

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

IN THE MATTER OF PERIODIC REVIEW)	ORDER ON
TASK 1 AND THE AMENDMENT OF)	RECONSIDERATION OF
THE URBAN GROWTH BOUNDARY)	APPROVAL ORDER
FOR THE CITY OF McMinnville)	08-WKTASK-001760

This matter came before the Land Conservation and Development Commission (Commission) on September 12, 2006 as an appeal of a department approval of a completed periodic review work task and an urban growth boundary (UGB) amendment. The City of McMinnville (city) submitted Task 1, "Inventory of Commercial Lands", of its approved work program to the Department of Land Conservation and Development (department) for review pursuant to ORS 197.633 and OAR chapter 660, division 25. The city also submitted the amendment of its 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 director of the department approved the submittals by order 001696. An appeal of the director's decision was filed with the department on June 22, 2006. The Commission, having fully considered the written record listed in Attachment A, including the city's Task 1 and UGB amendment submittal, and the oral presentations of the parties, the city, and the department, now enters the following findings, conclusions, and order:

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 Ilse 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 Ilse 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 2nd St. 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 approves the city's request to amend its periodic review work program to add Task 4, the rezoning of the West Hills and West 2nd St. 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.

Substantive Review

Scope of Review

The Commission has exclusive jurisdiction to review all work program tasks for compliance with the statewide planning goals. ORS 197.644(2); OAR 660-025-0040(1). The Commission also has exclusive jurisdiction to review certain UGB amendments pursuant to ORS 197.626 and OAR 660-025-0040(1)(a). For issues arising from land use decisions that do not involve compliance with the statewide planning goals, the Land Use Board of Appeals (LUBA) has exclusive jurisdiction. ORS 197.825; OAR 660-025-0040(2). Where the Commission reviews a land use decision under periodic review for compliance with the statewide planning goals, LUBA only has jurisdiction to review that land use decision for compliance with other legal requirements "that go beyond or are different from" the requirements of the statewide planning goals. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426, 430-31, *aff'd* 179 Or App 468, 40 P3d

556 (2002). In *Manning v. Marion County*, 45 Or LUBA 1 (2003), LUBA clarified that under this split jurisdiction framework the Commission, not LUBA, has jurisdiction to review (1) challenges to the evidentiary support for findings of compliance with comprehensive plan criteria that directly implement the statewide planning goals and (2) “allegations of procedural error that are based on requirements stated in the statewide planning goals” or administrative rules that implement the goals. 45 Or LUBA at 8-10. Thus, the Commission’s exclusive jurisdiction in periodic review extends to issues that arise under the statewide planning goals and rules and under those planning statutes whose requirements do not differ in substance from goal requirements, or relate so closely to those requirements that the Commission cannot determine goal compliance without applying or interpreting those statutory requirements.

Standard of Review

As described in detail above, the Commission reviews the submittal for compliance with the applicable goals and administrative rules. OAR 660-025-0040. For periodic review submittals under ORS 197.628 to 197.650, “compliance with the goals” means the submittal “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.” ORS 197.747.

In determining compliance with Goal 2, the Commission considers whether the submittal is supported by substantial evidence. The city’s decision on Task 1 is a legislative decision. The Goal 2 requirement for an adequate factual base requires that a legislative land use decision be supported by substantial evidence. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 376-378, *aff’d* 130 Or App 406, 882 P2d 1130 (1994), *DLCD v. Douglas County*, 37 Or LUBA 129, 132 (1999). Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. ORS 183.482(8)(c) and *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). Where the evidence in the record is conflicting, if a reasonable person could reach the decision the city made in view of all the evidence in the record, the choice between the conflicting evidence belongs to the city. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff’d* 133 Or App 258, 890 P2d 455 (1995).

Because the city’s Task 1 and UGB amendment submittal embodies both basic findings of fact and inferences drawn from those facts, substantial evidence review involves two related inquiries: “(1) whether the basic fact or facts are supported by substantial evidence, and (2) whether there is a basis in reason connecting the inference to the facts from which it is derived.” *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 271, 639 P2d 90 (1981). Where substantial evidence in the record supports the city’s adopted findings concerning compliance with the goals and the Commission’s administrative rules, the Commission nevertheless must determine whether the findings lead to a correct conclusion under the goals and rules. *Oregonians in Action v. LCDC*, 121 Or App 497, 504, 854 P2d 1010 (1993).

Applicable Law

In April 2005, the Commission made amendments to Statewide Planning Goal 14 (OAR 660-015-0000(14)) that became effective on April 28, 2006 pursuant to ORS 197.245. The Commission reviews the city's submittal under Goal 14 prior to the April 2005 amendments. Consistent with review under that Goal 14, the Commission notes that, although instructive, OAR chapter 660, division 24 is not applicable to this submittal. *See* OAR 660-024-0000(2) (providing applicability of rules in the division).

The Commission amended OAR chapter 660, division 25 effective May 15, 2006. Pursuant to the applicability provision of OAR 660-025-0230(1), the Commission reviewed the city's submittal pursuant to the OAR chapter 660, division 25 rules in effect on the date of the city's submittal, January 31, 2006. However, the Commission notes that the city's submittal of Task 4 under its amended periodic review work program will be subject to the amended OAR chapter 660, division 25.

Background Description of UGB expansion process

The city's submittals in this matter are two ordinances that adopt "certain amendments to the McMinnville Urban Growth Management and Urbanization Plan (MGMUP), supporting Findings, Economic Opportunities Analysis, Comprehensive Plan and implementing ordinances." Ordinance Nos. 4840 and 4841. The city's submittal concluded that to meet its identified residential and employment need, it would be necessary to expand its urban growth boundary.

Goal 14 is "[t]o provide for an orderly and efficient transition from rural to urban land use." OAR 660-015-0000(14). Goal 14 requires that the change of UGBs to be based upon considerations of seven factors:

- “(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- “(2) Need for housing, employment opportunities, and livability;
- “(3) Orderly and economic provision for public facilities and services;
- “(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- “(5) Environmental, energy, economic and social consequences;
- “(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
- “(7) Compatibility of the proposed urban uses with nearby agricultural activities.”

Factors 1 and 2 are the “need” factors. *Friends of Linn County v. Linn County*, 41 Or LUBA 342, 344 (2002). Factors 3 to 7 are known as the “locational factors.” *D.S. Parklane Development, Inc. v. Metro*, 165 Or App at 7 n 1. The five locational factors do not stand alone as five independent approval criterion, the factors must be individually addressed and applied equally, and then the city must consider and balance the five factors in reaching a conclusion concerning whether adding a specific area to the UGB achieves the overall goal to provide for an orderly and efficient transition from rural to urban land use. *Id.* at 24; *1000 Friends of Oregon v. Metro*, 174 Or App at 410.

Generally, if a city determines that the development capacity of land inside the UGB is inadequate to accommodate its identified needs under factors 1 and 2, the city must act to satisfy the identified need. The city must either increase the development capacity of land already inside the city or expand the UGB, or both. However, prior to expanding the UGB, a city must demonstrate that the identified needs cannot reasonably be accommodated on land already inside the UGB

When considering a UGB amendment to address a need identified under Goal 14, factors 1 and 2 that cannot be reasonably accommodated within the existing UGB, a city must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the locational factors of Goal 14.

Beginning with the highest priority of land under ORS 197.298 available, a city must determine which land in that priority can reasonably accommodate its identified need. If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, the city must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB. However, if the amount of land in the first priority category is not adequate to satisfy the identified need, the city must determine which land in the next priority can reasonably accommodate the remaining need, and proceed using the same method until the land need is accommodated.

LCDC FINDINGS OF FACT AND CONCLUSIONS

I. 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 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 Commission approved the following components of the city’s Task 1 submittal in December 2004:

- 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 rezoning of certain parcels in McMinnville Growth Management and Urbanization Plan (MGMUP), specifically: parcel ID nos. 7, 9, 10, 15, 16, 19, and 20.

Subsequent to the Commission order, the city approved three actions related to this submittal:

- 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 DLCD Order 001661).
- Three Mile Lane UGB expansion via post-acknowledgment plan amendment (DLCD file no. 001-04): 35 acres for parking/additional buildings at airport museum site (no DLCD action).
- UGB expansion on west side: 42 acres for new high school (approved by DLCD 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. The department considered the submittal complete for the purpose of department review upon the receipt of Ordinance 4841 on January 31, 2006. The submittal concerns McMinnville Periodic Review Task 1 and the accompanying UGB amendment and McMinnville Growth Management and Urbanization Plan (MGMUP), Economic Opportunities Analysis, and Buildable Lands Inventory, as amended. The amendments listed below are in response to Commission and DLCD 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 the department.
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. The city has not changed the amount of acres identified 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.
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.

II. ANALYSIS

The Commission's decision and order concerning the original Task 1 and UGB amendment submittal remanded certain matters for the city to consider that arose as objections that the Commission sustained. 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 Commission approved the population forecast.*
- 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 Commission approved the Housing Needs Analysis.*
- 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 Commission approved the Housing Needs Analysis.*
- 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 Commission approved the Housing Needs Analysis.*
- 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 acres 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 city reduced the overall need for vacant land. The city provided for pedestrian-friendly and transit-oriented development through the establishment of the NACs and associated plan policies and implementing ordinances.

- 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 due to the projected direction and location of future growth planned parks may not be located near floodplains. The city adopted a new plan policy (Ordinance No. 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 (Ordinance No. 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 (Ordinance No. 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's submittal 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 of the findings document, 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 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 Ordinance No. 4840 (pp. 7-8) and determined that it could not meet the 10 dwelling units per acre standard. The city has identified, but not rezoned, parcels suitable for higher density housing (Ordinance No. 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 (Ordinance No. 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. *The city's submittal complies with this remand directive. See Ordinance No. 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. *The city's submittal complies with this remand directive. See Ordinance No. 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. *The city's submittal removed the illustrations. See Ordinance No. 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 deleted the rezonings referred to in this item and rezoned parcels 1-3, 8, 11-14, 17, and 18 to their original designations. See Ordinance No. 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: The city's submittal clarifies that the city permits ADUs in their residential zones while stating that they do not count toward the density requirement. See Ordinance No. 4796.

- i. Amend the C-1 zone to eliminate or substantially increase the 0.25 commercial floor area ratio limitations. *The city eliminated this provision. See Ordinance No. 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. See Ordinance No. 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 submittal completed this provision. See Ordinance No. 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 submittal completed this provision. See Ordinance No. 4840, p. 5.*
- n. Adopt a policy to (1) complete the “concept planning” process for NACs over the 20-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 submittal completed these. See Ordinance No. 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 submittal completed this amendment. See Ordinance No. 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 submittal removed the illustrations and revised the policy. See Ordinance No. 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. The city's submittal clarified

policy 188.03 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.)

III. OBJECTIONS RECEIVED AND COMMISSION RESPONSES

The department received three letters of objection, two from 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Pearse (hereafter 1000 Friends), 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 of Oregon 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.

Finding 1.a. The city submittal includes an adopted 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 provides that the plan shall be the basis for specific implementation measures. Therefore, the plan contains some specific implementation measures that increase land use efficiency, in accordance with the requirements of Goals 2 and 14 to reasonably accommodate the identified need for residential land within the existing UGB by reducing the amount of acreage needed by some 38 acres. The city will rezone lands within the West Hills consistent with the directive of this LCDC Order, and the city's requested amendment to its periodic review work program. The Commission rejects with this objection.

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

Finding 1.b. The city's submittal has established that it 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 Grandhaven and Northwest McMinnville areas are generally located in the NAC Overlays, and are subject to future refinement planning, at which time the city will employ the factors identified to implement the increased density. The Commission rejects this objection.

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

Finding 1.c. The city established that the existing development patterns and amount of vacant and redevelopable land within the identified transit corridors did not permit the city to achieve densities supportive of transit at this time. Therefore, rather than rezone the parcels identified for possible higher density housing, the city adopted policies encouraging such action in the future. Assessment of their impact on the city's transportation system would occur as part of this action, consistent with Goal 12 requirements. The Commission rejects this objection

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

Finding 1.d. 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 type[.]" 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 city's submittal amends Plan Policy 187.00 to defer planning and implementation of NACs 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). The Commission rejects this objection.

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.

Finding 2. In response to the comments from the department, the city submitted revised 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 provide:

Medium-Density Residential (R3 and R-4) – Medium density residential development should be limited to the following:

- Areas that are not committed to low-density development;
- Areas that have direct access from collector or arterial streets;
- Areas that are not subject to development limitations such as topography, flooding, or poor drainage;
- Areas where the existing facilities have the capacity for additional development;
- Areas within one-half mile of existing or planned public transportation;
- Areas that can be buffered from low density residential areas in order to maximize the privacy of established low density residential areas; and
- Areas within one-quarter mile from a designated neighborhood activity or focus area. (Ordinance No. 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 submittal amends the policy to provide:

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 objects that these amendments create conflicts within the plan. The city established that although the city amended the policies, 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 provides 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 objects 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 because as a matter of fact the vast majority of residential lands in McMinnville are 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 Commission 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. The Commission rejects this objection.

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 objects 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.

Finding 3.a. The city established that only three additional parcels could be rezoned to higher densities at this time. Ordinance No. 4840, p. 8. The city’s submittal determined that since 2003, five of the six parcels identified for rezoning within the 1,000-foot transit corridor have developed. Therefore, the city determined it was not reasonable 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. Further, irrespective of the amount of land that may be available for higher density housing, this does not change the land needs analysis and the amount of such housing required over the planning period. The city found that its identified need for high density housing can be accommodated within the planned NACs, and as otherwise dictated by plan policy.

- b. 1000 Friends objects 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.

Finding 3.b. The city established 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. The city did not conclude 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. The city maintains that for such a strategy to be a valid, it would be necessary to either: disassociate the housing needs projection from what is provided for by the city, which would occur only in violation of statute; or demonstrate that the housing needs analysis is incorrect, which did not occur.

Summary Finding 3. 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 reasonably accommodated its identified residential need within its existing UGB consistent with Goals 2 and 14. The Commission rejects this objection.

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.

Finding 4. The city submittal of Policy 188.03 is an element of its attempt to ensure and strengthen its policies related to transit corridors and NACs. Although Policy 188.03 states that high density housing *should not* radiate out farther than one-eighth mile from the edge of a focus area, the city explained that Policy 188.03 does not *preclude* the location of high-density housing further than one-eighth mile from the edge of the focus area. The city established that 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 initially recommended remand to amend Policy 188.03, but upon further consideration, the Commission finds that the city has established that the inclusion of Policy 188.03 in its current form is not inconsistent with any standards, and that it serves to reinforce a more finite arrangement of land uses in the NACs. Furthermore, the Commission does not believe that Policy 188.03 as interpreted by the city, when read in context with the other guidelines and policies related to NACs, promulgates the inefficient use of land. The Commission rejects this objection.

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

Finding 5. 1000 Friends objects that Goal 14, Factor 4, “Maximum Efficiency;” ORS 197.732(2)(c)(B); Goal 2, Part II(c)(2); OAR 660-004-0020(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.

While the cited statutes and rules address efficiency of the use of land within the UGB, ORS 197.296 provides the most specific direction to certain local governments on how to plan for the mix and density of residential uses for an UGB amendment. Because ORS 197.296 provides specific direction, where it applies, a city may generally establish that a submittal has considered maximum efficiency or reasonable accommodation of residential need within the existing UGB by complying 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 it will achieve the needed mix and density. 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. The Commission reviews the submittal against the applicable criteria.

The city established that it considered numerous measures to maximize efficiency. The city points to its nine adopted measures to improve efficiency, including allowing flag lots and “skinny” streets (Plan, pp. 5-2 through 5-8). Further, the city also points to its 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 submittal addresses efficiency under Goal 14, factor 4 and the exceptions standard provided in ORS 197.732(2)(c)(B), Goal 2, Part II(c)(2), and OAR 660-004-0020(2)(b). The Commission rejects this objection.

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

Finding 6. Goals 2 and 14 require the city to adopt a plan and implementing regulations that are consistent and that use land efficiently. 1000 Friends objects that Plan Policy 188.05 calls for a very large amount of land for the projected amount of built employment space within NACs 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.

The City established Plan Policy 188.05 as a guideline to describe 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.

The city created the NACs as a means to implement broad planning requirements, the NACs are not specifically mandated by the statewide planning goals, rules, or statutes. Therefore, the city may define the characteristics of the NACs, and has expressed the desire for the NACs to be pedestrian- and transit-friendly, consistent with Goals 12 and 14. The city established that Policy 188.05 is the range and intensities of uses that it anticipates are necessary in order to implement the plan.

While 1000 Friends correctly observes that FARs of about 0.23 are relatively auto-oriented, outside of downtown areas, the city established that 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. While higher FARs than the city’s minimum of 0.23 are desirable, the city demonstrated the important roles that design standards regarding the location and orientation of buildings and entrances, clustering buildings, and assuring safe, convenient, and direct pedestrian circulation play in achieving pedestrian- and transit-friendly areas. The city has adopted policies guiding the arrangement of commercial uses within NACs to be pedestrian-oriented and transit supportive. The Commission rejects this objection.

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

Finding 7. The city submitted a revised Economic Opportunities Analysis (Ordinance No. 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 per net acre for commercial and 3.6 employees per net acre for industrial (Ordinance No. 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 (Ordinance No. 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 (Ordinance. 4840, Exhibit B, p. 5, Table 6-4). The Commission concludes that the city

has established that the assumptions and conclusions are both reasonable and supported by substantial evidence. The Commission rejects this objection.

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.

Finding 8.a. The city has adopted a Parks Master Plan that contains standards for community, greenway/natural area, 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 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 due to the projected direction and location of future growth, planned parks may not as a matter of fact be located near floodplains.

The city has adopted a new plan policy (Ordinance No. 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 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, the city determined that the park need projection is viable, and that it has a reasonable ability, through the bond measure, SDCs, and other sources identified in its adopted Parks Master Plan, to provide funding for the parks.

According to the city, it has not included lands for linear parks, special use parks, mini-parks, or trails and connectors as part of this submittal because the Parks Master Plan does not provide projections for such parks, and therefore, no land was included specifically for these park types. The Commission rejects this objection.

- 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.

Finding 8.b. 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 (Ordinance No. 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 city determined that the circumstances of parks in Woodburn and McMinnville are distinguishable. The Commission rejects this objection.

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

Finding 9. 1000 Friends objects 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 city established that that the density achieved in Riverside South exception areas will be less than what would be achieved on large parcels. *See also D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516, 569 n 36 (1999), *aff'd* 165 Or App 1, 994 P2d 1205 (2000) (resource land can almost always be developed more efficiently than exception land). 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, to accommodate a total of 552 dwelling units of the identified need. The city established that 4.3 dwelling units per acre is a reasonable density projection given the nature of exception areas explained above, as well as the factors affecting urbanization of this subarea that it identified (C-65 thru C-70). LUBA has recognized that existing patterns of development on exception lands may impact the ease or efficiency of development and make those lands less productive compared to less developed lands. *Residents of Rosemont v. Metro*, 38 Or LUBA 199, 238 (2000), *aff'd, rev'd and rem'd on other grounds*, 173 Or App 321, 21 P3d 1108 (2001). The Commission rejects this objection.

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.

Finding 10. 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). 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. *Parklane*, 35 Or LUBA at 569. 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). The Commission rejects this objection.

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

Finding 11. In 2004, the city expanded its UGB to include 35 commercially zoned acres for future expansion of the Evergreen Air Museum. The city expanded the UGB 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.

As part of the UGB expansion to include the Evergreen Aviation Museum land, the city generally limited uses to those 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. The Commission rejects this objection.

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.

Finding 12. The Commission 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," and subsequent amendments to this appendix:

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

Westside Road. The city determined 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 county road designated as a major collector. The city excluded this area from the UGB under ORS 197.298(3)(b), based on substantial evidence that the area cannot reasonably be served with local streets.

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 land adjacent to the county major collector cannot reasonably accommodate urban uses. The city determined that lack of a local street in this area would necessitate more driveway access onto the major collector. A setback from the right-of-way 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 Commission finds that the city established that not including Westside Road in the UGB is justified.

Bunn's Village. The city documented its reasons for excluding this area in Appendix C, pp. C-19 through C-40. The department agreed 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 the Oregon Department of Transportation (ODOT) reduce speeds on the highway and stoplights be installed, severely impacting the function of the highway.

Second, the city established 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. The city established that in order to develop this area, it would need to provide alternate local street connections to the remainder of the city rather than rely on just the state highway. The city determined that providing alternate street connections is not reasonable because 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, the city established that services cannot reasonably be provided to this area and ORS 197.298(3)(b) allows the city to not include this area. 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 Bunn's Village unreasonable to serve, when compared to other areas. The Commission finds that the city established that not including Bunn's Village in the UGB is justified.

Riverside North. The Commission finds that the city established 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 Commission finds that the city established this area cannot reasonably accommodate the identified need. 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 difficult. This is consistent with the decision the Commission made regarding the City of North Plains. This exception area cannot reasonably accommodate the need for a compact, pedestrian-friendly urban area.

Old Sheridan Road. The Commission finds that the city established that this area cannot reasonably accommodate the identified need because transportation facilities cannot reasonably be provided to this area. As stated in Appendix "C" of the MGMUP, Old Sheridan Road, which borders the sub-area along its western edge, is designated in both the Yamhill County "Transportation System Plan" and the McMinnville "Transportation Master Plan" as a minor arterial street. ODOT classifies Oregon Highway 18, which borders this sub-area along its entire eastern edge, as a Limited Access Highway. The significance of this designation is that ODOT will not grant direct access to the sub-area from Highway 18 (Attachment 1).

b. ***Excluded resource areas.*** In its review of the MGMUP in March and April of 2004, the department 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 department 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 through Class VIII. 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 hills west of McMinnville are steeply sloped, and marked by several ravines that cross through the area. The area is largely vacant of 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. The city found that the lower West Hills area to the south 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 below 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. The McMinnville Water & Light Water Master Plan indicates future 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 2nd Street, which currently stubs approximately 3,000 feet to the east of the existing UGB. Extension of these 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.

The city determined that the concentration of Class III soils within the West Hills area adjacent to the existing westerly urban growth boundary could not reasonably accommodate the land needs identified in the MGMUP. 1000 Friends objects to the exclusion of this area, contending 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 Commission finds that the city established both that the West Hills area could not reasonably accommodate the city’s identified need and that under ORS 197.298(3)(b), the city could not reasonably provide water, a future urban service, due to the topographical constraint.

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 LCDC approved for addition to the UGB in 2004. 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 within the existing McMinnville UGB and 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 in 2004 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.

The city determined 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, the city determined that 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 is bordered by actively farmed land (the northern portion of tax lot 200) along an approximately 350-foot length of its western boundary, but otherwise abuts the school site at the north, Hill Road at the east, Fox Ridge Road at the south, and the UGB at the southwest. Although development of tax lot 700 would remove farmland from production, the city determined there is a greater 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.

The northern portion of tax lot 200 abuts 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 is bordered by actively farmed land on two sides and along a portion of a third. The city established that 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. The city intends NACs 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; because tax lot 700 abuts Hill Road at the east; the city determined 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.

Tax lot 100 and the northern portion of tax lot 200 also lie within the Northwestern NAC boundaries. However, the city established 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 found that this would be an inefficient use of tax lots 200 and 100. Because 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 concluded that the needs 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, did not include these lands in its expanded UGB, purportedly under ORS 197.298(3)(a). The Commission concludes that the city erred in excluding the lands under ORS 197.289(3)(a). However, pursuant to Goal 2, the city did not need to consider lands under ORS 197.298 that could not reasonably accommodate its identified need. However, the city established that identified residential land needs can be accommodated by tax lot R4418-00700, which is predominately Class III and Class IV soils.

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 objects to 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 tax lots are actually comprised primarily of Class III and IV soils.

The Commission concludes that the city has established 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 determined that those three areas near the airport are inappropriate for use in satisfying the identified residential and commercial land needs. As such, the city did not include those areas in the amended UGB.

Land use compatibility: The city found 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,¹ 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. The city determined that limiting development within the zone, and on lands adjacent to it, is critical for safe operation of the airport.

Agricultural land compatibility: This land is 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 MGMUP provides for the creation of complete neighborhoods that are achieved through the implementation of NACs. The city expects densities within these centers 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 concluded 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.

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 Commission concludes that the city established that the area cannot reasonably accommodate an identified need due to safety issues related to the airport.

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. The Commission concludes that the area cannot reasonably accommodate residential uses, and the city did not err by not including this area in the UGB for residential uses.

¹ The Commission takes official notice of the McMinnville Municipal Airport Master Plan.

c. **Included resource areas.** 1000 Friends of Oregon objects to the city's inclusion of the following resource areas in the proposed UGB:

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 floodplain, 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 objects that the city inadequately considered the compatibility of the proposed urban development within the subarea with nearby agricultural activity.

The city addressed Goal 14, factor 7, and ORS 197.732(2)(c)(D) and 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. ORS 197.732(1)(a) provides "'compatible' is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses." The city described the types of existing uses surrounding the subarea and the proposed uses that would take place within the subarea. In so doing, the city noted that the Three Mile Lane subarea is bordered to the south, west, and northwest by the South Yamhill River's 100-year floodplain, and to the north and east by lands currently inside the McMinnville UGB. The city found that the urbanization of this subarea would not create compatibility conflicts with resource lands, the nearest of which are some distance from the subarea's southern border (separated by the South Yamhill River and its associated floodplain). Regarding the plan's proposal to include this subarea and other resource lands, the city 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 Findings, p.74). The Commission concludes that the city has adequately established the compatibility of urban development within the expansion area with nearby agricultural activity.

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 part of the justification for excluding lands with poorer soils east of the airport. The city found the facility to be incompatible with urban residential development. In addition, the city noted the issue of safety and interference of airport operations as an even greater concern. (see "Lands east of McMinnville," above.)

3. The city justified the inclusion of the Three Mile Lane area in part based on an identified need for a Neighborhood Activity Center in this vicinity. 1000 Friends of Oregon contends that the Norton Lane subarea would be a better location for a Neighborhood Activity Center. Because 1000 Friends of Oregon presented its reasoning and evidence for including the Norton Lane subarea as a Neighborhood Activity Center which conflicts with the city's justification for inclusion of the Three Mile Lane area, the Commission considers whether a reasonable person could reach the decision the city made in view of all the evidence in the record. *Mazeski*, 28 Or LUBA at 184. The city developed the Neighborhood Activity Center concept in order to create complete neighborhoods, which contain services, commercial use, high- and medium-density housing. The city determined that it is necessary to distribute the Neighborhood Activity Center areas throughout the city. The city has established that the large parcel size and vacant land provide opportunities for successful NAC creation in the Three Mile Lane subarea. The Commission concludes that the choice between the conflicting evidence belongs to the city. *Mazeski*, 28 Or LUBA at 184.

4. 1000 Friends also objected that because there are exception areas and higher-priority resource areas that can reasonably accommodate identified land needs, inclusion of the Three Mile Lane area violates Goal 14 and ORS 197.298. The Commission concludes that the city established why other areas were not able to reasonably accommodate its identified land needs (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 west side of Old Sheridan Road and on the east 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 because high-density housing on Hill Road as part of the NAC would create conflicts with the agricultural land to the west.

The city refers to general arrangements of uses in the Southwest NAC, but does not state that high-density housing will be located adjacent to Hill Road (MGMUP, p. 7-18). In addition, the city addressed Goal 14, factor 7, and ORS 197.732(2)(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 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 Findings, p. 74). The Commission rejects this objection.

Grandhaven and Norton Lane Areas: 1000 Friends objects that 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 city addressed Goal 14, factor 7, and ORS 197.732 (2)(c)(D) and has determined 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). Specific to the Grandhaven area, it is bordered along its entire northwest, north, and east by the North Yamhill River and its associated floodplain. Because resource lands are some distance beyond that border, the potential for conflicts with existing or future agricultural operations are minimized. A similar situation exists with the Norton Lane area, which is bordered to the west, north, and east by the South Yamhill River and its floodplain. Resource lands exist only to the east, some distance beyond this subarea’s border. The Commission rejects this portion of the objection.

Finding 12: The Commission 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): McMinnville’s submittal is incomplete.

Finding 13. The Commission rejects this objection.

In 2004, the Commission 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 objects that the current submittal includes only those portions of the plan and findings that the city and county amended 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 (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.

Finding 13. The city’s comprehensive plan requires the involvement of the Citizen Advisory Committee (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.

Goal 1 is to “develop a citizens involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.” OAR 660-015-0000(1). The city’s submittal does not amend or affect its citizen involvement program. Under those circumstances, the city’s submittal is in violation of Goal 1 only if the submittal includes provisions that are inconsistent with the city’s citizen involvement program. *Homebuilders Assoc. v. Metro*, 42 Or LUBA 176, 196-197 *aff’d Homebuilders Assn. of Metro Portland v. Metro*, 184 Or App 633, 57 P3d 204 (2002). The Commission rejects this objection.

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.

Finding. The Commission rejects 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. The city determined 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 (Ordinance No. 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

Based on the foregoing recitals, the findings and conclusions, and the record in this matter, the Commission hereby approves the city's task 1 and UGB amendment submittal, pursuant to OAR 660-025-0150 and 660-025-0160, and approves the city's request to amend its periodic review work program to add Task 4, the rezoning of the West Hills and West 2nd Street areas from R-1 to R-2, as listed in the Order below.

Order

THEREFORE, IT IS ORDERED THAT:

1. The city's UGB amendment is approved as illustrated in Figure 6 (Exhibit B) of Ordinance 4841.
2. Periodic Review Task 1, Inventory of Commercial Lands is approved.
3. The city shall request that its periodic review work program be amended to include Task 4: rezoning 204 acres in the West Hills and West 2nd 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).

DATED THIS 17th DAY OF NOVEMBER, 2008.

FOR THE COMMISSION:



Richard M. Whitman, Director
Oregon 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 197.650.

Copies of all documents referenced in this order are available for review at the department's office in Salem.

Attachment A

Written Record before LCDC

The department listed the written record before the Commission in the August 23, 2006 director's report. Page 8 and Attachment G. The record consists of:

1. 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse's Exceptions to Director's Report dated September 5, 2006.
2. Department of Land Conservation and Development Director's Report dated August 23, 2006.
3. 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse's appeal dated June 22, 2006.
4. Department of Land Conservation and Development Approval Order 001696 dated May 31, 2006.
5. 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse's objections dated February 17, 2006.
6. 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse's objections dated February 3, 2006.
7. City of McMinnville Ordinance No. 4841 submitted on January 30, 2006.
8. Mark Davis objection dates January 23, 2006.
9. City of McMinnville Ordinance No. 4840 submitted on January 17, 2006.
10. Department of Land Conservation and Development Advisory Comments letter dated December 5, 2005.
11. City of McMinnville Draft Amendments to MGMUP, October 14, 2005.
12. Department of Land Conservation and Development Approval Order 001681 (42-acre UGB expansion for a high school site) dated October 4, 2005.
13. Department of Land Conservation and Development Advisory Comments letter dated May 16, 2005.
14. Department of Land Conservation and Development Partial Approval Order 001661 (rezoning specific parcels) dated April 21, 2005.
15. Land Conservation and Development Commission Partial Approval and Remand Order (001646) dated December 6, 2004.

16. Department of Land Conservation and Development Referral Report dated April 20, 2004.
17. Department of Land Conservation and Development Referral Report dated March 30, 2004.
18. The content of list titled, "The Written Record for this Proceeding" from April 2004 Department of Land Conservation and Development Referral Report, Attachment K-Statement of the Record.