extent that compliance with a goal is excused by an exception to its application.

15           Goal 14 (Urbanization), OAR 660-015-0000(14), provides particular  
16 standards for setting or changing a UGB:<sup>1</sup>

17           "Urban growth boundaries shall be established to identify and  
18 separate urbanizable land from rural land. Establishment and change of the  
19 boundaries shall be based upon considerations of the following factors:

20           "(1) Demonstrated need to accommodate long-range urban  
21 population growth requirements consistent with LCDC goals;

22           "(2) Need for housing, employment opportunities, and livability;

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<sup>1</sup> The provisions of Goal 14 were amended by LCDC on April 28, 2005. The amendments allow local governments "that initiated an evaluation of the [UGB] land supply prior to April 28, 2005, and consider[ed] an amendment of the UGB based on that evaluation" to apply the former version of Goal 14 to that amendment. The city applied the former version of Goal 14. All references to Goal 14 and its implementing regulations in this opinion pertain to the former Goal 14 and the regulations in effect prior to the goal amendments, unless otherwise noted.

1                   "(3) Orderly and economic provision for public facilities and  
2 services;

3                   "(4) Maximum efficiency of land uses within and on the fringe of  
4 the existing urban area;

5                   "(5) Environmental, energy, economic and social consequences;

6                   "(6) Retention of agricultural land as defined, with Class I being the  
7 highest priority for retention and Class VI the lowest priority; and,

8                   "(7) Compatibility of the proposed urban uses with nearby  
9 agricultural activities.

10                   "The results of the above considerations shall be included in the  
11 comprehensive plan. In the case of a change of a boundary, a governing  
12 body proposing such change in the boundary separating urbanizable lands  
13 from rural land, shall follow the procedures and requirements as set forth in  
14 the Land Use Planning goal (Goal 2) for goal exceptions."

15 The referenced Goal 2 standards for exceptions are to the exception standards noted  
16 above. \_\_\_ Or App at \_\_\_ (slip op at 2-3).

17                   ORS 197.298 supplements the Goal 14 criteria used to justify a UGB  
18 change. The statute requires that land be added to a UGB in a priority sequence:

19                   "(1) In addition to any requirements established by rule addressing  
20 urbanization, land may not be included within an urban growth boundary  
21 except under the following priorities:

22                   "(a) First priority is land that is designated urban reserve land under  
23 ORS 195.145, rule or metropolitan service district action plan.

24                   "(b) If land under paragraph (a) of this subsection is inadequate to  
25 accommodate the amount of land needed, second priority is land adjacent to  
26 an urban growth boundary that is identified in an acknowledged  
27 comprehensive plan as an exception area or nonresource land. Second  
28 priority may include resource land that is completely surrounded by  
29 exception areas unless such resource land is high-value farmland as  
30 described in ORS 215.710.

1           (c) If land under paragraphs (a) and (b) of this subsection is  
2 inadequate to accommodate the amount of land needed, third priority is  
3 land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

4           (d) If land under paragraphs (a) to (c) of this subsection is  
5 inadequate to accommodate the amount of land needed, fourth priority is  
6 land designated in an acknowledged comprehensive plan for agriculture or  
7 forestry, or both.

8           (2) Higher priority shall be given to land of lower capability as  
9 measured by the capability classification system or by cubic foot site class,  
10 whichever is appropriate for the current use.

11           (3) Land of lower priority under subsection (1) of this section may  
12 be included in an urban growth boundary if land of higher priority is found  
13 to be inadequate to accommodate the amount of land estimated in  
14 subsection (1) of this section for one or more of the following reasons:

15           (a) Specific types of identified land needs cannot be reasonably  
16 accommodated on higher priority lands;

17           (b) Future urban services could not reasonably be provided to the  
18 higher priority lands due to topographical or other physical constraints; or

19           (c) Maximum efficiency of land uses within a proposed urban  
20 growth boundary requires inclusion of lower priority lands in order to  
21 include or to provide services to higher priority lands."

22           Thus, ORS 197.298(1) requires that the statutory priorities be applied to  
23 UGB amendments "[i]n addition to any requirements established by rule addressing  
24 urbanization," *i.e.*, Goal 14 and its implementing administrative rules. The priority  
25 statute directs the application of different, but somewhat analogous, factors in approving  
26 UGB changes than those mandated by Goal 14. This case raises questions about the fit  
27 between Goal 14 and ORS 197.298: whether Goal 14 is applied to the classification of  
28 lands as eligible for prioritization under ORS 197.298, how Goal 14 works in  
29 determining whether higher-priority land is "inadequate to accommodate the amount of

1 land needed," and the ways the two policies are otherwise integrated in their application.

2           One final legal setting is worthy of discussion at this point. The plan  
3 amendments in this case arose in the context of "periodic review" of the city's  
4 comprehensive plan. The statutes that define the periodic review process provide context  
5 to an understanding of the demands of Goal 14 and ORS 197.298 when a UGB is  
6 changed as part of a plan update.

7           Once a local comprehensive plan has been approved or "acknowledged" by  
8 LCDC as consistent with the statewide planning goals, ORS 197.628(1) requires that the  
9 plan and implementing land use regulations be periodically updated

10           "to respond to changes in local, regional and state conditions to ensure that  
11 the plans and regulations remain in compliance with the statewide planning  
12 goals adopted pursuant to ORS 197.230, and to ensure that the plans and  
13 regulations make adequate provision for economic development, needed  
14 housing, transportation, public facilities and services and urbanization."

15           ORS 197.296 specifies particular work tasks for larger cities during  
16 periodic review to accommodate demand for new housing. A locality must "demonstrate  
17 that its comprehensive plan \* \* \* provides sufficient buildable lands within the urban  
18 growth boundary \* \* \* to accommodate estimated housing needs for 20 years." ORS  
19 197.296(2). To do this, ORS 197.296(3) requires that a local government shall

20           (a) Inventory the supply of buildable lands within the urban growth  
21 boundary and determine the housing capacity of the buildable lands; and

22           (b) Conduct an analysis of housing need by type and density range,  
23 in accordance with ORS 197.303 and statewide planning goals and rules  
24 relating to housing, to determine the number of units and amount of land  
25 needed for each needed housing type for the next 20 years."





1 downtown area and along major roads, infill and redevelopment of underutilized land,  
2 and creation of "neighborhood activity centers" (NACs), in order to intensify land uses in  
3 the UGB expansion areas.

4 The plan described NACs as follows:

5 "Under this concept, neighborhoods are each centered or organized around  
6 an activity center that would provide a range of land uses within walking  
7 distance of neighborhoods--preferably within a one-quarter mile area--  
8 including neighborhood-scaled [commercial and civic uses]. Surrounding  
9 the activity center (or **focus area**) are **support areas**, which include the  
10 highest-density housing within the neighborhood, with housing densities  
11 progressively decreasing outward.

12 "These activity centers would be selected due to their location, distribution,  
13 proximity to vacant buildable lands, ability to accommodate higher  
14 intensity and density development, and their context and ability to foster the  
15 development of a traditional, or complete, neighborhood. The selected  
16 Neighborhood Activity Centers should be equally spaced around the edge  
17 of the McMinnville urban area, with the downtown area serving as the  
18 geographic center or hub."

19 (Boldface in original.) After further specifying those technical parameters for an NAC,  
20 which require a high degree of comprehensive master planning and a defined amount of  
21 land, the plan concludes that

22 "Neighborhood Activity Centers should not be located in areas that are  
23 heavily parcelized, or characterized by numerous individual ownerships.  
24 Priority should be given to locations that consist primarily of large vacant  
25 parcels in order to maximize the ability to realize such development in a  
26 cost effective, comprehensively planned manner."

27 The city determined that the NAC form of development would facilitate the construction  
28 of new medium-density to high-density housing, as compared with the low-density  
29 residential development pattern of the past, and decrease the quantity of land that needed  
30 to be added to the UGB by approximately 225 acres.

1           With those assumptions, the city determined that it needed to expand the  
2 UGB by 1,188 gross acres, including 890 buildable acres. The city concluded that this  
3 was necessary to accommodate a need for 537 acres for residential use (341 acres for  
4 low-density residential development and 106 acres for medium-density and high-density  
5 residential use), 193 acres for office and commercial uses, and 314 acres for parks in  
6 order to serve an estimated population of 44,055 by 2023.<sup>2</sup> The plan and its findings  
7 quantified needs for additional land supply, both inside and outside of the existing urban  
8 growth boundary, by land use type (*e.g.*, single-family detached housing, manufactured  
9 dwellings, row/townhouses, and apartments) and zoning designation.

10           The adopted UGB changes designated four parts of the added land for  
11 neighborhood activity centers (Three Mile Lane, Southwest, Northwest, and Grandhaven  
12 NACs). For the most part, those boundary changes captured prime agricultural land.  
13 Another area of agricultural land was added, a good part of which had already been  
14 developed as a city park (Norton Lane). The city also proposed to add four exception  
15 areas to the boundary to meet residential needs (Fox Ridge Road, Redmond Hill Road,  
16 Riverside South, and Lawson Lane). The city decided, however, not to add five  
17 exception areas (Westside Road, Bunn's Village, Old Sheridan Road, Riverside North,  
18 and Booth Bend Road) for various reasons.

19           The findings adopted to justify those actions evaluated a number of  
20 considerations in applying ORS 197.298(1) to nine alternative exception areas, including

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<sup>2</sup>           The remaining acres were needed for institutional and governmental uses.

1 potential for annexation, costs of water service, transportation circulation issues,  
2 consistency with a compact urban form (distance from commercial services and schools),  
3 compatibility with adjacent land uses, and environmental concerns. The findings  
4 analyzed whether the exception areas would be suitable for an NAC. Both the plan and  
5 the adopted findings concluded that the five excluded exception areas would be  
6 insufficient to meet that need:

7 "These sub-areas are, in summary, extensively parcelized; held in multiple  
8 ownerships; require costly extension or upgrades to existing public utilities  
9 to support urban density development; are located some distance from  
10 existing public utilities, schools, and other services; in some cases, located  
11 adjacent to heavy industrial development and rail; and have extensive  
12 amounts of rural residential development in locations and patterns that  
13 make higher density development impracticable or [un]timely."

14 The findings further explained, "Absent supporting urban residential development, it is  
15 not appropriate that these sub-areas be considered for other identified residential land  
16 needs, such as schools, parks, and churches, or for commercial land needs." The plan  
17 assumed that future low-density residential land need could be satisfied by land within  
18 the existing UGB. The findings then evaluated the included exception areas and five  
19 parcels of high-quality agricultural land (Norton Lane, Three Mile Lane, Northwest,  
20 Grandhaven, and Southwest properties) for consistency with the Goal 14 locational  
21 factors.<sup>3</sup>

22 The city presented the MGMUP amendments and supporting

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<sup>3</sup> Another agricultural area, West Hills South, was analyzed but not proposed to be added to the UGB at that time.

1 documentation to the Department of Land Conservation and Development (DLCD or  
2 department) for approval as a completed work task.<sup>4</sup> Petitioners 1000 Friends of Oregon  
3 and Friends of Yamhill County objected to the city's submissions and appealed the  
4 director's decisions on those objections to LCDC. After a hearing, the commission  
5 approved inclusion of three exception areas in the UGB (Riverside South, Fox Ridge  
6 Road, and Redmond Hill), and remanded the proceeding to the city for an evaluation of  
7 adding lower-quality agricultural land, as well as, among other things, consideration of  
8 parkland needs and the exclusion of floodplain areas from the proposed UGB. On  
9 remand, the city adopted ordinances to remove floodplains from three expansion  
10 subareas, adjust slightly the calculations of needed lands, change the boundaries of the  
11 added areas, correct implementing zoning, justify its parklands assumptions, and  
12 otherwise respond to the remanding directives. In particular, the city added some lower-  
13 quality agricultural land (Fox Ridge North and West Hills South), and adopted new  
14 findings to justify its exclusion of other lower-quality agricultural lands.

15           Ultimately, the city determined that it needed to add 663 gross acres to the  
16 UGB for residential land needs to be developed at a higher density (6.3 dwellings/acre)

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<sup>4</sup> Under the periodic review process, when a work task is completed, the actions are submitted to the DLCD director for approval. ORS 197.633(4). The director can approve or remand the work task, or refer the work task to LCDC. *Id.* If the director approves completion of the work task, the action is final unless an interested party files an objection to the approval. If a work task is referred or appealed, LCDC will consider the matter under a process set out by its rules. ORS 197.633(5). *See also* ORS 197.633(2) (required rulemaking for periodic review process); OAR ch 660, div 25 (periodic review rules).

1 than allowed under low-density residential zoning. It proposed to add four NAC areas to  
2 meet 488 acres of that need, two additional parcels of agricultural land to address 175  
3 acres of that need (Norton Lane and West Hills South), and the three previously approved  
4 exception areas to be developed for residences at lower densities (Riverside South, Fox  
5 Ridge Road, and Redmond Hill Road).

6           And so, the city sought DLCD approval of the retooled UGB amendments.  
7 Petitioners filed extensive and particular objections to the submission with the DLCD  
8 director. In general, petitioners asserted that the city zoning map and regulations did not  
9 adequately implement the plan directives, the large size of the proposed UGB expansion  
10 was not justified, and the expansion improperly included prime agricultural land instead  
11 of available exception areas and areas of poorer soils. Petitioners argued that those  
12 actions were inconsistent with ORS 197.298, Goal 14, and the Goal 2 exception criteria.  
13 Petitioners objected to particular city findings that ruled out individual exception areas  
14 and lower-quality agricultural lands, complaining either that the findings lacked factual  
15 support or were insufficient to explain the particular decision under all applicable  
16 decisional standards. The objections were not sustained by the DLCD director, who  
17 approved the UGB changes.

18           Petitioners appealed to LCDC. Petitioners took issue with DLCD's  
19 response to their objections. They complained that the DLCD report did not respond to  
20 their objections and that DLCD otherwise erred in sustaining factual findings and making  
21 legal determinations about the various parcels included and excluded from the proposed

1 UGB change. Among the many specific assertions, petitioners argued that the NAC  
2 designations over-allocated needed amounts of commercial land and parkland, the  
3 boundary expansion excluded over 225 buildable acres of exception lands, and the  
4 relevant legal standard was "whether exception areas can accommodate the use at all, not  
5 whether they can do so as efficiently or beneficially as farmland." Specifically,  
6 petitioners alleged that "the city's identified land needs are not limited to pedestrian- and  
7 transit-oriented development in neighborhood activity centers" and added that,  
8 "[u]nder ORS 197.298, resource land cannot be included in a UGB instead  
9 of exception land if the exception land can reasonably accommodate some  
10 portion of identified needs. It cannot be excluded simply because it cannot  
11 meet one type of identified land need."

12 Petitioners reiterated that the exclusion of parcels with lower-quality agricultural lands  
13 could not be justified because of their inability to accommodate an NAC when "the city  
14 has [a] specific, identified land need for low density housing that exceeds the capacity of  
15 all the exception areas it has included within the UGB."

16 Following a hearing, the commission upheld the department's approval of  
17 the plan amendments. Petitioners sought review in this court. After petitioners filed their  
18 opening brief, LCDC withdrew its original order for reconsideration.

19 The order on reconsideration generally approved the exclusion of the  
20 exception areas because "they could not accommodate the identified land need  
21 (MGMUP, pp. 6-5 to 6-10)"<sup>5</sup> based on physical constraints, location relative to existing

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<sup>5</sup> The referenced part of the MGMUP is a summary of the analysis of alternative sites for a UGB expansion. It describes the city's "identified land needs" as needs for "an

1 and planned facilities, surrounding uses, market demand, and "[e]xisting development  
2 patterns and other factors affecting urbanization." LCDC more particularly justified the  
3 failure to include particular exception areas because the area could not (1) be served with  
4 public facilities under ORS 197.298(3)(b); (2) "reasonably accommodate the need for  
5 pedestrian- and transit-oriented development in a neighborhood activity center"; (3)  
6 "accommodate residential use"; or (4) "reasonably accommodate the need for a compact,  
7 pedestrian-friendly urban area." As to the omitted lower-quality resource land, West  
8 Hills was excluded because it could not "reasonably accommodate the city's identified  
9 need [for 'medium- or high-density housing']" and because of topographic constraints to  
10 the supply of water under ORS 197.298(3)(b). The resource area north of Fox Hills Road  
11 was left out because, "pursuant to Goal 2, the city did not need to consider lands under  
12 ORS 197.298 that could not reasonably accommodate its identified need." The resource  
13 land near the airport was determined to not "accommodate an identified need due to  
14 safety issues." Based on these and other extensive findings, LCDC concluded that "the  
15 city has adequately justified those areas included and excluded from the UGB based on  
16 relevant criteria." The LCDC order is before us on review.  
17

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increased percentage of multi-family, or single-family attached, housing," in general, and neighborhood activity centers, in particular, and for "314 acres of public parkland, 96 acres for public school use, and 106 acres for future commercial development." The summary further notes the "identified residential land needs as they are described in the 'McMinnville Residential Land Needs Analysis' (and the revisions to that document), and the 'Urbanization Element Update.'" The residential land needs analysis describes generic residential land needs.

1 III. CONTENTIONS OF THE PARTIES

2 Petitioners raise three assignments of error. We reject the second and third  
3 assignments of error without further discussion. The remaining assignment of error  
4 raises a number of general concerns about whether the city properly applied Goal 14 and  
5 ORS 197.298 to sort through potentially eligible property for inclusion in the UGB.  
6 Those concerns are that the city initially erred in amending the UGB and LCDC erred in  
7 upholding the UGB decisions because (1) the city did not apply the Goal 14 standards  
8 completely or consistently when it assessed exception areas by, on the one hand, using a  
9 particular factor to rule out some land with a disqualifying characteristic, but, on the other  
10 hand, including land in the boundary with that same quality; and (2) the city ruled out  
11 some land for consideration by defining its land needs too particularly at the front end of  
12 the ORS 197.298 prioritization--*i.e.*, land needed for use as an NAC or for particularized  
13 residential land needs--so that less exception land was available for the city's particular  
14 needs and more agricultural land was included in the boundary than otherwise would  
15 have been included had the city's needs been defined more generically.

16 As to the latter contention, respondents argue that ORS 197.296(3)(b)  
17 requires the city to determine "housing need by type and density range, in accordance  
18 with ORS 197.303 and statewide planning goals and rules relating to housing." To the  
19 extent that need cannot be met by zoning changes inside the UGB, then land can be  
20 added to the UGB under ORS 197.298 to address those particular housing needs.  
21 Respondents claim that that is what the city did.



1 LCDC defends its decision more specifically. The commission contends  
2 that Goal 14, in general, and its incorporated Goal 2 exception factors can be used to  
3 define even more particular land needs at the front end of the ORS 197.298 analysis.  
4 Thus, LCDC asserts that the city defined the NAC land form as the need to be evaluated  
5 under the priorities statute and relied on the desired characteristics of an NAC site as  
6 reasons to rule out higher-priority land in order to resort to lower-priority land under ORS  
7 197.298. Petitioners disagree and counter that, even if an NAC does qualify as a generic  
8 or specific land need under ORS 197.298, the land added through the NACs does not  
9 satisfy all of the city's quantitative needs for additional residential land and a more  
10 rigorous application of ORS 197.298 is required to justify bringing agricultural land into  
11 the boundary for that non-NAC need.

12 Petitioners also dispute the sufficiency of LCDC's findings on their  
13 objections to the city's rationale for not including particular exception areas in the UGB  
14 (Old Sheridan Road, Riverside North, and Booth End Road) or not adding lower-quality  
15 agricultural land (West Hills, north of Fox Ridge Road, north of McMinnville Airport,  
16 and various smaller tracts) before including prime agricultural land. The city and LCDC  
17 respond that the locational factors in Goal 14 were properly applied to categorize those  
18 exception and lower-value agricultural lands as insufficient.

19 Many of the general differences between the parties stem from their  
20 different understandings about how ORS 197.298 works to sort land available for  
21 inclusion within a UGB. In petitioners' view, the priorities statute works to categorize



1 guided primarily by the text and context of the statute, in light of any pertinent legislative  
2 history. [State v. Gaines](#), 346 Or 160, 171-72, 206 P3d 1042 (2009). In the analysis of the  
3 text of the statute, we give words of common usage their "plain, natural, and ordinary  
4 meaning." *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143  
5 (1993). That textual analysis, of course, is assisted by our prior construction of the  
6 statutory terms. [Waite v. Dempsey](#), 203 Or App 136, 141, 125 P3d 788 (2005). The  
7 context of a statute includes the entire enactment of which it was a part, [State v. Ortiz](#),  
8 202 Or App 695, 699-700, 124 P3d 611 (2005), as well as related statutes on the same  
9 subject, *State v. Carr*, 319 Or 408, 411-12, 877 P2d 1192 (1994).

10 A. *Step One: Determine the land needed under ORS 197.298(1)*

11 The first issue concerns how to categorize land needs that arise from  
12 periodic review for purposes of the application of ORS 197.298 to a large-scale  
13 expansion of a UGB. LCDC and the city argue that ORS 197.298 can be applied to  
14 prioritize areas of potential UGB expansion based upon the functional needs of  
15 particularly intended land uses (*i.e.*, an NAC). Petitioners, by contrast, suggest that the  
16 statute is applied to broad, generic types of land use needs that are identified during  
17 periodic review (*e.g.*, 250 acres for residential uses) and that adequacy determinations  
18 under ORS 197.298(1) are less particular in focus.

19 Again, the descending priorities in ORS 197.298(1) are applied to  
20 determine whether the priority land is "inadequate to accommodate the amount of land  
21 needed." The first step is to determine the "amount of land needed." That determination

1 is necessarily made by the application of Goal 14, which provides that "[e]stablishment  
2 and change of the boundaries shall be based upon considerations of the following factors:

3 (1) Demonstrated need to accommodate long-range urban population growth  
4 requirements consistent with LCDC goals; (2) Need for housing, employment  
5 opportunities, and livability \* \* \*." In [\*Residents of Rosemont v. Metro\*](#), 173 Or App 321,  
6 328, 21 P3d 1108 (2001), we explained that

7 "[w]e held in *Baker [v. Marion County]*, 120 Or App 50, 852 P2d 254, *rev*  
8 *den*, 317 Or 485 (1993),] that factors 1 and 2 of Goal 14 are interdependent  
9 and that, if one of the factors is not fully satisfied, or is less determinative,  
10 that factor must still be considered and discussed in deciding if a need for  
11 expansion of a UGB has been shown under factors 1 and 2 of Goal 14."

12 (Footnote omitted.) In the context of periodic review, Factor 1 pertains to a  
13 determination of overall land need in order to accommodate population growth. Factor 2  
14 requires subcategorization of that need at least to specify separate quantities of land  
15 needed for "housing, employment opportunities, and livability." Because different types  
16 of land use consume different amounts of land (*e.g.*, the dwellings/acre densities for low-,  
17 medium-, and high-density residential development), determining the amount of land  
18 needed to be added to a UGB during periodic review under Factors 1 and 2 necessarily  
19 requires differentiation of land use types according to their land consumption attributes.  
20 The coordinated application of ORS 197.298 with Goal 14 ("[i]n addition to any  
21 requirements established by rule addressing urbanization") implies that ORS 197.298 is  
22 applied during periodic review to the quantified land use needs identified by the  
23 operation of Factors 1 and 2 of Goal 14.

1           That application of ORS 197.298 is more directly required by ORS 197.296  
2 during the periodic review process. That statute prompts a quantification of the amounts  
3 of land needed for specific residential purposes prior to UGB amendments that result  
4 from the periodic review process.<sup>6</sup> As part of that process, ORS 197.296(3) requires an  
5 analysis of "housing need by type and density range \* \* \* to determine the number of  
6 units and amount of land needed for each needed housing type for the next 20 years." If  
7 those needs cannot be met within the existing UGB through rezonings or infill, then the  
8 locality must "[a]mend its urban growth boundary to include sufficient buildable lands to  
9 accommodate housing needs." ORS 197.296(6)(a). The statutory direction to amend the  
10 UGB "to accommodate housing needs" that are classified "by type and density" strongly  
11 implies that the next step--the operation of ORS 197.298--works on those same  
12 inventoried needs. Thus, for purposes of periodic review, ORS 197.298 works on types  
13 of land uses that generate the need for specific quantities of land as a result of the  
14 application of the need factors of Goal 14 and related statutory directives, including ORS  
15 197.296.<sup>7</sup> We reject petitioners' general contention that LCDC erred in applying ORS

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<sup>6</sup> The 1995 Legislative Assembly adopted the initial versions of ORS 197.296 and ORS 197.298 as part of one law. Or Laws 1995, ch 547. In construing the meaning of a statute, we have looked at the context of related statutes in the same chapter in which a provision has been codified, *Morsman v. City of Madras*, 203 Or App 546, 561, 126 P3d 6, *rev den*, 340 Or 483 (2006), and at other provisions of the bill enacting that statute, *Ortiz*, 202 Or App at 699-700.

<sup>7</sup> LCDC did not approve any addition to the McMinnville UGB because "[s]pecific types of identified land needs cannot be accommodated on higher priority lands" under ORS 197.298(3)(a). We need not apply that part of the statute to dispose of the contentions in this review proceeding. ORS 197.298(3)(a) does have contextual

1 197.298(1) to evaluate the city's need for higher-density residential land, as opposed to all  
2 residential needs.<sup>8</sup>

3 B. *Step Two: Determine the adequacy of candidate lands under ORS*  
4 *197.298(1) and (3)*

5  
6 1. *General scheme characteristics--the tension between ORS 197.298*  
7 *and Goal 14*

8  
9 The next step is somewhat more complicated--the application of ORS  
10 197.298(1) and (3), together with Goal 14, to locate and justify the inclusion of land to  
11 fill that quantified need. ORS 197.298(1) provides that its prioritization scheme, which  
12 allows for bringing prime resource land into the UGB as a last resort, is "[i]n addition to

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relevance, however, in contrasting the types of "[s]pecific \* \* \* land needs" under ORS 197.298(3) with the types of land use needs identified at the front end of ORS 197.298 as the statute is applied during the periodic review process. The text of ORS 197.298(3) suggests that its "specific types" pertain to need for land of a particular quality or situation, such as size, site characteristics, service levels, or proximity to other land uses, that occurs only on lower-priority land. For example, ORS 197.712(2)(c) requires comprehensive plans to "provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies." That more discrete land need is in contrast to the more generic land use needs identified during periodic review and used in making adequacy determinations under ORS 197.298(1).

<sup>8</sup> We need not decide the relationship of the current Goal 14 to ORS 197.298. The land need portion of Goal 14 now requires that a UGB change be based on

"(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).

"In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need."

1 any requirements established by rule addressing urbanization"--a plain reference to Goal  
2 14 (Urbanization) and its implementing rules. As noted above, Goal 14 sets out seven  
3 factors for changing a UGB: two "need" factors relate to determining the need for  
4 additional land ("[d]emonstrated need to accommodate long-range population growth"  
5 and "[n]eed for housing, employment opportunities, and livability") and five "locational"  
6 factors relate to justifying the selection of land to satisfy those determined needs (either  
7 inside the existing UGB or at specific locations outside the UGB) based on public  
8 facilities and services, efficiency of land uses, consequences of any allowed development,  
9 retention of agricultural land for farm use, and compatibility of development with nearby  
10 agricultural activities.<sup>9</sup>

11 In prior decisions concerning the application of Goal 14 to UGB changes,  
12 we have required that all five locational factors be considered together and balanced in  
13 assessing the alternative locations for a UGB change. In [\*Citizens Against Irresponsible\*](#)  
14 [\*Growth v. Metro\*](#), 179 Or App 12, 17, 38 P3d 956 (2002), we concluded that the  
15 locational factors in Goal 14 "do not stand alone but represent \* \* \* several factors to be  
16 considered and balanced when amending a UGB. \* \* \* No single factor is of such  
17 importance as to be determinative in a[ ] UGB amendment proceeding, nor are the

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<sup>9</sup> The incorporated Goal 2 exception standards also require an analogous assessment of the reasons for a UGB change (comparable to Goal 14, Factors 1 and 2); why areas that do not require an exception to Goal 14 (*i.e.*, areas already inside the UGB) "cannot reasonably accommodate the use"; the long-term environmental, economic, social, and energy consequences of expanding at a particular location, as opposed to other possible locations; and the compatibility of development allowed by the expansion with adjacent uses.

1 individual factors necessarily thresholds that must be met." Similarly, in [1000 Friends of](#)  
2 [Oregon v. Metro](#), 174 Or App 406, 409-10, 26 P3d 151 (2001), we noted that

3 "the locational factors are not independent approval criteria. It is not  
4 necessary that a designated level of satisfaction of the objectives of each of  
5 the factors must always be met before a local government can justify a  
6 change in a UGB. Rather, the local government must show that the factors  
7 were 'considered' and balanced by the local government in determining if a  
8 change in the UGB for a particular area is justified. It is within a local  
9 government's authority to evaluate the Goal 14 factors and exercise its  
10 judgment as to which areas should be made available for growth."

11 In other words, under Goal 14, an expansion of a UGB to include agricultural land could  
12 be justified if considerations of the cost of public facilities, land use efficiency, and  
13 environmental, energy, economic, and social consequences and compatibility with nearby  
14 land were favorable.

15 By contrast, ORS 197.298 appears to operate less flexibly. Under the  
16 priorities statute, prime agricultural land can be included within a UGB *only if* urban  
17 reserve land, nonresource land, exception land, and marginal land are "inadequate to  
18 accommodate the amount of land needed" for identified urban uses.

19 So, which scheme ultimately controls the choice of where to expand a  
20 UGB--the flexible Goal 14 or the more rigid ORS 197.298? Our case law--in a very  
21 imprecise way--suggests that the answer may be either or both.

22 We have previously determined that Goal 14 interacts with ORS 197.298 in  
23 two ways. First, the two operate *independently* to justify a UGB expansion. Compliance  
24 with ORS 197.298 does not absolve the independent and separate requirement to apply  
25 the Goal 14 factors to a proposed UGB change. In *Residents of Rosemont*, two cities



1 challenged Metro's decision to expand the Portland-area UGB in order to address a need  
2 for housing in a particular part of the metropolitan area. An issue on review was whether  
3 a subregional need for housing could qualify under the Goal 14 need factors as a basis for  
4 expanding the UGB without considering that need in the context of the overall regional  
5 need for housing. We held that it could not, at least in the context presented. We also  
6 concluded that compliance with the criteria in ORS 197.298 did not excuse the separate  
7 application of Goal 14 to the UGB amendment:

8 "Those priority concerns [in ORS 197.298] do not purport to be the  
9 exclusive considerations governing the location of UGBs, and ORS  
10 197.298(3) does not purport to excuse compliance with Goal 14's  
11 requirements for the establishment or change of UGBs. ORS 197.298  
12 specifically provides that the priorities for UGB inclusion that it sets forth  
13 are '[i]n addition to any requirements established by rule addressing  
14 urbanization.' Metro contends that it is impossible to implement the  
15 requirements of ORS 197.296 and 197.298 *and* the requirements of Goal  
16 14. Because of that, it asserts that the provisions must be read together.  
17 The problem with that argument, however, is that, because ORS 197.298  
18 specifically provides that its requirements are *in addition* to the  
19 urbanization requirements of Goal 14, which are particularly directed to the  
20 establishment and change of UGBs, it cannot be said that the statute was  
21 intended to supersede Goal 14."

22 173 Or App at 332-33 (emphases in original). *See also 1000 Friends of Oregon*, 174 Or  
23 App at 412-14 (compliance with ORS 197.298 in justifying a UGB change does not  
24 excuse the need to separately apply Goal 14, Factor 6 (retention of agricultural land), to  
25 the proposed change).

26 Subsequently, though, we have held that ORS 197.298 is to be applied in an  
27 *integrated* way with Goal 14. In [City of West Linn v. LCDC](#), 201 Or App 419, 422, 119  
28 P3d 285 (2005), we reviewed an LCDC approval of another amendment to the Portland-

1 area UGB by Metro. In that case, the petitioner argued that the particular UGB  
2 expansion was inconsistent with ORS 197.298 because lower-priority resource land had  
3 been added without determining that there was inadequate land of higher priority  
4 anywhere in the region. We agreed with LCDC that the locational factors of Goal 14  
5 were relevant in determining whether land of a particular priority in ORS 197.298(1) is  
6 "inadequate to accommodate the amount of land needed." We reasoned that

7 "[t]he operative term is 'inadequate.' Whether there is adequate land to  
8 serve a need may depend upon a variety of factors. In particular, the  
9 adequacy of land may be affected by locational characteristics that must be  
10 taken into account under Goal 14. As LCDC correctly noted, ORS  
11 197.298(1) expressly provides that the priorities that it describes apply '[i]n  
12 addition to any requirements established by rule addressing urbanization,'  
13 such as the locational factors described in Goal 14. As a result, the fact that  
14 other, higher priority land may exist *somewhere* adjacent to the UGB does  
15 not necessarily mean that that land will be '[ ]adequate to accommodate the  
16 amount of land needed,' if using it for an identified need would violate the  
17 locational considerations required by Goal 14. In other words, the statutory  
18 reference to 'inadequate' land addresses suitability, not just quantity, of  
19 higher priority land."

20 *City of West Linn*, 201 Or App at 440 (emphasis in original). In [Hildenbrand v. City of](#)  
21 [Adair Village](#), 217 Or App 623, 634, 177 P3d 40 (2008), we summarized the holding in  
22 *City of West Linn* and stated that determining "whether there is 'inadequate' land to serve  
23 a need depends on not only the constraints identified by ORS 197.298(3), but also the  
24 criteria for locating an urban growth boundary expansion under Goal 14."

25 This relationship between the overlapping policies in Goal 14 and ORS  
26 197.298--that the policies are to be applied separately as well as together--creates, at the  
27 very least, some awkwardness in their application. Complete integration of the policies is

1 inconsistent with their independent viability. What might reconcile that tension,  
2 however, is if ORS 197.298 is not completely conflated with Goal 14--only partially  
3 integrated with the goal--in its application, and if Goal 14 is separately and fully applied  
4 to the candidate land identified under ORS 197.298 in order to determine if that land is  
5 suitable for inclusion in the UGB. We examine that possibility next.

6           2.       *Integration of Goal 14 and ORS 197.298*

7           We turn, then, to the adequacy assessment under ORS 197.298(1),  
8 specifically the factors used to determine when priority "land \* \* \* is inadequate to  
9 accommodate the amount of land needed." Petitioners contend that a jurisdiction can use  
10 lower-priority land for its land needs only when higher-priority land is not available to  
11 accommodate the need because of one of the limitations in ORS 197.298(3) (specific type  
12 of identified need, urban services unavailability due to topographical or physical  
13 constraints, needed to provide services to higher-priority land). The Goal 14 locational  
14 factors, according to petitioners, must be applied in the process of selecting among  
15 alternative locations in the same priority class. Respondents disagree and argue that all  
16 of the Goal 14 locational factors are used to determine if priority land is "inadequate to  
17 accommodate the amount of land needed" under ORS 197.298.

18           The parties agree, and we concur, that any necessary UGB amendment  
19 process for purposes of land development begins with the identification of buildable land  
20 that is contiguous to the existing boundary. ORS 197.296(6)(a) makes this step explicit  
21 for housing needs, requiring the locality to "[a]mend its urban growth boundary to

1 include sufficient buildable lands to accommodate housing needs." For this and other  
2 purposes, ORS 197.295(1) defines "buildable lands" as "lands in urban and urbanizable  
3 areas that are suitable, available and necessary for residential uses \* \* \* [including] both  
4 vacant land and developed land likely to be redeveloped." LCDC has further defined  
5 "suitable and available" buildable lands to exclude land that is severely constrained by  
6 natural hazards under Goal 7; subject to natural resource protection measures under Goals  
7 5, 15, 16, 17, or 18; severely sloped; within a floodplain; or to which public facilities  
8 "[c]annot be provided." OAR 660-008-0005(2).

9           The adequacy assessment under ORS 197.298(1), then, applies to land that  
10 could be developed. The candidate land, whether exception land or different types of  
11 agricultural land, must be "buildable." So, evaluating whether candidate land is  
12 "inadequate" under ORS 197.298(1) requires considering qualities other than whether the  
13 land is buildable.

14           *City of West Linn* established that Goal 14 is applied in the prioritization of  
15 land under ORS 197.298(1) to determine if land of a particular priority "is inadequate to  
16 accommodate the amount of land needed." 201 Or App at 440. However, petitioners  
17 read *City of West Linn* too narrowly in confining the Goal 14 analysis in ORS 197.298(1)  
18 to the selection of land within a single priority class of lands, rather than as general  
19 criteria on the inadequacy of land within that priority class to meet the need and allow  
20 resort to lower-priority land.

21           Rather, the question becomes whether all of the Goal 14 locational factors

1 are used to disqualify higher-priority land under ORS 197.298(1), or whether a more  
2 limited sorting occurs that leaves land available for the potential application of ORS  
3 197.298(3). Based on the text of both policies--including a comparison of the more  
4 specific locational criteria in ORS 197.298(3) with their Goal 14 analogues, and the  
5 textual dynamic within ORS 197.298 between subsections (1) and (3)--we conclude that  
6 the legislature likely intended the latter option.

7           In the context of expanding a UGB to include lower-priority land, ORS  
8 197.298(3) states more specific limitations than the analogous factors in Goal 14 do:  
9 Factor 3 of Goal 14 requires consideration of the "[o]rderly and economic provision for  
10 public facilities and services," but ORS 197.298(3)(b) prefers higher-priority land over  
11 resource land unless "[f]uture urban services could not reasonably be provided to the  
12 higher priority lands due to topographical or other physical constraints." Goal 14, Factor  
13 4, directs consideration of the "[m]aximum efficiency of land uses within and on the  
14 fringe of the existing urban area," whereas ORS 197.298(3)(c) inhibits urbanization of  
15 lower-priority land unless "[m]aximum efficiency of land uses within a proposed urban  
16 growth boundary requires inclusion of lower priority lands in order to include or to  
17 provide services to higher priority lands."

18           The particular limitations in ORS 197.298(3)(b) and (c) have no practical  
19 effect if the broader and less restrictive Goal 14 factor counterparts must be used to  
20 determine whether to include lower-priority land under ORS 197.298(1). If land is  
21 "inadequate" under Factor 3 because the relative cost of delivery of public facilities and

1 services to the area is high, then the more specific limitation in ORS 197.298(3)(b)--  
2 permitting an inadequacy conclusion only when public services cannot be extended  
3 because of topographic or physical constraints--has no independent force. Because ORS  
4 197.298(3) relates "only to the inclusion of land that comes within the priority concerns  
5 described in [ORS 197.298(1)]," *Residents of Rosemont*, 173 Or App at 332, it follows  
6 that ORS 197.298(1) must use different kinds of limitations to determine inadequacy than  
7 those set out in ORS 197.298(3). Otherwise, ORS 197.298(3) is redundant or incapable  
8 of application. We are constrained to construe ORS 197.298 in a way that gives effect to  
9 all of its terms. "As a general rule, we assume that the legislature did not intend any  
10 portions of its enactments to be meaningless surplusage." [\*State v. Stamper\*](#), 197 Or App  
11 413, 417, 106 P3d 172, *rev den*, 339 Or 230 (2005); *see also* ORS 174.010 ("In the  
12 construction of a statute, \* \* \* where there are several provisions or particulars such  
13 construction is, if possible, to be adopted as will give effect to all.").

14           It follows, then, that the more specific limitations in ORS 197.298(3)  
15 displace the application of their more generic and flexible Goal 14 counterparts in the  
16 application of ORS 197.298(1). That displacement gives meaning to ORS 197.298(3),  
17 which reads that it--as opposed to other factors--is applied to determine "if land of higher  
18 priority is \* \* \* inadequate to accommodate the amount of land estimated in subsection  
19 (1)." That explicit requirement precludes the application of any analogous, but less  
20 restrictive, suitability criteria under ORS 197.298(1) to make that same determination,  
21 *i.e.*, whether higher-priority land "is inadequate to accommodate the amount of land

1 needed." That limited use of Goal 14 in applying ORS 197.298(1) avoids the complete  
2 conflation of Goal 14 and ORS 197.298 and allows for the sequential application of ORS  
3 197.298(3).

4           Instead, the Goal 14 locational factors that are applied under ORS  
5 197.298(1) and *City of West Linn* are those that are *not* the counterparts to the ORS  
6 197.298(3) factors: Factor 5 ("Environmental, energy, economic and social  
7 consequences") and Factor 7 ("Compatibility of the proposed urban uses with nearby  
8 agricultural activities"). The application of Goal 14, Factors 5 and 7, at this point  
9 parallels the separate considerations for determining the location of a UGB amendment  
10 that are required by the Goal 2 exception criteria that are incorporated into Goal 14; that  
11 parallel reinforces the logic of a limited use of Goal 14 as part of the application of ORS  
12 197.298. Those Goal 2 considerations are:

13           "(3) The long term environmental, economic, social and energy  
14 consequences resulting from the use of the proposed site with measures  
15 designed to reduce adverse impacts are not significantly more adverse than  
16 would typically result from the same proposal being located in areas  
17 requiring a goal exception other than the proposed site; and

18           "(4) The proposed uses are compatible with other adjacent uses or  
19 will be so rendered through measures designed to reduce adverse impacts."

20 OAR 660-015-0000(2), Part II.<sup>10</sup> Thus, those specific Goal 2 exception criteria and their

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<sup>10</sup> The remaining exception criteria are less relevant in determining where a UGB should be expanded. The first criterion goes to the reasons for expanding the UGB and is satisfied through the general application of Goal 14, particularly Factors 1 and 2. OAR 660-004-0010(1)(d)(B)(i) (reasons factor for UGB change under former Goal 14 "satisfied by compliance with the seven factors of Goal 14"). The second criterion requires consideration of "[a]reas which do not require a new exception." In the case of a Goal 14 exception, that area is the land already in the UGB. See \_\_\_ Or App at \_\_\_ (slip

1 Goal 14 factor counterparts (Factors 5 and 7) are the relevant Goal 14 considerations in  
2 assessing the adequacy of land in a priority class under ORS 197.298(1).

3           Based upon the text and context of ORS 197.298, we conclude that not all  
4 of the Goal 14 locational criteria are applied under ORS 197.298(1) to determine if  
5 priority land "is inadequate to accommodate the amount of land needed." Instead, only  
6 the consequences and compatibility factors of Goal 2, Part II, and Goal 14 are applied.  
7 Whether the priority land is inadequate due to the unavailability of public facilities and  
8 services or because of land use efficiencies is determined by the separate application of  
9 ORS 197.298(3). Thus, we agree with petitioners' general claim that LCDC improperly  
10 applied ORS 197.298(1) in approving the city's resort to lower-priority land because of  
11 the relatively higher costs of providing a particular public facility or service to the higher-  
12 priority area.

13 C.           *Step Three: Determine which candidate lands should be included under*  
14               *Goal 14*

15           Goal 14 is independently applied, then, *after* land has been prioritized  
16 under ORS 197.298 as adequate to accommodate the identified need. ORS 197.298  
17 operates, in short, to identify land that *could* be added to the UGB to accommodate a  
18 needed type of land use. Thereafter, Goal 14 works to qualify land that, having been  
19 identified already under ORS 197.298, *should* be added to the boundary. This works in  
20 two ways--both to make choices among land in the lowest rung of the priority scheme  
21 and to justify the inclusion of the entire set of lands selected under ORS 197.298. Once

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op at 40).



1 candidate lands have been located under ORS 197.298 (*i.e.*, the higher-priority lands that  
2 have been identified as adequate to satisfy part of a land need and any remaining lower-  
3 priority lands that exist in quantities sufficient to accommodate the remaining need), the  
4 location of the boundary changes is determined by the full and consistent application of  
5 the Goal 14 locational factors, the Goal 2 exception criteria to those candidate lands, and  
6 relevant plan and ordinance criteria.

7           It is at this point in the analysis that cost efficiencies in the provision of  
8 public facilities and services become relevant. Considerations of Goal 14, Factor 3  
9 (provision of public facilities and services) and Factor 4 (efficiency of land uses), at this  
10 point--in combination with the other Goal 14 locational factors--may prompt the  
11 discarding of candidate land identified under ORS 197.298, and the selection of land  
12 otherwise consistent with the Goal 14 factors.

13           That application of all of the provisions in Goal 14 to the resulting UGB  
14 change is required under *Citizens Against Irresponsible Growth* and *1000 Friends of*  
15 *Oregon*. The application of Goal 14 to the land that results from the prioritization of  
16 ORS 197.298 allows the separate and full use of both policies in justifying a UGB change  
17 that is contemplated by the priorities statute ("[i]n addition to any requirements  
18 established by rule addressing urbanization, land may not be included within an urban  
19 growth boundary except under the following priorities") and our holdings in *Residents of*  
20 *Rosemont* and *1000 Friends of Oregon*.

21           With those principles in mind, we turn to petitioners' remaining

1 contentions.

2 V. JUSTIFICATION FOR THE PROPOSED CHANGES

3 A. *Standards of review*

4 We begin with our standards of review. ORS 197.650(1) provides that we  
5 review the LCDC order "in the manner provided in ORS 183.482." That part of the  
6 Administrative Procedures Act sets out the standards of review of a contested case order  
7 and provides:

8 "(a) The court may affirm, reverse or remand the order. If the court  
9 finds that the agency has erroneously interpreted a provision of law and that  
10 a correct interpretation compels a particular action, the court shall:

11 "(A) Set aside or modify the order; or

12 "(B) Remand the case to the agency for further action under a  
13 correct interpretation of the provision of law.

14 "(b) The court shall remand the order to the agency if the court finds  
15 the agency's exercise of discretion to be:

16 "(A) Outside the range of discretion delegated to the agency by law;

17 "(B) Inconsistent with an agency rule, an officially stated agency  
18 position, or a prior agency practice, if the inconsistency is not explained by  
19 the agency; or

20 "(C) Otherwise in violation of a constitutional or statutory  
21 provision.

22 "(c) The court shall set aside or remand the order if the court finds  
23 that the order is not supported by substantial evidence in the record.  
24 Substantial evidence exists to support a finding of fact when the record,  
25 viewed as a whole, would permit a reasonable person to make that finding."

26 ORS 183.482(8).

27 We recently explained that the requirements that an agency correctly

1 interpret the law, explain inconsistencies, and have evidentiary support for the decision  
2 implies that LCDC must "demonstrate in [its] opinion[ ] the *reasoning* that leads the  
3 agency from the *facts* that it has found to the *conclusions* that it draws from those facts."  
4 [\*1000 Friends of Oregon v. LCDC\*](#), 237 Or App 213, 225, 239 P3d 272 (2010)  
5 (*Woodburn*) (quoting *Drew v. PSRB*, 322 Or 491, 500, 909 P2d 1211 (1996)) (emphasis  
6 in *Drew*). See also *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 271, 639  
7 P2d 90 (1981) (stating the test as "whether there is a basis in reason connecting the  
8 inference [of compliance with the decisional standard] to the facts from which it is  
9 derived"). In connection with substantial evidence review, we do not review the city's  
10 decision for evidentiary support. Rather, "[o]ur role is to determine whether [LCDC]  
11 applied the correct legal test in deciding whether [the city's] decision is supported by  
12 substantial evidence." *Citizens Against Irresponsible Growth*, 179 Or App at 21.<sup>11</sup>

13           Finally, the focus of our review is on the issues presented on appeal that  
14 have been preserved before LCDC. As we said in *Marion County v. Federation For*

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<sup>11</sup> In *City of West Linn*, we concluded, based on *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384, 404-05, 752 P2d 271 (1988), that an LCDC order approving a legislative UGB change under ORS 197.650 "implicates the substantial evidence standard that is described in [ORS 183.482]." 201 Or App at 428. More precisely, LCDC reviews UGB and periodic review submissions for "compliance with the statewide planning goals." ORS 197.628(1). Goal 2, in turn, requires that land use decisions have an "adequate factual base." LCDC's review of a legislative UGB change for an "adequate factual base" is synonymous with the requirement that a decision be supported by substantial evidence. Substantial evidence review of an LCDC periodic review order may directly occur when the commission requests and obtains new evidence for the periodic review submission and then makes factual findings on that enhanced record. See OAR 660-025-0160(5) (allowing supplement to periodic review record).

1 *Sound Planning*, 64 Or App 226, 237, 668 P2d 406 (1983), "[a] petitioner seeking  
2 judicial review under the terms of [ORS 197.650] must base the arguments on the  
3 objections (or comments) filed with DLCD; those objections will therefore frame the  
4 issues on appeal."<sup>12</sup> This requires objectors before LCDC to make an explicit and  
5 particular specification of error by the local government. ORAP 5.45(1) requires  
6 preservation of error in a lower court in order to consider the error on appeal. We apply  
7 that preservation requirement to administrative proceedings. [Veselik v. SAIF](#), 177 Or  
8 App 280, 288, 33 P3d 1007 (2001), *rev den*, 344 Or 121 (2002); *see also* [VanSpeybroeck](#)  
9 [v. Tillamook County](#), 221 Or App 677, 690, 191 P3d 712 (2008) (applying preservation  
10 requirements in proceedings to review LUBA orders). A party's claim of error by LCDC  
11 in its periodic review order, therefore, is limited to the commission's resolution of  
12 objections raised in the periodic review proceedings.

13 B. *The commission's defense*

14 We turn--at long last--to petitioners' contentions about the deficiencies in

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<sup>12</sup> Moreover, under ORS 197.633(2), LCDC is obliged to "adopt rules for conducting periodic review." The rules require persons who object to a work task submittal to file written objections with DLCD that "[c]learly identify an alleged deficiency in the work task sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated." OAR 660-025-0140(2)(b). OAR 660-025-0150(4)(d)(B) imposes that same specification of error requirement when an appeal is taken to LCDC from DLCD decisions on periodic review task completions. Objections that do not meet that standard "will not be considered by the director or commission." OAR 660-025-0140(3). If no objections are received, "the work task shall be deemed approved." OAR 660-025-0150(3)(a). Standing to appeal an LCDC periodic review order is limited to "[p]ersons who submitted comments or objections" to the agency. ORS 197.650.

1 LCDC's order and findings in light of the specific objections and exceptions they filed  
2 with the agency. Petitioners' assignment of error contends that (1) LCDC erroneously  
3 interpreted ORS 197.298, Goal 14, *former* ORS 197.732(1)(c)(B) (2005), *amended by* Or  
4 Laws 2007, ch 71, § 68, *renumbered as* ORS 197.732(2)(c)(B) (2007) ("[a]reas which do  
5 not require a new exception cannot reasonably accommodate the use"), and Goal 2, Part  
6 II(c), OAR 660-004-0020 (an administrative rule detailing the requirements for a  
7 "reasons" exception to a goal); (2) LCDC made a decision not supported by substantial  
8 evidence; and (3) LCDC acted inconsistently with an official agency position in adding  
9 agricultural land rather than other lands. Although petitioners' contentions are framed  
10 with respect to the exclusion of particular exception and higher-priority resource lands  
11 from the area of the proposed UGB change, their arguments attack the *manner* in which  
12 the city and LCDC applied ORS 197.298. Petitioners complain that the city defined the  
13 needed land--higher-density residential land--too specifically under Step One so that ORS  
14 197.298(1) was applied to allow the exclusion of some land that could be used for low-  
15 density residential needs and that lands were excluded under Step Two because of a  
16 single deficiency rather than an overall adequacy assessment based on balancing all of  
17 the considerations. Moreover, petitioners argue that various locational factors in Goal 14  
18 were not considered as part of Step Three in evaluating the alternatives for the UGB  
19 expansion.

20                   In its brief, LCDC offers a broad justification for its order and joins the  
21 city's more specific defenses. LCDC explains that the city identified neighborhood

1 activity centers as a form of land need to which the prioritization scheme of ORS  
2 197.298(1) was then applied, and that the commission was correct in approving the  
3 exclusion of exception areas and higher-priority resource lands that could not  
4 accommodate NACs. LCDC further argues that, under the Goal 2 exceptions criteria, a  
5 broad test should be employed under ORS 197.298 to determine whether candidate lands  
6 are "inadequate to accommodate the amount of land needed." LCDC reasons that (1)  
7 ORS 197.298 is administered "[i]n addition to" Goal 14; (2) Goal 14 includes the  
8 "reasons" exception criteria in Goal 2; (3) ORS 197.298(1) incorporates the exceptions  
9 criterion in Goal 2 that "[a]reas that do not require a new exception cannot reasonably  
10 accommodate the use"; and, therefore, (4) the statute allows a broad assessment of  
11 whether land is "inadequate to [reasonably] accommodate" an identified land need.

12 LCDC's first defense--that the city appropriately identified a quantity of  
13 needed NAC land and applied ORS 197.298(1) to that quantified need--fails because that  
14 is not what the city did. The city did determine that the NAC mixed-use category of land  
15 use would use less land than the traditional low-density residential development for  
16 housing needs. But the city did not quantify the amount of any needed mixed-use  
17 category of commercial and residential land uses and then apply the ORS 197.298(1)  
18 priorities to that quantified mixed-use need. To recall, ORS 197.298(1) is applied to  
19 determine if land of a particular priority "is found to be inadequate to accommodate the  
20 *amount of land*" determined to be needed. (Emphasis added.) Here, the city quantified  
21 the need for categories of residential, commercial, industrial, parkland, and other land

1 uses and then applied the priorities to those quantitative needs. However, the city used  
2 the defined qualities of an NAC (*e.g.*, size, location to downtown, and urban form) as a  
3 basis to rule out higher-priority land under ORS 197.298(1), and, in doing so, proved the  
4 wrong point.

5 LCDC's argument that its order is justified because of the need for land for  
6 NACs is not supported by the order's reasoning or result. First, the order is unclear on the  
7 specifics of the identified need under ORS 197.298--whether the need is for residential  
8 land in general; higher-density residential land; mixed-use land for specified residential,  
9 commercial, and parkland needs; or NACs. The order upholds the exclusion of the  
10 Westside Road exception area from the UGB amendment under ORS 197.298(3)(b)  
11 (unavailability of services due to topographic or other physical constraints), rather than  
12 because the area is unsuitable for use as an NAC. Another part of the order approves  
13 exclusion of the Bunn's Village exception area under ORS 197.298(3)(b) as well as under  
14 ORS 197.298(1) for its unsuitability for "pedestrian- and transit-oriented development in  
15 a neighborhood activity center." LCDC determined that the Booth Bend Road exception  
16 area "cannot reasonably accommodate the identified need," but purports to identify the  
17 need as one for a "compact, pedestrian-friendly urban area." The city's failure to include  
18 the Old Sheridan Road exception area into the boundary change was approved because  
19 "this area cannot reasonably accommodate the identified need," yet that approval was  
20 made without any elaboration on the nature of that identified need. The Riverside North  
21 area was not included because "this area cannot reasonably accommodate residential

1 use." If ORS 197.298 is applied to address separate types of land needs, then the amount  
2 of each of those land needs must be quantified, and the land supply examined to see if it  
3 is "inadequate to accommodate [each] amount of land needed."

4           Second, the order, in fact, approves the inclusion of some of the lower-  
5 priority agricultural land (Norton Lane, West Hills South, and part of Fox Ridge North)  
6 ahead of some exception areas even though those agricultural areas were not designated  
7 as NACs. Thus, the adopted justification for the UGB amendments as well as the actual  
8 inclusion of agricultural land for general residential use suggests that lower-priority land  
9 was not added solely to meet the need for an identified quantity of land for mixed-use  
10 development. The adopted order fails to explain why the failure of an exception area to  
11 accommodate the need for an NAC justifies its exclusion from the expansion area when  
12 lower-priority land is being added to accommodate a less specific need for residential  
13 land. As we held in *Woodburn*, 237 Or App at 224-26, when an LCDC order fails to  
14 explain its reasoning for finding consistency with the standards for a UGB expansion, the  
15 order lacks substantial reason and becomes inadequate for judicial review. The failure of  
16 LCDC to consistently identify the needed categories and quantities of land uses--the  
17 fundamental premises of its justification of the UGB change under ORS 197.298--  
18 requires the same conclusion here.

19           LCDC's second point--that the "[a]reas that do not require a new exception  
20 cannot reasonably accommodate the use" criterion in the Goal 2 exception standards can  
21 be used to rule out higher-priority land under ORS 197.298(1), presumably no matter



1 how the need for residential land is described--also does not withstand scrutiny. As noted  
2 earlier, Goal 14 requires that a UGB change "follow the procedures and requirements as  
3 set forth in the Land Use Planning goal (Goal 2) for goal exceptions." The standards for  
4 such an exception include a determination that "[a]reas which do not require a new  
5 exception cannot reasonably accommodate the use." But that criterion applies to land  
6 that does not require an exception to Goal 14, *i.e.*, land already within the UGB or  
7 specially designated land in unincorporated communities outside of a UGB. [VinCEP v.](#)  
8 [Yamhill County](#), 215 Or App 414, 425, 171 P3d 368 (2007) ("areas which do not require  
9 a new exception" criterion under Goal 14 are "lands within urban growth boundaries and  
10 areas for which a Goal 14 exception has already been taken"). The exception standard  
11 requires an evaluation of whether land inside of a UGB can be developed in a way that  
12 eliminates or minimizes the need to expand a UGB. The criterion is not a factor to  
13 distinguish among lands that do require an exception to Goal 14--the exception and  
14 resource lands outside the UGB that could qualify for inclusion within the boundary.<sup>13</sup>  
15 So the second exception criterion, by its terms, is not relevant to classify exception and

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<sup>13</sup> DLCD understood that the second exception criterion did not require an alternatives analysis of lands outside the existing UGB. In its decision on petitioners' objections in the first LCDC proceeding, the department noted:

"It is not clear that [the alternative lands exception criterion] distinguishes between Goal 3 exception lands and resource lands outside of a UGB. Both require that the city follow the exceptions process for a UGB amendment and can be said to 'require a new exception.' The department understands this standard to mean that a UGB amendment is needed only if lands inside a UGB or rural lands for which an exception to Goal 14 has been taken cannot reasonably accommodate the use."

1 resource lands outside the existing UGB as suitable for growth.<sup>14</sup>

2           The order under review approves the city's decision not to include the North  
3 Fox Ridge Road resource area in the UGB because, "pursuant to Goal 2, the city did not  
4 need to consider lands under ORS 197.298 that could not reasonably accommodate its  
5 identified need." In other parts of the order, the exclusions are justified under a generic  
6 "reasonably accommodate" standard (presumably tied to Goal 2), rather than the more  
7 discrete accommodation standards of ORS 197.298(1) and (3). In those respects, LCDC  
8 erred in applying the wrong standards and misconstrued the applicable law. ORS  
9 183.482(8)(a).

10           We must next determine if those Step One and Step Two errors compel a  
11 different result under ORS 183.482(8)(a) (allowing remedy if "the agency has  
12 erroneously interpreted a provision of law and \* \* \* a correct interpretation compels a  
13 particular action"). We turn then to petitioners' specific contentions about the application  
14 of ORS 197.298. LCDC and the city defend the LCDC order by arguing that the

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<sup>14</sup> The reference to the Goal 2 exception requirements in Goal 14 was eliminated in the revision to Goal 14 adopted in 2005. In its place, the goal now requires that,

"[p]rior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary."

In addition, OAR 660-004-0010(1)(c)(C) now provides that,

"[w]hen a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals[.]"

1 exclusions are justified under ORS 197.298, no matter how the residential land need is  
2 defined--whether as a need for higher-density residential land or for land suitable for an  
3 NAC.

4 C. *Application of ORS 197.298*

5 Petitioners claim that LCDC erred in endorsing the exclusion of three  
6 exception areas--Old Sheridan Road, Riverside North, and Booth Bend Road--that should  
7 have been added to the boundary under ORS 197.298. They reason that those areas were  
8 excluded because they were unsuitable for medium-density and high-density housing, but  
9 that such a specification of need is inappropriate for the application of ORS 197.298.  
10 Rather, petitioners argue, the statute should have been applied to residential land needs as  
11 a whole. Moreover, the quantity of needed low-density residential land (341 acres)  
12 exceeded the buildable land added through the included exception areas, so petitioners  
13 reason that the other exception areas should have been brought into the boundary to meet  
14 low-density residential land needs. Finally, petitioners claim that there is no substantial  
15 evidence that the excluded exception areas could not accommodate some medium-density  
16 or high-density housing. More specifically, petitioners contest LCDC's findings on the  
17 excluded exception areas as well as the three excluded lower-quality resource lands tracts  
18 (West Hills, Fox Ridge Road North, and the area north of McMinnville Airport).

19 1. *Old Sheridan Road exception area*

20 In its findings on ORS 197.298(1), the city evaluated this exception area  
21 under factors that it also applied to other exception areas (annexation potential, ability to

1 develop with adequate internal transportation circulation, limited traffic access from  
2 Highway 18, consistency with compact urban form, and public safety issues). As stated  
3 earlier, considerations of the *general availability* of public facilities and services are  
4 immaterial as part of the Step Two application of ORS 197.298. The remaining  
5 determinations by the city are relevant under ORS 197.298(1) (comparative long-term  
6 environmental, economic, social and energy (EASE) consequences resulting from the use  
7 at the proposed site). The city's decision to exclude the Old Sheridan Road exception  
8 area was based upon a balancing of those determinations.

9           Petitioners objected to DLCD that the city's findings failed to establish that  
10 the Old Sheridan Road exception area could not accommodate a portion of the city's  
11 residential land needs. More specifically, petitioners claimed that the city findings  
12 showed that the comparative costs of providing city facilities and services to the area  
13 varied, depending upon the service, but were not prohibitive. Petitioners disputed that  
14 there was evidence in the record to support the city's findings that Old Sheridan Road  
15 provided the sole access to the area and that the area was distant from existing public  
16 utilities and schools.

17           DLCD did not resolve those objections under ORS 197.298(1). Instead,  
18 DLCD concluded that it "agrees with the city's findings that transportation facilities  
19 cannot reasonably be provided to this area under ORS 197.298(3)(b)." Again, ORS  
20 197.298(3)(b) allows resort to lower-priority land if "[f]uture urban services could not  
21 reasonably be provided to the higher priority lands due to topographical or other physical

1 constraints." LCDC appeared to affirm on that basis, largely because Highway 18 is a  
2 limited access highway.

3           On review, petitioners argue that ORS 197.298(3)(b) allows resort to lower-  
4 priority land only if a package of future urban services could not be reasonably provided.  
5 Petitioners contend that LCDC's findings failed to evaluate the entire suite of urban  
6 services in excluding the Old Sheridan Road exception area and that the deficiency in the  
7 provision of transportation facilities was not due to topographical or other physical  
8 constraints. Moreover, petitioners claim that there is no substantial evidence to support  
9 the finding of unavailable transportation facilities because local streets could be extended  
10 to the area. Respondents counter that LCDC approved the exclusion of Old Sheridan  
11 Road, in part, because lack of access to Highway 18 required prohibitively expensive  
12 road improvements to the area and congestion in other access points to the highway.

13           We disagree with petitioners' contention that a composite of urban services  
14 must to be considered under ORS 197.298(3)(b). Although the term "urban services" is  
15 not defined in the statute, a related term, "urban facilities and services" is defined under  
16 Goal 11 to include "police protection; sanitary facilities; storm drainage facilities;  
17 planning, zoning and subdivision control; health services; recreation facilities and  
18 services; energy and communication services; and community governmental services."  
19 OAR 660-015-0000(11). That definition does not include water supply systems or roads.  
20 Goal 12 separately deals with transportation facilities, a utility that is neither "urban,"  
21 being necessary to both rural and urban land uses, nor a "service." ORS 197.298(3), by

1 its plain text, refers only to those "urban services" that could be constrained "due to  
2 topographical or other physical constraints." Thus, the text of the provision refers to a  
3 service that is urban in character and that can be physically constrained in its provision.  
4 What is a constrained urban service is a matter of proof in a particular UGB amendment  
5 proceeding, but it surely does not mean the full panoply of urban facilities and services  
6 described in Goal 11.

7           We do agree, however, with petitioners' contention that inefficiencies in the  
8 provision of roads to a potential urbanizing area is not sufficient to exclude that area  
9 under ORS 197.298(3)(b). Transportation facilities are not an "urban service" under the  
10 statute. It may be that LCDC's order also implicitly rests upon excluding the Old  
11 Sheridan Road exception area from the category of candidate lands under ORS  
12 197.298(1). As noted earlier, however, any inefficiency in the provision of urban  
13 services and facilities is not material to the analysis under ORS 197.298(1). LCDC erred  
14 in approving the exclusion on either of those bases; it should have addressed whether the  
15 city's findings were otherwise factually and legally sufficient under ORS 197.298(1).

16           2.       *Riverside North exception area*

17           Petitioners next contend that the basis for excluding the Riverside North  
18 exception area--unsuitability for residential use due to "noise and odor associated with  
19 the adjacent sewage treatment plant, industrial use, and railroad"--was insufficient under  
20 ORS 197.298(3)(a) because residential use is not a "[s]pecific type[ ] of identified land  
21 need[ ]" under that statutory provision, but a more generic need that is subject to the

1 priorities of ORS 197.298(1). Petitioners argue that LCDC's findings are deficient in  
2 failing to assess whether the Riverside North exception area could be used to satisfy  
3 nonresidential land needs, in general, or for industrial uses, in particular, thereby allowing  
4 redesignation of existing industrial land within the UGB for residential uses. Petitioners  
5 finally assert that the city's decision to exclude Riverside North was inconsistent with its  
6 decision to include the Riverside South exception area, and that, in approving both  
7 actions, LCDC acted "inconsistently with official agency position or practice" and  
8 without substantial evidence.

9            Respondents argue that the incompatibility of any proposed residential use  
10 of the subarea with nearby industrial and institutional uses is a legitimate consideration in  
11 applying ORS 197.298(1). Based on the Step Two analysis noted earlier (that EESE  
12 considerations under Goal 2 and Goal 14, Factor 5, are applied under ORS 197.298(1)),  
13 we agree with respondents. We also agree with respondents' further contention that  
14 LCDC did not misconstrue the applicable law or fail to support its decision by substantial  
15 reason in not requiring redesignation of industrial land within the existing UGB for  
16 residential uses in order to add Riverside North for industrial purposes. Finally,  
17 petitioners' assertion that LCDC made inconsistent determinations on the Riverside South  
18 and Riverside North areas was not preserved, because petitioners never asserted to DLCD  
19 that the city was constrained to treat both areas in the same way.

20            3.        *Booth Bend Road exception area*

21            Again, the city adopted findings on the considered exception areas,

1 including the Booth Bend Road exception area, that evaluated those areas under ORS  
2 197.298(1) based upon a balancing of factors that included the area's potential for  
3 annexation, internal transportation circulation, urban form, public safety, the overall cost-  
4 effectiveness of the provision of urban facilities, and compatibility with adjacent uses,  
5 including agricultural uses. The city excluded the Booth Bend Road exception area  
6 because of limited potential for annexation, the cost-ineffectiveness of necessary road and  
7 sanitary sewer improvements, the lack of supportive neighborhood services and facilities,  
8 and incompatibility with adjacent agricultural uses.

9           Before LCDC, petitioners disputed the factual accuracy of some of the  
10 city's findings. LCDC overruled those objections because "this area is problematic since  
11 it would be an isolated extension of the UGB across the highway, making walking to  
12 nearby destinations difficult[,] such that it could not "reasonably accommodate the need  
13 for a compact, pedestrian-friendly urban area."

14           On review, petitioners argue that that specification of need is not a  
15 "[s]pecific type[ ] of identified land need[ ]" under ORS 197.298(3)(a) and, to the extent  
16 that the need arises as a consequence of the application of Goal 14, Factor 4 (efficiency  
17 of land uses on the fringe of urban areas), that consideration was not balanced with other  
18 Goal 14 factors in determining suitability under ORS 197.298(1). Moreover, petitioners  
19 assert that excluding the Booth Bend Road exception area because of its isolated location  
20 (south of Highway 18) is inconsistent with the inclusion of other areas south of the  
21 highway (Three Mile Lane and Lawson Lane areas). Respondents counter that the city's



1 findings appropriately considered urban form and conflicts with agricultural land in its  
2 ORS 197.298(1) analysis.

3           We agree with petitioners that the application of ORS 197.298(1) requires  
4 more than the consideration of pedestrian circulation. LCDC erred in failing to address  
5 whether the city's findings about other ORS 197.298(1) considerations were sufficient  
6 and were supported by the record. The city's evaluation of the cost-effectiveness of the  
7 provision of public facilities and services is immaterial to the analysis under ORS  
8 197.298(1) during Step Two. In the same way, considerations of urban form under Goal  
9 14, Factor 4, are more appropriately deferred to Step Three, during the full application of  
10 Goal 14 to candidate lands identified under the priorities statute.

11           4.       *West Hills resource land area*

12           Following the initial remand of the MGMUP amendments by LCDC, the  
13 city analyzed resource areas with poorer soils for potential inclusion within the UGB.  
14 The city determined that an area in the West Hills west of Fox Ridge Road and Redmond  
15 Hill Road (exception areas included in the UGB in the initial LCDC proceedings) would  
16 be unsuitable. The findings in support of that conclusion identified a land need for  
17 medium- and high-density housing. The city reasoned that the sloped topography of the  
18 subarea would increase the cost of construction "anywhere from \$5,000 to \$15,000 per  
19 lot in additional development costs, depending on site-specific conditions"; the area was  
20 more likely to be developed with single-family residences; additional water distribution  
21 facilities and transportation access would be expensive; the area was too far from

1 commercial areas for feasible higher-density residential development; and development  
2 would be incompatible with nearby farm and forestry operations and with a compact  
3 urban form. The city concluded that the area should be excluded from the boundary  
4 change under ORS 197.298(3).

5 In their DLCD objections, petitioners agreed with the city's rationale for  
6 excluding the more steeply sloped portions of the subarea, but claimed that the more  
7 gently sloped portions adjacent to the current UGB would be suitable to accommodate  
8 identified land needs. Petitioners disagreed with the city's limitation of the identified  
9 need to higher-density residential use and with the city's adopted rationale for exclusion  
10 that relied upon the expense of water service, the feasibility and likelihood of higher-  
11 density housing in the area, and the expense of road extension and distance from  
12 commercial areas. After reiterating much of the city's findings, LCDC concluded that

13 "1000 Friends objects to the exclusion of this area, contending that the city  
14 erred in its findings and that the area can accommodate specific types of  
15 land needs \* \* \*. Specifically, that this higher priority area can  
16 accommodate low-, medium-, or high-density housing even with the  
17 constraints of slope, water service costs, transportation difficulties, and  
18 should therefore be included. The Commission finds that the city  
19 established both that the West Hills area could not reasonably  
20 accommodate the city's identified need and that under ORS 197.298(3)(b),  
21 the city could not reasonably provide water, a future urban service, due to  
22 the topographical constraint."

23 On review, petitioner argues that LCDC's determination applies only to the  
24 more steeply sloped part of the resource area and not to the more gently sloped area  
25 adjacent to the existing UGB. Petitioners further assert that the findings do not identify  
26 which land need could not be accommodated, that the reference in the findings to the

1 effects of inclusion of the territory on nearby agricultural land is inappropriate under  
2 ORS 197.298(1), and that water services can be extended to the lower portions of the  
3 resource area. Respondents claim that the city findings and LCDC restatement of those  
4 findings applied to the entire resource area and were sufficient under ORS 197.298(1).

5           We agree with petitioners in part. The city findings identified a need for  
6 higher-density housing. We concluded earlier that ORS 197.298(1) could be applied to  
7 prioritize land to satisfy that particular need. The city considered some relevant factors  
8 under ORS 197.298(1), including compatibility with adjacent agricultural land, in  
9 evaluating the resource area. However, LCDC relied upon the city's findings that applied  
10 Goal 14, Factor 3 ("[o]rderly and economic provision for public facilities and services"),  
11 in determining suitability under ORS 197.298(1). Because that factor is applied under  
12 Goal 14 to evaluate, but not determine, candidate lands (Step Three in the analysis),  
13 LCDC erred in its application of ORS 197.298 to the city's findings. Petitioners have not  
14 otherwise shown that LCDC incorrectly applied ORS 197.298 or misunderstood the  
15 substantial evidence test in approving the city's findings on this issue.

16           5.       *Area north of Fox Ridge Road*

17           A portion of the area north of Fox Ridge Road (Tax Lot 700) was added to  
18 the UGB. Petitioners argue that an additional corridor of land in this area should have  
19 been included (Tax Lots 100, 200, 300, and 400). The city determined that Tax Lot 100  
20 and portions of Tax Lot 200, although within the boundaries of the Northwest NAC,  
21 should be excluded from the UGB because of limited connectivity with the existing road

1 system and "the steep slopes in the southern portions of these two properties leave only  
2 perhaps a 200-foot wide buildable corridor extending across tax lots 700, 200 and 100."  
3 The city concluded that those properties should not be included in the boundary "as  
4 permitted by ORS 197.298(3)(a)."

5 In their DLCD objections, petitioners complained that the city failed to  
6 address the potential inclusion of Tax Lots 300 and 400 and that the city's factual findings  
7 on the soil composition, road connectivity, and buildable lands in the resource area were  
8 not supported by the record. LCDC reiterated the city's findings, concluding that,

9 "[f]or the reasons cited above, the city concluded that the needs identified  
10 in the MGMUP cannot be reasonably accommodated by the areas of Class  
11 III and Class IV soils within tax lot R4513-00100 or the northern portion of  
12 tax lot R4418-00200. The city, therefore, did not include these lands in its  
13 expanded UGB, purportedly under ORS 197.298(3)(a). The Commission  
14 concludes that the city erred in excluding the lands under ORS  
15 197.298(3)(a). However, pursuant to Goal 2, the city did not need to  
16 consider lands under ORS 197.298 that could not reasonably accommodate  
17 its identified need."

18 After noting petitioners' objections "to the exclusion of tax lot 100, the northern portion  
19 of tax lot 200, and land west of tax lot 100 from the proposed UGB" and their assertion  
20 that the city's findings on the soil composition of Tax Lots 100 and 200 were wrong,  
21 LCDC decided that

22 "[t]he Commission concludes that the city has established that the excluded  
23 lots will have limited future connectivity, are constrained by slope that  
24 leaves a limited building corridor, and would create an island of agricultural  
25 activity and cut off tax lots 1100 and 1000 from existing farm operations."

26 On review, petitioners claim that LCDC's findings addressed only part of  
27 the area they argued should have been included and failed to address Tax Lots 300 and

1 400. Petitioners also contend that the reasons for excluding two of the tax lots--road  
2 connectivity and cutting off farm parcels--are insufficient if the entire area is included.  
3 Respondents argue that LCDC affirmed the city's findings on the unsuitability of Tax  
4 Lots 100 and 200 under ORS 197.298 based on a number of relevant considerations  
5 (topography, relation to existing and future development, connectivity, and effect on  
6 agricultural operations) and that LCDC did not err in its construction of applicable law or  
7 application of the substantial evidence test in reaching those determinations.

8           We agree with petitioners that LCDC failed to address their core  
9 contention--that the city did not evaluate, in its adopted findings, whether a larger area of  
10 properties north of Fox Ridge Road, with lower-class soils, could reasonably  
11 accommodate the city's identified need for residential land instead of the lower-priority  
12 land added for that purpose, and that such an evaluation was necessary under ORS  
13 197.298(1).<sup>15</sup> LCDC should have determined whether the city's rationale for excluding  
14 Tax Lots 100 and 200 was based upon consequences and compatibility considerations  
15 relevant under ORS 197.298(1) and whether that rationale was legally sufficient without  
16 consideration of a larger area. Instead, LCDC sustained the city's determination  
17 "pursuant to Goal 2," using a broader and incorrect "reasonably accommodate" standard

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<sup>15</sup> On remand of the original UGB decision, DLCD directed the city to "identify areas with class 3 and 4 agricultural soils and either (1) include them in the UGB instead of areas with class 1 and 2 soils, if any, or (2) explain why they should not be included based on the standards in ORS 197.298(3)." The city identified the properties with Class III and IV soils that were within one mile of its 1981 UGB. It is not clear whether Tax Lots 300 and 400 fit within that parameter. The "discussion areas" map of alternative lands attached to petitioners' opening brief appears to exclude Tax Lots 300 and 400.

1 in the application of ORS 197.298. And, LCDC did not deal with petitioners' contention  
2 that the city's findings were insufficient under ORS 197.298(1) because the city did not  
3 address whether the consequences and compatibility concerns about bringing Tax Lots  
4 100 and 200 into the boundary should have been mitigated by including a differently  
5 configured area. That determination was necessary to LCDC's conclusion that the city's  
6 findings demonstrated its compliance with ORS 197.298(1).

7           6.       *Other resource land areas*

8           After the remand, the city considered including in the UGB three lower-  
9 quality agricultural tracts near the municipal airport: a 197-acre tract north of the airport  
10 that is bordered by farmland on three sides; a smaller 35-acre tract on Highway 18 that is  
11 situated south of the air museum, and surrounded by the existing UGB except along an  
12 access road; and a large tract east of the airport. The city made collective findings on  
13 those properties under ORS 197.298, although some of the collective findings appear to  
14 be specific to a particular, but unidentified, property (*e.g.*, "[t]his property is also  
15 immediately adjacent to the airport approach zone for Runway 17," "[t]his land \* \* \*  
16 would be bordered by actively farmed land on three of its four sides"). The findings note  
17 concerns with the effects of high-density housing on flight safety and use of adjacent  
18 agricultural land as the bases for excluding the properties from the boundary. The city  
19 concluded:

20           "For the above noted reasons, the City concludes that specific types of land  
21 needs as identified in the MGMUP cannot be reasonably accommodated on  
22 the lands north and east of the McMinnville Municipal Airport, on which  
23 are found predominantly Class III or Class IV soils. The City, therefore,

1 has not included these lands in its expanded urban growth boundary, as  
2 permitted by ORS 197.298(3)(a)."

3 In their DLCD objections, petitioners complained that the city findings  
4 made collective assessments about differently situated properties and that the smaller  
5 tract next to the museum could be used to satisfy low-density residential land needs.  
6 LCDC, after taking administrative notice of the airport master plan, concluded that  
7 "[d]evelopment of these lands at urban residential densities would be incompatible with  
8 the long range plans for the airport, \* \* \* and would potentially threaten the airport's  
9 viability." The commission reiterated some of the city's collective findings that were  
10 written as particular to one property. After noting petitioners' concern that the small tract  
11 adjacent to the air museum was not analyzed in the findings, LCDC concluded that "the  
12 city established that the area cannot reasonably accommodate an identified need due to  
13 safety issues related to the airport."

14 On review, petitioners argue that the smaller 35-acre parcel, which is  
15 composed of Class III soils, has particular priority under ORS 197.298(1)(b) (giving  
16 second priority to exceptions lands and "resource land that is completely surrounded by  
17 exception areas"). Petitioners claim that the city and LCDC did not address that property  
18 in particular, instead they lumped it with two other properties that have different  
19 compatibility issues. Finally, petitioners argue that, if the basis for excluding this parcel  
20 is its unavailability for high-density residential use, that basis does not excuse its  
21 potential use for low-density residential needs. Respondents counter that airport safety  
22 concerns are relevant issues under ORS 197.298(1) in the application of Goal 14, Factor

1 3 (orderly and economic provision of services), Factor 4 (maximum efficiency of land  
2 uses), and Factor 5 (EASE consequences).

3 LCDC's findings on this tract are inadequate for judicial review. As noted  
4 earlier, the ORS 197.298(1) consequences and compatibility factors apply differently,  
5 depending upon whether the quantified land need is for land to be used for low-density  
6 residential, mixed-use, or higher-density residential uses. The findings do not explain  
7 why the tract was evaluated for higher-density residential land needs alone. Moreover,  
8 the findings set out common compatibility concerns caused by proximity to a runway and  
9 flight paths for properties located in different areas and, presumably, with different  
10 compatibility issues. As such, the findings lack substantial reason because they do not  
11 articulate the ORS 197.298 evaluation for the smaller 35-acre parcel.

12 Finally, petitioners claim that they called the city's attention to other  
13 potential higher-priority resource lands (the Riverside area, land south of the airport, and  
14 land south of Three Mile Lane and west of Booth Bend Road), but that those sites were  
15 not evaluated, contrary to the then applicable version of OAR 660-004-0020(2)(b)(C),<sup>16</sup> a  
16 rule applicable to UGB changes made under the older version of Goal 14. Petitioners  
17 argue that LCDC erred in failing to remand the decision to the city for that consideration.

18 The above-cited rule set policy on how to comply with the reasons  
19 exception criterion in Goal 2, Part II(c), that "[a]reas which do not require a new

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<sup>16</sup> OAR 660-004-0020 was amended in 2011. Those amendments are not relevant to the contentions on review.



1 exception cannot reasonably accommodate the use." That rule stated that

2 "[s]ite specific comparisons are not required of a local government taking  
3 an exception, unless another party to the local proceeding can describe why  
4 there are specific sites that can more reasonably accommodate the proposed  
5 use. A detailed evaluation of specific alternative sites is thus not required  
6 unless such sites are specifically described with facts to support the  
7 assertion that the sites are more reasonable by another party during the local  
8 exceptions proceedings."

9 As we noted earlier, however, that exception criterion does not apply to  
10 evaluating land outside a UGB--all of which required a new exception to Goal 14 as  
11 applicable here--for inclusion in the boundary. Instead, it requires determining if land  
12 already inside the UGB--land which does not require a new exception--can reasonably  
13 accommodate the need. As such, OAR 660-004-0020(2)(b)(C) did not require the city to  
14 evaluate any particular alternative site proposed by petitioners.

15 Instead, the city applied particular criteria (*e.g.*, within one mile of the 1981  
16 UGB, composition of Class III or IV soils, and within prescribed geographic boundaries)  
17 to inventory the lands to be studied. Petitioners did not object to the city or LCDC that  
18 those inventory criteria were unlawful or that they had been misapplied to petitioners'  
19 suggested alternative resource lands areas. Thus, the commission did not err in failing to  
20 require the city to study those areas for inclusion.

21 D. *Application of Goal 14 locational factors*

22 Petitioners' first set of contentions relate to Step Two--the application of  
23 Goal 14 in determining whether the quantity of land in the priority class is inadequate  
24 under ORS 197.298(1). Petitioners claim that, in separately applying the locational

1 factors of Goal 14 to the areas proposed to be added to the UGB, the city and LCDC  
2 erred in failing to consider all of the available exception lands collectively and  
3 consistently and did not explain how the locational factors--in particular, Factors 3  
4 (public facilities and services), 4 (efficiency of land uses), and 7 (compatibility with  
5 agricultural activities)--were balanced to include some exception lands and not others.  
6 They assert that Factor 7 was not applied at all in the evaluation of the available  
7 exception areas, but was instead applied only to the already included territory.

8            Respondents protest that those arguments were not made to LCDC and that  
9 the commission is not obliged to determine on its own whether those particular  
10 deficiencies in the local decision existed. As we said before, petitioners' contentions  
11 must be particularly raised before LCDC in order to merit review in this court.  
12 Petitioners generally asserted below--in the midst of dozens of more specific objections--  
13 that "the city has not conducted a coordinated land priority analysis around the entire  
14 UGB perimeter." That is insufficient to raise the specific objection that the city failed to  
15 completely consider any particular Goal 14 factor in its evaluation of whether exception  
16 lands could reasonably accommodate an identified land need.

17            Petitioners next argue that LCDC erred in approving the city's Goal 14  
18 evaluation of both the low-value farmland that was excluded from the UGB and the high-  
19 value farmland that was included. Petitioners assert that the city and LCDC erred in  
20 failing to consider Factor 3 (public facilities and services) in comparing alternative lower-  
21 quality resource lands, made no findings about the availability of public services to the

1 Airport North and the Fox Ridge Road North resource areas, and inconsistently evaluated  
2 the public services factor in comparing the West Hills resource area with the higher-  
3 quality Southwest and Grandhaven areas. According to petitioners, LCDC and the city  
4 further erred in not balancing Factor 4 (efficiency of land uses) with other factors in  
5 evaluating alternative resource lands, instead subsuming that consideration in the  
6 application of ORS 197.298, and in applying Factor 4 to land outside of the "existing  
7 urban area." Petitioners also complain that Factor 6 (retention of agricultural lands) was  
8 applied in a cursory manner to available resource lands and that LCDC made no findings  
9 on that complaint.

10                   Some of those contentions were preserved; others were not. Before the  
11 agency, petitioners cited ORS 197.298 and Goal 14 as the bases for their contention that  
12 the city erred in excluding certain exception areas and higher-priority resource land.  
13 Much of the argument was framed around whether those properties could reasonably  
14 accommodate an identified land need, a contention apparently rooted in the requirements  
15 of ORS 197.298. As we concluded earlier, the relevant Goal 14 factors in the sorting of  
16 suitable higher-priority land under ORS 197.298(1) are Factor 5 (EASE consequences)  
17 and Factor 7 (compatibility with agricultural activities) and their analogues in the Goal 2  
18 exception criteria. We earlier determined the legal sufficiency of the city's consideration  
19 of exception lands and higher-priority resource lands under ORS 197.298(1); petitioners'  
20 restated Goal 14 contentions about the excluded exception and higher-priority resource  
21 lands raise no different and relevant claims.

1           Petitioners' remaining contentions concern Step Three, the application of  
2 Goal 14, Factor 7 (compatibility of proposed urban uses with agricultural lands) to the  
3 lands considered for inclusion in the boundary. The city's Factor 7 findings from 2003 on  
4 the Norton Lane, Three Mile Lane, Southwest, Northwest, and Grandhaven areas  
5 described adjacent agricultural land uses in general terms ("actively farmed land," "active  
6 farm use," "agricultural farm use," "actively farmed agricultural land," and "large-parcel  
7 farm operations") before concluding that,

8           "[t]he Council concludes that the proposed expansion areas will not create  
9 compatibility conflicts between uses. Much of the existing UGB is  
10 adjacent to resource lands that are currently in agricultural uses. Expansion  
11 of the UGB would not create new uses that would create new types of  
12 compatibility issues."

13           Before LCDC, among other assertions, petitioners argued that the city's  
14 findings on the application of Factor 7 to four of those areas were (1) incomplete because  
15 the findings did not consider the particular agricultural activities of nearby land and  
16 compare compatibility conflicts among the considered resource lands; and (2) inaccurate  
17 because the findings do not examine the boundaries of the redrawn resource lands areas  
18 that were altered following remand. In its order, LCDC reiterated the city's findings and  
19 affirmed, without further analysis, that the city properly applied Factor 7. We agree with  
20 petitioners that LCDC erred in not requiring additional findings on Factor 7. The existing  
21 findings were not sufficiently descriptive of nearby agricultural uses to allow comparison  
22 among the candidate sites and were inaccurate as to the redrawn boundaries of the  
23 resource areas. We reject petitioners' remaining Goal 14 contentions.

1 VI. CONCLUSIONS

2 We conclude that the commission erroneously interpreted ORS 197.298 by  
3 failing to require that the city first separately quantify its needs for low-density residential  
4 land, higher-density residential land, and mixed-use land (Step One) and then apply ORS  
5 197.298(1) and (3) to each of those quantified needs (Step Two), and in permitting the  
6 city to exclude land from further consideration under ORS 197.298(1) for immaterial  
7 reasons. Further, correct application of ORS 197.298 would compel different actions by  
8 the commission in its evaluation of the city's justification for excluding particular  
9 exception and resource areas under ORS 197.298. Thus, a remand is appropriate under  
10 ORS 183.482(8)(a)(B) (allowing remand to an agency for "further action under a correct  
11 interpretation of the provision of law").

12 On remand, LCDC should respond to petitioners' contentions by making  
13 additional findings or taking appropriate action in its review of the city's submissions to  
14 (1) determine what particular and quantified land use needs are to be accommodated by  
15 any additional land to be added to the McMinnville UGB; (2) apply ORS 197.298 to  
16 determine the land available to accommodate those quantified land use needs; (3) apply  
17 Goal 14 to justify the inclusion of suitable land in any amended UGB; and (4) take any  
18 other necessary action under a correct interpretation of the governing standards, including  
19 a determination of whether the city's submission, "on the whole, conform[s] with the  
20 purposes of the goals and any failure to meet individual goal requirements is technical or  
21 minor in nature" under ORS 197.747.

1

Reversed and remanded.

**BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON**

<b>IN THE MATTER OF PERIODIC REVIEW</b>	)	
<b>TASK 1 AND THE AMENDMENT OF</b>	)	<b>REMAND ORDER</b>
<b>THE URBAN GROWTH BOUNDARY</b>	)	<b>12-WKTASK-001814</b>
<b>FOR THE CITY OF MCMINNVILLE</b>	)	

This matter came before the Land Conservation and Development Commission (Commission) on February 28, 2012, on partial reversal and remand of the Commission's Order on Reconsideration of Approval Order 08-WKTASK-001760 from the Court of Appeals, pursuant to ORS 183.482 and ORS 197.650(1).

History and Summary of Task 1 and UGB amendment

The Department of Land Conservation and Development (department) approved the City of McMinnville's (city) periodic review work program on August 26, 1994. The city submitted Task 1, "Inventory of Commercial Lands", of its approved work program to the department for review pursuant to ORS 197.633 and OAR chapter 660, division 25. The city also submitted the amendment of its urban growth boundary (UGB) to the department for review pursuant to ORS 197.626, OAR 660-025-0040(1)(a), and OAR 660-025-0175(1). The Commission partially approved and partially remanded the submittal on December 6, 2004 by order 04-WKTASK-001645. In response to the remand, the city submitted Ordinances 4840 and 4841, the subject of the present matter.

Recitals

1. On January 17, 2006, the department received Ordinance 4840 from the city and on January 31, 2006, the department received Ordinance 4841 from the city in response to partial approval and remand order 04-WKTASK-001645. The department considered the submittal complete on January 31, 2006.
2. On January 23, 2006, the department received an objection from Mark Davis. On February 3 and February 17, 2006, the department received objections from 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse. The objections were timely filed.
3. On May 31, 2006, the department approved Task 1 and the UGB amendment by order 001696 and notified the city and the objectors.
4. On June 22, 2006, the department received an appeal of order 001696 from 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse.
5. On September 12, 2006, the Commission held a hearing on the appeal of the director's approval of a completed periodic review work task and an UGB amendment.

6. During the course of the September 12, 2006 hearing, the city requested that the Commission amend its periodic review work program to add Task 4, the rezoning of the West Hills and West 2<sup>nd</sup> Street areas from R-1 to R-2.

7. On November 8, 2006, the Commission issued Approval Order 06-WKTASK 001709, which approved the city's Task 1 and UGB amendment submittal, pursuant to OAR 660-025-0150 and 660-025-0160, and approved the city's request to amend its periodic review work program to add Task 4, the rezoning of the West Hills and West 2<sup>nd</sup> Street areas from R-1 to R-2.

8. On August 1, 2007, petitioners 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse filed their opening brief in the Court of Appeals on judicial review of the Commission's order. Petitioners' opening brief assigned error to the Commission's interpretation of certain statutes, statewide planning goals and prior Commission position thereon.

9. By order dated November 20, 2007, the Commission found that petitioners raised issues concerning the interpretation of law that merited reconsideration. The Commission also found that withdrawal of its approval order offered the most efficient means of resolving petitioners' concerns, to the benefit of the city, petitioners, and the Commission. Therefore, pursuant to ORS 183.482(6) and ORAP 4.35, the Commission withdrew Approval Order 06-WKTASK 001709 for reconsideration under the authority delegated to the director under OAR 660-002-0010(5).

10. In early 2008, the parties explored settlement. The city subsequently informed the petitioners and the department that it would no longer pursue settlement.

11. On November 17, 2008, the Commission issued Order on Reconsideration of Approval Order 08-WKTASK-001760, which approved Periodic Review Task 1, "Inventory of Commercial Lands" and the city's UGB amendment submittal, as illustrated in Figure 6 (Exhibit B) of Ordinance 4841, pursuant to OAR 660-025-0150 and 660-025-0160; and approved the city's request to amend its periodic review work program to add Task 4, the rezoning of the West Hills and West 2<sup>nd</sup> Street areas from R-1 to R-2 at the time of completion of the Transportation System Plan (Task 2 of the city's periodic review work program).

12. In 2009, the parties again explored settlement. In the fall of 2009, the city subsequently informed the petitioners and the department that it would no longer pursue settlement.

13. On October 13, 2009, petitioners filed a supplemental opening brief in the Court of Appeals on judicial review of the Commission's revised order (08-WKTASK-001760).



14. On June 9, 2010, the department issued order 001790 approving the city's Task 2 submittal regarding the Transportation System Plan.

15. On judicial review of the orders, the Oregon Court of Appeals reversed and remanded for reconsideration of the decision to add land to the UGB, but did not otherwise address 08-WKTASK-001760. *1000 Friends of Oregon v. LCDC*, \_\_ Or App \_\_, \_\_ P3d \_\_ (2011). The court directed the Commission to make additional findings regarding petitioners' contentions or take appropriate action in review of the city's UGB submittal to:

“(1) determine what particular and quantified land use need are to be accommodated by any additional land to be added to the McMinnville UGB; (2) apply ORS 197.298 to determine the land available to accommodate those quantified land use needs; (3) apply Goal 14 to justify the inclusion of suitable land in any amended UGB; and (4) take any other necessary action under a correct interpretation of the governing standards, including a determination of whether the city's submission, ‘on the whole conform[s] with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature’ under ORS 197.747.” Slip op at 60.

#### Findings of Fact

1. On July 13, 2011, the Court of Appeals filed its decision on judicial review of the Commission's Order on Reconsideration of Approval Order 08-WKTASK-001760.
2. On January 31, 2012 the State Court Administrator sent a copy of the appellate judgment to the Commission and the Court of Appeals decision became effective on that date pursuant to ORAP 14.05.

#### Conclusion

Based on the decision of the Court of Appeals, Work Task 1 is affirmed. The court directed the Commission to make additional findings regarding petitioners' contentions or take appropriate action in review of the city's UGB submittal. However, such determinations, for example the initial determination of the particular and quantified land use needs that are to be accommodated by any additional land to be added to the McMinnville UGB, are the purview of the city and not the role of this Commission. Therefore, under the court's direction, the only appropriate action is to remand the city's UGB submittal. On remand, the City of McMinnville must either determine its land use needs and apply ORS 197.298 and Goal 14 in the manner announced by the court's decision, or otherwise fulfill the requirements of accommodating its identified needs in compliance with the statewide planning goals and consistent with the court's decision.

THEREFORE, IT IS ORDERED THAT:

The Commission modifies its Order on Reconsideration of Approval Order 08-WKTASK-001760 to reverse the approval of the city's UGB amendment submittal, as illustrated in Figure 6 (Exhibit B) of Ordinance 4841, and to remand the city's UGB amendment submittal, as illustrated in Figure 6 (Exhibit B) of Ordinance 4841, for further findings consistent with the court's final opinion and order. On remand, the city may either (a) include the city's UGB amendment submittal, as illustrated in Figure 6 (Exhibit B) of Ordinance 4841, based on (1) findings of its particular and quantified land use need that are to be accommodated by any additional land added to the McMinnville UGB that are supported by substantial evidence; (2) application of ORS 197.298 to determine the land available to accommodate those quantified land use needs; (3) application of Goal 14 to justify the inclusion of suitable land in any amended UGB; or (b) fulfill the requirements of accommodating its identified needs, including by amending the city's UGB, in any other manner that complies with the statewide planning goals.

DATED THIS 29th DAY OF FEBRUARY, 2012.

FOR THE COMMISSION:



\_\_\_\_\_  
Jim Rue, Acting Director  
Department of Land  
Conservation and Development

NOTE: You may be entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provisions of ORS 183.482 and ORS 197.650.

ORDINANCE NO. 4961

An Ordinance amending certain portions of Ordinance No. 4796 related to the adoption of the McMinnville Growth Management and Urbanization Plan (MGMUP) and MGMUP – Findings document, and repealing Ordinance No. 4841 in its entirety.

RECITALS:

On October 14, 2003, the McMinnville City Council adopted the "McMinnville Growth Management and Urbanization Plan" (MGMUP) and appendices, and the MGMUP – Findings document (ORD No. 4796) as part of the McMinnville Comprehensive Plan, Volume I. These documents were prepared in response to an analysis of the city's buildable lands and future land needs, which determined that there exists a shortfall of both residential and commercial land necessary to accommodate projected growth needs through the year 2023.

Following a series of subsequent appeals and remands, the Oregon Land Conservation and Development Commission (LCDC) issued an Order approving the MGMUP on November 8, 2006.

On December 22, 2006, this action was appealed by 1000 Friends of Oregon, Friends of Yamhill County and Ilsa Perse to the Oregon Court of Appeals.

Following attempts at reaching a negotiated settlement with the appellants that proved unsuccessful, DLCD drafted amendments to the Commission's 2006 approval order to address interpretations of law. The Commission approved the revised Order in November, 2008.

After multiple time extensions were granted, the appellants filed their opening brief with the Oregon Court of Appeals in October, 2009. Oral arguments were presented to the Court in September, 2010.

On July 13, 2011, the Court issued its decision to reverse and remand LCDC's approval of portions of MGMUP. This decision became effective on January, 13, 2012. On February, 28, 2012, LCDC issued an order reversing and remanding its prior decision to the City consistent with the court's final opinion and order.

The City Council has determined that the prudent course of action at this time is to delay further work necessary to satisfy the LCDC Order, and to remove from the adopted MGMUP those elements that are no longer relevant.

A public hearing before the McMinnville City Council for the purpose of taking testimony to consider these proposed amendments was conducted on November 27, 2012, after notice of the meeting had been published in the News Register on November 16, 2012. At the conclusion of this hearing, the City Council held the record open and directed staff to provide a written response to comments offered during public testimony for review at the December 11, 2012, Council meeting.

At the December 11, 2012, meeting Council reviewed staff's response and received and considered additional public testimony. Following thorough deliberation, the Council found the amendments proposed by staff appropriate and consistent with the referenced LCDC Order and directed staff to prepare an amended ordinance for their consideration and adoption.

Now therefore, THE CITY OF McMinnville ORDAINS AS FOLLOWS:

Section 1. That the following comprehensive plan policies shall be amended to remove NAC references and to reinstate the previous policy language:

- (a) Policy 27.00, 68.00, 84.00, 86.00, 132.15, and 186.00

Section 2. That the policies and single goal below shall be modified as follows [new text is underlined; text to be deleted is indicated with a strikeout font]:

- (a) Policy 45.00 The City of McMinnville shall study the feasibility of developing bicycle and pedestrian paths and/or lanes between residential areas and the activity centers in the downtown. ~~designated Neighborhood Activity Centers and between residential areas and Downtown McMinnville.~~

- (b) Policy 71.01 The City shall plan for development of the property located on the west side of the City that is outside of ~~designated Neighborhood Activity Centers~~ or planned or existing transit corridors (1/4 mile ~~500 feet~~ either side of the route) to be limited to a density of six units per acre. It is recognized that it is an objective of the City to disperse multiple family units throughout the community. In order to provide for higher density housing on the west side, sewer density allowances or trade-offs shall be allowed and encouraged.

[..] E. Applications for multiple-family zone changes will be considered in relation to the above factors, e.g., sewer line capacity and dispersal of units. In addition, requests for zone changes to multiple-family shall consider those factors set forth in Section 17.72.035 (zone change criteria) of the zoning ordinance. (as amended by Ord. 4218, Nov. 23, 1985). ~~and the locational policies contained in Volume I of the McMinnville Comprehensive Plan.~~

- (c) GOAL IV 3: TO ENSURE COMMERCIAL DEVELOPMENT THAT MAXIMIZES EFFICIENCY OF LAND USE THROUGH UTILIZATION OF EXISTING COMMERCIALY DESIGNATED LANDS, THROUGH APPROPRIATELY LOCATING FUTURE NEIGHBORHOOD AND COMMUNITY SERVING COMMERCIAL LANDS, AND DISCOURAGING STRIP DEVELOPMENT.

Section 3. That the following elements of the MGMUP be repealed in their entirety:

- (a) MGMUP pages, i – 7-30, C-1 – C-217, and D-18 – D-24
- (b) MGMUP policies: 28.01 (page D-2), 71.11 (page D-9), 71.12 (page D-10), and 170.06 (page D-15)
- (c) MGMUP zoning: 17.33.010 (3) (page E-3), 17.06.425 (page E-4), NAC Chapter (pages e-5 – E-15) and 17.22 (pages E-16 – E-21)
- (d) MGMUP Findings document pages 1-169

Section 4. That the following amendments to Policy 49.01 regarding industrial land (denoted by underlined text for addition and ~~strikeout~~ text for deletion):

- 49.01 The City shall designate an adequate supply of suitable sites to meet identified needs for a variety of different parcel sizes at locations which have direct access to an arterial or collector street without having to pass through residential neighborhoods.

Section 5. That Policy 49.02 addressing the location and provision of industrial land be supplanted with the following:

- 49.02 The location, type, and amount of industrial activity within the Urban Growth Boundary shall be based on community needs as identified in the Economic Opportunities Analysis.

Section 6. That Ordinance No. 4841 be repealed in its entirety.

Section 7. That the current McMinnville comprehensive plan map be supplanted with the comprehensive plan map attached to this ordinance as Exhibit 1.

Section 8. That this ordinance shall be subject to the terms and conditions of Ordinance No. 3823 entitled "Initiative and Referendum" for a period of thirty (30) days.

Passed by the Council this 8<sup>th</sup> day of January 2013, by the following votes:

Ayes: Hill, Jeffries, May, Menke

Nays: \_\_\_\_\_

Approved this 8<sup>th</sup> day of January 2013.

  
\_\_\_\_\_  
MAYOR

Attest:

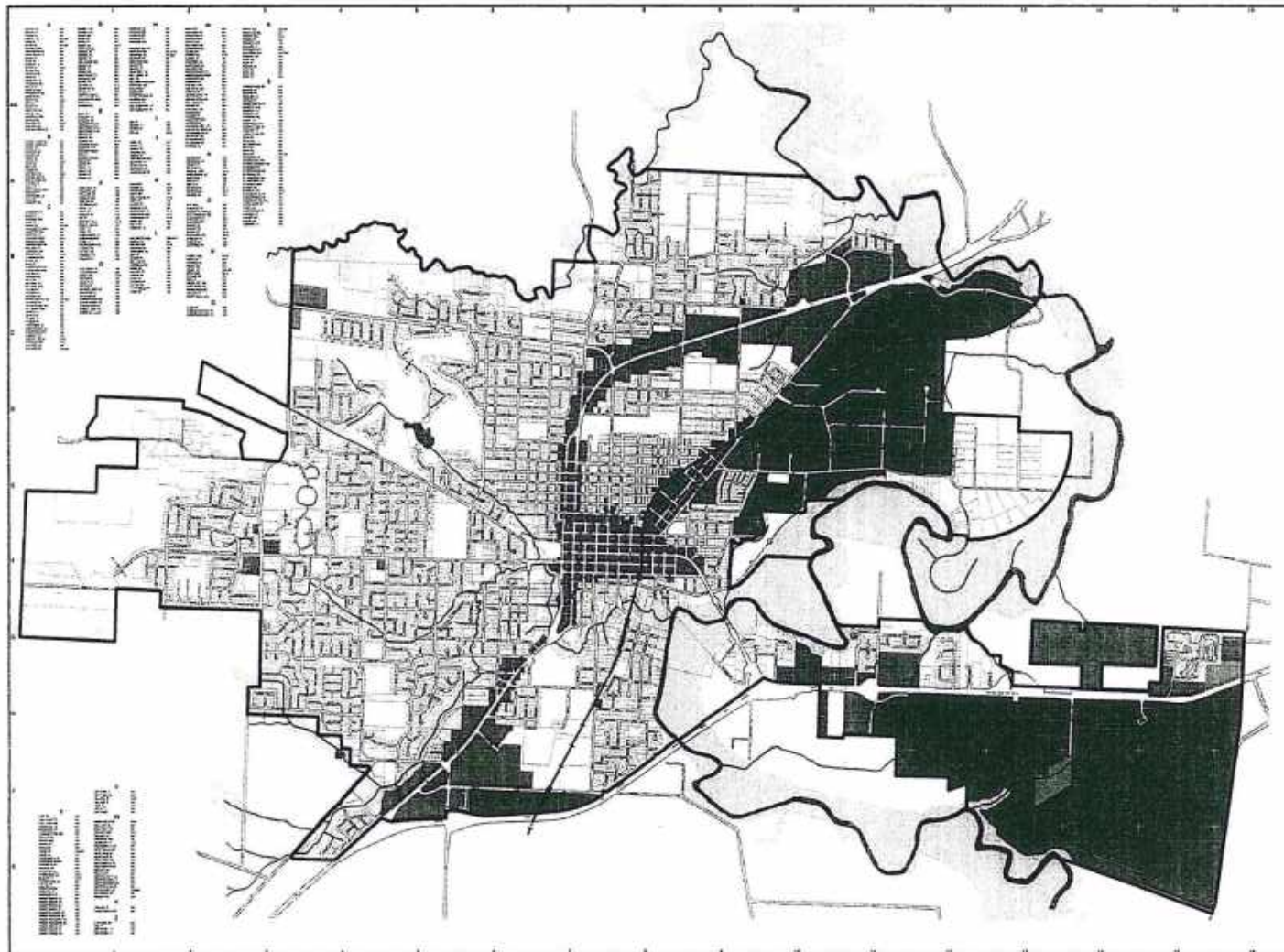
  
\_\_\_\_\_  
CITY RECORDER

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY

# Exhibit 1

## City of McMinnville Comprehensive Plan



This map is for site-planning purposes only. For more detailed information please call the McMinnville Planning Department at (503) 434-7311.

City of McMinnville  
 Engineering Department  
 231 1st Park St.  
 McMinnville, OR 97128  
 (503) 434-7312



**City of McMinnville**  
**Planning Department**  
231 NE Fifth Street  
McMinnville, OR 97128  
(503) 434-7311

[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## **STAFF REPORT - ADDENDUM**

**DATE:** April 14, 2020  
**TO:** Mayor and City Councilors  
**FROM:** Heather Richards, Planning Director  
**SUBJECT:** Work Session – Growth Planning

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Mayor and Councilors,

This should serve as an addendum to your Staff Report entitled Work Session – Growth Planning, that is part of your April 14, 2020 City Council meeting.

We wanted to provide you with the attached *Department of Land Conservation and Development (DLCD), Report on City of McMinnville Periodic Review Task 1 and Urban Growth Boundary Amendment, DLCD Order 001696*, in advance of your meeting as reference materials.

It provides a synopsis of the 2003 McMinnville Growth Management and Urbanization Plan (MGMUP) submittal to DLCD, what was affirmed in 2003 and what was remanded and then how the remanded items were addressed by the City in an amended 2006 submittal.

The report then discusses the amended 2006 submittal, objections received to it and DLCD's response to the amended items and objections.

This administrative decision by DLCD staff was then appealed to the Land Conservation and Development Commission (LCDC), reaffirmed by LCDC and then appealed to the Court of Appeals, setting the stage for the Court of Appeals remand that will be under consideration at the work session..

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
REPORT ON CITY OF MCMINNVILLE  
PERIODIC REVIEW TASK 1 AND  
URBAN GROWTH BOUNDARY AMENDMENT**

**DLCD ORDER 001696**

**I. DECISION**

The Department of Land Conservation and Development (DLCD, or “the department”) finds actions of the City of McMinnville to address Task 1, Inventory of Commercial Lands, and the accompanying Urban Growth Boundary (UGB) amendment, comply with the statewide planning goals and implementing administrative rules, based on the findings contained in this report and the submittal. Task 1 and the UGB amendment, as implemented through the McMinnville Growth Management and Urbanization Plan (“MGMUP”), are approved.

**II. REVIEW PROCEDURES AND CRITERIA**

Oregon Revised Statute (ORS) 197.644(2) and (3) and Oregon Administrative Rule (OAR) 660-025-0140 through 660-025-150 authorize the director’s review of submitted periodic review tasks. Further, ORS 197.626 and OAR 660-025-0175 state that a UGB amendment including 50 acres or more for a city over 2,500 population must be submitted and reviewed in the manner of periodic review. The legal standards that govern the review and decision are OAR Chapter 660, specifically Division 15, the Statewide Planning Goals; and Division 25, Periodic Review. Review of the City of McMinnville Task 1, Inventory of Commercial Lands, is focused on Goals 11 and 12. The proposed UGB amendment is controlled by Goal 14. If the department receives valid objections to the local government’s final decision, the department must sustain or reject each objection based on the review standards in the applicable goal, rule, or statute.

**III. BACKGROUND AND DESCRIPTION OF TASK SUBMITTAL**

Task 1, Inventory of Commercial Lands, is part of a periodic review work program approved by the department on August 26, 1994. The city submitted its original Task 1 product to the department on October 17, 2003. The matter came before the Land Conservation and Development Commission (LCDC, or “the Commission”) on April 22 and September 10, 2004, as a referral of the completed task and UGB amendment. The Commission issued a partial approval and remand order on December 3, 2004.

**A. Summary of Commission Approvals**

The items approved by the Commission at that time are summarized below:

- Population Forecast: 44,055 in 2023



- Persons per household : 2.54
- Residential Lands Needs Analysis, including the buildable lands inventory, R-2 zoning, and government assisted and farmworker housing, but not including park needs.
- UGB expansion for the following exception areas: Riverside South, Fox Ridge Road, and Redmond Hill.
- The following rezonings in MGMUP: parcel ID nos. 7, 9, 10, 15, 16, 19, and 20.

Subsequent to the Commission order, the following three actions related to this submittal have been approved by the city:

- City of McMinnville’s Periodic Review Task 1 partial submittal regarding parcels 4, 5, and 6 (the “Brickyard properties”) and amendment of a typographical error found in section (f)(13) of city Ordinance 4769 (approved by DLCDC Order 001661).
- Three Mile Lane UGB expansion via post-acknowledgment plan amendment (DLCDC file no. 001-04) – 35 acres for parking/additional buildings at airport museum site (no DLCDC action).
- UGB expansion on west side – 42 acres for new high school (approved by DLCDC Order 001681).

**B. Summary of New Submittals (City of McMinnville Ordinances 4840 and 4841)**

The city submitted Ordinance 4840 to the department on January 17, 2006, and Ordinance 4841 on January 31, 2006. The first submittal contained amendments that did not require concurrence from Yamhill County, while the second included the county’s approval. For the purpose of department review, the submittal was considered complete upon the receipt of Ordinance 4841 on January 31, 2006. The submittal concerns McMinnville Periodic Review Task 1 and the accompanying UGB amendment and MGMUP. The amendments listed below are in response to LCDC and DLCDC staff comments and concerns prior to and during the 2004 Commission proceedings.

1. **Transit corridor enhancement policy:** The city has expanded the transit corridor width to one-half mile, as recommended by the department. In addition, the city has identified three additional properties that may be redeveloped to higher densities.
2. **Residential density within Neighborhood Activity Centers (NACs):** The city has amended the density requirements in each of the four NACs to state that the “Residential density of this neighborhood is a *minimum of 7.5 dwelling units per acre.*” This replaces the previous language that stated 7.5 units per acre was a “target” density.
3. **Residential density definitions:** The city made changes to the definitions of high- and medium-density that are implemented through the McMinnville zoning ordinance. The

changes remove specific housing types from the definitions in the medium-density zone, but retain locational and transportation criteria.

4. *Amendment of NAC illustrative plans:* The city removed the illustrative NAC plans in order to remove internal inconsistencies related to density and the arrangement of land uses.
5. *Rezoning of certain properties:* The city has elected to reverse the remaining rezonings contained in Table 73 and zone parcels 1-3, 8, 11-14, 17, and 18 with their original designations (Ord. 4840, pp. 5-6).
6. *Accessory Dwelling Units (ADUs) and residential density:* ADUs are permitted in all four residential zones. In addition, density requirements do not apply to ADUs.
7. *Amendments to the C-1 zone:* The city deleted the 30-foot front-yard setback requirement and lot coverage requirements as suggested by DLCDD.
8. *R-4 and R-5 zone design standards:* The zoning for the R-4 and R-5 zones contained standards that were not clear and objective, specifically related to façade design and buffering. The city removed those standards.
9. *West McMinnville residential density policy:* The city clarified the policy limiting density to six units per acre on the west side, but excluded the transit corridors and areas within one-quarter mile of neighborhood and general commercial shopping areas.
10. *Reduction of buildable lands needs for parks:* The city proposed a policy that requires new community parks to be located outside the 100-year floodplain, and has not changed the number of acres for park needs.
11. *Removal of floodplain lands from the 2004 UGB proposal:* The city has removed the floodplain land in the Three Mile Lane, Norton Lane, and Grandhaven subareas from the UGB proposal.
12. *Removal of floor area ratio for commercial land need analysis:* The city has removed all references to floor area ratios from the commercial land need analysis.

## **IV. ANALYSIS**

### **A. Summary of City's Response to Commission Remand**

The Commission's decision concerning the original Task 1 and UGB amendment submittal included a list of matters that arose as objections that the department recommended the Commission uphold. These are each addressed below.

1. *Needs Analysis.* The Commission remanded the submittal for reconsideration of the land need for residential, commercial, and office uses and to address the following tasks:

- a. Amend the population forecast, based on a constant population for the county unincorporated area, or provide substantial evidence to demonstrate that county unincorporated population can be expected to decline in the next twenty years. *The population forecast was approved by the Commission.*
- b. Amend the Housing Needs Analysis employ the year 2000 household size of 2.66 persons per household or justify why this factor should be reduced to 2.54. *The Housing Needs Analysis was approved by the Commission.*
- c. Amend the Housing Needs Analysis to accommodate a portion of the housing need on redeveloped land in the R-2 zone, based on available information on development which has actually occurred. *The Housing Needs Analysis was approved by the Commission.*
- d. Amend the Housing Needs Analysis to project the type and density of government assisted housing and farmworker housing that will be needed, including multifamily; reevaluate the planned ratio of single family to multiple family units; and ensure that sufficient land is planned in each residential zone to accommodate the need. *The Housing Needs Analysis was approved by the Commission.*
- e. Amend the Economic Opportunities Analysis and land need for commercial and office use to substantially increase the planned efficiency in the use of land and to plan for types of development that is pedestrian-friendly and transit oriented development.

*Findings: With this submittal, the city has revised its Economic Opportunities Analysis (Ord. 4840, Exhibit B) to demonstrate that the actual employee/acre ratios are substantially lower than previously indicated in the MGMUP. Actual ratios are 18.4 employees/net acre for commercial and 3.6 employees/net acre for industrial (Ord. 4840, Exhibit B, Table 4). The city found that the use of the proposed employee/acre ratios will encourage future commercial and industrial development to occur at higher densities. Additionally, the city found that approximately 18 percent of future employment will be accommodated through existing expansions or redevelopment of existing sites (Ord. 4840, Exhibit B, p. 5, tables 6-2 and 6-3). Therefore, the overall need for vacant land has been reduced. As to pedestrian-friendly and transit-oriented development, the city provided for these through the establishment of the Neighborhood Activity Centers (NACs).*

- f. Reduce the planned need for buildable land for community parks to account for information on the portion of these parks that has actually occurred within the 100-year floodplain and the potential for sharing park facilities with the school district and Linfield College.

*Findings: The city found that three community parks have lands within the 100-year floodplain, of which approximately 52 percent of the total land area is constrained by floodplain. Furthermore, the city found that it is fiscally unsound, environmentally irresponsible, and not in the best interests of its citizens to locate future community parks in the floodplain. Additionally, the city found that planned parks may not be*

*located near floodplains due to the projected direction and location of future growth. The city adopted a new plan policy (Ord. 4840, p. 4) that states future community and neighborhood parks shall be located above the boundary of the 100-year floodplain. The city also made findings related to the sharing of facilities with the school district and Linfield College, noting that the school district's needs differ from the city's park needs, and that the location of the Linfield College facilities are in an area of the city that is already served by other parks (4840, pp. 10-11).*

- g. Delete the unbuildable floodplain portions of the Three Mile Lane and Norton Lane areas or justify the need for these lands or urban uses under Goal 14, Factors 1 and 2. *The city removed these areas (Ord. 4841, p. 2).*

**2. UGB Location.** The Commission remand included elements relating to which lands are to be included in the UGB, including the following tasks:

- a. If the revised land needs analysis results in a decrease in the 20-year land need, remove a corresponding amount of land from the UGB, starting with resource land, according to the priorities in ORS 197.298. *Findings: The city determined that a revised land need analysis was not necessary, nor was there a decrease in the 20-year land need.*
- b. Using maps provided by the Natural Resource Conservation Service and the Oregon Department of Agriculture, identify areas with Class III and IV agricultural soils and either (1) include them in the UGB instead of areas with Class I and II soils, if any, or (2) explain why they should not be included based on the standards in ORS 197.298(3). Areas with Class III and IV soils east of the airport are excluded from this requirement. *Findings: See 1000 Friends Objection 11, below.*

**3. Implementation.** The Commission remanded the submittal for the city to address plan and related implementing regulations, including the rezonings in Table 73, to make them internally consistent, consistent with the findings used to justify the UGB amendment, and to comply with applicable goal requirements, including the following tasks:

- a. Develop a program that will achieve the 10 dwelling units per acre within transit corridors by identifying additional vacant, underdeveloped, and redevelopable parcels that may be suitable for medium- and high-density housing within this half-mile corridor.

*Finding: The city addressed this issue in Ord. 4840 (pp. 7-8) and has found that the 10 dwelling units per acre standard cannot be met. The city has identified, but not rezoned, parcels suitable for higher density housing (Ord. 4840, p. 3, Table 9). The city proposes to consider these rezonings as part of their Transportation System Plan process.*

- b. Rezone those parcels identified as suitable for medium- and high-density housing in order to implement the plan.

*Finding: The city has identified, but not rezoned, parcels suitable for higher density housing (Ord. 4840, p. 3, Table 9). The city proposes to consider these rezonings as part of their Transportation System Plan.*

- c. Amend the NAC policies to clarify the target of 7.5 dwelling units per net acre is a minimum but that higher overall densities will be allowed. *This has been completed (Ord. 4841, p. 4).*
- d. Revise the definitions of low-, medium-, and high-density residential development to ensure the comprehensive plan, policies, and implementing ordinances are internally consistent and consistent with regard to minimum lot sizes and the types of residential products found in the city. *This has been completed (Ord. 4841, p. 4).*
- e. Amend the illustrative plans for the Northwest, Grandhaven, and Three Mile Lane NACs in order to make these illustrative plans internally consistent with the plan policies. *This has been completed by removing the illustrations (Ord. 4841, p. 3).*
- f. Conduct an analysis to determine the traffic impacts of the rezonings in Table 73 and include findings to address OAR 660-012-060 or complete such an analysis in a transportation systems plan.

*Finding: The city elected to delete the rezonings referred to in this item and rezone to the original designations for parcels 1-3, 8, 11-14, 17, and 18 (Ord. 4840, pp. 5-6).*

- g. Amend Ordinance 4796 to remedy a typographical error and to rezone and apply development restrictions to Parcel 13.

*Finding: The city fixed the typographical error. As to Parcel 13, the city determined that the rezoning of this parcel will occur at a later time in conjunction with the Transportation System Plan.*

- h. Amend all residential zones to clearly state the minimum lot size for a lot with an accessory dwelling unit.

*Finding: This has been completed. The city permits ADUs in their residential zones while stating that they do not count toward the density requirement (Ord. 4796).*

- i. Amend the C-1 zone to eliminate or substantially increase the 0.25 commercial floor area ratio limitation. *The city eliminated this provision (Ord. 4840, p. 5).*
- j. Amend the C-1 zone to substantially reduce or eliminate the required 30-foot front yard setback. *The city removed this provision (Ord. 4840, p. 5).*
- k. Amend the R-5 zone to provide clear and objective standards for required design features on exterior elevations of buildings. *The city completed this provision (Ord. 4840, p. 5).*

- m. Amend the R-4 zone to provide clear and objective standards for buffering multiple family from adjacent single-family housing. *The city completed this provision (Ord. 4840, p. 5).*
- n. Adopt a policy to (1) complete the “concept planning” process for Neighborhood Activity Centers over the twenty-year planning period and (2) require the concept plans to demonstrate that the increased traffic resulting from the proposed uses can be accommodated. Amend the NAC Planned Development Ordinance to (1) delete the requirement in Section 5.C to apply the Planned Development process to zone changes and land divisions and (2) add a requirement to include a traffic analysis, which may be satisfied through the adoption of a TSP. *The city completed these (Ord. 4841, p. 3)*
- o. Amend Policy 71.01 to indicate that densities higher than six units per acre are allowed within one-quarter mile of transit routes. *The city completed this amendment (4840, p. 3).*
- p. Amend the illustrative plans so that the NAC Support Areas consist of high- and medium-density designations. Alternately, amend Policy 188.00(4) to be consistent with the illustrative plans. *The city removed the illustrations and revised the policy (Ord. 4841, p. 3).*
- q. Amend Policy 188.03 to provide clear guidelines that do not limit high-density housing from being a maximum distance of one-eighth mile (660 feet) from the edge of a Focus Area.

*Finding: The policy states that high-density housing should not radiate out further than one-eighth mile from the edge of a focus area. This does not preclude the location of high-density housing further than one-eighth mile from the edge of the focus area. (See also 1000 Friends’ Objection 4.)*

## **V. OBJECTIONS RECEIVED AND DLCD RESPONSES**

The department received two letters of objection, one from Sid Friedman on behalf of 1,000 Friends of Oregon, and one from Mark Davis. The objections were timely, and described the objector’s participation in the local process, which included written testimony at the city’s hearing.

The objections filed by 1000 Friends of Oregon relate to a wide array of issues contained in McMinnville’s submission of Task 1 and UGB amendment. The objection identifies alleged deficiencies in the submittal and suggests revisions to resolve the objections. This is a valid objection under OAR 660-025-0140(2).

The objection filed by Mark Davis relates to the provision of park land as part of McMinnville’s UGB amendment. The objection identifies alleged deficiencies in the

submittal and suggests revisions to resolve the objection. This is a valid objection under OAR 660-025-0140(2).

### **A. 1000 Friends Objections**

**Objection 1:** the city's zoning and regulations fail to implement zone changes that form a basis for the plan. Specifically, 1000 Friends points out the following:

- a. Rezoning R-1 land to R-2: The city has proposed rezoning 204 acres of land from R-1 to R-2, and has not rezoned any land as part of the submittal.

**Response to Objection 1.a.** The department does not agree with this objection. The city has adopted a policy that contains an implementation measure through the MGMUP (pp. 5-19) to rezone land from R-1 to R-2 on slope-constrained land. As 1000 Friends points out, Goal 2 states that the plan shall be the basis for specific implementation measures. Therefore, the plan contains specific implementation measures that increase land use efficiency, in accordance with the requirements of Goal 14, Factor 4, by reducing the amount of acreage needed by some 38 acres.

- b. Rezoning R-1 land to R-3, R-4, and R-5: The MGMUP is based on rezoning and presently designated R-1 to higher-density zones in the Grandhaven and Northwest McMinnville areas.

**Response to Objection 1.b.** The department does not agree with this objection. The city has generally identified lands to be rezoned to medium- and high-density residential. Again, the plan forms the basis for the implementation measures in the MGMUP. The areas references are generally located in the NAC Overlays, and are subject to future refinement planning, at which time the factors identified to institute the increased density can take place.

- c. Transit Corridors: The plan identifies transit corridors and identifies parcels that could support transit-oriented development, but does not rezone them.

**Response to Objection 1.c.** The department does not agree with this objection. Higher density transit corridors are a key component of the plan. In order to implement the policies contained in the plan regarding higher density along transit corridors The city has identified, but not rezoned, parcels suitable for higher density housing (Ord. 4848, p. 3, Table 9). The city proposes to consider these rezonings as part of their Transportation System Plan process.

- d. Multi-family zone (R-5): The city created this new high-density zone but has not applied it to any property.

**Response to Objection 1.d.** The department does not agree with this objection. 1000 Friends contends that not applying the R-5 zone violates ORS 197.296(9), which says, in part, "the local government, shall, as a minimum, ensure that land zoned for needed housing is in locations appropriate for the housing types..." Plan Policy 71.12 states that the R-5 zone should be applied to lands within Neighborhood Activity Centers and to

lands within existing or planned transit corridors. The planning and implementation of NAC's has, by policy (see Ord. 4841, Section 2, Plan Policy 187.00, as amended), been deferred to a time in the future when funding is available to carry out such master planning. Also, the MGMUP plans for all of the R-5 zoned land (38 acres) to occur on land outside the current UGB (see pages B-14 and B-15, Tables 10 and 11, respectively).

**Objection 2:** The definitions of low-, medium-, and high-density residential development within the MGMUP and its implementing ordinances are internally inconsistent, inconsistent with regard to minimum lot sizes and the types of residential products found in the city, and inconsistent with the city's housing needs analysis.

**Response to Objection 2.** The department does not agree with this objection. In response to the comments from the department, the city has revised the definitions for low-, medium-, and high-density housing as follows.

The MGMUP adopted in 2003 included Policy 71.09, which stated:

Medium-Density Residential (R-3 and R-4) – The majority of residential lands are planned to develop at medium density range (4-8 dwelling units per net acre.) Medium density residential development uses include small lot single-family detached uses, single family attached units, duplexes and triplexes, and townhouses.

The city has amended this definition to read:

Medium-Density Residential (R3 and R-4)- Medium density residential development should be limited to the following: (Ord. 4840., p. 4)

The city also amended plan policy 71.11. The version adopted in 2003 read:

High-Density Residential (R-5) – High density residential contains housing at densities of anywhere from 8 to 30 units per acre, depending on where the high-density dwellings are located (the highest densities being in the downtown commercial core). Typical uses include townhouses, condominiums, and apartments.

The city's adopted decision amends the policy to read:

High-Density Residential (R-5) – High density residential housing includes townhouses, condominiums, and apartments, with the highest densities being in the downtown commercial core.

1000 Friends asserts that these amendments create conflicts within the plan. The department finds that although the policies have been amended, the mention of these residential terms elsewhere in the plan, including MGMUP pp. 7-24 and 7-25, do not create an internal conflict. For instance, the inclusion of the original definitions in the MGMUP provide certain refinements that include density ranges as well as housing



product types. Ultimately, the zoning designations determine both the density and the permitted housing types.

Further, 1000 Friends asserts that Policy 71.09 as adopted in 2003 MGMUP stated that the majority of residential lands in McMinnville are planned to develop at medium density range, and that the actual zoning regulations failed to implement this policy since the vast majority of residential lands in McMinnville are actually planned and zoned for low-density development in the R-1 and R-2 zones. According to Table 8 of the MGMUP (p. B-10), the city plans for 1,053 acres of housing development in McMinnville between 2003 and 2023. Of these 1,053 acres, 669 acres—about 64 percent—are in the R-1 and R-2 zones. Only 313 acres—less than 30 percent—are in the city's medium density zones (R-3 and R-4).

The department disagrees with this portion of the objection for two reasons:

First, Table 8 of the MGMUP (p. B-10) displays the “Need forecast of housing, land need (gross acres), and needed density by zoning and housing type, 2003-2023.” It is not a table that actually plans or rezones land, but rather considers the housing type and land need.

Second, the city considers medium-density zoning to be 4-8 units/acre (MGMUP p. 7-24 and 7-25). If 1000 Friends asserts that Table 8 contains planning and zoning directives, then the total amount of acreage that is actually identified between 4 and 8 units/acre is 620 acres out of 1053 acres of the projected need, a majority of the land. This is consistent with the statement contained in the MGMUP.

**Objection 3:** The city amended the plan in a manner that reduces residential land need but has failed to adopt a corresponding reduction in the size of the UGB expansion.

- a. 1000 Friends states that the adoption of the revised policies relating to the expansion of the width of the corridor from 1,000 feet to 2,640 feet requires the city to further reduce the amount of land included in the proposed UGB. This is based on the fact that there was a 15.79-acre reduction in land need when increased density is directed to 1,000-foot transit corridors (MGMUP, p. 7-28). 1000 Friends states there should be an additional reduction based on the fact that the transit corridors have increased by 264 percent in area.

**Response to Objection 3.a.** As the city noted in Ord. 4840, p. 8, the city has identified only three additional parcels that could be rezoned to higher densities, and that since 2003, five of the six parcels identified for rezoning within the 1,000-foot transit corridor have since developed. Therefore, it is unreasonable to require the city to decrease the amount of acreage in the UGB beyond the 15.79 acre reduction already accounted for, given the limited opportunities for increasing densities on existing parcels.

- b. 1000 Friends argues that the revisions to policies that change targeted densities of 7.5 units per acre to a minimum of 7.5 units per acre and allowing for higher density housing within one-quarter mile of activity centers and neighborhood and general shopping areas within NACs instead of the previous one-eighth mile will increase the

overall densities within NACs and the city as a whole, therefore mandating a revised residential land need calculation and corresponding reduction in the size of the UGB expansion.

**Response to Objection 3.b.** The department believes that the amendments serve to reinforce the NAC policies with respect to higher densities closer to the focus areas and within one-quarter mile of activity centers and shopping areas. There is no evidence that the policy revisions will increase density to the extent that a revision of the residential land needs or corresponding reduction in the UGB is warranted.

**Summary Response to Objection 3.** The department does not agree with this objection. Contrary to 1000 Friends' claim, the city has calculated the reduced land need via the efficiency measures contained in the MGMUP, the city has adopted additional efficiency measures to increase planned residential density from 5.9 to 7.2 dwellings per acre (MGMUP, p. 5-24), reduce gross land need by 225 acres (MGMUP, p. 5-26), and employ measures to increase residential land capacity (MGMUP, p. 7-28). These measures include planning for neighborhood activity centers and transit corridors. Based on these efficiency measures, the city has adequately maximized efficiency under Goal 14, Factor 4.

**Objection 4:** The city's amendments to plan Policy 188.03 fail to resolve internal inconsistencies within the plan and establish a guideline calling for inefficient use of urban land.

**Response to Objection 4.** The department does not agree with this objection. The city has attempted to ensure and strengthen its policies related to transit corridors and NACs. Policy 188.03 states that high density housing *should not* radiate out farther than one-eighth mile from the edge of a focus area. This does not *preclude* the location of high-density housing further than one-eighth mile from the edge of the focus area. The basis for the arrangement of land uses in the NACs is to ensure higher density housing support areas radiating out from the focus areas. Policy 90.00 (MGMUP, p. D-10), reinforces Policy 188.03 by stating, "Greater residential densities shall be encouraged to locate within one-quarter mile from neighborhood and general commercial shopping centers, within neighborhood activity centers. . ."

The department formerly recommended remand to amend Policy 188.03, but upon further consideration, the department finds that the inclusion of Policy 188.03 in its current form to be acceptable, and that it serves to reinforce a more finite arrangement of land uses in the NACs. Furthermore, the department does not believe that Policy 188.03, when taken with the other guidelines and policies related to NACs, promulgates the inefficient use of land.

**Objection 5:** The city has rejected reasonable measures that would result in more efficient use of urban land.

**Response to Objection 5.** The department does not agree with this objection. 1000 Friends argues that Goal 14, Factor 4, "Maximum Efficiency;" ORS 197.732(1)(c)(B); Goal 2, Part II(c)(2); OAR 660-04-020(2)(b)); and ORS 197.296 require the city to adopt

measures to increase the efficiency in the use of land and, thereby, reduce the amount of farm or forest land needed for urban use. Also, the objection compares McMinnville with other cities in the area.

While all of these statutes and rules speak to efficiency in the use of land, only ORS 197.296 gives specific direction to local governments on how to plan for the mix and density of residential uses for a UGB amendment. Because this statute provides specific direction, a city is only required to maximize efficiency or accommodate residential uses within the existing UGB to the extent necessary to comply with ORS 197.296.

ORS 197.296 requires a city to compare the residential mix and density that have actually occurred and the mix and density determined in a housing needs analysis. If the actual density is different from that which is needed, the city is required to adopt measures to increase the likelihood that the needed mix and density will be achieved. A comparison with other jurisdictions or a showing that additional measures could increase efficiency are not required to respond to the statute. For residential uses, the analysis need only be based on a comparison of housing needs and the actual mix and density of housing in McMinnville, unless data from a wider geographic area is more accurate, complete, and reliable. The objection has not demonstrated that the data the city collected within its own UGB is not sufficiently accurate, complete, and reliable to be used as the basis for the city's decision.

Also, the city has considered numerous measures to maximize efficiency. The city had already adopted nine measures to improve efficiency, including allowing flag lots and "skinny" streets (Plan, pp. 5-2 through 5-8). Further, the city has adopted additional efficiency measures to increase planned residential density from 5.9 to 7.2 dwellings per acre (MGMUP, p. 5-24), reduce gross land need by 225 acres (MGMUP, p. 5-26), and employ measures to increase residential land capacity (MGMUP, p. 7-28). These measures include planning for neighborhood activity centers and transit corridors. Based on these efficiency measures, the city has adequately maximized efficiency under Goal 14, Factor 4.

1000 Friends also states that the city could reduce the proportion of land in large-lot zones, establish minimum density standards, establish minimum floor area ratios for employment uses, and provide incentives for infill and redevelopment as a means to increase efficiency. As stated above, the city has considered and implemented a number of measures to increase efficiency, and considering additional measures is not required by the statute.

**Objection 6:** Plan Policy 188.05 allocates an excessive amount of land for the projected built commercial and office space in neighborhood activity centers.

**Response to Objection 6.** The department does not agree with this objection. Goal 2 and Goal 14 require the city to adopt a plan and implementing regulations that are consistent and that use land efficiently. 1000 Friends argues that this plan policy calls for a very large amount of land for the projected amount of built employment space within Neighborhood Activity Centers and therefore fails comply with these goals.

Plan Policy 188.05 (MGMUP, p. D-20) calls for 5 to 10 acres of land in each NAC to accommodate 50,000 to 100,000 square feet of retail floor space and an additional 2.5 to 10 acres to accommodate 25,000 to 100,000 square feet of office. These translate into floor area ratios of 0.23.

Policy 188.05 is a guideline that describes the ranges of land (in acres) and floor space for commercial, office, and institutional uses that "should" be provided and are acceptable for the NACs. Comparing the ranges of acres to the acceptable range of floor areas yields minimum and maximum floor area ratios (FARs) allowed in the NACs of 0.23 and 0.46, respectively.

We disagree that the commercial and office FARs are necessarily inconsistent with the stated purposes of the NACs or that the city needs to provide a more detailed explanation of this policy. As noted in the staff report, the NACs are a creation of the city rather than the statewide planning goals, rules, or statutes. Therefore, the city should be afforded considerable deference in terms of defining the characteristics of the NACs. While the city may express the desire for the NACs to be pedestrian- and transit-friendly, this policy is the city's expression of the range and intensities of uses the city anticipates is necessary in order to carry out the plan.

While 1000 Friends correctly notes that FARs of about 0.23 are relatively auto-oriented, the department's experience has been that, outside of downtown areas, average intensities of about 0.25 FAR for retail uses and 0.35 FAR for office uses are not typically exceeded in most small- to medium-sized communities, including those served by feeder bus service. In addition, the department's experience has been that FARs are not the most important or effective tool to accomplishing pedestrian- and transit-oriented development in most small- to medium-sized cities such as McMinnville. While higher FARs than the city's minimum of 0.23 are desirable, design standards regarding the location and orientation of buildings and entrances, clustering buildings, and assuring safe, convenient, and direct pedestrian circulation are more important factors than regulating FARs. The city has adopted policies guiding the arrangement of commercial uses within NACs to be pedestrian-oriented and transit supportive.

**Objection 7:** The city has over-allocated land for commercial and office employment uses.

**Response to Objection 7.** The department does not agree with this objection. The city has revised its Economic Opportunities Analysis (Ord. 4840, Exhibit B) to demonstrate that the *actual* employee per acre ratios are substantially lower than previously indicated in the MGMUP. Actual ratios are 18.4 employees/net acre for commercial and 3.6 employees per net acre for industrial (Ord. 4840, Exhibit B, Table 4). The city found that the use of the proposed employee per acre ratios will encourage future commercial and industrial development to occur at higher densities. The city has also found that the proposed densities for employment uses will increase by at least 50 percent over actual and historic densities. Additionally, the city has found that approximately 18 percent of future employment will be accommodated through exiting expansions or redevelopment of existing sites (Ord. 4840, Exhibit B, p. 5, Tables 6-2 and 6-3).

The city estimates that it will need 173.6 acres of vacant land to accommodate the need for commercial and office uses, 175.6 acres for industrial, and 20.4 for public uses (Ord. 4840, Exhibit B, p. 5, Table 6-4). The department finds that the assumptions and conclusions are reasonable and supported by substantial evidence.

**Objection 8:** The city has not justified the amount of buildable land included in the UGB expansion for parks, nor adequately considered the impact of shared facilities on needed park acreage.

- a. Amount of Buildable land included in the UGB expansion for parks: 1000 Friends objects to the amount of park land being proposed, lack of funding mechanisms for acquiring parkland, and inclusion of additional lands for linear parks/trails.

**Response to Objection 8.a.** The department does not agree with this objection. The city has an adopted Parks Master Plan that contains standards for community and neighborhood parks. The city has estimated their park need based upon these standards (MGMUP, Table 23). The results of that analysis yield a projected need for 314 acres for the three types of parks mentioned above.

The city found that three community parks have lands within the 100-year floodplain, of which approximately 52 percent of the total land area is constrained by floodplain. Furthermore, the city found that it is fiscally unsound, environmentally irresponsible, and not in the best interests of its citizens to locate future community parks in the floodplain. Additionally, the city found that planned parks may not be located near floodplains due to the projected direction and location of future growth.

The city has adopted a new plan policy (Ord. 4840, p. 4) that states future community and neighborhood parks must be located above the boundary of the 100-year floodplain. The city currently has a bond measure in place to acquire and develop parkland. While 1000 Friends points out that the city has only acquired 20 acres for parks in the last six years, there is an adequate factual base to conclude that the park need projection is viable, and that the city has a reasonable ability, through the bond measure or SDCs, to provide funding for the parks.

According to the city, it has not included lands for linear parks or trails as part of this submittal since no projections were provided in the Parks Master Plan, and therefore, no land was included specifically for these park types.

- b. Shared facilities: The issue of sharing parks facilities with the school district and Linfield College has been raised by 1000 Friends and objector Mark Davis as a way to reduce the land needed for parks in the UGB expansion.

**Response to Objection 8.b.** The department does not agree with this objection. The city made findings related to sharing of facilities with the school district and Linfield College, noting that school district needs differ from the city's park needs, and that the location of the Linfield College facilities are in an area of the city already served by other parks (Ord. 4840, p. 10-11). 1000 Friends pointed out that the City of Woodburn has assumed a

50 percent reduction in parkland needs due to shared facilities. That may be the case, but the facts and circumstances of parks in Woodburn and McMinnville are different.

**Objection 9:** The city has significantly underestimated the development capacity of the Riverside South area, which is now within the city's acknowledged UGB.

**Response to Objection 9.** The department does not agree with this objection. 1000 Friends argues that the city should achieve a density of residential development in the Riverside South exception area greater than the planned 4.3 dwellings per gross acre (MGMUP, Table 16, p. 7-28). The department does not agree. It is to be expected that the density achieved in exception areas will be less than what would be achieved on large parcels. The city has shown the pattern of lots and dwellings for each exception area in Appendix C. In many of these areas, the pattern of small lots means that future development will occur through partitions rather than the more efficient subdivision process which is possible where there are larger parcels to divide. Also, the placement of dwellings may make it difficult to locate an efficient pattern of residential streets and infrastructure. The subarea is proposed to develop at a density of 4.3 dwelling units per acre, for a total of 552 dwelling units. This is a reasonable density projection given the nature of exception areas explained above, as well as the factors affecting urbanization of this subarea identified by the city (C-65 thru C-70).

**Objection 10:** The city has underestimated the development capacity of the Redmond Hill and Fox Farm areas, which are now within the city's acknowledged UGB.

**Response to Objection 10.** The department does not agree with this objection. 1000 Friends argues that the city should achieve a density of residential development in the Redmond Hill and Fox Farms exception areas greater than the planned 3.5 dwellings per gross acre (MGMUP, Table 16, p. 7-28). The department does not agree. It is to be expected that the density achieved in exception areas will be less than what would be achieved on large parcels of flat land. The city has shown the pattern of lots and dwellings for these exception areas in Appendix C. In these areas, the pattern of small lots means that future development will occur through partitions rather than the more efficient subdivision process which is possible where there are larger parcels to divide. Also, the placement of dwellings may make it difficult to locate an efficient pattern of residential streets and infrastructure. The Redmond Hill Road exception area is also limited by slope factors in the northeast and southwest portions of the area (Appendix C, Fig. 62).

**Objection 11:** The city has failed to account for a UGB expansion made since 2003 outside the MGMUP process.

**Response to Objection 11.** The department does not agree with this objection. In 2004, McMinnville expanded its UGB to include 35 commercially zoned acres for future expansion of the Evergreen Air Museum. The UGB was expanded through the post-acknowledgment plan amendment process. 1000 Friends argues that the city's current submittal does not address the impact of this 35 acre UGB expansion on the amount of land in the existing UGB or the impact, if any, on the amount additional land needed for future employment growth.

Those uses were generally limited to uses that serve the existing museum. The fact that the UGB was amended for the narrow and specific purpose of the museum expansion, and would not be providing additional general commercial or office space, does not affect the employment lands needs contained in the current UGB proposal.

**Objection 12:** McMinnville's UGB expansion includes prime farmland instead of higher-priority exception areas and areas of poorer soils. For several expansion areas the city has not analyzed the compatibility of proposed uses with nearby farm and forest activity.

**Response to Objection 12.** The department does not agree with this objection.

a. *Excluded exception areas.* The city did not include these areas in the UGB because it determined that they could not accommodate the identified land need (MGMUP, pp. 6-5 to 6-10) based on:

- physical constraints, location relative to existing and planned facilities;
- location relative to surrounding uses;
- location relative to market demand; and
- existing development patterns and other factors affecting urbanization.

These areas are mapped at Findings, Map 1 and the city provides additional information about each area in Appendix "C":

- Westside Road
- Bunn's Village
- Riverside North
- Booth Bend Road
- Old Sheridan Road

Westside Road. The city states that the area is unlikely to develop with urban uses in the planning period, the southernmost property owner does not want to annex, and the city does not have a need for more land for low-density housing. This is a small exception area that lies between a creek and a state highway. The city excluded this area from the UGB, based on substantial evidence that the area cannot reasonably be served with local streets. This satisfies the standard in ORS 197.298(3)(b) to exclude the area.

The city's maps in Appendix C show that the pattern of lot lines and buildings in this small area make it infeasible to find a route for a local street to serve the area. The creek, although not an absolute barrier, is a factor that increases the cost of serving the area and would require the construction of a bridge to connect to other areas to the east. The other small "strips and patches" of exception areas adjacent to state highways cannot reasonably accommodate urban uses. As the city points out, lack of a local street in this area would necessitate more driveway access onto the highway. A setback from the highway to provide a buffer would further reduce the already small number of homes this area could accommodate. Because of its small size, pattern of existing development and the land use conflict with the adjacent highway, the area cannot reasonably accommodate

urban uses and cannot reasonably be served with local streets. The city is justified to exclude it from the UGB.

Bunn's Village. The city's reasons for excluding this area are documented in Appendix C, pp. C-19 through C-40. The department agrees with the city that this area should be excluded from the UGB for two reasons.

First, this area cannot reasonably accommodate the need for pedestrian- and transit-oriented development in a neighborhood activity center. Although the area has 126 gross acres of buildable land, it extends in a linear fashion, across the North Yamhill River, along Highway 99W, and then along Hawn Creek (Appendix C, Figure 10). The linear configuration of this area does not lend itself to development of a walkable community without bringing in adjacent resource land. The commercial area of Bunn's Village is located in the middle of two halves of the state highway that form a couplet. The highway makes this commercial area virtually inaccessible for pedestrians. To make this area pedestrian-friendly would require that speeds on the highway be reduced and stoplights be installed, severely impacting the function of the highway.

Second, the department agrees that this area cannot reasonably be served with streets, water and sewers because of the separation from the remainder of the city caused by a floodplain and the negative impact of the state highway. Extensive development in this area would require major upgrades to Highway 99. ODOT has stated its opposition to the inclusion of this area in the UGB. Allowing development to occur in an area that is wholly dependent on the state highway for access to the remainder of the city is not a good planning practice or precedent. If this area were to develop, the city would need to provide alternate local street connections to the remainder of the city rather than rely on just the state highway. Providing alternate street connections is not reasonable since each connection would require a bridge crossing of the river and floodplain. Also, there are already traffic problems where Highway 99 splits into a couplet; these problems would be magnified should additional development occur.

For these reasons, services cannot reasonably be provided to this area and it fails the test under ORS 197.298(3)(b). In addition to the cost of extending water and sewer lines up to 2.8 miles, the cost of crossing the river and the highway makes this area unreasonable to serve, when compared to other areas.

Riverside North. The department agrees with the city that this area cannot reasonably accommodate residential use because of the noise and odor associated with the adjacent sewage treatment plant, industrial use, and railroad. This location is not suitable for residential use. The area could accommodate industrial use when the city has a need.

Booth Bend Road. The department agrees with the city's decision to exclude this area from the UGB. Service can be provided to this area since the extension of Booth Bend Road across Highway 18 already exists and would not need to be upgraded to a large extent to support a relatively minor amount of infill development (or at least the findings do not state otherwise). However, this area is problematic since it would be an isolated extension of the UGB across the highway, making walking to nearby destinations extremely difficult. This is consistent with the decision the Commission made regarding



the City of North Plains. This exception area cannot reasonable accommodate the need for a compact, pedestrian-friendly urban area.

Old Sheridan Road. The department agrees with the city's findings that transportation facilities cannot reasonably be provided to this area under ORS 197.298(3)(b). This area extends in a linear fashion southwest along Highway 99W. Portions of the area on the south and east side of the highway should be excluded for the same reasons as the Booth Bend Road area, above. The long, narrow shape of this area fronting on the highway would extend urban traffic out past the present UGB. Since the highway is the most direct way to reach almost all other destinations in the city, the additional traffic would necessarily use the highway for most trips rather than any local streets.

**b. Excluded resource areas.** In its review of the MGMUP in March and April of 2004, DLCDC concluded that the city's analysis was deficient and recommended to the Commission that additional work be done to support the prior decisions relative to which resource lands should be included—or excluded—from the proposed urban growth boundary. Specifically, the DLCDC recommended the following:

Using maps provided by the US Natural Resource Conservation Service and the Oregon Department of Agriculture, identify areas with class 3 and 4 agricultural soils and either (1) include them in the UGB instead of areas with class 1 and 2 soils, if any, or (2) explain why they should not be included based on the standards in ORS 197.298(3). Areas with class III and IV soils east of the airport are excluded from this requirement.

Consistent with this recommendation, the city mapped areas surrounding the McMinnville urban area, extending outward a distance of one mile from its 1981 urban growth boundary, for the purpose of identifying the existence and location of soils rated by the Natural Resource Conservation Service as Class III or Class IV. Under ORS 197.298 and Goal 14, if the UGB is amended to include resource lands, it must first look to land of lower capability soils and only include more productive soils if identified land needs cannot be reasonably accommodated. The objections focus on the following areas:

West Hills: The West Hills area contains two distinct areas; a crescent that defines the steeper upper West Hills area and the more gently sloping lower West Hills area, which is adjacent to the current UGB. The city found that the lower West Hills area contained approximately 200 acres of Class III soils, but was not included in the UGB for a variety of reasons.

Water: As discussed elsewhere in the MGMUP, McMinnville's current water distribution system is designed as a single-level pressure system that can only provide service to those properties situated between 100 feet and 275 feet in elevation. The West Hills area west of the UGB has an elevation of approximately 300 to 560 feet and sits entirely above the current water service level. It appears from the McMinnville Water & Light Water Master Plan that the agency has contemplated construction of an additional pressure zone system that could provide water service up to a high elevation of 415 feet; this elevation occurs at roughly the mid-point of the Class III soils in the West Hills area.

*Transportation:* Two public streets stub to the existing UGB at the east edge of the West Hills area: Fox Ridge Road at the north terminates in a series of private driveways and easements serving residences on acreages; Redmond Hill Road at the south is a public street all the way through to its existing stub at the urban growth boundary. For development to occur in the West Hills area west of the current urban growth boundary, Redmond Hill Road could be extended, but a secondary access road would have to be created in order to provide reasonable circulation and needed emergency vehicle access. For extension of Fox Ridge Road, right-of-way dedication would have to occur either along the existing privately held driveways or along a new alignment. A third option would be the extension of West 2<sup>nd</sup> Street, which currently stubs approximately 3,000 feet to the east of the existing UGB. Of further consideration, Peavine Road lies to the southwest of the West Hills area; however, a wide band of severe slopes (exceeding 25 percent gradient) lies between Peavine Road and the area of Class III soils, which are adjacent to the existing urban growth boundary, creating an impediment to a street connection. Extension of any of these three streets would require expensive design and construction measures because of the relatively steep grades present across this area.

*Land use compatibility:* The area within the western portion of the existing urban growth boundary is above the 275-foot elevation mark for service under the existing municipal water system. To the east of that elevation, the area is rapidly undergoing development with low-density single-family residential subdivisions. Preliminary indications are that this development pattern will continue. If needed medium- and high-density housing were placed in the West Hills area through westward expansion of the urban growth boundary, it would lie between low-density housing at the east and resource land at the west. From a planning perspective, this is not a logical scenario as it increases the potential for conflicts between residential uses and farm/forest resource management.

*Agricultural land compatibility:* The West Hills area borders farm and forestry lands to the north, west, and south. If brought into the UGB and developed with needed medium- or high-density housing, the potential for conflicts between the residential development and surrounding farming or forestry operations would increase significantly: the expansion would increase the number of dwelling units and residents adjacent to these farm and forestry operations.

Further, the bulk of the Class III soils within this portion of the West Hills are parts of larger parcels that are managed for farm or forestry uses, and comprise the best soils of those parcels; development on these soils would leave the residual parcels dominated by Class IV or lesser quality soils.

*Complete neighborhoods:* The Class III soils adjacent to the existing UGB at the west edge of McMinnville are concentrated outside the boundaries of the nearest NAC. Development of medium- to high-density housing in this area would create a "satellite" area extending out into the resource land areas.

In accordance with ORS 197.298(3)(a), (b), and (c), the city concludes that the concentration of Class III soils within the West Hills area adjacent to the existing westerly urban growth boundary are inadequate to accommodate the specific types of

land needs identified in the MGMUP, for the reasons cited above. Accordingly, the city has not included these lands within its expanded UGB.

1000 Friends objects to the exclusion of this area based on the fact that the city erred in its findings and that the area can accommodate specific types of land needs outlined in the MGMUP. Specifically, that this higher priority area can accommodate low-, medium-, or high density housing even with the constraints of slope, water service costs, transportation difficulties, and should therefore be included. The department does not agree, as the city has identified a specific need, namely medium- and high-density housing and that the location is outside the planned NAC, creating a satellite with no pedestrian access to shopping or other commercial services.

West Hills (north of Fox Ridge Road): Three parcels, which abut the existing UGB north of Fox Ridge Road, are dominated by Class III and IV soils. The westerly parcel is tax lot R4513-00100, a 94.73-acre piece owned by the Abrams family and is part of their larger farm and timber operation. The central parcel is a 16-acre portion of the larger tax lot 200, the southern portion of which is a former exception area that was approved for addition to the UGB in 2004 by LCDC. The easterly parcel is the approximately 34-acre parcel (tax lot R4418-00700, owned by Mark Smith).

Topographically, this area immediately adjacent to Hill Road is generally flat, but rises abruptly at the southwest where it merges with the foothills (the "West Hills"), which rise up to the west along Fox Ridge Road. The Class III and IV soils comprise the flat portions of the Smith parcel, and a small portion (northern edges) of the other parcels. Predominantly, these Class III and IV soils are consistent with the steeply sloped areas in the southern portions of the westerly two parcels where gradients can exceed 25 percent.

The flatter portions of these parcels have historically been farmed, although the sloped areas at the south are managed for timber production, and a small area within the unincorporated portion of tax lot 200 has been cultivated for Christmas trees. The parcels border the current UGB at the south, southwest, and east.

The abutting parcels to the southwest are under county jurisdiction and tend to be small acreage residential properties, with forest use and some livestock pasture. The McMinnville Water & Light reservoirs are within this cluster of parcels. At the west and to the north of the central parcel are additional parcels within the Abrams farm operation. At the north, tax lot 701 is a 42-acre piece, which was approved for inclusion in the UGB; this parcel is owned by the McMinnville School District No. 40 and is slated as a future high school site.

For the reasons discussed below, the city finds that tax lot R4418-00700 (Smith parcel) is appropriate for use in satisfying the identified residential land needs, but the city finds that the northern portion of tax lot R4418-00200 and the entirety of tax lot R4513-00100 are inappropriate for satisfying future land needs.

*Land use compatibility:* Tax lot 700 lies between low-density residential housing to the south and southwest and a future high school site to the north. Because this parcel abuts the school property, it would be ideal for medium- to high-density residential

development, which would also provide a reasonable transition between the school and the low-density development to the south/southwest. In addition, medium-density residential development on this parcel would be consistent with ongoing development on the east side of Hill Road, which includes a future elementary school site and a mixture of medium- and low-density residential development.

*Agricultural land compatibility:* Tax lot 700, if brought into the UGB, would be bordered by actively farmed land (the northern portion of tax lot 200) along an approximately 350-foot length of its western boundary, but would otherwise abut the school site at the north, Hill Road at the east, Fox Ridge Road at the south, and the UGB at the southwest. Development of tax lot 700 would remove farmland from production. The city believes there is more likelihood of conflicts between urban and farm uses if tax lot 700 is left as agricultural land. The preliminary plans for the future high school site indicate that the westerly portion will be used for outdoor activities and athletic events; these uses can provide a buffer between agricultural activities to the west and north and residential development on tax lot 700.

If the northern portion of tax lot 200 was brought into the UGB, it would abut the agricultural tax lot 100 at the west for a distance of approximately 1,100 feet, and tax lot 1000 at the north for about 500 feet. Although the southern portion of this piece of land would be unlikely to develop due to the steepness of the slopes, the northern portion could develop, resulting in a “prong” of residential development between the agricultural uses to the north and west, and the school property at the east.

Tax lot 100, if brought into the urban growth boundary, would be bordered by actively farmed land on two sides and along a portion of a third. This would leave an island of farm parcels bordered by the school property at the south, residential development at the southwest and west, Hill Road at the east, and Baker Creek Road at the north. This would also cut off tax lots R4418-1000 and 1100, also owned by the Abrams family, from the remaining portions of the farm operation.

*Complete neighborhoods:* Tax lot 700 lies within the preliminary boundaries of the Northwest NAC. As discussed elsewhere in this document, NACs are intended to provide medium- and high-density housing close to neighborhood-scale commercial development and transit corridors, because low-density housing needs are already met within the existing urban growth boundary. Hill Road is designated as a transit corridor and planned transit route in the MGMUP; since tax lot 700 abuts Hill Road at the east; this provides an excellent opportunity to plan for development that can take full advantage of transit opportunities. The NAC plan in the MGMUP (Figure 8) calls for medium-density (R-3 and R-4) residential development on tax lot 700; the city stands by this recommendation.

Tax lot 100 and the northern portion of tax lot 200 also lie within the Northwestern NAC boundaries. However, the city now finds that these two properties should be excluded from the UGB and the NAC because they will have limited connectivity with Hill Road and with development of tax lot 700 (absent the addition of other lands to the north and west, as proposed in the 2003 MGMUP); the steep slopes in the southern portions of these two properties leave only perhaps a 200-foot wide buildable corridor extending across tax lots 100, 200, and 700. Although such a corridor could potentially be

developed with a 60-foot wide local street right-of-way lined by homes on each side, the city finds that this would be an inefficient use of tax lots 200 and 100. Since the street could not make a connection to the north, it would have to be designed as a dead-end street, which would be an inefficient system.

For the reasons cited above, the city concludes that specific types of land needs as identified in the MGMUP cannot be reasonably accommodated by the areas of Class III and Class IV soils within tax lot R4513-00100 or the northern portion of tax lot R4418-00200. The city, therefore, has not included these lands in its expanded UGB, as permitted by ORS 197.298(3)(a).

However, the city also concludes that identified residential land needs can be accommodated by tax lot R4418-00700, which is predominately Class III and Class IV soils. The city, therefore, recommends its inclusion into the expanded UGB.

1000 Friends objects to the exclusion of tax lot 100, the northern portion of tax lot 200, and land west of tax lot 100 from the proposed UGB, arguing that these lands can reasonably accommodate identified needs. 1000 Friends also takes issue with the city's position that Class III and IV soils comprise a "small portion" of tax lots 100 and 200, predominately in the steeper portions where grades exceed 25 percent (Exhibit A, Amendment to findings, p. 9). Instead, 1000 Friends argues that the city has drawn the wrong conclusion, and that the taxlots are actually comprised primarily of Class III and IV soils.

The department agrees with the city, in that the excluded lots will have limited future connectivity, are constrained by slope that leaves a limited building corridor, and would create an island of agricultural activity and cut off tax lots 1100 and 1000 from existing farm operations.

Lands North of Olde Stone Village: To the immediate north of Olde Stone Village, a manufactured home park constructed in the mid-1980's, are two parcels predominantly composed of Class III soils. These parcels are identified as tax lots R4414-03601 and R4423-00400 and total approximately 197 acres. Topographically, this land is relatively flat and is absent any physical development. The properties are owned by Evergreen Agricultural Enterprises and Dora Bansen; each property has a history of active farm use. The parcels are bordered to the north, west, and east by other lands that are actively farmed. The manufactured home park and the Evergreen Aviation Museum campus border the parcels to the south. This property borders the existing McMinnville UGB along its southern edge. This property sits immediately west of the protection zone for a runway at the McMinnville airport, a zone used to minimize incompatible development within the area critical for safe aircraft landings and departures.

Lands North of McMinnville Municipal Airport: Some 35 acres comprised of predominantly Class III soils lay to the north of the airport, south of the Evergreen Aviation Museum property, and west of Olde Stone Village. The property is owned by Evergreen Agricultural Enterprises and is actively farmed. Cirrus Avenue terminates at the site's southwest corner; no other improvements are found within the site.

Lands East of McMinnville Municipal Airport: An area of Class IV soils, which are surrounded by Class II soils, lays east of the airport. This land is actively farmed and borders the McMinnville city limits and urban growth boundary to the west.

For the following reasons, the city finds that the three above-described areas near the airport are inappropriate for use in satisfying the identified residential and commercial land needs. As such, they are not included in the amended UGB.

*Land use compatibility:* The city finds that inclusion of this land would result in further residential encroachment adjacent to the airport; some of this land is less than one-quarter mile from a runway, while other land is immediately adjacent to the airport approach zone or under the downwind leg of runway traffic. Development of these lands at urban residential densities would be incompatible with the long range plans for the airport, as described in the McMinnville Municipal Airport Master Plan, and would potentially threaten the airport's viability and ability to serve the local and regional economy. According to the McMinnville Municipal Airport Master Plan, updated December 2004, aircraft operations are forecast to increase from 65,961 (2003 levels) to 109,440 by the year 2023.

*Safety:* The city finds that aircraft on the downwind leg of Runway 4 fly directly over the subject land. Placing residential development on this property would potentially jeopardize the safety of those on the ground and pilots and passengers in the aircraft (need for open space in which to land in the event of emergency). In addition, noise from such aircraft operations would not be conducive to residential development within the subject site. This property is also immediately adjacent to the airport approach zone for Runway 17. Limiting development within the zone, and on lands adjacent to it, is critical for safe operation of the airport.

*Agricultural land compatibility:* This land, if brought into the UGB, would be bordered by actively farmed land on three of its four sides. Its inclusion would also increase the perimeter of land that would be in direct proximity to farmed land.

*Complete neighborhoods:* The cornerstone of the MGMUP is the creation of complete neighborhoods that are achieved through the implementation of NACs. Densities within these centers are expected to be higher than historically realized in McMinnville and would include higher percentages of multi-family housing. To address safety concerns, higher density housing is not an appropriate use for the subject site.

For the above noted reasons, the city concludes that specific types of land needs as identified in the MGMUP cannot be reasonably accommodated on the lands north and east of the McMinnville Municipal Airport, notwithstanding its predominantly Class III and IV soils. The city, therefore, has not included these lands in its expanded UGB, as permitted by ORS 197.298(3)(a).

1000 Friends objects to the exclusion of the areas north and east of the airport, in particular an area that they claim was not examined, located between the Evergreen Air Museum and Olde Stone Village. The city did include this area in their Alternative Lands discussion of the East area (p. 6-8, Fig. 1). The department agrees with the city in that the

area cannot reasonably accommodate an identified need, namely medium- and high-density residential development, due to safety issues related to the airport, and can therefore be excluded in accordance with ORS 197.298(3)(a).

Riverside Resource Area: 1000 Friends states that there is an area of resource land with Class III and IV soils located between the Riverside North and Riverside South exception areas that was not considered or even analyzed by the city. The area consists of two large parcels: the westerly parcel contains the city's water reclamation facility (sewer plant), and the easterly parcel is identified as a future reclamation facility expansion site. This being the case, the area cannot reasonably accommodate residential uses, and can be excluded.

c. *Included resource areas.* The following resource areas are included in the proposed UGB, and are considered problematic by 1000 Friends:

Three Mile Lane: The Three Mile Lane subarea is located south of McMinnville across Highway 18, and, with the exception of the Lawson Lane exception area (also proposed for inclusion into the UGB), encompasses all of the land south of Highway 18, east and north of the South Yamhill River, and south and west of the existing UGB. The McMinnville Municipal Airport is adjacent to the southeast corner of the subarea. The land in the subarea is primarily in farm use. Soils within this subarea are primarily Class II with a small area of Class I extending east from the Lawson Lane exception area. The Three Mile Lane subarea is proposed as one of the four NACs upon annexation.

1000 Friends has four objections related to the inclusion of the Three Mile Lane subarea:

1. Goal 14 requires the city to consider the compatibility of urban development within the expansion area with nearby agricultural activity. 1000 Friends states that the city inadequately considered the compatibility of the proposed urban development within the subarea with nearby agricultural activity. The Oregon Department of Agriculture (ODA) has similar concerns.

The department does not agree with this portion of the objection. The city addressed Goal 14, Factor 7, and ORS 197.732(1)(c)(D) and has found that the term "compatible" does not require that there be no interference with, or adverse impact of any kind, on adjacent uses, but rather that the uses be reasonably able to coexist. The city described the types of existing uses surrounding the subarea and the proposed uses that would take place within the subarea, and in so doing, concluded that "the proposed expansion areas will not create compatibility conflicts between uses. Much of the existing UGB is adjacent to resource lands that are currently in agricultural uses. Expansion of the UGB would not create new uses that would create new types of compatibility issues" (MGMUP, p.74).

2. The city noted the existence of a "Weapons Training Facility" in its findings, its submittals to DLCD, and its staff memoranda. The city cited this facility in its findings as a justification for excluding lands with poorer soils east of the airport. The city found the facility to be incompatible with urban residential development.

The department disagrees with this portion of the objection. While the weapons training facility was cited as a reason to exclude higher-priority lands east of the airport, it was not the only reason, nor was it a primary reason. The issue of safety and interference of airport operations was of greater concern. (see "Lands east of McMinnville" above).

3. The city justifies the inclusion of the Three Mile Lane area in part based on the need for an NAC in this vicinity. 1000 Friends contends that the Norton Lane subarea would be a better location for a Neighborhood Activity Center.

The department disagrees with this portion of the objection. The city developed the NAC concept in order to create complete neighborhoods, which contain services, commercial use, high- and medium-density housing, and the locational criteria includes distribution of these areas throughout the city. The large parcel size and vacant land provide opportunities for successful NAC creation in the Three Mile Lane subarea.

4. As detailed in earlier portions of this objection, there are exception areas and higher-priority resource areas that can reasonably accommodate identified land needs. For this reason, inclusion of the Three Mile Lane area violates Goal 14 and ORS 197.298. The department does not agree with this portion of the objection, and has addressed this issue above (see the Excluded Resource Areas and Excluded Exception Areas portions of this section).

Southwest Area: The Southwest subarea is located southwest of the existing UGB on the east side of Old Sheridan Road and on the west side of Hill Road. It is bounded on the north by a creek and urban development, Hill Road to the west, and by farmland to the south. The subarea contains 194.62 acres and is currently in agricultural use. It is comprised primarily of Class II soils with some Class III and IV soils close to the creek. 1000 Friends objects to the inclusion of this subarea based on the idea that there will be high-density housing on Hill Road as part of the NAC, and that this type of housing would create conflicts with the agricultural land to the west.

The department disagrees with this objection. The city refers to general arrangements of uses in the Southwest NAC, but does not state that high-density housing will be located on Hill Road (MGMUP, p. 7-18). In addition, The city addressed Goal 14, Factor 7, and ORS 197.732(1)(c)(D) and has found that the term "compatible" does not require that there be no interference with, or adverse impact of any kind, on adjacent uses, but rather that the uses be reasonably able to coexist. The city has described the types of existing uses surrounding the subarea and the proposed uses that would take place within the subarea, and in so doing, has concluded that "the proposed expansion areas will not create compatibility conflicts between uses. Much of the existing UGB is adjacent to resource lands that are currently in agricultural uses. Expansion of the UGB would not create new uses that would create new types of compatibility issues" (MGMUP, p. 74).

Grandhaven and Norton Lane Areas: 1000 Friends states that, like the Three Mile Lane and Southwest area, the city has not analyzed the compatibility of proposed uses in the Grandhaven and Norton Lane areas for either the boundaries adopted in 2003 or the amended boundaries adopted in 2006. For both of these areas, the amended boundaries



create unbuffered edges of over a mile with actively farmed agricultural land in an EFU zone.

The department does not agree with this portion of the objection. The city addressed Goal 14, Factor 7, and ORS 197.732 (1)(c)(D) and has found that the term “compatible” does not require that there be no interference with, or adverse impact of any kind, on adjacent uses, but rather that the uses be reasonably able to coexist. The city described the types of existing uses surrounding the subarea and the proposed uses that would take place within the subarea, and in so doing, concluded that “the proposed expansion areas will not create compatibility conflicts between uses. Much of the existing UGB is adjacent to resource lands that are currently in agricultural uses. Expansion of the UGB would not create new uses that would create new types of compatibility issues” (MGMUP, p.74).

**Response to Objection 12:** The department finds that the city has adequately justified those areas included and excluded from the UGB based on relevant criteria.

**Objection 13** (mistakenly labeled 12 in 1000 Friends’ letter): McMinville’s submittal is incomplete.

**Response to Objection 13.** The department does not agree with this objection.

In 2004, LCDC remanded all portions of the MGMUP that were not explicitly approved. The Commission did not require that the city make specific changes beyond what was identified in the order. 1000 Friends contends that the current submittal includes only those portions of the plan and findings that were amended by the city and county and that neither portion of the current submittal included other remanded parts of the plan, nor is it apparent that the city or county has readopted them, either with or without changes. Ordinances 4840 and 4841 clearly identify that the MGMUP, adopted in 2003 by both the county and the city, are amended. There was no requirement to resubmit the entire package as part of the remand.

**Objection 13** (mistakenly labeled 11 in 1000 Friends’ letter): The city failed to comply with Goal 1 and its local plan policies that implement Goal 1 in reaching its current decision.

**Response to Objection 13.** The department does not agree with this objection. The city’s comprehensive plan requires the involvement of the CAC when contemplating “major” changes to the comprehensive plan text and map amendments, and changes to the UGB. The city engaged in an extensive public involvement process as part of the original 2003 UGB submittal. The majority of the 2003 submittal is still intact and the city did hold public hearings on the proposed amendments. The department does not find that the city violated its own citizen involvement process or Goal 1.

#### **B. Mark Davis Objection**

Mr. Davis argues that the city has overstated its need for buildable lands for and that park land need could be substantially reduced through the sharing of facilities with Linfield

College and the local schools. This objection is similar to 1000 Friends' Objection 8 above.

***Response to Objection.*** The department does not agree with this objection.

The city has an adopted Park Master Plan that contains standards for community and neighborhood parks. The city estimated its park need based upon these standards (MGMUP, Table 23). The results of that analysis yield a projected need for 314 acres for neighborhood parks, community parks, and greenspace/natural areas.

In his objection, Mr. Davis states that approximately 30 percent of the land proposed for inclusion in the UGB is for park land, and that the city has ignored or not fully considered the use of floodplain and other "constrained" lands for parks. The city has found that three community parks have lands within the 100-year floodplain, of which approximately 52 percent of the total land area is constrained by floodplain. Furthermore, the city has found that it is fiscally unsound, environmentally irresponsible, and not in the best interests of its citizens to locate future community parks in the floodplain. Additionally, the city has found that planned parks may not be located near floodplains due to the projected direction and location of future growth. The city has adopted a new plan policy (Ord. 4840, p. 4) that states future community and neighborhood parks shall be located above the boundary of the 100-year floodplain.

As related to the sharing of parks facilities, the city has made findings related to the sharing of facilities with the school district and Linfield College, noting that the school district needs differ from the city's park needs, and that the location of the Linfield College facilities are in an area of the city that is already served by other parks (Ord. 4840, p. 10-11).

## **VI. CONCLUSIONS**

The department concludes that the City of McMinnville has responded to the Commission remand in a manner that complies with Goal 14, OAR 197.296, and ORS 197.298. Specifically, the city has demonstrated that the UGB expansion is needed, that the expansion locations chosen and those passed over have been justified, and the implementation through the McMinnville Growth Management and Urbanization Plan satisfies applicable criteria.



*Growing McMinnville*  
**MINDFULLY**

# FOLLOW UP TO JANUARY 22, CITY COUNCIL WORK SESSION

McMinnville is trying to decide how it will move forward with growth planning to accommodate 20 years of population growth within the City's urban growth boundary. Today's discussion will focus on what a response to a Court of Appeals 2012 Remand for the 2003 McMinnville Growth Management and Urbanization Plan looks like in terms of time, costs and risks, in comparison with starting a new UGB expansion effort.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# GROWTH PLANNING – MCMINNVILLE, Is there a path forward?

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# MCMINNVILLE NEEDS TO EXPAND ITS UGB

The need to expand has not been the issue, it is how and where the city expands that has been a contested dialogue for 20 years, plagued by opposition, challenges and appeals.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# MCMINNVILLE UGB HISTORY

- ❑ 1981: Adopted UGB for 1980-2000 Planning Period
- ❑ 1988: Entered Periodic Review with DLCD
- ❑ **1993-1995:** Residential inventory/projections
- ❑ **1994-1995:** Commercial land inventory and projection
- ❑ **1995-1997:** HB 2709 retrofit to Residential inventory and needs
- ❑ **1999:** Community Growth and Land Use Analysis project
- ❑ **2000-2002:** Residential BLI, adoption, DLCD appeal, LUBA remand
- ❑ **2001-2003:** Economic Opportunities Analysis
- ❑ **2002-2003:** Additional local review produced the McMinnville Growth Management and Urbanization Plan adopted in 2003
- ❑ **2003-2013:** Continued defense of Growth and Expansion plan
- ❑ **2013:** Remand by Oregon Circuit Court of Appeals
- ❑ **2013:** Decision to let it rest. – battle worn and resource depleted.
- ❑ **2018:** Start work again with HNA/EOA and direction to pursue URA/UGB

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# LAND SUPPLY IS CONSTRAINED

- Higher Land Costs
- Lack of Affordable Housing Opportunities
- Lack of Overall Housing Opportunities
- Increasing Homeless Population
- Loss of Economic Opportunities
- More Population Growth in Unincorporated County = SPRAWL
- Deficit in Tax Revenue to Fund Public LOS
- Infill in a Vacuum



CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020





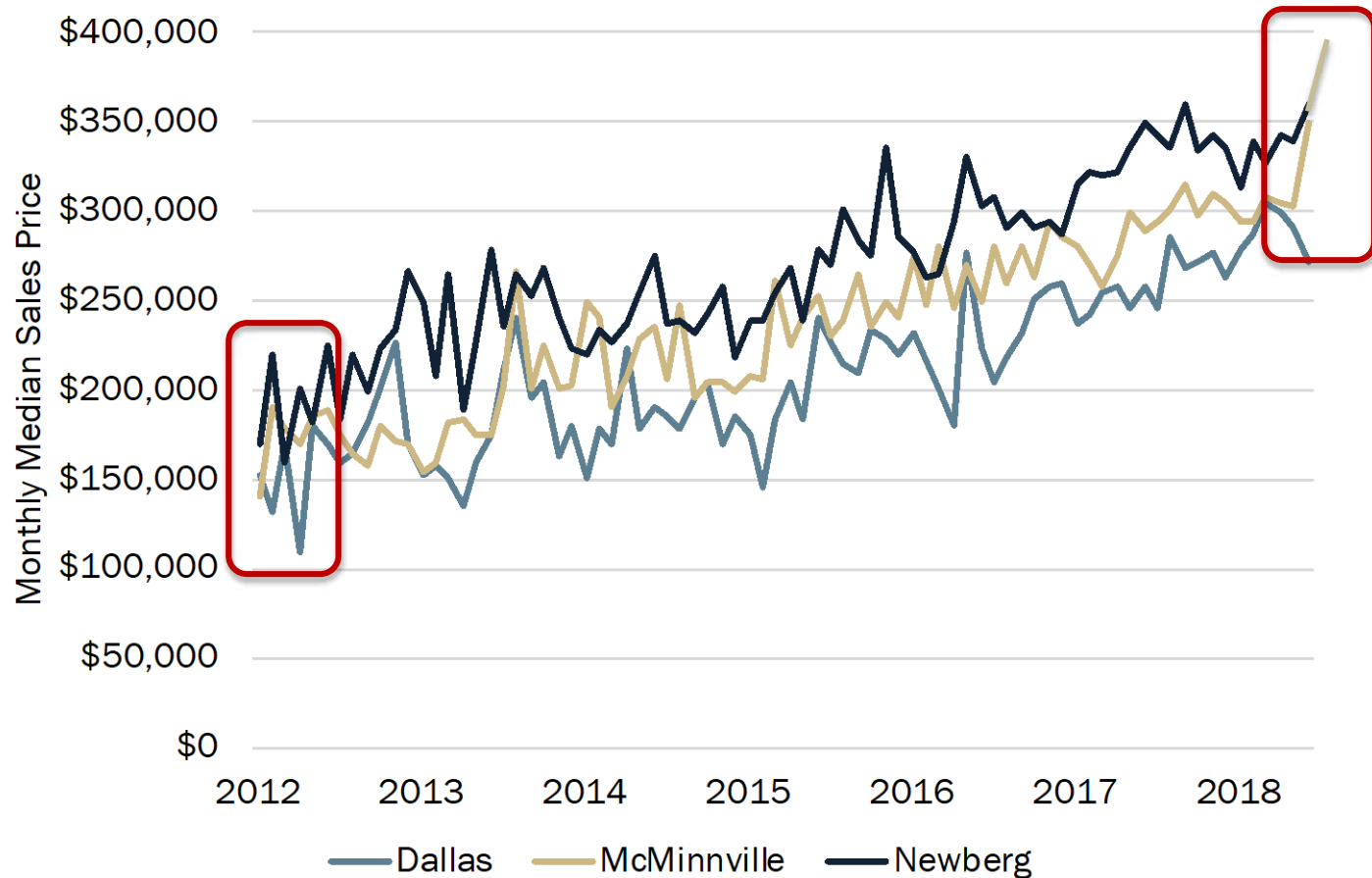
# MCMINNVILLE – A QUICK SNAPSHOT

- ❑ McMinnville is beginning to GENTRIFY.
- ❑ Lower and moderate income households are being displaced.
- ❑ Homelessness is increasing.
- ❑ Average home sales price in 2019 was \$398,200.
- ❑ Employers are losing employees due to housing scarcity.
- ❑ Last successful UGB amendment was adopted in 1981 for the planning horizon of 1980 – 2000.
- ❑ Started next effort in 1994, and then decided to shelve it in 2013 after 20 years of challenges and appeals – planning horizon of 2003-2023.
- ❑ McMinnville spent \$1,000,000 on the MGMUP effort, 100s of hours of staff time, 100s of hours of community engagement.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# Median Sales Price, 2012 to 2018



Source: Redfin.

**2019 = \$398,200**

**\$55,400**

***If your household earns....***

**\$15,000**

(30% of MFI)

**\$25,150**

(50% of MFI)

**\$40,240**

(80% of MFI)

**\$50,300**

(100% of MFI)

**\$60,400**

(120% of MFI)

***Then you can afford....***

**\$375**

monthly rent

**\$630**

monthly rent

OR

**\$1,000**

monthly rent

OR

**\$1,260**

monthly rent

OR

**\$1,510**

monthly rent

OR

**\$45,000-  
\$53,000**

home sales price

**\$75,000-  
\$88,000**

home sales price

**\$141,000-  
\$161,000**

home sales price

**\$176,000-  
\$201,000**

home sales price

**\$211,000-  
\$242,000**

home sales price



.5 FTE,  
earning minimum wage  
\$13,000



Food Processor  
\$25,490



Healthcare Support  
\$36,705



Real Estate Broker  
\$52,287



Firefighter  
\$65,904

**\$55,400**

***If your household earns....***

**\$15,000**

(30% of MFI)

**\$25,150**

(50% of MFI)

**\$40,240**

(80% of MFI)

**\$50,300**

(100% of MFI)

**\$60,400**

(120% of MFI)

***Then you can afford....***

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OR

**\$45,000-  
\$53,000**

home sales price

**\$75,000-  
\$88,000**

home sales price

**\$141,000-  
\$161,000**

home sales price

**\$176,000-  
\$201,000**

home sales price

**\$211,000-  
\$242,000**

home sales price



.5 FTE,  
earning minimum wage  
\$13,000



Food Processor  
\$25,490



Healthcare Support  
\$36,705



Real Estate Broker  
\$52,287



Firefighter  
\$65,904

**ESTABLISHING NEED IS NOT  
THE ISSUE**

**HOW TO ACCOMMODATE  
THE NEED IS**

**CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020**





# Growing McMinnville MINDFULLY

## SHOULD McMINNVILLE GROW...

*Up?*



**HIGHER DENSITY  
RESIDENTIAL DEVELOPMENT**

*(apartment complexes, smaller lots, duplexes & triplexes)*

**NO URBAN GROWTH  
BOUNDARY EXPANSION**

*Out?*



**MAINTAIN THE EXISTING  
MIX OF HOUSING TYPES**

**LARGE URBAN GROWTH  
BOUNDARY EXPANSION**

*Both?*



**ADDITION OF HIGHER DENSITY  
RESIDENTIAL DEVELOPMENTS  
AND SINGLE FAMILY HOMES**

**SMALL URBAN GROWTH  
BOUNDARY EXPANSION**

# ORS 197.298 – PRIORITY LANDS FOR UGB AMENDMENTS

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- 1) **First Priority = Urban Reserve Land**
- 2) **Second Priority = Land adjacent to the UGB that is an exception area or non-resource land.**
- 3) **Third Priority = Land designated as marginal land.**
- 4) **Fourth Priority = Agricultural and Forest Lands**
  - **Low Value Farmland**
  - **High Value Farmland**

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020

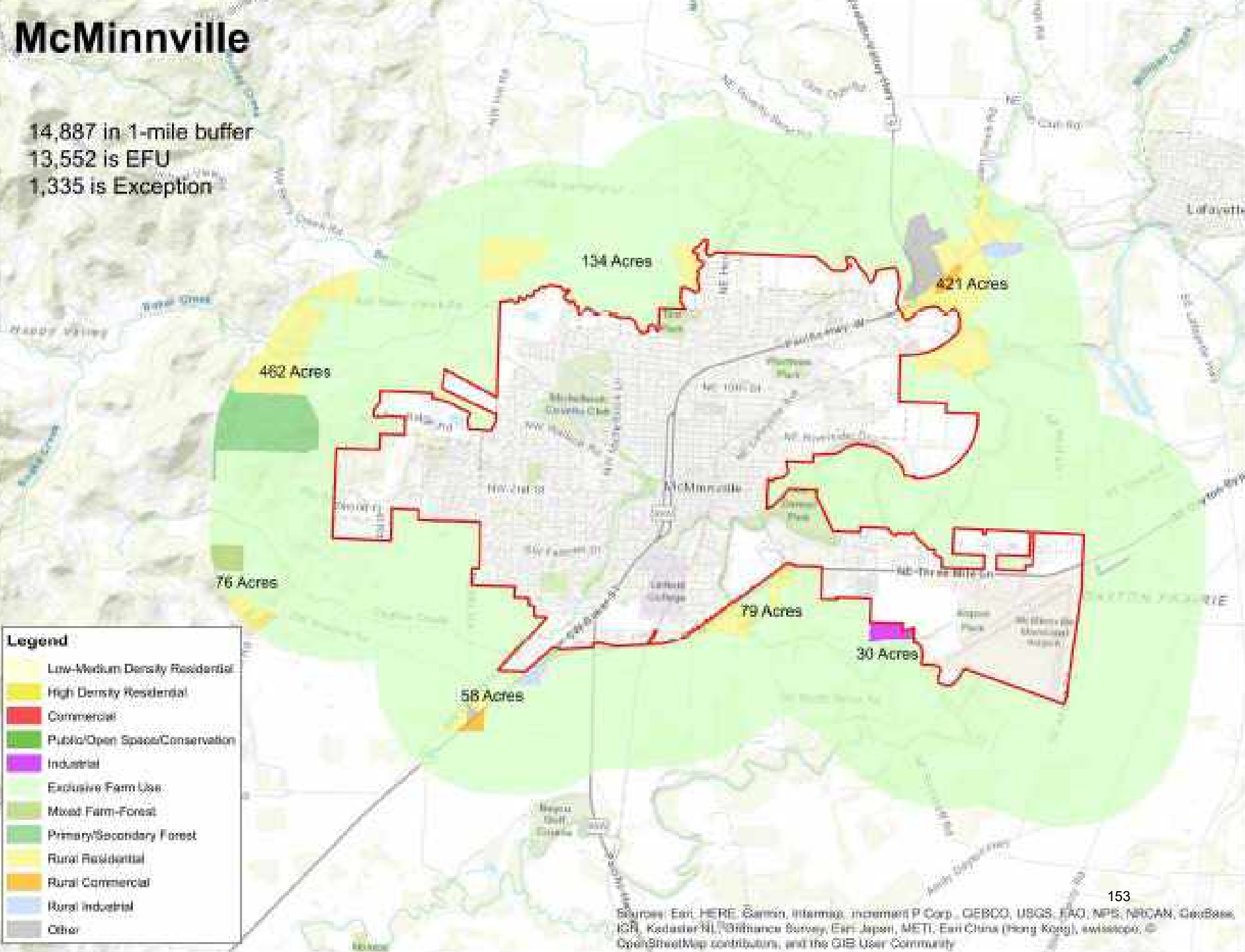






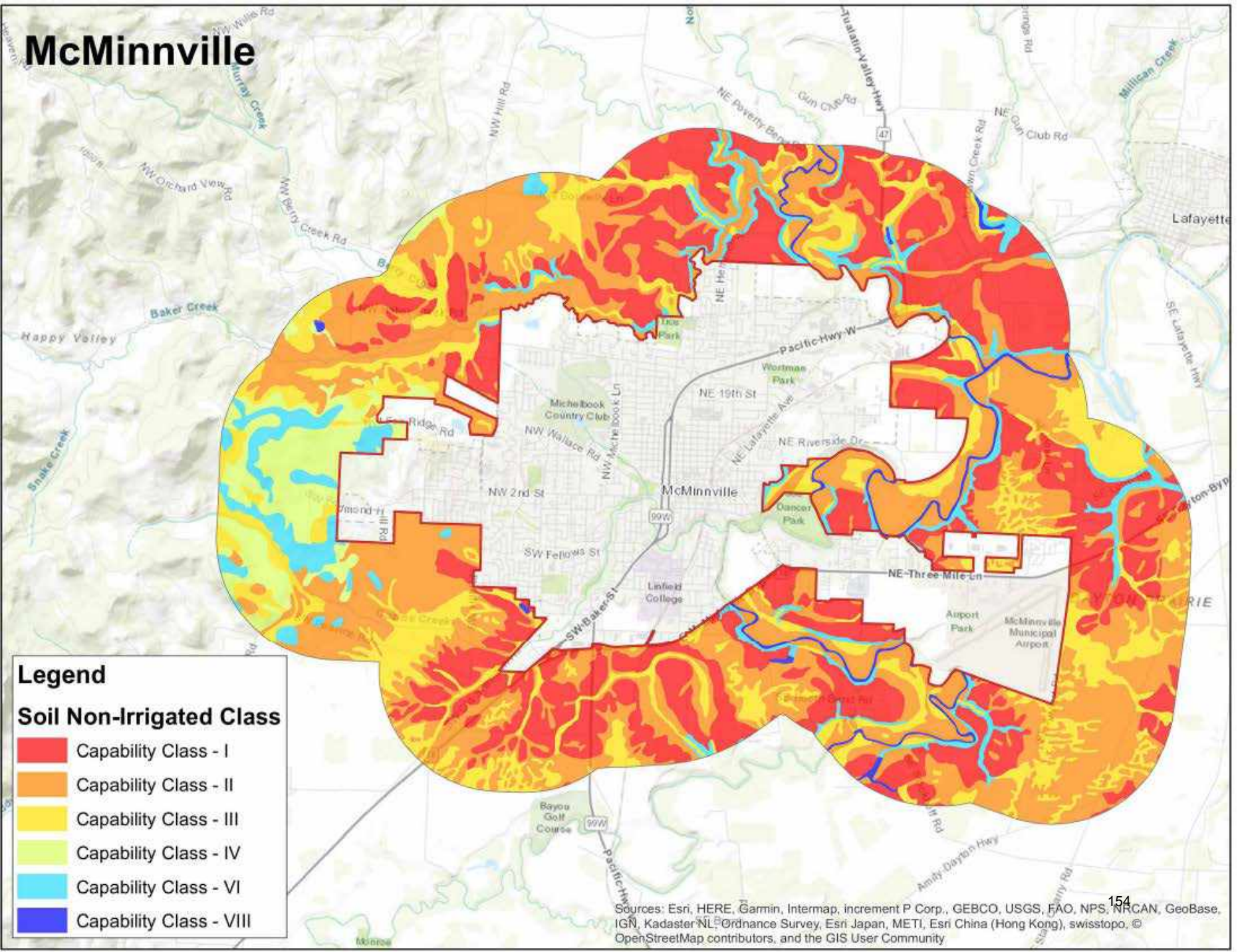
# McMinnville

14,887 in 1-mile buffer  
13,552 is EFU  
1,335 is Exception



- Legend**
- Low-Medium Density Residential
  - High Density Residential
  - Commercial
  - Public/Open Space/Conservation
  - Industrial
  - Exclusive Farm Use
  - Mixed Farm-Forest
  - Primary/Secondary Forest
  - Rural Residential
  - Rural Commercial
  - Rural Industrial
  - Other

# McMinnville



**Legend**

**Soil Non-Irrigated Class**

- Capability Class - I
- Capability Class - II
- Capability Class - III
- Capability Class - IV
- Capability Class - VI
- Capability Class - VIII

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, © OpenStreetMap contributors, and the GIS User Community

# POTENTIAL PATHS FORWARD

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# POTENTIAL PATHS FORWARD

1. URA/UGB
2. UGB
  - a. Dust off 2003 Submittal, resubmit with revised findings
  - b. New alternatives analysis
  - c. Concurrent with URA
3. REGIONAL PROBLEM SOLVING
  - a. RPS – 2003 UGB Plan
  - b. RPS – URA/UGB
4. LEGISLATIVE BILL
5. QUASI-JUDICIAL UGB AMENDMENTS
6. DO NOTHING (Wait for a state-wide fix)
7. NEGOTIATE A DEAL

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# DECISION MAKING FILTER

## 1. DOES IT ACHIEVE SUCCESS – Reality not Monopoly

- a. Housing
- b. Economy
- c. Parks
- d. Livability
- e. Infrastructure
- f. Master planning
- g. Local Control

## 2. ACHIEVEMENT OF GOALS

## 3. COSTS

## 4. TIME

**McMINNVILLE'S GROWTH PLANNING - POTENTIAL PATHS FORWARD**

OPTION	DESCRIPTION	POTENTIAL COSTS	POTENTIAL BENEFITS	POTENTIAL RISKS	RISK ANALYSIS	Cost & Benefit Value Score	Cost	Time
OPTION 1	...	...	...	...	...	...	...	...
OPTION 2	...	...	...	...	...	...	...	...
OPTION 3	...	...	...	...	...	...	...	...
OPTION 4	...	...	...	...	...	...	...	...
OPTION 5	...	...	...	...	...	...	...	...

OPTION	DESCRIPTION	POTENTIAL COSTS	POTENTIAL BENEFITS	POTENTIAL RISKS	RISK ANALYSIS	Cost & Benefit Value Score	Cost	Time
OPTION 1	...	...	...	...	...	...	...	...
OPTION 2	...	...	...	...	...	...	...	...
OPTION 3	...	...	...	...	...	...	...	...
OPTION 4	...	...	...	...	...	...	...	...
OPTION 5	...	...	...	...	...	...	...	...

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# CITY COUNCIL DIRECTED STAFF TO EVALUATE RESPONDING TO THE 2012 REMAND OF THE 2003 MGMUP

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# MGMUP (2003-2023) UGB HISTORY

---

- ❑ **1994 – 2000 Coordinated Population Forecast, Draft HNA work**
- ❑ **2001: HNA Adopted.**  
Appealed to LUBA. Remanded back to City.
- ❑ **2002: City started work on the UGB Alternatives Analysis (2003-2023)**
- ❑ **2003: Ordinance No. 4795 (EOA) and Ordinance No. 4976 (MGMUP)**
- ❑ **2004: LCDC Hearing on MGMUP**  
Objections Filed. LCDC Remands to the City.
- ❑ **2006: Ordinance No. 4840 and 4841 – Amended MGMUP**  
Approved by DLCD Staff. Appealed to LCDC. LCDC Affirms DLCD Staff Decision.  
Appealed to Court of Appeals.:

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# MGMUP (2003-2023) UGB HISTORY

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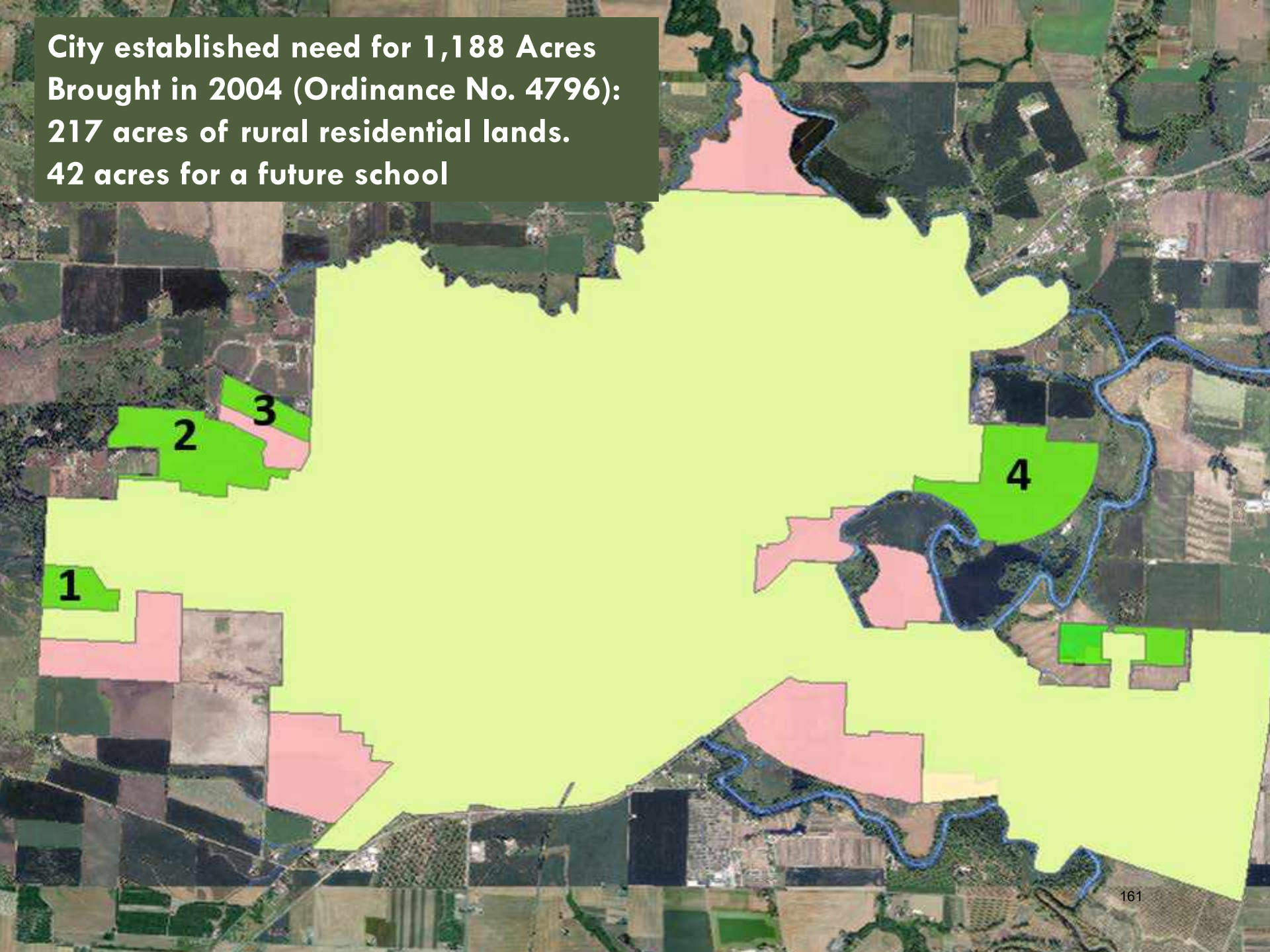
- ❑ **2011: Court of Appeals Decision – One Assignment of Error.**  
Remanded back to LCDC.
- ❑ **2012: LCDC remanded back to the City of McMinnville**  
(Yamhill County was not part of the remand).
- ❑ **2013 :** City adopts Ordinance No. 4961, “unwinding all of its work”, electing to delay a response to the remand.
- ❑ **2014 – 2015:** DLCD Rulemaking
- ❑ **2016:** New rules become effective. All UGB work prior to new rules can still move forward under previous rules.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



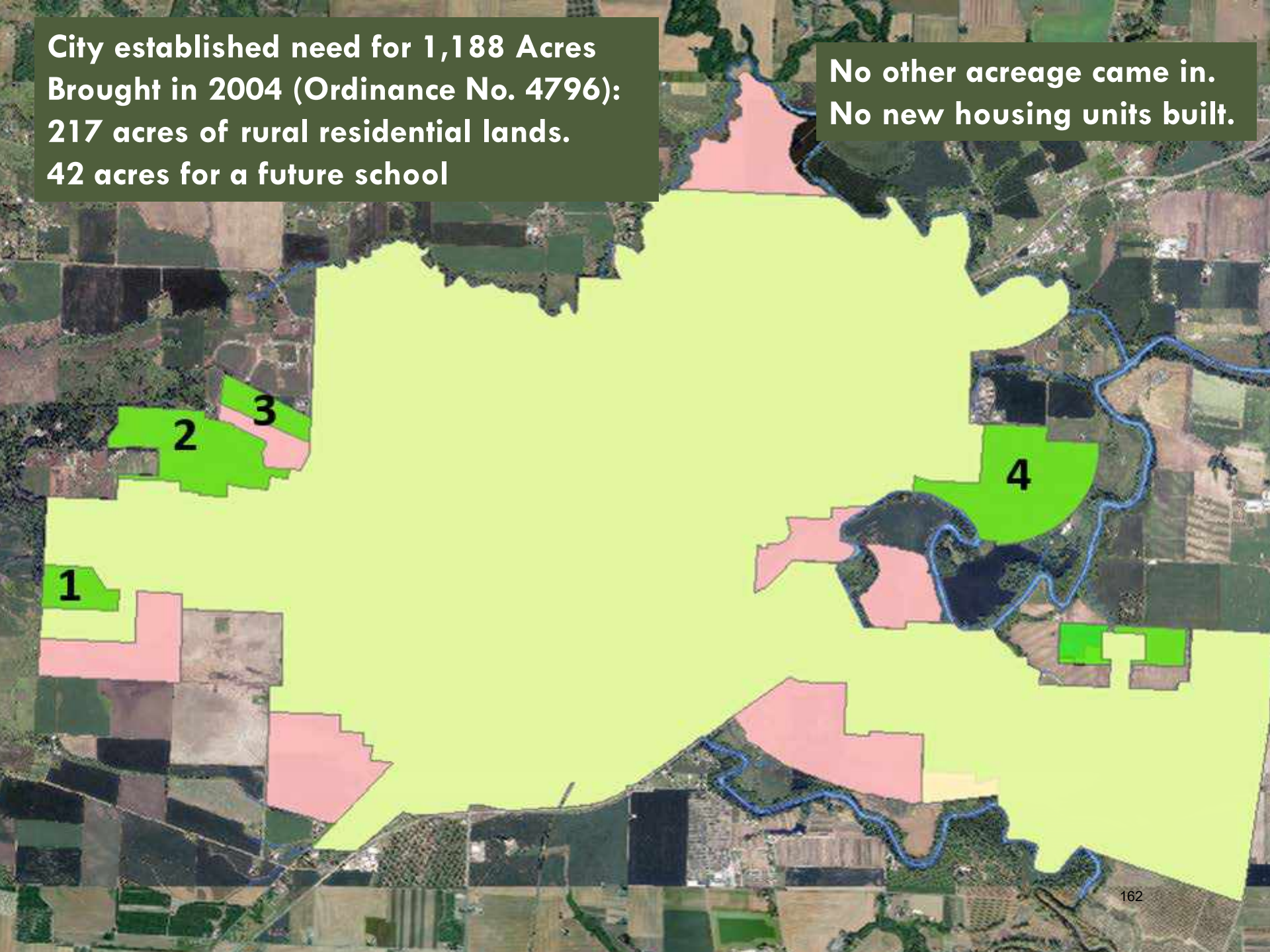


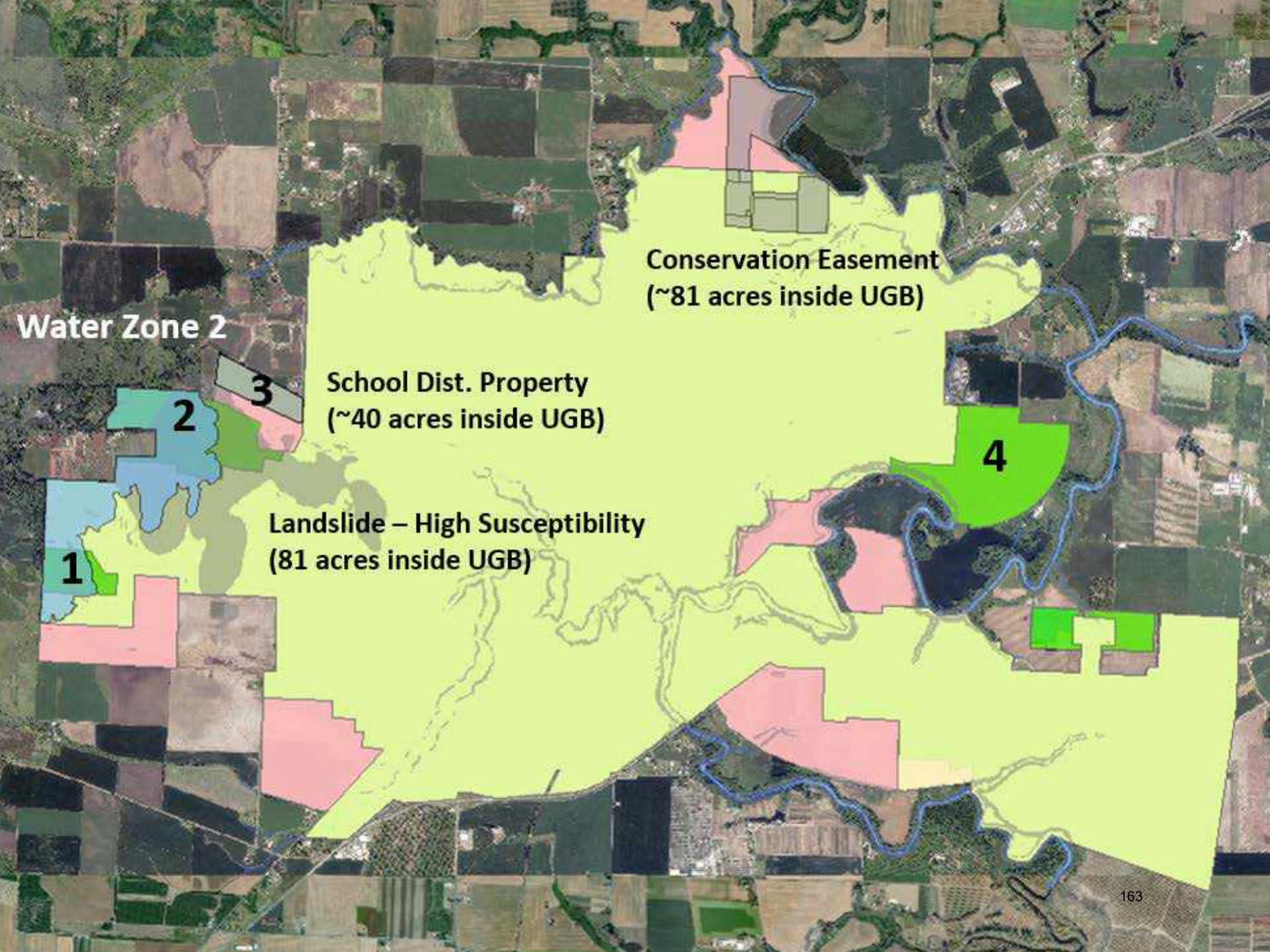
**City established need for 1,188 Acres  
Brought in 2004 (Ordinance No. 4796):  
217 acres of rural residential lands.  
42 acres for a future school**



**City established need for 1,188 Acres  
Brought in 2004 (Ordinance No. 4796):  
217 acres of rural residential lands.  
42 acres for a future school**

**No other acreage came in.  
No new housing units built.**





**Water Zone 2**

**Conservation Easement  
(~81 acres inside UGB)**

**School Dist. Property  
(~40 acres inside UGB)**

**Landslide - High Susceptibility  
(81 acres inside UGB)**

**1**

**2**

**3**

**4**

# LEGAL VIABILITY

---

- **McMinnville can legally respond to LCDC's remand. (DLCD supports this interpretation).**
- **Pursuant to statutes and administrative rules in effect at the time of the submittal - 2006.**

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# REMAND OVERVIEW

---

## Remand Review – *What's in the Court of Appeals decision?*

- **General critique of buildable land analysis and how to do it correctly.**
- **Specific critique of the UGB analysis to include/exclude areas.**

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# REMAND OVERVIEW

---

## Remand Review – What is in the Court of Appeals decision?

- Buildable land – Cost does not make land un-buildable.
- Solution - revise BLI maps to only exclude hazards, steep slopes, and “topographic/physical” barriers.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# REMAND OVERVIEW

---

## Remand Review – What is in the Court of Appeals decision?

- From buildable land maps, select land to include in the UGB based on statutory priorities.
- Skip “priority” areas only if they cannot meet a specific land need.



# REMAND OVERVIEW

---

## Remand Review – What is in the Court of Appeals decision?

- From buildable land maps, select land to include in the UGB based on statutory priorities.
- Skip “priority” areas only if they cannot meet a specific land need.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020





# REMAND OVERVIEW

---

**Remand Review – What did DLCD’s remand order say?**

- **Follow the Court’s instructions, or**
- **Proceed “in any other manner that complies with the statewide planning goals”.**

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# REMAND OVERVIEW

---

## Response – Remand Work Outline

- Re-Map Buildable Land
- Cost to Serve Analysis
- Land Development Cost Analysis
- Refine Housing Need Analysis
- Revise UGB Expansion Map
- Revise Plan Documents/Findings

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# REMAND OVERVIEW

---

## Buildable Lands

- **Most land in expansion areas will be classified as buildable.**
- **Exclude: flood plains, steep slopes, severe and high risk landslide.**
- **Topographic/Physical Barriers: Baker Creek, Yamhill River.**

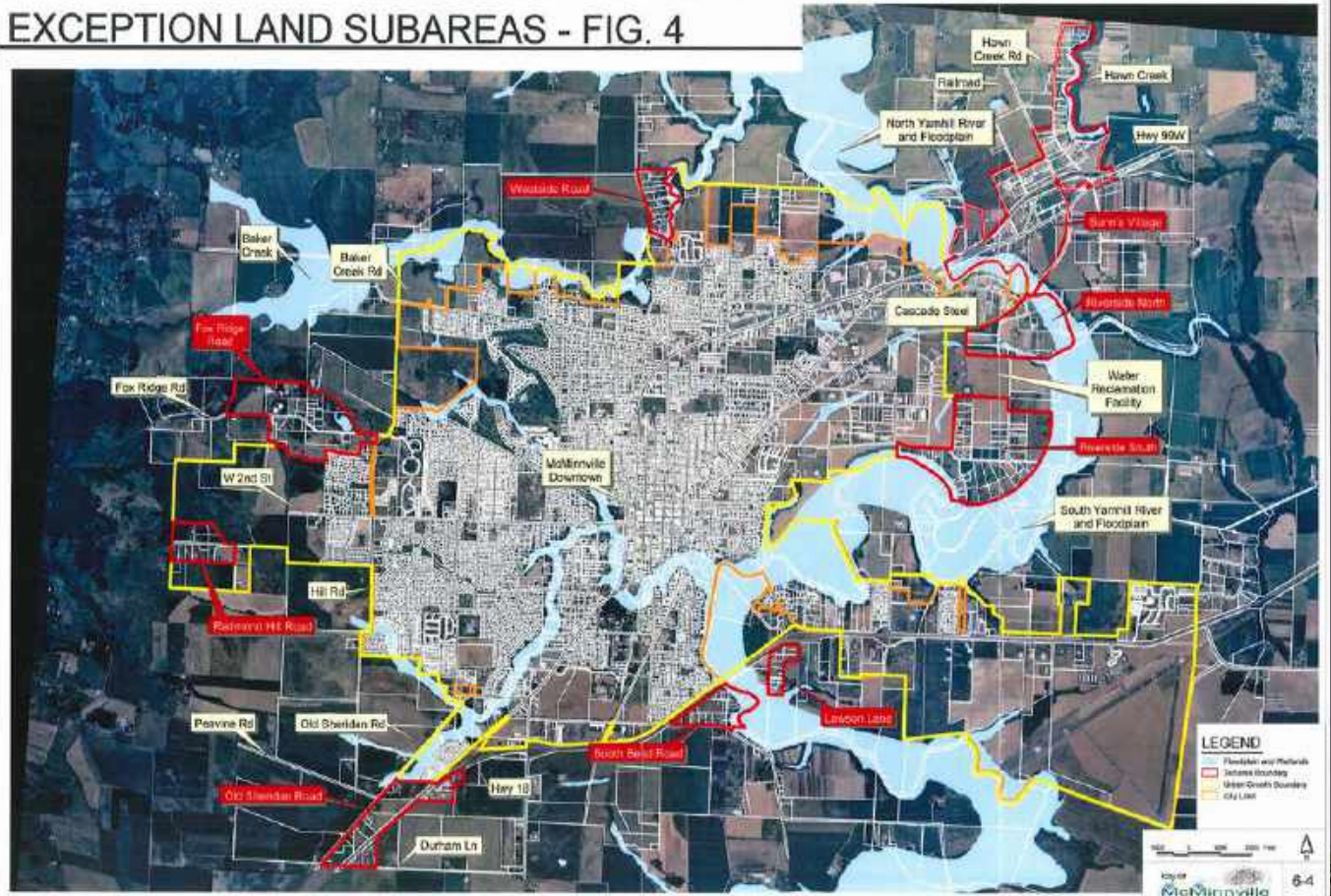
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# CANDIDATE EXPANSION AREAS

2003 Study Areas  
Figure 4

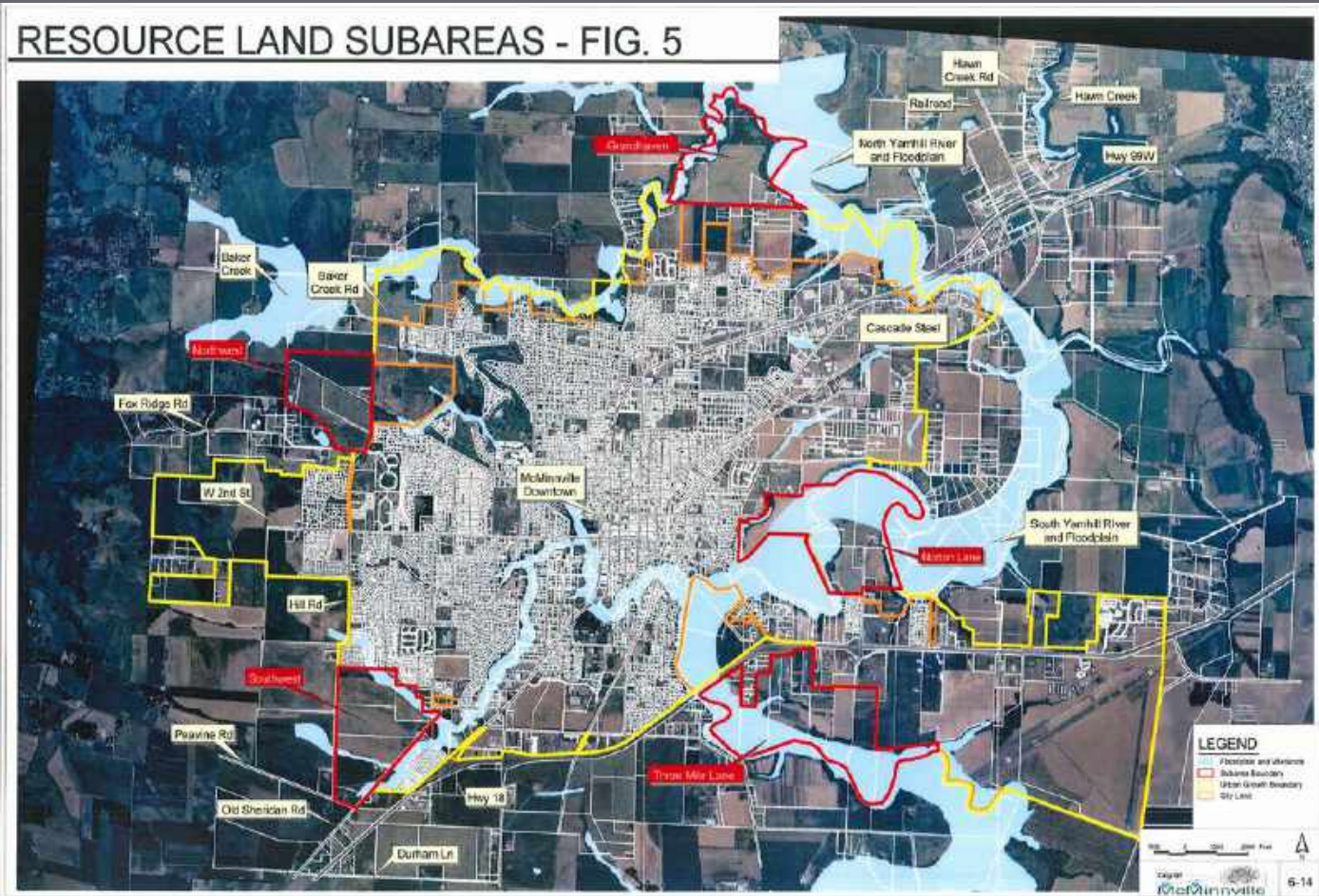
EXCEPTION LAND SUBAREAS - FIG. 4



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# CANDIDATE EXPANSION AREAS

2003 Study Areas  
Figure 5



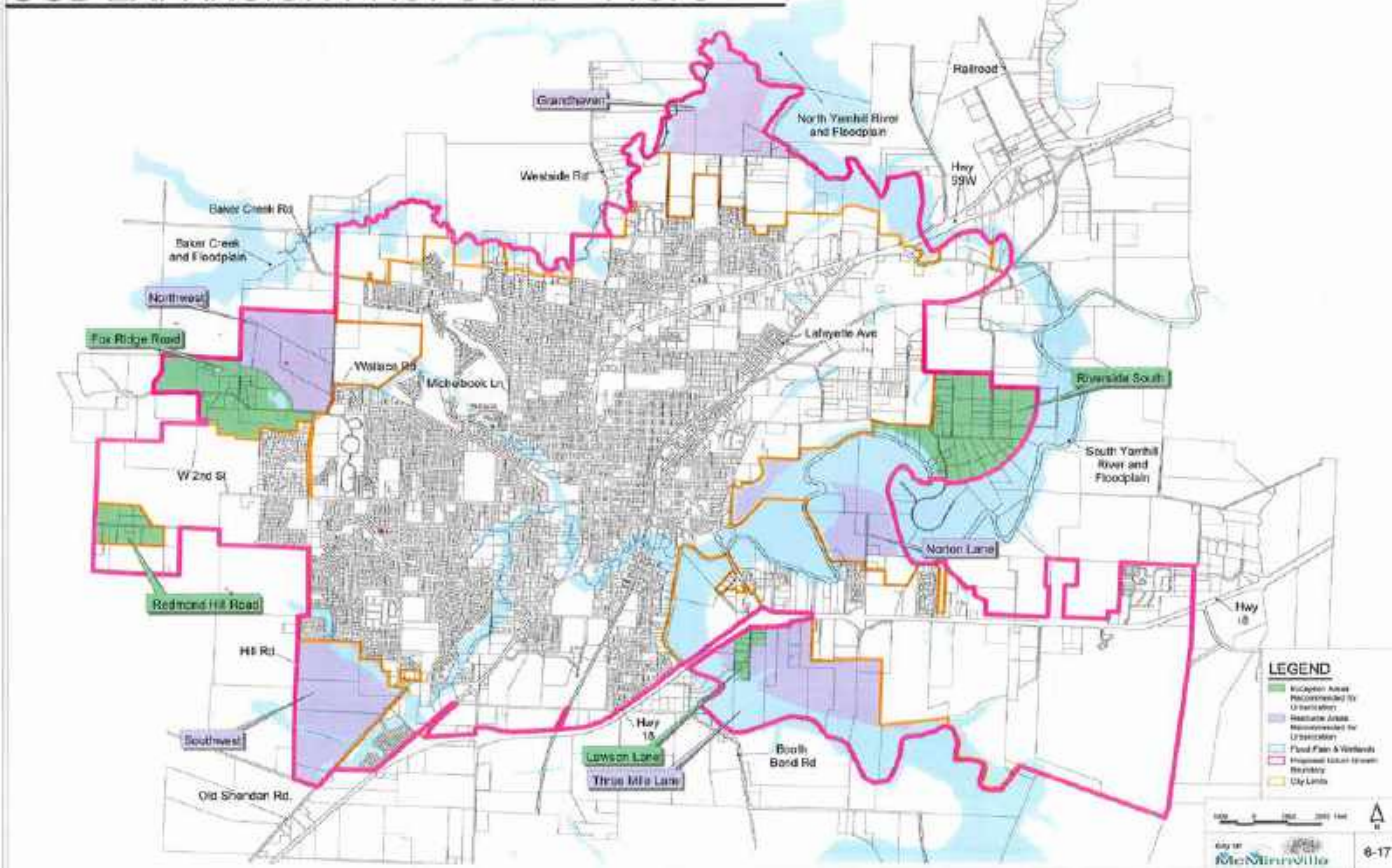
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# CANDIDATE EXPANSION AREAS

2003 UGB Areas  
Figure 6

UGB EXPANSION PROPOSAL - FIG. 6

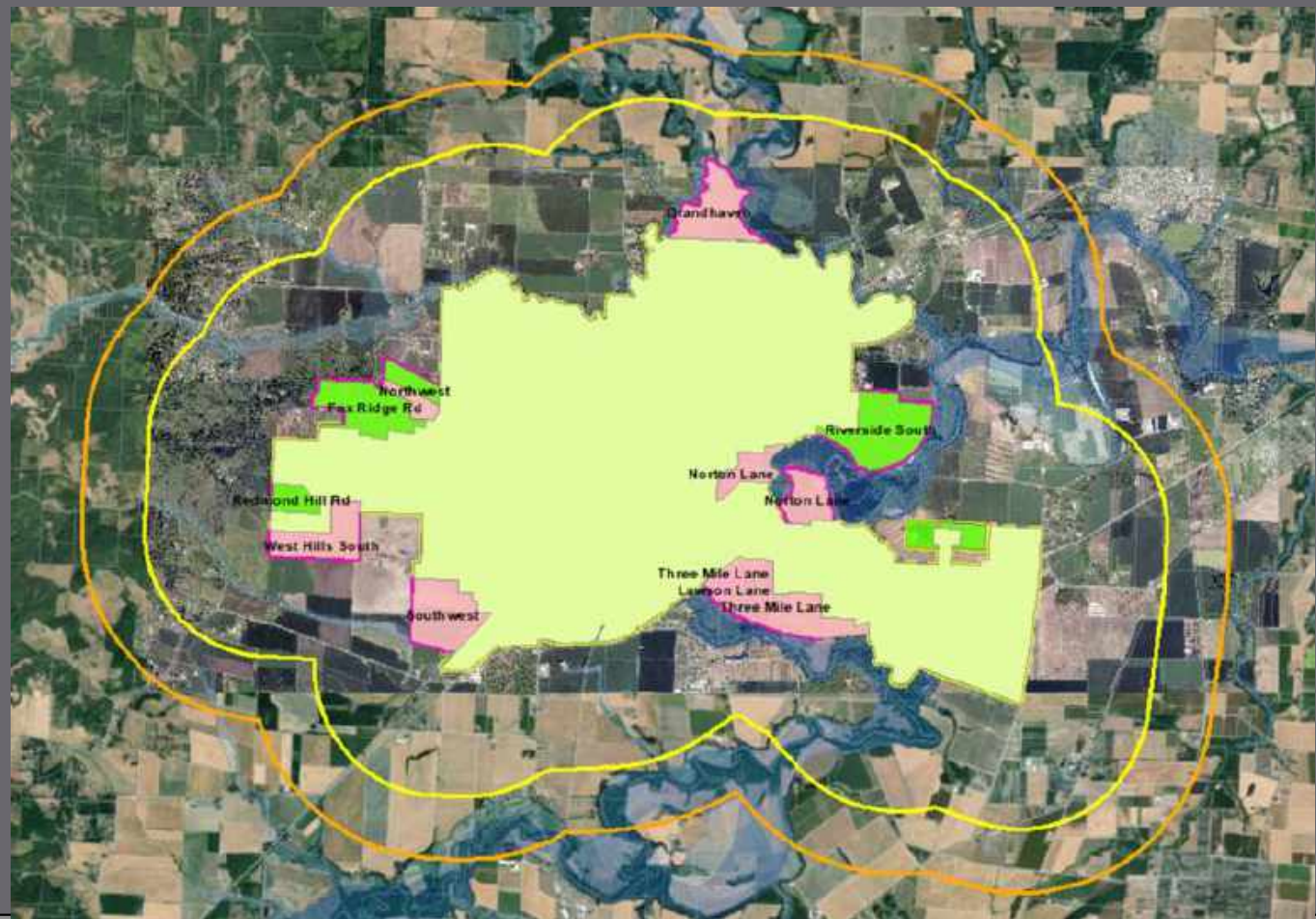


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# CANDIDATE EXPANSION AREAS

2006 UGB Proposal  
Figure 6



CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# REMAND OVERVIEW

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## Cost to Serve Study

- Water, sewer, and roads.
- Serviceability cost rating: low, medium, high cost/buildable acre.
- Consultant support: Jacobs Engineering.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020





# REMAND OVERVIEW

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## Land Development Cost Analysis

- “typical” 5-acre sites in West Hills, Riverside South, and 3-Mile Lane.
- Feasibility and cost/dwelling to develop SFR and MFR.
- Professional development support.

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# REMAND OVERVIEW

---

## Refine Housing Land Needs Analysis

- Use data from the 2001 HNA.
- Define land needs and cost parameters for housing types from executive to affordable.
- In-house work product.

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# REMAND OVERVIEW

---

## Revise UGB Expansion Map

- Follow Court of Appeals screening process to justify inclusions and exclusions.
- Use 2006 plan designations and zoning (NAC, R-5 zone).
- In-house product.

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# REMAND OVERVIEW

---

## Revise Plan Documents/Findings

- Use 2006 amendments where possible.
- Revise Appendix C to document UGB land selection process.
- Outline implementation steps (e.g. NAC plans, County growth management agreement).

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# REMAND – Response Work Program Costs

<b>Task</b>	<b>Est Cost</b>	<b>Assigned to:</b>
<b>Buildable Land Map</b>	<b>\$ 6,000</b>	<b>Planning (In process)</b>
<b>Serviceability Analysis</b>	<b>30,000</b>	<b>Public Works, MWL, Jacobs Eng.</b>
<b>Development Cost</b>	<b>22,000</b>	<b>Planning w/ developers</b>
<b>Affordable Housing Land Need</b>	<b>2000</b>	<b>Planning, ECONW (in process)</b>
<b>Map/Plan Amendments</b>	<b>15,000</b>	<b>Planning (In process)</b>
<b>Findings</b>	<b>8,000</b>	
<b>Sub-total</b>	<b><u>\$ 83,000</u></b>	
<b>Note also need to update Public Facility Plans</b>	<b>\$500,000</b>	<b>Parks, Transportation, WW, Water, Storm</b>

**Plus legal expenses, estimated to be \$50,000 - \$100,000**

**CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020**



# REMAND OVERVIEW – PROS AND CONS

---

## PROS:

- Builds upon previous work and investment, has community support.
- All of the challenges have been legally resolved, except for one. (Coordinated Population Forecast, Housing Needs Analysis, Efficiency Measures, Park Land, etc.)
- Court decision lays out path for response.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# REMAND OVERVIEW – PROS AND CONS

---

## CONS:

- One assignment of error is a big one – priority structure.
- Cannot use new rules adopted in 2016 which allows for impractical infrastructure analysis.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# “NEW WORK” - OVERVIEW

---

- **What is the New Work? Where are we?**
  - ▣ **Overview/Recap of Steps**
  - ▣ **New Work Status**
  - ▣ **Summary of Need**
- **Next Steps & Requirements**
- **Cost of Next Steps**
- **Decisions/Actions Which can be Appealed**

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020





# WHAT IS THE NEW WORK?

---

- **Started 2018**
  - ▣ Planning for UGB for 2021-41, Urban Reserve -2067
- **So far:**
  - ▣ Draft Needs analysis (residential, employment, other – public/semi-public)
  - ▣ Draft Buildable Lands in UGB to determine sufficiency
  - ▣ Have not yet begun evaluating expansion areas per new rules
- **Not yet vetted through public process or adopted.**
- **Unknown: challenges or appeals at any step in process**
  - ▣ (MUAMC public hearing, CC public hearing, DLCD)

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# STATUS



STEP	TASK
1	Determine the Need
2	Evaluate Alternatives to Meet the Need – Pt 1
3	Evaluate Alternatives to Meet the Need – Pt 2
4	Develop and Select the Preferred Alternative
5	Adopt the Plan
6	Adopt Supporting Plans
6	Implement the Plan

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# STATUS OF STEP 1 - NEEDS ANALYSIS TASKS

---

## Needs Analysis Tasks:

- Housing Needs Analysis and BLI
- EOA and BLI, Public/Semi Public Land Needs
- Urbanization Report
- Housing Strategy (not a land use document)

## All Items:

- Complete Remaining Items in Drafts
- Distribute to PAC for review
- Public vetting
- Public hearing process for adoption

Need to Submit PAPA “Notice of Proposed Amendment” for Drafts to DLCD in May

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# NEXT STEPS

STEP	TASK
1	Determine the Need
2	Evaluate Alternatives to Meet the Need – Pt 1
3	Evaluate Alternatives to Meet the Need – Pt 2 Develop and Select the Preferred Alternative
4	Adopt the Plan
5	Adopt Supporting Plans
6	Implement the Plan



CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020

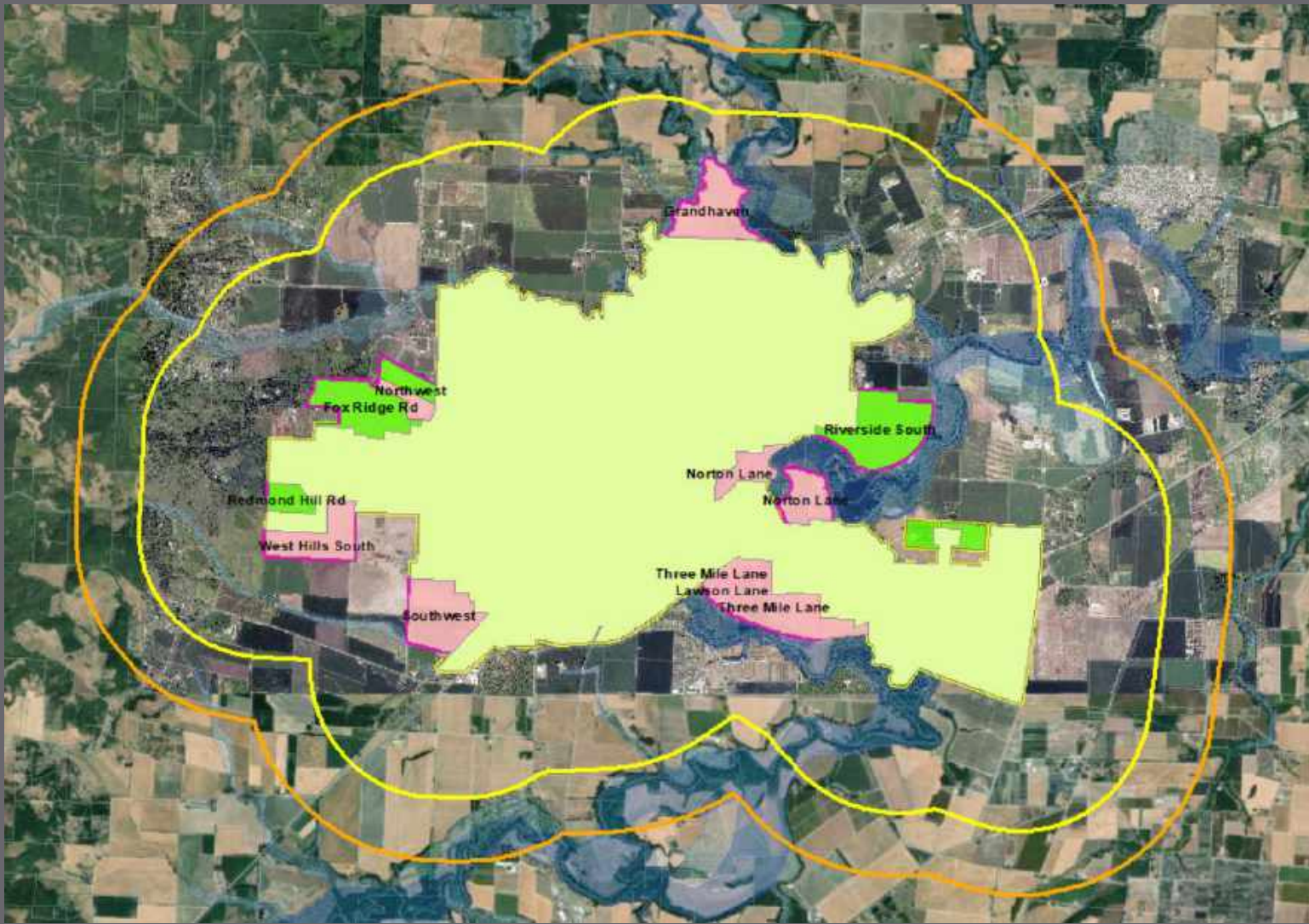


# ANALYSIS – ESTABLISH PRELIMINARY STUDY AREA

---

- **Establish Preliminary Study Area (for UGB):**
  - All land within an Urban Reserve (not applicable), *and*
  - All lands within 1 mile from the UGB, *and*
  - All exception areas contiguous to an exception area that includes land within 1 mile of the UGB and that are within 1.5 miles of the UGB.
  
- At the discretion of the local government, the preliminary study area can contain lands in addition to those above.





**Current UGB**

7,530 ac  
11.8 Sq Mi

**1 Mile**

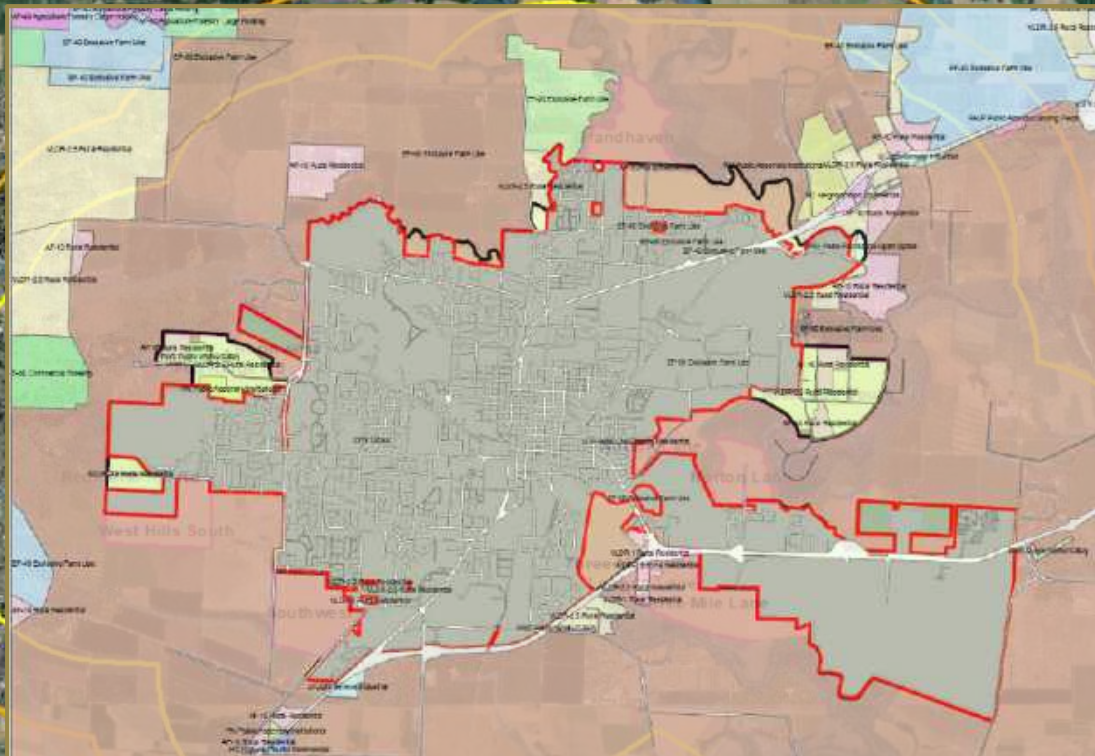
~15,000 ac  
23 Sq Mi

**1.5 Mile**

Add ½ Mile:  
Addl ~8,000 ac  
Addl ~13 Sq Mi

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020





**Current UGB**

7,530 ac  
11.8 Sq Mi

**1 Mile**

~15,000 ac  
23 Sq Mi

**1.5 Mile**

Add ½ Mile:  
Addl ~8,000 ac  
Addl ~13 Sq Mi

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# ANALYSIS –EXCLUSIONS FROM PRELIMINARY STUDY AREA

---

City can exclude land from preliminary study area if it is:

- **Impracticable**\* to provide necessary public facilities or services to the land (see next slide)
- Subject to significant development **hazards**, due to risks more specifically described for landslides, flooding, tsunamis (those described in OAR)
- Consists of significant scenic, natural, cultural, or recreational resources (those listed in OAR)
- Owned by the federal government and managed primarily for rural uses.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020





## ANALYSIS – EXCLUSIONS FROM PRELIMINARY STUDY AREA

### \*“Impracticable” to provide necessary public facilities or services to the land:

- Area at least 5 ac: > 75% area is slope >25%, but not if excluding area with 20 ac or more with slope < 25%
- **Isolated** from existing service networks by physical, topographic, or other impediments\* to service provision...if impracticable to serve during planning period, based on evaluation of:
  - Amount of development likely during planning period
  - Likely cost of facilities and services
  - Substantial evidence how similarly situated land in the region has/hasn't developed over time

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# ANALYSIS – EXCLUSIONS FROM PRELIMINARY STUDY AREA

---

- **\*Impediments:**

- Rivers/water bodies requiring new bridge crossings to serve
- Topo features (canyons/ridges) >40% slope, vert. >80'
- Freeways, rail lines, restricted access corridors – requiring grade separation to serve
- [Official] significant scenic, natural, cultural, recreational resources that would prohibit or significantly impede public facilities and services

- **Not an allowable exclusion:**

- Existing development patterns, but may affect capacity

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# ANALYSIS – REFINED STUDY AREA

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**After allowed exclusions from preliminary study area:**

- If not already 2x deficiency, adjust area to include 2x amount of land needed to address deficiency, by expanding distance

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# EVALUATE LAND IN STUDY AREA FOR INCLUSION IN UGB

---

- Evaluate all land in study area:
  - ▣ Apply Land Priorities
  - ▣ Include as much land in highest priority before next priority

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# NEW WORK PROGRAM COSTS

<b>Task</b>	<b>Est Cost</b>	<b>Assigned to:</b>
<b>Need Analysis Completion</b>	<b>\$20,000</b>	<b>Planning (In process)</b>
<b>Alternatives Analysis</b>	<b>\$205,000</b>	<b>Planning, Public Works, MWL, Consultants</b>
<b>Map/Plan Amendments</b>	<b>\$15,000</b>	<b>Planning, Consultants</b>
<b>Findings</b>	<b>\$20,000</b>	
<b>Sub-total</b>	<b><u>\$ 260,000</u></b>	
<b>Note also need to update Public Facility Plans</b>	<b>\$815,000</b>	<b>Parks, Transportation, WW, Water, Storm</b>

Plus legal expenses, estimated to be \$50,000 - \$250,000 depending upon the legal challenges along the way

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# Potential Areas for Appeal

---

*Basically, any decision, analysis, or assumption that isn't a "safe harbor" is subject to appeal at each step of the process.*

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# Potential Areas for Appeal

**1. Needs Analysis:** Housing, Employment, Other Lands; Needs, BLI, Capacity, Surplus/Deficit

**2. UGB/UR Expansion Study Areas Analysis:** Analysis of areas eligible for inclusion

**3-4. UGB/UR Expansion Proposal and Plan:** Selection of proposed expansion area from eligible areas; Comprehensive Plan map for expansion areas; Comprehensive Plan policies

**5. Supporting Plans:** Public facility plans; Goal 5 & Goal 7 resource plans

**6. Implementation:** Area Planning; Code Amendments, Efficiency Measures, and Rezoning; Etc.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# NEW WORK OVERVIEW – PROS AND CONS

---

## PROS:

- Investment in HNA/EOA has occurred.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020





# NEW WORK OVERVIEW – PROS AND CONS

---

## CONS:

- Exposure to significantly more challenges and appeals = time and money.
- Costs of alternatives analysis and new public facility planning. = \$1,100,000
- McMinnville will be the test case for new rules in a environment that has historically been strife with challenges, opposition and legal appeals.

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# A COMPARISON SNAPSHOT

	<b>REMAND</b>	<b>NEW WORK</b>
<b>TIME</b>	<b>December, 2020 Submittal</b>	<b>December, 2022/23 Submittal</b>
<b>MONEY</b>	<b>\$83,000</b>  <b>(Plus Public Facility Plans, estimated to be \$500,000)</b>	<b>\$260,000</b>  <b>(Plus Public Facility Plans, estimated to be \$815,000)</b>
<b>RISKS – APPEALS</b>	<b>Appeals resolved on all issues but one.</b>	<b>Adoption process has not started yet, everything is on the table for challenges and appeals</b>
<b>OUTCOMES</b>	<b>Satisfy a land need for a total population of 44,055</b>	<b>Satisfy a land need for a total population of 47,498</b>

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# LEVERAGING INVESTMENT IN NEW WORK

## Options for Use of “New Work”

**New Work – Instead of Remand**

**UGB: 2021-2041, UR: -2067**

**New Work – In Addition to Remand**

**-Urban Reserve Only**

**Add Urban Reserve to “Remand UGB” (2023-2053)**

**-UGB Update Only**

**(After remand completion, update UGB to 2021-2041)**

**-UGB Update + Urban Reserve**

**(After remand completion: (UGB 2021-41, UR -2067)**

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# PUTTING IT ALL IN PERSPECTIVE



CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# GROWTH PLANNING – MCMINNVILLE, Moving Forward Mindfully

---



CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# REFERENCE SLIDES IF NEEDED

CITY COUNCIL UGB WORK SESSION, APRIL 14, 2020



# PUTTING IT ALL IN PERSPECTIVE

---

**Yamhill County has 458,240 acres of land.**

**of that, 7,552 acres are in McMinnville's UGB (1.6% of total county land)**



**Since 1973, cities in Yamhill County have added 847 acres of land to their UGBs, (0.2% growth).**

**Yamhill County's population has increased by 140% in that timeframe.**

**CITY COUNCIL WORK SESSION, 01.22.20**



# PUTTING IT ALL IN PERSPECTIVE

---

If McMinnville expanded its UGB by 1200 acres to accommodate the growth of 12,800 people . . . .

That would be 0.3% of Yamhill County's overall acreage.  
And 0.002% of statewide acreage.

Yamhill County has 192,251 EFU acres. If the city expanded by 1200 acres on to only EFU land, the city would be absorbing 0.6% of Yamhill County EFU land. 6/10 of 1%.

**McMINNVILLE CITY CLUB, 01.14.20**





## MCMINNVILLE UGB COMPARISON – 2003-2023 versus 2021-2041

DATA METRIC	REMAND	NEW SUBMITTAL
Planning Horizon	2003-2023	2021-2041
Population Forecast - Total at End of Planning Horizon	44,055	47,498
Date HNA Adopted	2001, updated 2003	Draft
Date EOA Adopted	2003	Draft
Identified Housing Need (Units)	6,014	4,657 (5,269 from 2018-41)
Annual Average Need	301 units/yr	233 units/yr
<b>Housing by Income</b>		
Extremely Low? (<30% MFI)		11% - 509
Very Low (30-50% MFI)	2,121	11% - 509
Low (50-80% MFI)	1,641	15% - 719
Moderate (80-120% MFI)	2,405	21% - 992
High (>120 MFI)		41% - 1,930
<b>Housing by Zone</b>		
R-1 (new vac/pv)	721	26% - 1,120*
R-2 (new vac/pv)	1,985	29% - 1,237*
R-3 (new vac/pv)	841	20% - 861*
R-4 (new vac/pv)	1,383	25% - 1,067*
R-5	1,083?	
Dedicated High Density Residential Zone	Yes	Yes
Mixed-Use Neighborhoods	Neighborhood Activity Centers	Great Neighborhood Principles
<b>HOUSING ASSUMPTIONS</b>		
Household Size	2.54	2.55
Group Quarters	800	Addressed in multi-family land need
Redevelopment Potential	50 acres	8% of new need (373 DUs)
Targeted Housing Mix (SFD/SFA/MF)	60/40 for new housing	55%/12%/33%
Density Target	5.7 units/gross acre*	5.3 units/gross ac
<b>Employment Assumptions</b>		
Pop. to Emp. Ratio	1.96	1.64
Employment Forecast (Total Emp. at End of Horizon)	22,161	29,042

\* (4.9 units/net acre achieved 2000-2018 since plan was not able to be implemented)

**From:** [Alexis Biddle](#)  
**To:** [Scott Hill](#); [Sal Peralta](#); [Wendy Stassens](#); [Kellie Menke](#); [Zack Geary](#); [Remy Drabkin](#); [Adam Garvin](#)  
**Cc:** [Claudia Cisneros](#); [Heather Richards](#); [Howard, Gordon](#); [Mary Kyle McCurdy](#); [KATHRYN JERNSTEDT](#); [angela.carnahan@state.or.us](mailto:angela.carnahan@state.or.us)  
**Subject:** Urban Growth Strategy and Process  
**Date:** Tuesday, April 14, 2020 9:50:59 AM  
**Attachments:** [We sent you safe versions of your files.msg](#)  
[Mcminnville Urban Growth Strategy April 2020 1000 Friends.pdf](#)

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**This message originated outside of the City of McMinnville.**

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Dear Mayor and Council,

Please see the attached comments from 1000 Friends and Friends of Yamhill County. Thank you.

Alexis Biddle  
Pronouns: he/him/his  
Urban Advocate  
[1000 Friends of Oregon](#)  
[503.497.1000](tel:503.497.1000)



*Support a beautiful, bountiful Oregon for generations to come...[join us today!](#)*

ENTERED INTO THE RECORD  
DATE RECEIVED: 04/14/2020  
SUBMITTED BY: Alexis Biddle on behalf  
of 1000 Friends and  
SUBJECT: Friends of Yamhill  
2- UGB County 210



ENTERED INTO THE RECORD  
 DATE RECEIVED: 04/14/2020  
 SUBMITTED BY: Alexis Biddle on  
 SUBJECT: behalf of 1000  
2 - UGB Friends and Friends  
of Yamhill County

April 14, 2020

Via email:

McMinnville City Council  
 C/O Heather Richards & Claudia Cisneros (heather.richards@mcminnvilleoregon.gov,  
 claudia.cisneros@mcminnvilleoregon.gov)  
 230 NE 2<sup>nd</sup> Street  
 McMinnville, Oregon 97128

RE: Growth Planning

Dear Mayor and City Council Members,

1000 Friends of Oregon and Friends of Yamhill County are non-profit organizations dedicated to working with Oregonians to support livable communities. Our memberships include McMinnville residents who support the mission and values of the Oregon land use program. Among these Oregon values are the protection of resource land and the provision of adequate housing to meet the needs of all Oregonians.

We write today to inform McMinnville’s urban growth strategy. In today’s work session, Council has been offered two strategies:

- 1.) Pick up where the McMinnville Growth Management and Urban Plan (MGMUP) left off by responding to the remand from the Court of Appeals, or
- 2.) Continue with the new process that is already underway.

The Council should be aware that a third option is also possible; the simplified UGB process provided for under existing law. This process uses baseline assumptions and a 14-year planning horizon that leaves less discretion, but also more certainty as to the legal outcome of the urban growth decision.

We offer the following comments to inform Council’s discussion:

- The Court of Appeals remanded the MGMUP decision because high quality farmland was prioritized for inclusion in the UGB, over exception areas and resource areas of poorer soils that could have met some portion of the needs identified in that plan.
- We will continue to advocate for the inclusion of exception areas and lower quality farmland before including high quality farmland, whatever process the city chooses. The Court of Appeals decision and the 2009 mediation effort provide a potential road map to a successful expansion that includes both farmland and exception areas.

- No matter what option is chosen, any proposal must have an adequate factual base and comply with legal requirements. It may be logistically difficult to provide an adequate factual base for a plan based on data that is in some cases 20 years old.

We know that McMinnville has a need for greater housing supply, diversity, and affordability. Our organizations' and the City's shared goal should be to meet those needs expeditiously and with a minimum of conflict.

Thank you for your service and consideration.

Sincerely,

Alexis Biddle  
Urban Lands Advocate  
1000 Friends of Oregon  
| alexis@friends.org

Kathryn Jernstedt  
President  
Friends of Yamhill County  
kljernstedt@comcast.net

Cc: DLCD

# STAFF REPORT

**DATE:** April 14, 2020  
**TO:** Mayor and City Councilors  
**FROM:** Jamie Fleckenstein, Associate Planner  
**SUBJECT:** Arbor Day Proclamation

## STRATEGIC PRIORITY & GOAL:



### GROWTH & DEVELOPMENT CHARACTER

Guide growth & development strategically, responsibly & responsibly to enhance our unique character.

**OBJECTIVE/S:** Strategically plan for short and long-term growth and development that will create enduring value for the community

---

## Report in Brief:

This is a proclamation to be read by the Mayor which will proclaim April 24, 2020 as Arbor Day in McMinnville.

## Background:

Arbor Day was first celebrated in Nebraska in 1872 as a tree-planting holiday, and since that time the Arbor Day Foundation was formed and the holiday is now celebrated internationally each year. In Oregon, the first full week of April is celebrated as Arbor Week. Nationally, Arbor Day celebrated on the last Friday in April.

## Discussion:

This year, the City of McMinnville celebrates the 23<sup>rd</sup> consecutive year of recognition as a certified Tree City USA. The Tree City USA recognition program, sponsored by the Arbor Day Foundation in partnership with the United States Forest Service and National Association of State Foresters, honors a city's commitment to a framework for a healthy and sustainable urban forestry program. Recognizing and celebrating Arbor Day is an important component of the Tree City USA program. In McMinnville, it provides an opportunity to educate about trees and tree care, build support for the City's community forest, and helps foster a sense of civic pride. Arbor Day is also a day to recognize the many benefits provided by trees in McMinnville, the State of Oregon, and around the world:

- Trees clean air by removing pollutants
- Trees provide oxygen
- Trees contribute to positive mental health

- Trees help clean drinking water
- Trees provide shade to lowering surface and air temperatures
- Trees help reduce effects of climate change
- Trees help save and conserve energy
- Trees support wildlife and provide habitat
- Trees help reduce crime
- Trees increase property values

To further support McMinnville, the Arbor Day Foundation has provided updates for street signs located at prominent entries to the city showing McMinnville has been a certified Tree City USA for 23 years. Also, McMinnville's Tree City USA flag continues to fly over the city on a flag pole at the Fire Department, near the corner of Baker Street and 2<sup>nd</sup> Street.

**Attachments:**

None.

**Fiscal Impact:**

None.

**Recommendation:**

Staff recommends that the Mayor read the attached proclamation to proclaim April 24, 2020 as Arbor Day in the City of McMinnville.

JF



# PROCLAMATION

**Whereas**, in 1872 Julius Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

**Whereas**, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska and is now observed throughout the nation and world; and

**Whereas**, trees reduce the erosion of our precious topsoil, clean the air by absorbing 48 pounds of carbon dioxide each year per tree, produce life-giving oxygen, and provide vital habitat for wildlife; and

**Whereas**, trees can moderate the average temperature in a city by 10 degrees and can cut individual household heating and cooling costs by up to 25%; and

**Whereas**, trees in our city increase property values, enhance the economic vitality of our business areas, and beautify our community; and

**Whereas**, the City of McMinnville is celebrating its 23<sup>rd</sup> year as a certified Tree City USA as recognized by the Arbor Day Foundation; and

**Whereas**, trees, wherever they are planted, are a source of joy and spiritual renewal.

**NOW, THEREFORE, I, Scott A. Hill**, Mayor of the City of McMinnville, do hereby proclaim Friday, April 24, 2020 as

## ARBOR DAY

in the City of McMinnville, and I urge all citizens to celebrate Arbor Day and support efforts to protect our trees and woodlands, and further, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

**In Witness Whereof**, I have hereunto set my hand and caused the official Seal of the City of McMinnville to be affixed this 14<sup>th</sup> day of April, 2020.

---

Scott A. Hill, Mayor

**From:** [Jerry Hart](#)  
**To:** [Claudia Cisneros](#)  
**Subject:** Public Comment: Council Meeting of April 14  
**Date:** Tuesday, April 14, 2020 10:54:29 AM  
**Attachments:** [We sent you safe versions of your files.msg](#)  
[TLT comments .pdf](#)

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Claudia,

Please include the attached PDF in the Public Comments section of the the council's meeting. Let me know if this format doesn't work for you.

With any luck I'll be able to "attend" at least part of the meeting via Zoom.

Thank you.

Jerry Hart  
971-241-3408

ENTERED INTO THE RECORD  
DATE RECEIVED: 04/14/2020  
SUBMITTED BY: Jerry Hart  
SUBJECT: 4/5a.



To: City Council  
From: Jerry Hart  
April 14, 2020

Re: Public Comment--Transient Lodging Tax

The agenda shows that the League of Oregon Cities' general counsel, Patty Mulvhill, will review for the council's benefit the allowed uses of the revenue generated by the city's transient lodging tax (TLT).

I am delighted that the council is looking at how to best use the money generated by McMinnville's TLT. Mac's TLT brought in about \$950,000 in 2017-18; about \$1.2 million in 2018-19; and was budgeted to bring in about \$1.3 million in 2019-20. (Of course the amounts for 2019-20 and 2020-20 will be affected by COVID). The success of the TLT gives McMinnville a terrific opportunity to invest in facilities and infrastructure.

State law allows a basic 30/70 division of local TLTs which were created after 2003-----30% can go to general city services; the remaining 70% goes to tourism. McMinnville's TLT was enacted in 2013 so it is subject to the 30/70 split. Currently the full 70% goes to Visit McMinnville.

Visit McMinnville has done a terrific job of promoting tourism but the city needs look hard at how the 70% can best be invested.

Tourism's 70% share of the TLT can generally be used for three purposes: promotion of tourism; for tourism related facilities; and for financing or refinancing debt incurred for tourism related facilities. Off the top of my head I can think of several tourism related facilities worthy of TLT money. These include current city assets which could be upgraded and facilities the city may want to purchase or build.

In my view there should be a robust discussion of what are the best ways to invest the TLT money. Here are a few of the issues that should be considered: What is the optimum amount to spend on promotion? Should TLT revenues be invested in facilities? What facilities would have the greatest benefit for tourism? What are the reasonable projections for TLT revenues in future years? How will the COVID pandemic affect current and future TLT revenue?

Thank you,

Jerry Hart  
McMinnville, Oregon  
971-241-3408

## MEMO:

**DATE:** April 7, 2020  
**TO:** Jeff Towery, City Manager  
**FROM:** Patty Mulvihill, League of Oregon Cities General Counsel  
**SUBJECT:** Presentation on TLT revenue usages

---

**Report in Brief:** Patty Mulvihill will be presenting a report to City Council outlining allowable uses of McMinnville's Transient Lodging Tax (TLT) as background information in preparation for considering a new contract with Visit McMinnville.

# Local Transient Lodging Taxes

McMinnville – April 14, 2020



# McMinnville's Lodging Tax

- Established via Ordinance No. 4970 on June 11, 2013. Original tax rate was 8%.
- Tax collectors are permitted to withhold 5% of the net tax due to cover expenses they incur in collecting and remitting the tax.
- The original Ordinance has been amended six times since its enactment.
- The 2017 amendment raised the tax rate from 8% to today's rate of 10%.
- The most recent amendment in September of 2019 ensures that online travel companies and hosting platforms must collect McMinnville's lodging tax from their guests.



# State Preemption of Local Lodging Taxes

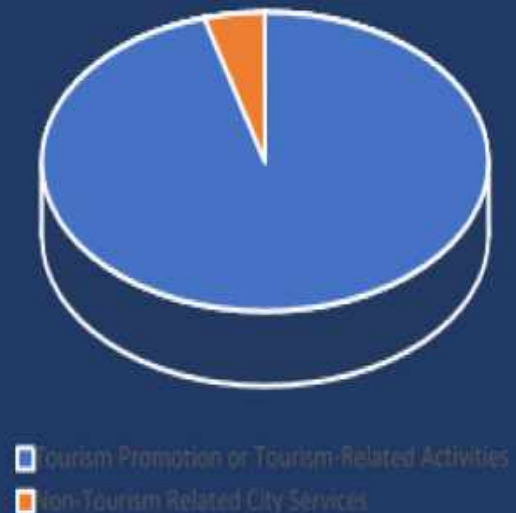
Limitations on How McMinnville Can  
Use Its Lodging Tax Revenues



# The 70/30 Split

- 70% of net revenue of McMinnville's lodging tax **must** be used to:
  - Fund tourism promotion or tourism-related activities; or
  - Finance or refinance the debt of tourism-related facilities.
- 30% of net revenue of McMinnville's lodging tax **may** be used to fund non-tourism related city services.

70/30 Split





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# What is a Tourism Promotion?

- Advertising, publicizing or distributing information for the purpose of attracting and welcoming **tourists**;
- Conducting strategic planning and research necessary to stimulate future tourism development;
- Operating **tourism promotion agencies**; and
- Marketing special events and festivals designed to attract **tourists**.



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# Who is a tourist?

A tourist is a person who, for business, pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to McMinnville that is separate, distinct from and unrelated to the person's community of residence, **AND**:

- the trip requires the person to travel more than 50 miles from their community of residence; **OR**
- includes an overnight stay in McMinnville.





# Am I a tourist?

- Patty Mulvihill (that's me) travels to McMinnville to give its city council (that's you) an in-person presentation on local lodging taxes. Her home of residence is Salem. *Am I a tourist?*
- Jane Doe, a resident of Medford, travels each year to McMinnville for the UFO Festival. *Is Jane Doe a tourist?*
- Joe Smith, a resident of Wilsonville, travels to McMinnville to attend the annual Holiday Parade and Tree Lighting Festival. Joe stays the night at the Atticus Hotel. *Is Joe a tourist?*



# What is a Tourism Promotion Agency?

A tourism promotion agency includes any of the following:

- An incorporated nonprofit organization or governmental unit that is responsible for the tourism promotion of a destination on a year-round basis;
- A nonprofit entity that manages tourism-related economic development plans, programs and projects; and/or
- A regional or statewide association that represents entities that rely on tourism-related business for more than 50% of their total income.



# Is it a Tourism Promotion Agency?

- In 2014, the City Council created Visit McMinnville. *Is Visit McMinnville a Tourism Promotion Agency?*
- McMenamins decides to begin developing and managing tourism-related economic development plans, programs and projects. *Is McMenamins a tourism promotion agency?*
- Hoteliers in the Mid-Willamette Valley create an Association to help them promote their hotels. The Association receives 75% of its funding from the hotels themselves. *Is the Association a Tourism Promotion Agency?*



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# Putting it All Together Tourism Promotion Includes...

- Advertising, publicizing or distributing information for the purpose of attracting and welcoming people who, for business, pleasure, recreation or participation in events related to art, heritage, or culture travel more than 50 miles from their own home to McMinnville or who stay the night in McMinnville;
- Conducting strategic planning and research necessary to stimulate future tourism development;
- An incorporated nonprofit organization or governmental unit that is responsible for tourism promotion on a year-round basis;
- A nonprofit entity that manages tourism-related economic development plans, programs and projects;
- A regional or statewide association that represents entities that rely on tourism-related business for more than 50% of their total income; or
- Marketing special events and festivals designed to attract tourists.



# What is a Tourism Related Activity?

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- A **conference center, convention center** or **visitor information center**; and
- Other improved real property that has a useful life of 10 or more years and **has a substantial purpose of supporting tourism or accommodating tourist activities.**



# What is a Conference Center?

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A conference center is a facility that:

- Is owned or partially owned by a unit of local government, a governmental agency or a nonprofit agency; and
- Meets the current membership criteria of the International Association of Conference Centers.

## Quality Standards: Conference & meeting venue design

One of the core beliefs of IACC is that the venues which become members must be designed and operated for small to medium sized meetings and conferences.

### Acceptable

- ▶ The venue should have at least one flat-floored main conference room which contains a minimum 93m<sup>2</sup> (or 1,000 sq ft) of floor space with unobstructed views.
- ▶ A dedicated main conference room should have the capacity to provide flexible seating to enable a variety of learning environments.
- ▶ The venue must provide at least three (3) additional breakout spaces in addition to and in proximity to the main conference room.
- ▶ The venue must have sufficient inventory to set the majority of its meeting and conference spaces using ergonomically designed chairs.
- ▶ All conference and meeting rooms should provide access to high speed internet, either through a wired or Wi-Fi connection, as part of the meeting package, as well as in-room climate controls.
- ▶ All dedicated conference and meeting rooms have in-room control of lighting which when at maximum is between 500 & 700 lux (50 & 70 foot candles) at table-top.
- ▶ Dedicated conference and meeting rooms larger than 93m<sup>2</sup> (1,000 sq ft) should have zoned lighting and controls which permit dimming from full power to off.
- ▶ Acoustic ratings for sound transmission between dedicated conference and meeting rooms exceed 45 NIC (Noise Isolation Class) for all adjoining walls.
- ▶ Ambient sound levels within all dedicated conference and meeting rooms exceed 35 BNC (Background Noise Criteria) and Reverberation Time (RT) of lower than 1.2 seconds at mid frequency.
- ▶ Built-in sound systems are required for any room greater than 93m<sup>2</sup> (1,000 sq ft).





# Is it a Conference Center?

- McMinnville has a Community Center. In fact, in 2018, LOC hosted an Elected Essentials training in the Center. *Is the McMinnville Community Center also a Conference Center?*
- The Salem Convention Center regularly plays host to the LOC Annual Conference. It's partially owned by the city of Salem. *Is the Salem Convention Center also a Conference Center?*
- Let's pretend Salishan Resort meets the requirements of the International Association of Conference Centers. *Is the Salishan Resort also a Conference Center?*



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# What is a Convention Center?

A convention center is a facility that:

- ü Is capable of attracting and accommodating conventions and trade shows from international, national and regional markets requiring exhibition space, ballroom space, meeting rooms and other associated space.
- ü Has a total meeting room and ballroom space between 1/3 and 1/2 of the total size of the center's exhibition space;
- ü Generates a majority of its business income from tourists;
- ü Has a room-block relationship with the local lodging industry;  
and
- ü Is owned by a unit of local government, a governmental agency or a nonprofit organization.





# Is it a Convention Center?

- McMinnville has a Community Center. In fact, in 2018, LOC hosted an Elected Essentials training in the Center. *Is the McMinnville Community Center also a Convention Center?*
- The Portland Convention Center is partially owned by the city of Portland. In 2021, the Center will host the Annual International City County Manager's Conference. *Is the Portland Convention Center a Convention Center?*



# What is a Visitor Information Center?

A visitor information center means a building, or a portion of a building, the main purpose of which is to distribute or disseminate information to tourists.





## Is it a Visitor Information Center?

- McMinnville has a Community Center. In the lobby of the Community Center there is a section devoted to travel brochures and tourism information related specifically to the city of McMinnville. *Is the McMinnville Community Center also a Visitor Information Center?*
- The city of Klamath Falls has a Welcome Center, the primary purpose of which is to provides travel resources to visitors and act as a meeting location for area tours. *Is the Klamath Falls Welcome Center a Visitor Information Center?*



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## What Types of Real Property Support Tourism or Accommodate Tourist Activities?

- There is no statutory definition that gives guidance.
- There is no Oregon appellate case that gives guidance.



But, we do have a 2008 Attorney General Opinion that provides some guidance.

- AG Opinions are not *binding* – it is the opinion of the AG and not the opinion of the Legislature or the Judicial Branch.
- AG Opinions are *persuasive* and courts do strongly consider them when issuing their own interpretations of statutes.
- AG Opinions *provide guidance* to State agencies that enforce State statutes.



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# 2008 Attorney General Opinion

- The legislature most likely intended local roads, sewers, sewer plants, and transportation facilities to qualify as “tourism related facilities” **only if they draw tourists themselves, directly serve a specific attraction (such as an access road), or are part of the infrastructure of a specific tourist attraction (such as a restroom and the on-site sewer line).**
- The legislature likely **did NOT** intend “tourism related facilities” **to encompass roads and other infrastructure simply because they are used, even heavily, by tourists as well as locals.**

# State Preemption of Local Lodging Taxes

LOC is Working to Whittle Away the  
Preemptions & Give Cities More Latitude





# 2019 Legislative Session

In 2019, LOC had two bills that attempted to expand the ways in which cities could spend local lodging tax dollars. While neither attempt was successful, both bills had large support and future legislative sessions give LOC hope that it may be able to give cities more leverage soon.

- HB 3134 – the bill would have allowed expenditures of local lodging tax revenues for tourist events and sporting event costs, including public safety costs associated with those events.
- SB 595 – the bill would have allowed up to 30% of the 70% of net revenues to be used to fund affordable workforce housing.

# League of Oregon Cities

Call: 503-588-6550

Email [pmulvihill@orcities.org](mailto:pmulvihill@orcities.org)







**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

November 14, 2008

Todd Davidson, Chief Executive Officer  
Oregon Tourism Commission  
670 Hawthorne Avenue SE, Suite 240  
Salem, OR 97301

Re: Opinion Request OP-2008-3

Dear Mr. Davidson:

In 2003, the legislature enacted ORS 320.300 to 320.990, which govern the collection and use of state and local transient lodging taxes. Or Laws 2003, ch 818. Transient lodging taxes are taxes “imposed on any consideration rendered for the sale, service or furnishing of transient lodging.” ORS 320.305(1). ORS 320.350 restricts how local governments may spend revenue from lodging taxes imposed or increased on or after July 2, 2003. Specifically, ORS 320.350(5) and (6) require local governments to use at least 70 percent of the net revenue generated from any new or increased lodging taxes for specified tourism-related purposes (for simplicity this opinion will refer to the net revenue generated from new and increased taxes as “new lodging tax revenue.”) One of those tourism-related purposes is funding “tourism-related facilities.” ORS 320.350(5)(a). You ask whether certain local expenditures qualify as funding “tourism-related facilities.” Your question, a short answer, and a supporting discussion follow.

**QUESTION PRESENTED**

Can local infrastructure, such as county roads or city sewers, qualify as “tourism-related facilities” under ORS 320.350(5)(a) such that local governments may fund them, without restriction, with new lodging tax revenue? If so, under what circumstances?

**SHORT ANSWER**

Based on the text, context, and legislative history of ORS 320.300(9) and ORS 320.350(5) and (6), the legislature most likely intended local roads, sewers, sewer plants, and transportation facilities to qualify as “tourism-related facilities” only if they draw tourists themselves, directly serve a specific tourist attraction (such as an access road), or are part of the infrastructure of a specific tourist attraction (such as a restroom and the on-site sewer line.) The legislature most likely did not intend “tourism-related facilities” to encompass roads and other infrastructure simply because they are used, even heavily, by tourists as well as locals.

## DISCUSSION

### 1. Method for Interpreting Statutes

To answer your question, we must interpret the relevant statutes with the goal of determining the legislature's intent. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993); ORS 174.020. We begin by examining the statute's text and considering statutory and judicially created rules of construction that bear directly on how to read the text, such as to give words of common usage their "plain, natural and ordinary meaning." *Id.* at 611; ORS 174.010. We do not examine the text in isolation but in context, including other provisions of the same statute. *Id.* at 610; *SAIF Corporation v. Walker*, 330 Or 102, 108, 996 P2d 979 (2000). If the text and context suggest only one possible meaning, our inquiry ends there. *PGE*, 317 Or at 610-11. If more than one meaning is possible, we examine legislative history to determine which meaning the legislature intended. *Id.* at 611-12.

### 2. ORS 320.350

#### a. Text of the Provision

ORS 320.350 provides, in relevant part, that:

(1) A unit of local government that did not impose a local transient lodging tax on July 1, 2003, may not impose a local transient lodging tax on or after July 2, 2003, unless the imposition of the local transient lodging tax was approved on or before July 1, 2003.

(2) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may not increase the rate of the local transient lodging tax on or after July 2, 2003, to a rate that is greater than the rate in effect on July 1, 2003, unless the increase was approved on or before July 1, 2003.

\* \* \*

(5) Subsections (1) and (2) of this section do not apply to a new or increased local transient lodging tax if all of the net revenue from the new or increased tax, following reductions attributed to collection reimbursement charges, is used consistently with subsection (6) of this section to:

(a) Fund tourism promotion or tourism-related facilities;

(b) Fund city or county services; or

(c) Finance or refinance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing or refinancing that debt \* \* \*.

\* \* \*

(6) At least 70 percent of net revenue from a new or increased local transient lodging tax shall be used for the purposes described in subsection (5)(a) or (c) of this section. No more than 30 percent of net revenue from a new or increased local transient lodging tax may be used for the purpose described in subsection (5)(b) of this section.

Accordingly, local governments must spend at least 70 percent of new lodging tax revenue on the identified tourism-related purposes, including funding tourism-related facilities, and no more than 30 percent to fund “city or county services.” You ask whether local infrastructure, such as county roads or city sewers, can qualify as “tourism-related facilities” under ORS 350.320(5)(a) and be funded without limitation by new lodging tax revenue or whether those facilities are more properly categorized as county and city services subject to the 30 percent funding limitation.

#### **b. City or County Services**

We first discuss the meaning of “city or county services.” “Services” is the plural of “service,” which, used as a noun, has a variety of meanings. Potentially relevant meanings include “the duties, work, or business performed or discharged by a government official,” “action or use that furthers some end or purpose: conduct or performance that assists or benefits someone or something: deeds useful or instrumental toward some object,” “useful labor that does not produce a tangible commodity – usually used in plural <railroads, telephone companies, and physicians perform *services* although they produce no goods>” and “the provision, organization, or apparatus for conducting a public utility or meeting a general demand.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (WEBSTER’S) at 2075 (unabridged 2002).

It is not apparent from the text and context which of those meanings the legislature intended. For instance, it may be that the legislature intended city or county services to mean the provision of labor (police, fire, etc.), but not facilities funding or it may have meant the term to encompass all services provided. In such a circumstance, we consult legislative history to discern the legislature’s intended meaning.

ORS 320.350(5)(b) was enacted in 2003 as part of HB 2267. Or Laws 2003, ch 818, § 10. Originally, HB 2267 required all new local lodging tax revenue to be spent on tourism. HB 2267, § 11 (Introduced) (2003). Before 2003, local governments had not been restricted in their use of local lodging tax revenue and they opposed the new restriction. *See former* ORS 305.824 (governing local lodging taxes before 2003). Lodging and tourism groups and local government associations eventually compromised and the bill was amended to allow local governments to use up to 30 percent of new local lodging tax revenue for city and county services. The legislative history demonstrates that the legislature intended to allow local governments to use that 30 percent for *any* expenditure they chose:

LARRY CAMPBELL: Recognize that, in this Bill, 30 percent of increased local taxes can be used any way the community wants to. They are not limited to public service or anything else.

Testimony of Larry Campbell, Oregon Lodging Association (HB 2267), July 23, 2003, tape 223, side B at 117.

REPRESENTATIVE VERGER: This bill perhaps strikes [a] balance of being able to protect 70 percent of that money at the same time [allowing] cities \* \* \* to do whatever they want to do with the 30 percent.

Testimony of Representative Verger, House Revenue Committee (HB 2267), August 12, 2003, tape 241, side A at 73.

REPRESENTATIVE SCOTT: [HB 2267] require[s] 70 percent of the new local tax revenue to be used for tourism purposes [and] up to 30 percent to be used for the needs of the local jurisdiction at their choice.

Testimony of Representative Scott, House Floor Debate (HB 2267), August 19, 2003, tape 176, side A at 065.

SENATOR METZGER: [HB 2267] creates a formula requiring 70 percent of new local room tax revenue to be used for tourism purposes and up to 30 percent to be used for the needs of the local jurisdiction as they see fit.

Testimony of Senator Metzger, Senate Floor Debate (HB 2267), August 22, 2003, Tape 281, side B at 311.

That history demonstrates that the legislature intended ORS 320.350(6) to allow local governments to use up to 30 percent of new lodging tax revenue in any way they saw fit, but to require that they spend at least 70 percent on tourism. Therefore, local governments may use up to 30 percent of new lodging tax revenue to fund local infrastructure, including roads and sewers. If the road or sewer does not qualify as a “tourism-related facility” the local government can spend no more. But, if a road or sewer qualifies as a “tourism-related facility”, the 30 percent limitation is inapplicable and the local government may expend up to 100 percent of new lodging tax revenue to fund the facility. We next consider whether city or county infrastructure such as roads and sewers can qualify as “tourism-related facilities.”

**c. Definition of Tourism-Related Facility**

ORS 320.300(9) provides that “tourism-related facility”:

(a) Means a conference center, convention center or visitor information center;  
and

(b) Means other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.

“Conference center,” “convention center” and “visitor information center” are defined by ORS 320.300(2), (3) and (13), respectively. Facilities that fit within those categorical statutory definitions are “tourist-related facilit[ies]” for purposes of ORS 320.350(5)(a). But those definitions are very restrictive and apply to very few facilities in Oregon. For example, among other requirements, a convention center must have a room-block relationship with the local lodging industry and generate a majority of its business income from tourists. ORS 320.300(3). A conference center must meet the current membership criteria of the International Association of Conference Centers. ORS 320.300(2).

Other tourism-related facilities also can qualify as “tourism-related facilities” if they meet certain criteria set out in ORS 320.300(9)(b). Specifically, the facility must be: “other improved real property”, “ha[ving] a useful life of 10 or more years”; and “a substantial purpose of supporting tourism or accommodating tourist activities.” We examine each of those criteria in turn.

### **(1) Other Improved Real Property**

The first criterion is that the facility be “other improved real property.” “Other” obviously means “other than” conference centers, convention centers and visitor information centers that fit within the categorical statutory definitions.

Turning to “improved real property,” there is no common definition of that phrase. Parsing the words, the relevant definition of “improve” is “to increase the value of (land or property) by bringing under cultivation, reclaiming for agriculture or stock raising, erecting buildings or other structures, laying out streets, or installing utilities (as sewers).” WEBSTER’S at 1138. “Real” in this context means “[1] **c**: of or relating to things (as lands, tenements) that are fixed, permanent, or immovable; *specifically*: of or relating to real estate <real property>.” *Id.* at 1890. The fitting definition of “property” is: “2 **a**: something that is or may be owned or possessed: WEALTH, GOODS *specifically*: a piece of real estate[.]” *Id.* at 1818. Putting those definitions together, “improved real property” means real estate or land enhanced in value by a building or other structure, cultivation, reclamation for agriculture or ranching, or by streets and utilities, such as sewers. Therefore, land enhanced by streets or sewers or other utilities is “improved real property.”

We note “improved real property” connotes a thing – improved land – rather than a project. If the improved real property qualifies as a “tourism-related facility” the local government may “fund” it without limitation pursuant to ORS 320.350(5)(a) and (6). “Fund,” which is used as a verb in the statute, means “to furnish money for.” THE AMERICAN HERITAGE DICTIONARY at 342 (3d ed 1994) (we consulted a commonly-used dictionary other than WEBSTER’S, because it provides no definition that is applicable in this context). Applying that definition, to “fund” a tourism-related facility is to furnish money for a tourism-related facility.

Thus if the improved real property qualifies as a tourism-related facility, the local government may use funds in any way it sees fit on the facility, including to expand or maintain it.

## (2) Useful Life of 10 or More Years

Roads and sewers and other city or county infrastructure, in the normal instance, have a useful life of 10 or more years, but that would be a factual matter to be determined on a facility by facility basis.

## (3) Substantial Purpose of Supporting Tourism or Accommodating Tourist Activities

The last criterion – that the property has “a substantial purpose of supporting tourism or accommodating tourist activities” – is the linchpin of the definition, being the one that makes the property “tourism-related.” Each of the terms in this criterion requires careful consideration, beginning with “substantial purpose.”

The pertinent definition of “purpose” is “something that one sets before himself as an object to be attained: an end or aim to be kept in view in any plan, measure, exertion, or operation: DESIGN.” WEBSTER’S at 1847. Therefore a “substantial purpose” means a substantial objective to be attained by the facility.

“Substantial” is used in the statute as an adjective to describe “purpose.” The adjective “substantial” has a range of meanings, three of which are pertinent. The first is “consisting of, relating to, sharing the nature of, or constituting *substance*: \* \* \* MATERIAL.” *Id.* at 2280. “Substance” means “essential nature: ESSENCE \* \* \* a fundamental part, quality or aspect: essential quality or import: the characteristic and essential part.” *Id.* at 2279. The second relevant definition of “substantial” is “being of moment: IMPORTANT, ESSENTIAL.” *Id.* at 2280. “Important,” in turn, means “marked by or possessing weight or consequence.” *Id.* at 1135. The third relevant definition of substantial is “being that specified to a large degree or in the main” as in “a *substantial* victory or a *substantial* lie.” *Id.* at 2280. The relevant definition of “large” is “of considerable magnitude: BIG.” *Id.* at 1272. And “main” means “outstanding, conspicuous or first in any respect: GREAT, PREEMINENT: principal.” *Id.* at 1362.

In short, “substantial purpose” may mean: (1) a fundamental, characteristic or essential part of the purpose; (2) a weighty, consequential purpose; (3) a purpose of considerable magnitude; or even, (4) the first purpose. A slight, unimportant or inconsequential purpose would not be “substantial” under any of those definitions; the purpose must be important and consequential. Under the last definition, the purpose must even be the “main” – meaning first or preeminent – purpose.

Context suggests that the legislature may not have meant “substantial” in the sense of the main or first purpose. ORS 320.300(13), a related statute defining “visitor information center,” states that it is “a building, or a portion of a building, *the main purpose of which* is to distribute or disseminate information to tourists.” (Emphasis added). We generally presume that when the legislature uses different language in related provisions it intends different meanings. *PGE*, 317

Or at 611 (use of term in one section and not in another section of the same statute indicates a purposeful omission); *State v. Guzek*, 322 Or 245, 265, 906 P2d 272 (1995) (when the legislature uses different terms in related statutes, we presume that the legislature intended different meanings.) Applying the presumption, the legislature's use of "the main purpose" in ORS 320.300(13) and "a substantial purpose" in ORS 320.300(9)(b) presumptively demonstrates that the legislature did not intend "a substantial purpose" to mean "the main purpose" as in the first or principal purpose.

Accordingly, "a substantial purpose" likely means an important, weighty, consequential purpose, but not necessarily the first or chief purpose. "Important, weighty and consequential" have both qualitative and quantitative aspects. Even in the latter sense, those terms do not lend themselves to precise quantification. Thus, it is not obvious how to determine whether a "purpose" is "important, weighty, or consequential." For that reason, it is appropriate to consult legislative history for clarification. But first we consider the meanings of "supporting tourism" and "accommodating tourist activities."

Beginning with "supporting tourism," "supporting" means "to uphold by aid[ing] \* \* \* [or] actively promot[ing] the interests or cause of [.]" WEBSTER'S at 2297. "Tourism" means "economic activity resulting from tourists." ORS 320.300(6). Therefore, "supporting tourism" means aiding or actively promoting economic activity resulting from tourists.

Facilities might aid or actively promote tourist spending in the community in a number of ways. First, facilities like convention centers, conference centers, and performing arts centers could hold conventions, conferences and other events that draw tourists – and their tourist dollars – into the community. Second, tourists could be drawn into the community by the nature of the facility itself, such as an improved recreational area or a museum. Third, a facility like a visitor's center could disseminate information to tourists that would induce them to spend their money at various places in the community. All of those facilities likely aid or actively promote tourist spending in the community.

Roads and sewers are not like those facilities; they do not "draw" in tourists or induce them to spend their money in the community. On the other hand, most roads and sewers may *indirectly* aid or promote tourist spending by providing adequate infrastructure to tourists who are drawn to the community for other reasons. The text and context do not clarify how attenuated the legislature intended the "aid" or "support" of tourist spending to be and, later in this opinion, we will look to legislative history for clarification, but first we examine the meaning of "accommodating tourist activity."

The relevant definition of "accommodate" is to "furnish with something desired, needed, or suited." WEBSTER'S at 12. "Tourist" is defined by ORS 320.300(10) to mean:

a person who, for business, pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person's community of residence, and that trip:

(a) Requires the person to travel more than 50 miles from the community of residence; or

(b) Includes an overnight stay.

“Activity” means “an occupation, pursuit, or recreation in which a person is active – often used in plural <business *activities*> <social *activities*>.” WEBSTER’S at 22. Putting the definitions of “tourist” and “activities” together, “tourist activities” are business activities, pleasure and recreation activities, and attending arts, heritage and cultural events when done by people who travel more than 50 miles from their community of residence or stay overnight in a community that is distinct from their community of residence to do so. We doubt that the legislature meant “tourist activities” to include activities of daily living, such as using local infrastructure like the roads, water, and wastewater systems, because the definition of “tourist” is limited to visitors who come to a community “for” certain activities. That limitation strongly suggests that “accommodating tourist activities” means accommodating the listed activities.

Putting it all together, an improved real property has a substantial purpose of “accommodating tourist activities” if it furnishes something desired, needed or suited for tourists to engage in business, pleasure or recreational activities or to attend arts, heritage or cultural events. Obvious examples, because they furnish places that are desired, needed or suited to those tourists activities, would be convention and conference centers, improved recreational areas, museums, and performing arts centers.

Once again, local infrastructure is unlike those facilities because it does not directly accommodate tourist activities. But, again, infrastructure may indirectly accommodate tourist activities by furnishing something necessary, desired or suited for tourists to use the places that *do* accommodate tourist activities. For example, an access road to a recreational facility makes it possible for tourists to use the facility. It is not clear, however, whether the legislature intended facilities that provide indirect accommodation to be included.

Based on our examination of text and context, we conclude that roads and sewers fit within the definition of improved real property, but questions remain about whether they have a substantial purpose of supporting tourism or accommodating tourist activities. We next examine the legislative history for clarification.

**d. Legislative History Concerning “Substantial Purpose of Supporting Tourism or Accommodating Tourist Activities**

ORS 320.300(9) (defining “tourism-related facility”), ORS 320.350(5) (specifying the purposes on which new local lodging tax revenue could be spent) and ORS 320.350(6) (specifying the percentages that must be used for tourism and may be used for non-tourism purposes) were enacted in 2003 as part of HB 2267. Or Laws 2003, ch 818, §§ 1, 2 and 8. The primary purpose of HB 2267 was to establish a state lodging tax dedicated to increasing Oregon tourism marketing efforts. Again, the legislature originally intended all new local lodging tax revenue to be used to promote tourism. Although the state tax had wide and enthusiastic legislative support, the new restriction on how local governments could spend their local tax



dollars was highly contentious and the subject of numerous proposed amendments, which were discussed and debated at length. Those discussions resulted in two significant compromises. The first – allowing local governments to spend 30 percent on any purpose they saw fit – we discussed earlier. The second compromise was changing the definition of “tourism-related facility” to make it more inclusive. We now address that change.

The legislature, over the course of seven months, considered 19 different proposed amendments to HB 2267. Many of them proposed alternative definitions of “tourism-related facility.” The first definition relevant to our analysis was the one proposed in the -9 amendments, which was:

[A] conference center, convention center, visitor information center or other improved real property that has a useful life of 10 or more years and *the primary purpose* of supporting tourism or accommodating tourist activities.

HB 2267, § 1(9) (-9) (2003) (emphasis added). The House Revenue Committee discussed that new definition in a work session on June 25, 2003. Much of that discussion focused on the fact that the definition appeared to require conference centers, convention centers and visitor information centers that met statutory definitions to also meet the 10-year useful life and primary purpose criteria. In the course of discussing that problem, Representative Barnhart raised concerns about the “primary purpose” language:

I have to say I have a big concern about the use of that word “primary” and let me just give you an illustration of that. The Convention Center in Portland is not “primarily” used for tourism. It’s – most of the people who use it come from the neighborhood – certainly within 50 miles – on any given event, it doesn’t matter what event it is, most of the people come from the neighborhood within 50 miles.

In Eugene, the Hult Center is another good example, obviously a tourist-related facility, but most of the people coming to events there come from within 50 miles even though the Bach Festival, for example, has people from 35 states that are going to be attending starting the end of this week. \* \* \* I really need to understand how the use of that word “primary” would not limit the use of these funds for facilities like those that certainly have a tourist-related function – a very important one – but are not “primarily” tourism-related facilities.

Testimony of Representative Barnhart, House Revenue Committee (HB 2267), June 25, 2003, tape 190, side A 411- 446. Representative Barnhart interpreted the “primary purpose” criteria to eliminate facilities that drew most of their patrons from the local community, even if they also had a very important tourism-related function. That interpretation of “primary purpose” is consistent with its plain meaning as the relevant plain meaning of “primary” is “first in rank or importance: CHIEF, PRINCIPAL.” WEBSTER’S at 1800.

No further discussion of the meaning or implications of the “primary purpose” requirement took place in that work session. But when the committee held its next work session on July 23, 2003, it considered amendments that changed the definition of tourism-related

facility to: (1) clarify that conference centers, convention centers and visitor information centers that met statutory definitions did not have to meet additional criteria; (2) for other facilities, substitute a “substantial purpose” requirement for the “primary purpose” requirement; and, (3) expressly exclude “roads, other transportation facilities, [and] sewers or sewer plants” from the definition. HB 2267, section (1) (9) (a) - (c) (-14 and -15 amendments) (2003).<sup>1/</sup>

The committee discussed the latter two changes at length. Because that discussion was so lengthy, we summarize the most pertinent points, beginning with the exclusion of “roads, other transportation facilities, [and] sewers or sewer plants” from the definition. At the beginning of the work session, Chair Shetterly told the committee that he intended to remove “other transportation facilities” from the exclusion. Testimony of Chair Shetterly, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 380-400. But four committee members, Representatives Haas, Barnhart, Hobson and Verger, refused to vote for the amendment even with that change, because it continued to exclude roads, sewers and sewer plants. Testimony of various legislators, House Revenue Committee (HB 2267), July 23, 2003, tape 224, side B at 010-070.

None of the legislators explained what roads, sewers, or sewer plants should be included; their objection to the exclusions was more general. Both Representatives Hobson and Verger expressed opposition to the exclusion because it “was moving in the wrong direction,” the “wrong direction” in this context being imposing greater restrictions on local governments. *Id.* Representative Barnhart opposed the exclusion because he was concerned about how a city would be able to raise a local tax and spend 70 percent of it on tourism if the restrictions on the definition of tourism-related facilities were so substantial. *Id.* Representative Hass merely stated that the exclusion was a source of consternation among his colleagues, who otherwise supported the bill. *Id.*

Two non-legislator witnesses discussed roads and sewers more specifically. The first, Ken Strobeck, representing the League of Oregon Cities, testified that he was concerned about the exclusion because coastal communities’ sewer systems and roads were heavily impacted by tourists. He testified that those communities had to build their sewer facilities to accommodate tourists, not local residents. He gave the example of Cannon Beach, stating that it had a population of 1500 to 2000, but over 1000 motel rooms. He also testified that he thought the exclusion would prevent funding public restrooms. Testimony of Ken Strobeck, League of Oregon Cities, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 059-314.

On the other hand, Mr. Strobeck appeared to recognize a distinction between “tourism-related facilities” and funding local infrastructure such as sewers. He testified that new restrictions on how local governments could spend the revenue were not necessary, because local governments already were “spen[ding] [50 percent of the revenue from existing taxes] on tourism promotion, tourism facilities, with the other half \* \* \* on sewers, police, etc..., which are affected by tourist traffic.” Testimony of Ken Strobeck, League of Oregon Cities, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 278. In other words, while he appeared to want local communities to have the flexibility to spend more money on local

infrastructure, such as sewers and roads, his testimony also appears to acknowledge that such spending is not funding a tourist-related facility.

The second non-legislator witness, Doug Riggs, representing the Central Oregon Cities Organization, testified that the exclusion was problematic because a city like Redmond might want at some future point to expand roads or sewers around the Deschutes County Fairgrounds, a facility that drew a lot of tourists, specifically to address the needs of the tourist industry. Testimony of Doug Riggs, Central Oregon Cities Organization, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 318-371.

At the end of the work session, the committee decided not to vote on any proposed amendments that day, but to attempt to work out a compromise. Testimony of various legislators, House Revenue Committee (HB 2267), July 23, 2003, tape 224, side A at 371-497. The resulting compromise was the removal of the express exclusion of “roads, other transportation facilities, [and] sewers or sewer plants” from the definition of “tourism-related facility.” The definition otherwise remained the same. HB 2267, § (1) (9) (a) – (c), (-19) (2003).

After that change, when discussing the specific types of facilities that they intended “tourism-related facilities” to include, legislators mentioned the types of roads and sewers as follows. In the work session on August 12, 2003, Representative Barnhart stated that: “I am especially pleased that we left out the piece on sewers and such. I can imagine putting in a restroom in a park might very well be a substantial promotion of tourism and, of course, that involves sewer lines among other things.” Testimony of Representative Barnhart, House Revenue Committee (HB 2267), August 12, 2003, tape 241, side A at 031-113. Second, in the House Floor Debate, Chair Shetterly stated that “improvements and access to natural resources and recreational facilities” could very well fall under the definition of “tourism-related facility.” Statement of Chair Shetterly, House Floor Debate (HB 2267), August 19, 2003, tape 177, side A at 211. Representative Farr agreed. Statements of Chair Shetterly and Representative Farr, House Floor Debate (HB 2267), August 19, 2003, tape 177, side A at 237.

In sum, the history shows that the legislature did not intend to categorically exclude roads, sewers, sewer plants, and other transportation facilities from the definition of “tourism-related facilities.” If a specific road or sewer, etc., meets the criteria in ORS 320.300(9)(b), including having a substantial purpose of supporting tourism or accommodating tourist activities, it would qualify as a “tourism-related facility.” But legislators cited only three very limited types of roads and sewers that might qualify: roads that provide access to natural and recreational facilities, other improvements to recreational facilities, which could include sewers, and a restroom in a park. Those types of roads and sewers either are part of tourist attractions or directly serve them. In that sense, those facilities might “draw” tourists to the extent that the attraction itself draws tourists. No legislator stated any intent to include roads and sewers merely because they are used heavily by tourists. Consequently, the history suggests that the legislature may have intended local infrastructure such as roads and sewers to be “tourism-related facilities” only to the extent that they either are part of or directly serve tourist attractions.

For further clarification, we turn to the legislature’s discussion about the meaning of “substantial purpose.” First, Chair Shetterly explained that the change from a “primary purpose”

test to a “substantial purpose” test was a compromise that benefited local governments by giving them more flexibility. Testimony of Chair Shetterly, House Revenue Committee (HB 2267), July 23, 2003, tape 224, side A at 010-497. In other words, “substantial purpose” was a lesser standard than “primary purpose.” Accordingly, the legislative history on that point is consistent with the context, which also suggests that “substantial” was not intended to mean the primary or chief purpose of the facility.

But no legislator provided a definition of “substantial purpose” and there appeared to be considerable confusion amongst the legislators about what facilities would meet that test. Rather than clarifying the meaning of “substantial purpose,” Chair Shetterly attempted to demonstrate the legislature’s intent by describing on the record the kinds of facilities that were meant to be included. Other legislators appeared to agree with his assessment, although Representative Barnhart appeared to intend the definition to be interpreted as broadly as possible. The following are excerpts of legislators’ statements from the time that the “substantial purpose” language was introduced to statements made during the House floor debates. We begin with committee discussions following the introduction of the “substantial purpose” language on July 23, 2003:

CHAIR SHETTERLY: I will say on the record that I think the Hult center, *because it accommodates the Bach Festival, and when it is not accommodating the Bach Festival, there is the Eugene Opera and there are concerts that are advertised and I know I have traveled several times to events at the Hult Center.* I think that there is no doubt in my mind that the Hult Center and other *regional facilities that bring people in are going to qualify under the substantial purpose test.* Keller Auditorium. I don’t know how many times a year I am up at the Keller Auditorium in Portland and I live more than 50 miles from Portland, and *I’ll bet that you’ve got a substantial number of people who are in there every time there is a show that live more than 50 miles away. I think those are the facilities that in fact do come under the substantial purpose test \* \* \** which is, again, exactly why it has been such a difficult test for the lodging association and the proponents of the Bill to move towards. \* \* \* And I think Brownsville, the Brownsville Museum, or some of those kinds of things, if those are even owned or funded by municipalities I think those would qualify. *Again, I have traveled to the Brownsville Museum on several occasions to see them [sic]. They have a sign by the freeway that draws people in off the freeway and I am sure that that would qualify under any reasonable standard of “substantial purpose.”* So I think there is more flexibility than what you are granting in your testimony with that move toward the “substantial purpose” test.

\* \* \*

\* \* \* [A] convention center that we do have in Salem now, that *we have gatherings of statewide organizations on a regular basis \* \* \* would qualify as a substantial purpose[.]*

REPRESENTATIVE SCOTT: \* \* \*. We talk about, Doug you have spoken to the Redmond facility and everyone is talking about how *folks come to these* and

where they get the money to operate these. And now we are talking about the tourism industry that collects a tax and should that bear the burden of the facility. ***I think we need to look at really how many people affect those facilities, wherever they may be.***

\* \* \*

REPRESENTATIVE FARR: You know, we have had Mr. Chair, you placed on the record during this discussion that you feel that “substantial” includes the Hult Center and “substantial” includes the Deschutes facility and the Astoria facility and I think that placing that on record goes a long way to the interpretation of the intent of the amendments and the intent of the language of this bill.

\* \* \*

REPRESENTATIVE WILLIAMS: \* \* \*. My own concern that the “substantial” language modifying the word tourism in that sentence still creates in my mind some question as to whether some of the facilities that have been discussed today would, in fact, be protected.

Testimony of various witnesses, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A, 380-400, tape 223, side B 300-436; tape 224, side A, 010-497, and tape 224, side B, 010-070 (emphasis added).

The following are excerpts from the committee work session on August 12, 2003 following the removal of language expressly excluding “roads, other transportation facilities, [and] sewers or sewer plants”:

CHAIR SHETTERLY: There was concern still about the language of “substantial purpose” and what kind of facilities [would meet that test.]

\* \* \*

I just want to confirm my inclination for the record that these are the kinds of things that we would be looking around [at] statewide: performing arts centers, we talked about the Hult Center, I think your convention center in Salem that might not qualify as a convention center within the specific language of the statute, ***but that nevertheless was designed to facilitate statewide conferences and conventions***, I think would be one that would fall under that substantial purpose test. I can see recreational facilities, improved recreational facilities, performing arts centers, cultural facilities, ***those kinds of things would be my intent as long as you have folks coming in from out of the area and can establish that there is a substantial number of those, whatever that is. That is going to be a locally-driven test, but I think there is flexibility on all sides.***

\* \* \*

REPRESENTATIVE BARNHART: \* \* \* I was in Pennsylvania a few weeks ago for a family reunion and one of the things that we did while we were there was to visit some sights in the little town that the Barnhart family came from. Among the things that we saw were historical houses; there is a genealogy library set up as part of the county library there and, of course, parks, historical railroad stations, and a variety of other things. It seems to me that within the right context all of those might be considered to be tourist, might be facilities that support tourism or accommodate tourist activities. After all, while we were there, we spent money in the local restaurants and in lodging and so forth in Pennsylvania. ***So, I think and I hope that this is considered to be a very broad definition. I am especially pleased that we left out the piece on sewers and such; I can imagine putting in a restroom in a park, might very well be a substantial promotion of tourism and, of course, that involves sewer lines among other things.*** I think, otherwise, the Chair has mentioned most of the areas, most of the issues that I am interested in. ***It is hard for us to know all of the things that bring tourists to town and I hope that anyone interpreting this language will interpret it very, very broadly.***

REPRESENTATIVE FARR: \* \* \* I just want to make sure that the understanding [is] that, for instance, fairgrounds are included in tourism facilities.

CHAIR SHETTERLY: Well, I guess my thinking would be that they are not excluded. Again, I think it is going to be a facility-by-facility test and, ***depending on the nature of the crowd that comes, I think they very well could be.***

Testimony of various legislators, House Revenue Committee, August 12, 2003, tape 241, side A, 031-113 (emphasis added).

Following that discussion, the committee unanimously voted to send the bill to the floor with a do pass recommendation. These statements followed in the House floor debate:

CHAIR SHETTERLY: As you know, if you followed this Bill, one of the most contentious issues was the element of the rumination on the use of new tourism tax dollars by local communities.

\* \* \*

Examples of a tourism-related facility that local communities can fund out of their 70 percent share that is restricted under this bill would include such things as the Hult Center in Eugene. ***That draws and has the substantial purpose of attracting tourists to the Eugene community.*** Keller Auditorium in Portland. I know my wife and I travel up there as often as we can. We are tourists under the definition of this Bill. And even here in Salem, the planned convention and conference center that's ***going to be drawing conferences from around the state; statewide conferences and meetings. Those are the kinds of facilities at the***

*local level that would fall under this tourism facility.* County fairgrounds could very well fall under this definition as well as *cultural and historical facilities that draw people from elsewhere in the state. And also, improvements and access to natural resources and recreational facilities.* There is flexibility in this for local communities and, at the same time, there is a guarantee that to the extent that flexibility is used, *it is going to be used for facilities that draw tourists and that have as their substantial purpose that tourism promotion[.]*

REPRESENTATIVE BARNHART: One of the key issues in this was the repeated working and reworking of what it was that cities and counties could spend any new transient room taxes that they might raise on and whether, not going into the specific details of what we ended up with in the bill, except to say that, as we worked through this, we came to realize that the *cities and counties needed to have a very broad definition of what is was that they were going to be allowed to spend the 70 percent of their new or expanded tax that had to be spent on tourism promotion or tourism-related facilities.* The “*substantial purpose*” which is referred to in the bill having to do with tourism-related facilities turned out to be a very important phrase for us as we worked on this bill, because it *deals, of course, with not only facilities that are designed to primarily draw tourists, but facilities which are useful to the local community to do local things, but also, as a part of their operation and nature, will have a substantial purpose of supporting tourism and accommodating tourist activities.*

\* \* \*

[While in Pennsylvania] we visited \* \* \* a couple of local museums and the library. And, as the committee dealt with this issue of “substantial purpose” I would submit, and I believe the other committee members would agree that those facilities, small facilities that they were, *because they do in fact draw tourists from far away*, that they have, along with other reasonable purposes, they have a “substantial purpose” of supporting tourism or accommodating tourist activities.

Testimony of Chair Shetterly, House Floor Debate, August 19, 2003, tape 177, side A at 211 (emphasis added); Testimony of Representative Barnhart, House Floor Debate (HB 2267), August 19, 2003, tape 176, side B at 09 (emphasis added).

That history demonstrates that the types of facilities that legislators intended to include were things like performing arts centers, convention centers and other facilities that, by their nature and operation draw “substantial numbers” (a locally-driven and flexible test) of tourists to the community.<sup>2/</sup> Roads and sewers, while they do serve tourists, do not, by their nature and operation, draw tourists.

But the legislative history also is clear that legislators did not want to exclude roads and sewers from the definition; the only possible conclusion to be drawn from that fact is that they believed that at least some types of roads and sewers would qualify. Legislators mentioned three that might: “improvements and access to natural and recreational facilities” and “a restroom in a park.” Those facilities might be said to draw tourists as they are part of the infrastructure of a

tourist attraction or directly serve a specific tourist attraction. No legislator expressed an intent to include local infrastructure that does not have that direct nexus to a tourist attraction simply because it is used heavily by tourists. The legislature likely intended local governments to use their 30 percent unrestricted funds to pay for those facilities.

## CONCLUSION

We conclude, based on the text, context and history of ORS 320.300(9) and ORS 320.350(5) and (6) that the legislature most likely intended local roads, sewers, sewer plants, and transportation facilities to qualify as “tourism-related facilities” only if they drew tourists in themselves, directly serve a specific tourist attraction (such as an access road), or are part of the infrastructure of a specific tourist attraction (such as a restroom and the on-site sewer line). The legislature most likely did not intend “tourism-related facilities” to encompass roads and other infrastructure simply because they are used, even heavily, by tourists as well as locals.

Sincerely,

Donald C. Arnold  
Chief Counsel  
General Counsel Division

DCA:JTM:AEA:mcg/645803

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<sup>1/</sup> At the beginning of the work session, Chair Shetterly mentioned a July 1, 2003 memo that he had circulated to the committee that “addressed changing ‘primary’ to ‘substantial.’” Testimony of Chair Shetterly, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A 006-022. That memo is not included in the legislative history materials and the Office of Legislative Counsel does not have a copy of that memo in its file, so we do not know what discussion, if any, it contained about the reason for the change from “primary purpose” to “substantial purpose.” The only memo from Chair Shetterly to the committee members concerning that change is dated July 23, 2003 and it merely tells committee members about the change without explaining the reason for it. Minutes, House Revenue Committee (HB 2267), July 23, 2003, Exhibit 4.

<sup>2/</sup> There was no discussion of visitor information centers which aid tourism spending by disseminating information, likely because those facilities are unique and fit within the categorical statutory definition.





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## EXCLUSIVE MEETING VENUES, BY DESIGN

It's a clear, distinct point of differentiation—IACC standards are the benchmark for meeting venue should aspire to.

IACC elevates the meeting experience by creating a unique point of entry that is inclusive of only the best-in-class meeting venues from around the world. Quite simply, IACC membership is a badge of honour, a seal of exceptional connections and a sense of universal pride. This exclusiveness makes IACC's members part of an elite group representing the most innovative, forward-thinking and results-driven meeting venues in the industry. And the bar for our standards continues to be raised as we look to the future.

To be a IACC certified venue, members must demonstrate a commitment to the highest standards in design, facilities and services, as well as technology and sustainability. Our members understand the importance of each of these elements in a successful meeting - and those who use the venue expect them.

IACC member properties are designed and operated to ensure their clients have the most productive environment,

supported by the best staff, with a commitment to help the client achieve the outcomes they are seeking.



Only IACC member properties can claim the best global meeting environments, and an unmatched commitment to client outcomes.

IACC recognises that best practice is sometimes viewed through a different lens dependent upon where you are in the world. The IACC Quality Standards have been designed to enable local interpretation of what constitutes best practice in a particular country, without changing the general tenets of the standards. While every venue won't look, operate or be the same, they all share a common commitment to creating the best meeting environments.

IACC is, by definition, the future of the meeting industry, realised. IACC is creating—and implementing—the trends that are shaping the way we connect, network and learn from each other.

Through IACC, we bring together some of the brightest, most creative and innovative minds from across the globe who are continuously applying their intellect, insights, high

standard of service and passion to perpetually drive the industry forward.

IACC members continue to learn from one another and shine a light on innovations, which help create the most effective meeting spaces in the world, where planners and participants alike can confidently conduct their business meetings.



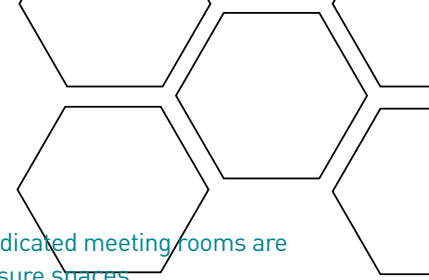
# Quality Standards: Conference & meeting venue design

One of the core beliefs of IACC is that the venues which become members must be designed and operated for small to medium sized meetings and conferences.

## Acceptable

- ▶ The venue should have at least one flat- floored main conference room which contains a minimum 93m<sup>2</sup> (or 1,000 sq ft) of floor space with unobstructed views.
- ▶ A dedicated main conference room should have the capacity to provide flexible seating to enable a variety of learning environments.
- ▶ The venue must provide at least three (3) additional breakout spaces in addition to and in proximity to the main conference room.
- ▶ The venue must have sufficient inventory to set the majority of its meeting and conference spaces using ergonomically designed chairs.
- ▶ All conference and meeting rooms should provide access to high speed Internet, either through a wired or Wi-Fi connection, as part of the meeting package, as well as in-room climate controls.
- ▶ All dedicated conference and meeting rooms have in-room control of lighting which when at maximum is between 500 & 700 lux (50 & 70 foot candles) at table-top.
- ▶ Dedicated conference and meeting rooms larger than 93m<sup>2</sup> (1,000 sq ft) should have zoned lighting and controls which permit dimming from full power to off.
- ▶ Acoustic ratings for sound transmission between dedicated conference and meeting rooms exceed 45 NIC (Noise Isolation Class) for all adjoining walls.
- ▶ Ambient sound levels within all dedicated conference and meeting rooms exceed 35 BNC (Background Noise Criteria) and Reverberation Time (RT) of lower than 1.2 seconds at mid frequency.
- ▶ Built-in sound systems are required for any room greater than 93m<sup>2</sup> (1,000 sq ft)





Design is of extreme importance, as it establishes the venue's core intended purpose. This does not mean that hotels cannot be members or committed to meetings, provided they

apply the core principle – that dedicated meeting rooms are separated from the living and leisure spaces.

## Not Acceptable

- ▶ Any venue, including a hotel, where meeting rooms are at all times multi- purpose, and the set- up is determined by the type of event.
- ▶ A banquet or function venue which also holds meetings, regardless of the quality of the meeting facilities provided within the venue.
- ▶ A museum, art gallery or other exhibition space which provides meetings, regardless of the quality of those meetings.
- ▶ Any venue, including a dedicated conference venue, which does not provide at least 3 conference or meeting rooms, with one being at least 93m<sup>2</sup> (1,000 sq ft).
- ▶ A venue that is unable to set the majority of its meeting space utilising ergonomic chairs.
- ▶ A venue that uses padded tables, or tables with linen overlay as conference tables, instead of non-reflective tables with a hard-writing surface.
- ▶ Conference tables which provide less than .76 metre (30 inch) of space per person.
- ▶ Any venue, including a dedicated conference venue, which does not have sufficient separation of meeting spaces from food and beverage and leisure or social space.
- ▶ Any venue, including a dedicated conference venue which does not provide appropriate acoustic and lighting levels to conduct professional meetings.
- ▶ Any venue, including a conference venue, which has pillars or other obstructions within its meeting rooms, thus preventing uninterrupted sight-lines for all corners of the room.
- ▶ A venue where light and noise transfers easily from the outside to inside the conference room, causing disruption to the smooth running of a meeting.
- ▶ A venue with no zoned lighting in meeting rooms greater than 93m<sup>2</sup> (1,000sq foot), or no capacity for dimming lights across the full spectrum of full power to off.
- ▶ A venue which has no communication ports, or insufficient power/ data points, or Wi-Fi access in its meeting rooms.
- ▶ A venue which does not provide high-speed Internet connectivity within its guest rooms, its meeting rooms and its public areas.

# Quality Standards: Priority of business

An IACC venue must demonstrate that it is a bona-fide Conference venue through many different measures, one of which is its Priority of Business. This doesn't exclude the venue from hosting non-meetings-related events, but it does mean that the majority of their operation is in running meetings and the majority of their income is derived from meetings.

## Acceptable

- ▶ The majority of conference space, based on net area within the venue, must be dedicated, single purpose meeting/conference space.
- ▶ A majority of total revenue derived from guest rooms, meeting space, food and beverage, meeting technology (IT/AV) and conference services is derived from meetings.
- ▶ If the venue is non-residential or non-marketed, the majority of business must be generated from internal or external conferences and meetings.
- ▶ The venue must offer and actively promote the benefits of an all-inclusive, flexible package plan.
- ▶ Flexible, all-inclusive meeting packages – both residential and day-meeting packages, can be modified to suit a customer's specific requirements as necessary.
- ▶ IACC venues cater to the small to medium sized meetings and therefore members must demonstrate that their average group size is no greater than 125 .

The application process for IACC membership requires disclosure of the percentages of business across various market segments. A potential member may be admitted whilst under construction, but the prime intent of the venue must be disclosed at the time of application.

## Not Acceptable

- ▶ A hotel or other venue which frequently converts existing meeting spaces into temporary dining spaces, regardless of the quality of the space.
- ▶ A town hall, banquet or function venue, regardless of the quality of its infrastructure and services.
- ▶ A hotel or casino, which operates a conference venue within the building, where the prime purpose is filling guest rooms and selling food and beverage or gambling and not meetings.
- ▶ A dedicated conference venue may be accepted into membership if it is operated separately from the primary, non-related portion of the business.
- ▶ A convention or large meetings venue where the average meeting is greater than 125 delegates, and which is often supported by large exhibitions.
- ▶ Any venue not designed and operated for the sole purpose of meetings, where the infrastructure and technology is mobile and supplied on an as-required basis. Any venue where the primary purpose is for exhibitions and trade shows.

# Quality Standards: Conference & Business Services

IACC believes that its members must be capable of supporting conference and meeting planners in every aspect of the meeting delivery.

We believe this extends to being there to provide emergency materials and support whenever a planner or facilitator needs it, or to make his or her life that little bit easier.

## Acceptable

- ▶ A designated and skilled conference planner will be assigned to each conference group.
- ▶ A range of equipment will be available to assist the delivery of a successful meeting, such as printers, laptops, digital media and copying services.
- ▶ Staff are trained to respond to business services related requests with ease.
- ▶ The venue will offer professionally administered business services, which may include a fully staffed business centre, able to assist facilitators and attendees.
- ▶ The business centre will provide a range of products, materials and services, consistent with expectations in a professional office and meeting environment.
- ▶ Venue staff includes skilled conference planners who are thoroughly proficient in effective meeting room setups, menu and special event planning, conference technology (IT/AV) equipment and services, and any other special needs of the client.

IACC therefore sees the provision of a dedicated venue contact who can be immediately called upon for assistance and support and who can provide a range of business services to manage “the little things”. It is these little things that set our members apart from our competitors. Being the best meeting venues in the world means we must have the best support services as well.

## Not Acceptable

- ▶ No dedicated in-house meeting planners are available.
- ▶ Equipment such as printers, laptops and copiers need to be prearranged to enable delivery from an outside provider.
- ▶ No business services staff available to support conference groups.
- ▶ Limited or no professionally administered business services are available to conference planners and attendees.
- ▶ Conference planners are required to bring their own materials, as none are available at the venue.
- ▶ Internal conference planners are utilised across other divisions within the venue, or are drawn from other areas to manage conference groups. Conference planners have little or no experience in meeting planning and are not conversant with conference technology or menu planning.

# Quality Standards: Technology

Technology continues to drive the way people collaborate and interact – this is certainly true of a growing number of events which are no longer content driven from a presenter at the front of the room.

IACC takes the view that technology enhances the meeting experience only when it is specifically designed and integrated into appropriate meeting spaces.

## Acceptable

- ▶ Learning spaces that have sufficient power, signal infrastructure, design elements and physical arrangements.
- ▶ The meeting package offered is inclusive of basic presentation equipment such as digital projectors and devices used for computer/video image display.
- ▶ The venue has skilled technicians who are thoroughly proficient in creative program consultation, equipment set up, operation and instruction.
- ▶ Dedicated conference rooms larger than 93m<sup>2</sup> (1,000 sq ft), have at least one built in remote-input computer video image display.
- ▶ The venue has a program in place to consistently remain current in its technology and services offerings.
- ▶ Meeting facilitators are provided with a means of direct communication to the conference planner, from within the dedicated conference and meeting rooms.

We created the industry leading Design for Great Technology guidelines to assist owners and developers in understanding the importance of this critical component in an effective meeting environment.

It is vital that technology be supported at all times by skilled on-site staff, to best assist customers with their technology needs.

## Not Acceptable

- ▶ Venues with insufficient on-site technology to support a successful meeting.
- ▶ A conference venue which applies a separate charge for the use of basic technologies such as digital projectors and computer/video image displays.
- ▶ No technicians are available on site for consultation during the planning stages, or for support during the meetings.
- ▶ All conference rooms require equipment to be brought in for each meeting and no rooms have integrated technologies.
- ▶ The venue has aged technology and has no formal program of replacement in place.
- ▶ Meeting facilitators are required to go to a central desk or to search for assistance when needed, causing unnecessary inconvenience, negative impact and unsuccessful meeting outcomes.



# Quality Standards: Guest rooms

Not all venues are residential however those that are should provide their guests with a workspace with hard writing surface and the capacity for hard-wired or Wi-Fi connectivity. Members of IACC ensure that the guest rooms have good quality design and physical attributes and are typically fit-for-purpose to enhance the overall meeting attendee experience.

## Acceptable

- ▶ Guest rooms are separate from conference and leisure areas to allow maximum privacy and comfort.
- ▶ Guest rooms contain workspace with hard-writing surfaces and sufficient power and controllable lighting, separate from overhead lighting, which provides adequate illumination for reading
- ▶ Guest rooms contain a suitable chair to enable the guest to sit properly at the work desk in a comfortable and ergonomic manner whilst working.
- ▶ Guest rooms are inclusive of en-suite bathrooms in all rooms.
- ▶ Guest rooms have individual climate control to enable a guest to set his or her own level of comfort.
- ▶ Guest room bedding is modern and in superior condition for appearance and comfort. Property has green initiatives in place, which encourage guests to choose environmentally friendly alternatives in relation to linen, water and other natural resources.

Venues are designed and operated for meetings and business events. This extends to the guest rooms, where the design qualities reflect the expectations of the business communities we serve.

## Not Acceptable

- ▶ Guest rooms do not provide privacy and comfort and are not located away from leisure areas.
- ▶ No workspace exists with the guest room, thus preventing a guest from being productive whilst in the room.
- ▶ No comfortable and ergonomic chair is provided to the workspace, preventing productive work from being undertaken.
- ▶ Guest rooms do not have en-suite bathrooms, instead utilising shared bathroom facilities.
- ▶ Guest room does not have individual climate control, thus guest comfort is reliant on the broader hotel energy settings.
- ▶ Bedding is tired and poorly presented.
- ▶ No environmentally-friendly initiatives are evident. No guest options are in place to best preserve natural resources.

# Quality Standards: Day Centres

Not all venues are residential, many are non-residential or “day” centres. IACC recognises that a quality conference or meeting venue does not need to have guest rooms on-site to offer the same high standards of meetings experience.

IACC Day centres are an important and growing opportunity for meeting planners seeking high quality and exacting standards, without the need for overnight hotel rooms. IACC members in this category are every bit as committed to providing the world’s best meeting experiences.



## Acceptable

- ▶ The venue provides a conference reception and lobby within the venue.
- ▶ The venue has at least one set of restrooms located within the venue itself, not separated into a larger building.
- ▶ The venue has at least one public entrance with a door that clearly separates the conference and meeting venue from the remainder of the facility.
- ▶ The venue has at least one conference planner dedicated exclusively to the venue, whose office or work station is located on site within the venue.
- ▶ The venue is designed and equipped to specialise in small to medium size meetings, training courses and conferences. The meeting environment in the conference venue is not adversely affected by large groups from any neighbouring facilities.

## Not Acceptable

- ▶ No separate reception or lobby within the venue, causing confusion as to the purpose of the venue.
- ▶ Restrooms are provided within another part of the building and are shared by the people whose purpose is not related to the conference venue – e.g. within a convention centre.
- ▶ Access to the conference venue is only through a hotel lobby or a casino or other operation within the building.
- ▶ No dedicated conference planner is available and/or other staff members fulfil multiple work roles, one of which is meeting planning.
- ▶ The name of the venue is not reflective of the meetings-focused purpose.
- ▶ The conference venue is part of a casino, hotel or convention centre where the core purpose is non-conference business and the conference venue is only one aspect of services provided.

# Quality Standards: Staffing structures & professional development

IACC believes that professionally trained staff are as fundamentally important to the success of a conference as the physical environment.

The IACC meetings experience is effective only when all aspects of a meeting, such as; service, facilities and product are successfully blended and delivered on a high level.

## Acceptable

- ▶ The venue will have an organisational structure, which clearly identifies the conference planner role.
- ▶ The venue will be able to demonstrate a commitment to the professional development of its staff through internal and external education programs.
- ▶ The venue will encourage and support staff to undertake IACC endorsed learning and training.
- ▶ Planners employed have achieved the Certified Meeting Professional (CMP) designation or its equivalent.
- ▶ Staff employed to support the technology needs of customers have achieved the Certified Technology Specialist (CTS) designation or its equivalent.

Skilled and well-resourced staff will create the support structure required by meeting planners and meeting delegates, and they will be committed to continually improving the service they provide.

IACC members continually enhance the skills of their staff through a range of learning and training activities.

## Not Acceptable

- ▶ The venue will not be able to demonstrate that its staff is dedicated to certain key services, such as AV support, Conference Planning and Conference Services.
- ▶ Staff who are not trained and developed to deliver meetings-focused services and instead work only to set generic procedures.
- ▶ The venue leadership cannot demonstrate a culture where its staff are developed both academically, as well as through attending industry events and conferences where training is conducted.
- ▶ Venues not being able to demonstrate a clear understanding of the needs of a meeting planner.
- ▶ Venues relying on the remote support of a third party organisation to provide common AV and technical related support to meeting organisers.

# Quality Standards: Corporate social responsibility & sustainability

IACC is a leader in promoting the importance of a commitment to environmentally friendly practices among IACC member properties and their clients.

We do this by communicating the initiatives we have researched and identified as having a better environmental impact; by encouraging IACC members to adopt these

## Acceptable

- ▶ In addition to doing what's right for the environment, the venue leadership team realises the three-fold benefits of being a sustainable property: environmental, social and economic.
- ▶ The venue undertakes environmental benefits ranging from; reducing a member's carbon footprint... to creating a better work environment... to improving the air and water quality of the property and the surrounding community.
- ▶ The venue has a program of sustainability, delivering economic benefits such as increased productivity; cost savings in energy, water and supplies; attracting new business and building greater customer loyalty.

environmentally responsible practices into their business operations; and by continuous improvement to our own management efforts; all with the goal of reducing our carbon footprint and environmental impact.

IACC has a rigorous Code of Sustainability, Green Star Certification, which includes 40+ tenets.

## Not Acceptable

- ▶ A venue that has no commitment to sustainability and cannot demonstrate sustainable practices in all areas of the business.
- ▶ The venue does not undertake environmental initiatives, including reducing a member's carbon footprint, creating a better work environment, or supporting the surrounding community.
- ▶ The venue has no clear program of sustainability, leading to poor productivity; lack of cost savings in energy, water and supplies; not attracting new business and not building greater customer loyalty.

# Quality Standards: General conduct



## Acceptable

- ▶ IACC members will maintain the highest standard of honesty, integrity and professional conduct across all business practices.
- ▶ IACC members and their appointed representatives will honestly and fairly represent themselves and act within the areas of expertise and skill that they possess, and with professional competency.
- ▶ IACC members refuse to engage in or encourage activities for personal gain at the expense of IACC.
- ▶ IACC members will attempt to eliminate all practices which could be damaging to the public or bring discredit to our industry or IACC.
- ▶ IACC members use only legal and ethical means for all IACC related activities, including in their own business dealings.
- ▶ IACC members will not engage in any activity that is or could create a conflict of interest, but instead will seek to remove themselves from such situations.

# Quality Standards: Allowances & dispensations

To ensure we deliver an equitable and fair system of measuring the quality of our member properties, IACC makes some allowance, taking into consideration periods of refurbishment or development – as well as the geographical location, or the uniqueness of the venue – such as one created in an historic building, like a castle or Chateau.

These member properties are still required to satisfy

## Acceptable

- ▶ Renovations in-process, or planned to occur within the 12-months following the application for membership.
- ▶ Properties located in a region of a country where broadband or Wi-Fi connectivity is limited through the infrastructure provided by local carriers.
- ▶ Properties which are seasonal in nature, or may close during periods of low activity – thus requiring reduced services during this timeframe.
- ▶ Properties whose physical meeting room environment is not compliant to IACC standards, due to purpose-built meeting spaces created for specialised technical training.
- ▶ When Government legislation or other binding restriction is placed upon a venue, preventing it from meeting a

IACC's Board of Directors that they comply with applicable standards, without impacting upon the style of the venue.

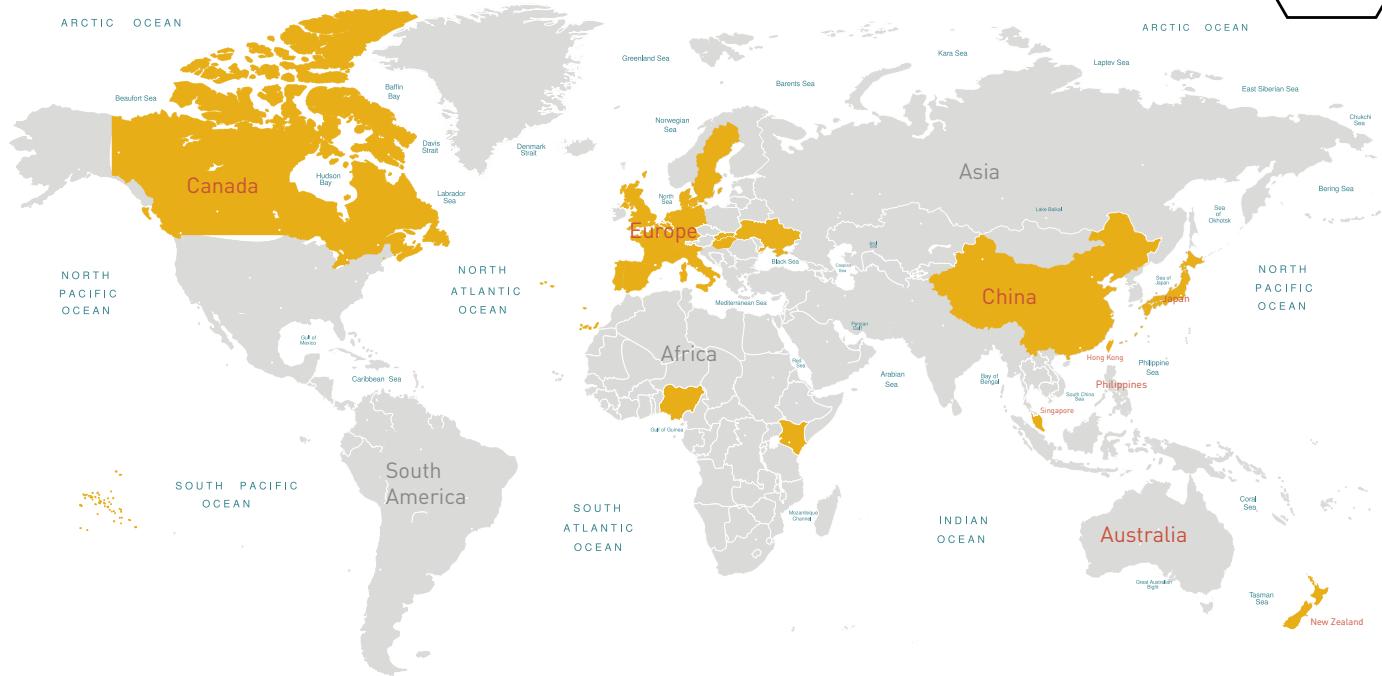
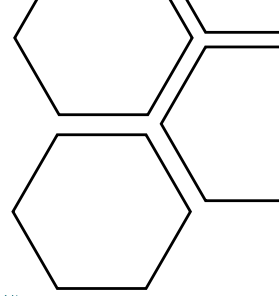
In respect of any allowance it is up to the owner/manager of the venue to provide any documentation or materials to satisfy the Board.

The IACC Board will be the sole arbiter. The IACC Board will be the sole arbiter.

specific aspect of the standards - provided all other standards are met.

- ▶ Venues with unique heritage or cultural design, which may prevent them from meeting all of the required standards, provided they are able to demonstrate the specific heritage or cultural environment restriction.
- ▶ Venues to apply local customs and accepted practices, when it can be demonstrated that the IACC standard applicable to a particular service, or piece of furniture or equipment, conflicts with what is deemed best practice in that country or region.
- ▶ Venues which provide a training environment where experiential learning programs determine a specialised training and meeting room configuration.

# IACC Conference Venues Can Be Found Globally



# CONTACT IACC

Americas Office +1 312 224 2580  
Europe Office +44 203 478 0274  
Australia Office +61 1300 008 710



@IACCmeetings



[www.linkedin.com/groups/95865](http://www.linkedin.com/groups/95865)



[bit.ly/IACCYoutube](http://bit.ly/IACCYoutube)



[www.facebook.com/IACCmeetings](http://www.facebook.com/IACCmeetings)

✉ [info@iacconline.org](mailto:info@iacconline.org)

🌐 [www.IACCmeetings.com](http://www.IACCmeetings.com)



[www.IACCmeetings.com](http://www.IACCmeetings.com)



**Visit  
McMinnville**

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**City Council  
Work Session**

**April 14, 2020**



**Planting**

***Beginnings***

City & VM Board  
Create  
Bylaws & Plan

***Foundation & Trust***

Brand Creation  
Hiring  
Office Setup

***Creating Awareness***

Media Relations  
Advertising

***Building Awareness***

Brand Partnerships  
Media Relations  
Advertising

***Collaboration & Amplification***

Stable Table Created  
YCTP Created  
Econ. Development  
Plan Created  
WVVA Board  
Brand Partnerships  
Media Relations  
Advertising  
Re-Brand

***Development***

Group Sales  
Cycling  
Arts & Culture  
Brand Partnerships  
Media Relations  
Advertising  
Campaign Launch  
Hiring

2014

2015

2016

2017

2018

2019

**Strategic Milestones**



**Planting**

1-5 years

- 1. Become a functional, effective organization
- 2. Establish brand
- 3. Identify partners

**Fertilizing**

5-10 years

- 1. Destination awareness
- 2. Opportunity analysis
- 3. Advancement

**Growing**

10-15 years

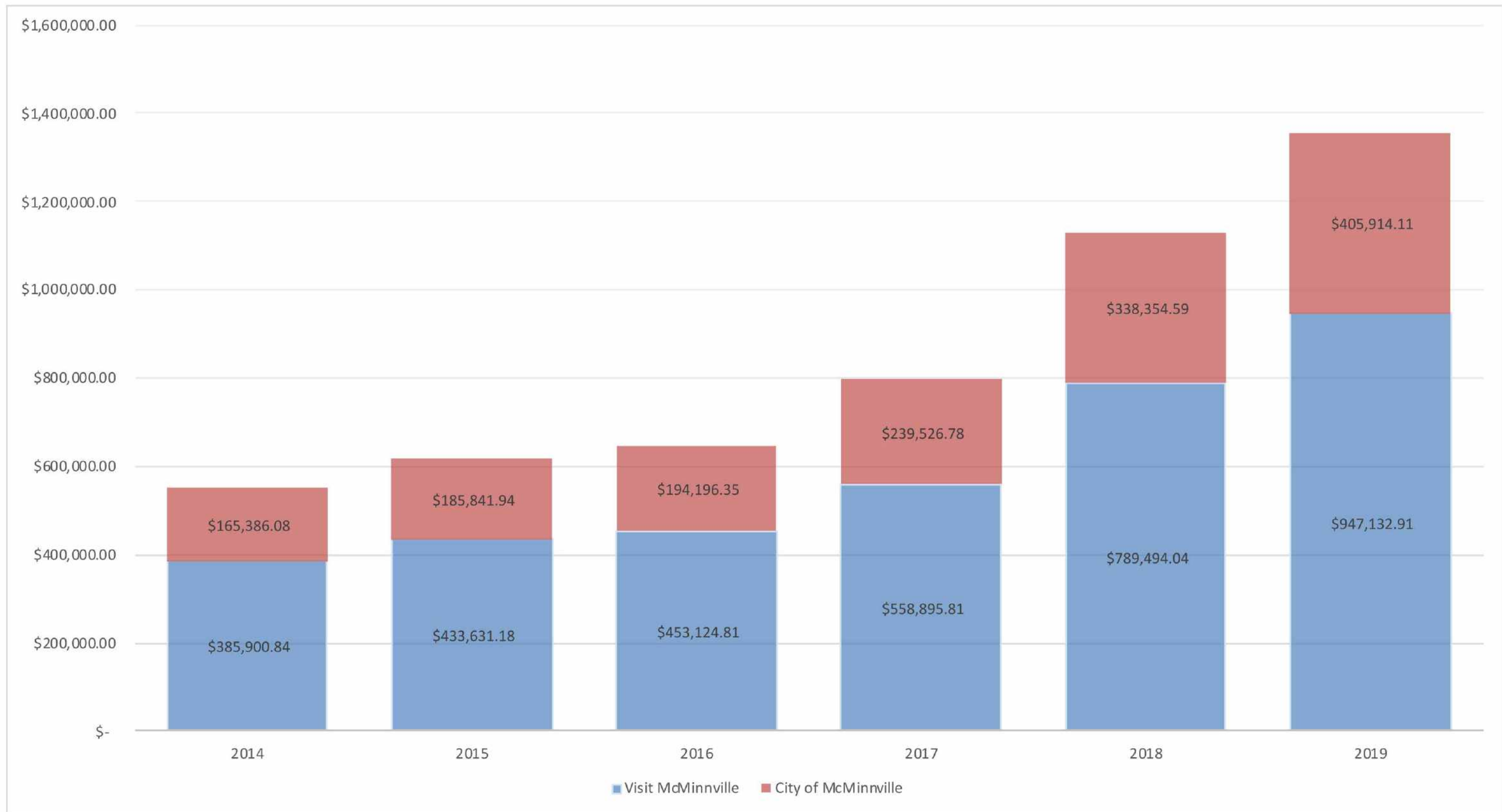
- 1. Activate opportunities
- 2.
- 3.

**Maturing**

15-20 years

- 1.
- 2.
- 3.

# TLT Collections 2014-2019



	Wait	Dream	Plan	Welcome	
	<div style="display: flex; justify-content: center; align-items: center;"> <span style="font-size: 2em; margin-right: 10px;">&lt;</span> <div style="background-color: #4b612d; color: white; padding: 5px 20px; border-radius: 10px; display: inline-block;">recovery</div> <span style="font-size: 2em; margin-left: 10px;">&gt;</span> </div>				
<b>Travelers</b>	<p><b>Truth</b></p> <p>Motivator</p>	<p>Quarantined &amp; social distancing</p> <p>Developing new daily normals; seeking creative outlets</p>	<p>Social distancing reduction; potential financial impacts</p> <p>Cautiously returning to formal routines; experimenting with future travel plans</p>	<p>Settling into new normal</p> <p>Adapting; proactively seeking an escape</p>	<p>Traveling at a normal cadence</p> <p>Resuming normal travel plans</p>
<b>Visit McMinnville</b>	<p><b>Brand Role</b></p> <p><b>Purpose</b></p> <p><b>Messaging Strategy</b></p>	<p>Acknowledge circumstances (national); rally around community (local)</p> <p>Maintain top-of-mind awareness</p> <p>Inspirational community support; "pride in place"</p>	<p>Understanding safety precautions; getaway solutions for 'cabin fever'</p> <p>Drive consideration of visitation</p> <p>Inspirational &amp; informational; possibility of booking</p>	<p>Encouraging travelers to get out and explore</p> <p>Increase consideration, planning, and visitation</p> <p>Full-funnel</p>	<p>Connecting travelers with reasons to visit</p> <p>Encourage visitation and bookings</p> <p>Full-funnel</p>
	<p><b>Desired Action</b></p>	<p>Stay connected with brand</p>	<p>Plan ahead; positive connections between visitor and brand</p>	<p>Get excited; make initial travel plans</p>	<p>Book travel</p>

## STAFF REPORT

**DATE:** April 2, 2020  
**TO:** Jeff Towery, City Manager  
**FROM:** Mike Bisset, Community Development Director  
**SUBJECT:** Airport Property Lease Amendment – Van Holland Farms

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**Report in Brief:** This action amends the terms of the lease amendment with Van Holland Farms approved by the City Council at their March 24, 2020 meeting.

**Background:** Van Holland Farms has been actively farming property at the airport since 1980. In 2012, Van Holland Farms entered into a lease with the City for farming of 34.7 acres of airport property (see attached lease document).

The term of the 2012 was for five years, with the ability to extend the lease to September 1, 2022 via five one-year extensions. Currently, the lease has been extended to September 1, 2020 (see attached lease extension), with a lease rate of \$75.00 per acre per year (\$2,602 per year total).

Van Holland Farms replanted the fescue crop on the leased property in 2019, and that replanting failed. They are interested in investing in an additional replanting the crop this spring, but have asked that the lease be extended to 2026 so that they can recoup the costs of the additional investment over the length of the crop.

**Discussion:** At their March 24, 2020 meeting, the City Council approved a lease amendment that extended the term of the lease with Van Holland Farms for farming of 34.7 acres of airport property to September 1, 2026. The amendment also adjusted the lease rate from \$75.00 per acre per year to \$150.00 per acre per year, effective September 1, 2020.

Subsequent to the Council's approval, Van Holland Farms notified staff that the intention of their amendment proposal was that the lease rate increase would be effective September 1, 2022 -- when the current lease ends. The attached revised lease amendment reflects those proposed terms.

**Attachments:**

1. Proposed Lease Amendment
2. 2012 Farm Lease w/ map
3. Farm Lease Extension through September 1, 2020.

**Recommendation:** Staff recommends that the City Council approve the lease amendment with Van Holland Farms for the lease of 34.7 acres of airport property.

LEASE AMENDMENT

This lease amendment is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of McMinnville, a municipal corporation of the State of Oregon (Lessor), and Van Holland Farms (Lessee).

RECITALS:

The Lessor and Lessee are parties to a lease agreement entered into on the 18th day of September, 2012, the "Premises" described as Parcel A (34.7 acres), all as more particularly described in the lease agreement attached hereto as Exhibit A.

The original term of that agreement expired on September 1, 2017, and the parties have agreed to three out of the five available one-year extensions of the lease, which have extended the term of the lease to September 1, 2020.

The parties desire to amend the lease term to expire on September 1, 2026.

NOW THEREFORE, the Parties agree as follows:

1. The term of the above-reference lease agreement is hereby amended to continue through August 31, 2026, expiring on September 1, 2026.
2. During the amended term from September 1, 2020 through August 31, 2022, the Lessee agrees to pay as rent for the premises, the sum of \$75.00 per acre per lease year.
3. During the amended term from September 1, 2022 through August 31, 2026, the Lessee agrees to pay as rent for the premises, the sum of \$150.00 per acre per lease year.
4. All remaining terms and conditions of the Lease shall remain unchanged.

CITY OF MCMINNVILLE

VAN HOLLAND FARMS

\_\_\_\_\_  
By: Jeff Towery, City Manager

\_\_\_\_\_  
By: Gary Van Holland

**LEASE OF REAL PROPERTY  
BY AND BETWEEN  
CITY OF McMinnville, OREGON  
AND  
VANHOLLAND FARMS**

This lease is made and entered into on 9-18-12, by and between City of McMinnville, a municipal corporation of the State of Oregon (Lessor), and VanHolland Farms. (Lessee).

**1. Premises:** In consideration of the covenants and agreements contained in this lease, Lessor leases to Lessee the following property: Parcel A, consisting of approximately thirty four and seven tenths (34.7) acres as indicated in Exhibit A, attached to this lease and incorporated by this reference. Parcel A (Premises) is located in Yamhill County, Oregon.

**2. Period of the Lease:** The lease on the Premises shall commence upon execution of this document and, unless terminated at a different time pursuant to Sections 10, 17, 20 or 21 of this lease, shall continue through August 31, 2017, expiring on September 1, 2017. Lessee covenants with Lessor that, upon termination of this lease either as anticipated by this paragraph or by paragraph 8, Lessee will quit and deliver the Premises and all future erections, improvements, or additions to or upon the Premises, to Lessor, peaceably and in as good an order and condition as the Premises are now or may in the future be put by Lessor. Loss by fire, flood, unavoidable casualty, and reasonable use and wear of the Premises is excepted.

**3. Consideration:** Lessee agrees to pay Lessor, as rent for the premises, the sum of \$34.58 per acre for each lease year. The lease year immediately following execution of this lease shall run from the date the lease is fully executed through August 31, 2012 and payment for this lease year will be prorated. The remaining lease years shall commence September 1<sup>st</sup> each year, and shall end on the 31<sup>st</sup> day of the following August. Payment for the first lease year shall be in cash, due within thirty (30) days of the date the lease is fully executed. Payment for subsequent lease years shall be in cash, due on or before December 31<sup>st</sup> of the previous year. Payments shall be made to City of McMinnville and be mailed or delivered to City of McMinnville, Attn: Finance Department, 230 NE 2nd Street, McMinnville, OR 97128. Lessee will include with the payment a statement that the payment relates to the "Airport Farm Lease."

After recording  
Return to: City of McMinnville  
231 NE 5<sup>th</sup> St.  
McMinnville OR 97128

Tax Statements: N/A

OFFICIAL YAMHILL COUNTY RECORDS  
REBEKAH STERN DOLL, COUNTY CLERK

2012-14298



00401194201200142980120120

\$91.00

10/04/2012 04:24:51 PM

DMR-LDMR Cnt=1 Str=3 SUSIE  
\$80.00 \$5.00 \$11.00 \$15.00



Any lease payment required of Lessee that is not paid within ten days of the due date shall bear interest at the rate of the maximum rate of interest permitted by law (at the time of the signing of this agreement, 9% per annum) from the due date until paid.

**4. Expenses Caused by Lease Termination:** Lessor agrees not to terminate the lease during the normal crop growing season unless required to do so in order to meet Airport facility expansion needs, or other future Lessor needs. Lessor shall not be liable for any expense incurred by Lessee in producing crops, except upon termination of lease by Lessor for Lessor's beneficial use of the premises under the terms of this section. Should Lessor terminate the lease pursuant to the terms of this section, Lessee shall be entitled to out of pocket expenses and labor and equipment costs but shall not be entitled to any future profits from crops. In no event shall the Lessee be entitled to any expenses or potential profits beyond the current lease year relative to crops with multi-year production.

**5. Taxes:** Lessor agrees to pay, on or before November 15 each tax year, all taxes due on the Premises. Lessee shall pay, as due, all taxes on its personal property located on the Premises.

**6. Encumbrances:** Should there ever be a mortgage or other encumbrance on the Premises, Lessor agrees to keep the encumbrance in good standing at all times, to make all payments when due, and not to suffer or permit payments to be or become in default.

**7. Relationship of the Parties:** The Lessor and Lessee agree that under no circumstances shall this lease be construed as giving rise to a partnership between them, and neither Lessor nor Lessee shall be liable for the debts or obligations of the other.

**8. Lease Term Extensions:** The lease may, upon mutual agreement of the Lessor and the Lessee, be extended for five (5) renewal terms of one year each. Lessee shall provide written notification to the Lessor, at least thirty (30) days prior to the expiration of the lease, that Lessee wishes to extend the lease. The parties will, at that time, renegotiate the lease price and the comprehensive general liability insurance coverage amount. If a mutually acceptable price and coverage amount can not be agreed upon, the extension of the lease will fail.

**9. Notices Directed to:** Notices required or permitted under this lease shall be directed to:

Lessor:

City of McMinnville  
Attn: Community Dev. Dir  
231 NE 5<sup>th</sup> Street  
McMinnville, OR 97128

Lessee:

Gary Van Holland  
Van Holland Farms  
11525 SE Cruickshank Rd.  
Dayton, OR 97114

(503) 434-7312  
(503) 474-4955 (Fax)

(503) 864-2327

**10. Use of the Premises:** The Premises will not be used in any way prohibited by law or governmental regulation. Should they be so used, the lease will automatically terminate immediately.

In connection with the use of the Premises, Lessee will conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct, at Lessee's own expense, any failure of compliance created through Lessee's fault or by reason of Lessee's use. Lessee shall refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Lessor from taking advantage of any available reduction in insurance rates unless Lessee pays the additional cost. Lessee shall refrain from any use that would be reasonably offensive to owners or tenants or users of neighboring premises or that would tend to create a nuisance.

Lessee shall not cause or permit any hazardous substances or contaminants to be spilled, leaked, disposed of, or otherwise released on the Premises without strict environmental controls satisfactory to Lessor. Lessee shall comply with all environmental laws (including federal, state, and local laws, and any judicial or other governmental orders pertaining to the protection of health, safety, or the environment) and exercise the highest degree of care in handling hazardous substances or contaminants and shall take all practicable measures to minimize the quantity and toxicity of hazardous substances on the Premises. Upon the expiration or termination of this agreement, Lessee shall remove all hazardous substances or contaminants from the Premises.

**11. Special Conditions of Use:** The Lessee further agrees to:

(a) Farm and cultivate the Premises in a judicious manner; keep the fences, hedges, buildings and improvements thereon in as good condition and repair as the same are now or as they may be put in subsequently by either party hereto, ordinary wear and tear and damage by fire, flood, unavoidable casualty, and the elements alone excepted;

(b) Not allow noxious weeds to go to seed on the premises, but to destroy them, and keep out the weeds and grass on roads within and adjoining the Premises;

(c) Haul out and spread on fields to be agreed on at least once per year all manure and compost produced on the Premises;

(d) Not burn any straw or crop residues except as permitted by law, and then only with Lessor's permission;

(e) Follow standard treatment for diseases of all seed sown on the Premises and pay the cost thereof;

(f) Take proper care of all trees, vines and shrubs and prevent injury to them and, except when needed for fences, not cut down any live trees except with Lessor's permission;

(g) Keep all ditches clean, open and free from brush and growth;

(h) Allow no stock on the premises except the stock of Lessee;

(i) Not plow pastures or meadow-land without Lessor's consent;

(k) Not allow damage or waste to Lessor's property;

(m) Pay all expenses of delivering crops to market;

(o) Not assign this lease, nor sublet or permit any person(s) other than members of Lessee's family and employees to occupy the Premises without consent of Lessor being first obtained in writing; and

(p) Plant only annual crops, or perennial crops that would allow the application of biosolids and abstain from planting any crop that could prohibit the application of biosolids.

**12. Access:** Lessee is required to coordinate access with the owner(s) and lessee(s) of the adjacent properties (if any) and minimize the disruption or damage caused. Any cost associated with damage or alteration to adjacent properties related to this lease will be paid by the Lessee.

(a) Airport Security - Lessee recognizes its obligations to comply with federal airport security regulations applicable to the Airport. The City shall notify Lessee of any such federal airport security regulations which City becomes aware of and which are or may become applicable to Lessee's use or occupancy of the Premises. As of the date of execution of this lease, there are no applicable security regulations that apply to the use or occupancy of the Premises.

(b) Lessee shall ensure that the airfield environment is kept continuously free of debris, equipment, and/or other materials that might endanger aircraft.

(c) For emergency purposes, all vehicles shall be equipped with radio, telephone, or similar devices for contact by City or Airport Operations personnel. In the event of an emergency, Lessee acknowledges the need to be prepared to move workers, vehicles, and equipment immediately at the direction of the City or Airport Operations.

(d) No smoking will be allowed within the airfield environment except as designated by the City.

### **13. Vehicles on Airport Property**

The purpose of this section is to provide for the safety of vehicle operations in the airfield environment, should such vehicle operation occur. Enforcement of these requirements will be by the City, Police, or Airport Operations Staff. Violations of the requirements may be cause for Lessee's work to be stopped and Lessee's safety procedures to be evaluated. The City, in its sole discretion, will have the authority to determine when Lessee's work may safely be continued.

The driving requirements are as follows:

(a) Yield the right-of-way to a) moving aircraft, whether under tow or their own power, and b) pedestrians.

(b) Within the airfield environment, equipment, vehicle, and personnel travel outside the work area is restricted to established route(s).

(c) Obey stop signs and markings.

(d) Yield right-of-way to emergency vehicles displaying rotating beacons (other than amber) and/or using sirens and other audible emergency signals.

(e) Observe the posted speed limits.

(f) Regardless of a posted speed limit, a lower speed may be required in order to account for congestion, reduced visibility, slippery surfaces, or other hazardous conditions. No vehicle shall be driven in a manner that endangers persons or property.

(g) The speed limit of all service roads is 25 MPH or as posted.

(h) Motor vehicles shall be equipped with omni-directional amber flashing lights, head lights, tail lights, and flashers that shall be used between sunset and sunrise or when visibility is low.

(i) Non-motorized equipment shall have reflective devices displayed on the front, back, and sides.

(j) Vehicle operators shall have a current and valid state driver's license on their person.

(k) Unattended vehicles shall not be left with engines running.

(l) Vehicles operating in aircraft movement areas may require the following:

1. Escort provided by Airport Operations Personnel or other designated personnel.
2. Radio equipped with Ground Control Frequency

(m) Unattended vehicles will be parked clear of service and perimeter roads.

(n) Loads being carried shall be contained by sufficient means to assure no loss of any portion of the load.

(o) Equipment that extends 15 feet or more above ground level shall be cleared through the City prior to moving onto site. Equipment that may be lowered readily shall be lowered at night, during reduced daytime visibility, and during other periods of storage to comply with the 15-foot height limitation.

(p) If directed by the City, equipment that cannot be lowered below the 15-foot height limitation shall be lighted at night and during periods of reduced daytime visibility. The lighting shall be mounted on the highest point of the equipment, shall be omnidirectional, and shall consist of, as a minimum, one 100-watt bulb enclosed within an aviation red lens. Also, for daytime operations, an FAA-approved three-foot square orange and white checkered flag shall be mounted at the high point.

**14. Maintenance:** Lessee shall have full responsibility for maintenance of the Premises. Lessee shall keep the Premises clean and in good appearance. Lessee shall make no physical alterations without permission of the Lessor.

**15. Insurance Requirements:** Lessor shall keep the Premises insured at Lessor's expense against fire and any other risks covered by a standard fire insurance policy. Lessee shall insure any property of Lessee on the Premises against the same risks. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Lessee shall, before the commencement of this agreement, procure and, during the term of this agreement, maintain the following insurance at Lessee's cost: Comprehensive general liability insurance in a responsible company with limits of not less than \$1,000,000 for injury to persons or property. This insurance shall cover all risks arising directly or indirectly out of Lessee's activities on or any condition of the Premises. Such insurance shall protect Lessee against the claims of Lessor on account of the indemnification obligations assumed by Lessee above. The insurance shall name the Lessor as an additional insured. Certificates evidencing this insurance and bearing

endorsements requiring thirty days' written notice to Lessor prior to any change or cancellation shall be furnished to Lessor prior to Lessee's occupancy of the Premises.

**16. Indemnification:** Lessee shall indemnify and defend Lessor from any claim, loss, or liability arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Lessor's negligence or breach of duty under this agreement.

**17. Damage to or Destruction of the Premises:** If the Premises are partially damaged, they shall be repaired as soon as practicable at Lessor's expense. If the Premises are destroyed or damaged to the extent that the cost of repair exceeds 25% of the value of the Premises before the destruction or damage, either party may elect to terminate this lease as of the date of the destruction or damage by written notice to the other party not more than thirty (30) days following the date of the destruction or damage. In such circumstances, the rights and obligations of the parties will cease as of the date of the termination and Lessee shall be entitled to reimbursement of any prepaid lease amount, prorated. If neither party elects to terminate, Lessor shall, as soon as practicable, restore the Premises to substantially the same condition as before the destruction or damage. Lessee shall be reimbursed a prorated amount of lease payments for any period during which the Premises are not usable.

**18. Warranties:** Lessor warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances. Lessor will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

**19. Assignment, Mortgage, Subleases:** No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conferred on any third person by any other means, without prior written consent of Lessor. This provision shall apply to all transfers by operation of law, including a transfer of a majority voting interest in stock or partnership interest of Lessee. No consent in one instance shall prevent this provision from applying to a subsequent instance. Lessor may withhold or condition consent in its sole and arbitrary discretion. Lessor shall consent to a transaction covered by this provision when withholding consent would be unreasonable in the circumstances. Lessor shall not unreasonably delay consent.

**20. Early Termination of Lease by Agreement:** If the Lessee desires to terminate this lease agreement at times other than those anticipated by Section 2 or Section 8, a request must be submitted in writing to the Lessor at least thirty (30) days in advance of the intended termination date. If the request for early termination of the lease agreement is granted, the Lessee will quit and deliver the Premises to the Lessor by the agreed upon termination date, peaceably and in as good an order and condition as the

Premises are now or may in the future be put by Lessor. Rent payments shall not be pro-rated when the lease is terminated under this section.

**21. Default and Remedies:** The following events shall constitute default:

Failure of Lessee to pay any lease payments within thirty (30) days after payment is due.

Failure of Lessee to comply with any term or condition or fulfill any obligation of this agreement (other than the payment of lease payments) within twenty (20) days after written notice from the Lessor specifying the nature of the default with reasonable particularity. If the default is of a nature that cannot be completely corrected within twenty (20) days, this provision shall be complied with if Lessee commences correction within twenty (20) days (or as soon as practicable) and proceeds with reasonable diligence and in good faith.

Insolvency of the Lessee, an assignment by Lessee for the benefit of creditors, filing by Lessee of a voluntary petition of bankruptcy, an adjudication that Lessee is bankrupt or the appointment of a receiver for the properties of Lessee, filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing, attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution with ten (10) days.

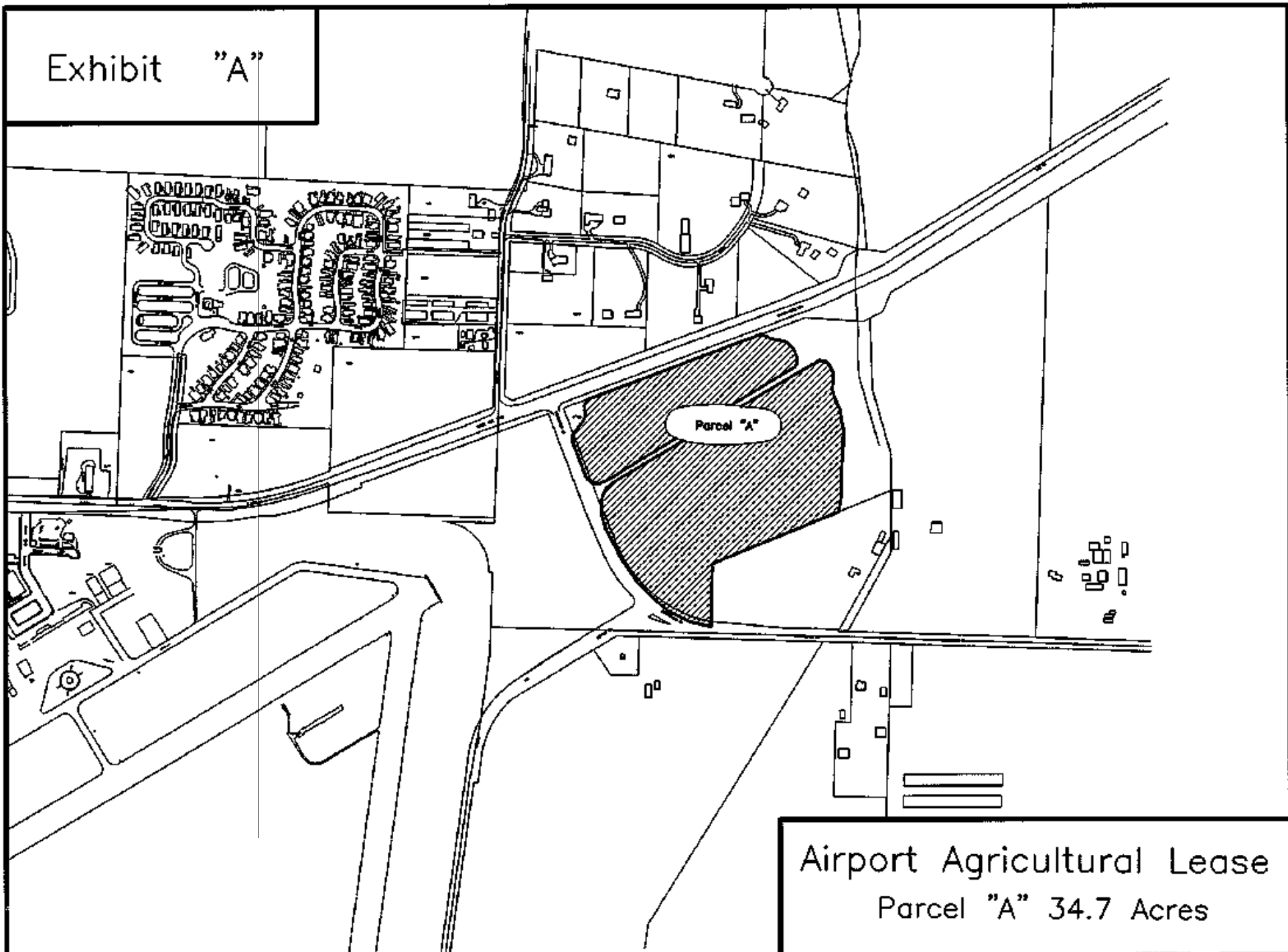
Failure of the Lessee to occupy the Premises for the purposes permitted under this agreement for the period of one (1) year.

In the event of a default, this agreement may be terminated at the option of the Lessor by written notice to Lessee. Whether or not the lease is terminated by the election of Lessor, Lessor shall be entitled to recover damages from Lessee for the default and Lessor may re-enter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender. Following re-entry or abandonment, Lessor may re-let the Premises, or any part thereof, but Lessor shall not be required to re-let.

In the event of termination or re-taking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future lease payment or until the date fixed for expiration of the lease, the following amounts as damages:

The loss of lease payments from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying.

Exhibit "A"



Parcel "A"

Airport Agricultural Lease  
Parcel "A" 34.7 Acres



The reasonable costs of re-entry and re-letting, including without limitation the cost of any cleanup, removal of Lessee's property and fixtures, and any other costs or expenses incurred through Lessee's default.

Any excess of the value of the rent and all of Lessee's other obligations under this agreement over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the premises are re-let, and continuing through the end of the term.

Lessor may sue periodically to recover the damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

The above remedies are in addition to and shall not exclude any other remedy available to Lessor under applicable law.

The limitations on remedies shall not preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set out in this agreement or for causing physical damage or injury to persons or property.

**22. Strict Performance:** Waiver by either party of strict performance of any provision of this agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision or of any other provision in the future.

**23. Attorney Fees:** If suit or action is instituted in connection with any controversy arising out of this agreement, the prevailing party shall be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

**24. Successors and Assigns:** Subject to the above-stated limitations on transfer of Lessee's interest, this agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**25. Recording:** This agreement shall be recorded at the expense of Lessor.

**26. Lessor's Rights:** Lessor shall have the right to enter upon the Premises at any time to determine Lessee's compliance with the terms of this agreement, and, in addition, shall have the right, at any time during the last year of the term of the lease, to place and maintain upon the Premises notices for leasing or selling the Premises.

**27. Time of the Essence:** Time is of the essence of the performance of each of Lessee's obligations under this agreement.

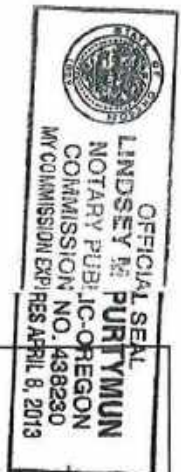
**28. Arbitration:** If any dispute arises between the parties, either party may request arbitration and appoint as an arbitrator an independent real estate appraiser having knowledge of leased properties comparable to the premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within ten (10) days of the choosing of the prior arbitrator, then either party may apply to the presiding judge for the judicial district where the premises are located to appoint the required arbitrator. The arbitrators shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in Yamhill County. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.

Gary VanHolland  
 Gary VanHolland  
 VanHolland Farms

Kent L. Taylor  
 Kent L. Taylor  
 City Manager

9-18-12  
 Date

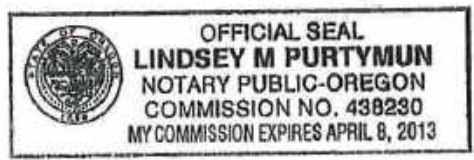
9.24.12  
 Date  
CLB  
 Approved as to Form



STATE OF OREGON, }  
 County of Yamhill } ss.  
 On September 18, 2012 before me personally appeared Garry VanHolland  
DATE

whose identity was established to my satisfaction, and who executed the foregoing instrument, acknowledging to me that the same was executed freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the date first written above.



Lindsey M. Purtymun  
 Notary Public for Oregon  
 My commission expires 4-8-2013

EXHIBIT "A"

A tract of land in Section 24 and 25, Township 4 South, Range 4 West of the Willamette Meridian in Yamhill County, Oregon, said tract being a portion of land deeded to the City of McMinnville and recorded in Yamhill County deed records on January 22<sup>nd</sup> 1974 Book 98, Page 598 and shown on Yamhill County Survey, CSP 7717 recorded December 29<sup>th</sup>, 1980, and more particularly described as follows:

Beginning at a point, said point being the "place of beginning" described in the above mentioned recorded deed and being the "True Point of Beginning" of this description. Thence North 00d29'30" West, 322.13 feet; thence North 65d46'11" East, 758.96 feet along the Southeast boundary of the above mentioned tract of land. Thence North 01d23'6" East, 480.25 feet; thence North 11d00'57" West, 93.45'; thence North 22d10'37" West, 126.13 feet; thence North 00d02'34" East, 95.89 feet; thence North 27d55'44" West, 47.40 feet; thence North 67d53'17" West, 53.59 feet; thence South 81d38'5" West, 128.90 feet; thence North 15d18'02" West, 79.49 feet; thence North 44d18'54" West, 50.33 feet; thence North 74d47'03" West, 158.44 feet; thence South 67d38'21" West, 1030.22 feet along the South boundary of Salmon River Highway No. 18 said boundary also being the North boundary of the above mentioned tract of land. Thence leaving said boundary and traveling South 24d45'38" West, 34.57 feet; thence South 07d30'56" East, 62.14 feet; thence South 32d33'14" West, 122.27 feet to the East boundary of Cruickshank Rd (formerly Market Rd No. 32), said boundary as shown on the above mentioned Yamhill County recorded survey CSP 7717, said boundary also being the west boundary of the above mentioned tract of land; thence along said boundary to the "True Point of Beginning" of this description.

Excepting that portion of the above mentioned tract of land covered by the City of McMinnville Airport runway lights.

LEASE EXTENSION

This lease extension is entered into on this 26<sup>th</sup> day of July, 2019, by and between the City of McMinnville, a municipal corporation of the State of Oregon (Lessor), and Van Holland Farms (Lessee).

RECITALS:

The Lessor and Lessee are parties to a lease agreement entered into on the 18th day of September, 2012, the "Premises" described as Parcel A (34.7 acres), all as more particularly described in the lease agreement attached hereto as Exhibit A.

The original term of that agreement expired on September 1, 2017, and the parties have agreed to two out of the five available one-year extensions of the lease, which have extended the term of the lease to September 1, 2019.

The parties desire to extend the lease a third time for a period of one additional year, to expire on September 1, 2020.

NOW THEREFORE, the Parties agree as follows:

1. The term of the above-reference lease agreement is hereby extended for a third time to continue through August 31, 2020, expiring on September 1, 2020.
2. During the third extended term from September 1, 2019 through August 31, 2020, the Lessee agrees to pay as rent for the premises, the sum of \$75.00 per acre per lease year.
3. All remaining terms and conditions of the Lease shall remain unchanged.

CITY OF MCMINNVILLE

VAN HOLLAND FARMS

  
By: Jeff Towery, City Manager

  
By: Gary Van Holland

Approved as to Form:

  
City Attorney

RECEIVED

JUL 29 2019

COMMUNITY DEVELOPMENT  
CENTER

## STAFF REPORT

**DATE:** April 7, 2020  
**TO:** Jeff Towery, City Manager  
**FROM:** Mike Bisset, Community Development Director  
**SUBJECT:** Customers Helping Customers program

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**Report in Brief:** This item outlines the City's participation in the McMinnville Water & Light (MWL) Utility Assistance Program (Customers Helping Customers) as directed by the City Council at their March 24, 2020 meeting.

**Background:** The attached Press Release from MWL (dated April 1, 2020) provides information regarding their Customers Helping Customers (CHC) program established in 1998. Through the program, MWL has matched donations from customers and employees to help other customers pay their utility bills in a time of crisis.

Historically, the program was funded via their electric fund at a maximum of \$20,000 of matching dollars annually. At their March 27, 2020 meeting, the McMinnville Water & Light Commission approved revisions to the CHC policy that authorized additional matching funds of \$20,000 annually from their water fund.

The policy revisions also allowed that the City can participate in the program by providing matching funds from the City's sewer fund. The City's participation would ensure that for each dollar donated to the fund, four dollars would go to help households in need pay their water, power, and sewer utility bills.

**Discussion:** As part of the current budget process, staff has included matching funds from the Wastewater Services fund (75) for the remainder of FY20 and for FY21. Future allotments of matching funds would be subject to the annual budget approval process.

Information regarding donating to the program can be found on MWL's website at: <https://www.mc-power.com/account/customers-helping-customers/>

Information regarding how customers can request payment assistance through the Customers Helping Customers program can be found on MWL's website at: <https://www.mc-power.com/account/payment-assistance/>

**Attachments:**

1. MWL press release dated April 1, 2020
2. MWL Utility Assistance Program Policy (approved on March 27, 2020)

**Recommendation:** Staff recommends that the City Council approve the City's participation in the McMinnville Water & Light (MWL) Utility Assistance Program (Customers Helping Customers).

## PRESS RELEASE

## Customers Helping Customers (CHC) Program Update



**MCMINNVILLE WATER & LIGHT (MW&L) PARTNERS WITH CITY OF MCMINNVILLE  
TO INCREASE FUNDING TO UTILITY BILL ASSISTANCE PROGRAM**

April 1, 2020

In February 1998, MW&L established a Customers Helping Customers (CHC) Program, funded entirely by donations from customers and employees. The program was designed to help customers overcome a temporary time of crisis by providing money to pay their utility bills. In 2007, MW&L instituted a matching program whereby MW&L matched funds donated to the CHC program up to \$20,000 annually from the electric fund. Since the program began in 1998, over \$400,000 has been disbursed to aid households in need.

With the current COVID-19 event affecting so many families locally, both the City and MW&L wanted to do more to help. On March 27, 2020, MW&L pledged the following:

- Authorization of additional matching funds up to \$20,000 from the water fund, bringing the total maximum donation to \$40,000 for 2020.
- Increased the maximum assistance amount per household from \$125 to \$250.
- Maximum monthly disbursement from the fund was increased from \$3,000 to \$6,000.
- The frequency that a household can qualify for assistance was reduced from 18 months to 13 months.

The City of McMinnville, as the owner and operator of the City's sewer system, recognize and support the effort to assist customers facing a financial hardship, especially during this difficult time and also wanted to help. The City has generously pledged matching funds up to \$20,000 from the sewer fund.

This means that for every \$1 donated to the fund, \$4 will go to help a household pay their utility bill!

Mayor Scott Hill said, "This important program will help many of our neighbors get through this difficult time. The City and Water & Light are proud that so many customers and employees are willing to help those in need."

## HOW CAN YOU HELP?

You can help by either making a monthly or one-time donation in any amount. Every dollar counts! 100% of your contributions go to helping families in need with no hidden costs or fees to administer the program. If you would like to make a contribution, please visit our website at <https://www.mc-power.com/account/customers-helping-customers/> or call 503-472-6158 for more information. Together we can make a difference!

For further information regarding this press release, please contact Community Relations Coordinator Trena McManus at (503) 435-3113.



## UTILITY ASSISTANCE PROGRAM POLICY

(as adopted by the Commission during a special meeting, March 27, 2020)

### Policy

The McMinnville Water and Light Commission (MW&L) finds it is in the interest of its customers to adopt a utility assistance program, “**Customers Helping Customers**” (the Program).

### Funding

Funds for the Program will be donated by MW&L customers and may be matched at a rate and ratio set by the Commission from the electric and water funds, or from sources other than from MW&L's revenues. The matching ratio will be based on overall residential electric and water fund revenues. The Commission may also make one-time contributions to either the water or electric fund. MW&L CHC funds will only be used for water and electric portions of bill. With direction from the City of McMinnville (“City”), other funds may be administered from the City’s sewer fund.

### Solicitation

Donations will normally be solicited primarily in the form of monthly pledge agreements. Solicitation for donations may be performed by MW&L, the City, and a third party service agency.

### Collection

Upon receipt of a signed pledge agreement, donations requested by and approved by the customer shall be billed to the customer as an additional line item on the customer's monthly MW&L statement. All donations shall be entered and maintained in a designated MW&L general ledger account.

### Administration

All donations collected for the Program are to be maintained by MW&L in a MW&L account. Program administration shall be by a third party non-profit service agency designated by the MW&L Commission. All qualifications, eligibility and need assessments of applicants, shall be performed and determined by the third party service agency. The service agency will provide to MW&L its qualification and eligibility criteria. Program funds will be applied to outstanding eligible-customer balances, in amounts and at a frequency as is determined under a written standard approved by the MW&L general manager and provided to the service agency. MW&L may administer a similar program authorized by the City to credit customer’s sewer charges from City sewer funds collected by MW&L. With the approval of the City, such amounts credited to customers’ sewer charges shall be deducted from the next payment of sewer charges made from MW&L to the City. CHC Program (water and electric) funds will be transferred from the MW&L general ledger account directly to the eligible customer’s MW&L account.

MW&L is not responsible or liable for errors or omissions by a third party service agency in administration of the Program. Any service agency participating in the Program shall agree to do so with no compensation, fees, and charges or administrative costs whatsoever to either MW&L, its customers, or any third parties. Pursuant to state and federal law, the service agency will not unlawfully discriminate in qualifying applicants. Annually MW&L staff will undertake to review service agency customer-eligibility processes and standards. MW&L reserves the right, in its sole discretion, to terminate the association of any service agency with the Program.



## STAFF REPORT

**DATE:** April 14, 2020  
**TO:** Jeff Towery, City Manager  
**FROM:** Larry Sherwood, Engineering Services Manager  
**SUBJECT:** McMinnville Municipal Airport - Jet A Fueling System Project Award

---

### **Report in Brief:**

This action is the consideration of a resolution to award a contract for the McMinnville Municipal Airport Jet A Fueling System, Project No. 2019-8, to Mascott Equipment.

### **Background:**

The City of McMinnville owns and operates the McMinnville Municipal Airport. Potcake Aviation, Inc. is responsible for operations and maintenance of all City-owned infrastructure and improvements at the Airport through a professional management contract with the City.

In November of 2018, an annual inspection found the Airports 12,000 gallon, Jet A fueling system to be in need of major refurbishment (see Attachment 1). Recommended repairs included; installation of a new tank equipment skid; replacement of tank piping; replacement of tank fill assemblies including valves and strainers; installation of floating suction components; new filter assemblies; new pump assemblies; new dispense equipment; new sump pump; and other miscellaneous items necessary to bring the existing system up to current standards. The City received an estimate for this work of \$117,500. The interior surfaces of the fuel tank were not inspected due to the required downtime and resulting fueling disruptions necessary to empty, dry, and inspect the tank. The City received an estimate of \$14,000, plus \$3 per gallon for disposal of remaining tank contents, to complete a thorough inspection of the fuel tanks interior. Detailed estimates are on file in the Engineering Department.

After considering the combined estimated costs for refurbishing the existing system and completing an interior fuel tank inspection, as well as considering the potential risk of discovering irreparable internal tank corrosion, it was determined that a new Jet A Fueling System was the best long term option for the City.

The new Jet A fueling system will be installed adjacent to the existing Jet A tank (see Attachment 2). The existing fueling system will remain operational until the new system is fully commissioned, which will eliminate fueling disruptions during construction. The old tank will remain in place after construction, allowing for the potential to connect the two tanks in series should a future interior inspection of the existing tank reveal satisfactory conditions and future fuel demands warrant additional storage capacity.

**Discussion:**

At 2:00pm on March 26, 2020, two bids were received, opened, and publicly read for the McMinnville Municipal Airport Jet A Fueling System, Project No. 2019-8. The results are tabulated as follows:

<b>Bidder</b>	<b>Total Bid Amount</b>
Mascott Equipment	\$ 229,850.00
Granite Petroleum	\$406,022.00

The Total Bid Amount is based on Lump Sum pricing for the fabrication, testing, delivery and installation of a new above ground 12,000 gallon self-contained Jet A bulk fueling system, complete with all components necessary to dispense fuel at 200gpm. The work also includes, but is not limited to, concrete footings and anchoring, electrical work, start-up and training, all in accordance with current standard aviation specifications.

The bids were evaluated for completeness and compliance with the bidding requirements. Both bids met the requirements. A detailed breakdown of the bids received is on file at the Engineering Department.

Mascott Equipment successfully completed the McMinnville Municipal Airport 100LL Fuel Tank Project in the summer of 2019, has historical experience with the Airport and its operations, and should be considered the lowest responsible bidder. Completion of the Project is expected in early September 2020.

**Attachments:**

1. SP001 AST Inspection Report for the existing tank
2. Proposed Tank Layout
3. Resolution 2020-20
4. Vicinity Map

**Fiscal Impact:**

A portion of the funds for this project are included in the Adopted FY20 Airport Fund (25) budget, and the remainder of the funds are included in the proposed FY 21 budget via an interfund loan from Wastewater Capital Fund (77) to the Airport Fund (25).

**Recommendation:**

Staff recommends that the City Council adopt the attached resolution approving the award of the Contract to Mascott Equipment for the McMinnville Municipal Airport Jet A Fueling System, Project No. 2019-8.



## STI SP001 AST Record

OWNER INFORMATION	FACILITY INFORMATION	INSTALLER INFORMATION
Name POTCAKE AVIATION LLC	Name McMinnville Airport	Name Petroleum Systems Inc
Number and Street 4000 SE CIRRUS AVE	Number and Street 4000 SE CIRRUS AVE	Number and Street
City, State, Zip Code McMinnville, OR 97128	City, State, Zip Code McMinnville, OR 97128	City, State, Zip Code

<b>TANK ID: AVGAS TANK</b>			
<b>SPECIFICATION:</b>			
Design:	<input checked="" type="checkbox"/> UL 142	<input type="checkbox"/> SWRI	<input checked="" type="checkbox"/> Horizontal
	<input type="checkbox"/> API	<input type="checkbox"/> Other	<input type="checkbox"/> Vertical
	<input type="checkbox"/> Unknown		<input type="checkbox"/> Rectangular
Manufacturer: Brown Minneapolis Tank	Contents: JET-A	Construction Date: 12/1998	Last Repair/Reconstruction Date: UNKNOWN
Dimensions: 120" x 21'-10"	Capacity: 12,000 Gallon	Last Change of Service Date: N/A	
Construction:	<input checked="" type="checkbox"/> Bare Steel	<input type="checkbox"/> Cathodically Protected (Check one: A. <input type="checkbox"/> Galvanic or B. <input type="checkbox"/> Impressed Current) Date Installed: _____	
	<input type="checkbox"/> Coated Steel	<input type="checkbox"/> Concrete	<input type="checkbox"/> Plastic/Fiberglass
	<input type="checkbox"/> Double-Bottom	<input checked="" type="checkbox"/> Double-Wall	<input type="checkbox"/> Other
		<input type="checkbox"/> Lined Date Installed: _____	
Containment:	<input type="checkbox"/> Earthen Dike	<input checked="" type="checkbox"/> Steel Dike	<input type="checkbox"/> Concrete
		<input type="checkbox"/> Synthetic Liner	<input type="checkbox"/> Other _____
CRDM:	<input checked="" type="checkbox"/> Date Installed: 12/1998	Type: ELEVATED AST	
Release Prevention Barrier:	<input checked="" type="checkbox"/> Date Installed: 12/1998	Type: DOUBLE WALL AST	

# STI SP001 Annual Inspection Checklist

## General Inspection Information:

Inspection Date: <u>11/2018</u>	Retain Until Date: <u>11/2021</u> (36 months from inspection date)	
Prior Inspection Date: <u>unknown</u>	Inspector: <u>Scott Milsted</u>	
Tanks Inspected (ID #'s): <u>12k JET-A TANK</u>		

## Inspection Guidance:

- For equipment not included in this Standard, follow the manufacturer recommended inspection/testing schedules and procedures.
- The periodic AST Inspection is intended for monitoring the external AST condition and its containment structure. This visual inspection does not require a Certified Inspector. It shall be performed by an owner's inspector who is familiar with the site and can identify changes and developing problems.
- Remove promptly upon discovery standing water or liquid in the primary tank, secondary containment area, interstice, or spill container. Before discharge to the environment, inspect the liquid for regulated products or other contaminants and disposed of it properly.
- In order to comply with EPA SPCC (Spill Prevention, Control and Countermeasure) rules, a facility must regularly test liquid level sensing devices to ensure proper operation (40 CFR 112.8(c)(8)(v)).
- (\*) designates an item in a non-conformance status. This indicates that action is required to address a problem.
- Non-conforming items important to tank or containment integrity require evaluation by an engineer experienced in AST design, a Certified Inspector, or a tank manufacturer who will determine the corrective action. Note the non-conformance and corresponding corrective action in the comment section.
- Retain the completed checklists for 36 months.
- Complete this checklist on an annual basis supplemental to the owner monthly-performed inspection checklists.
- **Note: If a change has occurred to the tank system or containment that may affect the SPCC plan, the condition should be evaluated against the current plan requirement by a Professional Engineer knowledgeable in SPCC development and implementation.**

Item	Task	Status	Comments
<b>1.0 Tank Containment</b>			
1.1 Containment structure	Check for: <ul style="list-style-type: none"> <li>• Holes or cracks in containment wall or floor</li> <li>• Washout</li> <li>• Liner degradation</li> <li>• Corrosion</li> <li>• Leakage</li> <li>• Paint failure</li> <li>• Tank settling</li> </ul>	<input type="checkbox"/> Yes* <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	TANK IS AN ABOVE GROUND DOUBLE WALL UL-142 TANK. NO EXTERIOR CONTAINMENT STRUCTURE.
<b>2.0 Tank Foundation and Supports</b>			
2.1 Foundation	Settlement or foundation washout?	<input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No	
2.2 Concrete pad or ring wall	Cracking or spalling?	<input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
2.3 Supports	Check for corrosion, paint failure, etc.	<input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	

Item	Task	Status	Comments
2.4 Water drainage	Water drains away from tank?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	
2.5 Tank grounding	Strap secured and in good condition?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No* <input type="checkbox"/> N/A	TANK IS NOT GROUNDED PER NFPA 70 STANDARD
<b>3.0 Cathodic Protection</b>			
3.1 Galvanic cathodic protection system	Confirm system is functional, includes the wire connections for galvanic systems	<input type="checkbox"/> Yes <input type="checkbox"/> No* <input checked="" type="checkbox"/> N/A	
3.2 Impressed current system	a. Inspect the operational components (power switch, meters, and alarms).	<input type="checkbox"/> Yes <input type="checkbox"/> No* <input checked="" type="checkbox"/> N/A	
	b. Record hour meter, ammeter and voltmeter readings.	<input type="checkbox"/> Yes <input type="checkbox"/> No* <input checked="" type="checkbox"/> N/A	
<b>4.0 Tank Shell, Heads, Roof</b>			
4.1 Coating	Check for coating failure	<input checked="" type="checkbox"/> Yes* <input type="checkbox"/> No	EXTERIOR PAINT COATING IS STARTING TO FAIL DUE TO LACK OF MAINTENANCE. Exhibit "A"
4.2 Steel condition	Check for: <ul style="list-style-type: none"> <li>• Dents</li> <li>• Buckling</li> <li>• Bulging</li> <li>• Corrosion</li> <li>• Cracking</li> </ul>	<input checked="" type="checkbox"/> Yes* <input type="checkbox"/> No	SLIGHT SURFACE RUST IS STARTING TO APPEAR DUE TO FAILING EXTERIOR COATING.
4.3 Roof slope	Check for low points and standing water	<input type="checkbox"/> Yes* <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
<b>5.0 Tank Equipment</b>			
5.1 Vents	Verify that components are moving freely and vent passageways are not obstructed for: <ul style="list-style-type: none"> <li>• Emergency vent covers</li> <li>• Pressure/vacuum vent poppets</li> <li>• Other moving vent components</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*	PRIMARY VENT IS OPERATING PROPERLY BUT CHAMBER WAS FILLED WITH BEE NEST. THIS MATERIAL HAS BEEN REMOVED. Exhibit "B"  BOTH EMERGENCY VENTS ARE WORKING PROPERLY, HOWEVER SEAL IS MISSING ON BOTH. EMERGENCY VENTS SHOULD BE REPLACED TO LIMIT POSSIBLE WATER INTRUSION.
5.2 Valves	Check the condition of all valves for leaks, corrosion and damage.	<input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No	
5.2.1 Anti-siphon, check and gate valves	Cycle the valve open and closed and check for proper operation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	A NORMALLY CLOSED SOLENOID VALVE IS UTILIZED FOR ANTI-SIPHON

Item	Task	Status	Comments
5.2.2 Pressure regulator valve	Check for proper operation. (Note that there may be small, 1/4 inch drain plugs in the bottom of the valve that are not visible by looking from above only)	<input type="checkbox"/> Yes <input type="checkbox"/> No* <input checked="" type="checkbox"/> N/A	
5.2.3 Expansion relief valve	Check that the valve is in the proper orientation. (Note that fuel must be discharged back to the tank via a separate pipe or tubing.)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	NO WAY OF VERIFYING EXPANSION RELIEF VALVE IS OPERATING PROPERLY. VALVE APPEARS TO BE FROM ORIGINAL INSTALLATION. Exhibit "C"
5.2.4 Solenoid valves	Cycle power to valve to check operation. (Electrical solenoids can be verified by listening to the plunger opening and closing. If no audible confirmation, the valve should be inspected for the presence and operation of the plunger.)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	
5.2.5 Fire and shear valves	a. Manually cycle the valve to ensure components are moving freely and that the valve handle or lever has clearance to allow valve to close completely.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No* <input type="checkbox"/> N/A	SYSTEM DOES NOT HAVE FIRE SAFETY VALVE
	b. Valves must not be wired in open position.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No* <input type="checkbox"/> N/A	
	c. Make sure fusible element is in place and correctly positioned.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No* <input type="checkbox"/> N/A	
	d. Be sure test ports are sealed with plug after testing is complete and no temporary test fixture or component remains connected to valve.	<input type="checkbox"/> Yes <input type="checkbox"/> No* <input checked="" type="checkbox"/> N/A	

Item	Task	Status	Comments
5.3 Interstitial leak detection equipment	Check condition of equipment, including: <ul style="list-style-type: none"> <li>The window is clean and clear in sight leak gauges.</li> <li>The wire connections of electronic gauges for tightness and corrosion</li> <li>Activate the test button, if applicable.</li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No* <input type="checkbox"/> N/A	MECHANICAL LEAK SENSOR IS DAMAGED AND NEEDS TO BE REPLACED. Exhibit "D"
5.4 Spill containment boxes on fill pipe	a. If corrosion, damage, or wear has compromised the ability of the unit to perform spill containment functions, replace the unit.	<input type="checkbox"/> Yes* <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	FILL CONNECTION IS ELEVATED AT ABOVE GROUND LEVEL FOR PORTABLE SPILL CONNECTION TO BE USED AT TIME OF FILLING.
	b. Inspect the connections to the AST for tightness, as well as the bolts, nuts, washers for condition and replace if necessary.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	PIPING APPEARS TO BE LEAK FREE, HOWEVER MOST OF THE PIPING IS SHOWING SIGNS OF PAINT FAILURE AND RUST.
	c. Drain valves must be operable and closed	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	
5.5 Strainer	a. Check that the strainer is clean and in good condition.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No* <input type="checkbox"/> N/A	STRAINER ACCESS CAP IS RUSTED SHUT, CANNOT BE REMOVED FOR INSPECTION, HAD TO REMOVE INLET PIPING TO GAIN ACCESS TO STRAINER SCREEN. Exhibit "E"
5.5 Strainer	b. Access strainer basket and check cap and gasket seal as well as bolts.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No* <input type="checkbox"/> N/A	STRAINER BASKET HAD MANY SMALL ROCKS AND OTHER NON ORGANIC MATERIAL CAPTURED IN BASKET. Exhibit "F"
5.6 Filter	a. Check that the filter is in good condition and is within the manufacturer's expected service life. Replace, if necessary.	<input type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	MONITOR VESSEL HAS NOT BEEN UPDATED. IF AVAILABLE 7 <sup>TH</sup> EDITION 6" MONITOR ELEMENTS MUST BE USED AFTER DEC. 18 <sup>TH</sup> 2018. ADDITIONAL REQUIREMENT IS TO ADD 15PSIG DIFFERENTIAL SWITCH THAT WILL SHUT THE SYSTEM DOWN IF 15PSIG DIFFERENTIAL PRESSURE IS REACHED.
	b. Check for leaks and decreased fuel flow	<input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	<b>RECOMMEND UPDATING TO FILTER/SEPARATOR MEETING 6<sup>TH</sup> EDITION EI-1581</b>
5.7 Flame arrestors	Follow manufacturer's instructions. Check for corrosion and	<input type="checkbox"/> Yes* <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	

Item	Task	Status	Comments
	blockage of air passages.		
5.8 Leak detector for submersible pump systems	Test according to manufacturer's instructions and authority having jurisdiction (AHJ). Verify leak detectors are suited and properly installed for aboveground use.	<input type="checkbox"/> Yes <input type="checkbox"/> No* <input checked="" type="checkbox"/> N/A	
5.9 Liquid level equipment	a. Has equipment been tested to ensure proper operation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	Petrometer Gauge does not read correct fuel level. Needs to have maintenance preformed. Exhibit "H"
	b. Does equipment operate as required?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No* <input type="checkbox"/> N/A	
	c. Follow manufacturer's instructions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	
5.10 Overfill equipment	a. Follow manufacturer's instructions and regulatory requirements for inspection and functionality verification.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	. Tank is equipped with a Clay and Bailey Solo Valve mechanical fill limiter. Tested using test plunger, valve moves freely. Was unable to test operation with fuel.  System is not equipped with a means to alert operator that the tank has reached 90% fill limit, per 2007 IFC 3404.2.9.6.6
	b. Confirm device is suited for above ground use by the manufacturer	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	
<b>6.0 Insulated Tanks</b>			
6.1 Insulation	Check condition of insulation for: • Missing sections • Areas of moisture • Mold • Damage	<input type="checkbox"/> Yes* <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
6.2 Insulation cover or jacket	Check for damage that will allow water intrusion	<input type="checkbox"/> Yes* <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	



Item	Task	Status	Comments
<b>7.0 Miscellaneous</b>			
7.1 Electrical wiring and boxes	Are they in good condition?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	
7.3 Emergency Shut of Switch (EFSO)	Ensure that EFSO shuts down Dispensing/Pumping System.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> N/A	
7.2 Labels and tags	Ensure that all labels and tags are intact and readable.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No* <input type="checkbox"/> N/A	MISSING NFPA HAZARD DIAMONDS.

**Additional Comments:**

Additional Comments:

- 1) Filter Vessel is equipped with a Differential Pressure Gauge that does not have a 3-way test valve that is required Per EI-1583. Exhibit "I"
- 2) System Pressure gauge should to be replaced, glycol has leaked out, and what remains appears to be turning cloudy. See Exhibit "I"
- 3) Filter vessel is missing current name tag with proper element number and element change out date. Per ATA 103
- 4) Bulk hose extensive cracking on its cover and needs to be replaced. See Exhibit "J".
- 5) Bulk hose reel has carbon steel internals, should be stainless steel or aluminum to limit fuel contamination from rust and scale.
- 6) Piping after the filter is carbon steel, all piping after the filter should be stainless steel to limit fuel contamination from rust and scale.
- 7) Low Point drain piping is coming off bottom of tank, which could result in a catastrophic leak or discharge if someone damages the drain valve or piping breaks. See Exhibit "K".
- 8) Tank does not have adequate slope to the low point drain which would force the water and sediment to collect at the low point so it could be removed by daily sumping of the fuel. ATA 103 recommends a slope of at least 1 in 20.
- 9) Tank is internally lined, unable to verify if system has floating suction and condition of internal coating (lining). Recommend cleaning tank and performing visual inspection of lining at that time. Per ATA 103 tank interior and coating

are to be inspected annually and cleaned (if needed). I am assuming this has never been done due to the way the system was installed.

- 10) A Humbug Microbial test was performed on existing fuel, at this time there are no signs of current microbial growth
- 11) Overall the system does not appear to have been maintained, the paint has degraded which has allowed corrosion to take place on the piping in various locations, some of which are more than just surface rust. The tank top is in the same condition. The rust and paint issues need to be addressed before the damage becomes more widespread and or pin holes start to develop in the piping.
- 12) Per A4A ATA 103 modified revision 2017.2 Filter Monitors, ALL 6" MONITOR ELEMENTS MUST BE CHANGED OUT TO CURRENT 7<sup>TH</sup> EDITION ELEMENTS BY THE NEXT REQUIRED FILTER ELEMENT CHANGE, BUT NO LATER THAN DECEMBER 31<sup>ST</sup>, 2018.
- 13) Bonding reel needs maintenance existing resistance reading to ground is 23.1 ohms. Acceptable limit is per ATA103 is 25ohms or less. System is still within tolerance, but it is close to maximum allowable reading.
- 14) Bulk dispensing meter is a Liquid Controls M15 class 1 meter, a class 2 meter should be used with Aviation fuels, to reduce the use of red metals, which are used as bushings in a Class 1 meter. Exhibit "L"

Please note: The Inspection Report indicates the System's condition at the time of the inspection. Not all aspects or functions of the system could be tested due to either design or functionality constraints. The results do not carry an implied warranty or guarantee of the system's operation after the inspection date.



Exhibit "A" Paint failure and Rust on tank



Exhibit "A" Paint failure and rust on Tank



Exhibit "B" Primary Vent



Exhibit "C" Expansion Relief Valve



Exhibit "D" Damaged Mechanical Leak Detector



Exhibit "E" Strainer Basket With inlet piping removed



PORTLAND

SEATTLE

TRI-CITIES

ANCHORAGE

435 NE Hancock

Portland, OR 97212

PH: 800-452-5019

FX: 503-288-9664



Exhibit "F" Material found in Strainer Basket



Exhibit "G" Filter Monitor – Missing Element Update

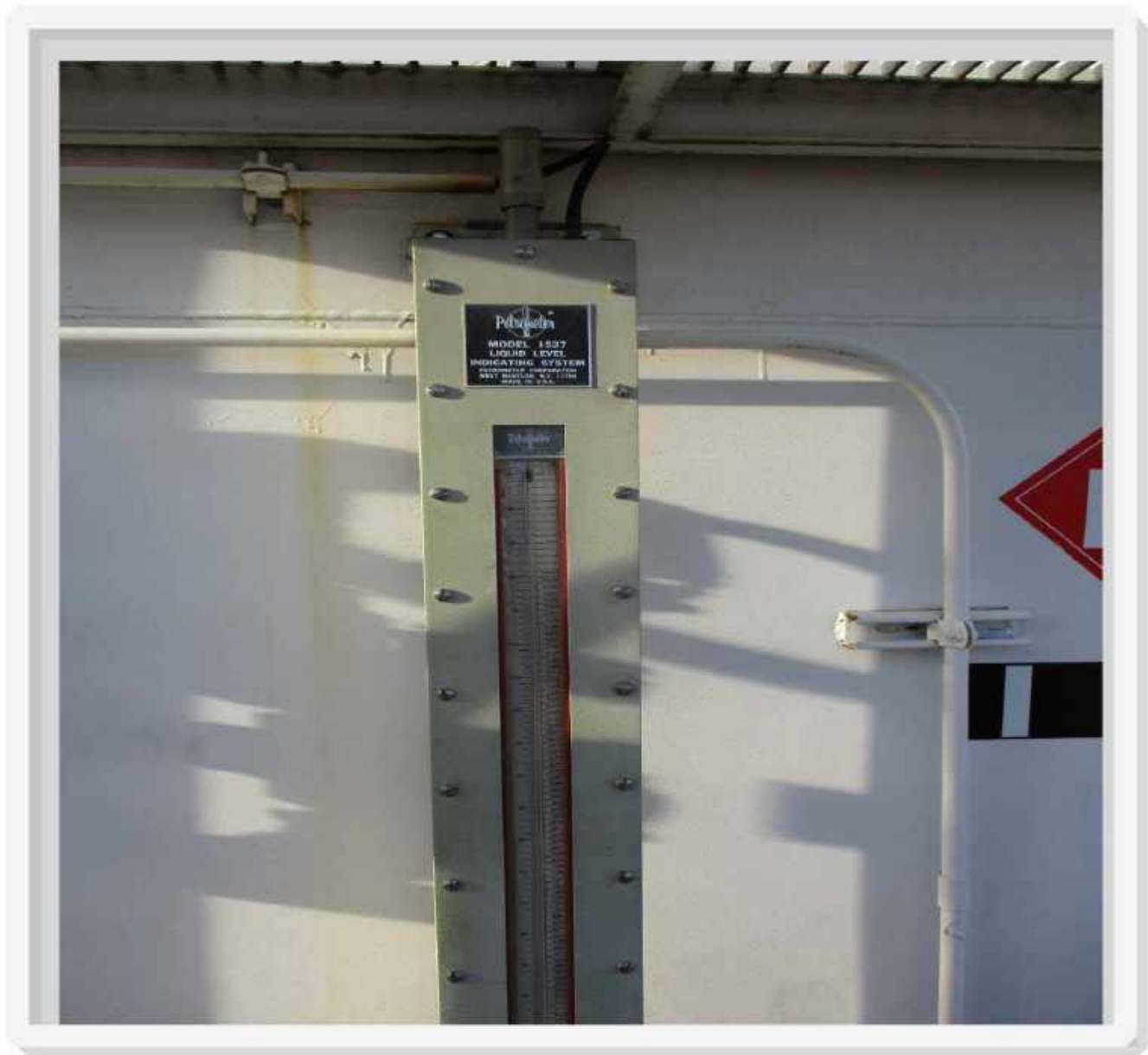


Exhibit "H" Petrometer Gauge



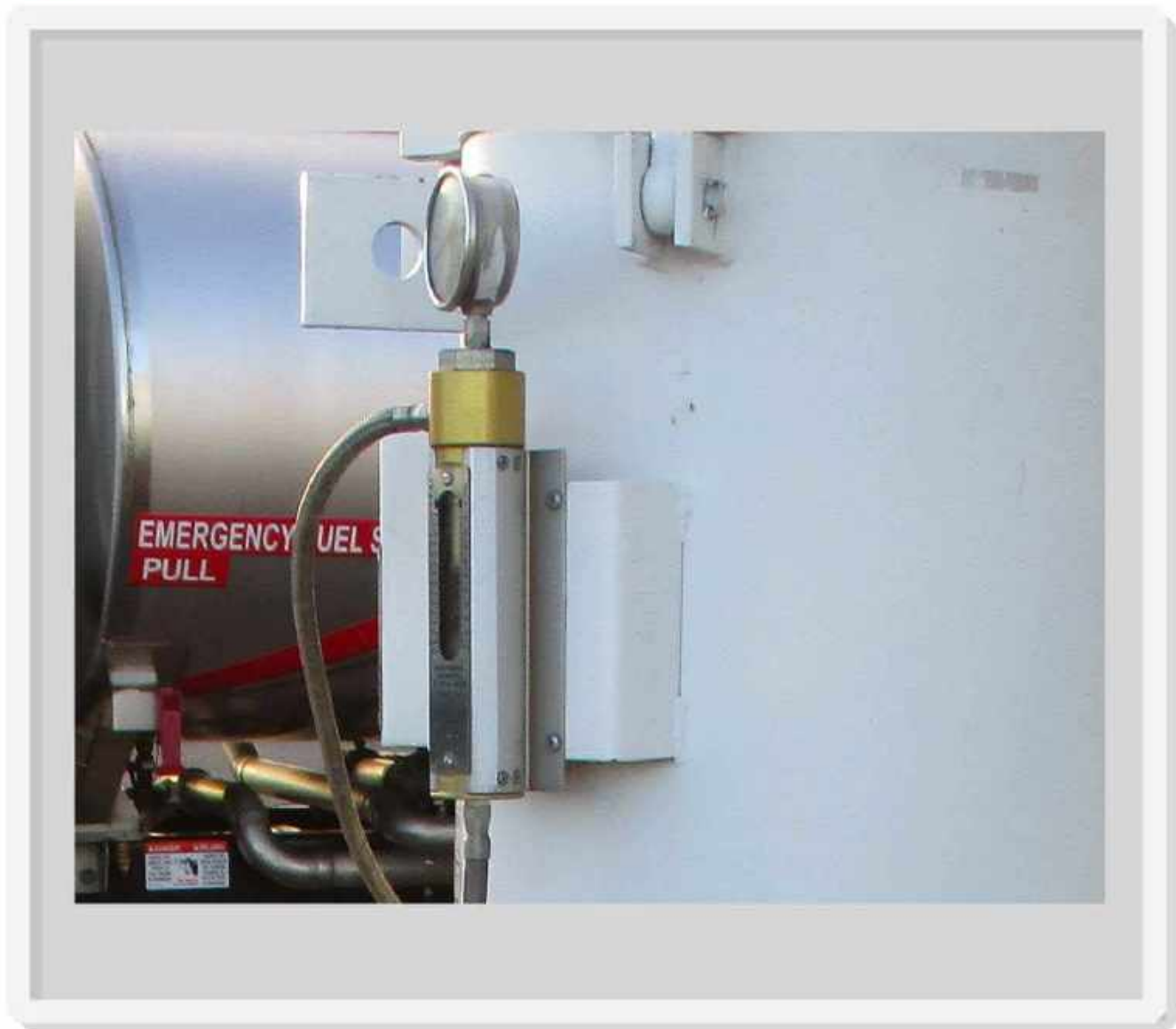


Exhibit "I" Differential Pressure gauge – missing test switch and Damaged Gauge



Exhibit "J" Cracked Bulk Loading Hose



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Exhibit "K" Existing Low Point Drain below liquid level line.



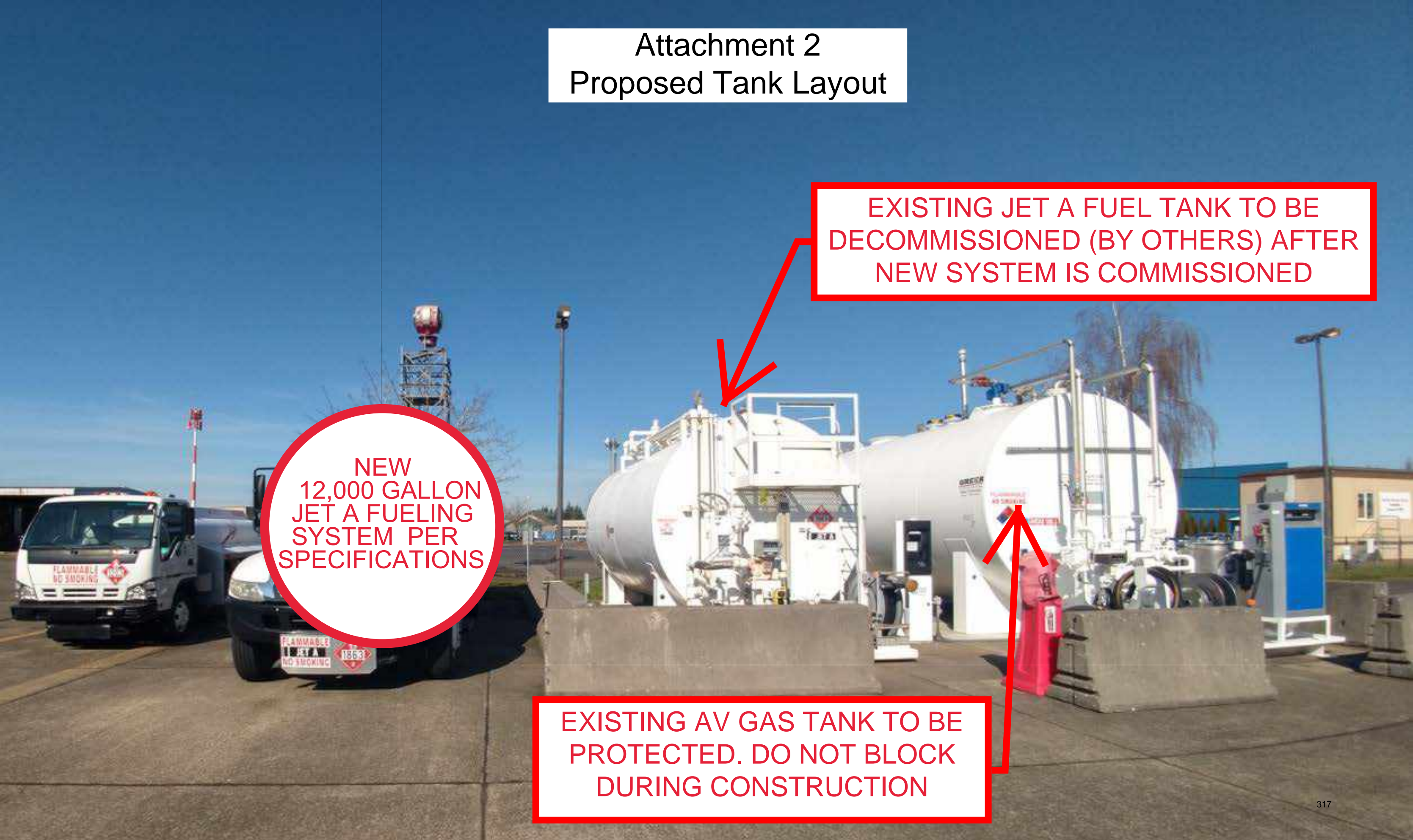
Exhibit "L" Bulk Meter – Class 1

Attachment 2  
Proposed Tank Layout

EXISTING JET A FUEL TANK TO BE DECOMMISSIONED (BY OTHERS) AFTER NEW SYSTEM IS COMMISSIONED

NEW  
12,000 GALLON  
JET A FUELING  
SYSTEM PER  
SPECIFICATIONS

EXISTING AV GAS TANK TO BE PROTECTED. DO NOT BLOCK DURING CONSTRUCTION



**RESOLUTION NO. 2020 - 20**

A Resolution awarding a Contract for the McMinnville Municipal Airport Jet A Fueling System, Project No. 2019-8, to Mascott Equipment.

**RECITALS:**

In November of 2018, an annual inspection found the Airports Jet A fueling system to be in need of major refurbishment to bring the system up to current standards at an estimated cost of \$117,500. In addition, the City received an estimate of \$14,000, plus \$3 per gallon for disposal of remaining tank contents, to complete a thorough inspection of the fuel tanks interior.

After considering the combined estimated costs for refurbishing the existing system and completing an interior tank inspection, as well as considering the potential risk of discovering irreparable internal fuel tank corrosion, it was determined that a new Jet A Fueling System was the best long term option for the City.

At 2:00pm on March 26, 2020, two bids were received, opened, and publicly read for the McMinnville Municipal Airport Jet A Fueling System, Project No. 2019-8. The low Bidder, Mascott Equipment, met all of the bid requirements and should be considered the lowest responsible bidder.

A portion of the funds for this project are included in the Adopted FY20 Airport Fund (25) budget, and the remainder of the funds are included in the proposed FY 21 budget via an interfund loan from Wastewater Capital Fund (77) to the Airport Fund (25).

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:**

1. That entry into a Standard Public Contract with Mascott Equipment in the amount of \$229,850 for the McMinnville Municipal Airport Jet A Fueling System, Project No. 2019-8, is hereby approved.
2. That the City Manager is hereby authorized and directed to execute the Standard Public Contract with Mascott Equipment.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of April 2020 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 14th day of April 2020.

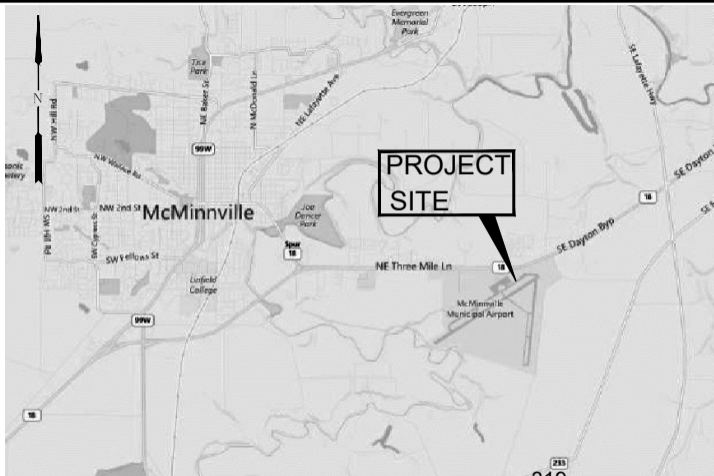
\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Recorder



VICINITY MAP

N.T.S.

319

# STAFF REPORT

**DATE:** April 14, 2020  
**TO:** Jeff Towery, City Manager  
**FROM:** Larry Sherwood, Engineering Services Manager  
**SUBJECT:** 2020 Spring Street Repair Project Award

---

## Report in Brief:

This action is the consideration of a resolution to award a contract for the 2020 Spring Street Repair, Project No. 2020-1, to K&E Paving Inc., dba H&H Paving.

## Background:

The primary mission of Public Works Department's Street Maintenance Section is the preservation of the City's transportation assets. Asphalt patching is a critical element in maintaining the approximately 100 miles of City streets and extending the service life of our paved roadways.

As part of the Cities asphalt preservation program, staff performs annual field inspections and uses historical street data to identify street sections in most need of pavement repairs. Small repairs in residential areas are generally performed by staff, and a list of larger repairs is compiled and sent to Contractors annually using a "Request for Quote" process. This year's repair package includes asphalt patching on 2<sup>nd</sup> Street, between Hill Road and Goucher Street, and on Linfield Avenue, between Melrose and Lever Streets (See Attachment 2)

## Discussion:

At 2:00pm on March 27, 2020, three quotes were received for the 2020 Spring Street Repair, Project No. 2020-1. The results are tabulated as follows:

Bidder	Total Bid Amount
K&E Paving, dba H&H Paving	\$62,608.20
Baker Rock	\$69,799.52
Pacific Excavation	\$84,862.85

The quotes were evaluated for completeness and compliance with the Request for Quotes documents. All three quotes met the requirements. A detailed breakdown of the quotes received is on file at the Public Works Department.

Completion of the Project is expected in June 2020.



**Attachments:**

1. Resolution 2020-21
2. Vicinity Map

**Fiscal Impact:**

Funds for this project are included in the Adopted FY20 Street Fund (20) budget.

**Recommendation:**

Staff recommends that the City Council adopt the attached resolution approving the award of the Contract to K&E Paving, dba H&H Paving, for the 2020 Spring Street Repair, Project No. 2020-1.

**RESOLUTION NO. 2020 – 21**

A Resolution awarding a Contract for the for the 2020 Spring Street Repair, Project No. 2020-1, to K&E Paving Inc., dba H&H Paving.

**RECITALS:**

At 2:00pm on March 27, 2020, three quotes were received for the 2020 Spring Street Repair, Project No. 2020-1. The quotes were evaluated for completeness and compliance with the Request for Quotes documents. All three quotes met the requirements.

The low Bidder, K&E Paving, dba H&H Paving, should be considered the lowest responsible bidder.

Funds for this project are included in the Adopted FY20 Street Fund (20) budget.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMinnville, OREGON, as follows:**

1. That entry into a Public Improvement Contract with K&E Paving, dba H&H Paving, in the amount of \$62,608.20 for the 2020 Spring Street Repair, Project No. 2020-1 is hereby approved.
2. That the City Manager is hereby authorized and directed to execute the Public Improvement Contract with K&E Paving, dba H&H Paving.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of April 2020 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 14th day of April 2020.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Recorder



# VICINITY MAP

## 2020 SPRING STREET REPAIR PROJECT 2020-1

2nd Street Pavement  
Repairs

Linfield Avenue  
Pavement Repairs

## STAFF REPORT

**DATE:** April 9, 2020  
**TO:** Jeff Towery, City Manager  
**FROM:** Jennifer Cuellar, Finance Director  
**SUBJECT:** A Resolution authorizing an interfund loan from the Wastewater Capital Fund to the General Fund  
A Resolution making a budgetary transfer of resources and appropriation authority for fiscal year 2019 – 2020 (Wastewater Capital Fund and General Fund).

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### CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize and deliver municipal services with discipline and focus

#### **Report in Brief:**

This action includes a resolution authorizing an interfund loan and a resolution making a budgetary transfer. These resolutions are related to internal borrowings for police pursuit vehicles and replacement of failing equipment at the Emergency Operations Center, a component within the McMinnville Police Department's budget.

In addition, this action includes a second budgetary transfer to allow the Aquatic Center to move a planned painting maintenance project to the current fiscal year instead of proposing it in the upcoming FY2020-2021 budget.

#### **Discussion:**

1. *A Resolution authorizing an interfund loan from the Wastewater Capital Fund to the General Fund*

This Resolution authorizes a loan from the Wastewater Capital Fund to the General Fund. The interfund capital loan will purchase three police pursuit vehicles and replace failed equipment at the Emergency Operations Center. Pursuing internal borrowing for the pursuit vehicles has both a lower actual and cost for the General Fund compared to a commercial lease arrangement that was originally budgeted to fund the purchase in the current year's budget.

Internal borrowing for the Emergency Operations Center's capital equipment replacement needs is similarly in the economic interest of the General Fund. Further, the General Fund does not have appropriations to pay for the cost of this unanticipated outlay. The equipment which failed is almost exclusively original to the building's opening, over ten years ago.

The Wastewater Capital Fund has reserve funds available to loan to the General Fund, which at

the end of the prior fiscal year amounted to more than \$25 million.

Oregon Revised Statute (ORS) 294.468 allows a local government to loan money from one fund to another, provided the loan is authorized by an official resolution of the governing body. Therefore, this resolution authorizes a maximum loan of \$236,600 from the Wastewater Capital Fund to the General Fund for both purchases, sets the interest rate at 2.25% per annum, and provides for repayment of the loan in five annual installment payments of \$37,312 and \$13,250.

2. *An Resolution making a budgetary transfer of resources and appropriation authority for fiscal year 2019-20 in the Wastewater Capital Fund and General Fund budgets*

To execute the loan, this Resolution transfers \$236,600 from Wastewater Capital Fund unused materials and services budgeted in the Sewer Capital Improvements appropriation category to the Transfers Out to Other Funds appropriation in the Wastewater Capital Fund. Resources and appropriation authority of \$236,600 are then transferred to the General Fund, increasing both Transfers In from Other Funds and the General Fund, Police Department appropriation by \$236,600

Oregon Budget Law allows interfund transfers of budgetary appropriation between funds under ORS 294.463 and these budget amendments may be made by resolution.

3. *An additional component to the Resolution making a budget transfer to the Parks and Recreation Department in the General Fund*

The current public health emergency has required the Parks and Recreation Department to close its facilities to the public. To avoid late summer closures at its facilities this summer, the Parks and Recreation Department will be moving work to the current fiscal year instead. A total of \$63,000 will be spent at the Aquatic Center, Senior Center and Community Center on a variety of maintenance projects.

Oregon Budget Law allows supplemental budget actions when an unknown occurrence or condition exists (ORS 294.471), as is the case in this situation. Further, intrafund transfers of budgetary appropriation within a single fund under ORS 294.463 allow these budget amendments to be made by resolution. General Fund appropriation authority of \$63,000 will be added to the Parks and Recreation Department budget; an equivalent reduction in the Transfers Out to Other Funds appropriation category will be made.

**Attachments:**

1. Resolution No. 2020-22: A Resolution authorizing an interfund loan from the Wastewater Capital Fund to the General Fund.
2. Resolution No. 2020-23: A Resolution making a budgetary transfer of resources and appropriation authority for fiscal year 2019–20 in the Wastewater Capital Fund and General Fund budgets.

**Recommendation:**

Staff recommends that the City Council adopt the attached resolutions.

## RESOLUTION NO. 2020-22

A Resolution authorizing an interfund loan from the Wastewater Capital Fund to the General Fund

### RECITAL:

Oregon Local Budget Law allows a local government to loan money from one fund to another, provided the loan is authorized by an official resolution of the governing body (ORS 294.468). This resolution authorizes a loan from the Wastewater Capital Fund to the General Fund for purposes of capital purchases of

three pursuit vehicles, a planned outlay to be funded via a commercial lease and included in FY2019-2020 budget, and

replacement of failed equipment at the Emergency Operation's Center, located in the Police Department's building; an unplanned outlay required as critical audiovisual components, original to the Police Department building construction over ten years ago, are no longer able to be repaired.

Pursuing internal borrowing for the pursuit vehicles has both a lower actual and cost for the General Fund compared to a commercial lease arrangement.

Internal borrowing for the Emergency Operations Center's capital equipment replacement needs is similarly in the economic interest of the General Fund. Further, the General Fund does not have appropriations to pay for the cost of this unanticipated outlay.

The Wastewater Capital Fund has reserve funds available to loan to the General Fund.

Therefore, as provided for in ORS 294.468, this resolution authorizes an interfund loan of no greater than \$174,600 from the Wastewater Capital Fund to the General Fund for the three pursuit vehicles and another interfund loan of no greater than \$62,000 from the Wastewater Capital Fund to the General Fund for the Emergency Operations Center audiovisual renovation. Only funds needed for these specific purposes will be loaned to the General Fund.

ORS 294.468 requires that an interfund loan to acquire a capital asset be repaid in full within 10 years of the date of the loan. The capital assets to be purchased have a useful life of five to ten years; both loans will be made for five year terms. The rate of interest on the loan is set at 2.25% per annum, a rate of return that exceeds the current interest rate for funds invested in the local government investment, 1.75% as of April 2, 2020. A loan repayment schedule, under which the principal and interest is to be repaid, is included in the body of this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, as follows:**

1. An interfund loan from the Wastewater Capital Fund to the General Fund is authorized.
2. The loan will be made from unrestricted reserve funds available in the Wastewater Capital Fund and will not exceed a total of \$236,600.
3. Interest will accrue at the rate of 2.25% per annum repayment of principal and interest will be made according to the following amortization schedules, except as provided for in section 4:

<b>Pursuit Vehicles</b>	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	Total
Principal	\$33,384	\$34,135	\$34,903	\$35,688	\$36,491	\$174,600
Interest	\$3,928	\$3,177	\$2,409	\$1,624	\$821	\$11,960
Total	\$37,312	\$37,312	\$37,312	\$37,312	\$37,312	\$186,560

<b>Emerg Ops Center</b>	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	Total
Principal	\$11,854	\$12,121	\$12,394	\$12,673	\$12,958	\$62,000
Interest	\$1,395	\$1,128	\$856	\$577	\$292	\$4,247
Total	\$13,249	\$13,249	\$13,250	\$13,250	\$13,250	\$66,247

4. Repayment of the balance of the loan may be made in advance at any time.

This Resolution will take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14<sup>th</sup> day of April, 2020 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 14th day of April 2020.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Recorder

## RESOLUTION NO. 2020-23

A Resolution making a budgetary transfer of resources and appropriation authority for fiscal year 2019-2020 in the Wastewater Capital Fund and General Fund Fund budgets

### RECITAL:

This resolution proposes a budgetary transfer from the Wastewater Capital Fund to the General Fund in order to properly budget for the interfund loan to fund the replacement of three police pursuit vehicles and the unanticipated need to replace failed equipment at the Emergency Operations Center housed in the McMinnville Police Department building.

ORS 294.468 allows a local government to loan money from one fund to another, provided the loan is authorized by an official resolution. Resolution 2020-22 authorizes a loan in an amount not to exceed \$236,600 from the Wastewater Capital Fund to the General Fund.

This resolution transfers resources and amends the Wastewater Capital and General Fund budgets to reflect the loan of \$236,600 authorized in Resolution 2020-22.

This resolution transfers \$236,600 from the Wastewater Capital Fund's Sewer Capital Improvements appropriation category to its Transfers Out to Other Funds appropriation. Resources and appropriation authority of \$236,600 are then transferred to the General Fund, increasing both Transfers In from Other Funds and the General Fund, Police Department appropriation by \$236,600.

This resolution transfers \$63,000 from the General Fund's Transfers Out to Other Funds appropriation category to its Parks and Recreation Department appropriation category. The current public health emergency has required the Parks and Recreation Department to close its facilities to the public. To limit closures this summer, Parks and Recreation Department will move maintenance projects to spring in the current 2019-2020 fiscal year. The cost of these activities is \$63,000.

ORS 294.463 allows interfund transfers between appropriation categories of different funds and intrafund transfers between appropriation categories within the same fund to be made by resolution.

ORS 294.471 allows budget amendments when an unknown occurrence or condition exists, as is the case for both the unanticipated Aquatics Center closure and equipment failure at the Emergency Operations Center.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:**

1. Make a budgetary transfer of resources and appropriation authority in the Wastewater Capital Fund:

Wastewater Capital Fund Sewer Capital Improvements appropriation is decreased by \$236,600 and Transfers to Other Funds appropriation is increased for the loan to the General Fund



<b>Wastewater Capital Fund:</b>	<b>Amended Budget</b>	<b>Budget Adjustment</b>	<b>Amended Budget</b>
Requirements:			
Sewer Capital Improvements	\$ 5 , 776,500	(236,600)	\$5,539,900
Transfers Out to Other Funds	249,194	236,600	485,794
Contingencies	500,000		500,000
Ending Fund Balance	<u>28,140,300</u>	<u>          </u>	<u>28,140,300</u>
Total Requirements	<u>\$34,665,994</u>	-	<u>\$34,665,994</u>

- Amend the General Fund budget to reflect the loan from the Wastewater Capital Fund:

General Fund resources category, Transfers In From Other Funds, is increased by \$236,600 and the Police Department appropriation is increased by \$236,600 to make capital purchases for three pursuit vehicles and replace capital equipment in the Emergency Operations Center.

- Amend the General Fund budget to reflect the intra-fund transfer of appropriation authority for the Parks and Recreation Aquatics Center painting and pool maintenance project:

General Fund Parks and Recreation department appropriation is increased by \$63,000 and the Transfers Out From Other Funds appropriation category is decreased by \$63,000.

<b><u>General Fund:</u></b>	<b><u>Amended Budget</u></b>	<b><u>Budget Adjustment</u></b>	<b><u>Amended Budget</u></b>
<b><u>Resource Categories:</u></b>			
All Other Resources	\$27,804,311		\$27,804,311
Transfers in from Other Funds	<u>3,397,066</u>	<u>236,600</u>	<u>3,633,666</u>
Total Resources	<u>\$31,201,377</u>	<u>\$236,600</u>	<u>\$31,437,977</u>
<b><u>Requirements:</u></b>			
All Other Requirements	\$16,184,998		\$16,184,998
Police Department	9,160,514	236,600	9,397,114
Parks & Recreation Dept	3,175,670	63,000	3,238,670
Transfers Out to Other Funds	<u>2,680,195</u>	<u>(63,000)</u>	<u>2,617,195</u>
Total Requirements	<u>\$31,201,377</u>	<u>\$236,600</u>	<u>\$31,437,977</u>

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of April, 2020 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 14th day of April 2020.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Recorder

## STAFF REPORT

**DATE:** April 4, 2020  
**TO:** Jeff Towery, City Manager  
**FROM:** Jennifer Cuellar, Finance Director  
**SUBJECT:** A Resolution authorizing closure of the Ambulance Fund and a change in fund type for the Building Fund from an enterprise fund to a special revenue fund.  
A Resolution making a budgetary transfer of resources and appropriation authority of the Ambulance Fund to the General Fund-Fire Department for FY2019– 20.

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## CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize and deliver municipal services with discipline and focus

### **Report in Brief:**

This action includes a resolution closing one fund, the Ambulance Fund, and changing the fund type of a second fund, the Building Fund, from an enterprise fund to a special revenue fund. The second resolution transfers the appropriation authority of the Ambulance Fund to the General Fund's Fire Department appropriation category.

### **Discussion:**

1. *A Resolution authorizing closure of the Ambulance Fund*

This Resolution authorizes closure of the Ambulance Fund, an enterprise fund of the City of McMinnville, as it no longer meets the definition of an enterprise fund. For over a decade, the Ambulance Fund has not collected revenues sufficient to cover operational costs. The funding model for municipal ambulance services in Oregon has changed over the years. The majority of ambulance runs are paid for by Medicare or Medicaid and are capped at a rate which cannot meet a full cost recovery model.

For the last fifteen fiscal years the City of McMinnville's General Fund has made annual contributions of unrestricted resources to the Ambulance Fund via transfer. In FY2019-2020, the amount of that transfer was \$1,150,000.

In addition to financial criteria, operationally ambulance services are fully integrated into the Fire Department's activities. This action will align the financial management of the Fire Department, including ambulance services, with its operational structure.

Oregon Revised Statute (ORS) 294.353 allows a local government to eliminate unnecessary funds.

2. *The Resolution further authorizes a fund type change for the Building Fund*

Currently the Building Fund is designated as an enterprise fund, a designation more typically associated with utilities and other municipal activities with a rate-paying customer base. The purpose of the Building Fund - to manage building code standards to safeguard the health, safety and welfare of McMinnville residents - is more frequently managed with a governmental fund, special revenue fund type. Utilizing this fund type will continue to assure that all financial resources and requirements associated with the activity are held within the self-balancing account while also simplifying financial reporting.

Oregon Local Budget Law (ORS 294.388) and the Local Budgeting Manual written by the Department of Revenue define budgetary funds, including the fund types used for budgeting and accounting, available for use by local governments.

3. *A Resolution authorizing the transfer of resources and budgetary appropriation of the Ambulance Fund to the General Fund – Fire Department.*

The activities of the Ambulance Fund are not ceasing. The financial representation of these activities are simply being unified with the finances of the Fire Department, thus aligning its fiscal activity with its operational reality as a fully integrated component of the Fire Department.

ORS 294.463 allows transfers of appropriation authority between existing appropriation categories of different funds to be made by resolution.

Ambulance Fund appropriation authority of \$5,920,204 will be distributed as follows:

- \$5,381,117 added to the General Fund - Fire Department budget
- \$300,000 contingency added to General Fund Contingency category

The Ambulance Fund's \$338,386 unappropriated ending fund balance estimate for FY2019-20 will be added to the unappropriated ending fund balance of the General Fund.

Interfund Transfers In and Out of the Ambulance Fund to and from the General Fund will be eliminated to calculate the actual change in budgetary appropriation authority transfer to the General Fund.

The actual beginning fund balance of the Ambulance Fund for FY2019-20 of \$174,483 will need to be transferred to the General Fund in order to close the accounting for the Ambulance Fund and bring it to a zero balance. The appropriation category and level required for this transfer will be included in the appropriation authority transfer calculation.

Revenues previously collected for transports including medicare, insurers and otherwise, will be allocated to ambulance services both in the 2019-2020 budget and in the accounting for this activity while it is within the general fund-Fire Department.

The fund type change for the Building Fund has no budget appropriation impact.

**Attachments:**

1. Resolution No. 2020-24: A Resolution authorizing the closure of one fund, the Ambulance Fund, and authorizing the change of the Building Fund from an enterprise fund to a

special revenue fund.

2. Resolution No. 2020-25: A Resolution authorizing a budgetary transfer of resources and appropriation authority for FY2019-20 of the Ambulance Fund to the General Fund – Fire Department.

**Recommendation:**

Staff recommends that the City Council adopt the attached resolutions.

## RESOLUTION NO. 2020-24

A Resolution authorizing the closure of one fund, the Ambulance Fund, and authorizing the change of the Building Fund from an enterprise fund to a special revenue fund.

### RECITAL:

Oregon Local Budget Law allows a local government's governing body to eliminate unnecessary funds by order (ORS 294.353).

The Ambulance Fund is an unnecessary fund. It no longer meets the definition of an enterprise fund because it can no longer collect enough fees to cover operational costs. The funding model for municipal ambulance services in Oregon has changed over the years. The majority of ambulance runs are paid for by Medicare or Medicaid and are capped at a rate which does not cover the actual cost of delivering the service.

For the last fifteen fiscal years the City of McMinnville's General Fund has made annual contributions of unrestricted resources to the Ambulance Fund via transfer. In FY2019-2020, the amount of that transfer was \$1,150,000.

In the General Fund, direct program revenue for city services is accounted for within the relevant department, assuring that these dollars are utilized for the proper purpose.

Ambulance services are operationally integrated into the Fire Department. Including ambulance services within the Fire Department will align the financial management of the department with its operational management structure.

For these reasons the Ambulance Fund will be eliminated. An intra-fund appropriation transfer will be made to unify the current fiscal year's budgetary appropriations with those of the Fire Department in the General Fund.

Oregon Local Budget Law (ORS 294.388) and the Local Budgeting Manual written by the Department of Revenue define budgetary funds, including the fund types used for budgeting and accounting available for use by local governments.

The definition of a Special Revenue Fund is the most accurate description of the current fiscal activity of the Building Fund. Further, treatment of the fund as a governmental fund, not an enterprise fund, in the financial statements of the City is more consistent with the activities carried out by the Building Fund.

### **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, as follows:**

1. The elimination of the Ambulance Fund is authorized.
2. The change in fund classification of the Building Fund from an enterprise fund to a special revenue fund is authorized.

This Resolution will take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14<sup>th</sup> day of April, 2020 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 14th day of April 2020.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Recorder

**RESOLUTION NO. 2020-25**

A Resolution authorizing a budgetary transfer of resources and appropriation authority for fiscal year 2019-2020 of the Ambulance Fund to the General Fund – Fire Department.

**RECITAL:**

ORS 294.463 allows transfers of appropriation authority between existing appropriation categories of different funds to be made by resolution.

The activities of the Ambulance Fund are not ceasing. The budgeting and accounting for these activities are being unified with the finances of the Fire Department, thus aligning its fiscal activity with its operational reality as a fully integrated component of the Fire Department.

Revenues previously collected for transports including medicare, insurers and otherwise, will be allocated to ambulance services both in the 2019-2020 budget and in the accounting for this activity while it is within the General Fund-Fire Department.

Ambulance Fund appropriation authority of \$5,920,204 will be added to the General Fund. Of this amount, \$5,381,117 is added to the General Fund - Fire Department budget with the amount allocated to contingency - \$300,000 - added to General Fund Contingency category. The Fire Department unappropriated ending fund balance of \$338,386 will be moved to the unappropriated ending fund balance of the General Fund.

Interfund Transfers In and Out of the Ambulance Fund to and from the General Fund will be eliminated to calculate the budgetary appropriation authority transfer to the General Fund. Transfer resources eliminated are \$1,150,000 Transfer In to Ambulance Fund from the General Fund and \$88,898 Transfer In to General Fund from Ambulance Fund. Appropriations to Transfer Out to Other Funds Eliminated are \$1,150,000 from General to Ambulance Fund and \$88,898 from Ambulance Fund to General Fund for a total of \$1,238,898.

The actual beginning fund balance of the Ambulance Fund for FY2019-20 of \$174,483 must be transferred to the General Fund in order to close the accounting for the Ambulance Fund and bring it to a zero balance. The appropriation category and level required for this transfer is included in the appropriation authority transfer calculation, making the Transfers Out to Other Funds budget appropriation category elimination amount \$1,064,415.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, as follows:**

1. Transfer of the Ambulance Fund FY2019-20 appropriation of resources to the existing General Fund – Fire Department is authorized:

<u>Ambulance Fund</u>		<b>Resource</b>	<b>Amended</b>
<b>FY20 Budgeted Resources</b>		<b>Adjustment</b>	<b>Resources</b>
Beginning Fund Balance	841,629	-841,629	0
Fees & Service Charges	3,640,000	-3,640,000	0
Grants & Donations	489,250	-489,250	0
Interfund Transfers	1,235,711	-1,235,711	0
All Other Resources	52,000	-52,000	0
<b>Total Resources</b>	<b>6,258,590</b>	<b>-6,258,590</b>	<b>0</b>



<u>General Fund</u>		Resource	Eliminate	Amended
FY20 Amended Resources		Adjustment	Transfer	Resources
			Resources	
Beginning Fund Balance	5,533,679	841,629		6,375,308
Fees & Service Charges	6,371,898	3,640,000		10,011,898
Grants & Donations	2,197,530	489,250		2,686,780
Interfund Transfers	3,633,666	1,235,711	-1,238,898	3,630,479
All Other Resources	603,497	52,000		655,497
Current Property Taxes	13,097,707			13,097,707
<b>Total Resources</b>	<b>31,437,977</b>	<b>6,258,590</b>	<b>-1,238,898</b>	<b>36,457,669</b>

2. Transfer of the Ambulance Fund FY2019-20 budgetary appropriation of requirements to the existing General Fund – Fire Department is authorized:

In addition, retain Transfer Out appropriation authority for the Ambulance Fund in the amount of \$174,483 to transfer the actual beginning balance for Ambulance Fund to the General Fund.

<u>Ambulance Fund</u>		Budget	Amended
FY20 Budget		Adjustment	Budget
Emergency Medical Services	5,381,117	-5,381,117	0
Transfers Out to Other Funds	239,087	-64,604	174,483
Operating Contingencies	300,000	-300,000	0
<b>Total Appropriations</b>	<b>5,920,204</b>	<b>-5,745,721</b>	<b>174,483</b>
Unappr'd Ending Fund Balance	338,386	-338,386	0
<b>Fund Total</b>	<b>6,258,590</b>	<b>-6,084,107</b>	<b>174,483</b>

<u>General Fund</u>		Budget	Eliminate	Amended
FY20 Amended Budget		Adjustment	Transfer	Budget
			Budget	
Fire Department	4,142,612	5,381,117		9,523,729
Transfers Out to Other Funds	2,617,195	64,604	-1,064,415	1,617,384
Operating Contingencies	900,000	300,000		1,200,000
Other Categories	22,082,238	0		22,082,238
<b>Total Appropriations</b>	<b>29,742,045</b>	<b>5,745,721</b>	<b>-1,064,415</b>	<b>34,423,351</b>
Unappr'd Ending Fund Balance	1,695,932	338,386		2,034,318
<b>Fund Total</b>	<b>31,437,977</b>	<b>6,084,107</b>	<b>-1,064,415</b>	<b>36,457,669</b>

This Resolution will take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14<sup>th</sup> day of April, 2020 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 14th day of April 2020.

\_\_\_\_\_

MAYOR

Approved as to form:

Attest:

\_\_\_\_\_

City Attorney

\_\_\_\_\_

City Recorder

# STAFF REPORT

**DATE:** April 7, 2020  
**TO:** Jeff Towery, City Manager  
**FROM:** Walter Gowell, Acting City Attorney  
**SUBJECT:** Campaign Finance Disclosure Ordinance

## STRATEGIC PRIORITY & GOAL:



### CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize & deliver municipal services with discipline and focus.

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## Report in Brief:

This is the consideration of Ordinance No. 5092, An Ordinance Adopting New Requirements and Regulations relating to Campaign Finance.

## Background:

The City Council has previously discussed the issue of campaign finance reform issues, actions being undertaken by other jurisdictions, ongoing judicial review and statewide legislation approved during 2019. The City Council has directed that staff prepare for Council consideration an ordinance establishing campaign finance disclosure requirements for city candidate elections.

**Discussion:** Draft Ordinance 5092 would establish a new "Chapter 2.10 to the Municipal Code entitled "CAMPAIGN FINANCE AND DISCLOSURE REQUIREMENTS". The new Chapter contains requirements for registration of campaign committees with the Secretary of State, provision for payroll deduction of campaign contributions, requirements for timely disclosure of certain large donors and expenditures, and implementation and enforcement provisions. The provisions are identical to City of Portland provisions that have been reviewed and approved by the Circuit Court of Multnomah County, and which are presently on appeal at the Oregon Court of Appeals.

## Attachments:

1. Draft Ordinance No.5092.

## Fiscal Impact:

The fiscal impact will consist of the time and possible added staff needed to implement the enforcement provisions. The amount of such impact is unknown at this time.

**Recommendation:**

Staff recommends that the City Council consider the draft ordinance and a possible first reading of the ordinance as presented.

**ORDINANCE NO. 5092**

**An Ordinance Adopting New Requirements and Regulations relating to Campaign Finance.**

RECITALS:

Whereas, the City of McMinnville has received information regarding campaign finance legislation and legal proceedings taking place within the State of Oregon; and

Whereas, the City of McMinnville wishes to adopt certain campaign finance legislation in candidate elections previously adopted by the City of Portland, Oregon

**NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:**

1. A new Chapter 2.10 of Title 2 of the McMinnville Municipal Code is hereby adopted to read as set forth on Exhibit A attached hereto and incorporated herein.
2. This ordinance will take effect within 30 days after its passage by the Council.

Read for the first time at a regular meeting of the City Council held on the 14th day of April 2020, and the City Council finally enacted the foregoing Ordinance this 28th day of April 2020 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstained: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

Attest:

Approved as to form:

\_\_\_\_\_  
CITY RECORDER

\_\_\_\_\_  
CITY ATTORNEY

**EXHIBIT A TO ORDINANCE 5092**

**“Chapter 2.10**

**CAMPAIGN FINANCE AND DISCLOSURE REQUIREMENTS**

**2.10.010 Contributions in City of McMinnville Candidate Elections.**

**A.** Individuals shall have the right to make Contributions by payroll deduction by any private or public employer upon the employer’s agreement or if such deduction is available to the employees for any other purpose.

**2.10.020 Expenditures in City of McMinnville Candidate Elections.**

**A.** An Entity shall register with the Oregon Secretary of State as a Political Committee under Oregon law within 3 business days of making aggregate Independent Expenditures exceeding \$750 in any Election Cycle to support or oppose one or more Candidates in any City of McMinnville Candidate Election.

**2.10.030 Timely Disclosure of Large Contributions and Expenditures.**

**A.** Each Communication to voters related to a City of McMinnville Candidate Election shall Prominently Disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:

**1.** The names of any Political Committees and other Entities that have paid to provide or present it; and

**2.** For each of the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle:

**a.** The name of the Individual or Entity providing the Contribution.

**b.** The types of businesses from which the maker of the Contribution has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).

**3.** For each of the largest five Dominant Independent Spenders paying to provide or present it:

**a.** The name of the Individual or Entity providing the Independent Expenditure.

**b.** The types of businesses from which the maker of the Independent Expenditure has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the NAICS.

**B.** If any of the five largest Dominant Contributors or Dominant Independent Spenders is a Political Committee (other than a Small Donor Committee) or nonprofit organization, the prominent disclosure shall include its top three funders during the current Election Cycle.

C. The disclosure shall be current to within 10 business days of the printing of printed material or within 5 business days of the transmitting of a video or audio communication.

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#### **2.10.040 Coordination with Public Funding of Campaigns.**

A Candidate participating in a government system of public funding of campaigns may receive any amount that such system allows a participating candidate to receive.

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#### **2.10.050 Implementation and Enforcement.**

A. The provisions of this Chapter shall take effect on May 1, 2020.

B. Each violation of any provision in this Chapter shall be punishable by imposition of a civil fine which is not less than 2 nor more than 20 times the amount of the unlawful Expenditure or Independent Expenditure at issue.

C. Any person may file a written complaint of a violation of any provision in this Chapter with the City Finance Director.

D. The City Finance Director, otherwise having reason to believe that a violation of any provision has occurred, shall issue a complaint regarding such violation.

E. Upon receipt or issuance of a complaint, the City Finance Director:

1. Shall examine the complaint to determine whether a violation has occurred and shall make any investigation necessary.

2. Within 2 business days of receiving or issuing a complaint, shall issue a notification, including a copy of the complaint, to every person who is the object of the complaint.

3. Shall accept written materials supporting or opposing the complaint for a period of 10 business days following any such notification.

4. Shall render a decision on the complaint within 10 business days of the close of the material submission period.

F. If the complaint is received or issued within 30 calendar days of the date of the election involving the object of the complaint, then all time periods stated in Subsections 2.10.050 E.3. and 2.10.050 E.4. shall be reduced by one-half.

G. The City Finance Director may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this Chapter.

H. Upon finding a violation of the requirement for timely disclosure set forth in Section 2.10.030, the City Finance Director shall determine the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication at issue and shall immediately issue a statement to all interested parties and news organizations containing all of the information about the involved donor(s) required by Section 2.10.030.

**I.** The complainant or any person who is the object of the complaint may, within 30 calendar days of the issuance of the decision, appeal that order to the appropriate Circuit Court as an agency order in other than a contested case.

**J.** The decision in the matter shall be deemed final, following completion of any judicial review. Such decision shall be enforced by the City of McMinnville. If the decision is not enforced within 30 calendar days of the decision becoming final, the complainant may bring a civil action in a representative capacity for the collection of the applicable civil penalty, payable to the City of McMinnville, and for any appropriate equitable relief.

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#### **2.10.060 Adjustments.**

All dollar amounts shall be adjusted on January 1 of each odd-numbered year to reflect an appropriate measure of price inflation, rounded to the nearest dollar.

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#### **2.10.070 Severability.**

For the purpose of determining constitutionality, every section, subsection and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

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#### **2.10.080 Definitions.**

Unless otherwise indicated by the text or context of this Chapter 10.4, all terms shall have the definitions at Chapter 260 of Oregon Revised Statutes, as of January 1, 2018. Terms found therein or defined below are capitalized in this Chapter.

**A.** “Candidate” has the meaning set forth at ORS 260.005(1).

**B.** “Candidate Committee” has the meaning set forth at ORS 260.039 - 260.041, as of November 8, 2016, for the term “principal campaign committee.”

**C.** “City of McMinnville Candidate Election” means an election, including a primary election, to select persons to serve (or cease serving) in public offices of the City of McMinnville.

**D.** “Communication” means any written, printed, digital, electronic or broadcast communications but does not include communication by means of small items worn or carried by Individuals, bumper



stickers, Small Signs, or a distribution of 500 or fewer substantially similar pieces of literature within any 10 business-day period.

**E.** “Contribution” has the meaning set forth at ORS 260.005(3) and 260.007, as of November 8, 2016, except it does not include:

- 1.** Funds provided by government systems of public funding of campaigns; or
- 2.** Providing rooms, phones, and internet access for use by a candidate committee free or at a reduced charge.

**F.** “Dominant Contributor” means any Individual or Entity which contributes more than \$1,000 during an Election Cycle to a Candidate Committee or Political Committee.

**G.** “Dominant Independent Spender” means any Individual or Entity which expends more than \$1,000 during an Election Cycle to support or oppose a particular Candidate.

**H.** “Election Cycle” means:

**1.** Generally, the period between an election at which a Candidate is elected and the next election for that same office, disregarding any intervening primary or nominating election, any recall election, or any special election called to fill a vacancy.

**2.** For any recall election: the period beginning the day that the recall election is called or declared and ending at midnight of the day of the recall election.

**3.** For any special election called to fill a vacancy: the period beginning the day that the special election is called or declared and ending at midnight of the day of the election.

**I.** “Entity” means any corporation, partnership, limited liability company, proprietorship, Candidate Committee, Political Committee, or other form of organization which creates an entity which is legally separate from an Individual.

**J.** “Expenditure” has the meaning set forth at ORS 260.005(8) and ORS 260.007, as of January 1, 2018, except that:

**1.** It does not include a Communication to its members, and not to the public, by a Membership Organization not organized primarily for the purpose of influencing an election.

**2.** The exception in ORS 260.007(7) does not apply.

**K.** “General Election Period” means the period beginning the day after the biennial primary election and ending the day of the biennial general election.

**L.** “Individual” means a citizen or resident alien of the United States entitled to vote in federal elections; however, when this Chapter expresses a limitation or prohibition, “Individual” means any human being.

**M.** “Membership Organization” means a nonprofit organization, not formed or operated for the purpose of conducting or promoting commercial enterprise, which has Individual members who have taken action to join the organization and have made a payment of money or volunteer time to maintain membership in the organization.

**1.** It cannot have commercial enterprises as members.

**2.** It can transfer to one and only one Small Donor Committee not more than 40 percent of the amount paid to the organization by each Individual member, with a limit of \$100 transferred per Individual member per calendar year.

**3.** It shall within 30 calendar days of any such transfer notify each paying member of the amount transferred, expressed in dollars or as a percentage of the member's amount paid to the organization. Such notice may be provided by regular mail or electronic mail to each affected member or by posting the information on the organization's main website. If the amount transferred is the same for each member or category of members (in dollars or in percentage of amount paid), the posting may state that amount or percentage without identifying individual members.

**N.** "Primary Election Period" means the period beginning on the 21st day after the preceding biennial general election and ending the day of the biennial primary election.

**O.** "Prominently Disclose" means that the disclosure shall be readily comprehensible to a person with average reading, vision, and hearing faculties, with:

**1.** any printed disclosure appearing in a type of contrasting color and in the same or larger font size as used for the majority of text in the printed material;

**2.** any video disclosure remaining reading on the regular screen (not closed captioning) for not less than 4 seconds;

**3.** any Finance Directory disclosure spoken at a maximum rate of 5 words per second;

**4.** any website or email message in type of a contrasting color in the same or larger font size as used for the majority of text in the message;

**5.** any billboard or sign other than a Small Sign: in type of a contrasting color and not smaller than 10 percent of the height of the billboard or sign.

**P.** "Small Donor Committee" means a Political Committee which has never accepted any Contributions except from Individuals in amounts limited to \$100 per Individual contributor per calendar year.

**Q.** "Small Sign" means a sign smaller than 6 square feet."