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JUN 1 4 2011

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

June 14, 2011

Appellate Court Administrator
Appellate Court Records Section
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Re: *1000 Friends of Oregon, Friends of Marion County, Lolita Carl, Kathleen Carl, Diane Mikkelson, and Marion County Farm Bureau v. Land Conservation and Development Commission; Opus Northwest, LLC; and City of Woodburn*
CA A148592

Enclosed please find the original Judicial Review Record in the above-entitled matter for filing with the Court of Appeals.

Sincerely,

Gwen Keil
Civil Appeals Assistant

Enclosure

cc: Mary Kyle McCurdy
Corinne C. Sherton
N. Robert Shields

DGF:gik

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that I filed the original Judicial Review Record with the Appellate Court Administrator, Appellate Court Records Section, at 1163 State Street, Salem, Oregon 97301-2563, on June 14, 2011.

I further certify that I served the Judicial Review Record upon Mary Kyle McCurdy, attorney for petitioner, on June 14, 2011, by mailing a copy, with postage prepaid, in an envelope addressed to:

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, FRIENDS OF MARION COUNTY, LOLITA CARL, KATHLEEN CARL, DIANE MIKKELSON, and MARION COUNTY FARM BUREAU, Petitioners, v. LAND CONSERVATION AND DEVELOPMENT COMMISSION, Respondent.	TRANSMITTAL OF ENTIRE RECORD AND CERTIFICATE Appellate Court No. A148592 Agency Case No 11-WKTASK-001802

I, Jerome Lidz, Acting Director of the Department of Land Conservation and Development, pursuant to ORS 183.482(4), list below and transmit herewith the original of the entire record under review in the above proceedings, except that wherein a copy of any document or paper if filed herein, I hereby certify that I have compared the copy with the original and that it is a true and correct copy of the original and the whole thereof.

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Dated this 9th day of June, 2011 in Salem, Oregon

Jerome Lidz, Acting Director
Department of Land Conservation and Development

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

IN THE MATTER OF PERIODIC REVIEW	)	**APPROVAL**
TASK 2 AND THE AMENDMENT OF	)	**ORDER**
THE URBAN GROWTH BOUNDARY	)	**11-WKTASK-001802**
FOR THE CITY OF WOODBURN	)	

This matter came before the Land Conservation and Development Commission (commission) on January 12, 2011 on remand for reconsideration from the Oregon Court of Appeals. The commission considered a new order and findings for a completed periodic review work task and an urban growth boundary (UGB) amendment submitted by the City of Woodburn (city). The city submitted Task 2, "Commercial and Industrial Lands Inventory," of its work program to the department for review pursuant to ORS 197.633 and OAR chapter 660, division 25. The city also submitted the amendment of its UGB to the department for review pursuant to ORS 197.626 and OAR 660-025-0175. The commission, having fully reconsidered the written record, including the city's Task 2 and UGB amendment submittal, and the written argument and oral presentations of the objectors, the city, and the department, now enters the following findings, conclusions, and order.

I. INTRODUCTION

A. Procedural History

1. On October 31, 2005 the city adopted its ordinance 2391, approving an urban growth boundary (UGB) expansion and certain periodic review work tasks.
2. On July 19, 2006 Marion County co-adopted the city's UGB expansion.
3. On August 3, 2006, the department received ordinance 2391 and the county's ordinance co-adopting the UGB expansion. The department determined that the submittal was complete on August 4, 2006.
4. Between August 22 and August 24, 2006, the department received objections from 10 parties. The objections were timely filed.
5. On November 30, 2006, the department referred periodic review Work Task 2 and the UGB amendment to the commission by Order 001714 and notified the city and the objectors.
6. On January 25, 2007, the commission held a hearing on the Task 2 and the UGB amendment, and reached a verbal decision to approve the city's submittal.
7. On February 14, 2007, the commission issued a final written order approving the city's submittal.
8. Objectors 1000 Friends of Oregon, Marion County Farm Bureau, Lolita and Kathleen Carl, Diane and Carla Mikkelson, and the Friends of Marion County appealed the commission's order to the Oregon Court of Appeals.
9. On September 8, 2010, the Oregon Court of Appeals reversed and remanded the commission's order 07-WKTASK-001720. *1000 Friends of Oregon v. LCDC (Woodburn)*, 237 Or App 213 (2010). The court remanded the decision for the commission to explain

10. On November 12, 2010 the department issued a draft revised order providing the department's proposed explanation and reasoning as requested by the court. The department circulated the order to the parties to the appeal requesting written argument concerning the draft revised order.
11. On November 30, 2010, the Court of Appeals issued the appellate judgment in *1000 Friends v. LCDC (Woodburn)*.
12. Between December 16 and 20, 2010, The Marion County Farm Bureau, Opus Northwest, the City of Woodburn, 1000 Friends of Oregon, and Kathleen and Lolita Carl submitted written argument concerning the draft revised order.
13. On December 29, 2010, the department issued a staff report concerning the draft revised order and notified the parties that it would issue a written response to the arguments on January 7, 2011.
14. On January 5, 2011, 1000 Friends of Oregon submitted a letter, requesting that the commission take official notice of certain documents.
15. On January 7, 2011, the department issued a report responding to the written arguments of the parties.
16. On January 10, 2011 the City of Woodburn and Opus submitted a letter opposing 1000 Friends' request to take official notice.
17. On January 12, 2011 the commission held a hearing on the draft revised order and heard argument from the parties and the department. The commission then closed the hearing on the remand, and deliberated to a decision. The commission denied 1000 Friends' request that it take official notice of certain documents, and again approved Task 2 and the UGB amendment, for the reasons set forth in this order.

B. The Submittal

The city's findings in support of its decision are found at R. Item 10, pages 1307 to 1362, and at R. Item 10 pages 1365 to 1454. The latter document is the city's UGB Justification Report, which contains its findings concerning statutes, goals and rules related to Goals 2, 5 and 7 through 14. R. Item 10 page 1331.

1. Residential Lands: The city included approximately 546 gross acres of land in the amended UGB expansion for residential uses (383.5 net acres). The land the city added for residential uses also was planned to include certain public and institutional uses. R. Item 10 page 1448. The residential lands are located to the north, northwest, south, southwest, and east of the city. The lands in the northwest, east and south areas are primarily exception lands, and the lands located in the north and southwest areas are primarily resource land. The residential need analysis, efficiency measures, and locational analysis conducted by the city are summarized in the "Woodburn UGB Justification Report." R. Item 10, at 1365-1448. The city's addition of lands for these uses was not at issue before the court or on remand.

2. Commercial Lands: The 24 net buildable acres of land the city added to its UGB for commercial uses included a small area adjacent to the golf course and two larger areas, one on the west side of 99W and one located in the southwest quadrant that is planned as part of a larger nodal development. R. Item 10, at 1448. The city has justified the inclusion of a relatively small amount of commercial land in the amended UGB as a way to ensure the redevelopment and infill potential of the downtown area and Highway 99W corridor is fully realized. The city established that both of these existing commercial areas are underutilized. The parties on remand have not challenged the amount or location of land in the UGB expansion area planned for commercial uses.

3. Industrial Lands: The city undertook a multi-year evaluation of community vision/goals, economic opportunities, population forecasting, and determination of site needs. The city included 409 gross acres of land in the amended UGB for industrial and office uses. The lands are located in the west and southwest part of the UGB. The largest industrial area in the amended UGB is the Southwest Industrial Reserve (SWIR), which is comprised of large parcels bounded on the south and west by Butteville Road. The city performed a 2020 employment forecast, an Industrial Land Needs Analysis, and a refined Target Industry Site Suitability as well as an Economic Opportunities Analysis (EOA) and Economic Development Strategy (EDS). In these documents, the city established the need for 409 gross acres of industrial land, and the analyses address site sizes, types, and locations under the requirements of Goals 9 and 14 as required by Goal 14 and OAR 660-009. The city's analysis of industrial land needs and its locational analysis also are summarized in the "Woodburn UGB Justification Report," which was adopted as the city's findings in support of its UGB amendment. R. Item 10, at 1319, 1331.

The city applied ORS 197.298 and the Goal 14 location factors to determine which lands to include within its UGB expansion area. The city created eight UGB Expansion Study Areas (a total of 3,984 acres) for the purpose of evaluating the land around Woodburn in accordance with the ORS 197.298 and the Goal 14 location factors. The city based the UGB amendments on the results of the locational analysis, which considered transportation impacts, constraints such as wetland and riparian areas, public facilities availability and serviceability, the soil quality of agricultural lands, and impacts on abutting agricultural lands.

C. The Issues on Remand

The Court of Appeals identified one basic issue in its remand: Did Woodburn include more industrial and office land in its UGB than was necessary to accommodate its land needs for these uses over the 20-year planning period, in violation of Goals 9 and 14? The court did not reach the second issue raised by the parties – whether (assuming that there was a need for additional industrial and office land) the city was required to select different land for inclusion in the UGB pursuant to ORS 197.298 and the locational factors in Goal 14. *1000 Friends of Oregon*, 237 Or App at 216.

The court concluded that the 2007 LCDC order was inadequate for judicial review of the first issue, and the court therefore did not address the second issue. *Ibid.* The court indicated that if the commission's decision to uphold the city's UGB expansion for industrial and office uses relied on "market choice," the commission must explain how that concept is consistent with both

Goal 9 *and* Goal 14, and (in particular) the limitation in Goal 14 that an urban growth boundary not contain *more* than a twenty-year supply of land. *Id.* at 225-226. This order of the commission addresses both issues: the amount of land added, and the location of the expansion area.

D. The Applicable Law

The city adopted Ordinance 2391, amending its UGB, on November 2, 2005. Marion County co-adopted the UGB amendment on July 19, 2006, and the city then submitted the amendment to the department on August 3, 2006. The city elected to apply the "new" version of Statewide Land Use Planning Goal 14, which was adopted by the commission on April 28, 2005 (but which had a delayed effective date unless a local government elected to apply the "new" provisions). The commission adopted rules implementing the "new" Goal 14 on October 5, 2006 (effective April 5, 2007). Those rules, OAR 660-024, do ***not*** apply to the city and county's decisions. The commission's current rules implementing Statewide Land Use Planning Goal 9 were adopted on December 1, 2005, but did not take effect until January 1, 2007 unless a local government elected to apply the rules before that date. Those rules also do ***not*** apply to the city and county's decisions (the prior division 9 rules "Industrial and Commercial Development" do apply).

II. COMMISSION REVIEW

The portions of the commission's 2007 order concerning residential lands and commercial lands were not challenged on judicial review. Those portions of the commission's prior order are repeated, below and have not been changed. They are included for purposes of presenting a complete order and to avoid confusion, but are not at issue in this proceeding on remand. This order also expressly adopts and incorporates by reference the department's written response to the arguments of the parties on remand, dated January 7, 2011, attached as Exhibit A to this order. In the event of any conflict between this order and the department's report, this order shall control.

A. Residential Land

The residential component of the UGB decision comprised 546 acres of land in the amended UGB residential uses and included public and institutional uses. The lands are located in the north, northwest, south, southwest, and east. The lands in the northwest, east and south areas are primarily exception lands, and the lands located in the north and southwest areas are primarily resource land. The residential need analysis, efficiency measures, and locational analysis conducted by the city are summarized in the "Woodburn UGB Justification Report." R. Item 10, at 1367-1454. The commission reviewed the record and the objections and approves the UGB decision related to residential land.

Objections

1. Renaissance Homes (Perkins Coie). This objection asserts the city misconstrued ORS 197.298 and failed to include the eastern part of OGA Golf Course despite identified "high-end" housing need.

Commission Response: The city has exhaustively documented the reasons for not including the subject area noted in the objection. Primary among those reasons is that the soils are almost entirely Class I. This makes the subject area the lowest priority for inclusion pursuant to ORS 197.298. Furthermore, the city found that the identified need for high-end housing could be met on other lands of higher priority. The commission rejected the objection. Order 07-WKTASK-001720 at 2. That decision was not appealed and is not now before the commission.

2. Tukwila Partners (Garvey Schubert Barer). This objection maintains the city failed to include an adequate amount of residential land and erroneously failed to include 277 acres around the OGA Golf Course for "high-end" housing.

Commission Response: The city identified the need for 1,074 "high-end housing units" (defined as having a selling price of $212,500 or higher, in 1999 dollars), and that need is proposed to be mostly met through an urban growth boundary amendment near the OGA Golf Course. The lands proposed for inclusion in this area will accommodate approximately 825 high-end units at 5.5 units per net buildable acre. The city found that the identified need for high-end housing also could be met on other lands of higher priority. The commission rejected this objection. Order 07-WKTASK-001720 at 2. That decision was not appealed and is not now before the commission.

3. Fessler (Saalfeld Griggs). This objection concerns the Woodburn Development Ordinance limitation on residential annexations to a five-year supply. The objector argues that the city erred by requiring that there be less than a five-year supply of land in a particular residential designation before annexing additional land from the UGB.

Commission Response: The commission finds that there is no statutory or rule violation in this action, and the five-year supply requirement will serve to ensure that development occurs in an orderly and efficient manner, and that there are adequate public facilities and services available in accordance with Goal 14. The commission rejected this objection. Order 07-WKTASK-001720 at 3. That decision was not appealed and is not now before the commission.

B. Commercial Land

Woodburn determined that it may need up to 310 net buildable commercial acres to meet 2020 needs. However, as a matter of policy, the city determined that most future commercial employment need would be met through intensification, redevelopment and infill of vacant, partially vacant, and redevelopable lands already within the UGB. The city concluded a small UGB expansion of 22 acres was needed to provide commercial opportunities in and near future residential areas, but decided to meet the remaining need on lands within the existing UGB. R. Item 10, at 1391-92.

The commission received no objections regarding Woodburn's findings and conclusions regarding commercial employment lands, and the proposed UGB amendment; it approved the UGB decision related to commercial land and that decision was not appealed and is not now before the commission.

C. Amount of Industrial and Office Land

A number of objectors assert that the City of Woodburn included more land in its UGB expansion for industrial and office uses than was necessary to accommodate its needs over the 20-year planning period in violation of Goal 9 or 14. This section of the commission's order provides its findings of fact, reasoning, and conclusions concerning this aspect of the city's decision.

1. Legal Standard

The applicable legal requirements are found in ORS 197.712, Goal 9 (and OAR 660-009 (2005), and Goal 14. As explained above, OAR 660-024 (the commission's Goal 14 rules for UGB expansions) and the current version of OAR 660-009 did not apply to the city and county decisions to amend the UGB, and are not applicable legal standards for the commission's review.

ORS 197.712 requires, in pertinent part, that:

> (2) By the adoption of new goals or rules, or the application, interpretation or amendment of existing goals or rules, the Land Conservation and Development Commission shall implement all of the following:
>
> (a) Comprehensive plans shall include an analysis of the community's economic patterns, potentialities, strengths and deficiencies as they relate to state and national trends.
>
> (b) Comprehensive plans shall contain policies concerning the economic development opportunities in the community.
>
> (c) *Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies.*
>
> (d) Comprehensive plans and land use regulations shall provide for compatible uses on or near sites zoned for specific industrial and commercial uses.
>
> * * *
>
> (g) *Local governments shall provide*:
>
> (A) Reasonable opportunities to satisfy local and rural needs for residential and industrial development and other economic activities on appropriate lands outside urban growth boundaries, in a manner consistent with conservation of the state's agricultural and forest land base; and
>
> (B) *Reasonable opportunities for urban* residential, commercial and *industrial needs over time through changes to urban growth boundaries.*
>
> (3) A comprehensive plan and land use regulations shall be in compliance with this section by the first periodic review of that plan and regulations." (Emphasis added).

Goal 9 requires that comprehensive plans provide opportunities for a variety of economic activities, based on inventories of areas suitable for increased economic growth taking into consideration current economic factors. Like ORS 197.712, the goal requires that comprehensive plans provide for at least an adequate supply of suitable sites, and limit incompatible uses to protect those sites for their intended function.

OAR 660-009(2005) requires the city to identify the number and acreage of sites needed to accommodate industrial and commercial uses to implement plan policies. "Plans shall designate land suitable to meet the site needs identified [as necessary to meet projected employment growth]." OAR 660-009-0015 and 0025. The sites must reflect the requirements of expected uses, based on the city's analysis of its economic development potential and locational advantages and disadvantages. This analysis is set forth in the city's Economic Opportunities Analysis (EOA). Under OAR 660-009-0025 (2005) "[*t*]*he total acreage of land designated in each site category shall at least equal the projected land needs for each category during the 20-year planning period.*"

Goal 14 requires that:

> "Establishment and change of urban growth boundaries shall be based on the following: (1) *Demonstrated need to accommodate long range urban population,* consistent with a 20-year population forecast coordinated with affected local governments; *and* (2) *Demonstrated need for* housing, *employment opportunities*, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need." (Emphasis added).

2. Summary of Local Actions

In 2001, Woodburn prepared an economic development strategy outlining community actions to improve economic conditions for residents. The city council endorsed a strategy comprising seven parts:

- Utilizing the city's comparative locational advantages to attract certain industry and office segments (explained in EOA);
- A policy intent to avoid becoming bedroom community;
- A desire to provide higher wage jobs in the future;
- Identifying target industries, while not limiting recruitment or support to those industries;
- A policy intent to assure adequate land, infrastructure, amenities, and workforce for the target industries;
- A commitment to strategic economic development to promote livability; and
- A desire to provide a range of housing to balance a range of employment opportunities. (R. at 706-07.

Woodburn also adopted specific, interrelated objectives concerning the UGB amendment:

- Implement the Economic Opportunities Analysis (EOA) and Economic Development Strategy;
- Improve transportation connections;
- Provide buildable land, improve efficiency, connectivity, and livability;
- Protect natural resources; and
- Minimize impacts to farmland. R. Item 10, at 1377-78.

The city worked with Marion County to develop an updated coordinated population forecast through 2020 (adopted in 2004), and worked with its experts to develop an employment forecast for the corresponding period. The adopted population forecast is for 34,919 in the year 2020, and is based on a 2.8% average annual population growth rate applied to the city's 2000 census population of 20,100. Marion County Ordinance No. 1233, Exhibit A (findings), at page 2.

The city's findings for ORS 197.712, Goal 9 and Goal 14, are contained in its "UGB Justification Report." The UGB Justification Report explains how the city developed its employment forecast. The city's employment in 2000 was 10,388 employees. The city's experts (ECONorthwest) projected 2020 employment for the city of between

> "16,370 and 18,762, - or annual growth rates ranging from 2.3 - 3.0 %. The Council chose the higher projection [8,374 new employees by 2020, and 3.0%] for several reasons:
>
> - First, Woodburn currently has a relatively low employment-to-population ratio, when compared with the county as a whole. Using covered employment figures, Woodburn has 5% of total county employees - but 7% of the county population. Woodburn has only 1 job for every 2.4 residents, compared with 1 job for every 1.8 residents in Marion County. Thus, there is a substantial imbalance between jobs and housing in Woodburn - a situation that the city addresses in the Woodburn Economic Development Strategy (EDS). If Woodburn's economic development strategy is successful and Woodburn is able to attract 8,762 new jobs to go along with planned population growth, then Woodburn will have a more reasonable ratio of 1 job for every 1.9 people.
>
> - Second, Woodburn's projected annual employment growth rate is reasonable given the City's I-5 location and the availability of flat, vacant and serviceable land within the [southwest industrial reserve] (SWIR) that will be master planned, before annexation and urban development can occur. As noted in Winterbrook's February 16, 2005 memorandum, Woodburn's comparative advantages are similar to those of Wilsonville, which attracted substantial economic growth over the last 25 years and has more jobs than residents.
>
> * * *
>
> Contrary to views expressed by 1000 Friends and FAN, Woodburn's projected annual population growth rate of 2.8% AAGR [Average Annual Growth Rate] is proportionate to its projected annual employment growth rate at 3.0% AAGR.

- Third, Woodburn Transportation Systems Plan (TSP) and Interchange Management Area Overlay District are based on the high employment projection of 18,762. If Woodburn were to attract fewer than the projected number of jobs, then impacts on the interchange would be reduced and interchange improvements would have a longer life. On the other hand, if Woodburn were to underestimate job growth near the interchange, and provide for lesser interchange improvements, then Woodburn would face a potential moratorium on higher employment growth under the City's IMA (Interchange Management Area) Overlay District."

R. Item 10, at 1388-89 (footnotes omitted).

Although the city ultimately chose to plan for employment growth at the high end of the range projected by its experts, its experts initially used a medium growth scenario to develop a preliminary estimate of land need. Based on a medium employment forecast of 7,140 new jobs through 2020, of which 6,346 would be accommodated in new buildings on vacant lands, the city's experts initially determined that it would need about 265 net developable acres of new land for office and industrial uses, "Site Requirements for Woodburn Target Industries." R. Item 10, at 1278 (Table 1 (commercial and public land needs are not included in the acreage total)).

A number of objectors, including 1000 Friends of Oregon, argue that this *initial* estimate by the city's experts demonstrates that Woodburn included too much land in its UGB for industrial and office uses. The commission finds that this argument is flawed for the following reasons:

First, the objectors fail to recognize that the city ultimately chose to plan for a higher rate of employment growth (3 percent instead of 2.8 percent), leading to an estimated employment increase of 8,374 jobs over the 20-year planning period, seventeen percent above the initial estimate in the ECONorthwest report. If the figure of 265 net developable acres is adjusted to reflect the higher employment target ultimately chosen by the city and approved by the county (8,374 jobs instead of 7,140) the net developable acres needed for industrial and office uses is 17 percent higher, or 311 net developable acres - based *solely on population and employment projections* and before considering needed sites and site requirements of target industries.

Second, and more fundamentally, the city based its UGB expansion for office and industrial uses on its analysis of the number and types of sites likely to be needed over the planning period to achieve its employment projection. It based its analysis on its assessment of target employment categories in its Economic Opportunities Analysis (EOA), and the projected number of sites and site requirements of those categories of uses. This approach to determining land needs for employment uses is expressly allowed under Goal 9, the commission's Goal 9 rules and ORS 197.712.

Third, the city's EOA is based on expert analysis of the number of sites and the site requirements needed for the city to meet its goals for future employment. There is little contradictory evidence in the record. In addition to its EOA, the city asked ECONorthwest to interview regional realtors and developers to obtain more specific information on necessary site characteristics (Site Needs Memorandum, Appendix A). ECONorthwest then also conducted a

literature review regarding trends in industrial and business park development to substantiate the projections for needed sites and site characteristics. Id. ECONorthwest used its analysis, interviews and literature review to estimate the number of sites by site class and locational requirements needed to accommodate the forecasted employment for the city.

In the end, the city identified a total need for 42 sites, in a variety of site sizes. The total acreage of land for these sites was 486 acres. R. Item 10, at 1392 (Table 1). Of the total need for sites over the 20-year planning period, the city determined that 23 (mostly small) sites with a total of 45 acres, were available on lands within the existing UGB. R. Item 10, at 1394 (Table 2). This left a shortfall of 19 (mostly larger) sites. *Id.* The remaining need for 19 sites was met through the city's UGB expansion into its Southwest Industrial Reserve, which contains 19 sites with 362 net developable acres, including one large lot site of approximately 96 acres, and another medium-sized site of approximately 65 acres. R. Item 10, at 1416 (Table 14 (net acres for SWIR)).

3. Commission Findings of Fact and Reasoning

While the city expressly elected ***not*** to base its determination of land need for industrial and office uses on a straight employee-per-acre method, the commission finds that the relatively close correlation between the city's projected land need based on its employment projection and employee-per-acre ratios (311 net developable acres), and the acreage contained in the 19 sites it determined are needed based on its EOA and site requirements analyses (362 net developable acres) provides important corroboration for the city's ultimate decision concerning the amount of land needed for industrial and office uses. The more a city's land need for employment based on its analysis of economic opportunities and sites diverges from what would be predicted based solely on forecasted population and employment growth and employee-per-acre ratios, the more thoroughly the city will need to substantiate its economic opportunities analysis and resulting site needs. In effect, the population and employment projections (Goal 14, factor 1), serve as an elastic constraint on a community's projected land needs based on the aspirations and opportunities (Goal 14, factor 2 and Goal 9), as documented through an EOA and through site requirements. The further the two diverge, the stronger the substantiation required that future opportunities are real (in the sense of land need under Goal 14, factor 1) and not speculative.

In this case, the commission notes that the two numbers are relatively close -- 311 net developable acres based solely on population and employment projections and ratios, and 362 net developable acres based on the city's analysis of target industries and site requirements for those industries. The commission finds that the first projections support a conclusion that the city's UGB expansion for industrial and office uses contains an amount of land that is reasonably related to both its forecasted growth (Goal 14, factor 1) and its employment opportunities (Goal 14, factor 2, and Goal 9).

As noted above, the city expressly elected (as allowed by Goal 9) to base its estimate of land need for employment opportunities on its analysis of economic opportunities. That analysis identified a set of target industries, based on the city's relative economic strengths and weaknesses. In turn, the city identified the likely site requirements for those target industries. The city's summary of its analysis is as follows:

"Table 4 [R. Item 10, at 1287] summarizes the number of sites by size class Woodburn will need to implement its economic development strategy. The land needs analysis concluded that Woodburn will need about 370 acres to accommodate 7,140 new employees between 2000 and 2020. Table 4 includes sites that total over 500 acres [the actual acreage for this lower level of employment growth in Table 4 is 486 acres, R. Item 10, at 1287]. Site needs can be conceived as a pyramid with few large sites at the top and many smaller sites at the bottom. Such a land inventory scheme is consistent with OAR 660-009 which requires cities to maintain an adequate inventory of sites. The table identifies a need for five sites of 25 acres or larger. While inclusion of such sites in its land inventory will exceed the identified land need based on the medium range employment forecast, an adequate supply of sites will provide Woodburn more flexibility in its economic development efforts and by accommodating the siting requirements of industries targeted in the EOA.

Table 4. Summary of estimated site needs by size, Woodburn 2000-2020

Site Size (acres)	Number of Sites	Average Site Size	Estimated Acres
100 or more	1	125	125
50-100	1	70	70
25-50	3	35	105
10-25	5	15	75
5-10	7	8	56
2-5	10	4	40
Less than 2	15	1	15
Total	42	11.6	486

"This hierarchy of need is consistent with the requirements of Goal 9 and OAR 660-009. Specifically, OAR 660-009-0015(2) requires that 'industrial and commercial uses with compatible site requirements should be grouped together into common site categories to simplify identification of site needs and subsequent planning.' Moreover, 660-009-0025(1) requires plans to identify needed sites:

'The plan shall identify the approximate number and acreage of sites needed to accommodate industrial and commercial uses to implement plan policies. The need for sites should be specified in several broad "site categories," (e.g., light industrial, heavy industrial, commercial office, commercial retail, highway commercial, etc.) combining compatible uses with similar site requirements. It is not necessary to provide a different type of site for each industrial or commercial use which may locate in the planning area. Several broad site categories will provide for industrial and commercial uses likely to occur in most planning areas.'

"Thus, the administrative rule that implements Goal 9 recognizes that sites designated for employment can accommodate different types of employment. This is made explicit in OAR 660-009-0025(2): 'Plans shall designate land suitable to meet the site needs identified in section (1) of this rule. The total acreage of land designated in each site category shall at least equal the projected land needs for each category during the 20-

year planning period.'"

"Table 4 assumes that most site needs will be for industrial uses. Commercial and office needs will be met largely through infill and redevelopment, and public uses will be largely met on residential land. The analysis assumes that limited office and supporting commercial uses will be met on industrial lands. This is consistent with OAR 660-009-0025(2) which states 'jurisdictions need not designate sites for neighborhood commercial uses in urbanizing areas if they have adopted plan policies which provide clear standards for redesignation of residential land to provide for such uses.' Discussions with City staff have identified a special need for a single commercial node the location of which has not been identified at this point. "

"Table 4 provides a preliminary allocation of land needed for employment by site size."

ECONorthwest, "Site Requirements for Woodburn Target Industries," at 8-10. R. Item 10, at 1287-1288.

This summary, and the accompanying table, are largely repeated in the city's UGB Justification Report. R. Item 10, at 1391-92. The city determined that in order to meet the likely site requirements of its target industrial and office uses, it had a need for 19 sites in its UGB expansion area, containing 362 net developable acres. R. Item 10, at 1395 (Table 3; note, column 3 of this table includes sites within both the existing UGB and the expansion area). The city also found that this amount of land would be sufficient to accommodate its higher employment projection. Id. at note 17.

The city undertook a buildable land inventory addressing residential and employment uses. (R. Item 10, at 1165-1194). The city identified an industrial/employment land inventory of sites within its existing UGB comprising 23 sites totaling 47 buildable acres. R. Item 10, at 1393, 1404.

Woodburn's determination of land needs started with the EOA, the economic development strategy, and city policies. Site needs and the amount of land necessary are targeted at fulfilling the city's objectives to bring higher wage jobs to the community. R. Item 10, at 706. The city's economic development program is supported by the EOA and the economic development strategy, and is encouraged by policy directives in Goal 9 and ORS 197.712. R. Item 10, at 1315.

In the EOA, the city identified 13 target industries as well as the site characteristics that are typical of those industries. R. Item 10, at 1059-64. The target industries include office as well as industrial uses. Before the commission, 1000 Friends argued that those office uses could be accommodated within the city's existing UGB. However, that argument ignores the fact that the city already had decided to accommodate almost *all* of its future land need for commercial (retail) uses within its existing UGB -- totaling over 200 acres of land accommodated on vacant and redevelopable land. Given the city's aggressive effort to focus future retail/commercial growth within the existing UGB, its decision to plan for future office development on lands outside of the existing UGB is reasonable (particularly given the office park types of uses

identified in the city's EOA - requiring larger sites), and consistent with the requirement of Goal 14 to demonstrate that land needs cannot reasonably be accommodated within the existing UGB.

The city documented the site requirements for target industries. R. Item 10, at 1278-87. The city relied on expert opinion (R., Transcript, p. 52, 55) to identify the number of sites in a range of site sizes needed to achieve the city's economic objectives based on the documented economic opportunities available to the city. The city found that in order to accommodate long range population consistent with its coordinated population forecast, and its demonstrated need for employment opportunities, it had an employment land need of approximately 486 acres of land in a range of types of sites with particular characteristics (size, proximity to freeway access, etc.). R. Item 10, at 1392. After analyzing sites within its existing UGB along with sites in its proposed expansion area, the city elected to proceed with the addition of 409 gross acres of land for employment opportunities. R. Item 10, at 1393-1395.

ORS 197.712, and Goals 9 and 14 establish how local governments in Oregon plan to ensure that they provide a land supply for the future employment needs of their communities. The commission's rules in OAR chapter 660, division 9 provide additional detail to implement Goal 9. Under Goal 14, factor 1, local governments must include an amount of land within urban growth boundaries that is sufficient to accommodate long-range urban population. Under Goal 14, factor 2, local governments also must include sufficient land for employment opportunities. This second factor of Goal 14 links to ORS 197.712 and Goal 9, which further detail what local governments must plan for and how local governments determine the amount and types of land that are needed for employment opportunities. The fundamental requirements of Goal 14, factor 2, Goal 9 and ORS 197.712 is that local governments must maintain at least an adequate supply of suitable sites for employment opportunities based on their analysis of their competitive advantages and the limitations of adequate public facilities. Goal 14, factor 1, also provides context for the *amount* of employment land, in that the amount of land within an urban growth boundary must be adequate to accommodate long-term urban population, consistent with a 20-year population forecast coordinated with affected local governments. Thus, while a local government must provide at least an adequate supply of sites to meet the need of its current and projected future population for employment, it may not add more land than is needed over a 20-year period for employment or any other purpose.

A local government's total land supply is the result of a series of policy choices. It is not a math formula. Goals 9 and 14, and division 9 task local governments to explore options and assemble the facts needed to inform the policy choices. Local governments must make findings supported by substantial evidence, and explain their policy choices. The local governments use an economic opportunities analysis to explore and document the information, analyses and series of policy choices that determine the total land supply for employment opportunities under Goals 9 and 14. The local government uses the EOA to define projected employment, community objectives, likely opportunities given comparative strengths and weakness, and the number and types of suitable sites needed to capture those opportunities.

Considerable attention has been paid at both the local level and before the commission about whether the city overestimated its land need and included more land in the UGB than is justified for the 20-year planning period. The discussion focuses on application of a target industries

methodology, the identification of site characteristics and selection of needed sites, and the concept of "market choice."

The commission finds, first, that the city's estimate of the amount of land needed for employment uses during the 2000-2020 planning period is consistent with Goal 14, factor 1 (demonstrated need to accommodate long range urban population, consistent with a 20-year coordinated population forecast) for the reasons explained above. The city and county have prepared and adopted an updated population forecast for the city. That forecast projects a 2.8 percent average annual population growth rate for the city. The city also has adopted an updated employment forecast, based on the work of its experts. That forecast projected a range in average annual growth in employment of up to 3 percent through 2020. The city chose the top end of the range, based on its policy choice to encourage a greater degree of balance between its population and employment, relative to the rest of Marion County, as well as its determination that this rate of growth is feasible over the planning period (as documented in its EOA), and its determination that encouraging industrial development west of I-5 is necessary to support needed transportation improvements. The commission finds that the city's policy choices and determinations are consistent with Goal 14, factors 1 and 2, are based on an adequate factual base, and that the city has provided an adequate explanation of how it derived its estimate of future population and employment during the planning period.

The city's population and employment forecasts provide context for the city's determination of its need for employment opportunities under Goal 14, factor 2 and its determination of needed sites under Goal 9. The commission finds that there is a reasonable relationship between the city's estimate of 8,374 new jobs during the 2000-2020 planning period and the amount of land it has determined is needed for employment opportunities based on its analysis of economic opportunities, target industries and suitable sites. The commission concludes that for these reasons, and the reasons set forth in the department's response to the written argument of the parties (dated January 7, 2011 and expressly incorporated by this reference) that the amount of land the city has added to its UGB is consistent with both Goal 9 and Goal 14. The city has not added more land than needed during the 20-year planning period. Nor, despite some contradictory statements in the city's planning documents, has it added land in order to provide for "market choice" (as explained in more detail below). Instead, the amount of land included in the UGB expansion is based on a reasonable projection of what target industries the city is most likely to succeed in attracting or having expand during the planning period, and the site requirements of those industries (the types of sites companies in those industries typically require in order to locate in a community). Finally, as noted above, the commission also finds that the city's estimate of land need is reasonably related to its projections of population and employment growth during the planning period.

The commission further finds that the city has demonstrated compliance with Goal 14, factor 2 and Goal 9 (and the commission's 2005 Goal 9 rules) through its analysis of target industries and suitable sites needed to provide employment opportunities that are reasonably likely to generate the employment needed for the city's current and projected future population. In this instance, the target industries methodology the city used is appropriate and complies with Goal 9 and Goal 14, factor 2. Using an employees-per-acre methodology is not required to demonstrate compliance with Goal 9 or Goal 14, factor 2, and the city did not use it to demonstrate total land need. The city's decision to use a targeted industries methodology instead of an employees-per-acre is

permissible under Goals 9 and 14. As explained above, the city's decision to plan for employment opportunities rather than projected employment based on population growth does not mean that the city added more land than it needs for employment during 2000-2020.

Goal 9 and Goal 14, factor 2, and the commission's Goal 9 rule (OAR 660-009-0025(2)(2005)) require the city to plan for an amount of land in each site category that at least equals the projected land needs for each category during the 20-year planning period. The city projected land needs by size class –tied to the particular requirements of its target industries, and demonstrated a need for approximately 409 gross acres of land after accounting for sites within the prior UGB. The commission finds that the city's analysis complies with Goals 9 and 14, as well as OAR 660-009 (2005).

The city's findings and the commission's prior order do mention providing sites to allow for "choice" in several places. R. Item 10, at 1392. "Market choice" is a term of art that refers to redundant sites provided to meet a *short-term* need for employment land. Market choice is recognized under the commission's *current* Goal 9 rules (OAR 660-009-0025(7)) through consideration of land availability to address issues such as a lack of ownership diversity. The commission discussed "choice", "market choice" and how the city determined its land supply. (R. Transcript, p. 51) in its first order on the Woodburn UGB expansion. However, the commission expressly finds that the city did not provide "market choice" in its determination of long-term (20-year) need of land for industrial and office uses. That is demonstrated most directly by the fact that the city planned for only *one* site in each of its two largest site classes (100 acres, and 50-100 acres). R. Item 10, at 1395 (Table 3). *No* market choice is provided with *one* site in these two largest site categories. It is also shown indirectly by the fact that the total amount of land the city has added to its UGB for industrial and office uses (362 net developable acres based on employment opportunities and site requirements) is reasonably related to its projection of 311 net developable acres of land need based on projections of future population employment using employee per acre ratios. R. Item 10, at 1391-1392. As noted above, the more the amount of land identified for employment under an EOA diverges from the amount of land predicted based on projected population growth, the more the commission will scrutinize a local decision to determine if the community is planning for more than a 20-year land supply. In this case, notwithstanding the city's references to choice in some parts of its planning documents, the commission is confident based on the relatively close correlation between the totals yielded by the two methods and the explanation provided in the city's analysis of target industries and site requirements that the city did not plan for more than a 20-year land supply for employment.

Before the commission on remand, 1000 Friends argued that the city's findings fail to "connect the dots" between its analysis of target industries, suitable sites and site requirements, and a 20-year land need. That is not correct. The city's UGB Justification Report (which are the city's findings for compliance with Goals 9 and 14) beginning at R. Item 10, at 1391 and continuing through R. Item 10, at 1395, describe its industrial (including office) land needs in terms of its needs through 2020 (a twenty-year period from when it commenced its work on its UGB). The city identifies the sites required by the target industries, the sites available within its existing UGB, and the sites needed in a UGB expansion. The city's findings provide the substantial reasoning and explanation needed for the commission to be able to review its decision, and the

city's findings are supported by substantial evidence in the record as a whole for the reasons stated above.

The city's determination of need for employment lands complies with the commission's division 9 rules. OAR 660-009-0015(1) requires that the EOA include a review of trends, an identification of required site types, an inventory of employment lands and an assessment of the community's economic development potential. The record shows that the city completed each of these required elements of an EOA. The documentation includes: 1-A The Woodburn Economic Development Strategy (R. Item 10, at 699); 4-A Economic Opportunities Analysis (R. Item 10, at 1019); 4-B Population and Employment Projections (R. Item 10, at 1077); and 4-H Site Requirements for Target Industries (R. Item 10, at 1275).

These documents contain the necessary facts and analysis to satisfy the commission's Goal 9 rules, including the requirements of OAR 660-009-0015 through 660-009-0030 (2005). The city based its planning effort on substantial evidence and coordinated with other local governments as required by making use of the best available information including trends and expert evaluation. The city determined that the number and types of industrial sites needed for the 20-year planning period was 42 sites, in a range of site sizes. R. Item 10, at 1392.

The city's decision also complies with Goal 9. Goal 9 requires that "...comprehensive plans for urban areas shall: 1. Include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends; 2. Contain policies concerning the economic development opportunities in the community; 3. Provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies; 4. Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses."

By complying with the administrative rule that implements Goal 9, the city has conducted the analyses and made the findings to demonstrate compliance with the goal. In addition to the materials provided in support of compliance with the administrative rule, the record includes: the city's Findings of Fact (R. Item 10, at 1307) and UGB Justification Report (R. Item 10, at 1365). These documents contain the necessary findings of fact, establish the city's Goal 9 plan policies and specify plan implementation policies to meet the requirement of Goal 9 to provide opportunities for a variety of economic activities, and provide for at least an adequate supply of suitable sites. The city's adopted plan also limits incompatible uses, in order to protect the designated sites for their intended function.

The city's decision also complies with Goal 14, factors 1 and 2. Goal 14 requires that "Establishment and change of urban growth boundaries shall be based on the following: (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need."

The city demonstrated compliance with Goal 14, factor 1 by using the Marion County coordinated population forecast as the initial step in its planning process (R. Item 10, at 1090-93), and selecting an employment projection that is proportional to and reasonably related to its population growth rate (R. Item 10, at 1093-95). As explained above, the city made a reasoned policy choice to plan for employment growth that would exceed projected population growth over the planning period. The city did this in order to address an existing relative imbalance in population to employment in the city. The city demonstrated consistency with the population forecast by establishing a plan policy to improve the balance of jobs to the forecasted population by taking deliberate actions to accelerate job growth to better accommodate the needs of the long-range urban population. R. Item 10, at 658-62. The city complied with Goal 14, factor 1 by developing an employment growth projection over the 20-year planning period that was related to its coordinated population forecast (R. Item 10, at 1095) and by establishing plan polices to improve the balance of jobs to population (R. Item 10, at 699, 1388), and to improve the wage and skill levels of the local work force. R. Item 10, at 699, 706, 1377.

The city complied with Goal 14, factor 2 by identifying its employment opportunities through an economic opportunities analysis, and by establishing the site requirements for target industries needed to accomplish the 20-year economic development strategy and associated city policies.

The commission finds that the city identified a reasonable set of site requirements for its target industries. The portfolio of sites chosen by Woodburn is a reasonable estimation, based on expert opinion, for the city to rely on as to its employment opportunities and corresponding land needs for the planning period.

The commission finds that the city's use of target industries to identify employment need over the planning period is consistent with the city's population and employment projections. Employment forecasts inform policy decisions and afford local governments the ability to plan a future different from historical trends.

Finally, the commission also finds that the city's determination of employment land need complies with ORS 197.712. ORS 197.712 provides in part:

> "the Legislative Assembly finds and declares that, in carrying out statewide comprehensive land use planning, the provision of adequate opportunities for a variety of economic activities throughout the state is vital to the health, welfare and prosperity of all the people of the state.
>
> (2) By * * * the application, [or] interpretation * * *of existing goals or rules, the Land Conservation and Development Commission shall implement all of the following:
>
> (c) Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies."

Goal 9's emphasis on employment opportunity is consistent with Goal 14's two need factors and ORS 197.712. As explained above, Goal 14, factor 1 requires that the amount of land within a

UGB for employment purposes be reasonably related to the local government's coordinated population projection. Goal 14, factor 2 and Goal 9 (along with ORS 197.712) further refine the state's policy by requiring that this amount also provide sufficient land and types of land to allow communities to meet their future need for employment opportunities and suitable sites that provide those opportunities.. The commission applies Goal 9 in concert with Goal 14. *Benjfran Development v. Metro Service Dist.*, 95 Or App 22, 26, 767 P2d 467 (1989).

As a practical matter this means that to support policy decisions, local governments must develop an adequate factual base that demonstrates that the land within the urban growth boundary will provide at least an adequate supply of suitable sites that are reasonably likely to lead to the employment opportunities needed for the community, given its projected long-range population and its policy choices. The overall amount of land may not exceed the total land need over the 20-year UGB planning period.

One other aspect of Goal 9 that bears on both the amount of land for employment opportunities, and the requirement to provide an adequate supply of suitable sites, is the cost and risk of planning, financing and developing public infrastructure. While this aspect of Goal 9 has not been a major issue in this matter, it can play an important role in directing a community to consider the fiscal feasibility of alternative ways of providing opportunities for future employment. This aspect of Goal 9 is intended to "daylight" the true costs of future growth options to inform local policy decisions, particularly the costs of expansion relative to the costs of redevelopment and infill.

For the reasons set forth above, the commission finds and concludes that the city's determination of the amount of land for industrial and office uses to include within its UGB expansion provides at least an adequate supply of sites to meet plan policies, and has not exceeded an amount needed over the 20-year planning period.

4. Conclusions

Based on its reviews of the record, the argument of the parties and the department's responses to the arguments, and the reasoning set forth above, the commission concludes as follows:

1. The amount of land the city added to its UGB for industrial and office uses complies with Goals 9 and 14 because it identifies an adequate supply of suitable sites for a 20-year planning period.

2. The city did not plan for an "oversupply" of employment sites by use of "market choice" or something similar. The commission finds that the amount of land the city has included within its UGB for industrial and office uses is reasonably related to the city's coordinated forecast of long-range population growth over the 20-year period as well as its forecast of employment growth over the same period.

3. The amount of land the city has included within its UGB for employment opportunities and suitable sites complies with the Goal 14 need factors 1 and 2 because the city's planning process included an employment forecast consistent with its coordinated population forecast.

4. The commission finds that Woodburn's total land supply determination is reasonable, complies with Goal 9, and complies with the Goal 14 need criteria. The city's determination concerning the amount of land needed for industrial and office uses is consistent with its coordinated population forecast (using similar AAGR for population and employment forecasts to achieve policy objectives), and provides an adequate supply of suitable sites including a mix of site sizes and types. The sites have characteristics typical of the target industries, as documented by the city's analysis of site requirements.

5. Other Objections

This subpart of the commission's order on remand addresses other objections concerning the city's decision on employment lands, and summarizes its responses to the main objections of 1000 Friends.

1. OPUS NW (Johnson and Sherton). This party objects to the lack of a deadline to complete the master plan requirements for the SWIR prior to annexation and contends the provision violates the OAR 660-009-0025 requirement to provide sufficient serviceable lands.

Commission Response: The city implemented a two-step master planning process for land in the SWIR prior to annexation. The first step, embodied in Policy E2.2, requires that the entire SWIR area be master planned for the provision, sizing, and general layout of water, sewer, storm drainage and transportation facilities, and that this be approved by the city council. The city has adopted a public facilities plan and a transportation system plan that address the requirements of Policy E2.2. Policy E-1.6 requires a more detailed second step site specific master plan. This policy is designed and implemented through the Woodburn Development Ordinance to ensure that parcels of adequate size are reserved to meet the needs of the targeted industries identified in the EOA. Therefore, there is not a conflict between these two requirements.

In addition, the commission finds that these master planning requirements are not inconsistent with OAR 660-009-0025(1)–(4). While the objection does not contain an allegation of specific rule violations, the commission finds that the master planning requirement will not affect the designation of needed industrial sites nor will it affect the serviceability of the sites. Rather, it ultimately ensures their serviceability and further ensures that needed site sizes and types are preserved for the intended uses.

2. 1000 Friends. This party's objection contained several parts.

a. Employment projections

1000 Friends objected that the city projected there would be 18,762 employees in the year 2020, reflecting a three percent average annual growth rate (AAGR). The city and county have adopted a population projection that provides for a 2.8 percent AAGR. 1000 Friends argues that the job growth projection is unrealistic, in that Woodburn would be taking 23 percent of all the jobs forecasted for Marion County during the planning period (8,374 out of 36,199 forecast jobs).

Commission Response: The city found that the current jobs/population ratio of one job per 2.4 residents is lower than the one job for 1.8 residents for the rest of Marion County, which has created a jobs/housing imbalance that the city and county seek to correct through the city's Economic Development Strategy. The city also determined that the projection is reasonable given the city's I-5 location and the availability of relatively flat, serviceable land within the SWIR. R. Item 10, at 1388. The city has coordinated its population and its employment forecasts with Marion County, and the county has co-adopted the UGB amendment and has endorsed the city's policy choice in its findings. The commission finds that the city has provided substantial reasoning supporting its policy choice, and that there is substantial evidence in the record as a whole supporting the city's determination that it should plan for a three percent average annual increase in employment over the planning period.

b. Coordination

1000 Friends asserts that the city failed to coordinate properly with nearby cities in Marion County, Metro, Wilsonville, and other Marion County cities as part of this process, and has therefore violated Goal 2.

Commission Findings: The city coordinated extensively with Marion County during this process, as required. Furthermore, the objector provides no explanation of how the listed jurisdictions will be affected or how Woodburn failed to consider their concerns. Metro did submit a letter to the city, and the city took Metro's comments into consideration in developing its economic opportunities analysis. For the reasons set forth here and as discussed in more detail below, the commission finds the city complied with the coordination requirements of Goal 2.

Goal 2 provides "[e]ach plan and related implementation measure shall be coordinated with the plans of affected governmental units."[1] As used in Goal 2, a comprehensive plan is "coordinated" once "the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." ORS 197.015(5). LUBA has described the coordination obligation as:

> "We have explained on many occasions that the coordination obligation does not mean that local governments must 'accede to every request' made by an affected governmental agency. *Brown v. Coos County*, 31 Or LUBA 142, 146 (1996); *Waugh v. Coos County*, 26 Or LUBA 300, 314 (1993). However, the obligation imposed by Goal 2 and ORS 197.015(5) goes beyond the county's obligation to address and demonstrate compliance with other applicable approval criteria. The coordination obligation requires an exchange of information and an attempt to accommodate the legitimate interests of all affected

[1] Goal 2 defines "Affected Governmental Units" as "those local governments * * * which have programs, land ownerships, or responsibilities within the area included in the plan."

governmental agencies. *Rajneesh v. Wasco County*, 13 Or LUBA 202, 210 (1985). Goal 2 and ORS 197.015(5) do not mandate success in accommodating the needs or legitimate interests of all affected governmental agencies, but they do mandate a reasonable effort to accommodate those needs and legitimate interests 'as much as possible.'[22] For LUBA to be able to determine that this coordination obligation has been satisfied, a local government must respond in its findings to 'legitimate concerns' that are expressed by affected governmental agencies. *Waugh*, 26 Or LUBA at 314-15 (1993).

"[22] The coordination obligation could be satisfied in a number of different ways, depending on the circumstances. For example, a concern might be rejected as being based on an erroneous understanding of the facts. On the other hand, the local government might determine that the concern is legitimate and encourage or require that the proposal be modified or conditioned to eliminate or mitigate the concern, in whole or in part. Or the local government might take the position that, while a concern is valid, practical alternatives to address the concern are not available and the proposal is of a nature that overrides the legitimate concern. Other responses may be appropriate, depending on the nature of the legitimate concern and the circumstances.

"Our cases do not articulate a precise standard that an affected local government must meet to raise a 'legitimate concern.' We do not believe a local government is required to respond in its findings to every written and oral statement that an affected local government may present during the local proceedings. We explained in *ONRC v. City of Seaside*, 29 Or LUBA 39, 56-59 (1995) that 'the concern must be sufficiently developed to require a specific response by the [local government].' In other words, the concern must be explained in sufficient detail to (1) communicate the expectation of some sort of response from the local government and (2) provide the decision maker with a sufficiently detailed understanding of the concern that an appropriate response can be included in the decision." *Turner Community Association v. Marion County*, 37 Or LUBA 324, 353-354 (1999).

From the foregoing, the coordination requirement is satisfied where the city has engaged in an exchange of information regarding an affected governmental unit's concerns, put forth a reasonable effort to accommodate those concerns and legitimate interests as much as possible, and made findings responding to legitimate concerns.

The commission notes the high level of coordination that has occurred between the City of Woodburn and Marion County, and takes particular notice of the oral comments of Marion County Commissioner Patti Milne. (R, Transcript, pp. 11-12). Commissioner Milne noted that the Marion County Growth Management Framework Plan identifies Woodburn as the employment growth center for North Marion County. She also noted that each of Marion County's 20 cities received written notice of the county's proposal to amend the Marion County Comprehensive Plan to adopt the city's proposed 2020 population forecast. None of the cities objected to this decision or to the county's co-adoption of the Woodburn UGB expansion.

c. More land than justified by target industry requirements

1000 Friends asserts that Woodburn added more industrial land to its UGB than can be justified by the target industry site requirements. 1000 Friends argues that the city concluded that it would need only 224 acres of land *if they utilized the "employees per acre" methodology* based on the number of projected jobs. 1000 Friends argued that even if the city is utilizing the site requirements for targeted industries methodology, the city has still included far more industrial land than is justified.

Commission Response: The city did not estimate its employment needs based on an employees per acre methodology. As explained at length above, the reference to 224 acres of land comes from an ECONorthwest Analysis of site requirements, which *predated* the city's decision to utilize a higher employment projection, and which does not include land for office uses which are included in the city's analysis of target employment categories and corresponding site requirements. When both industrial and office uses are included, and the analysis is adjusted to reflect the city's ultimate employment projection, the amount of net developable acreage that the city estimated is needed based on employees per acre ratios would be 311 net developable acres. As noted above, that number is reasonably related to the 362 net developable acres that the city found were needed based on its analysis of employment opportunities and suitable site characteristics. The relatively close correlation between the numbers demonstrates that the city's analysis is consistent with both Goal 9 and Goal 14.

The city has included sites with necessary characteristics identified by experts. The city has found that these estimates are credible, and the commission finds that the city's determinations are supported by substantial evidence in the record as a whole. 1000 Friends' arguments concerning the city's analysis reflect their disagreement with the expert analysis and conclusions that the city relied on. This is fundamentally a question of whether there is an adequate factual base for the city's analysis and conclusions. Given that the city's decisions reflect substantial reasoning, and are supported by evidence that a reasonable person could rely upon, the commission finds that there is substantial evidence in the record as a whole to support the city's decision that there is a need for 42 sites, with a range of site sizes and specific characteristics that are needed to meet the city's employment needs over the planning period. The city relied on testimony that these sites are needed to achieve the city's economic development objectives, and the commission concurred. (R. Transcript, pp. 54-56) The commission understands and accepts the explanation of the city that identifying sites to meet employment needs is not an exercise where each potential site is matched with perfect information about a potential user at a specific point in the future. Rather, economic development planning under Goals 9 and 14 evaluates opportunities and needs, and plans for a number of sites with characteristics typically required for target industries that are likely to meet the community's needs for employment over the planning period.

d. More land than expected to be developed

1000 Friends also objected that the city included more industrial land in the UGB than it expected to develop over the planning period.

Commission Response: The commission agrees with 1000 Friends that as a matter of law, nothing in Goals 9 or 14, or ORS 197.712 authorizes the city to expand its UGB beyond its identified need for the 20-year planning period. The commission disagrees with 1000 Friends that, as a matter of fact, the city has done so. The city's findings note the possibility that some identified sites may not fully develop during the planning period. R. Item 10, at 1392. That does not mean that the sites identified in the city's analysis are not "required." As documented in the city's Economic Opportunities Analysis, as a factual matter, some industries typically require more acreage for a new site than they may use in their initial construction phase. For these industries, suitable sites are larger than a particular company will use immediately. Typically, these companies are making large capital investments that have a longer return period than 20 years. To the extent that such a site develops partially during the 20-year planning period, the remaining developable lands are taken into account in the next buildable lands inventory. The commission finds that this is not providing more than a 20-year land supply. Rather, it is providing sites with characteristics necessary to attract the new employment opportunities needed by the city for the 20-year planning period. If only smaller sites were planned for, Woodburn would not be able to attract the identified target industries and provide the employment opportunities that it has shown are needed under Goal 14 factor 2 and Goal 9. The city identified sites based on expert opinion, and 1000 Friends has not provided evidence that undermines that evidence to the point where the city's conclusion is no longer supported by substantial evidence. The commission agrees with the city that potential employers do not look for acres, they look for sites that satisfy the needs of their operations. The city has researched and documented the size and type of sites pursued by industries it expects to attract, and has justified the number of sites included in the UGB based on factual information in the record. R. Item 10, at 1277-95. The commission finds that the city's determination complies with Goals 9 and 14 and ORS 197.712, and is supported by substantial evidence in the record as a whole.

e. Incorrectly removed buildable industrial land from inventory

1000 Friends also argued that the city failed to include 79 acres of industrial land that would be available for existing industries because owners of properties indicated that partially vacant land was being held for future expansion, and was therefore not available.

Commission Response: The city conducted the required inventory and analysis of existing industrial lands in accordance with Task 2 and OAR 660-009-0015(3)(2005). That rule provides: "Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use."

The city's UGB Justification Report states:

> "City staff contacted owners of "partially vacant" and "redevelopable" industrial firms identified in Winterbrook's 2003 BLI. In most cases, the owners of industrial firms stated that partially vacant land on their property was being held for future expansion, and was not available for purchase to meet the needs of *new* targeted employers. In other cases, owners stated that "redevelopable" industrial land (i.e., land with an improvement to land

value ratio of less than 1) was actually being used for storage of vehicles, equipment or materials." (Emphasis added.) R. Item 10, at 1390.

Contrary to claims by objectors, the city did not exclude "partially vacant" and "potentially redevelopable" land from its Buildable Lands Inventory. Rather, it classified such land into two categories: (a) land that is suitable to meet the needs of new targeted industries, and that was therefore included in the inventory (47 acres within the existing UGB); and (b) land that is owned by an existing industrial firm, and is reserved for future expansion by the existing owner, or already used for industrial storage (79 acres within the existing UGB). As noted in the UGB Justification Report, "there are only 47 buildable acres on 23 separate tax lots available to site new targeted employment in Woodburn['s] existing (2002) UGB." R. Item 10, at 1390. The commission finds that the city established that the remaining 79 acres are being used by their existing industrial owners or are not likely to be available as new suitable sites for the targeted industries identified in the city's EOA during the planning period. Goals 9 and 14 do not require a city to prove that existing industrial uses within an existing UGB will intensify during the planning period. The city analyzed "suitable" sites within its existing UGB as that term was defined in the commission's 2005 Goal 9 rule, and the commission finds that the city's factual determinations are supported by substantial evidence in the record as a whole.

f. The EOA ignores existing industries

1000 Friends also argues that Woodburn's EOA ignores existing industries and firms, asserting that (in general) most jobs are created by small to medium-sized businesses.

Commission Response: The commission finds that the city evaluated potential job creation from existing businesses in Woodburn as part of its review of national, state, regional, county and local trends required by OAR 660-009-0015. R. Item 10, at 1021-1030. The city assessed economic opportunities and constraints in the community to inform its choices about target industries. R. Item 10, at 1031-1059. Contrary to 1000 Friends' argument, the city did determine that a substantial portion of its future employment needs would be met on lands already within the UGB. Specifically, the city included 47 buildable acres on 23 sites within the existing UGB within its BLI - providing over half of the suitable sites necessary to meet its projected employment land need during the planning period. This is in addition to the city's assumption (noted above) that almost *all* future commercial development would occur through redevelopment and infill within the existing UGB. The city determined that it needed an additional 310 net developable acres of land for commercial uses, and that 108 acres were available within the existing UGB for these uses. Nevertheless, the city as a policy matter elected *not* to add significant amounts of land to the UGB for commercial uses.

> "The Council has intentionally under-allocated commercial land to encourage redevelopment along Highway 214, Highway 99E and in Downtown Woodburn. As explained further in Part II of this Report, as a measure to increase land use efficiency, the Council assumed that most future commercial and government employment will occur on existing commercial lands through intensification and redevelopment. In addition, the need for highway commercial uses can be met to a limited extent within the Southeast Commercial Exceptions Area. That Highway 99E area has a range of low-intensity development uses. The City has assumed that strip commercial properties along

Highway 99E, and 214 will redevelop over time, thus reducing the need to designate new commercial areas on resource land." Rec. at 1390-91.

The commission finds that under Goals 9 and 14, and that as a factual matter based on the city's EOA, the city's decision to focus its commercial land and smaller industrial site needs within the existing UGB, while seeking a limited number of larger sites for new industrial and office uses outside of the existing UGB and in proximity to I-5 is well-reasoned given the city's physical setting. The city's location along I-5 supports its planning for larger industrial and office uses on new, relatively large sites, while its existing residential and commercial (and smaller industrial uses) develop along Highway 99E near the city's historic core. This strategy supports redevelopment and infill in that area of the city. Contrary to 1000 Friends' argument, the city is planning for a substantial portion of its future employment to occur from existing firms within the city's existing UGB.

g. Largest parcel added to UGB not justified

1000 Friends argues that the city has not justified inclusion of the largest (96 net developable acres) industrial parcel in the UGB. 1000 Friends maintains that there is not an adequate factual basis to conclude that a large industrial user, such as a silicon chip fabrication plant, is likely to locate in Woodburn during the planning period (1000 Friends' arguments concerning the *location* of this site are addressed in the section that follows this one).

Commission Response: ECONorthwest prepared both the Woodburn EOA (R. Item 10, at 1019) and the Woodburn Economic Development Strategy (EDS). R. Item 10, at 699. The EDS describes the need for "very large manufacturing and high-tech firms [that] want sites as large as 40-80+ acres," and notes that the pre-amendment UGB lacked such sites with freeway access. The EOA (R. Item 10, at 1059-1060) further explains that these [large site] *users* typically require sites that exceed 100 acres.

The EDS notes that of the three sites over 30 acres within the existing (2002) UGB, "one of the sites was under development in the Spring of 2001, and the other two are relatively distant from Interstate 5 and are not particularly well suited sites to accommodate target industries." R. Item 10, at 709. The EOA responds directly to objector's claim that Woodburn is too far from existing electronics manufacturing "clusters" to attract large site industrial manufacturers. The EOA observes that "Woodburn is close enough to the high-tech areas of Wilsonville and Washington County to be a viable option for a corporate campus. Firms in the Electronic and Electric Equipment and Business Services have potential in this regard." R. Item 10, at 1060.

Finally, the commission notes that the record shows that nearby Wilsonville has been very successful in attracting firms in the way that Woodburn aspires to. R. Transcript, p. 58. As documented in the UGB Justification Report, Wilsonville in 1980 was much smaller than Woodburn is today, but had large tracts of serviced industrial land with I-5 access. Approximately 80 percent of Wilsonville's 1,000 acre industrial land base has developed since 1980. Today, Wilsonville has over 18,000 covered employees, which is comparable to the 18,762 employees projected by Woodburn (up from 10,388 in 2000). R. Item 10, at 1388. The commission finds that Woodburn's plans to take advantage of its I-5 access, to become a

regional industrial center located mid-way between Salem and the south Metro area, are reasonable. There is substantial evidence in the record as a whole to support the city's inclusion of a site in the range of 100 acres with good freeway access. The commission notes that the city also has adopted conditions for this site that assure that its use will result in the number and types of jobs that it seeks in its economic development strategy. For these reasons, the commission denies the objections of 1000 Friends.

3. Other objectors

a. Jerry Mumper. This objection states the city overestimated industrial land need in violation of Goal 9, and objects to the targeted employer site size and type methodology.

   Commission Response: The city has appropriately estimated employment needs using a methodology consistent with Goal 9 and Goal 14. See response to 1000 Friends objections, above.

b. Diane and Carla Mikkelson. The objectors contend the city overestimated industrial land need, underestimated redevelopment potential of existing industrial land and facilities, and failed to coordinate with other jurisdictions. The objectors state the city's submittal violates Goals 2, 3, 9, and 14, and ORS 197.296.

   Commission Response: The city has not overestimated its employment needs in assessing the UGB amendment for the reasons set forth in response to 1000 Friends' objections, above. The objectors do not provide sufficient detail about how the city has violated ORS 197.296 or Goal 3 for the commission to be able to respond. Issues concerning the *location* of the city's UGB expansion are addressed below.

c. Lolita and Kathleen Carl. This objection alleges the city failed to protect farmland in violation of Goal 14 and ORS 197.298, inadequately coordinated with other affected governments in violation of Goal 2 and ORS 197.015, and included too much industrial land in violation of Goal 14.

   Commission Response: The city has coordinated it actions with other affected local governments consistent with Goal 2 for the reasons set forth above in response to the objections of 1000 Friends. The city has justified its employment needs consistent with Goals 9 and 14 for the reasons set forth in response to 1000 Friends' objections, above.

d. Friends of Marion County (Roger Kaye). This objector also states the city included too much industrial land in the expanded UGB.

   Commission Response: The city has correctly estimated its employment land needs in assessing the UGB amendment for the reasons set forth in response to 1000 Friends' objections, above.

e. Marion County Farm Bureau. The objector maintains that the city included too much land in the UGB in violation of Goal 14, failed to coordinate adequately with other

jurisdictions in violation of Goal 2, and unnecessarily included prime farmland in violation of ORS 197.298.

Commission Response: The city's UGB expansion complies with Goal 14 for the reasons set forth above. The city has coordinated it actions with other affected local governments consistent with Goal 2 and has justified its employment needs consistent with Goal 9 and Goal 14. See response to 1000 Friends objections, above.

D. The Location of the UGB Expansion for Office and Industrial Uses

This section of the commission's order on remand addresses objections concerning the *location* of the UGB expansion for industrial and office uses. The city's expansion for these uses is entirely within its "Southwest Industrial Reserve," located to the south and west of the city, and includes one large site west of I-5. 1000 Friends *et al* object particularly to the city's decision to include the one large site (the "Opus site"), which contains 130 gross acres and 96 net developable acres of land. According to 1000 Friends, the city should have selected lands to the south of the SA-7 site (which are also to the south of the Southwest Industrial Reserve) and on the east side of I-5. The Opus site is located further north, to the west of I-5 and east of Butteville Road.

1. Legal Standard

Statewide Planning Goal 14 and ORS 197.298 require local governments, when amending a UGB, to identify a 20-year need for land, and determine how much of that need can be accommodated within the current UGB. If there is a deficit, the local government must select *which* land to meet the deficit according to the statutory priorities in ORS 197.298. To the extent there is more suitable land in a particular statutory category than is needed, the Goal 14 locational factors are used to determine which lands within a particular category are added to the UGB. In addition, ORS 197.298(2) requires that "higher priority [for inclusion in a UGB] shall be given to land of lower capability as measured by the [U.S. Natural Resources Conservation Service (NRCS) agricultural soil] capability classification * * *."
Finally, ORS 197.298(3) provides that land of lower priority may be included if land of higher priority is found to be inadequate because:

> (a) Specific types of identified land need cannot be reasonably accommodated on higher priority lands;
> * * * or
> (c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or provide services to higher priority lands.

Goal 14 and ORS 197.298 also recognize that the prioritization of land for urbanization first requires a determination of what land is suitable for the planned uses. *City of West Linn v. LCDC*, 201 Or App 419 (2005). Where a city has, through an economic opportunities analysis, identified particular site requirements for target industries, and those site requirements will not be met on higher priority lands under ORS 197.298, it may include lower priority lands that do

meet those site requirements. Its decision must be supported by adequate findings and substantial evidence.[2]

The version of Goal 14 applicable to the City of Woodburn's decision states: "In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need." The local government may use the site need characteristics during the boundary location analysis to determine which study area lands are suitable.

In 2009, the commission adopted UGB amendment rules (OAR chapter 660, division 24), which established a more specific methodology for applying ORS 197.298 and the Goal 14 boundary location factors (see OAR 660-024-0060(1)). As noted above, Woodburn's UGB amendment preceded the new rules, and division 24 does not apply to the city's amendment.

2. Summary of Local Actions

The city studied eight UGB study areas, containing a total of 3,984 acres. R. Item 10, at 1414. The study areas included five exception areas, all of which were included in the UGB expansion except for the MacLaren Youth Correctional Facility (which the city found had no potential for further urban development). The remaining lands in the study areas were all planned and zoned for farm use.

All of the EFU lands within the city's study areas contain a mix of soil types, with class II soils predominating in all of the study areas. R. Item 10, at 1418 (Table 15). The class II and III soils are interspersed in all of the study areas. The city analyzed soil types in each of the expansion areas, and adjusted where it proposed to expand in order to avoid lands containing higher soil

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[2] The commission amended Goal 14 in 2005, prior to the city's decision. The applicability provisions for the amended Goal 14 provide:

Applicability of Goal 14 Amendments and Related Goal Definitions Adopted April 28, 2005

(1) Goal 14 and related Statewide Goal Definitions, as amended on April 28, 2005, are applicable to the adoption or amendment of a comprehensive plan or land use regulation, or a land use decision made under a non- acknowledged comprehensive plan or land use regulation, on and after April 28, 2006, except as follows:

(a) Local governments are authorized, at their option, to apply the goal and related definitions as amended on April 28, 2005, to amendments to a comprehensive plan or land use regulation, or a land use decision made under a non-acknowledged comprehensive plan or land use regulation, on or after June 28, 2005.

(b) Local governments that initiated an evaluation of the Urban Growth Boundary (UGB) land supply prior to April 28, 2005, and consider an amendment of the UGB based on that evaluation, are authorized, at their option, to apply Goal 14 and related definitions as they existed prior to April 28, 2005, to the adoption of such UGB amendment regardless of the adoption date of such amendment.

(2) For purposes of section (1)(b), above, "initiated" means that prior to April 28, 2005, the local government either:

3(a) Issued a public notice of a proposed plan amendment for the purpose of evaluation of the UGB land supply and, if necessary based on that evaluation, amendment of the UGB, or

(b) Received Land Conservation and Development Commission approval of a periodic review work task for the purpose of evaluation of the UGB land supply and, if necessary, amendment of the UGB.

The city elected to apply the new Goal 14 provisions.

classifications. R. Item 10, at 1418-1422. Its changes included removing a proposed site to the west of Butteville Road and replacing it with lands to the south of SA-7.

1000 Friends argued before the Court of Appeals that the city should have selected lands for its UGB expansion for industrial and office uses that are further to the south of the city's study area 7 (SA-7) and that contain predominantly class III soils. 1000 Friends, Pet. for Review, at 25. The city's findings concerning this issue are as follows:

> "The Class III soils found on the southern portion of Study Area 7 continue to the south and southwest of this study area. Although the City did include one 46-acre primarily Class III parcel located south of the original Study Area 7, it did not include additional areas of predominantly Class III soil further to the south and southwest, for two reasons.
>
> > "First, the two Class III parcels located between the 2005 UGB and 1-5 are not needed at this time for industrial expansion. Although these parcels meet some SWIR siting criteria, their development would not facilitate extension of the South Arterial, which is needed to provide direct access to 1-5 from SWIR parcels to the north. Woodburn did not add these parcels [to the south of SA-7] to the UGB to meet the siting needs of target industries.
> >
> > "Second, the large concentration of Class III soils located further to the south extend beyond the two-mile (from the I-5 Interchange) locational need limit established by the Council for inclusion of parcels within the SWIR. This land is too far from the I-5 Interchange to be attractive to targeted industrial firms. Inclusion of this land would have meant that other more suitable land closer to the interchange and urban services could not be justified (on a strict need basis) for inclusion within the UGB. Further, inclusion of parcels with Class III soils south of the expanded SA 7 would have resulted in an inefficient urban form, would not have met the City's industrial siting need criteria, and would have increased substantially the cost of providing urban services."

R. Item 10, at 1421.

In its decision, the city described how it analyzed suitability for industrial and office sites.

> "Suitable industrial sites must:
>
> - Be comprised of large blocks of land contiguous to or- within the existing UGB;
> - Have direct access to the I-5/ Highway 214 interchange via an existing or planned arterial street;
> - Be located to avoid truck traffic through existing or planned urban residential neighborhoods;
> - Minimize potential conflicts with existing or planned residential areas by minimizing common boundaries;

- Be located to take advantage of existing or proposed arterial streets that direct industrial traffic to Highway 214 west (rather than east) of the interchange to access I-5;
- Be located within a two mile radius of the I-5 interchange;
- Be adjacent to existing industrial development;
- Have five or less percent slope;
- Meet size requirements outlined by ECONorthwest (October 2003 memorandum entitled "Site Requirements of Targeted Industries" and summarized on Table 1 of this Report);
- Be serviceable within the next 0-15 years with sanitary sewer, water and storm drainage facilities; and
- Avoid class I agricultural soils; then include first Class III soils and second Class II soils, if necessary to serve otherwise suitable sites with Class III soils."

R. Item 10, at 1393. This approach is consistent with ORS 197.298, Goal 14 and Goal 9.

To fulfill its need for 19 sites in its UGB expansion, including the need for larger sites with good freeway access, and the need to locate new uses in a manner that supports access to I-5 via Butteville Road and the western ramps rather than the (already overloaded) eastern ramps, the city identified sites in the SWIR. The city found that land in this area could be configured to meet the needed number of sites, range of site sizes, and other necessary site characteristics including supporting a looped road system that would encourage industrial uses to access I-5 from the west. The SWIR comprises 362 acres (net) or 409 acres (gross). R. Item 10, at 1450. Adding 362 acres (net developable) in the SWIR enabled the city to satisfy its 2020 need for 19 new industrial and office sites in its UGB expansion area. R. Item 10, at 1395.

3. Commission Findings, Reasoning and Conclusions

Goal 14 provides that local governments may "specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need." Similarly, ORS 197.298 allows a local government to consider suitability for planned urbanization in determining which lands to include. Neither the goal nor the statute force local governments to add lands to a UGB that will not accommodate future urbanization.

Woodburn properly considered both suitability and the statutory priorities of lands in determining where to expand to meet its future needs for industrial and office uses.

The commission finds that the site characteristics identified in the city's analysis, including proximity to I-5 and (particularly) locations that support access to I-5 from the west were properly used by the city in its locational analysis of where to expand its UGB.[3] A local

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3 LUBA has recently explained:

> "While 'typical' attributes would presumably include those attributes that are absolutely necessary to construct and operate a business, 'typical' attributes would also likely include those attributes that while not 'necessary' in the dictionary sense of the word, are nevertheless typically required for a business to

government may identify such attributes for industrial and other employment land through development of an EOA and a transportation systems plan (TSP). Here, the city's reasons are further detailed in ECONorthwest's April 26, 2005 memorandum (R. at 64-65).

On remand, the commission heard argument that industrial and office uses could obtain I-5 access from the *east* side of the existing I-5 interchange. 1000 Friends also made similar arguments to the court on appeal.

1000 Friends' arguments rely on the premise that there is adequate access to I-5 from the east, and that improvements to Butteville Road adjacent to the Opus site are unnecessary. That argument presumes, incorrectly, that the city's findings concerning adequacy of services for SA-7 are premised on independent access to the I-5 interchange by roads extending north to the eastern ramps to I-5. That simply is not correct. The city's findings of adequacy of service for area SA-7 were premised on access to I-5 by going *across* I-5 and north along Butteville Road to the western ramps to I-5. A key locational consideration for the city's UGB expansion was that it be designed so that uses will access the freeway interchange from the *west* via Butteville Road. See, e.g. R. Item 10, at 1393, 1420, 1424-1426. This new "Ring Road System" is key to serviceability of the UGB expansion areas. Forcing all industrial and office growth to remain east of I-5, with no improvement to Butteville Road would force traffic from the UGB expansion onto the eastern ramps to I-5, quickly exceeding the capacity of the I-5 interchange from that direction. A looped circulation system including a southern connector to highway 99-E and extending west and north across the Butteville Road bridge over I-5 is key to the future functioning of the city's transportation system. This conclusion is directly supported by the city's findings concerning the city's transportation system plan. R. Item 10, at 1427.

The city's decision to expand to provide industrial land with direct access to I-5 from the west is consistent with the Goal 9 requirement for cities to identify their locational advantages and the Goal 14 location and need factors. It would not serve the state's, the county's, or the city's economic development efforts to force Woodburn to add land to its UGB that cannot be efficiently served and is not suitable for the industries it seeks to attract capitalizing on its I-5 location. For all of these reasons, the commission concludes that Woodburn has appropriately analyzed which lands to include within its UGB expansion. The commission specifically concludes that the city's decision to include the Opus site is consistent with the city's consideration of suitability under Goals 9 and 14, as well as ORS 197.298(3)(a) and (c).

Finally, before the Court of Appeals, 1000 Friends also argued that the city's decision failed to analyze and compare the economic impact of the UGB expansion on the agricultural industry of Woodburn and the region by removing large parcels of prime farmland from production. The argument is that the city failed to consider the economic impact of alternative UGB locations on the farm industry under Goal 14, factor 3 (comparative environmental, energy, economic and

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> operate successfully." . . . "[W]e believe that site characteristics are properly viewed as attributes that are (1) typical of the industrial or employment use and (2) have some meaningful connection with the operation of the industrial or employment use."

Friends of Yamhill County, et al v. City of Newberg, __ Or LUBA __ (LUBA No. 2010-015, August 26, 2010) (slip op at 14-15); *affirmed* 240 Or App 738 (2011).

social consequences). Goal 14, factor 3 is addressed in the city's findings, at length, at R. Item 10, at 1427-1441. That analysis notes that the agricultural lands in study areas 7 and 8 are farmed for grains and grass seed rather than the more intensive farming uses (berries and hops) found in other study areas. The analysis concludes that expanding in areas 7 and 8 will have less impact on the agricultural economy. On remand, no party expanded beyond very general arguments that a UGB expansion will harm Marion County's agricultural economy, and that agriculture is a key industry in the county. The city considered these arguments under Goal 14, factor 3, and made appropriate findings supported by substantial evidence. The commission concludes that the city's decision complies with Goal 14, factor 3.

The commission concludes that the city's findings related to compliance with the Goal 14 boundary location factors and ORS 197.298 priorities for UGB amendment, as found in the UGB Justification Report, are reasonable and supported by substantial evidence in the record. R. Item 10, at 1383-84, 1413-47.

The city's findings with respect to the "Opus Northwest site," in Study Area 8, are extensive. This site has about 88 acres of buildable land, most of which has Class II soils. The Opus site is the closest of any possible industrial site to the North Marion County (Woodburn) I-5 interchange. The site can be immediately served by sanitary sewer and water facilities. The site is located next to developed industrial land, between the existing (2002) UGB and Butteville Road, a planned arterial street. Land to the west of Butteville Road with Class I and II soils was excluded from the UGB to minimize impacts on agricultural land, based on comments from the Oregon Department of Agriculture. R. Item 10, at 1445. The city has detailed how public facilities and services can be extended from the existing UGB to serve the site. R. Item 10, at 775-873.

The commission concludes that the city established that inclusion of the Opus site is necessary for the construction of Butteville Road, a planned arterial shown on the Transportation System Plan, to urban standards, which would allow the SWIR and other properties to access I-5 from the west. The city and ODOT have made it clear, throughout the record, that having access to the freeway from the west side is necessary due to the lack of capacity at the east access to the interchange. R. Item 10, at 1380-81. The city established both that the Opus site satisfies all of the city's site requirements for targeted industries and that development of this site is necessary to provide access and services to the remainder of the SWIR. For these reasons, the commission concludes that the city has justified inclusion of the Opus site under ORS 197.298(3)(c) and Goal 14.

4. Conclusion

The City of Woodburn has utilized all suitable exception lands for its 2005 UGB expansion. R. Item 10, at 1416. The remaining lands are all agricultural lands in soil classes I-IV. As required by ORS 197.298, the city has avoided the agricultural lands with the highest soil classifications. The city appropriately considered suitability under ORS 197.298(3)(a) and (c) as well as Goals 9 and 14. The commission also concludes that the city has provided an adequate factual base for its decision to include Study Areas 7 and 8 west of I-5 in the UGB instead of Study Area 6 east of I-5, and to locate the SWIR on both sides of I-5.

5. Objections

1,000 Friends and the Marion County Farm Bureau objected that land that is predominantly Class II soils west of Interstate 5 (Study Areas 7 and 8, also known as "the Opus site") was included for industrial use, instead of land with Class II and III soils east of I-5, south of Parr Road between Boones Ferry Road and I-5 (Study Area 6). The objectors stated that the city's reasons were arbitrary and not supported by findings with an adequate factual base. The city's reasons for including this area were:

1. The lands to the west of Interstate 5 are needed to provide access to I-5 from the west side of the I-5 interchange via Butteville Road; and
2. The southern parcels east of I-5 were more than two miles from the I-5 interchange, which did not meet the site characteristics identified by the city in its Economic Opportunities Analysis.

(August 23, 2006 1000 Friends of Oregon objection letter, pp. 8-10; August 22, 2006 Marion County Farm Bureau objection letter, pp. 2-3; January 13, 2007 1000 Friends of Oregon exceptions letter, pp. 8-9)

Commission Response: The commission finds that the Opus site must be included in the UGB expansion in order to create a ring road system with access to I-5 from the west. The Opus site is key to the adequacy of services for the other industrial lands in SA-7. ORS 197.298(3)(c). In addition, the lands south of Parr Road (Study Area 6) are not suitable for the demonstrated need for employment opportunities established by the city's EOA. R. Item 10, at 1379.

III. OVERALL CONCLUSIONS

A. Work Task 2 - "Commercial and Industrial Lands Inventory"

The department referred Task 2 to the commission because of its relationship to the UGB amendment. The city has conducted a thorough inventory of vacant, partially vacant, and potentially redevelopable commercial and industrial land within the existing UGB in response to this work task. The commission finds and concludes for the reasons stated in this order that the city's inventory complies with applicable goals, rules, and statutes.

B. UGB Amendment

The City of Woodburn amended its UGB to include 979 acres for residential, commercial, and industrial uses. The amended UGB contains 546 acres for residential uses (including public and institutional uses), 24 acres for commercial uses, and 409 acres for industrial uses, of which 200 acres are exception lands and 779 acres are resource lands. The commission finds and concludes for the reasons stated in this order that the city's UGB amendment complies with the applicable goals, rules, and statutes.

ORDER

THEREFORE, IT IS ORDERED THAT:

1. The city's UGB amendment as contained herein of Ordinance 2391 is approved.
2. Periodic Review Task 2, Commercial and Industrial Lands Inventory, is approved.

DATED THIS 16th DAY OF March, 2011.

FOR THE COMMISSION:

Jerome Lidz, Acting 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 provision 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.

Oregon
Theodore R. Kulongoski, Governor

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January 7, 2011

TO: Land Conservation and Development Commission (LCDC)

FROM: Richard Whitman, Director
Steve Oulman, Regional Representative
Tom Hogue, Economic Development Specialist
Gloria Gardiner, Urban Specialist

SUBJECT: **Agenda Item 4 (Woodburn UGB Expansion), Department's Response to Written Argument, January 12-13, 2011, LCDC Meeting**

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

This is a hearing on a remand from the Oregon Court of Appeals of a prior commission order approving work task 2 of the City of Woodburn's periodic review and an expansion of the city's urban growth boundary (UGB). This memo provides the department's written response to written argument by parties to the appeal. The department's report and draft proposed order were circulated earlier, on November 12, 2010. At the conclusion of the hearing, the commission will deliberate and make a decision to: (a) approve the city's decision based on revised findings; (b) to approve the city's decision based on revised findings and new conditions; or (c) to remand the decision back to the city for further action by the city.

B. Staff Contact Information

Questions about this agenda item should be directed to Steven Oulman, AICP, Regional Representative, (503) 373-0050 ext. 259, steve.oulman@state.or.us.

II. SUMMARY OF RECOMMENDATION

Following its review of the written argument of the parties, the department continues to recommend that the commission approve the city's UGB expansion for the reasons described below. The department recommends that the commission's final order further address the arguments made by the parties.

III. MAJOR ISSUES RAISED, AND DEPARTMENT'S RESPONSE

A. What Were the Standards for the City's Decision and What Are the Standards for the Commission?

At the outset, it is important to emphasize that this is a remand of a prior decision of the commission, upholding the city's decision to expand its urban growth boundary (UGB). The city's decision was made on October 31, 2005 (more than five years ago). The commission's role in this proceeding is to review what the city (and county) did, and determine if the decision complied with the standards that applied to the city's decision *at that time, based on that record.* The commission is not substituting itself for the city, and making a new decision, today, starting from scratch. The issues before the commission are, if the commission accepts the department's proposed draft order, almost entirely evidentiary issues, on which the question is whether a reasonable person could have determined what the city did, based on the record before it.

1000 Friends et al. assume that the city's decision in 2005 was subject to the commission's Goal 14 rules (division 24) and the most recent version of the commission's Goal 9 rules. That simply is not correct. The division 24 rules were not adopted until a year *after* the city's decision, and the most recent Goal 9 rules were not adopted until shortly *after* the city's decision (they did not take effect for over a year after that). This is important, because it means that the commission's decision in this matter has limited precedential effect in terms of other jurisdictions.

B. What Amount of Land Does the City Need for Future Employment Uses?

The main issue raised by *1000 Friends et al.* is the *amount* of land needed by the City of Woodburn for future employment uses (and, in particular, for industrial and office uses). According to *1000 Friends et al.*, the city included about twice as much land for industrial and office employment as the city showed was needed over the 20-year planning period. The department believes that this is not the case, and that the city's decision complies with applicable standards, for two main reasons.

First, the city's determination of the number, size, type and location of sites needed for industrial and office uses during the twenty-year planning period was based on its determination that that *number,* those *sizes*, those locations, and those *types* of sites were necessary to yield the employment growth it forecasted (and sought, as a policy matter). That is the determination required by Goal 9, and if the city had included fewer sites it would not be meeting its demonstrated need for industrial land. The basic structure of the city's decision was as follows:

- The city and county prepared and adopted a coordinated population forecast for the city;
- The city adopted an employment forecast that was reasonably related to the population forecast, and that reflected a policy decision to increase the ratio of employment to residents in the city over time;
- The city prepared and adopted an economic development strategy, and an economic opportunities analysis that documented that its aggressive employment forecast was reasonable (due largely to the city's competitive advantages provided by its location along interstate 5, in relation to Salem and Portland, and its labor force);

- The city documented that the types of businesses that it had a competitive advantage in attracting and growing over the planning period had certain site requirements (primarily in terms of size and location relative to the freeway);
- The city determined what sites should be included within the UGB expansion in order for it to have a reasonable likelihood of achieving the future employment growth forecasted during the twenty-year period.

Those steps are a permissible means of complying with the requirements of Goals 9 and 14, and ORS 197.712, and they do *not* result in adding more land for employment uses than is needed over the twenty-year planning period.

The second reason that the department believes Woodburn has not added an excess of industrial and office land is that even under the employee per acre method of estimating future land need, the approximately 360 net acres of land that the city has added to its UGB for industrial and office uses in the Southwest Industrial Reserve is reasonably related to the amount of land shown to be needed under a traditional employee per acre methodology. In its written argument on remand, 1000 Friends creatively contrasts net and gross land need numbers, and figures for particular categories of employment land, to make it appear that the city is grossly inflating its land needs.[1] The department does not agree that the city has done so.

Comparing apples to apples, under an employee per acre approach, the city's consultants estimated a land need of 41.2 acres for office uses and 224.1 acres for industrial uses (both of these categories are included in the target industries identified in the city's EOA). Note that commercial and public uses were, with the exception of a small amount of commercial land, entirely accommodated within the prior UGB. These estimates, however, were carried out in October of 2003 when the city was using the *medium* forecast for employment, of 7,140 new jobs (all sectors). As explained in the city's findings and the draft proposed commission order, the city subsequently made a different policy decision, and changed its employment forecast to 8,374 new jobs (all sectors). Although no new estimate of land need using an employee per acre methodology was made, applying the ratio of the overall increase in forecasted employment growth during the 20-year planning period from 7,140 to 8,374 ((41.2 + 224.1) x 8374/7140) would yield a total need for net (buildable) industrial and office land of 311 acres. This figure does not include that portion of future need met through redevelopment (the EcoNW analysis subtracted out a factor for redevelopment). For convenience, the key table in the city's record (Item 10, p. 1278) is reproduced below:

[1] 1000 Friends and the Oregon Court of Appeals both focused on language in the city's findings indicating that not all of the land within the expansion area may fully develop within the planning period. The department notes that there will almost *always* be further development capacity of land within an urban growth boundary, including land added most recently. If there were not further development capacity, there could be no redevelopment within the UGB. Business park type development is one of the main employment types anticipated by the city. See, e.g., rec. Item 10, pages 1284, 1285 (business park development for electrical equipment manufacturers, same for business services). Such development typically is in a campus setting where future expansion and redevelopment is possible. See rec. Item 10, pages 1063-65 (EOA).

DEMAND FOR COMMERCIAL AND INDUSTRIAL LAND

Table 1 shows the amount of new land and built space needed for each land use type in Woodburn over the 2000–2020 period. The results assume the medium employment forecast of 7,140 new jobs between 2000 and 2020. The amount of land needed (in acres) is calculated by dividing employment growth that will require new space by the employees/acre assumption for each land use type, with an adjustment for vacancy. Square feet of building space needed is calculated by multiplying employment growth that will require new building space by the square feet per employee assumption for each land use type, with an adjustment for vacancy.

Table 1. Woodburn vacant land and new built space need by land use type, medium employment forecast, 2000–2020

Type	Acres of land		Sq. Ft. of building space	
Commercial	70.6	19%	847,174	22%
Office	41.2	11%	577,391	15%
Industrial	224.1	61%	2,039,728	54%
Public	33.3	9%	332,800	9%
Total	**369.3**	**100%**	**3,797,093**	**100%**

Source: ECONorthwest.

Table 1 shows that about 370 acres of *new development* and 3.80 million square feet of building space are needed to accommodate the 6,346 new employees forecasted for the next 20 years to be accommodated in buildings that will be constructed on vacant land. Industrial uses are projected to need the most land and building space, almost 225 acres and 2.04 million square feet.

In sum, using an employee-per-acre approach, which the city was *not* required to do, approximately 310 acres of net buildable land would be required for industrial and employment uses in a UGB expansion in order to accommodate forecasted employment growth. Using its analysis of economic opportunities and required sites, the city added approximately 360 acres of net buildable land in the SWIR. Marion County Findings, at pages 14-15. Of that amount, 170 acres were in two large-lot sites that cannot be developed unless particular performance standards are met for new employment-intensive industries. Id., at page 15.

The fact that the employee-per-acre methodology yields a slightly lower number than a site-based approach does not mean that the city added more land than needed. In fact, the department believes that the relative proximity of the figures is important evidence that the city's economic development strategy and resulting site requirements were realistic and not overly aggressive. The department believes that the further a projection of land need based on site requirements departs from more traditional means of forecasting the need for land for employment opportunities, the greater the need for careful explanation of the basis for the former. In this case the two methods yield similar results. If a local government were to propose an employment lands expansion under the required sites methodology that was far out of line with a projection based on employees-per-acre, that would be an indication that the decision was proposing to add

more land than is needed, but that is not the case here, particularly where the city has shown strong economic advantages in terms of its location and labor supply that make more rapid and land-intensive growth possible. Rec. Item 10, pages 1031-1032. In sum, the department continues to believe that the city's decision complies with both Goal 9 and Goal 14.

Under the applicable standard, the question is whether a reasonable person could find as the city did, that there is a need for this amount of industrial and office land for the planning period. There is conflicting testimony, but there was credible expert testimony to the city and to the commission that the number, size, type and location of sites were required for the city to achieve its forecasted need for employment. LCDC Transcript, Rec. Item 2 at pages 54-55 (Transcript pages 52-54). That key testimony was an important basis for the commission's decision to uphold the city's UGB expansion in 2007, and the department is not aware of other evidence in the record that would make it unreasonable to rely on that testimony.

Finally, the department also notes the unusual nature of the performance standards that the city has placed on development of its two largest sites. Those requirements, adopted as an element of the city's UGB expansion, mandate that a large portion of the SWIR expansion area be developed only if performance standards for employment are met.

C. Location of Industrial Land Expansion

1000 Friends is correct that the Oregon Court of Appeals did not reach the arguments of the parties concerning *which* lands were selected by the city for its UGB expansion. Nevertheless, the department recommends that the commission revisit this issue in light of the arguments made by the parties to the Court of Appeals, and decide whether to supplement its findings.

On appeal to the court, 1000 Friends argued that instead of adding lands to the west of I-5 along Butteville Road, the city should have added lands to the south (east of I-5). The main reasons argued by 1000 Friends were that: (a) the lands along Butteville Road west of I-5 are class II farmlands (a lower priority for inclusion than lands with class III soils to the south); (b) expansion to the west of I-5 is more of an intrusion into important farming operations in the area around Woodburn (again, relative to the lands to the south); and (c) there is adequate access to I-5 from the SWIR UGB expansion area via planned road improvements east of I-5.

The city will bring an oversize exhibit to the commission hearing, showing soil classifications and the various UGB expansion areas. The department notes that most of the lands surrounding the city are class II, and that the area to the south referred to by 1000 Friends and analyzed by the city is not by any means a "clean" class III area. Rather, the area to the south is a mix of Class II and Class III (Class II lands must be included to get to Class III lands). The land to the west also is a mix of Class II and III soils, although more heavily weighted to Class II. The department believes that the city's findings adequately explain that (in particular for its large-lot sites) location in proximity to the I-5 interchange is a site requirement that justifies adding the lands to the west of I-5 rather than sites further south. Further, and contrary to 1000 Friends' argument to the Court of Appeals, the department believes that the record and the city's findings demonstrate that in order to succeed in balancing growth so that traffic impacts are balanced on both sides of the single I-5 interchange that is a critical link in any future growth in the city, a looped arterial

system connecting highway 99E with Butteville Road and the *west* side of the I-5 interchange is necessary. Restricting development to the east side of I-5 would load the resulting traffic on the already over-burdened east side of the interchange, contrary to the city's adopted transportation systems plan.

Regarding conflict with exiting agricultural operations, the city's findings contain an analysis showing that (based on advice from the department, and from Marion County) that it has planned for oversized road right-of-way within the UGB expansion area to provide separation from agricultural operations. The findings also show that the proposed uses are compatible with agricultural operations.

In sum, while the department recommends that the commission consider these issues on remand, and direct that its findings be supplemented to respond to the specific arguments of the parties to the Oregon Court of Appeals, the department continues to believe that the city has demonstrated that its decision regarding where to expand complies with the priorities of ORS 197.298, and with the Goal 14 factors. To the extent that the city has added some lands that contain a higher percentage of class II soils than alternative lands to the south of the expansion area, the department believes this decision is justified under ORS 197.298(3)(a) and (c): large lot industrial site with proximity to freeway, conditioned to restrict use to that specific type of employer (ORS 197.298(3)(a)), and inclusion of class II lands required to complete looped arterial system connecting to west side of I-5 interchange (ORS 197.298(3)(c)).

D. Late Submission of Materials Concerning New Population Projections

On January 5, 2011 (shortly before the department had intended to issue this report) the department received the attached letter from 1000 Friends et al. concerning population forecasts for the City of Woodburn. This letter was received well after the deadline set for submission of written argument, and caused some delay in the completion of this report.

The department recommends that the commission treat the letter as a request for it to consider new evidence, but the department also recommends that the commission not do so. The new coordinated forecast under ORS 195.036 is for a different planning period (starting in 2010) than the 2000-2020 period of the submittal under review. It was not before the city when it made its decision in 2005, and nothing in Goal 9 or Goal 2 requires the commission to remand this decision to the city for it to consider the new population forecast.

ATTACHMENT

A. Letter from 1000 Friends of Oregon et al.

1000 friends of Oregon

534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389
Willamette Valley Office • 220 East 11th Avenue, Suite 5 • Eugene, OR 97401 • (541) 653-8703 • fax (503) 575-2416
Central Oregon Office • 115 NW Oregon Ave #21 • Bend, OR 97701 • (541) 719-8221 • fax (866) 394-3089

January 5, 2010

VIA E-MAIL

Director Richard Whitman
Steve Oulman
Department of Land Conservation and Development
635 Capitol Street Suite 150
Salem, OR 97301

Re: Woodburn Periodic Review; remand from Oregon Court of Appeals

1000 Friends of Oregon asks the Department and Commission to take official notice of Marion County's updated, coordinated population forecast, adopted after the underlying Commission decision, which is the subject of the Court of Appeals remand.

The city of Woodburn's year 2000 population was 20,100. In the city's underlying UGB decision, Woodburn used a 2020 population forecast of 34,919. This was based on an average annual growth rate (AAGR) of 2.8%. This was coordinated with Marion County by county ordinance in 2004, and is in the record.

In September 2009, Marion County adopted a *new* coordinated population forecast for all cities in the county for the time frame 2010 to 2030. This coordinated forecast is online at http://www.co.marion.or.us/PW/Planning/population.htm . The coordinated population forecast for Woodburn for the year 2030 is 37, 216.[1] This is based on a 2.04% AAGR, which is considerably lower than that used in Woodburn's UGB decision of 2.8%.

Of equal significance is that while Marion County used a medium range population forecast to coordinate, its comprehensive plan includes a range forecast of low, medium, and high population projections. The *high* projection for Woodburn[2] is based on an AAGR of 2.53%, still considerably less than that used by Woodburn in its UGB expansion.

In addition, Marion County's current coordinated forecast starts at a 2010 baseline of 24,866 and projects a **2020 population** of 31,243.[3] This is almost 4,000 people, or more than 10% less, than the forecast Woodburn used.

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[1] Marion County Ordinance No. 1291, Exhibit B, Table 22 (adopted October 7, 2009)
[2] Ordinance No. 1291, Exhibit B, Table 23. The high population projection for Woodburn for 2030 is 41,718.
[3] Ordinance 1291, Exhibit B, Table 22.

Woodburn's reliance on a population forecast that not only is inconsistent with the current coordinated forecast, but is also simply inaccurate, is reinforced by data from the Portland State University Population Center. PSU's certified 2010 population for Woodburn is 23,150, substantially less than even the Marion County's baseline 2010 number.[4]

Woodburn's use of an inaccurate and outdated population projection and one that is not the most recent coordinated one infects its employment projection. Woodburn started with a 2000 total employment of 10,388 (covered and uncovered). It then assumed a 3.0% AAGR and arrived at a 2020 employment projection of 18,762 (covered and uncovered). This translates to an 81% increase in total employment over the planning period.[5]

In contrast, the Oregon Employment Department's most recent forecast (February 2010) forecasts only 10% total job growth for the 10 year period of 2008-2018 for Region 3 (Marion, Polk, Yamhill counties).[6]

We ask that the Department and Commission take official notice of these officially adopted population and employment forecasts. In particular, the coordinated population forecast is legally required to be relied upon by all jurisdictions in maintaining and updating their comprehensive plans. ORS 195.025, 195.036.

1000 Friends and the petitioners believe that LCDC must remand the underlying UGB decision to the city to legally address the Court of Appeal's decision. The coordinated population forecast and most recent state employment forecasts will have to be part of that remand.

Sincerely,

Mary Kyle McCurdy

Mary Kyle McCurdy
Attorney for 1000 Friend of Oregon and Petitioners

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[4] See http://www.pdx.edu/prc/
[5] This is in the Record at Item 10, p. 1095, Table 8.
[6] http://www.qualityinfo.org/olmisj/ArticleReader?p_search=Region%203%202008-2018.&searchtech=1&itemid=00006883

Oregon
John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 373-0050
Fax: (503) 378-5518
www.oregon.gov/LCD

March 16, 2011

Kathryn Figley, Mayor
City of Woodburn
270 Montgomery Street
Woodburn, Oregon 97071

RE: LCDC Approval of Periodic Review Task 2 and Urban Growth Boundary Amendment (Order 11-WKTASK-001802)

Dear Mayor Figley:

I am pleased to inform you that the Land Conservation and Development Commission has approved the City of Woodburn's Periodic Review Task 2 and urban growth boundary amendment. The LCDC approval order is enclosed.

Judicial review of this order may be obtained by filing a petition for review within 60 days from the service of this final order, pursuant to ORS 183.482 and 197.650.

We appreciate the efforts of the City of Woodburn in completing this periodic review task. Please contact Steven Oulman, your regional representative, at (503) 373-0050 extension 259, if you have any questions or need further assistance.

Yours truly,

Jerome Lidz
Acting Director

enclosure

cc: Parties
Larry French, Periodic Review Specialist
Steven Oulman, Regional Representative

From:	Oulman, Steve
To:	Oulman, Steve
Cc:	SHIPSEY Steve
Bcc:	kathryn.figley@ci.woodburn.or.us; scott.derickson@ci.woodburn.or.us; jim.hendryx@ci.woodburn.or.us; bob.shields@ci.woodburn.or.us; greg@winterbrookplanning.com; smanderson@co.marion.or.us; jstonecipher@co.marion.or.us; sabrentano@co.marion.or.us; sid@friends.org; mkm@friends.org; kathleenmantonc@comcast.net; carlamikke@yahoo.com; mikkeld@pdx.edu; csherton@orlanduse.com; esullivan@gsblaw.com; ralfred@perkinscoie.com; mshipman@sglaw.com; rkaye2@gmail.com
Subject:	LCDC Final Order - Woodburn
Date:	Wednesday, March 16, 2011 9:19:00 AM
Attachments:	Woodburn Final Order.pdf

Attached please find the order and findings regarding the Land Conservation and Development Commission's approval of Woodburn's periodic review work task and urban growth boundary amendment.

Steven M. Oulman, AICP | Regional Representative, Mid-Willamette Valley
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Desk: 503.373.0050 x 259 | Fax: 503.378.5518
steve.oulman@state.or.us | www.oregon.gov/lcd

Oregon
Theodore R. Kulongoski, Governor

Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 373-0050
Fax: (503) 378-5518
http://www.oregon.gov/LCD

MEETING NOTICE

LAND CONSERVATION AND DEVELOPMENT COMMISSION

January 12-13, 2011

Department of Land Conservation and Development
635 Capitol Street, Basement Hearing Room
Salem, Oregon

The meeting location is accessible to persons with disabilities. To request an interpreter for the hearing impaired or for other accommodations for persons with disabilities, please make requests at least 48 hours before the meeting to Lisa Howard at (503) 373-0050 ext. 271, lisa.howard@state.or.us, or by TTY: Oregon Relay Services (800) 735-2900.

Public Testimony: The commission places great value on testimony from the public. Those items on the agenda with an asterisk (*) are ones where public comment will be accepted.

People who wish to testify are requested to:

- *Provide written summaries (20 copies to the commission assistant prior to the agenda item)*
- *Recognize that substance, not length, determines the value of testimony*
- *Endorse, rather than repeat, testimony of other witnesses with whom you agree*
- *The chair may limit time for testimony on any item and may set time limits for individual speakers (usually 3 minutes)*

Because of the uncertain length of time needed, the commission may deal with an item at any time in the meeting, except those set for a specific time. Anyone wishing to be heard on an item without a set time should arrive when the meeting begins to avoid missing an item of interest. Topics not on the agenda may be introduced and discussed during the Director's Report, Commission Business and Reports, or Other.

The commission may continue its meeting through lunch to deliberate on matters on the agenda. In that event, those persons whose attendance is necessary for any matter of business undertaken during lunch will be required to attend.

Please note that staff may not be able to distribute written comments received after January 10th. If you have written testimony you wish to present to the commission that you are not able to submit by January 10th, please bring at least twenty copies for distribution to the commission and members of the public.

8:00 a.m. Wednesday, January 12, 2011

Budget and Management Subcommittee. The subcommittee will report to the full commission during Commission Business and Reports. For additional information, contact Teddy Leland at (503) 373-0050 ext. 237, teddy.leland@state.or.us.

8:30 a.m. Wednesday, January 12, 2011

*1. **Public Comment.** This part of the agenda is for comments on agenda items and topics not scheduled for public comment elsewhere on the agenda. The chair will set time limits (usually 3 minutes) for individual speakers. The maximum time for all public comments under this agenda item will be limited to 30 minutes.

2. **Citizen Involvement Advisory Committee (CIAC) Update.** The CIAC will update the commission on its recent work. For additional information, contact Bob Rindy at (503) 373-0050 ext. 229, bob.rindy@state.or.us.

*3. **Climate Change Assessment and Adaptation Framework Presentation.** The Oregon Climate Change Research Institute (OCCRI) will provide an overview of the Oregon Climate Assessment Report, which was required by the legislature and was released in late 2010. Following OCCRI's presentation, department staff will give the commission a presentation about the Oregon Climate Change Adaptation Framework, which relates to the commission's interim strategy for climate change adopted in July 2009. The Chairman of the Oregon Global Warming Commission will then provide a summary of its Interim Roadmap to 2020. For additional information, contact Jeff Weber at (971) 673-0964, jeff.weber@state.or.us.

4. **City of Woodburn: Urban Growth Boundary.** The commission will consider a revised order in response to the Court of Appeals decision in *1000 Friends of Oregon v. LCDC.* The commission may accept oral testimony only from the parties. For additional information, contact Steve Oulman at (503) 373-0050 ext. 259, steve.oulman@state.or.us.

*5. **Public Hearing and Possible Adoption: Proposed "Housekeeping" Amendments to Rules.** The proposed amendments make minor and technical amendments to correct, clarify and update several administrative rules, including amendments to respond to court and LUBA opinions, to synchronize citations, and correct grammatical and spelling errors. The rule hearing and amendments concern rules under OAR 660, divisions 4, 6, 18, 21, 25, and 33. Following public testimony the commission may adopt the proposed amendments. For additional information, contact Bob Rindy at (503) 373-0050 ext.229, bob.rindy@state.or.us.

6. **Director's Report.** The director will provide an update to the commission regarding recent matters concerning the department. For additional information, contact Lisa Howard at (503) 373-0050 ext. 271, lisa.howard@state.or.us.

* Public comment accepted. The chair may limit time for testimony on any item and may set time limits (usually 3 minutes) for individual speakers. The commission encourages written testimony in addition to or instead of oral testimony in the event there is not enough time to hear everyone who wishes to speak. Items without an asterisk are not open for public comment.

7. **Commission Business and Reports.**

   a. The Budget and Management Subcommittee will report to the commission.

   b. Request to appoint a hearings officer to conduct a hearing on the proposed amendment to the Willamette River Greenway Plan boundary within the City of Portland.

   c. Appointments to the Local Officials Advisory Committee.

   d. Request to extend the deadline for La Pine's Comprehensive Plan Review.

8:30 a.m. Thursday, January 13, 2011

8. **Request to Appeal pursuant to ORS 197.090(2) and (3), and OAR 660-001-0201 to -0230.** State law requires commission approval of the director's decision to seek review of a local government land use decision, expedited land division, or limited land use decision. Only the director or department staff on the director's behalf, the applicant, and the affected local government may submit written or oral testimony concerning commission approval of a director's recommendation to file or pursue an appeal, or an intervention in an appeal, of a land use decision, expedited land division, or limited land use decision.

*9. **Review and Approval of 2008-09 Reports on Land Use Decisions in Farm and Forest Zones – ORS 197.065.** This biennial report, based on reporting information provided by counties, summarizes and comments on land use decisions and trends in farm and forest zones from January 1, 2008 through December 31, 2009. Also included is a summary of Measure 37 and 49 decisions. For additional information, contact Katherine Daniels at (503) 373-0050 ext. 329, katherine.daniels@state.or.us.

*10. **Department Biennial Report.** The commission will review the 2009-11 Biennial Report which the department will submit to the 76th Legislative Assembly. For additional information, contact Michael Morrissey at (503) 373-0050 ext. 320, michael.morrissey@state.or.us.

11. **House Bill 3379 Briefing.** Department staff will brief the commission on the rules recently adopted by the Oregon Transportation Commission to implement HB 3379. The rules give local governments additional options for complying with Section 0060 of the Transportation Planning Rule as part of economic development projects. For additional information, contact Matt Crall at (503) 373-0050 ext. 272, matthew.crall@state.or.us.

12. **Transportation Planning Rule (TPR) 0060 – Joint Subcommittee.** The commission will consider a request for rulemaking on TPR 0060. The commission may refer the request to a joint subcommittee of the Land Conservation and Development Commission and the Oregon Transportation Commission for a recommendation. For additional information, contact Matt Crall at (503) 373-0050 ext. 272, matthew.crall@state.or.us.

* Public comment accepted. The chair may limit time for testimony on any item and may set time limits (usually 3 minutes) for individual speakers. The commission encourages written testimony in addition to or instead of oral testimony in the event there is not enough time to hear everyone who wishes to speak. Items without an asterisk are not open for public comment.

13. **Metropolitan Greenhouse Gas Reduction Target Rulemaking Briefing.** HB 2001 and SB 1059 require that the commission adopt rules by June 1, 2011 that set targets for each of the state's six metropolitan areas to reduce greenhouse gas emissions from light vehicle travel. Department staff will brief the commission on the schedule for target rulemaking and the status of related work under SB 1059. For additional information, contact Bob Cortright at (503) 373-0050 ext. 241, bob.cortright@state.or.us.

*14. **Measure 49 Update.** The department will report to the commission regarding the status of the Measure 49 Services Division. For additional information, contact either Richard Whitman at (503) 373-0050 ext. 271, richard.whitman@state.or.us or Michael Morrissey at (503) 373-0050 ext. 320, michael.morrissey@state.or.us.

15. **Measure 49 Litigation – Executive Session.** The commission will meet in executive session to consult with legal counsel concerning litigation pertaining to Measures 37 and 49. The executive session will be held pursuant to ORS 192.660(2)(h). For additional information, contact Richard Whitman at (503) 373-0050 ext. 271, richard.whitman@state.or.us.

16. **Other.** The commission reserves this time, if needed, for other business or for further consideration of any item on the agenda.

Oregon's seven-member Land Conservation and Development Commission, assisted by the Department of Land Conservation and Development, adopts state land use goals, assures local plan compliance with the goals, coordinates state and local planning, and manages the coastal zone program. Commissioners are unpaid citizen volunteers appointed by the governor and confirmed by the senate. Commissioners are appointed to four-year terms and may not serve for more than two consecutive terms. The statute establishing the commission, ORS chapter 197, also directs that members be representative of the state. The commission meets approximately every six weeks to direct the work of the department.

Current commissioners:

Bart Eberwein (Portland)
Hanley Jenkins (Union)
Tim Josi (Tillamook)
Greg Macpherson (Lake Oswego)
Christine Pellett (Central Point)
John H. VanLandingham, Chair (Eugene)
Marilyn Worrix, Vice-Chair (McMinnville)

Meeting dates for 2011 (subject to change):

March 3-4	Salem
April 21-22	Salem
May 19	Salem
June 16-17	Salem
August 4-5	To be determined
October 5-7	To be determined
December 7-9	To be determined

The next commission meeting will be March 3-4, at the Department of Land Conservation and Development, 635 Capitol Street NE, Basement Hearing Room, Salem, Oregon.

* Public comment accepted. The chair may limit time for testimony on any item and may set time limits (usually 3 minutes) for individual speakers. The commission encourages written testimony in addition to or instead of oral testimony in the event there is not enough time to hear everyone who wishes to speak. Items without an asterisk are not open for public comment.

1

2 1000 FRIENDS OF OREGON,

3 FRIENDS OF MARION COUNTY,

4 LOLITA CARL, KATHLEEN CARL,

5 DIANE MIKKELSON,

6 And MARION COUNTY FARM BUREAU,

7 Petitioners,

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9 v.

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11 LAND CONSERVATION AND

12 DEVELOPMENT COMMISSION,

13 Respondent.

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19 Agency No. 11WKTASK001802,

20 CA No. A148592

21 TRANSCRIPT OF LCDC MEETING

22 January 12, 2011

1 Marilyn Worrix: - What we're going to do now is turn to Agenda Item 4 and open the hearing
2 on the Woodburn Periodic Review Board Task and Urban Boundary Amendment. We are going
3 to allow the representatives from the city to speak because they have some time constraints and
4 will have to leave. We will then take a break and will come back and continue on Agenda Item
5 4. So, representatives from the city.
6 Richard Whitman: Thank you, Marilyn. As folks from the city are coming up and I think at this
7 point we're just going to hear from, Mayor Kathy Figley and, any other elected official, either
8 from the city or the county who wants to speak and who's got a schedule constraint and needs to
9 leave, because of other engagements. But, I do want to give just a very brief, introduction on this
10 Agenda Item 4 before we go to Mayor Figley. The City of Woodburn has been working on an
11 urban growth boundary expansion for a long time. City went into periodic review and - back
12 around 2000, and one of the work tasks was an urban growth boundary amendment, and the City
13 has been working to pull together the elements, justifying an urban growth boundary
14 Amendment since I think either 2000 or 2001. It's - the mayor may comment on that - been
15 going on for a long time. The City made its decision in the fall of 2005 that was followed by, a
16 decision which is required by state law by Marion County also to co-adopt the urban growth
17 boundary amendment in the spring of 2006, and then, the decision came to this agency for
18 review on, objections from a number of parties including Marion County Farm Bureau and 1000
19 Friends of Oregon and a number of individuals - and finally came before this commission for a
20 decision in 2007. And then, subsequently was appealed to the Oregon Court of Appeals which
21 issued the decision, this fall in 2010. so here we are today. So that's - I just - before we got
22 started with this I - we've got a number of commissioners who were not here in 2007 when this
23 decision was made. It's been going on for quite a while. You have copies of a fair number of
24 the key materials that resulted in the prior decision just to familiarize yourselves; the transcript,
25 also briefs. So, with that, we have a draft proposed order from the Department that provides the

1 explanation that the Court of Appeals asked for, on one of the two issues before you today, and
2 those two issues are - number one, the amount of land, the city has added to its urban growth
3 boundary for industrial and office uses, and then number two, assuming that you approve the
4 City's addition of land for those purposes where that addition of land should occur. So, those are
5 the two issues before you today. And with that I'll shut up and let the mayor go.
6 Mayor Kathy Figley: Well, thank you very much, Director Whitman, and I - I took a little time
7 as you were speaking to be very sure that the commission receives my LCDC remarks and not
8 my State of the City Address. Madam Chair and Members of the Commission, thank you very
9 much for your courtesy in letting me go out of order today. As the Director's already mentioned,
10 I will be delivering the State of the City Address to the Woodburn Chamber Forum at noon
11 today, and that includes both - quite a few guests and the televised audience, and that's an annual
12 date that I certainly do need to keep. Again, I appreciate your consideration in allowing me to
13 address you on a subject that is fundamental to my community's future while respecting my
14 obligations as a mayor to her community. Please also allow me to express my appreciation to
15 Director Whitman and to his staff for their efforts in the weeks since we learned of the remand
16 from the Court of Appeals. Their professionalism and their hard work and support of our
17 endeavors have been remarkable. You have some outstanding people, who are supporting your
18 work, and they have our thanks and I hope yours. The hearing is taking place today due to a
19 remand from the Court of Appeals. So, I will respect both your time and behave appropriately
20 by not even attempting to introduce new evidence. There's no need for that. As part of the
21 materials provided for your review today you have a transcript of testimony that I gave four
22 years ago in front of this commission. And remarkably there's nothing that I would change in
23 those remarks. They are as true today as they were four years ago although the economic climate
24 of our community and our state has changed enormously in the intervening years. The only
25 change that I would make is to call your attention to one transcription error that is significant,

1 and that is I did not say that we had chosen to expand upon poorest soils. I think some
2 Northeastern diphthongs in my voice probably got in somebody's way there. As we looked at
3 expansion to the area now designated as for Southwest Industrial Deserve, we looked at the high
4 water table and heavy, poorly drained soil. It's not poorest. We said it was poorest. So, just
5 wanted to correct that one error, but it jumped out at me when I re-read my remarks. We
6 directed our expansion efforts to that area because it wasn't the same type of soil, and did not
7 have the same characteristics as other land we considered such as some outstanding quality
8 nursery soil between Woodburn and Hubbard which we consciously avoided. Not only will I
9 attempt to not offer new testimony, I would like to simply call your attention to a number of
10 points that also are contained in the order before you for consideration. While other members of
11 the City of Woodburn team have offered these points in technical detail in written submissions
12 for your review and we'll discuss them orally later today. My purpose is simply to remind you of
13 the process that the City of Woodburn has undertaken and the policy decisions behind it. And as
14 a matter of history, there is some material in our package that is as old as 1997, but I would say
15 the serious work went underway probably around the time of the 2000 election season. As
16 originally presented to you four years ago, the City of Woodburn's UGB decision regarding
17 residential expansion was not even really a matter of serious concern here. We've made an
18 evidence-based decision to include specific parcels within our 20 year land supply while
19 recognizing that the owners of other parcels have made credible cases for inclusion of their
20 property within the expansion area as well. Not only in that case did the City of Woodburn not
21 make a so-called land grab, the City of Woodburn exercised restraint in denying the request of
22 long-time owners of a tract of residential sites to be included in that proposal. We did not do so
23 lightly. We recognize the role of agricultural lands in our regional economy and went out of our
24 way to respect them. As originally presented to you four years ago, the City of Woodburn
25 documented the need for up to 310 net buildable acres for commercial expansion. Rather than

1 ask for that or anything close to that, we made a principle decision to limit commercial
2 expansion to 22 acres. That, I am sure, will eventually be developed in - as either neighborhood
3 commercial uses or as part of mid-use - mixed-use developments. While we could have justified
4 significant additional big-box development, we chose not to do so. We decided to limit big-box
5 development to redevelopment sites or to a small number of sites already within the current
6 UGB. As originally presented to you four years ago, the City of Woodburn documented the need
7 for up to 800 acres in new industrial land in order to achieve its goals for stable jobs in sectors
8 that paid better than its historic agricultural and food processing employers and for economic and
9 diversification. We documented a severe, mismatch, an imbalance as it were, between our
10 residential population and our employment picture. We were in part attempting to rectify a
11 jobs/housing imbalance that's the mere image of some other communities such as, for example,
12 Wilsonville. As a principle decision - and this was a decision that we did not look at lightly and
13 took a great deal of time even at the local level - we chose to include the inclusion of roughly
14 half of those acres. After an extensive analysis, we chose sites that we believed best met the
15 needs of industries that would find Woodburn a good fit and that we were able to serve
16 efficiently and cost effectively. We chose, as we believe that legislation and rules allow us to do
17 and in fact require us to do, to recognize the actual space requirements, preferences and behavior
18 of actual employers with a likelihood of choosing Woodburn for expansion or relocation as we
19 perform this analysis. The preference some employers have for campus-like facilities is a reality.
20 We have recognized that reality. The limited appeal of the up-and-out mantra to many industrial
21 users who require or desire industrial space is a reality. We have acknowledged that and
22 recognized that. We recognize that some users will acquire property with a plan for phase
23 development of - that may or may not be realized in any given 20 year planning period. It
24 depends very much on the planning period and the economic conditions during that planning
25 period. We also recognize that because we have voluntarily placed constraints on division of

1 some of the larger parcels to keep them available for particular types of industries with particular
2 requirements, it may result and there being required later in the planning process and thus
3 developed later in the planning period or possibly even over a period that goes beyond that.
4 Having said all of that, that is a very far cry from a simplistic "they want too much land". We
5 went out of our way to determine how much land was reasonably needed within a 20 year period
6 as our - we believe we have been mandated to do. The record we submitted in 2006 clearly
7 shows that our industrial land expansion proposal is based on an integrated economic
8 engineering and planning analysis. Though components of our plan and through components of
9 our plan, rather, and an independent and inter-governmental agreement with ODOT, we have
10 voluntarily limited use of these lands through trip budgets, limits on visibility and requirements
11 for developers in the area to contribute significantly to the upgrade of the Woodburn
12 Interchange. We believe that our proposal is not only nothing to apologize for but an example of
13 outstanding planning. It deserves to be emulated elsewhere in this State. At noon today, I will
14 be addressing my remarks on the State of the City to a community that is currently experiencing
15 unemployment in the 17 percent range and some of the lowest per capita and household incomes
16 in our State. As I have done every January since 2003, that was my first State of the City, I will
17 be discussing the progress of the urban growth boundary expansion and its potential for
18 Woodburn's economic revival. This process began, as I stated, in 1997, got underway in 2000,
19 progressed rather slowly but did progress until 2006 and has been at a standstill since then. I do
20 not believe that the torturous process and the accompanying economic stagnation that our
21 community has experienced is what was intended either by SB100 or by any of the subsequence
22 legislation and rule making. We have submitted a restrained and well thought-out proposal for
23 employment land expansion for a community that has more than doubled in population and
24 added only 19 acres of land to its urban growth boundary, in my recollections, since the original
25 UGB was approved in the early 1980's. We encourage the commission to approve the draft order

1 submitted to you for review today, and again, we thank you for your consideration. And I would
2 like to ask, do you have any questions for me before I need to leave?
3 Marilyn Worrix: Questions for Mayor Figley? Thank you very much.
4 Mayor Kathy Figley: Thank you very much for your courtesies again. Thank you.
5 Marilyn Worrix: Are there any other elected officials from Woodburn who have, a scheduling
6 conflict that would require that they speak now?
7 Mayor Kathy Figley: Counselor Morris came with me for moral support, and he and I will be
8 leaving, but we do thank you.
9 Marilyn Worrix: Okay, all right. Thank you very much. Take a break. Yeah, we're going to
10 take a break.
11 [BREAK]
12 Marilyn Worrix: Meeting back to order. We are continuing with Agenda Item 4, the Woodburn
13 Periodic Review Work Task and Urban Growth Boundary Amendment. we are going to, again,
14 change our time schedule just a little bit to account for people's personal needs, and so, we're
15 going to hear at this point from, Commissioner Brentano, and, then we will have a short staff
16 report, and then, we will move to the, individuals who have some time constraints as well, some
17 of the, objectors. So that's where we're headed. Commissioner Brentano.
18 Sam Brentano: Commissioners, thank you so much for working me in here this morning. I
19 didn't expect that. Actually I was laid out to, spend a little bit of time but I'll - I'll make this
20 quick for your sake too. My name is Sam Brentano, Commissioner of Marion County. I was
21 asked and read a short notice to - from the City of Woodburn to come back and simply repeat
22 that we're still in favor of all this proposal and things before you today. And the short answer -
23 and I should just say it and leave - is absolutely. Nothing's changed. We've had a long period of
24 coordination with Woodburn. It hasn't always been agreement in the beginning, but it's turned
25 into agreement. We agree in policies, population projections, economic opportunities,

1 transportation plan, facilities plan, even size, location and use of proposed expansion. But this is
2 kind of speaking for myself, but I know my board agrees with this. We - we have a funny
3 situation, Marion County. Twenty wonderful cities, all of them right in the middle of farmer
4 resource ground. So we know, and I hope you know too, that anytime one of them wishes to,
5 needs to expand, it has to be into those grounds. And we believe in, the value of farmland. It's
6 our number one, industry in Marion County, our number one producer. And so, we fight for
7 those acres. But then, this case in Woodburn or any city that has to grow, we know it has to go
8 into that area so then we want it to be planned. But we know that, we need cities that have to be
9 used to their advantages. In Woodburn's case, and here in front of you today, it's flat land,
10 adjacent to major transportation. The county's horribly interested in family wage jobs economic
11 development for now into the future, and we think these changes will allow that. We need to
12 provide open space so that growth can happen. And, we also know - kind of back to that moving
13 on into the farm ground - I went by and I'll try to go back to it. We really believe in if an
14 expansion is contiguous - we had the same situation in Donald - contiguous to this current city
15 facilities available, it isn't leap-frogging. That goes up and that's certainly the case that makes it
16 more favorable. And that's the case here today. And then a final comment and I'm not trying to
17 criticize this board or anything. You're very accommodating, but I find it difficult that a - that a
18 decision takes decades to find. Not just for Woodburn, but for anybody, so I do criticize the
19 process, and I hope you and we and everybody are close to coming up with a decision. So,
20 unless there are any questions, I thank you so much for letting me give a quick comment, and
21 have a good day.
22 Marilyn Worrix: Questions for Commissioner Brentano?
23 I have one quick one.
24 Sam Brentano: Certainly.

1 Marilyn Worrix: Has there been discussion at the county level about any sort of allocation of,
2 economic development throughout the county? For example, if one city is very aggressive, in -
3 and very aspirational in, their attempt to attract economic development, is there - are there - is
4 there any discussion of trade-offs or have you looked at the picture from that perspective?
5 Sam Brentano: The short answer is no. In 2002 there were apparently different looks at
6 economic things and at that point Woodburn was to determine that it would be the north county
7 industrial commercial hub and - and I think that happens, and this could help that happen. But
8 we're not going to get into - I hope we don't, trying to settle differences and - and competitive
9 advantages, etc. of our different communities. We truly are trying to support them all.
10 Marilyn Worrix: Thank you. Okay, we'll have, staff come up.
11 Steve Oulman: Good morning.
12 Marilyn Worrix: Good morning.
13 Steve Oulman: Steve Oulman, regional representative, and with me is Tom Hogue, our
14 economic development specialist. you've heard a lot of the introductory, remarks already from
15 Richard as well as the Mayor, so I felt what we would try and do is touch on a couple of key
16 points that have guided us in dealing with this - this remand issue and then entertain questions
17 from the commission, before we get into testimony. What I think we want to impress upon the
18 commission is that, employment land planning under Goal 9 is a distinct creature from
19 residential land planning. We say it's distinct because it is not the mechanically driven process
20 that is rigidly driven by population forecasts and in model inputs. Goal 9 in the Goal 9
21 administrative rule, give local governments a - a certain amount of flexibility and in some
22 instance to be aspirational about their - their future growth needs. It's important that local
23 governments review trends, both economic and population growth trends, and that they are using
24 that information to select suitable sites to meet reasonable economic opportunities. We don't
25 believe that Goal 9 in the Goal 9 rule means that economic development planning is simply an

1 extrapolation of past trends. There is needs that are determined through an economic
2 opportunities analysis, an EOA, that relate to the citing requirements that are based on reasonable
3 opportunities that are going to come to a local government. Local governments are also, we
4 think, empowered to make certain policy decisions to advance an economic development
5 objective, all of which is, of course, tempered by reasonableness in how that work relates to
6 employment and population forecasts. So we just want to point out that we - we're dealing with
7 a little bit of a different creature here, with the economic development planning.
8 So what did Woodburn do in this context? As you've heard already, Woodburn adopted
9 coordinated population forecasts and economic - economic growth forecasts with Marion County
10 and others. They adopted an economic, opportunities analysis. They adopted an economic
11 development strategy. They adopted a series of comprehensive plan policies reflecting future
12 growth and development objectives, based on those, two pieces of work. They then went about
13 identifying target industries that they believed would be best suited for, the Woodburn area and
14 could help them meet their economic development objectives as well as provide for the
15 anticipated future population growth in their community. They evaluated the site characteristics
16 that those target industries had, and they went about an analysis of evaluating the land that was
17 available both within the existing urban area as well as potential expansion areas to,
18 accommodate the identified number of sites needed, to essentially support their economic
19 development portfolio. So, what we get as an outcome of this exercise is the city identified a
20 need for 42 sites that would accommodate their economic development objectives. They
21 identified a shortfall of 19 sites, mainly larger sites, that they would have to find, within the area
22 to accommodate their needs. Those 19 sites translated into the urban growth boundary
23 amendment that is mostly at discussion here. That urban growth boundary amendment is
24 approximately 409 gross acres or 362 net acres. And importantly, the city, with that urban
25 growth boundary amendment, adopted protection measures that will help assure into the future

1 that lands added to Woodburn's urban growth boundary are held for the targeted industries and
2 minimize the chances of conversion to other uses that they were not specifically identified for at
3 the outset.
4 So that in a nutshell is where we're at. The department is recommending that the commission
5 again endorse the decision it made four years ago approving Woodburn's, periodic review task
6 related to economic development planning and the urban growth boundary amendment request
7 associated with that. That's the short answer, and I think we'll stop there and take your questions.
8 Marilyn Worrix: Questions at this point? That was a good explanation of, the questions
9 surrounding Goal 9. We're going to be, of course, looking at Goal 9 in relation to, Goal 14. Are
10 you going to talk more about that later on?
11 Steve Oulman: We can come back and talk about that. We've set this up essentially trying to
12 deal with the need issue, but we certainly can dive in with both feet the whole thing, but it's
13 important probably to understand - answering the first question that I think the Court asked us to
14 address on reconsideration is, "Did Woodburn plan too much?" The Department is
15 recommending again that, "No, Woodburn did not plan too much." And that's a question of need
16 that they probably ought to sort through.
17 Marilyn Worrix: We had originally, planned to divide this into the two, uh - two issues, but
18 some of the parties have requested we do it all together. So, would it be appropriate to go on to
19 that discussion now?
20 Richard Whitman: Maybe I'll talk just for, a couple minutes about the location issue. I'm
21 looking at - or, Steve, do you want to do that? I want - want to talk - why don't you try to talk for
22 a couple minutes about the location issue also just to tee it up.
23 Steve Oulman: Thank you. So once the City of Woodburn identified its needs, they had this -
24 they had a deficiency of approximately 409 gross acres, 362 net acres. They applied - well, I'll
25 step back. They had identified a set of site characteristics that were important to these needs, and

1 these get at the issues of site sizes, location or proximity to infrastructures such as the
2 transportation system, other physical characteristics of the land. Are they flat sites? Are they,
3 developable sites? Do they have other constraints such as, wetlands, as well as agricultural
4 soils? Without getting real technical we will say that they - they employed the priorities as laid
5 out within Goal 14, in statute, as well as the other factors here to identify the lands that they've
6 chosen in the Southwest industrial area as best meeting the need for their employment lands.
7 And that is largely result of the fact that back in their economic opportunities analysis and their
8 site needs determination, they concluded that their need was largely for - was for larger sites, one
9 site of approximately a hundred acres, a site between 50 and 75 acres and some smaller sites.
10 And as I think we can understand, if you're looking for those sorts of sites with those
11 characteristics within the urban growth boundary as it existed when it began the process, there
12 aren't going to be too many 100 acre undeveloped sites available. So that naturally then led them
13 to the area about where they could assemble those sites. The southwest industrial area had
14 advantages in terms of transportation and public, infrastructure, public facilities that made them
15 the best selections according to the City of Woodburn. So, that's how we get to the location
16 question, via their economic opportunities analysis and their site needs determinations. Does
17 that answer in part what you were looking for, Commissioner?
18 Marilyn Worrix: Well, it, uh - I think we'll be, the discussion will go much deeper into the
19 relationship between the two, Goals, but, that certainly sets the stage.
20 Steve Oulman: Okay.
21 Marilyn Worrix: Okay, Tom, do you have any?
22 Tom Hogue: Well, just - just briefly I think I would point out that the EOA analysis was based
23 on the number of sites that were needed, and we often get confused with the number of acres that
24 go along with that, but that's really driven by the facts on the ground once the location analysis
25 takes place.

1 Marilyn Worrix: Greg?

2 Greg Macpherson: Yeah, here's a question about the target industries and the sort of needs
3 analysis. Looking at it at a state-wide basis, one of the sort of general principles in economic
4 development is looking at economic development that brings dollars into the state as opposed to
5 local goods and services that are just basically serving each other, and it's a recognition that we
6 have to have more dollars flowing into the State. And when I see the targeted industries, and the
7 only place I know where there's a list of what the city had targeted is actually a footnote to the
8 Court of Appeals opinion, it's kind of a mix of what I would imagine our traded sector is the term
9 for things that bring, dollars into Oregon as opposed to things that are just serving each other -
10 and it's a pretty broad list as it is. So, is there any - is there anything in our rules and this process
11 that draws that distinction, that says, "Okay, we will support or we will recognize a strategy that
12 is in aid of some general economic expansion as opposed to just more facilities that are serving
13 each other?"

14 Tom Hogue: Thank you, Commissioner. At the state level, the Oregon Business Development
15 Department provides incentives and programs to attract those specific entities, but at the local
16 planning level, they're looking at their competitive advantages and trying to get businesses to site
17 in their community to provide jobs and tax-base for - for their community. I think there's a
18 distinction about what role - and I think there's a large question about what role the local
19 economy plays in the state economy, and I think your question is apt, but I don't think it's
20 pertinent to the city's planning effort.

21 Greg Macpherson: It's just a follow-up. There's nothing that would, about our rules and our
22 process that would tell them to focus on what is in aid of the broader state economy as opposed
23 to just trying to make . . .

24 Tom Hogue: No, there's not a rule directing. . .

1 Greg Macpherson: There's some local healthcare clinic is there rather than in the next town
2 down the road.
3 Tom Hogue: Right. No, there's nothing in the rule directing that kind of analysis.
4 Marilyn Worrix: Any other questions? Thank you.
5 Greg Macpherson: I think what we'll plan on doing, as noted, we'll have, the essentially 1000
6 Friends representatives come up, and they have, I believe, identified the order in which they've
7 got folks that they're planning on speaking. Is that correct?
8 Thousand Friends Rep: I believe so.
9 Greg Macpherson: And that will select out the folks who are - have additional time constraints.
10 Marilyn Worrix: Okay, very good. Mary Kyle, could you help us? Then, my plan was to call
11 up all of the individuals, leaving you, Sid, Corinne to follow. But you know their time
12 constraints better than I do, so.
13 Sid Friedman: Which with your permission, Commissioner Worrix, if it would be possible,
14 could you call the, uh - the, other parties in the following order?
15 Marilyn Worrix: Um-hmm.
16 Sid Friedman: Lolita Carl followed by Kathleen Carl followed by Dianne Mikkelson followed
17 by Carla Mikkelson, followed by, myself and then followed by Tom Brawley from the farm
18 bureau and then-
19 Mary Kyle McCurdy: And then me.
20 Sid Friedman: Mary Kyle, and I'll probably come back up while Mary Kyle's here.
21 Marilyn Worrix: One more time. We've got Lolita Carl, Kathleen Carl-
22 Sid Friedman: Kathleen Carl. Right. Dianne Mikkelson.
23 Marilyn Worrix: Carla Mikkelson?
24 Sid Friedman: Dianne, did you fill out a blue card?
25 Dianne Mikkelson: No.

1 Sid Friedman: Okay, you can fill out one later but-.

2 Marilyn Worrix: So, Dianne?

3 Sid Friedman: Yeah, Dianne and then Carla.

4 Marilyn Worrix: Okay.

5 Sid Friedman: And then myself followed by Tom Brawley from the farm bureau and then Mary

6 Kyle. Thank you very much for accommodating that.

7 Marilyn Worrix: We also have Mark Shipman and,

8 Richard Whitman: Just to clarify, Mark Shipman and Corinne Sherton are speaking, are aligned

9 with party supporting the city's decisions. So, we'll call them up after we hear the first sequence

10 and after the city or with the city.

11 Marilyn Worrix: Okay. So we're starting with Lolita Carl.

12 Lolita Carl: That's me.

13 Marilyn Worrix: That's Kathleen?

14 Lolita Carl: I'm Lolita.

15 Marilyn Worrix: Lolita. And you are?

16 Male: I'm an intern with, 1000 Friends.

17 Sid Friedman: He's the tech guy.

18 Marilyn Worrix: The tech guy, okay. Okay. Lolita.

19 Lolita Carl: Yes. Lolita Carl, full-time farmer. Five generations of our family have lived and

20 worked on our farm over the past 95 years. Our land is within sight of the present Woodburn

21 UGB and just a few hundred feet from Woodburn sewage treatment property. In my lifetime we

22 have produced flax, wheat, corn, peas, dairy and beef cattle, sheep, hogs, chickens, fruit,

23 hazelnuts, oats, grass seed, alfalfa hay, grass hay, clover, berries and timber. This diversity is

24 characteristic of agriculture in our area. Farmers are adaptable and quick to respond to market

25 changes. The Willamette Valley's mild climate and fertile soil are ideal for an amazing number

1 of crops. Woodburn is in the heart of French prairie, and French prairie is the best of the best.
2 Farm land is not undeveloped land. It is already supporting the leading industry in Marion
3 County, agriculture. The agricultural industry is a prime driver of Woodburn's economy.
4 Agricultural experts rank number two in our State before all other exports. Agriculture accounts
5 for 25 percent of all Oregon exports. Agriculture's increasing economic importance is a
6 testimony to its success and sustainability. Marion County agriculture is the number on industry
7 in the county. Direct agricultural sales regularly reach half a billion dollars. Marion County
8 ranks number one among Oregon counties in gross agricultural sales. 80 percent of Oregon's
9 farm products are exported out of state. 40 percent are exported out of the country. Maybe you
10 see a grass seed field and say, "What good is that? Let's put in more industrial land." Because
11 we now have a planet of six and a half billion people. One to two billion of whom are starving
12 because the oil reserves are being used up, and we might not be able to afford to import
13 strawberries and apples from thousands of miles away. When the Oregon legislature passed
14 Senate Bill 100, it established the underlying policy basis in statute. I'm going to read ORS
15 215.243 because it cannot be more clearly stated. "The legislative assembly finds and declares
16 that one, open land used for agricultural use is an efficient means of conserving natural resources
17 that constitute an important physical, social, esthetic and economic asset to all of the people of
18 this state whether living in rural, urban or metropolitan areas of the state. Two, the preservation
19 of a maximum amount of the limited supply of agricultural land is necessary to the conservation
20 of the state's economic resources, and the preservation of such land in large blocks is necessary
21 in maintaining the agricultural economy of the state and for the assurance of adequate, healthful
22 and nutritious food for the people of this state and nation." We believe that you believe this
23 statute means something. Allowing Woodburn to take large blocks of prime farmland, even
24 though it admits it won't develop all that land, is clearly contrary to this statutory policy.
25 Woodburn is being greedy and wasteful of the community's natural resources. The ones who are

1 really pushing for huge expansion are the consultants who are paid to say, "We need it." Greg
2 Winterowd was paid by Opus Northwest to help them develop their parcel while also being paid
3 by the City of Woodburn to advise them on their UGB expansion. I urge you to drive
4 Woodburn's current boundary and look at the fields it wants to urbanize. Look at all the
5 industrial sites in the existing city limits that have been abandoned or not yet developed. These
6 sites already have sewer, power and roads. It behooves us to take care of these acres first and
7 conserve our best farmland. The conversion of the old Kmart site into the Wellspring facility is
8 an excellent example of thoughtful redevelopment within the current city limits. Please, take a
9 moment to reflect on the importance of your decisions today. Think of the early settlers who had
10 no idea of what the value of one old growth tree would be. Think of one acre of land. Our rich
11 Willamette Valley soil can produce new crops of food every single year to feed endless
12 generations. Thank you.
13 Marilyn Worrix: Questions for Lolita? Okay. We'll move on. Kathleen.
14 Kathleen Carl: I'm Kathleen Carl. I'm representing, our family farm. I helped grow all those
15 things too. So, anyway, my objections boil down to three. There's too much land in Woodburn's
16 UGB expansion. Woodburn's disregard for the agricultural sector of the local economy, and
17 Woodburn's expansion into prime farmland west of I-5 instead of onto poorer soils to the south.
18 First, too much industrial land. Under Goal 14, OAR 660-015-00014, "Local governments
19 should demonstrate that their needs cannot be reasonably accommodated on land already inside
20 urban growth boundaries." Woodburn may need more industrial land, but the amount proposed
21 is unrealistic and far exceeds what's needed for the city's future job population projections. The
22 city acknowledges that Woodburn has included more than twice the industrial land that it expects
23 to develop over a 20 year period. They have already told you, "If we have all the employment
24 we expect to have, we'll have 200 developed acres of the 400 acres we are developing." If you
25 allow Woodburn to include twice as much industrial land as it expects to develop over 20 years,

1 how will you say no to another city? Goal 14 will no longer have any meaning. And they not
2 only claim to need twice as much land as they expect to develop. They say existing vacant
3 industrial lands can't meet that need because they need special land for their targeted industries.
4 The Woodburn UGB included 126 acres of vacant, partially vacant and potentially re-
5 developable industrial land. But they reduced this amount. The acreage available for new
6 targeted industry was reduced from 126 acres to 47 acres. Because land owners said their
7 property was being held for future expansion or was being used for storage of equipment. So,
8 what were those targeted industries? The largest parcel by far, 125 acres, is for silicon chip
9 fabrication plant. That's over one third of the net buildable industrial acres Woodburn's adding
10 to its UGB. These plants are going overseas. Already several facilities within Metro, Salem and
11 Eugene are sitting vacant. The Department said the city documented the type of businesses that
12 it had had a competitive advantage in attracting and growing, but I don't believe that there is any
13 factual basis to conclude that Woodburn can attract a silicon chip fabrication plant. Second,
14 Woodburn's disregard for the agricultural sector of the local economy. Under statewide planning
15 Goal Guideline 4, "plans should emphasize the expansion and increase productivity from
16 established industries" - and that's the second one down there. I'm sorry. I'm reading backwards.
17 "From established industries and firms as a means to strengthen local and regional economic
18 development, and, above that, comprehensive plans for urban areas shall include an analysis of
19 the community's economic patterns, potentialities, strengths and deficiencies as they relate to
20 state and national trends." Yet, Woodburn's economic opportunities allows us - does not even
21 analyze or even mention the importance of agriculture to the local economy. Woodburn's
22 economic opportunities analysis makes no mention of agriculture of the rich soil surrounding
23 Woodburn as one of the comparative advantages of this area. In Woodburn's projections for
24 2020, they projected a 40 percent drop in agricultural jobs from 2000. Yet, agriculture's
25 contribution has grown since 2000 and is growing. Agriculture is a viable, thriving part of

1 Woodburn's economy, but instead of targeting industries that can compliment this strength,
2 Woodburn targets our most productive soils even though state law says to use poorer soils first.
3 Even if Woodburn could justify the amount of industrial land, which I don't believe they can,
4 they are taking the wrong land despite directives to the contrary, both in ORS 197.298 and Goal
5 14. The poorer soils are south of town, east of I-5 to Boones Ferry Road. All of the darker
6 yellow areas are prime farmland. The light, pale areas south to Gervais is still good farmland but
7 not as good. Now, you may see in this map that it's mixed, but you can see that it is better land
8 to the west. Here's where - did you - should we show them where the Woodburn is proposing to
9 expand the UGB? That's in the next one, right? Yes. Woodburn wants to expand west of the
10 freeway to include the Opus site which is 130 acres of prime farmland. Here is a photo of the
11 Opus site for the record. Woodburn could instead continue further south beyond Par Road onto
12 Class 3 soils to meet their industrial needs. The Department of Agricultural pointed this out -
13 Oregon Department of Agriculture. They said, "The target is concerned especially with the
14 proposed expansions located west of interstate 5 and north of the existing UGB. Both of these
15 areas include prime farmland and Class 2 soils. Based on the soils prior established by both Goal
16 14 and the statute, the best place for any justified expansion onto agricultural land would be
17 south of the existing UGB between I-5 and Boones Ferry Road. This area cart includes large
18 tracts of poorer Class 3 soils." I know it's not easy to say no to a local government even when
19 they are clearly over reaching. But I believe there's too much industrial land in Woodburn's
20 UGB expansion, and it's the wrong land. Please direct - direct Woodburn to recognize the
21 importance of agriculture to the Woodburn economy by reducing the amount of UGB expansion
22 onto farmland, reduce industrial land to be more commensurate with what is expected to actually
23 develop, reduce the amount of Class 1 and 2 soils including the UGB expanded to the south on
24 poorer lands rather than to the north towards Crosby Road or west of I-5 to Beautiful Road, the

1 Opus site. And include all available industrial parcels to accurately account for eligible
2 industrial land within the UGB. Thank you. Anybody have any questions?
3 Marilyn Worrix: Thank you. Questions for Kathleen?
4 Richard Whitman: Would you tell us where the Carl farm is?
5 Kathleen Carl: Yeah, do you want us-
6 Lolita Carl: We're northeast of, Woodburn. This little piece of land here which is now going to
7 be in the UGB, much to our regret I will say, but we're not protesting that. This is Carl Road
8 right here. Carl Road, goes east of 99E, and our farm is east of 99E. And Woodburn's, sewage
9 treatment plant goes down - is down that road right next to our farm. Well, a hundred feet away
10 from the-.
11 Kathleen Carl: More like 600 feet, I think.
12 Lolita Carl: Okay.
13 Richard Whitman: Thank you.
14 Marilyn Worrix: Okay. Any other questions? Okay. Then we will have Carla Mikkelson come
15 up and-.
16 Dianne Mikkelson: Actually she just filled out the form. This is Dianne Mikkelson.
17 Marilyn Worrix: Okay, we'll have - okay. We'll have, Dianne, Mikkelson and Carla come up.
18 Dianne Mikkelson: This will be very brief, and I don' t have any slides. By now you are
19 familiar with the issues-.
20 Marilyn Worrix: Who are you, for the record, your name?
21 Dianne Mikkelson: Sorry.
22 Marilyn Worrix: That's okay.
23 Dianne Mikkelson: I'm Dianne Mikkelson. I live at 1090 North First Street in, uh - within the
24 city limits of Woodburn. By now you are familiar with the issues surrounding Woodburn's plans
25 for inclusion of what is to many of us an unwarranted number of acres for industrial expansion in

1 their UGB proposal. We also feel that the expansion should be redirected from lands west of I-5
2 to those east of I-5 and to the south of Woodburn. Industrial zoned in current land currently
3 within Woodburn's UGB is waiting for redevelopment. The infrastructure is in place or the sites
4 lie close to existing utilities and could be brought into service without adding substantially to the
5 financial burden of the citizenry and existing businesses of Woodburn. What the city should not
6 be allowed to do, however, is implement unrealistic UGB expansion into areas where the
7 infrastructure does not exist and the provision of which would increase our tax burden without
8 providing improved or increased services to those of us who already live within Woodburn city
9 limits. In addition, this proposed expansion would pave over, otherwise known as develop, lands
10 which support Marion Counties most valued industry, agriculture. Available agricultural land is
11 finite. Once cemented over, it is not retrievable. Given our country's current economic
12 condition and the slow pace of recovery, it is unlikely that large industrial employers will be
13 locating at Woodburn any time soon, if at all. It is much more realistic to think that small to
14 medium size businesses will find Woodburn's already existing industrial sites more appealing.
15 Also, as Woodburn's existing businesses recover from the downturn, it is likely that they will add
16 positions or shifts and rehire laid off workers. I have noticed what seems to be a move away
17 from Woodburn's history of serving the agricultural community which surrounds it and an
18 increasing emphasis on courting more "upscale" types of industries. Courtships like this can
19 often include such things as a generous tax package which will allow the new enterprise to pay
20 lower tax rate for a specified number of years and very often can include additional infrastructure
21 built at the city's expense. Unfortunately, when those years have passed and the city can resume
22 normal tax collection, these businesses fold their tents and move on to the next community which
23 can be persuaded to forego tax revenues or remove themselves altogether and shift their
24 operations overseas leaving our community with empty industrial capacity, empty coffers and
25 laid off workers. In the meantime, the agri-business community will have taken its purchasing

1 power to nearby cities who are still proud of their heritage and continue to develop and provide
2 the resources that farmers, ranchers and nursery owners need to maintain and grow their
3 operations. Woodburn is its own place, but it doesn't exist in a vacuum. It is easy to become so
4 involved in the process that we forget that ultimately it will be the results that matter. The
5 physical impact of Woodburn's UGB expansion will not only be felt by Woodburn. How we use
6 our resources here will be observed by other communities in Marion County and the State of
7 Oregon. Please bear in mind that in several years when you are driving up 99E through
8 Woodburn or have come up I-5 to visit the outlet mall, it will not be you who will be dealing
9 with these long-term results of the decisions you will be making with this - in this matter. It will
10 be me, my family, my neighbors and the citizens of Woodburn. Thank you.
11 Marilyn Worrix: Thank you. Any questions for Dianne? Okay. Carla.
12 Carla Mikkelson: My name is Carla Mikkelson. I live at 17244 Arbor Grove Road NE in
13 Woodburn. That is the farm west of interstate 5. It is also west of Buteville Road. This property
14 has been in the possession of my family since 1949. My sister's house in Woodburn has been in
15 my family since approximately 1960. In previous hearings that we have attended we have been
16 accused by people of being outside agitators, and I simply wanted to, express that we have been
17 around this area for a long time. In their plan in UGB amendments, the city recognized that if it
18 wanted the commercial corridor along 99E to be redeveloped, it would have to limit the amount
19 of land it proposed for commercial expansion. That's encouraging redevelopment of existing
20 sites. Unfortunately it appears to have forgotten that method for redevelopment in its industrial
21 lands proposal. We believe that this city has over estimated the number of jobs that it will
22 capture and is underestimated the amount of available industrial land already within the UGB.
23 Between 1990 and 1999 Woodburn captured 11.2 percent of the job growth in the county but
24 predicts in their plan that they will grab 23 percent of the county's projected job growth in
25 coming decades. This is not a realistic assessment of Woodburn's job growth. It takes no

1 account of job growth in other jurisdictions in Marion County nor does it take into account some
2 of its targeted industries already cluster in other areas of the state and will undoubtedly choose to
3 expand near their current locations where they already have infrastructure and a pool of qualified
4 workers, or they will simply take their factories to other parts of the world where labor is cheap.
5 It was also noted that Woodburn had fewer jobs per capita than other places in the county, and an
6 assumption was made that Woodburn therefore lacked jobs and that their aggression in pursuit of
7 industry and growth was appropriate. But if you look closely at census data, Woodburn has
8 larger families and more retirees than is true for the rest of the county. Therefore, much of
9 Woodburn's population is either young or old and not in the job market. As you can see from the
10 next slide, Woodburn's initial consultant hired in 1999 did not find a need for new industrial land
11 outside the current UGB. For whatever reasons they had, the city did not agree with this finding
12 and hired new consultants. It is not surprising that a new consultant would come up with a
13 different scenario given what happened to their predecessor. It was no surprise then that the next
14 report stated Woodburn needed a gigantic UGB expansion of over a thousand acres which they
15 did reduce to slightly under a thousand acres. Over 44 percent of that would be for industrial
16 employment land. It wasn't just us who disagreed that Woodburn needed this much land.
17 Marion County Public Works did not see the need for the industrial expansion as proposed. And
18 once upon a time even DLCD staff agreed that the projected employment figures were overly
19 ambitious and that some growth would occur in areas already developed within the UGB. For
20 example, as has been already stated, I'm sorry, an employer could add another shift or call back
21 laid off workers. Not only did Woodburn not include this growth in its employment analysis it
22 also removed the approximately 80 acres of available industrial land from its buildable lands
23 inventory, whether intended or not, inflating the need for new land. The tension between the
24 agricultural land uses and urbanization is natural. Land that is flat and has good drainage makes
25 it desirable for both farming and for industry. Urban development is now recognized as the main

1 cause of farmland loss in North America. Oregon recognized this fact 40 years ago and tried to
2 do something about it. I support land-use planning and always will. But it needs to be
3 recognized that our system does not preserve farmland. It only slows down the rate at which
4 urbanization occurs. A city can grab whatever land they can get every 20 years. Sometimes
5 even more often than that depending on its ability to meet a 20 year supply. Granting a city more
6 land than it needs for its 20 year supply of land for any use only hastens the loss of farmland.
7 Sadly, to me anyway, the proposed industrial expansion undermines much of what is positive
8 about what the city is proposing. I hope it can be remembered that we actually supported much
9 of the city's plan. But the proposed expansion will require more of an already limited public
10 transit system and increase its costs. It will slow down the redevelopment of downtown and will
11 continue to pull limited city, energy and resources toward the I-5 corridor. I-5 has been proposed
12 as one of Woodburn's comparative advantages. But having lived there most of my life, at least
13 so far, it's a mixed blessing at best, and I think anyone who's tried to get to the outlet mall during
14 Christmas understands what we're talking about. But, sadly, superior farmland is no longer
15 considered a comparative advantage. Only its urbanizing potential is noted in this plan. Please
16 do not mistake adhering to fastidious procedures as legitimate decision making. We are making
17 decisions here for future generations, and they will be living with our mistakes. They may
18 wonder why we chose to turn our backs on our agricultural heritage at a time when that heritage
19 became more important than ever and a world losing farmland and gaining population at
20 alarming rates. Please send this decision back to the city. As noted earlier, we supported much
21 of this plan, and I strongly believe we can make this plan work better not only for Woodburn's
22 agricultural neighbors but for the citizens of Woodburn as well. Thank you.
23 Marilyn Worrix: Questions of Kathleen?
24 John VanLandingham: Carla.
25 Marilyn Worrix: Carla. I'm sorry. I'm sorry.

1 John VanLandingham: Tell me again where your farm is. You said, um-.

2 Carla Mikkelson: we are, um - I don't know where that map is but-

3 John VanLandingham: So, I see Buteville Road.

4 Richard Whitman: That's the railroad, isn't it?

5 John VanLandingham: No, that's something else.

6 Richard Whitman: That's the railroad.

7 Carla Mikkelson: That's the railroad. Okay, well, we're across the railroad track. The drag strip

8 is over here. And we're kind of up and over.

9 John VanLandingham: Okay, so off that - off that map.

10 Carla Mikkelson: Yes.

11 Marilyn Worrix: Questions? Okay, thank you, both of you. Okay, now we will have, Sid

12 Friedman and Tom Brawley. Since there are three chairs we might as well have Mary Kyle

13 come on up too. The order I have, Sid, is you next, is that correct?

14 Sid Friedman: Correct. If that works for you. For the record, my name is Sid Friedman. I'm

15 here representing 1000 Friends of Oregon today. Commissioners, as you've heard from other,

16 objectors regarding the existing industrial capacity within the urban growth boundary, that is

17 currently undeveloped, partially vacant, vacant, re-developable, and I want to, detail that a little

18 bit. Woodburn's existing industrial areas desperately need development or - and redevelopment.

19 These slides just show just a few of the existing industrial sites that the city claims, have no

20 capacity to meet future needs because they don't meet the needs of specific targeted industries.

21 Woodburn should focus its energy and resources into attracting employers that would move into

22 these empty buildings and vacant industrial land that are already within the existing urban

23 growth boundary and which, uh - for which public investments and infrastructure have already

24 been made. Most of - most new jobs are created by the expansion of - of existing small to

25 medium size businesses. But the city improperly discounts the vacant and re - reusable industrial

capacity within its current boundary because it will be used for expansion of existing industries or it says it's too far from its freeway interchange to attract specific targeted industries. And the next two slides or the next slide, the purple on the map shows the existing vacant and partially vacant land within Woodburn's current pre-expansion boundary, and you can see a lot of it is concentrated on the east side of town, in the vicinity of 99 E.

Richard Whitman: Sid, could I ask - interrupt and ask you a question with regard - is this - so the vacant, land is that industrial zoned land or is that all-?

Sid Friedman: It's all - all the purple - the dark purple is, uh - is industrial -partially vacant industrial land. The light purple is, vacant industrial land, and then the yellow and the red are - are other categories.

Richard Whitman: Okay, great, thanks.

Sid Friedman: Only the purple - only the purple is industrial land.

Richard Whitman: Okay.

Sid Freidman: so, then the, next slide - so - so those were the inventory, industrial land that exists - the capacity within the existing UGB, but, the city removed the lined-out parcels from the buildable lands inventory or from its calculations of capacity to meet need. Those are some of the purple parcels that you saw because they said they - they were going to be used for - by the people who already own them. Here's, the next slide shows the full revised map - or the - shows the revised map - next slide - after those lined- out parcels are removed, and you can see there's not a whole lot left. They removed - the didn't add another calculations. Most of the existing capacity - could you go back for a slide for a moment. Send it forward, and you can compare the two. Now, the full revised inventory after those lands are removed here and it shows the lands removed on the east side as well as the new replacement land that was added on the southwest corner of the urban growth boundary. So the - the large block of purple on the, left hand side is the new expansionary that they refer to as the southwest industrial, reserve. But you

1 can see that the city - in a moment, when you go back, you can see the city not only removed the
2 existing vacant industrial land on the east side. They also removed existing vacant industrial
3 land from their calculations that's just about adjacent to the freeway and has exactly the
4 characteristics they say they need for their targeted industries. Can you go back to Slide 22 for a
5 second? Or actually maybe - yeah, see the two parcels there, uh - purple parcels on the left hand
6 side are removed from the inventory, on the full inventory map, and that's Slide, 29 - that slide
7 there. So, all this additional, existing industrial capacity wasn't included in the city's land need
8 calculations. But in addition to this, as you've already heard from others, lots of industrial job
9 growth is absorbed without any development to redevelopment. In the real world, you know,
10 work - laid off workers are called back, a plant adds a shift. They even add a second - or they
11 may even add a third shift, and none of these involves development or redevelopment of newer
12 existing sites. And as the Mikkelson's pointed out in their original objections a few years ago,
13 for other cities such as Salem, ECONorthwest assumed that significant amounts of job growth
14 would be absorbed within their - within their current space with employee - employers adding
15 employees without adding any new additional space. But in contrast, Woodburn didn't allocate
16 any employment growth at all to this kind of intensification. Now, the city's, approach or basic
17 argument seems to be this doesn't matter. Pay no attention to this because everything is based on
18 the needs of our targeted industries. However, even using this approach the city over -
19 overstated its industrial land needs. For example, Woodburn identified four target industries that
20 need sites of five acres or less. But the city doesn't want four or five or even ten sites for these
21 four target industries. It wants 25 sites. Go ahead and show the next slide there. Keep going.
22 Well, doesn't matter. We had a slide up there that illustrated the - the, sites, but suffice it to say,
23 the, um - the city is including far more sites, multiple sites for each one of its targeted industries.
24 There it is. You can see they targeted four industries that need sites of, five acres or less, but
25 they're including 25 sites in those smaller categories. Ten in the two to five acre category and

1 another 15 that are less than two acres in size. So, what's the danger in - in - in too much land?
2 Well, there's a lot of danger in too much land. Not only do you have the loss of farmland, the
3 inordinate infrastructure cost, the disincentives to redevelop land that desperately needs
4 redevelopment. There's also pressure to convert that land to other uses not industrial uses. As
5 the Mikkelson's also pointed out in their 2006 objections, when the Keizer Station plan was,
6 approved rezoning prime industrial land by the I-5 interchange, and at the - in the Salem, Keizer
7 area in Keizer, the city council president stated at the time that the area was zoned industrial, but
8 the owners wanted to sell their properties, and the city hadn't been able to attract significant
9 industries to the area even though it had the same easy access to I-5 that Woodburn touts as its
10 advantage. So, the city of Keizer then changed the zoning and allowed major new commercial
11 development on what was supposed to be an industrial reserve protected as an industrial reserve
12 by comprehensive plan policies. Woodburn is claiming its new industrial overlay zone will
13 prevent such changes. But all it will take is a city council vote to remove those protections and
14 change the plan. Will the Department appeal an amendment to Woodburn's plan to remove that
15 overlay? Before expanding on to farmland, cities are required to use land that's already in the
16 urban growth boundary effectively and efficiently. You've already heard about the importance of
17 agriculture in Marion County's economy and to Woodburn's economy. Land that is being farmed
18 is neither vacant nor undeveloped. Woodburn's existing vacant land - vacant industrial land and
19 vacant industrial buildings can always be converted to a different industry. However, it can't be
20 converted back to farmland. So, let me wrap up here. Woodburn has not included existing
21 vacant industrial capacity in their calculations. It has not used sound methodologies to determine
22 its employment growth. It has not correctly used the methodology it did choose, and it is asking
23 for more industrial land in the urban growth boundary than it expects to develop over the next 20
24 years. Please understand. We don't object to all of Woodburn's expansion or even all of the
25 industrial expansion. Woodburn says it will develop 200 industrial acres over the planning

1 period. It has 126 acres of available land in the urban growth boundary, and even without the
2 Opus site, the expanded UGB includes land for targeted industry use. Can you go to a map of
3 the - that map there. So, the land in the - the Opus piece is the piece, on the left hand side west
4 of the freeway, and then down in the lower left is other land - industrial land that's been added to
5 the UGB. Those are very large parcels. You can see the parcel size there. So, even without the
6 Opus site there's plenty of industrial land added to the urban growth boundary. Now, even if -
7 and it's a big if - if Woodburn could justify more industrial land beyond this, it ought to be onto
8 the poorer soils to the south. Could you go to a soils map for, um - please? No. Yeah, so
9 anyway, the map that, the city provided, that oversized map, only shows the soils - that one's fine
10 - only show the soils in the expansion area, the area that they included those large parcels which
11 are directly south of the city, but directly south of that is additional land that's all Class 3, no
12 prime soils, and that's where any additional land, if it can be justified, ought to be located
13 because they're poorer soils and because it's where the rest of the new industrial land is. So,
14 there's three things we'd like to ask you to do. Send this back to Woodburn, remand it with
15 instructions to first recalculate its industrial land needs based on what is actually needed over the
16 20 year planning period based on a real - realistic projection of employment growth, two, to
17 include all the existing industrial capacity within their current urban growth boundary and their
18 calculations and, third, for that industrial land need that can be justified expand on to the poorer
19 soils to the south not on to the prime soils west of the freeway. Thank you. And if you have
20 questions, I'll do my best.
21 Marilyn Worrix: Questions for Sid? Thank you.
22 Sid Friedman: Thank you.
23 Marilyn Worrix: Okay, Tom.
24 Tom Brawley: I want to thank you all for being here. It's heartwarming to see as many
25 commissioners, across the table from me. I hope you're as impressed as I have been with the

1 testimony today. I'm a farmer. Been a farmer in Marion County for 35 years. We farm south in
2 the southern part of Marion County. I'm also a, active member of the Farm Bureau -Marion
3 County Farm Bureau Board of Directors, and that's why I'm here today as to represent the
4 farming community - the commercial farming community. Much testimony has been given as to
5 the importance of AG in Marion County. I don't have to go over it again except to say that the
6 timing is really great. I always love to talk about agriculture and food just prior to lunch. I got
7 your attention, and I like that. Appreciate that. Marion County did come up with a letter, and I
8 think it's a good letter. It's got, many ORS's, references that you'll find, and we didn't pass it out
9 intentionally so that you wouldn't be reading it right now. We'll hand it to you after we're done,
10 and we appreciate you using it and looking at it. It's well written. As much of this testimony has
11 been well written and - and, presented today. I'm going to make this short because I - I would
12 be, repeating everything that's been said. I think you all know why we want to farm prime land.
13 I do want to say that and mention once again - it's been mentioned once before that our hosts
14 today, the Department of Ag, have come out in a formal letter to you people, and I just want to
15 remind you of it, opposing anything west of I-5. Now that's big, and it pertains. So I'd like you
16 to consider that very heavily. That's a - I think an important point. When I was in the military
17 years ago, I took an oath to support the laws of the United States and the uniform code of
18 military justice. I don't know and I don't know and perhaps you can help me here whether you
19 people have to sign a letter, an agreement, an oath that says you will support the laws that have
20 been generated by the people of the State of Oregon in the land use planning process. I'd like to
21 know that because it's a heavy responsibility that you've got, and it affects people like me and
22 people that have been testifying and the people of Oregon. So, if the law isn't correct, I think it's
23 more important that you don't always seek to change - seek to grant exceptions and variations.
24 But if the law is not correct, then it needs to be changed. And, of course, that rests on your
25 shoulders. Thank you.

1 Marilyn Worrix: Thank you. Questions of Tom? Okay, Mary Kyle.

2 Mary Kyle McCurdy: Good afternoon I think. Commissioners, I can't see the clock. Mary Kyle
3 McCurdy representing 1000 Friends of Oregon. The manner before you, I believe, is really
4 much simpler than it may seem. So, I'm going to start out by describing what this is not about.
5 It may take away some paragraphs and pages and things that you have before you. It's not about
6 whether Woodburn has justified an urban growth boundary expansion. It has, just for not as
7 much land as it's included. It's also not about whether Woodburn can justify additional land for
8 industrial uses. It has. Again, we believe, just not as much as it has included. The Woodburn
9 UGB expansion is for approximately 980 acres. We object to less than half of that amount of
10 land that they're proposing to bring in. We believe the analysis for industrial land need is neither
11 technically nor legally supportable, but if it was done within the law, some of the 409 gross acres
12 that are currently being proposed for industrial use could probably be justified. It's also not
13 about the appropriate time-frame for the urban growth boundary land supply. Your staff's draft
14 order reconfirms that a UGB is to contain up to a 20 year land supply. And it's also not about
15 whether so-called "market choice" could allow a larger land supply than that. The draft order
16 again confirms this agency's and court precedent that the 20 year UGB supply is a long term land
17 supply, and it is market choice especially given that the UGB is updated at least every ten years.
18 Woodburn is required to go through periodic review every ten years, and it can do it more often
19 if needed. It's also not about whether Woodburn can use the targeted industry's method to assess
20 employment land needs. We have repeatedly said in our prior testimony before this commission,
21 before the city, in our briefs, and orally before the Court of Appeals, and again, in a written
22 submission for today that the targeted industry's methodology may well be a suitable analysis
23 approach provided it's implemented within the 20 year time frame, and that's what's lacking here.
24 So what is this about? It's about integrating a city's projected population and employment and
25 actual employment opportunities into that 20 year land supply and then determining whether and

1 by how much that requires an expansion of the urban growth boundary. And it's about ensuring
2 that that 20 year urban growth boundary has a factual and legal integrity because it represents a
3 commitment by the city, its residence and the state's residence to plan and pay for new urban
4 infrastructure and because of the impact removal of farmland will have on the agricultural
5 community and industry to the county and to the state, over a half billion dollar industry in
6 Marion County alone. We contend the proposed urban growth boundary's flawed for many
7 reasons. We've explained that in much of what's before you. So I'm going to talk about only a
8 few key points and respond to some recent arguments. First, the targeted industry's
9 methodology, as used here, is not implemented within the 20 year UGB planning period. The
10 site requirements for targeted industry's memo that was prepared by the city's consultant
11 describes 13 target industries that might locate in Woodburn. That was the ECONorthwest
12 report. Neither that memo nor any other part of this decision connects the dots between those
13 industries and the 20 year time frame. Nor is the targeted industry's method tied to the projected
14 number of employees that the city projects we'll have using the city's projection of employees
15 whether you use their medium forecast or their high forecast of new jobs. That memo - that
16 same memo describes the 13 industries and their site requirements but does not translate that into
17 a number of employees that would be accommodated. Again, the dots are simply not connected.
18 The number of employees could well be over or under the city's projected, employment for the
19 next 20 years. And that's likely because that was not the purpose of that targeted industry's
20 memo. The memo describes what type of industries might locate in Woodburn and what their
21 site requirements are. It's the city's job to translate that into just which of those industries are
22 likely to locate in Woodburn over the 20 year planning period, how many of those are likely to
23 locate, which land supply that translates into, whether that corresponds to the number of
24 projected employees in Woodburn, but the city did not do so. Instead, we have jumped to a
25 proposed UGB expansion. And, in fact, the city explained that it did not tie its proposed

1 industrial land supply to the projected number of employees. For example, the city, in its
2 decision, states, "The Council has projected land needs based on characteristics that are required
3 by target employers, thus, reducing the employment projection to the mid or even the low range
4 would not change the characteristics of the sites that Woodburn requires." There's simply not a
5 connection between the targeted industry's approach and the 20 year land supply or the
6 unemployment projection. What evidence does show is that the proposed UGB includes more
7 than a 20 year land supply, at least twice as much for industrial land and it does so due to at least
8 three factors. First, the proposed UGB provides lots that are larger than will be used during the
9 20 years. The city's decision in the draft order clearly state that the proposed UGB includes
10 some sites that are larger than will develop in 20 years because - this is a quote - "because the
11 company may have a build-up plan that extends beyond 20 years." There's many quotes along
12 those lines. You've heard some of them today. That not all the site may be used within 20 years.
13 Second, the decision impermissibly provides market choice over the long-term. Even though the
14 staff report and the draft order properly concludes that it is illegal to provide for market choice,
15 that is, provide more lots of similar characteristics in size than will actually be needed or used
16 beyond the market choice already provided by 20 year UGB. Yet, the city's decision clearly
17 states that it is providing market choice as did this commission in its original order and does the
18 draft order. It's really a matter of semantics in some respects. The draft order states that it is not
19 limiting the city to include quote, "only the number of acres expected to develop during the 20
20 year planning period because the city wishes to provide a variety of available sites." That sounds
21 like market choice to me. The city's UGB justification report states that it is providing choice
22 among suitable industrial sites. This decision improperly relies on providing a long-term market
23 choice. Third, the city has failed to include, all of the vacant and re-developable industrial land
24 currently inside its urban growth boundary. Sid went into some length in that. I won't repeat it,
25 but there's approximately 127 acres of vacant and partially vacant industrial land inside the

1 current urban growth boundary of which 80 - approximately 80 acres the city is not, taking into
2 account. The aggregate impact of providing many such sites is exactly what the Court of
3 Appeals described as impermissible. A UGB containing more land than will be needed or used
4 during the planning period. That the UGB contains more than a 20 year land supply was
5 acknowledged by the city. Quote, "If we have all the employment that we expect to have, there
6 will be 200 acres of the 400 we are developing." It was acknowledged by the city's consultant
7 not all of the industrial - Quote, "Not all of the industrial land proposed by this plan is expected
8 to develop by 2020." And it was stated by this commission in its brief to the Court of Appeals,
9 Quote, "Not all of the industrial land proposed by this plan is expected to develop by 2020." The
10 draft order and the staff's response to our written testimony on that draft order continually
11 changed the rationale for the same underlying decision. The petitioners - we feel we pointed out
12 flaws in the legal conclusions or the underlying factual basis and then a new reason for justifying
13 the same decision emerges. For example, the Court of Appeals recognized the legal and
14 practical flaws in the market choice justification for the amount of land in the urban growth
15 boundary. But rather than remove lands in the proposed UGB that were included to - in order to
16 provide market choice beyond the 20 year UGB the draft order tries to say, essentially, we didn't
17 really mean market choice, and we're going to discuss it in a different fashion. Secondly, we
18 pointed out in our November - that the November 12 draft order contained a fundamental
19 misunderstanding of the city's technical basis for its decision. It's a misunderstanding that your
20 staff relied upon to reach its conclusion in support of the city's decision. Your staff believed that
21 the 409 gross acres for industrial use, 360 net acres, was to meet the city's entire projected
22 employment of 7 to 8300 - 7,000 to 8300 new jobs. When the city actually only intended those
23 acres for 2,700 industrial sector jobs. But rather than correct this misunderstanding and change
24 the conclusion, the staff came up with a new rationale for the first time in its January 7 response.
25 The staff states that the acreage that has previously been described as for the industrial sector

1 now includes office employees. That adds another 1300 or so additional employees to the count
2 in an apparent attempt to make the amount of land proposed for industrial uses seem more
3 reasonable for a 20 year land supply. We object to this new rationale, but it's also simply not
4 supported by the evidence. For example, the city's decision states, Quote, "Commercial and
5 office needs will be met largely through infill and redevelopment." The analysis assumes that
6 limited office in supporting commercial uses will be met on industrial lands. The city did not
7 include office employees in its decision on its industrial land need. But if this land supply in the
8 proposed UGB expansion is supposed to meet the needs of projected office employees, 1300 to
9 1500 more employees, then it undermines the city's and the department's other rationale. That
10 rationale was that the land in the industrial category had to be within two miles of the I-5
11 interchange because it's industrial and needs to move items out through I-5. Office land has no
12 such need as all the city's underlying reports document. And it also does not need large lots. So,
13 if the 490 acres of industrial land does include office use, then the rationale for the location of
14 that land no longer stands up. And if part of this land is for office employment, then the city and
15 the department have an additional reason to include in its analysis the 127 vacant acres zoned
16 industrial inside the Woodburn UGB almost 50 of which the city and staff - actually almost 70
17 which the city and staff acknowledge are available for employment purposes. But they claim
18 they're not appropriate for the target industries. Well, if that industrial land now includes the
19 office workers, then it's - the city and - this commission must also include that land within the
20 existing urban growth boundary in the analysis. If it did, the land need would decrease
21 dramatically. And finally, for the first time in the January 7 response, the staff states that its
22 decision to include some lands that contain higher percentage of Class 2 soils, that is, higher
23 quality farmlands rather than lands to the south of the expansion area is justified based on the
24 specific type of identified land need category in ORS 197.298 sub 3. This is a new argument,

1 one not relied upon by the city in its decision or by the commission in its first order or the draft
2 order. We object to its being raised at this point. Thank you.
3 Marilyn Worrix: Question at Mary Kyle? I can't believe there are no questions at Mary Kyle but
4 maybe we want to, take - take that up after lunch. Can we reserve, we want you back after lunch
5 because I think there will be questions. So, is lunch here? Okay, we're going to try to keep
6 lunch short, because, we are a little bit behind schedule. This is totally unfair because lunch is
7 here for us, and we don't give you enough time to go anywhere, and we make it worse by then
8 coming back and eating in front of you. So forgive us for doing that, but in the interest of time
9 how about 20 minutes. And bring your lunch back. Half hour, John says, half hour. He's
10 scowling at me. He's got the gong out, so, half hour? Is that? Okay, half hour.
11 [BREAK]
12 Marilyn Worrix: And continue, the hearing on Agenda Item 4. We had completed the testimony
13 from the, objectors, and, we are now moving to testimony for those who, support the draft
14 commission response. And that would be, Corinne.
15 Richard Whitman: She's coming.
16 Marilyn Worrix: Yeah, she's here. And Mark Shipman. Is there anybody else that falls into this
17 category that has not filled out a blue sheet that wants to speak? Okay. Corinne, we'll just have
18 you come right on up to the, you're going to be on next.
19 Corinne Sherton: I'm going to be going after . . .
20 Robert Shields: Madam Chair, if you would, it's certainly up to you and the commission, but we
21 have conferred and, if possible, and it doesn't obstruct what you want to do, to see who'd like to
22 go first and then the other two parties in support of the city, if that would be acceptable to the
23 commission and . . .
24 Marilyn Worrix: That's fine.
25 Robert Shields: Thank you.

1 Marilyn Worrix: That's fine.

2 Robert Shield: Thank you. May it please the commission, I'm Robert Shields. I represent the
3 City of Woodburn. I'm here on - on my left is, Scott Derickson, the city administrator of the City
4 of Woodburn. With your pleasure he would like to go first. Then I would like to testify briefly,
5 and at that point after me, we have Mr. Winterowd here with us again. We were here four years
6 ago, I think, almost to the day, and, he's here to answer questions and then after that, Corinne
7 Sherton representing Opus and Mark Shipman representing the Fessler Family farm. Thank you.

8 Marilyn Worrix: Okay.

9 Scott Derickson: Thank you, Madam Chair. At first I'd like to say this on behalf of the City. . .

10 Marilyn Worrix: For the record?

11 Scott Derickson: Oh, I'm sorry. Scott Derickson. I'm the City Administrator, City of
12 Woodburn, 270 Montgomery Street, Woodburn, Oregon. And, Madam Chair, first I'd like to tell
13 the commission how appreciative we have been working with staff and the director. We have
14 found all of our conversations, honest, candid and very thoughtful, and we think that the findings
15 you have before you, are well thought out, and the City agrees with them and believes they are
16 correct. I'd also like to thank the commission as somebody who's pretty new to this process - I've
17 only been with the City for about two years - I understand what a daunting and complex issue
18 this is, and I know that you spend a lot of time just preparing for today's hearing, and we really
19 appreciate, the effort that you do as volunteers to take on this job and to work through these
20 types of issues for us. One of the things I wanted to share with the commission today was this:
21 an observation that I've developed in my assessment of the City of Woodburn the time that I've
22 been there. And it's my opinion that really there's no other community in Oregon that
23 appreciates and respects the value of farmland and the agricultural impact both socially,
24 culturally and economically than the citizens of Woodburn. We have a long standing tradition
25 and our demographic is composed of, generational families that have worked the land, and I'm

1 here to tell you that in the City of Woodburn there's tremendous support for the proposed UGB
2 expansion from that very community. The mayor eluded to our unemployment rate 17 percent,
3 and I can talk to you, and I can tell you, about the need in our community for investment.
4 Investment in the city, not only of private sector investment, but the opportunities that creates for
5 the city then to, develop more of a sustainable, service overall. The other thing I wanted to tell
6 you about too was, how well the city has thought this out. We've done everything that's been
7 asked of us. We provided every analysis that's been required, and we've spent millions -
8 hundreds of thousands if not millions of tax payer dollars to get us to where we are today which
9 also is, supported by the community. If the community didn't support this - the city's effort and
10 believe it wasn't in the interest of the community, that it was consistent with the values of the
11 community, there's no way that the city would have been able to have made such a substantial
12 commitment to bring it to this point in time. And I think that's an important point. The other
13 thing I wanted to tell you about too is that economically how the city is doing. The city has been
14 hit hard by the economy like a lot of other communities, and we've really been forced to be very
15 careful in the liberty with the dollars that we have. And we've taken a look at where we stand as
16 a community and what the options are and where we're going. And I can tell you that the city
17 would not be supportive of taking in additional lands that we could not provide services to.
18 We're not in a position to create additional economic burnout on our - on our constituency, and
19 we don't believe that we will do this. We see this as an investment opportunity. We think it's
20 sustainable. It's supported by the community. It is the hot topic amongst community and
21 business leaders. It's been talked about for years, and we're hoping that the commission today
22 can help bring this to a resolution and, by supporting the findings, presented by your staff. Bob
23 introduced me, and, we have our consultant here to deal with any technical or other issues that
24 you might have, and so, Madam Chair, is there's no questions at me, I would just like to, pass it
25 on to our city attorney.

1 Marilyn Worrix: Okay.

2 Robert Shields: Thank you again. I'm Robert Shields, and I'm honored to be City Attorney of
3 Woodburn. I have practiced for a few years, and that really is sort of in aside except that I would
4 say I'd be remiss if I didn't say that since I practiced in Oregon, the DLCD staff - I still can't quite
5 say that, but, I have never seen your staff this cooperative as it is now and not just to us. I just
6 think in general. I think that's, uh - you're to be credited for that. They're to be credited for that.
7 We found them to be, very competent, extremely helpful, and, I - I think that that's, a major
8 difference in said practice. I think years ago that wasn't the case, but it certainly is now. And, I
9 argued this case in a Court of Appeals, but today I'm really not going to get into a lot of details.
10 If you have detailed questions, again, on my right, Greg Winterowd's here, and he would be
11 responding for us to those questions, but what I would say is that the Court of Appeals, and I'm
12 certain that you've read the decision. You've got a large packet, and you've read the decision
13 carefully I'm certain, but I'd just like to come back to it just for a second here. Just, a short
14 quotation from the Court of Appeals, and it's a very interesting opinion. We were waiting a long
15 time for this opinion. There's some, sort of, you know, grand statements about the goals and how
16 they go together. It's interesting from that point of view, but the point that I want to make is that
17 the Court of Appeals did not substitute its judgment for your judgment. This is your decision.
18 This is an agency decision. They made some, sweeping statements about goals and how the
19 goals went together and that's all very interesting. But from the lawyer's point of view, that's sort
20 of dicta because really what the Court of Appeals ultimately did after, unfortunately, about two
21 year, is that they said, and if I could just quote, "because LCDC did not adequately explain the
22 reasons that the UGB amendment was consistent with both Goals 9 and 14, its order failed to
23 respond to petitioner's objections and is inadequate for judicial review. Accordingly, we reverse
24 and remand the order for reconsideration." They sent your decision back to you. They sent it
25 back to try to clarify this decision, if it's possible. Certainly it's your prerogative as to whether it

1 can be clarified. Certainly, if you have concerns, to my right, Greg Winterowd will address
2 those to the very degree that we can, but I just, respectfully would urge the commission that this
3 is your decision, and it was sent back to you, if you could, to try to make an even better decision,
4 to clarify the decision. And that's really what we're talking about here. As your staff points out,
5 I believe in the January 7 report, this is not a brand new decision. I mean, yes, you have some
6 authority here. Yes, you could probably do something different than what your staff is
7 recommending. I'm certain that sometimes you do that. But in this case we would urge you not
8 to do that. This is a very well thought out, very well drafted, very defensible order, we would
9 urge, and we believe that your staff has done a far better job than last time in terms of explaining,
10 in your order, the decision. So, I think that's really the major point that I'd like to make. I have a
11 few other points, but, again, we've tried to adjust, I mean, for our efficiency and mainly your
12 efficiency in terms of getting through this. If you have technical questions, Mr. Winterowd has a
13 couple things that he wants to address, he'd field those, but again, I think it's very important, to
14 look at what the Court of Appeals here actually asked you to do. And, the agency draft order
15 before you explains, the decision very well. It's defensible. Your director and staff have done an
16 excellent job putting this together. Continued to do that today in the hearing. Please adopt a
17 draft order. And, I tried to answer questions if you have, again, of specific questions about, the
18 record in this case which of course is the existing record or, specific issues that are troubling to
19 you. If you have them, I think Mr. Winterowd is available to ask - to answer those, and he'll go
20 next.
21 Marilyn Worrix: Any questions?
22 Robert Shields: Thank you.
23 Greg Winterowd: Chair Worrix, members of the commission, Greg Winterowd, 310 Southwest
24 4th Avenue, Portland. I'm also proud to be representing the City of Woodburn in this matter. I'd
25 like to make a few general statements because I'm guessing that you will have questions from

1 1000 Friends testimony, and I rather than trying to answer the myriad of issues that were raised
2 just now before you, I'd rather, I think, respond to questions, if you have them. I will say that all
3 of the issues that were raised by 1000 Friends were addressed by the city in months of public
4 hearings and testimony. There were letters sent out from the city planning director's office, from
5 our office that systematically addressed all of the issues raised by 1000 Friends. They were also
6 addressed in the UGB justification report. One of the things that I do want to talk about is the
7 order from the Court of Appeals. If you go through the record, you will not find that I used or
8 that ECONorthwest used or there are findings used, we justified this land supply based on market
9 choice, some abstract mirror market choice. In the record there's statements from me that
10 addresses my testimony to you 4 years ago where we said since the 1980's we have known that
11 you can't use a market factor to justify a UGB. We didn't do that. We did, unfortunately, use the
12 term choice in the marketplace in the same paragraph where we talked about target industries
13 being matched up with, the needs - target industry site needs being matched up with the sites
14 who provided. But market choice was never used in - in our testimony. It was used in the
15 commission's order. I think that has been corrected in the new order. I would also like to point
16 out that we built the case for the target industries analysis systematically, and please bear with
17 me as I just go briefly through the process we went through. We went - the first thing that
18 Woodburn did in 2000, 2001 was do an economic opportunity use analysis. As part of that, they
19 went through a very elaborate process of public involvement to get to 13 targeted industry
20 clusters, groups of industries that included office. The last three of the 13 target industries were
21 office uses. And this was based on a lot of research and analysis from ECONorthwest about
22 what was happening in the region, why Woodburn was in a good position to attract these
23 industries and based on local policy because Woodburn wanted higher paying jobs and taking
24 advantage of Woodburn's primary comparative advantage, which is access to Interstate 5, having
25 a well - good public services available for sewer and water and having a commitment by the City

1 Council to provide services to land near I-5. The second thing that ECONorthwest did on behalf
2 of the city was to do a combination population and employment projection. They were in the
3 same memo. They were integrally related. They were tied together, and they considered the
4 economic advantages that Woodburn wanted to pursue. Those population projections were
5 adopted by Marion County. The population projection and the basis for that was the
6 employment projection which part of the same memo. The city chose, ultimately, the higher
7 employment projection and the mid-range population projection for two reasons. One, to make
8 sure they can address the issue of not being a bedroom community. But the other is to make sure
9 that while we're planning for transportation facilities, that we have enough employees to go into
10 the targeted sites that we provided so that we don't overburden the improvements we were
11 making to I-5 to Highway 214 to the south - to the south arterial so that we don't use up that
12 capacity early, hence, the higher employment projection. The next thing that ECONorthwest did
13 was to build on the general information in the EOA about site size and characteristics that we
14 needed by target industries. They prepared a memo. It was called "Site Needs Memo". The
15 infamous Site Needs Memo. The infamous Site Needs Memo in 2003. When I - when I hear
16 people talk about there was no relation that had nothing to do with 20 year land supply, I am
17 baffled. The - the introduction to that memo says, "The 2000 to 2020 employment forecast
18 provide the basis for our provisional demand estimates for non-residential land." They provide
19 the basis for it. That's where they began was the employment projection. We will use data from
20 Task 2, the employment projection and the EOA, because there's a policy element to this, to
21 estimate the number of sites by size, class and location requirements needed to accommodate
22 forecast employment for targeted industries. That was a 20 year projection for targeted
23 industries. The sites that are allocated are to accommodate the high projection that was done in
24 2003 that serves as the basis for the population projection. We have always thought of this as a
25 20 year plan. We have never used some abstract notion of market factor to justify it. I think

1 1000 Friends have done a good job of stringing together quotes over a four or five year period to
2 make a point. But I don't think that's what we did. I did say, apparently, that the 200 and the 400
3 acre comment which, was after about two and a half hours of hearing and that was a mistake. I
4 should not have said that. That's not consistent with the findings the city adopted. So, that in a
5 nutshell is our view of the market factor argument and target industries. Once we had the 42
6 target industries, we looked carefully inside the existing growth boundary - the 42 sites for how
7 many of those sites could be accommodated within the existing urban growth boundary. 23 of
8 the 42 sites were accommodated in the urban growth boundary. It was only the larger sites that
9 we, primarily the largest sites that we had to place outside the growth boundary because they're
10 not sites available inside. I'd like to say-
11 John VanLandingham: Excuse me, Greg.
12 Greg Winterowd: What's that?
13 John VanLandingham: Say that number again.
14 Greg Winterowd: 23 of the 42 sites are inside the urban growth boundary. In terms of the 127
15 acres that was reduced to 45 acres through our process, we didn't just look at vacant acres. There
16 were 36 vacant acres total. 36 vacant acres of industrial land.
17 John VanLandingham: Vacant acres or ?
18 Greg Winterowd: Of industrial land within the urban growth boundary.
19 John Vanlandingham: But acres?
20 Greg Winterowd: Acres.
21 John VanLandingham: 36 acres?
22 Greg Winterowd: Total vacant supply. But, we also went further and looked at redevelopment
23 potential and partially vacant acres. And because we did an exhaustive job of looking at every
24 possible, bit of land that might be useful for future employment that's where the 127 acres
25 begins. But then, we went and looked at aerial photos. We did interviews with the property

1 owners, industrial owners and said, "What is your intention? How do you want to use this land?"
2 And in - often they said, "You know, we're using it. Look. We've got trucks parked out there.
3 That may not have shown up on your aerial photo. We need this land." Or, "No, we're holding
4 this for future expansion." Which many of them said, and we said, "Okay, if you're holding it for
5 future expansion, it would be unreasonable for the city to conclude that that land is available to
6 meet the need for new target industries." And that's what we did. That's how we got down to 45
7 acres. This has all been explained on numerous occasions to the planning commission, to the
8 county board of commissioners, to the city council and to you four years ago. I'm trying to
9 explain it again. I think it's been addressed. We did not take that off the inventory. We did say
10 we anticipate that this land will accommodate expansion of existing industries and some in 23 if
11 the site needs - needed sites that we identified. So, we just disagree with 1000 Friends
12 characterization of the work we did. I think, with that statement, oh, one more thing I would like
13 to address. There is an insinuation that your department and the Department of Agriculture
14 oppose this application. That was a five year process we went through. We got numerous
15 letters, numerous correspondence back and forth with the department and with the Department of
16 Agriculture. One of the major changes that we made that we think was a good change was to
17 remove land west of Buteville Road that had Class 1 agricultural soils so that we could include
18 land south on the east side of the freeway south of the proposed south arterial so that we could,
19 provide more Class 3 soils which is exactly what Department of Agriculture asked us to do.
20 "Please minimize your expansion on the west side bringing as much, Class 3 soils as you
21 recently can." So, rather than the agencies being opposed to us, you'll notice there was no
22 objection letter from the Department of Agriculture. They ultimately agreed that the buffer we
23 provided with Buteville Road was a good choice and protected the large swath of agricultural
24 land to the west. We actually expanded the size of our study area so that we could include more
25 Class 3 land. But what we didn't do, because it would have been illogical and perhaps foolish for

1 two reasons, we did include more Class 3 land further south of the two mile limit that we
2 established based on a Metro standard for looking at industrial land and recommendations from
3 ECONorthwest. The two mile standard was not, as has been suggested, an arbitrary standard. It
4 was something that we researched and that we adopted as part of our plan and that we applied on
5 the ground. So we went as far as two miles from the interchange to include Class 3 soils. If we
6 had done what 1000 Friends suggest, we would not be able to get to the Class 3 soils except
7 through the east side of - of the land east of the - of I-5. If we relied on the transportation system
8 east of I-5, we would be adding increased congestion to the most congested intersection in
9 Woodburn and working with the Department of Transportation, they insisted and we worked
10 with them to say, "We will find a way to connect most of our industrial traffic to the west side of
11 the interchange to manage congestion. And that is why we needed to include Buteville Road.
12 That's why we're proposing to build the south arterial street to make that integral connection
13 that's necessary for the transportation system and necessary for our economic development
14 objectives because without that interchange working, none of the plans that Woodburn has for
15 attracting targeted industries will work. We need to have that west interchange work.
16 Commissioner Macpherson asked a question, "Well, not all of the industries you're talking about
17 are export industries." They're not - but if you look at the large sites we're providing, they are all
18 for the export industries, and that's why we're doing that so Woodburn can bring basic
19 employment to the community, and that will have spin-off effects that will increase other types
20 of employment as well. One final comment. We intentionally played down the need for
21 commercial land, put in less land than we needed, relied more extensively on redevelopment for
22 commercial, and this is in the record, than any jurisdiction I knew at that time on redevelopment
23 because we could not afford to put more traffic at that interchange. We had to reserve it for the
24 industrial industries - industries, the office and industrial uses that were targeted by
25 ECONorthwest in 2001. It doesn't work to not go west of the interchange, not to rely on

1 Buteville Road. It simply doesn't work from a transportation standpoint. So, now I've said
2 enough.
3 Marilyn Worrix: Questions of Greg right now? Hanley.
4 Hanley Jenkins: So, Greg, one of the first comments you made was that, you did not use market
5 choice. You used choice in the market. Could you talk a little bit more about the differentiation
6 between those two?
7 Greg Winterowd: I think it's a really important distinction. What happened in the process, I was
8 going back and - because I can think of no one who is more knowledgeable and more sensitive to
9 market choice or market factor than I am because of my history working with Goal 14. It's a
10 non-starter. What choice in the market place, choice among sites became shorthand for was,
11 provide the range of sites that are required, site sizes required by target industries to meet
12 employment needs over the next 20 years. So it's a lot of words to say all at once, but choice in
13 the marketplace didn't add some arbitrary percentage to the number of needs. It said, "We want
14 to make sure we have a match between what our target industries need according to
15 ECONorthwest and the sites we actually provide." It was never intended to inflate the number of
16 sites. And as Scott said, the last thing the city wanted to do was bring in more land than it
17 needed to attract target industries because it was acutely aware of the cost of servicing these.
18 And that's been a discussion with the property owners, with ODOT, with the city and county
19 through their TSP's from day one.
20 Hanley Jenkins: So, let me follow up with that. One of the arguments that's been made is that,
21 you identified, target industries, and then you identified in multiple sites for each target industry
22 and yet there doesn't seem to be a quantifying way to identify why you picked those multiple
23 sites. I think that's what I'm trying to get at here with . . .

1 Greg Winterowd: And that's, Commissioner Jenkins, the exact same question you asked four
2 years ago. And here is the answer that I can - will attempt to . . .
3 Hanley Jenkins: I got to beat you up twice.
4 Marilyn Worrix: It does not speak well for one of you.
5 Greg Winterowd: I love it. Okay, so, the first thing that we did in the target industries analysis
6 was began with the employment projection. How many employees? What kind of employees?
7 Broke that down into four categories; office, public, industrial, commercial and said, "All right.
8 Here's how many employees we want to be able to attract." And it ECO's very clear that in order
9 to attract these, you've got to provide the range of sites necessary to bring them to - to our
10 community - to Woodburn. And then, I can't include things in the record, but then ECO decided
11 that, and it was asked to by the city to provide more detail about the size of sites and their
12 characteristics and they had in the EOA. Why? It wasn't good enough to base a UGB
13 amendment. It was too uncertain. So, ECO did two things. They interviewed extensively
14 developers of industrial land and industrial and business parks which is important because
15 business parks also include office and ask them, "What sort of characteristics do you require,
16 would you want to see to make an investment in Woodburn?" There were a half a dozen,
17 interviews or so, and they took that information into account. The second thing they did was
18 made an extensive research on each of the 13 targeted industry clusters because each targeted
19 industry includes many sub-categories or uses that would fit into that SIC classification. And
20 their information was not absolutely conclusive. It didn't say every stone manufacturing plant
21 needs 40 acres. They said some can get by with ten, some need much more than that. There
22 were a lot of unquantified top-ends to that - those site need analysis. They did identify that a
23 hundred to 300 acres would be needed for a chip fabrication plant, as one situation. Based on
24 that information, that research, those interviews, they then used their professional judgment
25 because they've done a lot of work in this area and said, "We believe, Woodburn, that you need

1 to use 42 sites in these site ranges most of which, not all of which, most of which require access
2 to I-5 - direct access to I-5. If you do this, you will greatly improve your chances of achieving
3 your employment projection." And that's how we got to that number. But then it went further
4 because we were very, very conscious of being in front of you, before we were in front of you,
5 and said, "What are you guys going to do to protect those sites?" And what I told you then is
6 what I'll tell you now. We have done more to protect the 13 target industrial site - 42 sites than
7 any other jurisdiction in Oregon has ever done. We have done it through specific plan policies
8 that say, "We will protect these. We'll now no new commercial uses." We did it through the
9 interchange area management plant and a budget that was - we worked out with ODOT that says,
10 "We will do no commercial changes." So that's another - it's not a simple plan and we would
11 have to go and amend our intergovernmental agreement with ODOT and the transportation
12 system plan and the interchange area management plan to go away from that, and in our zoning
13 we identified exactly where everyone of those large sites would go and required a master plan to
14 preserve those large sites on each one of them. I could show you on the map, if you wanted,
15 where the hundred acre site is - which is now only 96 acres - 65 acres site where the 235 acre
16 sites are, etc. They're fully protected because we were not sure that every targeted industry,
17 every site that we allocated, would be used because no one can be sure of that. And for that
18 we're told, well, we have more than the 20 year supply. No. What we said is that we have
19 allocated these 42 sites because we want to attract the employment projection that we had. We
20 then said, "We're going to protect each one of those sites." If an industry doesn't use it as we
21 estimate that they will, it is protected for agriculture because we cannot be sure. But we do know
22 that if we don't provide that 96 acre, not 125, 96 acres allocated for a chip manufacturing site,
23 we're pretty sure we won't get one. And that is what I think Woodburn is asking this commission
24 to do in what we think Goal 9 allows us to do is to say, "If you protect the site for what you say
25 you need it for, and you have a factual base to explain why you'll get those industries, you ought

1 to be able to allocate that site in your 20 year plan." And I did say that maybe - maybe one of
2 the sites won't get chose or maybe, as is frequent as in fact your staff report suggested, of when
3 Jason Locke was here, it is just land bank all the time. They frequently go and buy more land
4 than they need right now so they can expand in the future, and that's all we were talking about.
5 Some sites may not fully develop. So, and I think that's consistent with Goal 9.
6 Marilyn Worrix: Anything else?
7 Hanley Jenkins: So just a follow up on that particular question. You're saying is that, the table
8 that lists the number of sites for the, 13 targeted industries the limits on that are the research that
9 ECONorthwest did to say, "This is how many sites the market requires for that industry."
10 Greg Winterowd: the primary limit on that was the expertise of ECONorthwest which we relied
11 on. But we weren't satisfied that that would be enough. We also went through an exhaustive
12 analysis also required by Goal 9 and 197.712 to show that we could serve each and every one of
13 those sites and how we would do it. We also went through an exhaustive analysis working with
14 ODOT to allocate two transportation analysis zones, all the employment that was called for in
15 the - in the high employment projection. That's how we used those numbers to say we want to
16 make sure that when the industries come that we have the classy interchange for that to work.
17 We didn't want to use low numbers for that. We went to the high employment projection for that
18 purpose. And, finally, I would say the county, which is - some of you will recall, was very
19 concerned about the amount of farmland the city was bringing in. They - they gave it a very
20 rigorous review. There are letters back and forth between Les Susaki, who I think may be still in
21 the audience saying, "Why do you guys need this much?" Here's why. Okay, as long as we have
22 protections, as long as you have the substantial evidence deployed we'll back you. That's what
23 happened with the county. Then you and your staff - your staff are not - are not easy always.
24 And they gave also very rigorous review. So we went through it with them and said, "We think
25 we've justified it. What do you think?" And, frankly, your staff often does not support local

1 government proposals. They felt that we had done a good job of - of justifying the 42 sites, the
2 407 total acres, 362 acres added to the growth boundary. It - you know, and - and when I hear -
3 we used target industries - the term industries as shorthand for target employment opportunities.
4 In the new rule they would call it targeted industry and other employment. Then it was called
5 industrial and commercial. You know, and - and what the rules told us and what we did said,
6 "You do not have to do as suggested by 1000 Friends. You don't have to take every single use,
7 figure out what side it needs and then apply - give that a site." It says, "You can lump uses
8 together." And that's exactly what we did. We said, "We have 13 target industries. We think a
9 lot of those uses will demand I-5 access. We think a lot of them will want to be in business in
10 industrial parks." If we're going to locate new land for these uses, we should do it all near the
11 freeway because none of the uses are hurt by - by the freeway location. Most benefit. If we're
12 going to make investment in public facilities, industrial and business parks, that's where we
13 should put our investment. And that is all in the record. It's just that it hasn't all been-.
14 John VanLandingham: A follow up. Greg, one of the points that, Mary Kyle made in her letter -
15 I can't remember whether she made it in her spoken testimony - was that you made a - the phrase
16 is, you made an unexplained jump from the target industries and their lot size requirements to
17 then to the number of sites, lot sizes and amount of land in a proposed UGB. There's no
18 explanation of how many businesses within each targeted industry are expected to locate in
19 Woodburn during the planning period.
20 Greg Winterowd: And what - again, what we did - and clearly I didn't explain it well enough - is
21 that ECO said, "We believe you're going to get a certain number of employees in these 13 broad
22 categories of use. And for those 13 categories that have many more than 42 subcategories, we
23 think you need to provide this range of sites based on the research you've done." Some, like fab
24 plants, need a hundred acres site or 125 they suggested. Others need - could be anywhere from
25 sort of 10 to greater somewhere in the 30 and 40 acre range. And they made this

1 recommendation to it. It wasn't an unexplained jump. It was a jump - it was an estimate as
2 required by Goal 9. An estimate of the number of sites that will be needed and their
3 characteristics and their size and location to accommodate the employment.
4 John VanLandingham: You're predicting a 20 year demand.
5 Greg Winterowd: And for a 20 year demand.
6 John VanLandingham: Then how do you get from the number of sites? Is there something in
7 there that shows that the city expects that within that 20 year period you're going to need all
8 those sites?
9 Greg Winterowd: What ECO said is we began with the employment projection. Everything we
10 that have done has been focused on the 20 year time horizon, and over the next 20 years - 20
11 year plan, we believe you'll need 42 sites to attract the industries you want to attract. The 13
12 targeted industries.
13 John VanLandingham: It seems to be there's a difference between the number of sites you need
14 to attract the industries that you want and how many you expect to actual come so you'll actually
15 use that land or need that land in the 20 year period.
16 Greg Winterowd: And the expectation was if we were fortunate that the expectation, in the
17 words of Goal 9, it's reasonably likely that you will get a user for each of these sites during the
18 planning period. Otherwise you wouldn't allocate them. You wouldn't provide services to them.
19 But is there a guarantee? No.
20 John VanLandingham: I don't mean a guarantee, but you have justification in the record that
21 shows you expect those 42 sites to be used during the 20 year period?
22 Richard Whitman: I would state it slightly differently which is in order to have a reasonable
23 likelihood of achieving this level of employment increase in the City of Woodburn, this is the
24 number, size and type of sites that in our judgment are necessary to achieve that employment
25 number.

1 John VanLandingham: Okay. And is - is there some sort of limit on - I mean, could you-
2 Greg Winterowd: All right, this is a question- this is the ultimate question.
3 John VanLandingham: You want a Boeing plan coming . . .
4 Greg Winterowd: This is the ultimate question.
5 John VanLandingham: . . . to, Woodburn, for example. What's the - what's the limit on your
6 aspiration for your targeted industry?
7 Richard Whitman: The - and we talk about this in the staff report, the limits are we believe there
8 needs to be a reasonable relationship between the population forecast and the employment
9 forecast. It doesn't have to be a one-to-one ratio, but it has to be a reasonable ratio, and the EOA
10 can't simple be completely aspirational. It has to have, and this is a matter of professional
11 judgments, some likelihood of actually being achieved during that 20 year period. In this case,
12 in the case of Woodburn, because of the locational context that Woodburn sits in relative to
13 Metro and Salem and because of the I-5 location and other transportation advantages, the experts
14 said that they thought that that was reasonable, reasonably possible to achieve that employment
15 increase. So, that's the linkage. There's no, if you're looking for a what we're more used to on
16 the residential side, a more, almost mechanistic linkage between all those points, it doesn't exist
17 to the same degree on the employment side nor do I believe its required, at least by the current
18 language of Goal 14, which talks not about - so, Goal 14 factor 2 says, "you have to plan for
19 housing and employment opportunities". It doesn't say employment. It says employment
20 opportunities. You know, this is the same issue that this commission struggled with last time
21 around, and I've read the transcript several times. I wasn't here personally. And I'm sympathetic
22 to the issue, and I - I think there was also nervousness on the Court of Appeals about what is the
23 upper limit on the extreme. And I have two responses. One is I don't think in this case, under
24 the facts of this case, that that's an issue. I think there is a reasonable relationship between, the
25 population and employment forecast and the amount of land. And then, number two, to the

1 extent that you are concerned about cities, basically being too aspirational, I - that's a legitimate
2 concern, and I think you should address it in rule-making.
3 Greg Winterowd: If I could, actually, the way it was expressed by Director Whitman is perhaps
4 more articulate than what I was saying, but it does convey the meaning. Sites are necessary to
5 achieve the 20 year employment projection. But the other thing we did is we asked as a city,
6 "Are there any comparator jurisdictions that are like Woodburn, that are near the Portland region,
7 that had large amounts of serviced industrial land?" And the comparator we found was the city
8 of Wilsonville which in 1980 was much smaller - much smaller than Woodburn, but it had one
9 thing that Lake Oswego didn't have and that was a large amount of industrial land with freeway
10 access and the ability to service it. And during the 20 year period, from 19 - this is in the record
11 also - from 1988 to 1999 Woodburn had used up 800 industrial acres and had well - many, many
12 more employees, 18,000 employees approximately, in their industrial land which gave them a
13 ratio of employment to population where they had more employees than they did have
14 population.
15 John VanLandingham: You said Woodburn. I think you meant Wilsonville.
16 Greg Winterowd: It's wishful thinking for Woodburn. We're trying - that's what we're trying to
17 achieve, and so we think that Wilsonville is a very logical comparison, and that's what we said to
18 bolster the case that, you know, if we provide the sites, we can achieve what Wilsonville was
19 able to, and if we don't provide the sites, we are pretty much doomed to bedroom community
20 status, and that is inconsistent with the EOA and our aspirations as a community.
21 John VanLandingham: I'm done with that subject, but I have more.
22 Marilyn Worrix: Of course. Can I ask one follow up on your question before we do that? Same
23 question. I'm still kind of looking for a stronger answer. Where is the employment projection
24 number in the number of acres or sites? How'd you get - how is that number of, the employment

1 projection - where is that in that - in your final chart with the number of - of parcels and the
2 number of acres?
3 Greg Winterowd: We did.
4 Marilyn Worrix: Because that came from the - the opportunities analysis not in the context
5 maybe. You always said, "Well, we always expect it to be the 20." But, where is it when you
6 made that final . . . ?
7 Greg Winterowd: What page are you looking at so I can make sure . . .
8 Marilyn Worrix: Oh, I'm looking at Agenda number 4, attachment E, Page 21 of 123.
9 Greg Winterowd: Thank you. And can you tell me . . .
10 John VanLandingham: So that's from the 1000 Friends letter?
11 Marilyn Worrix: Yes, it's basically one chart showing the, lot size in acres for, the various,
12 types, yes. Corinne has it. And the other chart is, the final product. You're gonna have this
13 many sites of this many acres.
14 Greg Winterowd: All right. The Table 3 is in the EOA. Table 3 is what the city and ECO and
15 Winterbrook decided did not provide enough clarity. 5 to 30, what do we do with that 1 to 5, 5
16 to 20 in terms of the actual number and size of sites.
17 Marilyn Worrix: What was your employment projection?
18 Greg Winterowd: The employment projection was approximately 18,000 with approximately 7
19 total of 18,000 . . .
20 Marilyn Worrix: What's the relationship between 18,000 and Table 4?
21 Greg Winterowd: Okay, I do not have the spreadsheets that ECONorthwest used. And I am
22 attempting not to put new evidence in the record. So, I'm - but I think it's clear that they use
23 spreadsheets where they do an allocation of the employment by site size because that's how
24 they've done it in many other EOA's that I've seen, but the actual allocation of number
25 employees to each of the large sites is not in the record. And we didn't think that was necessary

1 because we didn't think there was even an employment projection required. We thought the
2 exercise as one of identifying targeted employment opportunities and their site requirements. I
3 just, I can't provide that because I don't have it. But that is how ECO does their projections.
4 Marilyn Worrix: Yes, no, I understand that, and I don't even want to see the spreadsheet, but I
5 would be interested to know if the method was, we assume that we're going to get one industry
6 from every of the 13 or we're going to get . . .
7 Greg Winterowd: Okay, the assumption was that we have 13 types of employment
8 opportunities. In the case of the high-tech fab - electronic fabric - chip fabrication, they said,
9 "Boy, this is a big site." 100 to 300 acres, as you see in this table. We did not go, "Oh, let's go
10 allocate a 300 acre site just in case." Because we couldn't serve that much and serve other
11 properties as well. So, what - in that one case we said, "We're going to allocate one site for that
12 specific use. No market choice. One site, one use." But then, if you go down the list, stone
13 glass and clay, up to 65. We did have a site that was 65 acres. And based on additional research,
14 if you deflate things like truck and warehousing varies. They can easily be in the hundred plus
15 acre size such as Lebanon, which is not in the record, but that varies so that you could have a site
16 in that category. So there's one site in the mid-range category that could possibly pick up a
17 second chip fabrication plant or another one of these target industries, and then it goes down to
18 35, 25 and 10.
19 Marilyn Worrix: Which is sort of my point. There's so many variables, so many different ways
20 you could do that, that I guess the final question in that regard is did you assume with the, 18 or
21 with the 8 - whatever the number was - did you assume that you were going to have 42
22 businesses? That all these sites were going to fill up?
23 Greg Winterowd: We assumed that by providing these sites we had a realistic opportunity to do
24 that. It's a matter of opportunity.

1 Marilyn Worrix: May I ask, where that came from that the answer is, from the expertise of, the
2 consultant.
3 Greg Winterowd: That's correct. And their research and their interviews.
4 Marilyn Worrix: I guess the one thing I would like to hear is I'd like to hear that sentence being
5 finished. The expertise of the consultant said, "We need this many sites". . .
6 Hanley Jenkins: To attract the industry.
7 Marilyn Worrix: . . ."to attract the industries because"
8 Hanley Jenkins: That would produce x jobs.
9 Marilyn Worrix: . . ."because it will produce x jobs" or because there does have to be, some
10 choice.
11 Greg Winterowd: Because if we provide site sizes, locations and characteristics that match the
12 research that ECO did for what target industries will demand over the 20 year period, if we do
13 that, then we will increase the likelihood that we'll actually get those industries. And let's, if we
14 could, just take the chip manufacturing plant by itself. If we need a site of 100 to 300 acres, they
15 documented why Woodburn was in a good position to attract such a plant. They considered
16 testimony from 1000 Friends and still said, "We think you need this - justify it." That one site, if
17 we are reasonably fortunate and because we're providing services, we are likely to get a chip
18 manufacturing, firm that could employ 300, 500 more employees. In fact, we have a minimum
19 employee threshold of 300 employees for that site. A very tough standard to meet. And if we
20 get that chip manufacturing, there will be spinoff which will then create the additional jobs that
21 will - if we have the site for that spinoff, they will get us to our higher employment projection. If
22 we don't, if we're not successful in getting the chip manufacturing plant, which is a possibility
23 because if it's reasonably likely, at least somewhat unlikely that you won't get the site, then we
24 have reserved a site that didn't get used during the 20 year planning period. But if you get - and
25 we use this as an example in the record - if the chip manufacturing plant does come and they

1 need 70, 50 acres initially, we want to make sure that we can attract them because they have
2 room to grow, and that seems pretty basic. But if - if you took away that hundred acres, we
3 would come reasonably close to an employee per acre method, just that 100 acres. But if we
4 took away that hundred acres, we wouldn't provide an opportunity for the chip manufacturing
5 plant. And that's why I think Goal 9 is different than Goal 10. It says, "Provide sites for
6 economic opportunities that are reasonably likely." It doesn't say you must show every acre of
7 every site will develop during the 20 year period. It's just a big difference.
8 Marilyn Worrix: Okay. Any questions at this point?
9 John VanLandingham: I do.
10 Marilyn Worrix: Okay, go ahead.
11 John VanLandingham: The population projection, showed, from a baseline in the, 2000 Census
12 of 20,100 in the city. It was projected to grow at 2.8 percent. Now it just happens that we are
13 now just half way through that 20 year period, and we've just recently had census figures
14 released for - I don't know how broken down they are. But what is the population in the 2010
15 Census for the city of Woodburn, same territory?
16 Hanley Jenkins: Actually, I think we're going to get into, request for new evidence. And if that's
17 the wish of the entire commission, then we should probably do that by motion because the 2010
18 Census information wouldn't be in this record.
19 John VanLandingham: Right. Well, I don't want to mess things up procedurally, but it just
20 happens that here we are half way through the planning period, and instead of being speculating
21 about whether a 2.8 percent annual growth rate is right, we would actually have a pretty
22 indicative benchmark, for half way through.
23 Richard Whitman: If I could, this is a good opportunity for me to remind the commission what
24 your decision is about today. You are reviewing a 2007 decision of the City of Woodburn about
25 their land need between 2000 and 2020. I know it's very tempting to try to think about what's the

1 state of facts in the world today, and did the city - in light of that, did the city make the right
2 decision or not, but I just - I would urge you to be somewhat disciplined about trying to put
3 yourself back in the shoes of the city in 2007 and say, "Based on the records the city had before
4 it, did the city make a decision that complies with the standards?" So, sorry. Now, you can ask
5 for new evidence, but your role here is to review the city's decision, not to necessarily come to
6 your conclusion about what's the right decision today.
7 John VanLandingham: I would not that we, with a Bend decision, a number of people, including
8 especially me, said, "This is nuts for Bend to think now in 2010 that its population forecast that it
9 made in 2008, given the recession and the economic crash and the foreclosures and the
10 abandonment of the city, was accurate." But, said - I think what we said was that's for them to
11 decide. We're reviewing what they decided in 2008. We're not going to go back now and make
12 them redo those numbers.
13 Hanley Jenkins: So, Richard, could you give me the quick - a lot of people have heard how long
14 this has been going on and just can we hear a quick chronology . . .
15 Richard Whitman: Yes.
16 Hanley Jenkins: . . . this decision and our commission.
17 Richard Whitman: Yes. So, very briefly, the city, went into periodic review one part of which
18 was to determine whether their urban growth boundary was adequate for a variety of purposes
19 starting in about the year 2000. They spent the first few years doing a series of studies and,
20 having started a public process to consider potential alternatives for expansion, and that
21 culminated in a decision by the City Council and Woodburn in October of 2000 . . .
22 Marilyn Worrix: Six.
23 Richard Whitman: No, five. And I'm sorry. I misspoke a minute ago when I said 2007. So, it's
24 actually October 2005 that was followed by a decision in 2006 by Marion County, and under
25 state law they both have to adopt this. It then came to this commission for a decision in the end

1 of November, beginning of December of 2007. And then, it took a little while to get the order
2 out, and then there was about a two year appeal period where the Court of Appeals, and here we
3 are today.
4 John VanLandingham: I remember an argument before us, over the population forecast with
5 Marion County versus - with Woodburn arguing that Marion County had shorted it - the
6 population forecast.
7 Richard Whitman: It's a matter of public record that there has been previous litigation over
8 population forecasts in Marion County.
9 Greg Winterowd: And if I might say, it's a matter of public record that we're all happily working
10 together now.
11 Greg Macpherson: Who's happily working together now?
12 Greg Winterowd: We all being the city and the county. Yes.
13 Greg Macpherson: Yes, sort of was the tenor from our - from the presentation this morning from
14 the commissioner was that they were - they were fully in support of these projections. On the
15 other hand, it also appeared to me that they - it wasn't as though that was reflected in reduced
16 projections for anybody else in the county. It was all aspirational.
17 Richard Whitman: And, Greg, that's - it' s a good point and again I think the whole question of
18 coordinated - both coordinated population and employment forecast is one, that perhaps needs
19 some policy attention and, if you'll recall, the first element of that we hoped to do in the near
20 future is actually on coordinated population. It's a key issue.
21 Greg Macpherson: So, population is a zero sum game. The county gets a number, and it has to
22 allocate that within the county.
23 Richard Whitman: In theory but by timing it's actually not even - Greg's laughing. It's not
24 necessarily a zero sum game and that's . . .
25 Greg Macpherson: Yes, but employment is not necessarily the same.

1 Greg Winterowd: Right. Employment's not.

2 Richard Whitman: Correct. And I think - I forget which commissioner it was that raised that

3 issue earlier, but, you know that's a legitimate question about whether it should be.

4 Greg Winterowd: It's not . . .

5 Richard Whitman: It's not - it's not for this decision.

6 Greg Macpherson: Marilyn, going back to the pickup, I'll withdraw my question because I don't

7 want to complicate us - our situation procedurally, and it's not probably - I mean, it is - it's an

8 interesting data point but not a critical data point. But it is - I think there - at least I have a sense

9 that, um - that 2.8 percent annual growth rate is pretty highly aspirational, for a community like

10 this.

11 Greg Winterowd: And Commissioner Macpherson, I thought this might be useful, information

12 is that from 1990, the City of Woodburn grew at an average annual growth rate compounded of

13 4.1 percent.

14 Hanley Jenkins: From when to when?

15 Greg Winterowd: From 1990 to 2000. And that was the basis for doing a revised projection and

16 why Marion County accepted that revised projection.

17 Greg Macpherson: And was that the same territory? The same - same footprint?

18 Greg Winterowd: Well, the footprint grew some. The city limits grew, but that's within the

19 Woodburn urban growth boundary. And the other fact that is in the record is that after, some

20 discussion and a disagreement - a legal disagreement with Marion County as part of their growth

21 management framework plan, they cited, as the commissioner, county commissioner said,

22 Woodburn as the north Marion County population employment growth center. So, there was in

23 fact some discussion at the county level about where growth should occur. The other two were

24 Silverton in east county and Salem and Keizer in the central part. But Woodburn - they

1 recognized Woodburn's growth potential and that fed right into the higher, higher than some
2 population projections. There's also been - well, I think that - that's enough to be said.
3 Marilyn Worrix: we went, quietly through the, first, party's presentation anticipating that we
4 would have some period of discussion at the end, and, at - with the last group of parties we've
5 started our discussion. I suggest maybe we hear Corinne and then, we move back to the
6 VanLandingham way of doing things and we bring everybody back to the table. Corinne.
7 Corinne Sherton: For the record, this is Corinne Sherton, 247 Commercial Street North East,
8 Salem, and I'm here representing Opus Northwest, LLC which, has the exclusive option to
9 develop the property that's usually referred to as the Opus site, and it's located between Buteville
10 Road and I-5. And I want to echo what other people have said about our appreciation for the
11 hard work that your staff has done. I think they have produced an excellent draft order which I
12 think responds very well to what the Court of Appeals asked for, which was an explanation of,
13 how the conclusions were reached by you, in the first order and better responses to the objections
14 that were made by the other participants. I would like, to respond to one, final, comment that
15 Ms. McCurdy made in her presentation on behalf of petitioners. She said she objected to the
16 new order relying on ORS 197.298 sub 3, sub b and sub c which are two of the exception
17 provisions in the priority statute for allowing lower priority land to be brought into the UGB.
18 She said she objected because this was a new argument that was not relied on by the city in its
19 initial decision, or by this commission in its first order, and I believe that it is incorrect and I'd
20 like to point you to the original UGB justification report that was adopted by the city in October
21 2005 and support as the findings in support of its UGB amendment. On Page 15 of that order it
22 sets out a complete quote of ORS 197.298 sub 3 which are the reasons why a city may include
23 lower priority land, and then on the following page, page 16, it discusses how as shown on the
24 attached soil maps, Woodburn is surrounded predominantly by Class 2 agricultural soils but
25 there are some large concentrations of Class 3 soils located within the study areas. And then it

1 says these areas of Class 3 soils can only be developed by extending services in arterial streets
2 through the areas with Class 2 soils. And then it says, ORS 197.298 sub 3b and c allow for the
3 inclusion of lower priority Class 2 soils to achieve maximum efficiency of land use and where
4 necessary to serve higher priority Class 3 soils. And then, further on in the decision on pages 52
5 to 53 where they're talking about, which study areas they decided to include they say, "to provide
6 access to I-5 for Class 3 soils within Study Area 7" which is the area to the south of the city.
7 "Buteville Road must be improved to arterial standards to connect with the plan southern arterial.
8 For this to happen, land in SA8", which is the western area where the Opus site is located,
9 "between the UGB and Buteville Road must develop and help pay for needed road and utility
10 improvements. In addition, urban sewer, water and storm drainage services must be constructed
11 through intervening areas with Class 2 soils to allow development of lower priority Class 3
12 areas." Now, they didn't put in a specific site to ORS 197.298 sub 3b and c at that point in the
13 decision, but I think it's clear from their language and from there previous discussion of that
14 standard that that is what they were relying on. And then in your order which was adopted in
15 February of 2007, and the one that was reviewed by the Court of Appeals, on page 12, it says,
16 "as shown on the Woodburn transportation system plan, Butteville Road in the south arterial
17 must be constructed to serve the entire southwest industrial reserve area, thus both of these
18 planned arterials must pass through Class 2 soils to serve areas with Class 3 soils." It goes on
19 some more about issues involving city area 7 and 8, and then it says, "For these reasons, the
20 city's findings are consistent with Goal 14 locational factors and ORS 197.298 priorities." Now,
21 admittedly, it didn't spell out which provisions ORS 197.298, but that's exactly the kind of thing
22 that the Court of Appeals has asked you, to clarify in this remand is to explain more specific,
23 particularly, what provisions you were relying on and why you found compliance. But, this is
24 certainly not a completely new argument that's being made for the first time at this stage of the

1 proceedings. That is really all I have in addition to what's already been said at length to call to
2 your attention. But if you have any questions for me, I'd be glad to respond.
3 Marilyn Worrix: Questions for Corinne? Okay. How many people do we still have in the
4 audience that spoke. I'm sorry. Forgive me. See, here comes the gong.
5 Mark Shipman: That's okay. Good afternoon, Madam Chair and members of the commission.
6 For the record, my name is Mark Shipman. I'm an attorney with Saalfeld Griggs here in Salem.
7 250 Church Street, SE, Suite 300 in Salem, Oregon. Our firm represents the Fessler Family
8 LLC, one of the stakeholders that has been involved in this process for quite a while. And, I too,
9 agree with the comments that have, frankly, been made, primarily by Corinne. And appreciate
10 the opportunity to say a few words here today. My comments are brief, and they're brief,
11 primarily, because of the good job that your staff did, frankly, in coming up with the draft order
12 and the information in it. And so, I didn't feel the need to submit additional information in
13 writing and didn't do so. Had there been areas that we felt needed to be supplemented or
14 identified, we would have done so, but we didn't. They did a very thorough job and I think have
15 taken great pains to do that. So therefore, on behalf of the Fessler Family, as a whole, I would
16 respectfully request that this board select option number one as identified by staff and that you
17 would approve the UGB amendment and Task 2, before you this this afternoon. And thank you
18 for your consideration.
19 Marilyn Worrix: Thank you. Any questions for Mark? Okay, how many people are still in the
20 audience that spoke earlier today? Three? Four. Lolita, back there? Yes. Okay. So, that puts a
21 lot of people up here, doesn't it?
22 John VanLandingham: I think - I think we have the, option of calling back who we want to call
23 back.
24 Marilyn Worrix: Okay.

1 Chair John VanLandingham: So, I mean, we - we - so that implies a level of subjectiveness
2 here, that in the VanLandingham method, you let everybody who signed up speak and then
3 VanLandingham chooses who gets to speak again.
4 Male: I don't have that in muscle memory. Could you describe for me what-
5 Male: You're not supposed to. He's just making it up as he goes.
6 John VanLandingham: Between now and making our - I mean, what-.
7 Marilyn Worrix: We can ask questions.
8 John VanLandingham: We can ask questions.
9 Marilyn Worrix: We can have discussion, and if we have all parties or at least representation of
10 those sites, then we can get a dialogue going that allows us to get clearer answers.
11 Commissioner Bart Eberwein: Okay, cause I - when the dialogue starts, I would like to say
12 something.
13 Marilyn Worrix: Oh, yes, I-
14 Commissioner Bart Eberwein: I have some questions.
15 Marilyn Worrix: Oh, yes, I know that there will be-
16 Chair John VanLandingham: It gives you a chance to say to Mary Kyle, "Okay, Mary Kyle,
17 Winterowd said, "X". What's your response?" And you know you can't let it go on too long.
18 The Chair has to run the show, and, it's sort of a little dictator in that regard and some feelings
19 can get hurt. But I think it helps us get a - get a better understanding of the issues and make a
20 better decision. That's - anyway, that's the justification.
21 Marilyn Worrix: Well, it is, uh - it is true that some of the, parties have a more focused view. If
22 we, allowed, Corinne and Mark to, go back to the audience - if you have something you want to
23 say, you can always signal me. We're not - we're not putting a muzzle on you. We're making a -
24 we're playing musical chairs. And if we could have Mary Kyle.
25 Commissioner John VanLandingham: I'll say Sid.

1 Marilyn Worrix: And Sid. And that's no reflection on the individuals. We value your input, and
2 if you have something that, you feel needs to be said, make some sort of signal. This public
3 hearing is still open.
4 John VanLandingham: So, I would say the city manager doesn't have to sit up there unless he
5 wants to.
6 Marilyn Worrix: Okay.
7 Greg Macpherson: Madam Chair, can I point out that Mayor Figley is back with us today.
8 Marilyn Worrix: Oh, yes. Okay. Where do we start with these questions?
9 Hanley Jenkins: Oh, well, I guess I would start by saying - asking Mary Kyle, we spent a lot of
10 time talking about, translating the number of sites into the land need and the employment job
11 production. You know and I think the questions were somewhat reflective of arguments that
12 especially Mary Kyle made in her letter in her testimony. And so, we've got Greg's response of
13 that, and I'd ask whether you all have, any further argument or you know this is not a rebuttal,
14 but in essence it is.
15 Marilyn Worrix: Could I say something before she answers? If, here's what I'd like to hear from
16 everyone if you could incorporate it somehow into your answer. I'm looking for the relationship
17 between Goal 9 and Goal 14. How they work together. And doing that, I'm looking at what you
18 all said, but I'm also looking at what the Court said. There was clearly some questions raised and
19 a little bit of guidance given about how we look at that. So, that's going to take us to questions
20 like, "Is it the same to say you can't take in more than you need as it is to say you can't take in
21 more than you think you're going to use that relates to your projected use?" So, its - that's the
22 kernel that I'm confused. Mary Kyle?
23 Mary Kyle McCurdy: Thank you, Commissioner Worrix. My name's Mary Kyle McCurdy
24 representing 1000 Friends of Oregon. I think your question and Commissioner
25 VanLandingham's questions earlier hit the nub, of the issue that, I think it's, despite contradictory

1 statements here today by, the proponents of this and contradictory remarks in the written records,
2 there is more than a 20 year land. There is more land in this urban growth boundary expansion
3 than will be used in 20 years because there is a market choice, whatever semantics want to be
4 called, imbedded in this as well as more land on some of those sites than will be, than might be
5 absorbed over 20 years. And I believe that what the Court said was in integrating Goal 14 and
6 Goal 9, it's a 20 year land supply. You don't have to have a one-to-one relationship with the
7 population and employment projection. There has to be a relationship. It's not entirely the same.
8 You plan for housing in Goal 10 differently than you do for employment under Goal 9. But
9 there is an outer limit, and it's 20 years. And the Court even said you can carry this to an absurd
10 conclusion, and we don't see the boundaries here in this in the underlying technical, reports or in
11 the final decision for just what those boundaries are. It's that connecting the dots. Because I
12 think what is there is evidence that there's more than, it's clear. I mean, it's stated several times
13 in many underlying documents. It's not just misstatements in oral remarks to you. It's in the
14 underlying documents that there's more than 20 years here. There's more land than will be
15 absorbed. But there's something about site choice and being provided, for the, 13 target
16 industries. There's 42 sites provided. We don't know from this record whether all of those sites
17 will be used, how many in each industry might locate in Woodburn. We did not pick the
18 targeted industry's approach to address Goal 9. That was chosen by the City which has led down
19 this path that may seem more picky in some ways then or more ,specific in some ways than,
20 you've seen in other Goal 9 economic opportunity analysis or Goal 9 analysis. But that's what
21 the city has chosen to do. So there has to still be some connecting of those dots between the
22 methodology they've chosen and a 20 year land supply. And we don't see that in the record, that
23 connecting of the dots. It is in Goal 9 employment opportunities that have to be provided not
24 employer opportunities, and there's a way where that spillover of the number of sites provided
25 for each target industry spills over into an employer opportunity provision of inexpensive land

1 and lots of choice among lands. Now, we don't have just a 20 year land supply that's only
2 reviewed every 20 years. It's a 20 year land supply, and the city, by law's required to revisit in
3 periodic review every 10 years. It can revisit as often as it wants if it finds a need to. The charge
4 here is to provide an amount of land that's reasonable for those industries or for that employment
5 that may come to the city over the next 20 years. But it doesn't shut down there. It's revisited as
6 often as the city would like, but at least every 10 years. I want to be clear that there is industrial
7 land provided including in large lots in this UGB expansion. We have objected to the
8 methodology underlying the amount that's been, the 409 gross acres that's been proposed for
9 industrial uses. But, as I said, we believe they can justify some amount over the 20 years. We
10 just haven't seen that here. We do object to the choice of a particular site on the west side of the
11 freeway. We can talk more about that location later, if you'd like. But there are large sites on the
12 east side of the freeway that are provided in this decision. So, I don't want to lose sight of that.
13 There are industrial lands in addition to the 127 acres of vacant and partially vacant lands zoned
14 for industrial use inside the current urban growth boundary.
15 Marilyn Worrix: Sid, would you like to add anything?
16 Sid Friedman: Just briefly, you also asked Madam Chair, about the relationship between the 20
17 year employment projection and the amount of land added to the UGB, the number of sites and
18 their size. And, Mr. Winterowd referred to the, site requirements for Woodburn target industries,
19 memorandum and quoted from its, introduction which does in fact say, "We began this analysis
20 by reviewing the 20 - 2000 to 2020 employment forecast to 2000 to 2020 employment forecast
21 provide the basis for our provisional demand estimates for non-residential land." And then it
22 goes on, "to provide that provisional estimate, and the provisional estimate for industrial land is
23 224 acres." It says, "Table 1 shows the amount of new land in built space needed for each land
24 use type in Woodburn over the 2000 to 2020 period." And that's 224 acres. Then the city went
25 on to instead, survey what sites might be attractive to various industries that it wants to attract

1 based not just on interviews regarding site needs but also site preferences. The memo is clear.
2 ECO initiated interviews to gather more information about site needs and preferences and then
3 came up with a - eventually decided that they needed some, 480 acres of industrial land and
4 would expand the urban growth boundary by 409 acres. At the time, during the local
5 proceedings, many objections were raised by us, by other parties, and the city's own findings
6 clearly state - and as Mary Kyle pointed out before - it wouldn't matter what the employment
7 projection we chose was. That's the city's findings. We could choose the medium or the low or
8 the high employment projection, and it wouldn't affect the amount of industrial land that they
9 concluded that they needed. That's a pretty clear indication that there is no real meaningful tie
10 between the employment projection and the amount of land included within the urban growth
11 boundary.
12 Mary Kyle McCurdy: I think I, if I may, Chairman, make one more, remark that, there - so
13 there's 13 target industries, and there's three to four sites provided of various sizes for each of
14 those target industries. And where I think you see imbedded in that is - and also some of those
15 industries will not use all of the land - may not use all the land within the 20 years. Tt's never
16 addressed that many of these, maybe almost all of these, target industries have overlapping land
17 needs as identified in underlying technical report, and just because a particular site may not be
18 chosen by one of the target industries for which three or four sites have been provided, doesn't
19 mean another of those target industries won't use that same site. There - they are more
20 overlapping and alike in their site needs than they're not, and so, the provision of multiple sites
21 reach to the target industries, there isn't any discussion about whether the remainder of those
22 sites or those other sites will be used by the other target industries. I don't think we have to
23 provide three to four sites or there isn't any explanation of why one would have to have discreet
24 sites for each of the target industries. I also don't see an evidentiary basis other than some
25 potential reference to interviews and preference for not absorbing all of a site within a 20 year

1 time period. We don't really have a feel for what that is except it's anecdotally stated that sort of
2 we all know high-tech likes big campuses, and they don't use it all within 20 years. I'm not sure
3 that's true, but I'm also not sure it's in the record to support that. So, the absorption of the - we -
4 we talk about it as though it's assumed and so we all know that, but, I don't believe that we have
5 a real evidentiary basis for - for how much of the land that's being projected for industrial use
6 will not be used and why it won't be used within the 20 years. Will it be used by another
7 industry? Does it actually expand over that 20 year period? I don't think we have a really good
8 accounting for that either. I think what this all adds up to is what is needed in a 20 year land
9 supply and to error on the side of caution and conservativism would be less of a UGB expansion
10 and not onto farmland.
11 Marilyn Worrix: Other questions?
12 Commissioner Bart Eberwein: I've got lots.
13 Marilyn Worrix: Let's see what Bart has to say.
14 Commissioner Bart Eberwein: I have a few. If I could, ask Marilyn, I'm not going to go back to
15 census or anything, but some of this might be a little remedial because I'm coming at this late,
16 and in that timeline that you've described, this is sort of - a lot of this is-. So, for any of you, how
17 - how, over this six or eight year period - how often do you guys talk to each other and not
18 through us? How often have you met, and what kinds of things have you talked about, and can
19 you characterize those meetings for me?
20 Mary Kyle McCurdy: Commissioner Eberwein, Sig Friedman, on behalf of 1000 Friends of
21 Oregon and a number of citizen you've heard from today and additional others were involved
22 with the local process for a number of years, and I think Sid can describe that much more often.
23 I know that I've had several meetings in the City of Woodburn myself when it was at the local
24 level, but Sid was - he can describe his - maybe as much as weekly.
25 Sid Friedman: I'm not sure I correctly understood your question, Commissioner?

1 Commissioner Bart Eberwein: How much do you talk to each other?

2 Sid Friedman: Mary Kyle and I and the other objectors or with the city?

3 Commissioner Bart Eberwein: With the city.

4 Sid Friedman: Well, let me answer both questions, and then I'll get them both.

5 Commissioner Bart Eberwein: I love this picture, the four of you there together, but I wonder

6 how often you're talking to each other.

7 Sid Friedman: During the local proceedings and the years - the two or three years leading up to

8 the city's decision, we met, myself, the Mikkelson's who were here earlier, I believe, the Carl's, a

9 number of us met on numerous occasions, several occasions with the city, then city manager

10 John Brown to discuss our concerns, and we have not met with the city since it sort of moved up

11 to the next level beyond the local level, at least not on a personal one-on-one basis.

12 Commissioner Bart Eberwein: Correct me if I'm wrong because here's what I think I've heard.

13 That here's where you all seem to agree. That there's a need to expand the urban growth

14 boundary. That unemployment of 17 percent is unacceptable and that the value of farms and

15 farmland to Woodburn is high. I think that's where you guys agree. And I think where I've

16 heard you disagree is how much land, where that should be, and whether there's enough capacity

17 within the existing urban growth boundary. Man, that's close to a deal. I mean, you don't

18 disagree on that much and for this to have gone on this long, I - if it was up to me, and I know it's

19 not, but, again, I'm just coming at this fresh, I'd say go into a room, talk this over. You agree on

20 more than you disagree, and come back to us and say, "You know, we're not - none of us are

21 completely happy. We had to give and take a little bit, but we banged this thing out, and here's

22 what we agree on."

23 Mary Kyle McCurdy: Commissioner Eberwein, we've - that issue's been raised.

24 Commissioner Bart Eberwein: I don't know what that means.

1 Richard Whitman: Well, so, if I could, I think the parties are being a little careful here because
2 they're trying to be careful not to talk about things that aren't in the record again. I think your
3 point's taken about how, there might be a basis for some discussions among the parties here.
4 But, I don't feel - they probably don't feel at liberty to talk about that right now in terms of any
5 discussions that might have occurred since the city made its decision because that's not in the
6 record that you're reviewing.
7 Commissioner Bart Eberwein: So, if I may . . .
8 Marilyn Worrix: And Hanley and then Chris.
9 Hanley Jenkins: The difficulty that we're put in as a commission in dealing with decision - this
10 decision is we have to essentially get - put back into a time machine that takes us back to 2007 in
11 the context of the Court of Appeals decision, and so, what - you know, what' I'm seeing from,
12 Bart and Greg is this intense desire to try and put it in the context of today, and we can't put it in
13 the context of today even though we've got administrative rules that we've adopted since 2007
14 that address some of these issues, and we've got the history of the last ten years. This is really
15 hard for us to do because we have to be putting ourselves back in 2007 and not create a record
16 that in some way is in violation of that Court of Appeals decision.
17 Richard Whitman: Well, Hanley, thank you. That was great. The other reason for that is, again,
18 your role here is to review a decision that was made at the local level. It's not to make your own
19 decisions starting from scratch about what's the best. You're a review body. So, with all that
20 said, I think your point's well taken.
21 Marilyn Worrix: Chris.
22 Chris Pellett: it's interesting that the three people that three commissioners that weren't present
23 in 2007 are all sitting over on this side, but so be it. And I think I appreciate that. What I'm
24 having trouble with is when I read things, the variety of the selections of possible industries and
25 their land needs is - is almost - I can't find that connection. I understand that it you know - it's

1 going to be highly variable whether you know if you look at - you know, you even say on a
2 wholesale trade it just varies. I mean, it could - they could use an acre. They could use probably
3 25 acres. We don't know. But somehow that's what I thinks' lacking here is that I realize it may
4 not be a hard, fast number, but at least get me there, and I - as I read through here, couldn't quite
5 find that information, and I'd take anybody's, explanation of where that is because I just can't
6 quite understand the support that you have for that acreage.
7 Marilyn Worrix: Who would like to answer? Greg.
8 Commissioner Chris Pellett: Greg, it probably is addressed to you.
9 Greg Winterowd: If you look at the target industry's memo, the side needs memo, what it starts
10 off with is the employment projection the city hopes to attract. And then, it goes into research
11 and then you see the table. What is missing is the spreadsheets that allocate those employees to
12 each of the sites. And that was not in the record. And that's how ECO does it all the time. You
13 can see this many employees went to this site. This many employees went to this site. And
14 that's what - that missing piece is not there. It's the way they do it in every other EOA I've
15 known, but I don't have that record. Could I try to explain to you, building a little bit on Hanley's
16 sympathetic comment, is sort of what's a fellow going to do when you've got the rules you've
17 got? So, here's what the Goal 9 rules says, and this is what the old Goal 9 rules says.
18 Richard Whitman: There you go.
19 Greg Winterowd: I've made a point of digging that up.
20 Richard Whitman: Good. Thank you, Greg. Appreciate that.
21 Greg Winterowd: It's 009.025, "identification of needed sites." We are charged by Goal 9 to do
22 this. The plan must identify the approximate number acreage and site characteristics of sites
23 needed to accommodate industrial and other employment uses to implement plan policies. It
24 doesn't say to implement employment or population protection. It says to implement plan
25 policies. That's the key difference between Goal 9 and 10. Plans do not need to provide a

1 different type of site for each industrial or other employment use. Compatible uses with similar
2 site characteristics may be combined into broad site categories. We had a broad site category for
3 the 13 targeted industries in the SWIR. That's what we did. We were not required by this rule to
4 do what you're asking, to assign each target industry with a number of employees attached to a
5 site. There's nothing that presents two sites - two industries from located on the same site in this
6 analysis. That could easily happen. In fact, we talked about business parks and industrial parks
7 as being the preferred method providing for it which would allow multiple-use on a single site.
8 What we did - and this is I think answering the question. How does this work with Goal 14?
9 Under Goal 14, to determine employment needs, you go to the Goal 9 rule. You make sure you
10 consider that you don't have a linear relationship, a mechanical relationship with the population
11 employment, but you consider that, and then you do what the Goal 9 rules says. You identify
12 target industries, make sure there's a good match between what the industries need and what we
13 provided. And that's what the ECO memo does. It doesn't link each individual, target industry.
14 It leads to the group of like industries. And until the Goal 9 rule was changed, in that aspect it
15 really didn't change much, but back then we said, "Well, that's what we're going to do. We're
16 going to make sure we follow this rule on the employment side and then follow the Goal 10 rule
17 on the housing side." And that can result in more land allocated for sites than the total
18 employment land projections, the 220 acres that Sid mentioned. I mean, it can have a different
19 result, and, if the finding said high, medium or low, at that, I may - after a while you get tired of
20 saying, "This isn't directly, linearly tied to an employment population projection, and it doesn't
21 have to be." 1000 Friends, you keep saying the same thing over again. You have to allocate land
22 in a linear way from population to employment to employees per acreage ratio, and that's not
23 what the Goal 9 rule says, and that's why we did it differently.
24 Marilyn Worrix: It's true that Goal 9 does not have that numerical connection that you find in 10
25 or - but Goal 9 has to function within the context of Goal 14, and you have a number guideline in

1 14 that is pretty clear, and that's 20 years. and as the - the Court said, you know, Goal 9 can't
2 pre-empt Goal 14, so you - you have this kind of, um - Goal 14 making it, I think, very, very
3 clear. We're talking about a 20 year time period. They say it over and over again.
4 Greg Winterowd: Sure.
5 Marilyn Worrix: And yet, in Goal 9, you have this, requirement to provide at least, a sufficient
6 amount of land, and there's you know - there's some stress, right there, but it's still looking for - I
7 like the flexibility. I think it's - it's common sense to have the kind of flexibility you're offering.
8 I like market choice. I understand why it's you know a difficult thing to weave into this, and I
9 think it's woven into it, anyway, and - and I think one could make an argument that some kind of
10 choice like that is a part of need. Again, you know, we're - you know are we talking need or are
11 we talking use it up? But we do have a 20 year numerical limit in 14, and we have to live with it.
12 And so, I'm looking for how you're going to live with that.
13 Greg Winterowd: I will differ.
14 Richard Whitman: If I might? So, I think from the staff level we were struggling with the same
15 issue after we saw the remand opinion from the Court of Appeals, and we went back and the
16 staff working on this now are not the same staff that worked on this with the city at the time of
17 going through the initial decision of the City. So, we've all sort of been back through it fresh,
18 and it really strikes me in looking at the analysis and the record here which stretched back to
19 2001 and then 2003 and 2005, you have to understand and I struggle with this also. I try to put
20 myself in that time machine as Hanley put it and go back to 2001 or 2003 and think about what
21 were the commission's rules at that point? What was the state of understanding of what state law
22 required at that point in time? And read everything sort of in that context. So that's a long way
23 of saying that I don't see the level of explanation that I would ideally like to see in the local
24 record in this case. But the question in my mind is: is there enough there that a reasonable
25 person could decide that, as the city did, that this is an amount of land required for industrial and

1 office uses, that is needed during the 20 year planning period to provide employment
2 opportunities that are consistent with that employment projection? That was sort of the way staff
3 framed the question in approaching this.
4 Marilyn Worrix: Needed as distinguished from used?
5 Richard Whitman: Needed in order to provide that number of jobs or employment opportunities.
6 So not necessarily - not every acre of land necessarily utilized but land with the amount of land
7 with the site characteristics that make it reasonably likely you'll get that number of jobs during
8 the 20 year period. That's the way we posed the question.
9 Chris Pellett: So, how do you then explain the top-end where you think you've gone over? And
10 I think you've done a really good job of explaining where the bottom is?
11 Richard Whitman: Right.
12 Chris Pellett: But where's the top?
13 Richard Whitman: So, thank you. Perfect. That's why we went back and did look at the
14 employee per acre projection at the beginning of the ECONorthwest memo where they did come
15 up with those estimates of land need based on an employee per acre because we were basically
16 using that as a reality check on the upper end, and whether the city is just getting too wildly
17 aspirational about a very large site or too many sites, in terms of amount of land. And you know
18 we can argue, we can quibble back and forth about particular numbers, and there's some
19 arguments, actually on the other side that the numbers could be even adjusted up, but again, in
20 the staff's opinion the question is given the lack of explanation in the record about connecting
21 those dots, could we use that employee per acre as a benchmark sort of on the amount that the
22 city brought in? And that's the sense that we used it in, and we think that it does correspond
23 relatively closely with the amount that they brought in. We believe the numbers are roughly
24 comparable between the employee per acre approach which the city was not required to use and
25 the approach that the city did use in terms of, sites. If there had been a big disparity, if the

1 number had been, you know, one third of what they ended up with in terms of the sites, then I
2 think that would start to raise real questions about whether this is in compliance with Goal 14
3 and they've gone too far.
4 Marilyn Worrix: But what was the disparity that the two . . .
5 Richard Whitman: Well, we believe it's something like 320 or 310 versus 360. Mary Kyle has
6 made some arguments that it's otherwise. We can get into discussion about how re-developable
7 land was calculated in that. We can also get into discussion about how right-of-way was
8 included in that or not included in that. You know, we could be here all afternoon quibbling
9 about some of those things we talked about in Bend's case on the housing side. We were just
10 using it as a rough benchmark, and I think it shows that the number's reasonable.
11 John VanLandingham: But one of the things we haven't talked about with regard to that is Mary
12 Kyle's assertion that, it's the apple - I don't know. Steve used apples to apples in his rebuttal.
13 Was that the department is counting office jobs in the total instead of industrial jobs.
14 Richard Whitman: And that's correct, and it's because there are three or four of the 13 targeted
15 site industries are in the office sector.
16 John VanLandingham: Health services, business services, engineering and management.
17 Richard Whitman: That's right.
18 John VanLandingham: All those are . . .
19 Richard Whitman: And Mary Kyle's point on that is that those are smaller sites that could be
20 accommodated through redevelopment in the existing urban growth boundary, and then we get
21 back into a discussion about how, you know, the adequacy of how redevelopment opportunity
22 was calculated. And I think Greg did a good job of describing the fact that there are 42, total
23 sites of which, 20 something are accommodated within the existing urban growth boundary,
24 number one, and, number two - remember the context here - the city has made a policy decision
25 to accommodate almost all of its future commercial growth within the existing urban growth

1 boundary. So, those are some of the reasons why I think the Department is continuing to believe
2 that this is a reasonable, decision by the city given that it was made in 2005 before some of these
3 things had been flushed out in a bit more detail in your rules.
4 Marilyn Worrix: Hanley.
5 Hanley Jenkins: So, I want to build on that. And it's in answer to Chris's question. Where's the
6 top-end of reasonably likely? And I don't - we haven't precisely identified in 2005 how we
7 measure reasonably likely. John's-.
8 Marilyn Worrix: We have now.
9 Richard Whitman: That's the rule making we're going to do later.
10 Hanley Jenkins: Okay, so - so I think it's - it's important then to look at the cumulative evidence
11 that is before us to determine whether it's too much. You know, have we gone beyond
12 reasonably likely? And - and I look at, you know, who's participated in the process and what is
13 the evidence that's there? The county has said, "Yes, we believe that this is reasonably likely that
14 Woodburn will be the employment center for the north end of the county." It's reasonably likely
15 that industry needs to be within two miles of, I-5, in order to, locate, and attract, businesses to
16 this area. It's the cumulative evidence that is presented that gets you to whether or not they have
17 - it's reasonably likely that that's the right number, and that's the only way I know how to get
18 there, without a precise formula like we have in coordinating population projections. We didn't
19 do that. We didn't ask them to do that.
20 Marilyn Worrix: Mary Kyle.
21 Mary Kyle McCurdy: Commissioner Worrix, I appreciate the frustration that everyone involved
22 with this, but nothing that we have raised today is anything new. We've raised it from the city
23 level, and we are suffering from a constant re-rationalization of this decision. You are required
24 to make a reasonable decision based on substantial evidence and you were supposed to in 2005
25 or 2006 or 2007. And that standard hasn't changed. What's changed, to me, is that now we have

1 the office employment put into this. We raised, early on, that some of those target industries
2 were not industries. They were offices. They could go on the vacant land, not just the re-
3 developable land, but the vacant land inside the existing urban growth boundary. They don't
4 have to be within two miles of a UGB. Only one of those target industry - excuse me - the I-5
5 interchange - only one of those targeted industries says it has to be within close proximity to an
6 I-5 interchange, not the others. We've raised that those were a lot of offices. It wasn't until the
7 response memo on January 7 that the Department included office formerly in this. It wasn't
8 until, this time before you that the staff had a misunderstanding of the amount of employees -
9 their 7 to 8,000 new employees being accommodated in the urban growth boundary expansion.
10 Apparently, the staff believed that the entire urban growth boundary expansion for industrial
11 lands was to accommodate that 7 to 8,000 employees when it was only the industrial side. But
12 that's how the original, or that's how the November staff draft report was written. We don't have
13 any employment allocated to the 80 acres of vacant industrial land inside the UGB that don't
14 qualify for the target industrial industries. Yet, they're zones for industrial use. We don't - we
15 don't know how many of the industrial, um - we don't know why - even if you could say in order
16 to provide land for the number of employees projected to come to Woodburn over the next 20
17 years, we need to provide more land. Even if that was legal, which I don't believe is, but even if
18 you could, we don't have anything in the record that shows us why this is the right number. I
19 guess it is that upper end you're trying to struggle for. Why three to four sites for each of the
20 target industries? How do we know that's enough and not too much or too little to attract those
21 employees that the city hopes to attract? There's just - there's no connecting of the dots and the
22 path keeps moving for us. So, I would like to go back, I would like to go in the box right now.
23 It's today's time and redo the whole thing based on current population and current knowledge and
24 all of that. I would like to, if you could have an order that does that, that would be great because
25 this is frustrating for everyone. But, it - it's just - it's a moving target, and nothing we've raised is

1 anything new, and I just - in fact, I think it's just really ironic that now we're recognizing that
2 many of those target industries are in fact office uses because we've been raising that from the
3 beginning that don't need target land. I do want to, um - I do want to say that there are - in the
4 proposed urban growth boundary expansion on the east side there are large sites within two miles
5 of the - of freeway access. I've said that again. There is industrial sites provided in the - in the
6 UGB that does not involve going to the west side.
7 Marilyn Worrix: Greg? John?
8 Greg Winterowd: If I could, we use the term in the UGB findings employment categories
9 frequently. Target industries is in quotes. There've always been these three bottom categories
10 that were clearly office. So, I'm just disagreeing with what Mary Kyle said. I think the industrial
11 site that exists on the west side of the freeway is owned by WinCo. We have evidence in the
12 record from WinCo that says-
13 John VanLandingham: West side or east side?
14 Greg Winterowd: West side.
15 John VanLandingham: West side.
16 Greg Winterowd: And that's what I think Mary Kyle was talking about, right?
17 Mary Kyle McCurdy: Just vacant land inside the UGB.
18 Greg Winterowd: With direct freeway access.
19 Mary Kyle McCurdy: Sid can respond to that, I believe.
20 Greg Winterowd: I - I can't think of those sites, so.
21 Sid Friedman: I did raise those acres that were removed from the vacant - from the buildable
22 lands inventory in my oral remarks prior. It is vacant land that is owned by WinCo, and they
23 show up on the chart that I showed lined out. And I assume there's no explanation as to why
24 they were lined out other than that parcels were removed based on owner interviews. I would
25 point out - and some owners were saying they were going to use them for expansion of their own

1 industry, their own business. I would point out that in this case WinCo is one of the target
2 industries, a distribution and warehouse, outfit, which is one of the targeted industries which
3 makes the removal of those parcels particularly hard to understand.
4 Greg Winterowd: And I will, if I could, help you understand. The city, we originally included
5 that as a vacant site. It was a vacant site. It was owned by WinCo. It was going to be regulated
6 by the rigorous standards of the southwest industrial district. We got a letter from WinCo saying
7 two things. Number one, "There is no way that we're going to sell this site to anybody else
8 because we have imminent plans to expand on it. So please don't put us in the SWIR. It is not a
9 site that will be available for anybody else but our expansion." And this gets us to the - you
10 know, the crux of the issue. Under the sites needs method you want to have enough sites to
11 attract the targeted firms. We have a firm that says, "We are going to use the land that we own to
12 expand." There wasn't just WinCo. It was other firms within the UGB. This demonstrates that
13 there is redevelopment potential in every UGB even after 20 years. And that seems a reasonable
14 assumption. You don't completely use up industrial commercial land otherwise you wouldn't get
15 constant objections that you don't count on redevelopment enough when you do UGB expansion.
16 WinCo gave us concrete evidence that this site was needed for imminent expansion. We took
17 that. Took it off the inventory of suitable sites, but recognized that WinCo would add additional
18 employees. It seems fairly straight forward to me.
19 Marilyn Worrix: You did adjust the employee number by the . . .
20 Greg Winterowd: No, we did not adjust the employee number because the employee per acre
21 method was not the only basis for the allocation of sites. It was also based on plan policies as
22 acquired by Goal 9. It was a combination of the two.
23 Marilyn Worrix: I understand that.
24 Greg Winterowd: Yes. I know you do, Marilyn. I'm sorry.
25 Marilyn Worrix: We have a number for reference.

1 Greg Winterowd: Right. And so we know we didn't . . .

2 Marilyn Worrix: And we took a big piece of land off. Did you make any - but it didn't affect the

3 number of - for our reference number.

4 Greg Winterowd: Here's another numerical reference that is in the, memo that ECO did for

5 calculating needs and employees. They start off by saying that under the medium scenario we

6 need a little over 7,000 employees. And then they go on to say that to accommodate the needs of

7 new development as opposed to other types, that we're going to have about 800, 11 percent of

8 that total is going to go toward existing developed sites. So, they allocated about 11 percent of

9 the total need to existing development and then said the 6,000 plus employees are needed for -

10 for new development. So, we hear from 1000 Friends that we didn't account for, you know for

11 redevelopment. Yes, we did in a number of ways. And that is clearly on the first page of the

12 memo also. There's a lot to respond to, things that were responded to in the record, but, clearly

13 we did account for redevelopment, and we did not account for every employee in a bean

14 counting way nor are we required to by Goal 9 in the way we are for Goal 10.

15 Marilyn Worrix: Okay, John.

16 John VanLandingham: So, I'd like us to have us focus a little on this vacant and re-developable

17 issue, because it may reduce the amount of land at issued. Not a very big number. So, Sid, I'd

18 like for you to respond to what Greg just said. You made - you made the argument that there

19 were city somehow ignored 80 acres of vacant land industrial land they could have counted.

20 Greg used the number of 36 which I was I think 80 plus 36 got to . . .

21 Sid Friedman: I think he misspoke. Was that actually 46, but I'd be happy to because I believe

22 Mr. Winterowd's, explanation of those two WinCo parcels actually proves our point. And that is

23 that the city - the city has 126 acres or did have 126 acres at the time of the inventory of land that

24 was either vacant, partially vacant or re-developable, I mispronounced that, within its existing

25 urban growth boundary. The majority of that 126 acres was land that is either vacant or partially

1 vacant. The smaller number is re-developable. And those are distinct categories of - of re-
2 developable land might be a land with a dilapidated building on it or a vacant building as
3 opposed to a piece of vacant or partially vacant land. So the - the city removed from the
4 inventory, as Greg has explained, or from its calculations of land need, parcels that were to be -
5 that were - that were vacant or partially vacant because they were to be used for expansion of
6 existing industries even industries that were amongst their targeted industries. So, here you
7 have, whatever the size of those two vacant WinCo parcels which were about to be used
8 imminently to be developed for use by one of the targeted industries, trucking and warehousing.
9 But they were not removed from the land need category or not included in the land need
10 calculations simply because they were - they were going to be used by somebody who's already
11 here not somebody new coming in from outside. We don't believe the law supports that kind of
12 approach.
13 Greg Winterowd: And, okay. This is a discussion that we've had before. So what happened
14 then? This is the detailed history of a five year process. So you're going to find some points that
15 maybe are not totally explained without an explanation. So, at the very end of the process
16 WinCo says, "We don't want to be part of the SWIR. The site is not available. We take it off the
17 list of sites that can meet the 42 site needs. That made us short a site. And so, what we did - and
18 this is on the UGB justification report. It was mentioned in Mary Kyle's objection why we were
19 inconsistent. We said, "You know, we've got our UGB established. It's a logical UGB. It's
20 based on the location of the south arterial Butteville Road. We're not going to go out and try and
21 make - add another site to account for the one we lost in - in, uh - for WinCo. So, what we're
22 going to do is take a closer look at land inside our UGB to see if we can't make up for that one
23 site, and here's how we did it - which I don't think is inconsistent. I think it was intend to be
24 efficient. First, we - there's the largest vacant site. The largest vacant site in Woodburn was -
25 partially vacant site in Woodburn was 19 acres. It was owned at that time by a - a firm that does

1 food processing, an agricultural firm, as luck would have it. They told us they didn't need it. We
2 scratched our heads. We were a little bit - that they needed it for future expansion, but we didn't
3 think that was the greatest argument in that 19 acre site. It was big. By far, the biggest
4 undeveloped portion of an existing site. So we said, "You know, it's possible that the need that
5 would have been met in WinCo - we don't say that but that is historically what happened - could
6 be met on that remainder 19 acre parcels. That's possible. We also said we might be able to, by
7 going - if a firm comes in with the lower end of the range on some of the site needs, we might be
8 able to make up for that need on that - on some of those sites. I'm not sure if I'm being clear. If
9 you need a 15 acre site and that comes - it's 10 to 20 and you say 15, they come in at 10, you
10 might have some 5 acre surplus each. We might be able to do some accounting for that. And
11 then, we also recognize that the city during the process of fixing plan zone conflicts also added a
12 little bit of additional land, 10 acres, inside the UGB which hadn't been accounted for. For those
13 reasons, we are going to forego the need to expand the UGB to have a one-to-one relationship
14 with the 42 sites. That - all this happened at the very end of the process, and if you think about it
15 from attempting to track industry, if you said, "Okay, we know that WinCo's going to use that
16 property, that's a good thing. We might be able to find another site to make up for that by
17 looking inside the UGB. That - that's what we did. You're looking quizzical, Commissioner
18 Macpherson. Is there, you didn't follow?
19 Greg Macpherson: I must have reread here somehow, but continue on. I'll try to . . .

20 Greg Winterowd: But the key point is we said, "This site is not available for meeting the needs
21 of a new target industry because WinCo says they need it for expansion." We are now under the
22 methodology we used a site short. So we said, "Let's see if we can find a way to make up for
23 that lost site by one of three ways." And we gave the three ways, and one of them was
24 questioning the assumption of a statement of one of the industrial owners that they would need

1 19 acres for expansion. That was on one of the sites that was partially developed. The Goal 9
2 rule, we could have said, "Well, it is developed." But we said it's partially developed because we
3 did a detailed inventory, and so we said, "That's why we have less than 486 acres. We have 407
4 acres from need. I mean, there's a whole logical train, that goes for that. I think I lost everyone.
5 Chris Pellett: Can I - I truly don't understand. WinCo, if they have that site - if they don't
6 develop they do develop, but I don't understand why it leaves the inventory. It's a targeted
7 industry . . .
8 Richard Whitman: Let me try it.
9 Chris Pellett: Today they might say they would use it. Five years from now they - within the 20
10 year window, so I'm a little confused. Either it's a possible site for someone to use, WinCo or
11 somebody else, or, I mean, what do you do with it? It's industrial.
12 Richard Whitman: Go ahead. Could I give it a try? So, what I hear in Greg - tell me if this is
13 wrong. But what I heard you saying was when the city obtained the information about the future
14 use of the WinCo site, you didn't adjust the, inventory of sites being proposed to be brought
15 within the urban growth boundary.
16 Greg Winterowd: No.
17 Richard Whitman: So, that's basically a wash. So I think the short answer is effectively that the
18 WinCo site, the city is not double counting. The city is assuming that part of the 20 year future
19 is that the WinCo site will develop and have some employment on it. The problem - there
20 would have been a problem if the city had then gone out and added a 40 acre - or whatever the
21 acreage is - site to the urban growth boundary to replace that, but they - they didn't do that.
22 Chris Pellett: So, it's sort of an irrelevant issue.
23 Richard Whitman: It's not really an issue.
24 Chris Pellett: Yes, okay.
25 Mary Kyle McCurdy: I don't think I agree with that Richard.

1 Richard Whitman: Okay, then tell me why.

2 Mary Kyle McCurdy: Because I think you're looking at just that snapshot of WinCo versus these
3 19 acres, and they should have included the 19 acres in the first place. I think you have to look
4 at the overall all - the 80 acres of land inside the urban growth boundary that's vacant or partially
5 vacant that they did not include and what the impact on the overall UGB that was and then also
6 what, happened with what did they do with the WinCo site when they took it off the inventory.
7 Is there employment allocated to that? It's not clear. The city in its decision says the city
8 removed these industrial lots from the inventory - the 80 acres that, Sid showed you from the
9 inventory for purposes of industrial siting needs comparisons. I think it's bigger than just WinCo
10 versus the 19 acres. I don't think the 19 acres is treated appropriately the first time. Just - it
11 should never have been off of the inventory in the first place to be allowed to substitute for
12 WinCo. I see the vacant . . .

13 Richard Whitman: So, let me try. And then, Greg, if this is wrong, again, jump in. When you
14 totaled up the number of required sites based on ECONorthwest's memo, it came to a total of 486
15 acres.

16 Greg Winterowd: Correct.

17 Richard Whitman: And so, at the end that got take down, and that's gross acres. At the end that
18 got take down to 409 or 407?

19 Greg Winterowd: I think it was net acres from ECO because it was the site size. It wasn't . . .

20 Richard Whitman: I thought - I thought that . . .

21 Sid Friedman: I think that was right. I think you were right. It was those 407 gross acres that
22 came to like 370 net acres.

23 Greg Winterowd: May I disagree for a moment, Mr. Director-

24 Marilyn Worrix: Yes.

1 Greg Winterowd: I think it improperly that 486 acres got taken down to 455 acres. The 409
2 acres that were added to the urban growth boundary plus the 46 acres of vacant and partially
3 vacant land within the existing UGB that the city did count as available to meet its needs.
4 Richard Whitman: So, you know, you've got my head spinning at this point. I - I think this
5 simply . . .
6 John VanLandingham: It was Mary Kyle's letter that says 409 gross acres for industrial use.
7 Richard Whitman: That was . . .
8 John VanLandingham: I - maybe it doesn't matter, but indicates - if your own letter says 409-
9 Richard Whitman: So - but, John, if I could, and Marilyn, I think that illustrates the point that
10 the city is trying to make here. This is not an exact accounting game. This is a planning process
11 to estimate the number, location and type of sites that are estimated to be needed to achieve a
12 particular amount of employment opportunity over a 20 year planning period. I think we're all
13 sort of in agreement on that. I hope. And so, you're looking for an exact accounting of how
14 many employees are going to go on each one of those sites. I don't think that's required by the
15 Goal 9 rule as it existed then. I think there's a certain element of professional judgment, by the
16 experts advising the city as to whether this - these sites are necessary to achieve these
17 employment opportunities. I understand the discomfort with that in the degree of discretion that
18 that appears to give to a consultant in the city in making the decision in the natural sort of,
19 tendency to overreach. That's why we looked at the, employee per acre approach as a check on
20 that to see if the numbers were in fairly close alignment and again they appear to be.
21 John VanLandingham: So, I would agree that there's - the part of the difficulty here is, we're -
22 we're going back and forth between the targeted industries approach to determining the amount
23 and the per employee approach. And it's further complicated because you're talking about land
24 within the UGB and new land. And so, within the UGB I think we're sort of - I don't know.
25 Maybe we're not.

1 Marilyn Worrix: Corinne.

2 John VanLandingham: Using the employee and then looking the targeted vacant land outside,

3 but . . .

4 Marilyn Worrix: While Corinne is coming up, I'm not quite doing what John suggested. I'm

5 looking at the, um - the targeted industry. I'm not - I'm not jumping back and forth between the

6 two. I'm looking at the targeted industry and I'm looking for some guideline, something that tells

7 me when I'm in the ballpark. And I only - this is the only other guideline I have is the employee

8 per acre or - what - how - how else do I decide if that's reasonable?

9 Bart Eberwein: And will you be calling the vote at three o'clock? That's what the agenda says.

10 Marilyn Worrix: Yes. No, we will not, but we will talk about timing in a minute.

11 Bart Eberwein: I mean, we're way wrapped around the axel in some of this stuff, and I we're not

12 going to unwind this thing in you know in three weeks if we go this far into principle.

13 Marilyn Worrix: Sometimes Corinne can unwind us quickly if we give her a chance.

14 Corinne Sherton: Okay, well, I want to point out that the Court of Appeals decision says that "it

15 is incumbent upon LCDC to cogently explain the reasons that the degree of market choice

16 employed by the city in this case is consistent with the requirements of Goal 9 and the Goal 9

17 rule," and they talk about the degree of market choice employed in this case. And I've heard you

18 going back and forth about how do we decide what's a reasonable upper limit on it and is what

19 the city did here reasonable or not, and I just wanted to point out that I think part of the origin of

20 the disagreement from 1000 Friends and the other petitioners is their disagreement with the

21 policy choices that the city has made. And the testimony that was first presented today,

22 particularly from the Carl's and the - and the Mikklesons - if I got the name right - there was a lot

23 of discussion on how they think the city should have made other choices. They think the city

24 should have emphasized more industries related to farm. They think the city should not have

25 tried to emphasize attracting new industries that would benefit primarily from the I-5 location.

1 But under Goal 9 the city has the right to make those kinds of choices, and to decide to pursue an
2 aggressive approach to attracting new jobs which is what they've done because they want to
3 improve their situation which is now more of a bedroom community and they want to have better
4 jobs for their citizens. So, given the choices, policy choices that the city made, I think the
5 amount of land the city ended up bringing in is reasonable. Maybe it wouldn't have been if they
6 made other policy choice, but they have a right to go the direction they want to go and do what's
7 reasonable for that direction.
8 Marilyn Worrix: Thank you. I'm not sure but go ahead.
9 Richard Whitman: So Marilyn, I want to come back to the question that you posed right before
10 Corinne and that's what's - you're looking for some - something to hang your hat on in terms of
11 the number and size of sites that the city selected. And so I go back to that memo from
12 ECONorthwest of the target industry site requirements where they surveyed those target
13 industries and both did survey research work and interviews about for those industries what types
14 of sites, what number of sites are, what characteristics are necessary for those industries to want
15 to locate in a particular place. I think that's the other input, source of information into the city's
16 decision.
17 Marilyn Worrix: I agree. I like to think that we're consistent from one decision to another so the
18 next time the question comes up, what is the process for determining how many acres we can
19 take in for industrial land, I don't want to say it's hidden in the expertise of ECONorthwest. I
20 want to be able to say something, more than that. I think that we can say something more than
21 that. I certainly don't question their expertise, and in an interview from all my years as a real
22 estate broker I know a business is going to say, "Well, I'm more likely to go to Woodburn if I got
23 a couple choices" and because you all like choices. You're much more likely to buy period if
24 you have choices. And secondly it's going to be cheaper than if there's just one parcel. So, I
25 think that I am more likely to go there, and I'm afraid now to call in market choice because it got

1 us in trouble. And you know I don't want to do that. But I think you can make some distinction
2 between need and use, and I - and you could argue that you need some additional land to attract
3 target industries because the difference between target industries and the employee per acre thing
4 is this is just filling the slots. It's just counting the numbers, and this one is a really active
5 process. I'm going to go out there and attract those people. I got to, I've got to show them that
6 you know they can make a purchase here that will be reasonable. I'm really impressed by all the
7 city's studies, and I don't question the economic analysis or - or any of that. I liked our first
8 answer. We can't give that first answer. We were asked to give another answer or another
9 justification for the same answer. And that's really hard to do, because I think that having that
10 choice is some part of this, but I think you could wrap that into need. We have told cities they
11 can be aspirational. Goal 9 does say you got to have "at least" and that carries the meaning that
12 "at least". Goal 14 says you can't go beyond 20 years, but if it's a 20 year need and I have that
13 need to be able to attract my targeted industries, I think you could probably get there. I would
14 also look to distinguish Woodburn, and I would distinguish it by saying it has been, shown by
15 the county to be, an industrial - proposed industrial center. It's a flat land and, the adjacent,
16 frontage on I-5 is, very unusual and does make them very attractive. So I'm going to support
17 personally what they're doing. All of this talk has been - I don't like - I don't like the way we've
18 had to do the rationale to do it. And I'd like to hear how people are going to respond with what I
19 just said.
20 Richard Whitman: If I . . .
21 Marilyn Worrix: If I didn't confuse you all so much . . .
22 Richard Whitman: One - one quick comment on that. Remember that Woodburn is in a unique,
23 historical situation here in terms of the law that applies.
24 Marilyn Worrix: I understand that. That was the other reason.

1 Richard Whitman: So, I don't want to say that you're decision won't have any effect on future
2 decisions, but it is unique in that the current Goal 9 rules or current Goal 14 rules don't apply to
3 this decision. There are some differences as a result of that, and I think the issues that have been
4 brought up by this case illustrate a need for the commission to clarify some things under Goal 9
5 and the Goal 9 rules, I think pretty strongly. I don't, like Commissioner Eberwein, I don't know
6 that you're going to get there this afternoon in the context of this particular case though. I think
7 that's a longer term discussion about your level of comfort with Goal 9 and Goal 9 rules as they
8 exist in this case and to some extent exist even for going forward.
9 John VanLandingham: I'd like to ask two final things which I think are important to address
10 before we make a decision or end this. One specific and one's more general. The specific is to
11 ask the staff to respond to Mary Kyle's assertion that the city has said that it's including land that
12 will not fully develop during the 20 year period and that's wrong.
13 Richard Whitman: Okay, there is some evidence in the record of development patterns in other
14 comparable communities that, the city of Woodburn looked at and there's also some evidence
15 with regard to business park, office park development that those lands will develop during the 20
16 year planning period, but they may not develop at the ultimate intensity of use that they end up
17 at. I hope that helps, and I think . . .
18 John VanLandingham: Well, it was whether we're saying Intel is going to buy - it's twice the
19 land it needs in the next 20 years because it's planning further than that. But what Carl's
20 argument was there's no, that might well be true, but there's no evidence in the record.
21 Richard Whitman: There is evidence in the record regarding, office park and business park, type
22 development, in the relatively low intensity of use, and there's some evidence in there regarding
23 the city of Wilsonville, in that regard. There's not a lot of evidence about it. I don't want to
24 mislead you, but going back and reading the transcript of Greg's remarks during the last
25 commission meeting, that was how I interpreted his remarks.

1 John VanLandingham: So, it's okay to say so that land is not quote "available" as a targeted site
2 even though they've bought . . .
3 Richard Whitman: I would say it's been used. It's been used.
4 John VanLandingham: Or in use.
5 Greg Macpherson: So, the evidence in the record is WinCo and the other you know 80 acres that
6 are within the UGB that are not being, included in the calculation because those companies - the
7 companies that are lined out, have said they're no longer available. We intend to expand onto
8 these lands and we don't want those included in the vacant lands analysis. That's the record.
9 John VanLandingham: So, the general question and we still haven't talked about location yet,
10 but, we should is: 1000 Friends starts off with its assertion that, what the department - "the draft
11 order seems to rationalize the same collusions as the first appealed order when there is no legal
12 evidentiary basis for those conclusions." So, it looks to them like you just took the same
13 conclusion and you're throwing a bunch of stuff in there. Now I think that requires saying what
14 it is the Court of Appeals told us to do which is the Court of Appeals didn't tell us to remand.
15 The Court of Appeals told us to do a better job explaining why we didn't remand or why we
16 think it's approval.
17 Richard Whitman: So, we are giving them new explanation of the commission's decision, a
18 proposed new explanation of the commission's decision. We've made some changes here today
19 in terms of what that explanation is. I don't think there's anything wrong with that at all. That's
20 exactly what you're supposed to be doing.
21 Marilyn Worrix: We have more freedom than that. I mean of reverse and remand.
22 Richard Whitman: You can change - there's nothing wrong with you changing your
23 rationalization for the decision.
24 Marilyn Worrix: There's nothing wrong with changing the decision.
25 Richard Whitman: Correct. Then there's nothing wrong with changing the decision either.

1 John VanLandingham: But from my perspective, what I think the Court of Appeals was asking
2 us to do was to explain why we agree that it's reasonably likely that that's the right number. And
3 we didn't do a good enough job the first time, and I think that's what they're asking us to do, and
4 that's why I think it's the - the cumulative evaluation. It's all of those things Marilyn ticked off.
5 It's all of those things that gets us to, that cumulative decision that is reasonably likely.
6 Richard Whitman: They asked you to do at least that.
7 Greg Macpherson: If I may, Commissioner? I think the Court actually asked for an explanation
8 of how it related to Goal 14 not how it was the right number, and I think that's an important
9 distinction to keep in mind. They've asked for something that we haven't done before and make
10 that explanation more explicit. So for years that was not addressed. We assumed that when you
11 satisfied Goal 9 you satisfied Goal 14. The Court said, "We're troubled by that. We would like
12 to know some more explanation." And I think we've heard today that they would like to have
13 more than just an explanation of Woodburn. I think there's a hunger for some policy direction.
14 That's not on our plate today because of the situation, but we are - we have Woodburn on our
15 plate today, and I think that the draft order has addressed their request hasn't satisfied the hunger
16 for the other though.
17 Richard Whitman: Yes, thank you.
18 Marilyn Worrix: Okay, yes, Chris.
19 Chris Pellett: I just want to say, as much as I agree that we probably need some new rule making
20 that, I'm comfortable with the idea that they have made their point, and - and have - and I think
21 that - that basically they do support, whether I like the policy choice - I like the way you got to it
22 that you probably did support it. And so I'm - I just wanted to say that I'm not interested in
23 taking this further personally. I get it, as someone who's relatively new on the Commission.
24 Marilyn Worrix: Other comments at this time before we talk about location? You want to take a
25 break before we talk about location?

1 Greg Macpherson: Yes, and this is on total need. Just I want to make sure that I've kind of wind
2 this thing out correctly. I'm seeing the number the projected employment increase at 8,374
3 employees residing in Woodburn and looks to me like their - they want to bring in 409 industrial
4 acres into the UGB and there' s 486 including some land that's inside the UGB. So when I divide
5 that out, I get 17 employees per acre. Now, obviously, with these target industries there'd be
6 highly variable kinds of levels of intensity of employees per acre, but I just - I need some kind -
7 somebody point me to something in the record . . .
8 Richard Whitman: I think that's fine.
9 Greg Macpherson: . . .that generally supports - says, yeah, that's in the right ballpark.
10 Richard Whitman: So, right at the beginning of the ECONorthwest-
11 Greg Winterowd: So, in the ECONorthwest target - I mean, site needs memo and make
12 assumptions . . .
13 Greg Macpherson: Is that on the record here?
14 Richard Whitman: Yes.
15 Greg Winterowd: Yes, they make assumptions about . . .
16 Greg Macpherson: What pages? Where would I find that?
17 Greg Winterowd: This would be . . .
18 Greg Macpherson: Not in our packet, no. Okay. I was hunting around for it.
19 Greg Winterowd: But they made estimates of employees per acre for different categories,
20 commercial, retail commercial, office and industrial. Industrial's by far the lowest. That's where
21 the big sites are being allocated for industrial. It's not - and I don't know without doing the math
22 again what exactly ECO is assumed for industrial.
23 Richard Whitman: 220.
24 Greg Winterowd: No. In terms of employees per acre on industrial.

1 Sid Friedman: I believe, Greg, and you can correct me if I'm wrong, I think, uh you had a
2 technical memorandum in the record later where you said that if you were doing this on an
3 employee per acre basis you'd assume 11 employees per acre for industrial.
4 I think though, Commissioner Macpherson, with all due respect, that you make an error here in
5 assuming that those 409 or 486 acres are for all the employment, for all 8,300 and some odd
6 employees who are coming. They're not. They're either for just the industrial piece of it or just
7 the industrial and office piece of it depending on whether you choose to believe 1000 Friends of
8 Oregon or believe . . .
9 Greg Macpherson: So, what you're saying is that some portion of the 8,374 will of course arise
10 based on lands that are already inside the urban growth boundary. So there's some allocation of
11 how much of that was based for new employment will occur outside as opposed to in.
12 Sid Friedman: Some of it will locate on commercial lands in the existing UGB. Some of it will
13 locate on commercial lands that are added to the UGB. Some of it will locate on public lands
14 and schools, government buildings, etc. Some of it will be absorbed by home occupations. the
15 actual number of new employment that will be absorbed on those 409 and 486 acres you can get
16 by adding together, either - either taking the industrial jobs number adding the industrial and
17 office job numbers together, and when you do that you're not going to be anywhere near the 11
18 employees per acre that was discussed earlier.
19 Bart Eberwein: Just one really quick.
20 Marilyn Worrix: Yes.
21 Bart Eberwein: That 17 percent unemployment we heard a lot about today, is that a back to the
22 future number or is that a today number?
23 Richard Whitman: It's a today number, so you shouldn't consider . . .
24 Bart Eberwein: Expunge that one, huh?
25 Richard Whitman: Yes, sorry.

1 Bart Eberwein: Do you know what it was in back to the future? 2005 or 2007?

2 Richard Whitman: City folks, have any sense of that?

3 Mary Kyle McCurdy: Not sure it's in the record either.

4 Bart Eberwein: Okay.

5 Mary Kyle McCurdy: I don't know.

6 Bart Eberwein: Thank you.

7 Greg Macpherson: Well, I'm ready to move on to the locational issue. I just - I have to say I'm
8 still - I'm still kind of groping around on for - it's not that we - I realize it's not a precise
9 calculation, but just some kind of a benchmark that gives us something to say, yeah, that's not
10 just kind of a "we like that land" and so here's - so we're going to come up with something that
11 justifies it."

12 Marilyn Worrix: So, is this - does this help? I'm looking at something I don't know if you have
13 in your packet. It's in the record. It's the Woodburn UGB justification report was written by
14 Greg and under industrial land needs it says that "the "ECONorthwest site requirements
15 concluded that about 370 acres would be needed for basic employment use to accommodate that
16 mid-range of 7,140 of employees in this planning period based on employee per acre ratios."

17 Greg Winterowd: And, as Sid is jumping to tell you, that includes all the employment types,
18 includes commercial and public as well. If we look at the numbers that I think are in the draft
19 order, they look something like this. If you look at office and industrial together, assuming the
20 target industries go for both, then under the high projection you would need under the employee
21 per acre method 311 acres. The city provided a total in sites of 407 net acres.

22 John VanLandingham: Gross.

23 Richard Whitman: Gross.

24 Greg Winterowd: 300 no the UGB . . .

25 Richard Whitman: 370.

1 Greg Winterowd: Added 360.

2 Richard Whitman: I'm sorry. 360 net.

3 Greg Winterowd: The total was 407 net.

4 Greg Macpherson: 370 net?

5 Greg Winterowd: Added to the UGB plus the 485 that are already inside the UGB.

6 Richard Whitman: So, Greg, when I talked earlier about this being - this is the check on the

7 site's method, and it's - we were having the same struggle you're having now about just looking

8 for some reference point, and so it was that three - I can't remember if it's 360 or 370 versus 311-

9 Marilyn Worrix: 370 . . .

10 Richard Whitman: Thank you.

11 Marilyn Worrix: For everything.

12 Richard Whitman: No, that's only for industrial and office. You're not going to find it there,

13 Marilyn. This is in the Department's January 7 staff report where we - where we back out this

14 number from what the city provided.

15 Marilyn Worrix: But the 370 acres is to accommodate 7,140 new jobs.

16 Greg Winterowd: Correct.

17 Marilyn Whitman: So isn't that all the jobs? That's just the industrial jobs?

18 Mary Kyle McCurdy: That's all of them.

19 Richard Whitman: It's all the jobs but at a lower employment forecast.

20 Mary Kyle McCurdy: At a mid-range forecast.

21 Richard Whitman: So, when you take the higher employment forecast and you back out the

22 commercial and public jobs, we believe you get back to a 370 number. They basically balance

23 out.

1 Chris Pellett: Richard, when you say commercial you really mean retail, correct? Because I
2 always think of office and all kinds of uses being commercial, and what we're not talking about
3 is retail, am I not understanding that correctly?
4 Greg Winterowd: It's - when ECO used commercial, they were talking essentially about
5 commercial retail when they were saying - because they had a different office thing. In the UGB
6 findings which Mary Kyle dug up, we said that most of the commercial and office needs would
7 be met through redevelopment. That is still true. Some of the office needs will be met on - in
8 target industry sites. So we may have overreached a little bit in saying all of the 40 acres in the
9 office would be for the target industries. Some of that might occur through redevelopment. And
10 I think that was Mary Kyle's point.
11 Richard Whitman: That's true, and it's also true that in terms of the net number, the net number
12 is after you subtract out the unbuildable land, it does not subtract out land for right of way. So I
13 mean we could - this gets to Bart's point. We could be here all afternoon trying to work out the
14 accounting of this. Our approach on this was just to get a rough benchmark on the sites
15 approach.
16 Greg Winterowd: And this is why - I said it many times - because we were not using the site
17 needs approach - I mean, housing you can see every acre accounted for because we had a
18 housing needs analysis, units per acre vacancy rate, all of those things to get us down to the acre.
19 In the sites need approach we didn't do a detailed accounting of the employees because that's not
20 required by Goal 9, and we don't think it's acquired by Goal 14 either in the case of Goal-.
21 Marilyn Worrix: I think we all agree on that. I think that point has been made. Is the 7,140
22 number a good number for the employee, range - or, need.
23 Greg Winterowd: It should be the higher range of 8,000.
24 Marilyn Worrix: Okay, so, up a little bit.
25 Richard Whitman: It's the mid-range forecast for employment.

1 Marilyn Worrix: So we can take the higher - we can take the higher range.

2 Richard Whitman: The city made a policy decision, and I believe basically seconded by the

3 county to use the higher range of forecast.

4 Marilyn Worrix: So, the following sentence is false. Originally they talked about 370 acres, to

5 accommodate all the needs and now 370 acres to accommodate just the industrial. That's false.

6 Because-

7 Greg Winterowd: That's not accurate.

8 Marilyn Worrix: We, use the higher range.

9 Greg Winterowd: The higher range gets you somewhere over 400 total acres.

10 Marilyn Worrix: It's still true that it grew significantly somehow in that jump. If we're using

11 370 as . . .

12 Greg Winterowd: If you use that number.

13 Marilyn Worrix: . . . a reference point.

14 Greg Winterowd: If you use the EPA method, try to divide it up as Commissioner Greg was

15 saying.

16 Marilyn Worrix: What do you think our reference point should be if it isn't that?

17 Greg Winterowd: I think the reference point should be they followed the Goal 9 rule steps.

18 There's no inherent conflict between 20 year need for sites for employment-

19 Marilyn Worrix: Then at what point is it, unreasonable? When . . .

20 Greg Winterowd: And the point when . . .

21 Marilyn Worrix: . . . common sense tells you it is?

22 Greg Winterowd: . . . you look at the, relationship between the EPA, employee per acre,

23 method and sites need method, are they reasonably close? And if you combine the industrial and

24 office, you come up with 311 acres which is reasonably close to the acreage that was provided,

1 net acres provided 470 is within 31 percent. So, the exact numbers is the site-need method
2 provided 31 percent more land than the EPA method if we count office and industrial the same.
3 Mary Kyle McCurdy: And I would like to state that we did not find a 30 percent difference to be
4 anywhere near reasonable, and I also do not see any framework or parameters for what you all
5 may be defining as reasonable. I just see trying to rationalize something. For example, the
6 discussion on what was done with commercial lands is irrelevant to the amount of land needed
7 for industrial uses. The fact that they did a good job of accommodating the commercial lands. I
8 just don't see how the public is supposed to participate in a process that seems as mushy as this
9 right now. We're not looking for specification. We're not looking for an exactitude. We didn't
10 choose this methodology. But there's nowhere in the ECO report that tells you how many sites
11 you need for any of those target industries. We don't know whether that's a reasonable amount.
12 We don't know whether it's going to get the employee number or not. This is really mushy, and I
13 do not know how you can expect the public to participate in something that is a moving target.
14 We're on remand from the Court of Appeals and the rationale has changed from your draft order
15 to your January 7 staff response to our thing that we're now including all of the office workers.
16 It just - it's very challenging. I look - anyway.
17 Marilyn Worrix: Commission comments.
18 [BREAK IN AUDIO]
19 Sid Friedman: Characterizes our position. And this, lack of Class 3 soils extends well beyond
20 this line right here, where there is no Class 2 interspersed. It is all Class 3 and we did depict a,
21 we had on the record that we showed on our slides. What we have said is this led, Woodburn is
22 already bringing in these large parcels on the east side for industrial land. If additional industrial
23 land can be justified, it should be on these class soils which are immediately adjacent to the other
24 industrial land, rather than on the west side of the freeway on the lower priority farm, prime
25 farmland. The other thing I want to point out on the transportation map, is that you planned our

1 material and the DSP brought on the east side of the freeway from the Southwest Industrial
2 Reserve, that portion that's on the east side of the freeway on up to the interchange.
3 Richard Whitman: Greg said that we're going to leave that out. I thought I understood Greg
4 said that there's a problem, that the county would have some concerns about it, assuming that,
5 that all the industrial land that they rejected is needed. I know you don't assume that, but, if they
6 couldn't go south because it would be too close to Joe's.
7 Sid Friedman: The county has a stated policy. I don't know whether it's in plan or not that
8 historically separates these. That does not supersede the statutory requirements in our, in our
9 revised statutes. That's my short answer. And I would also point out, it's quite a ways to Joe's.
10 It's about two miles to Joe's. one of the things that is considered, they also failed to mention, is
11 that if we direct the traffic on the south side of the freeway, we will have to head it on the east
12 side of the interchange. The interchange will be hopelessly overburdened at Southland Road.
13 Transportation studies, we've about signed off on that. I also think let's continue to ignore that
14 [INDISCERNIBLE]. There is evidence in the record that we'll survive it, umm. In 2006, we
15 recognized that this issue would come up. And this memo dated April 26, 2006, and Kevin
16 wrote to us and supplemental record and what we'd done on this issue. Your reply said that only
17 one industry leads had, had maybe two and maybe direct access to I-5. And I think it's
18 implication that the, the, silicone plant could go on the local side, but that, silicone plant is
19 actually identified in the southeast area on the other side of the freeway. But, here's what
20 happened with the sounds. Most, no not all, you just reached 25 required direct I-5 access. And
21 then we sought to keep that access. That those 2003 site requirements support high ramps,
22 freeway access is important, lots of manufacturers and aerospace, parts and manufacturers. And
23 that is critical to motor-freight transportation and warehouse service. Your report also says the
24 full sale trade for, by transportation access and that we would save taxes is beneficial to, you
25 know, fabricate. Additional comments beyond those that echoes 2002 will be made regarding the

1 interstate access needs of other targeted industries. We're creating a publishing firm who's
2 setting markets and quarterlies in the same areas. [INDISCERNIBLE] that's the name of these
3 for reported access to my files or report. There's a variety of other target issues such as left line,
4 more time with equipment manufacturers, business issues, non-depository credit unions,
5 engineering and accounting research management and related services, master plans, business
6 parks would be desirable locations if you recall in the [INDISCERNIBLE] analysis, it was
7 essentially about the importance of such a park and [INDISCERNIBLE] citing. A third thing, is
8 that freeway access is a important competitive advantage for these master planned business parks
9 as explained with the following exception: While some firms have been targeting this current
10 location for commercial areas. Small [INDISCERNIBLE] doctor offices, [INDISCERNIBLE]
11 and some engineering central management-related firms, many of those prefer master planned
12 parks. Due to most of Woodburn's target industries acquired for that I-5 access. I believe
13 there's a short distance between parcel and [INDISCERNIBLE] and nothing moves up from I-5
14 access. The only thing that we have exclusively required is direct I-5 access, we prefer to be
15 master planned industrial parks, which by the way, are available only smaller. Since these parks,
16 we became for a variety of terms, including those who do not require I-5 access. It makes sense
17 for Woodburn to provide these land for these parks near an I-5 interchange. The report goes on
18 to say the closer, the better. You'd be better off within a mile, but two miles is reasonable. You
19 know, this is, you know, this is the measure chose. And that's why I'm adding even more miles
20 because we're going to be meeting with the target industries. And so I just disagree, I don't
21 disagree, but there's nothing in the record to support the target industries. And without looking
22 at the actual [INDISCERNIBLE], that we need to get back to the west side of the freeway in
23 order for that interchange to work. And if that interchange doesn't work, we don't have that kind
24 of, you know, program.

1 Mary Kyle McCurdy: I'd hate to have to [INDISCERNIBLE] non- responsive to the issue that
2 the Southwest Industrial Reserve on the east side of the freeway is within 2 miles of the
3 interchange. The issue here is whether it's coming from the east or west. Laverne has it,
4 transportation, system planned. Sid pointed out the rest of their material that we're getting, falls
5 directly to that interchange. The book, there's requirements that's beneficial and it's required
6 access. And those are all open terms we can use in the underlying open request memo. But
7 there's still access of 15 miles from the east side to the Southwest Industrial Reserve to that
8 interchange. Going to the west side, this is prime industrial land. And there isn't just, excuse
9 me, prime agricultural land which is industrial land. And there is not a need for that number of
10 acres in one parcel that can't be met on the east side. And saying that targeted industries need
11 smaller parcels, there's a variety of options available. We do not see justification to go on prime
12 land as opposed to other plans in the [INDISCERNIBLE]. Thank you.
13 Marilyn Worrix: Thank you. Any other questions from the commission?
14 John VanLandingham: I have.
15 Marilyn: Go ahead.
16 John VanLandingham: I think this is probably aimed toward Richard. In [INDISCERNIBLE]
17 written comments, she did not point out that the court did not direct the commission to address
18 the second location change. I feel more confident after hearing the revised email. We were
19 advised for her to see when the change date from the first time. I assume that was not the intent,
20 amend the order too. Anticipate or at rest the arguments said, friends made an appeal. Do you
21 want to respond?
22 Richard: Sure.
23 John VanLandingham: Did you change the revised letter from the
24 Richard Whitman: We did not, we did not see the draft proposed order although we expect that
25 it will change the response to execute change by today. And it's that report in response to the

1 new argument from 1000 Friends. We acknowledge that the Court of Appeals did not require
2 the commission to address the location of issue. We repeat that we recommend that the
3 commission do so, and take the opportunity, to further explain the, the location unaccepted, not
4 the decision. That's it.
5 Marilyn Worrix: I'm about to close the public hearing, portion here, but I'd like to know if
6 there's anyone in the audience that spoke earlier today that has any final comment they would
7 like to make? Corinne? No. Okay. Okay, then I will close the public hearing and yes, Lolita?
8 Lolita Carl: I would like to say something. I found this procedure very upsetting because I think
9 you took all that time debating, because you're trying to make something wrong. That's all I
10 have to say.
11 Marilyn: Thank you for your comments. Okay, now we'll really close down. Yes?
12 We will really close the public hearing and, bring it to the commission.
13 Richard Whitman: So, just a procedure on court reporting. We're having some issues with our
14 sound system we're trying to record. And,
15 Marilyn Worrix: Okay.
16 Richard Whitman: We do have, we have a backup system here before you, but I think before we
17 go forward with the deliberations, if you would give us a few minutes to work on this, you know,
18 system, we'd appreciate it.
19 Marilyn Worrix: Okay.
20 [INAUDIBLE OVERLAPPING]
21 Richard Whitman: We should take a break now? [INDISCERNIBLE]
22 Sound Guy: Okay, it's this recorder.
23 Marilyn Worrix: it's [INDISCERNIBLE].
24 Male: I'm cutting you off onto a chair in the commission.

1 Marilyn Worrix: I think if I moved the speaker to here. But I just wanted to try and just turn it
2 all off and turn it back on to see if it.
3 [INDISCERNIBLE]
4 Marilyn Worrix: Alright, okay, great.
5 Richard Whitman: Okay, are you done with your ITI's?
6 Marilyn Worrix: Up to them.
7 Robert Shields: Do you want to restate by the [INDISCERNIBLE] here? Do you think he's
8 going to do a [INDISCERNIBLE].
9 Corrine Sherton: I'd imagine that.
10 Marilyn Worrix: Well, I think there was some business.
11 Mary Kyle McCurdy: So did you mention that to her?
12 Sid Friedman: I mentioned it. I didn't know that she's there.
13 Female: So, yeah.
14 [INAUDIBLE OVERLAPPING]
15 Male: Perfect.
16 [INAUDIBLE OVERLAPPING]
17 Corrine Sherton: Oh, I would love to see that.
18 Male 1: I'm going, I'm just [INDISCERNIBLE]
19 [INAUDIBLE OVERLAPPING]
20 Greg Macpherson: Did we continue- continue to do a date certification?
21 Marylyn Worrix: Well, this would be
22 Greg Macpherson: Because it was notice [INDISCERNIBLE]
23 Marilyn Worrix: I think you're right.
24 Richard Whitman: Yeah, you [INDISCERNIBLE]
25 Marilyn Worrix: We're talking about the making reference – we can be serious like last time.

1 Tom Hogue: Do we continue to do a lead search?

2 Steve Oulman: Yeah, we did two today.

3 Tom Hogue: Okay, so we want to add to that.

4

5

6 Marilyn Worrix: Okay I'd like to just make a-a couple of comments and I'm going to ask
7 commissioners to tell us their final thoughts. I'm going to ask Richard to give a few final
8 thoughts from the department. I am prepared to support the draft, not easily. But what I'm-what
9 I'm thinking about as I say that is I do think the city did a very thorough economic analysis.
10 There's been a lot of base work done, to get them to this point starting with the economic
11 development work, done many, many years ago and they've built on it since then. I'm given
12 some small amount of comfort by the fact that the division 24 rules have changed and the
13 changes may have clarified some of the questions that arose in-in this case, do I think, it's more
14 land than I would say they needed? Yes. But that's not my call. I don't think that-I-I can't, see
15 the cities, conclusion as unreasonable they have high aspirations and then they did which are
16 allowed under Goal 9 and then set out to show what they needed to be able to reach those
17 aspirations. The methodology that they used was not always clear, so there is just some lack of
18 clarity, in the process. I do think we can reconcile Goal 9 with Goal 14 even though Goal 9, says
19 that you need at least to satisfy at least, what is needed, suggesting that you could have more.
20 And Goal 14, clearly restricts us to, to 20 years. I think those are reconciled by how you define
21 need. I don't know that it's the best definition but I think the city looked at the word, and said
22 what do we need to get our targeted industries and one of the things they needed was the number
23 of parcels, that they chose to, bring in. I am influenced by the restrictions the city put on the
24 land. They are more stringent than we have seen before. I-I don't-I don't think there's any-any
25 chance this is a bait-and-switch, it doesn't-it certainly doesn't look like it. I think they're honest

1 and sincere in keeping this land in, industrial use. On the location, Again, I'm not totally
2 comfortable but I think there is evidence in the record that, the, that this will, increase the, access
3 to I-5 and that would be, a step in helping to attract their targeted industries. This whole,
4 discussion today has certainly shown me that we need to do some Goal nine work. And we need
5 to do some Goal 9/Goal 14, work. And we always say this after we have a hard hearing; we need
6 to do some rule-making. But I do think this one needs to rise to the top of the list. This was not
7 a good experience for anybody, and part of the problem was some lack of clarity and that's our
8 fault. So I'm going to strongly suggest that we, tackle some rule-making to clarify, some of the
9 issues that came up. Richard would you like to support the stand?
10 Richard Whitman: Marilyn, I'd like to make a few remarks, and again emphasizing the point
11 that we're not this strange, to use my predecessors term-the "way back machine", situation of
12 having to put ourselves not back in 2007 but actually back in 2005. And what was going on in
13 2005? So in 2005 at the time you were-at the time the city was reviewing this and making a
14 decision on this, you were in the middle of a rule-right in the middle of a rule-making on, rules
15 for, both Goal nine and I believe the division 24 rules under Goal 14. So, and I bring that up
16 because there's one point that I haven't made previously is, this concern about market choice.
17 While market choice was a concept that was talked about, at length in the, rule-making that was
18 done on the most recent version of the Goal nine rules that was going on at the time this was, and
19 market choice is something that is allowed to be taken into consideration only in the short term
20 in terms of providing a five year short-term competitive land supply. And so when I went back
21 and read the transcript for your hearing in 2007 and went back and read the city's materials from
22 2005, what struck me was a lot of loose language about market choice and I think a lot of that
23 reference was-can be explained by thinking about market choice in the short-term sense of
24 whether there's an adequate, range of sites available within a five year period to provide a

1 competitive short-term supply. I don't know whether that fully explains the references in the
2 written record or not, but I think in my mind that was some of, uh-what explained that.
3 Hanley Jenkins: And the context was that the Commission was working at that time on that very
4 issue.
5 Richard Whitman: We were. So that's-that was my first point. second point is, from the-again
6 and in the department's opinion, the question here is not what's the right thing to do now, or
7 even what was-what do you think the right decision was in 2005. The question is whether-did
8 the city make a decision that complied with your standards as they existed then, and to the extent
9 there are any factual questions, whether a-a reasonable person could come to the same decision
10 that the city did. It's a-it's a narrow-you're in a review mode; you're not in a king making, uh-
11 mode. And I think because of that, the department believes it does not see a good reason to
12 change the decision that you made in 2007. The department believes, based on the existing
13 record from the city, you can put together, on review an adequate explanation for how the city
14 got to the conclusion that it got to, that complies with your rules and that meets the-that
15 reasonable person standard in terms of any FAQ questions-I know I'm being really lawyerly
16 here. But stepping back from that a minute, just from a common sense sort of way, did the city
17 overreach here in terms of the amount of land? I think for us, and for me personally the, um-
18 using the employee-per-acre methodology is a benchmark measuring stick, not as the primary
19 method for determining amount but just seeing are-were they within the ballpark, gave us the
20 comfort that we were looking for, and I think Commissioner Macpherson was looking for. So
21 that was very important to us. And then, last piece of this, just most directly in responding to the
22 Court of Appeals. the Court of Appeals asked for an explanation of what's the relationship
23 between Goal 9 and Goal 14 and I think in the draft order, what the department proposes is that
24 the relationship is that Goal 14, factor II says part of planning for a 20 year period is to plan for
25 employment opportunities that are needed within a community. Goal 9 is the way that you-going

1 through the Goal 9 process is the way that you show what, employment opportunities are needed
2 within a community, within that 20 year planning period. As we've heard today, there are
3 continuing concerns from interest groups, from the department; I think on the part of the
4 Commission; on the part of many people about whether there is an adequate check or upper limit
5 on the amount of land a community could bring in through that method. I agree that that's an
6 issue. It's one that the Commission should address in a future rule making. But I think under the
7 rules that existed in 2005, the city did an adequate job on this. And I-we-the department does not
8 believe they're overreaching. Part of-the other part of that finally is the city, as already been
9 mentioned, was identified as an employment center for Northern Marion County. It has some
10 unique advantages that make it possible for it to grow this fast so that's the last part of that. In
11 terms of location, I-I-I'm not going to add anything to what the parties have already said except
12 to emphasize the key from the department's perspective is that access to that interchange from
13 the west side. The whole-putting the whole plan together in providing that looped arterial access
14 to the west side not just from the OPA site, but also getting the sites in the southeastern-well the
15 southwest industrial reserve, but on the east side of the freeway. And to some extent traffic from
16 99E over on the south arterial up Butteville Road in, in on the west side of the freeway
17 interchange is critical to ODOT and critical to the city in terms of making their overall plan
18 work. Not just for industrial uses but for all the uses in the city. So that's why we believe, the
19 record is adequate to support the locational arguments, in terms of the need to go on the west
20 side of I5 to develop along Butteville Road. There to provide that-that full arterial access over
21 there. In legal terms that's a 197.2983(c) argument and I believe that's the main argument here
22 on location. The department did allude to 197.2983(a) in its most recent report. I do-do not
23 recommend the Commission base its order, on remand on .2983(a). That's the specific identified
24 land need. That's gonna get us into other issues that I don't think we need to, get into in this
25 particular case. So I think the main justification is the-in order to maximize the efficiency of

1 lands within the urban growth boundary we need-you-the city needs to bring in that land west of
2 I5 for the reasons that I've stated. With that I'll stop.
3 Marilyn Worrix: I would like to say that I-I'm hopeful that we can come to some resolution, on
4 this today because everyone agrees this is an unreasonable period of time and an unreasonable
5 amount of money. We all maybe bear a little responsibility for that but the truth is this is, this is
6 absurd. It's just too long, to-too much money, and hopefully, we can find some ways to shorten
7 that road a little bit. I certainly don't want to be here two years from now trying to go back two
8 more years in time and figure out, what-what's going on. Comments from the Commission;
9 John you have some notes?
10 John VanLandingham: [LAUGHS]
11 Marilyn Worrix: Tell us.
12 John VanLandingham: I was hoping I could go last.
13 Marilyn Worrix: You can. Chris?
14 Hanley Jenkins: I'll go next to last.
15 Chris Pellett: you can go next to last. This probably isn't-I would not disagree with people who
16 like to support agriculture and farmland. I don't like this decision, but that isn't really the
17 question we've been asked and-and I would ha-hope that you would understand that. today we'd
18 probably come up with a very different answer, but I believe that basically I think the department
19 has it right where we are and I'm going to support that. I'd probably say about the cost of this;
20 the length of time, the choices of how you decide to do your studies; how you decide to support
21 things have a great deal of risk in them and, I would say that those decisions also made this take
22 a very long time and I'd like to say it cost a lot of taxpayer dollars and we have plenty of blame
23 to go around beyond just the Land Use system in its own right. And that's all I have to say.
24 Marilyn Worrix: Greg?

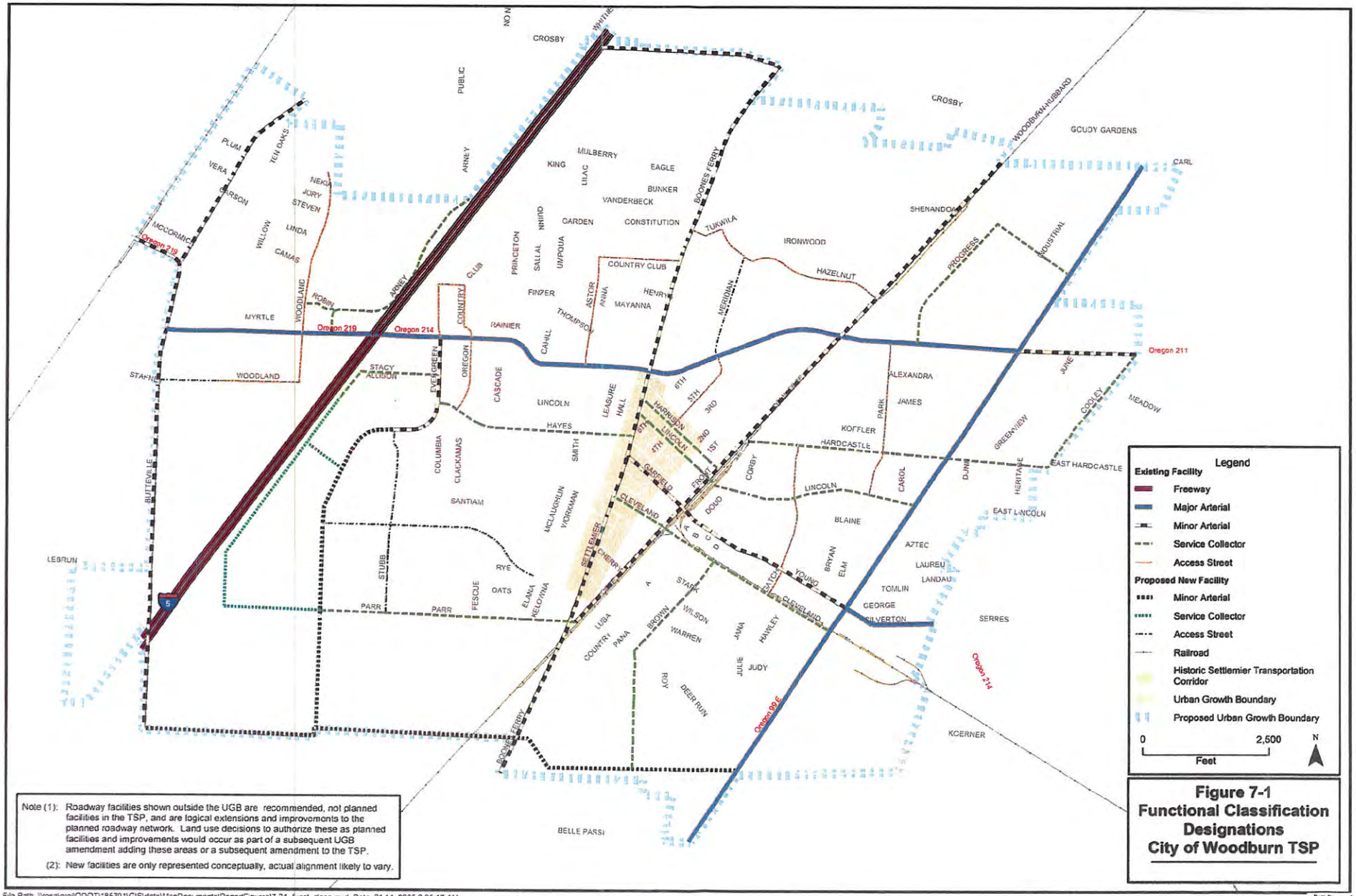
1 Greg Macpherson: Yeah well I'll support the staff report given the constrained nature of the
2 decision we have in front of us. I would have to say, I don't-I'm not-I'm very uncomfortable
3 with the policy choices that have been made here, back several years ago and maybe, there was a
4 different environment in which people were planning for the future. and in particular I-I'm
5 troubled by the fact that we have such a robust, agricultural, industry going on in-in Marion
6 County and we know that that acreage on the west side in particular, and really all around the
7 urban growth boundary is highly productive and it produces things that are sold outside of the
8 state and they bring dollars into the state. I would regard it personally as a very unfortunate
9 result if the consequence of this is that, another warehouse operation were to spring up on that
10 land in the west side which is just shipping goods around that we sell to ourselves because that
11 doesn't add anything net to Oregon's economy and we'd be-we'd be back subtracting it because
12 we'd be giving up the productivity of that land. Nevertheless, given the-the long timeline and I
13 certainly, can appreciate the-any frustration that the participants have had in waiting for a
14 decision. I-I don't want to delay this thing any longer and I think given the kind of way it comes
15 to us I support the motion for that proposal.
16 Marilyn Worrix: Bart?
17 Bart Eberwein: I made some notes toward the end could I just read them?
18 Marilyn Worrix: Please do.
19 Bart Eberwein: So projecting the 2005, I've been trying to project myself there and asked to
20 review the cities, urban growth expansion plan, I'd say, okay that's why I signed up for this. I
21 mean this seems to me classic LCDC business. Try to balance the state's needs for development,
22 how and where, against Oregon's need to conserve our heritage; our rural resources. So it's
23 framed that way to me. And then I read from the notes here, you know in our instructions, and is
24 the city's amendment consistent with Goals 9 and 14 and that's the question that I thought we
25 were here to wrestle with. So I put for Goal 9, as far as I could tell Woodburn as meeting,

1 especially in spirit and probably in letter that tenants of economic diversification and making
2 preparations for a more prosperous future for assistance. So Goal 9-but I had trouble with the
3 Goal 14. As far as I could tell, Woodburn may have asked for too much land in total and in the
4 wrong locations. I thought there was enough testimony here to-to not buy that, Goal 14 was met.
5 Therefore, if it was up to me, I would not approve this. I'm, I'm uncomfortable as the new guy
6 to-to have a split vote, and so-but if it was up to me I'd say, this-this doesn't-this doesn't pass
7 and I'd say don't drag it out any further; come back with a plan that a thousand friends; the Farm
8 Bureau and the city can live with. Talk to each other; find common ground as Oregonians who
9 agree that we need to expand the urban growth boundary in Woodburn but unemployment is too
10 high, and that the value of farming and farmland must be amplified by whatever decision we
11 make.
12 Marilyn Worrix: I don't think we've ever tried to encourage a Commission member to vote, one
13 way or another, based on having a-a-unanimous vote, and you should feel free to vote your-vote
14 your conscious.
15 Bart Eberwein: Well that's-that's the way I would vote and . . .
16 Marilyn Worrix: Okay.
17 Bart Eberwein: . . . and just two side notes. I-I'm not sure what Woodburn's relationship is
18 with the outlet mall, but it seems like a golden opportunity to connect with lots of people without
19 our agricultural heritage. It's some way that could be really powerful and I would suggest that
20 the farm bureau and the farm community might address this employment thing and the
21 recruitment of business and I-I don't know how active they are. But I'm troubled by the 17%;
22 that's-that's hard to sit up here and listen to and-and not come up with-not try to be helpful about
23 that.
24 Marilyn Worrix: Thanks. Hanley?

1 Hanley Jenkins: Well you know, I've made the argument that, our standard is reasonably likely
2 and the way we measure that standard is the cumulative evidence as presented to us. And so I
3 believe that the arguments that both you and Richard have made, about how we measure that
4 standard, while it may not be the best standard for today, it's the standard that we have to use to
5 measure them, and I think that it's our job to review whether the city's met that standard and
6 from, the accumulative evidence that's presented, you know, I believe they've met that standard.
7 As locational, standard or requirement, I think is more complicated. It's complicated by the need
8 to meet transportation of concerns that are associated with the I-5 corridor, and the city was
9 essentially required to go through an interchange area management plan for that interchange and
10 the result of that was the only access you're gonna get is from the west side. And so I believe,
11 you know, unfortunately or not, that interchange area management plan is driving the location of
12 where that urban growth boundary is going to be. In the context of all of the other Goal 14
13 requirements but it weighs very heavily in the balance of how you come up with a decision on
14 where that growth is going to occur and it may not be the best solution, it certainly isn't the best
15 solution I-I think for agricultural lands, but it is the solution I think in the total picture for the
16 urban growth boundary for the city.
17 Marilyn Worrix: Thank you. John?
18 John VanLandingham: So I agree with the department's draft order regarding the amount of
19 land needed and the location and I'm in agreement with Marilyn's arguments and with Richard's
20 arguments. I think the standard for us is whether a reasonable person could have determined
21 what the city did. That's not to say that a 1000 Friend's position, which I understand would
22 largely be to not add the 130 acre OPUS site. That's a reasonable position as well, but it's not
23 my job to say that one is necessarily better than another but whether the city's position is
24 reasonable and I think it is. I agree with the concerns that have been raised that that it would be
25 better if we had done a better job, perhaps with our rules of connecting the dots as Mary Kyle's

1 phrase was, between the targeted industries and their site needs and specific sites and the amount
2 of land. I'm also somewhat concerned about the vacant and re-developable sites within the UGB
3 and find, confusion about using the target industries method, and then the per employee method.
4 But I think a reasonable person would have found that the city had justified the decisions. I
5 don't feel that we're just trying to rationalize the earlier decision. The court asked us for a better
6 explanation; that does not mean that we have to do a different decision, but we could a different
7 decision but we have to do a better explanation. That requires-to me that requires that we do a
8 better job of understanding the city's position as well as the objector's position and to me that
9 says that we need to ask questions. I often ask questions when I want to know what somebody's
10 view is [chuckles], not to make an argument. And so my questions are designed to do that. I
11 want to push a party with my questions and say, so why do you think that? I want to hear you
12 respond to that person's argument. I don't question anyone's motives here. I-my fellow
13 commissioners have heard me say this many times, and I won't go through the length of my
14 story but it's better that there are people here who don't like what the city's doing than if no one
15 comments. For the-for the health of the city; for the health of the city it's painful; it's time
16 consuming, it's expensive. But without it the program wouldn't be as good. I don't question
17 that the, Carls or the Mikkelsons or 1000 Friends have the best motives in mind. And I think-I
18 admire their commitment to preserving farmland and I think the program benefits from that
19 commitment. I think at the same time, if we wanted to rubberstamp the department's decision,
20 we would not have spent six hours, sitting here in this room by talking about this subject or the
21 many hours of preparation, so I am disappointed with that comment.
22 Marilyn Worrix: Do I have a motion?
23 John VanLandingham: I move that we-I don't remember what the-whether there was specific-
24 Marilyn Worrix: Here it is.

1 John VanLandingham: I move the Commission approve the City of Woodburn's Periodic
2 Review Work Task Two and the UGB amendment as submitted to the department, and based on
3 the draft findings and including attachment A and as further revised by the department sometime
4 in the near future to include issues raised today.
5 Marilyn Worrix: Well guys [LAUGHS]. All in favor?
6 Hanley Jenkins: Second.
7 All: Aye.
8 Marilyn Worrix: Opposed? One. Okay. Oh we're only a little behind. We need to talk about
9 where we go from here folks.
10 Steve Shipsey: I didn't catch it; who was the second on that motion?
11 John VanLandingham: Hanley.



Note (1): Roadway facilities shown outside the UGB are recommended, not planned facilities in the TSP, and are logical extensions and improvements to the planned roadway network. Land use decisions to authorize these as planned facilities and improvements would occur as part of a subsequent UGB amendment adding these areas or a subsequent amendment to the TSP.

(2): New facilities are only represented conceptually, actual alignment likely to vary.

Figure 7-1
Functional Classification Designations
City of Woodburn TSP

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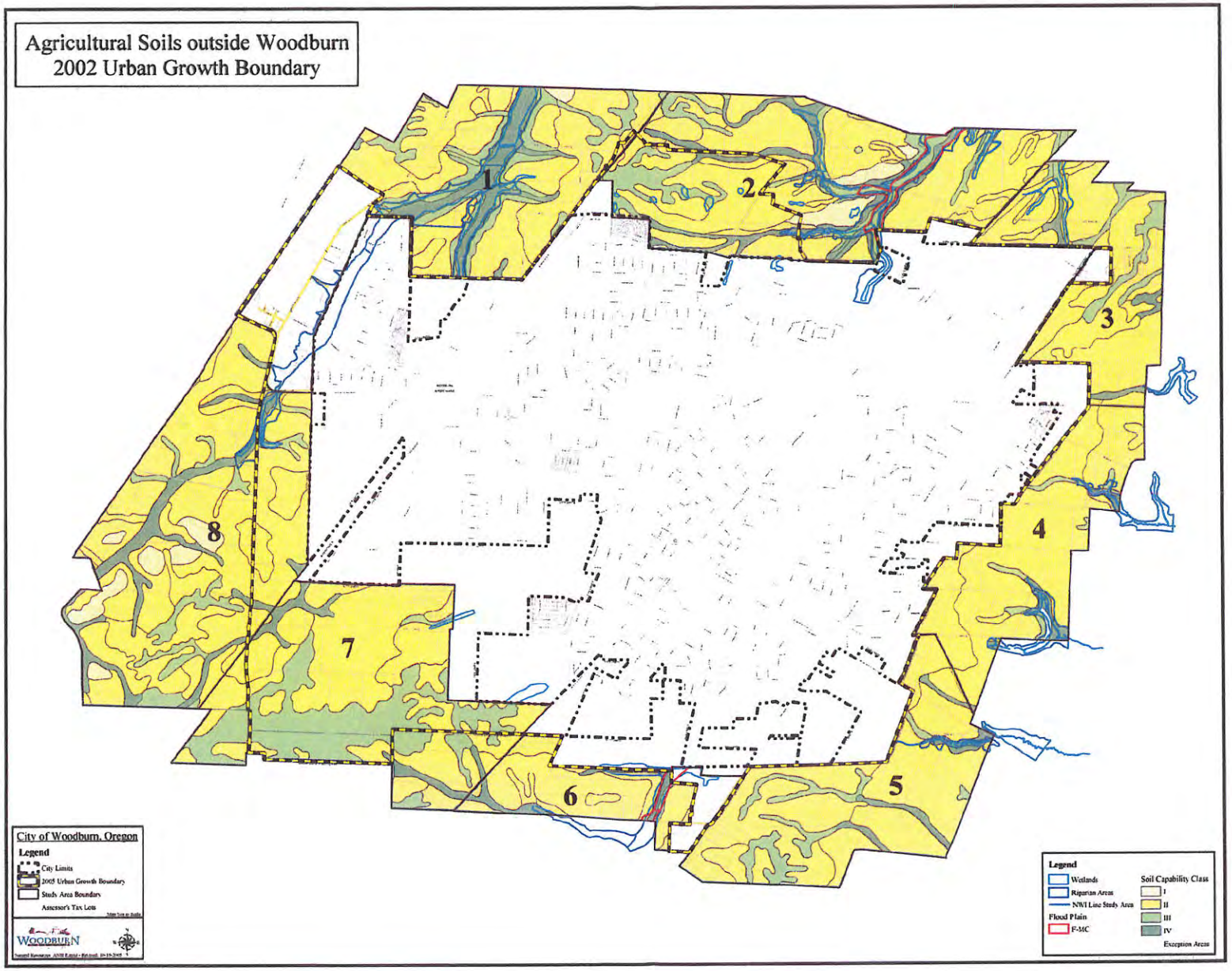
Agricultural Soils outside Woodburn
2002 Urban Growth Boundary
1
2
3
4
5
6
7
8
City of Woodburn, Oregon
Legend
City Limits
2005 Urban Growth Boundary
Study Area Boundary
Assessor's Tax Lots
WOODBURN
Legend
Wetlands
Riparian Areas
NWI Line Study Area
Flood Plain
F-MC
Soil Capability Class
I
II
III
IV
Exception Areas

Legend

- Tax Lots
- Overlay Zone
- Roads

N
W E
S

0 750 1,500 2,250 3,000
Feet

Figure 9-1
Interchange Management Area (IMA)
Overlay District

CH2MHILL

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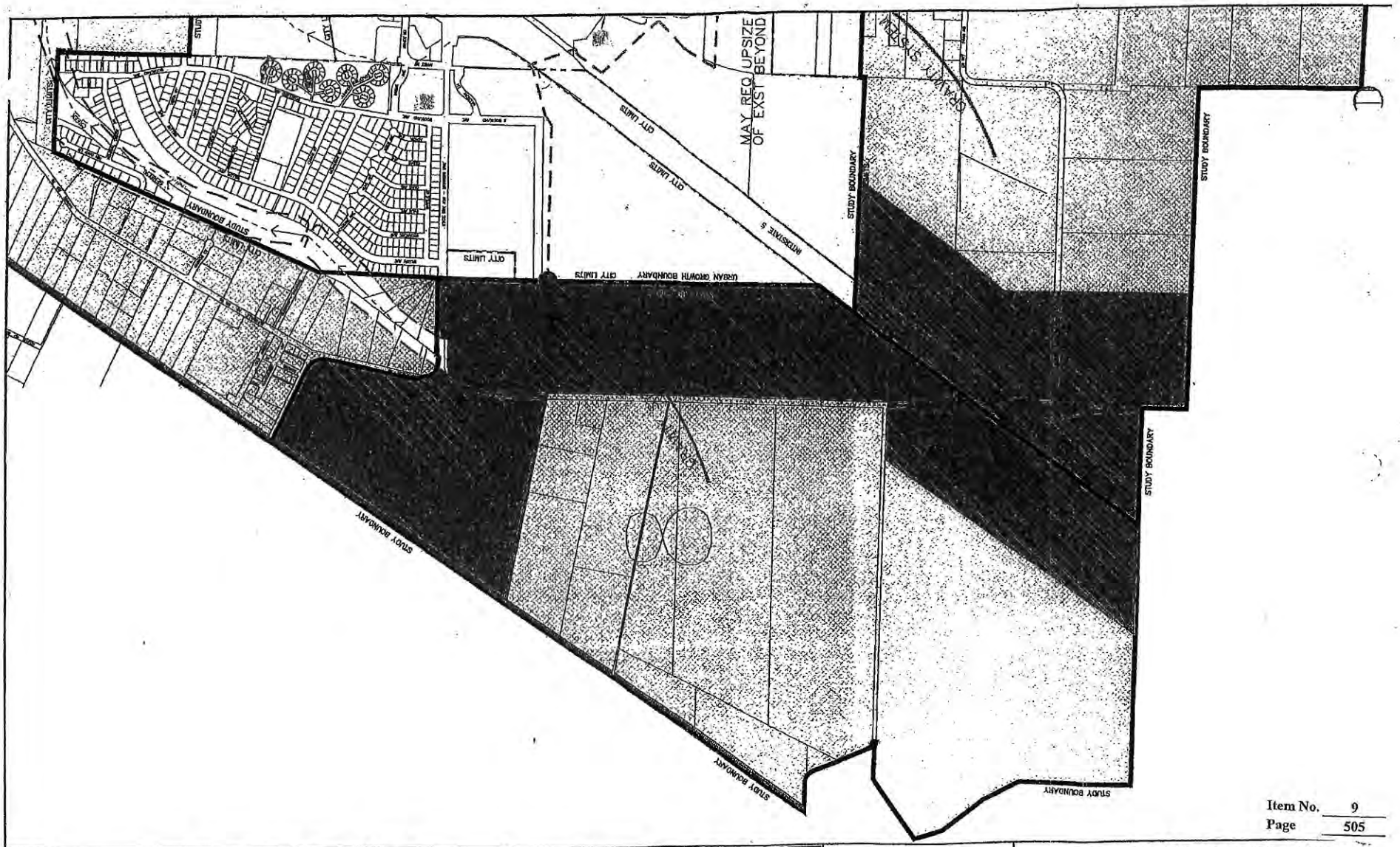


Item No. 9
Page 505

LEGEND

- STUDY BOUNDARY
- CITY LIMITS
- URBAN GROWTH BOUNDARY
- PRIVATE STREET (NOT CITY RIGHT-OF-WAY)
- UNIMPROVED RIGHT-OF-WAY
- RAILROAD
- CULVERT
- STREAM
- F.E.M.A. 100 YEAR FLOOD PLANE
- RS/RM
- COM/IND
- 1 REGION NUMBER
- CFS CUBIC FEET PER SECOND
- UPGRADES
- NEW TRUNK LINE
- GRAVITY SYSTEM FLOW DIRECTION
- POC-POINT OF CONNECTION
- NEW PUMP STATION

0 300' 700'
0 150' 600' 900'
SCALE: 1" = 900'

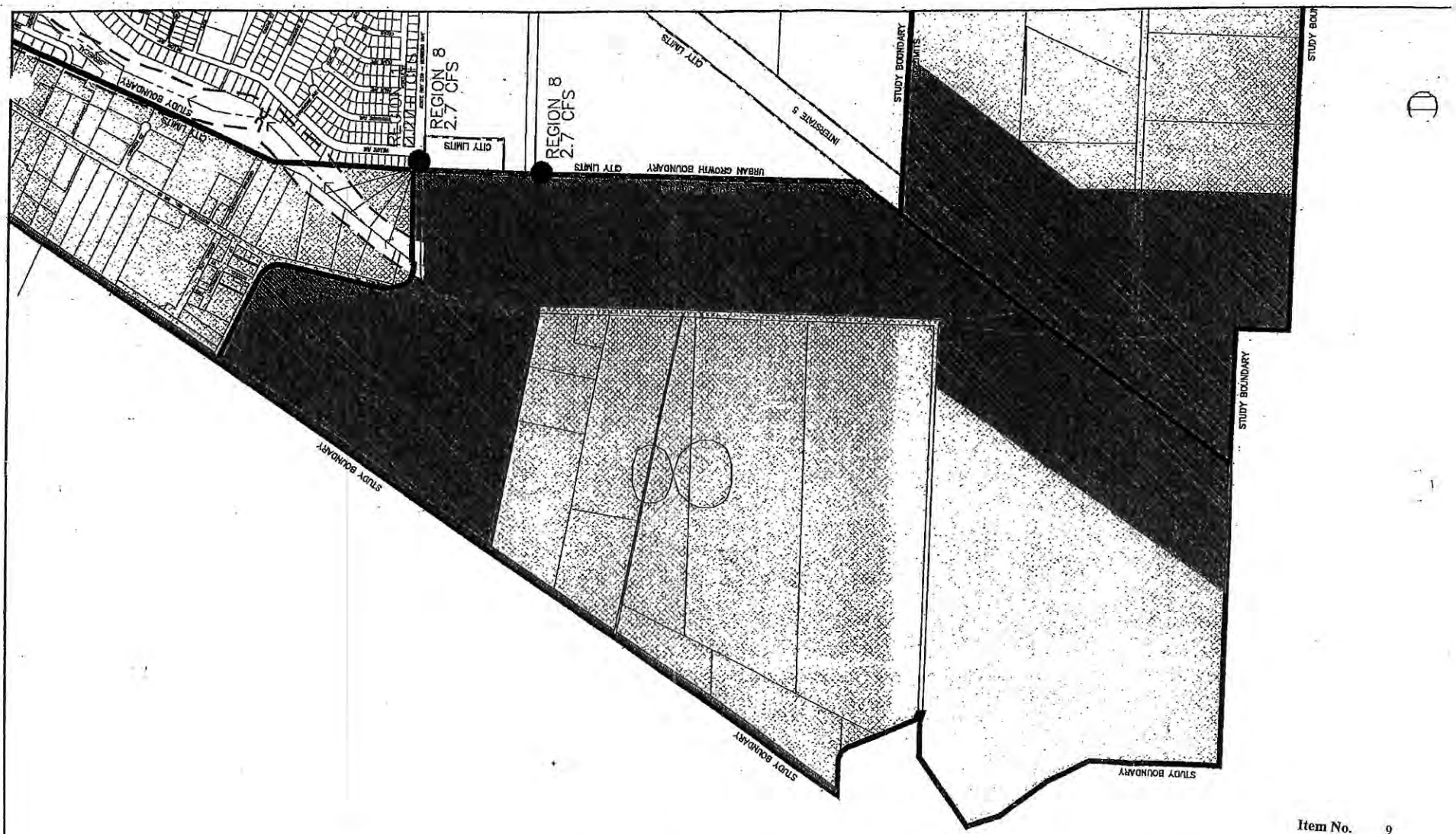
WOODBURN
Incorporated 1889

CITY OF WOODBURN
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

DISCLAIMER: THIS MAP IS A GRAPHIC REPRESENTATION, USING THE MOST CURRENT INFORMATION AVAILABLE. HOWEVER, IT SHOULD NOT BE CONSIDERED ACCURATE FOR SCALE.

SAP SANITARY MAP
REGION 8

PLOT DATE: MARCH 11, 2004



Item No. 9
Page 513

LEGEND

- STUDY BOUNDARY
- CITY LIMITS
- URBAN GROWTH BOUNDARY
- PRIVATE STREET (NOT CITY RIGHT-OF-WAY)
- UNIMPROVED RIGHT-OF-WAY
- RAILROAD
- CULVERT
- STREAM
- F.E.M.A. 100 YEAR FLOOD PLAIN
- RS/RM
- COM/IND
- 1 REGION NUMBER
- UPGRADES
- TRUNK MAIN
- POC-POINT OF CONNECTION
- CFS CUBIC FEET PER SECOND

0 200' 800'
0 160' 400' 800'
SCALE: 1" = 800'

WOODBURN
Incorporated 1889

CITY OF WOODBURN
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

DISCLAIMER: THIS MAP IS A GRAPHIC REPRESENTATION, USING THE MOST CURRENT INFORMATION AVAILABLE. HOWEVER, IT SHOULD NOT BE CONSIDERED ACCURATE FOR SURVEYS.

SAP WATER MAP
REGION 8

PLOT DATE: MARCH 11, 2004

Rec. Vol. 5, p. 417

- Marion County ranks #1 among Oregon counties in gross agricultural sales.
- Agriculture is the top industry in Marion County.
- 80% of Oregon's farm products are exported out of state; 40% are exported out of the country.

Rec. Item 6, p. 101, & Rec. Item 10, p. 1022, Table 2-3.

"[Farm businesses] have a substantial inventory in this county. Their businesses generate $500 million for the county. They are not a targeted industry. They're here. We're here. We've been here. We're necessary to life."

Tom Brawley, Marion County Farm Bureau
Testimony to LCDC, January 25, 2007
Supp. Rec. Item 2, p. 22

ORS 215.243
Agricultural Land Use Policy

The Legislative Assembly finds and declares that:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

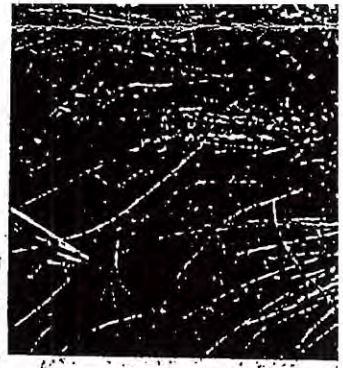
(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

Portland-based consultant Gregory Winterowd of Winterbrook Planning advised the city of Woodburn and real estate developer Opus Northwest. Opus intends to develop a 130-acre site along Interstate 5, west of the WinCo Distribution Center.

The dispute is whether Winterowd — hired by the city to provide impartial advice — should have taken money from a developer whose project depends on getting agricultural land brought into the urban growth boundary and rezoned for industry.

"How can we possibly rely on the objectivity of his analysis?" said Sid Friedman, planning advocate for 1000 Friends of Oregon.

Woodburn officials should view Winterowd's recommendations with skepticism or fall back on



EXPANSION: Land west of the
A land-use group is concerned

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from
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The dispute is whether Winterowd — hired by the city to provide impartial advice — should have taken money from a developer whose project depends on getting agricultural land brought into the urban growth boundary and rezoned for industry.

Conflict of interest cited

5068

A consultant on land use advised a developer, a group says.

BY MICHAEL ROSE
Statesman Journal

WOODBURN — A consultant hired by the city of Woodburn had a conflict of interest when he recommended expanding the city's urban growth boundary, according to land-use group 1000 Friends of Oregon.

Portland-based consultant Gregory Winterowd of Winterbrook Planning advised the city of Woodburn and real estate developer Opus Northwest. Opus intends to develop a 130-acre site along Interstate 5, west of the WinCo Distribution Center.

The dispute is whether Winterowd — hired by the city to provide impartial advice — should have taken money from a developer whose project depends on getting agricultural land brought into the urban growth boundary and rezoned for industry.

"How can we possibly rely on the objectivity of his analysis?" said Sid Friedman, planning advocate for 1000 Friends of Oregon.

Woodburn officials should view Winterowd's recommendations with skepticism or fall back on an earlier land-use study done by McKeever-Morris that suggested there was no need to expand the urban growth boundary, Friedman said.

Winterowd described 1000 Friends' allegations that he acted improperly as "a below-the-belt hit." The consultant said he took pains to inform 1000 Friends and the city about his work with Opus.

"Clearly, I don't believe there was a conflict because the city was fully aware of it," he said.

The American Institute of Certified Planners code of ethics states that a planner should fully disclose any "reasonably foreseeable conflict" to clients before performing work. A planner working for a real estate development client while also serving a public agency that may have a role in reviewing the client's projects is one example of "reasonably foreseeable conflict," according to an advisory issued by the trade group.

ANDREA J. WRIGHT / Statesman Journal

EXPANSION: Land west of the WinCo Distribution Center in Woodburn is slated for development. A land-use group is concerned that a consultant to the city regarding the parcel also advised the developer.

KAY WORTHINGTON/ Statesman Journal

Woodburn officials said Winterowd's work for Opus "was acknowledged verbally" by the city, according to a Dec. 11 letter from the city manager to 1000 Friends.

Winterowd said he assisted Opus with designing a master plan for its property, but that work came several months after his company made the determination that the Opus site would, in all likelihood, be part of Woodburn's urban growth boundary.

Opus also paid for his participation in meetings with state agencies, the governor's office, Marion County and 1000 Friends. In all, the consultant said Opus paid him about $8,000.

"I would never compromise a planning process for a little bit of money, or a lot of money," said Winterowd, who used to be a member of 1000 Friends.

The complaints particularly sting, he said, because the master plan he prepared for Opus was intended to prevent the traffic congestion and sprawl detested by 1000 Friends.

Woodburn officials said that they have reviewed 1000 Friends' complaints about Winterowd and found them unfounded.

Winterowd no longer works for Opus on the Woodburn project, he said.

"I don't see this as a story, although the 1000 Friends are trying to make it one," said John Brown, city administrator for Woodburn. "This is a difficult enough process without having third parties coming in from the outside," he added.

The Opus site might become a focal point for contrasting views of Oregon's future: saving land for agriculture or rolling out the welcome mat for real estate developers. It recently was identified as one of 25 locations of "statewide significance for job creation" by state economic development officials.

Woodburn has discussed adding about 1,000 acres of land to its urban growth boundary, including the Opus parcel. The process, which has been ongoing since 1997, must be approved by the city, county and state agencies before any land is added to Woodburn. It could take months, or even years if appeals are filed, before the proposed expansion is approved.

1000 Friends' Friedman

SEE WOODBURN / 7B

The dispute is whether Winterowd — hired by the city to provide impartial advice — should have taken money from a developer whose project depends on getting agricultural land brought into the urban growth boundary and rezoned for industry.

0173

Statesman Journal - January 14, 2004 - Rec. Vol. 5, p. 417

"We said if we have all the employment we expect to have, we'll have 200 developed acres of the 400 acres we are developing."

Greg Winterowd, City of Woodburn Consultant
Testimony at LCDC Hearing, January 25 2007
Supp. Rec. Item 2, p. 51

"As documented in the 2005 Revised Buildable Lands Inventory, the 2002 Woodburn UGB included 126 acres of vacant, partially vacant and potentially redevelopable industrial land ."

"The 126 acres was reduced to 47 acres because land owners said 'their property was being held for future expansion' or 'was…being used for storage of equipment.'"

City of Woodburn UGB Expansion Justification Report
September 2005
Rec. Item 10, p. 1390

Table 4. Summary of estimated site needs by size, Woodburn 2000-2020

Site Size (acres)	Number of Sites	Average Site Size	Estimated Acres
100 or more	1	125.0	125.0
50-100	1	70.0	70.0
25-50	3	35.0	105.0
10-25	5	15.0	75.0
5-10	7	8.0	56.0
2-5	10	4.0	40.0
Less than 2	15	1.0	15.0
Total/Average	**42**	**11.6**	**486.0**

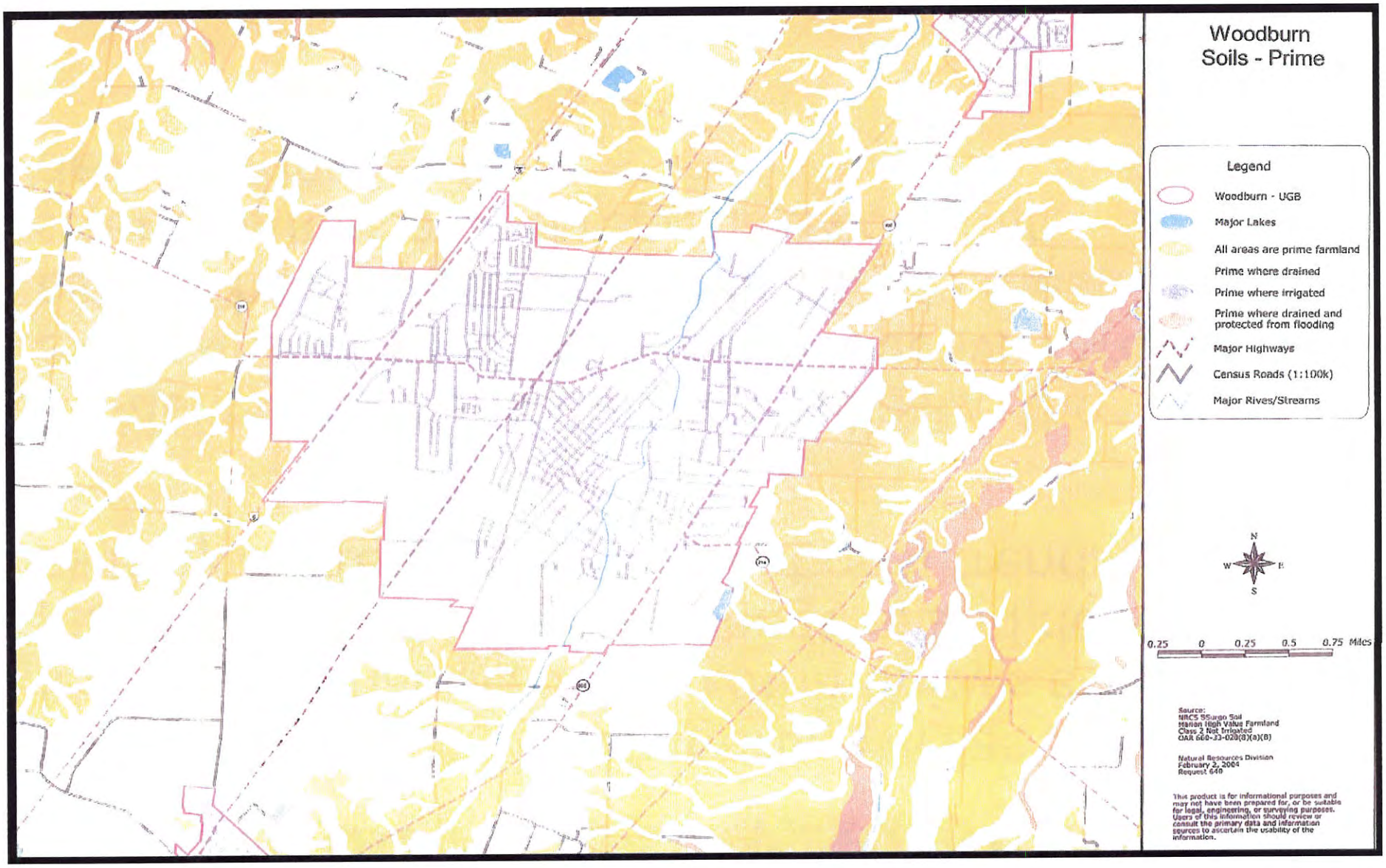
- Large lot target industries include Electronic and Electric Equipment manufacturing (i.e.,silicon chip fabrication plants).

ECONorthwest, *Site Requirements for Woodburn Target Industries*
October 2003
Rec. Item 10, p. 1287, Table 4

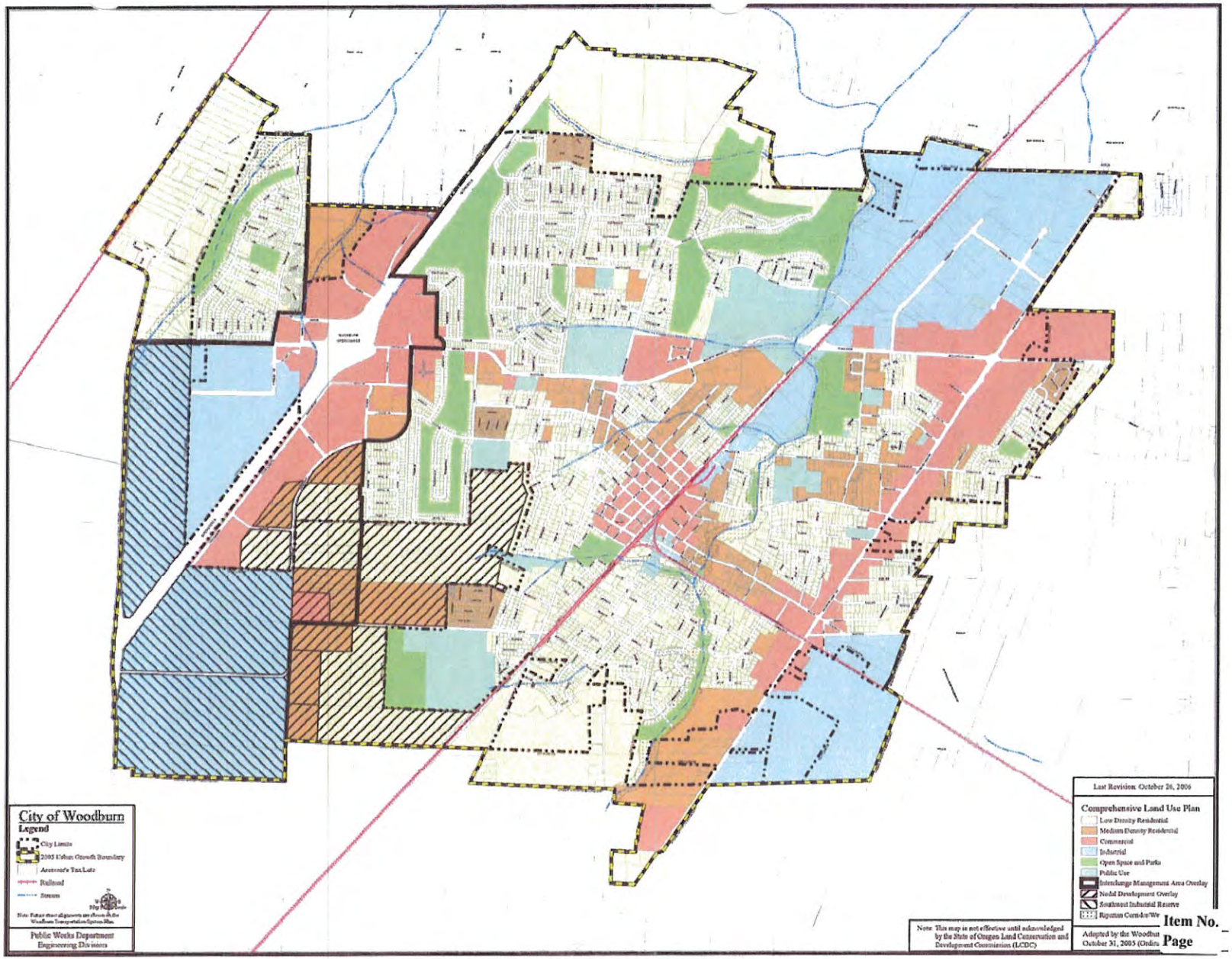
Statewide Planning Goal 9 (Economic Development)

"Comprehensive plans for urban areas shall… Include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends."

Guideline 4: "Plans should emphasize the expansion of and increased productivity from established industries and firms as a means to strengthen local and regional economic development."



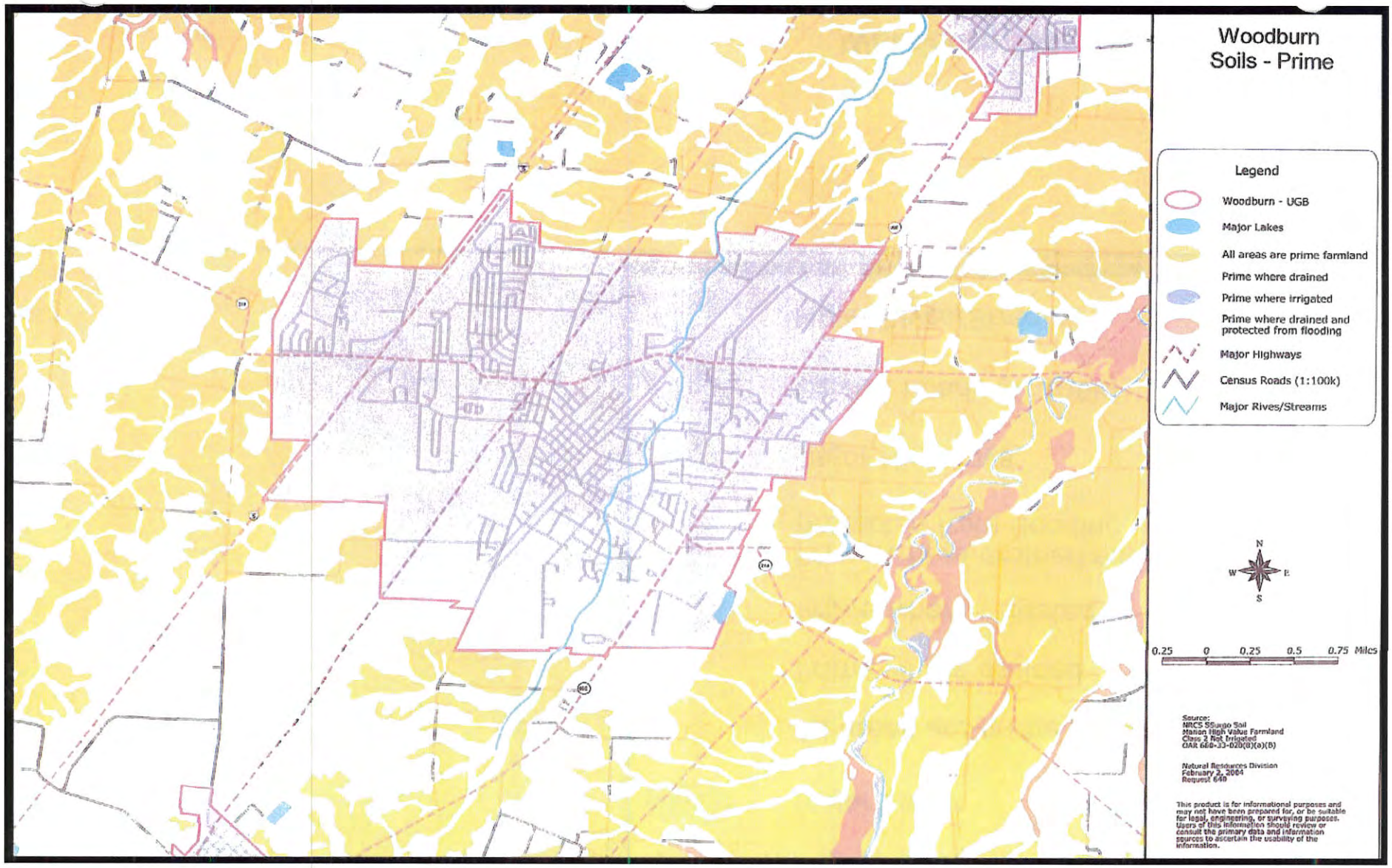
Woodburn Soils - Rec. Vol. 5, Item 7, p. 798



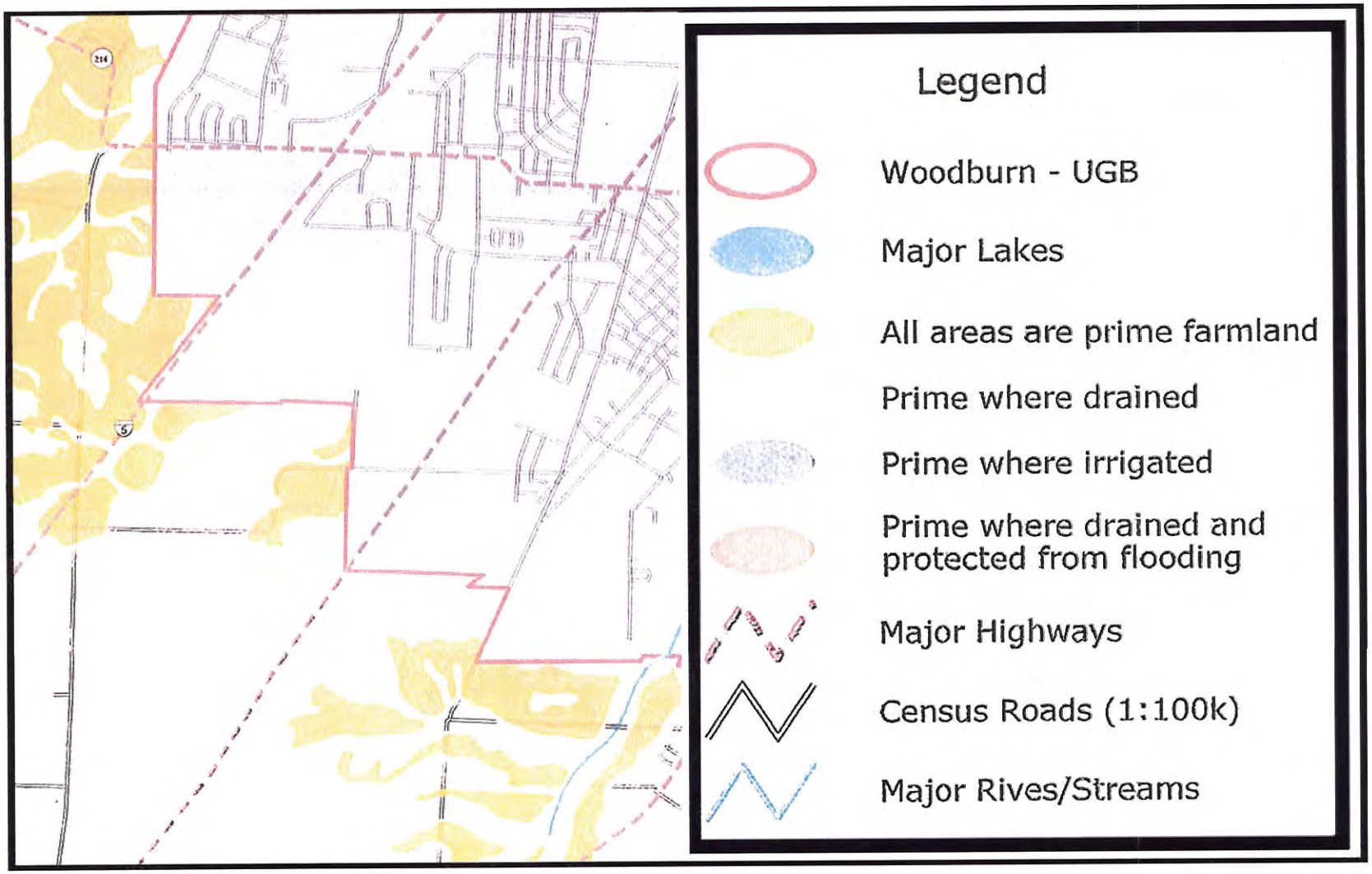
0179

Woodburn Comprehensive Land Use Map - Rec. Item 7, p. 243

Rec. Vol. 5, p. 417



Woodburn Soils - Rec. Vol. 5, p. 799



Woodburn Soils - Rec. Vol. 5, p. 799

"The department is concerned especially with the proposed expansions located west of Interstate 5 and north of the existing UGB. Both of these areas include prime farmland and Class II soils. **Based on the soils priority established by both Goal 14 and the statute, the best place for any justified expansion onto agricultural land would be south of the existing UGB between I-5 and Boones Ferry Road.** This area includes large tracts of 'poorer' Class III soils."

Oregon Department of Agriculture
Letter to Jim Mulder, Woodburn Community Planning Director
March 19, 2004
Rec. Vol. 5, p. 843

"Woodburn has about 7% of Marion County's population and just under 8% of Marion County's jobs. Between 1990 and 2000, 11.2% of all job growth in Marion County occurred in Woodburn...This new higher forecast would account for 23% of all future Marion County job growth. This is unrealistic."

1000 Friends of Oregon

Letter to City of Woodburn Planning Commission

February 10, 2005

Rec. Vol. 5, pp. 372-373

"Available employment and economic information indicate that the Base Case growth rate for Woodburn will diminish, **and the amount of industrial need identified by the Committee is unrealistic.**...The consulting team recommendation does not include any land outside of the existing UGB because **the data does not indicate a need in the foreseeable future."**

McKeever/Morris
Woodburn Buildable Lands and Urbanization Project—Final Report
February 7, 2000
Rec. Vol. 2, pp. 949-950

"The County supports an expansion [of the UGB] to the west and southwest but sees the inclusion of approximately **430 acres of existing farmland in these areas as being more than is needed to meet the economic development objectives of the city** and provide for the site needs of targeted industries."

Marion County Public Works
Comments on Periodic Review Amendments
March 21, 2005
Rec. Vol. 5, p. 152

"The amount of employment expected is overly ambitious, but more importantly, **much of the net growth in employment will probably be absorbed by underutilized industrial and commercial space and vacant lands.**"

Kevin Cronin, Metro Area Field Rep, DLCD
Letter to Jim Mulder, City of Woodburn
April 21, 2004
Rec. Vol. 3, p. 656

Woodburn Industrial Land For Sale - Rec. Vol. 5, p. 751-752

Woodburn Industrial Land For Sale

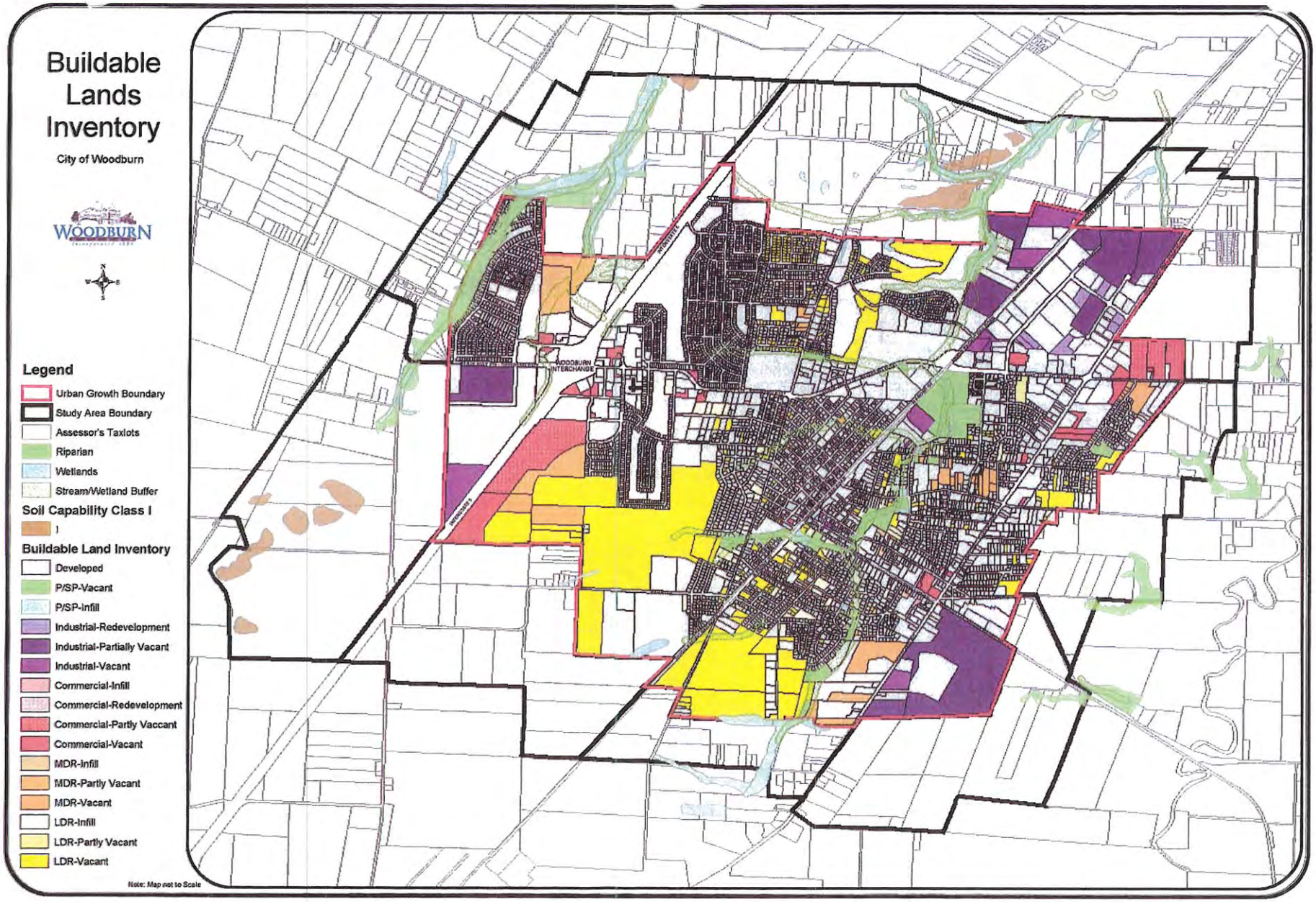
Rec. Item 9, p. 284

Woodburn Industrial Land For Sale

Rec. Vol. 5, p. 750

Woodburn Industrial Land For Sale
Rec. Item 9, p. 281

Woodburn Industrial Land For Sale
Rec. Vol. 5, p. 753



Woodburn Buildable Lands Inventory - Rec. Vol. 4, p. 29-30

Volume 5 Page 1591

Volume 5 Page 1592

Volume 5 Page 1594

Volume 5 Page 1596

Table 16: Industrial Vacant – Existing UGB

TAXLOT	OWNER_NAME	ACRES	Dev	IND Net Ac
051W05C 01100	MARY CO - A PARTNERSHIP	8.77	Vac	7.45
051W05D 01000	HANAUSKA,VICTOR J	13.32	Vac	11.32
051W07DA00100	DON BURLINGHAM FAMILY CORP	6.04	Vac	5.13
051W07DD00900	CITY OF WOODBURN	0.19	Vac	0.10
051W07DD01800	MIKE CAMPBELL DEVELOPMENT INC	0.32	Vac	0.20
051W08B 01500	MERCER INDUSTRIES INC	2.53	Vac	2.15
051W08BC00500	MERCER INDUSTRIES INC	3.03	Vac	2.58
051W17C 00900	CAM,IVAN &	6.26	Vac	5.32
051W18AB11100	WILLAMETTE VALLEY LAW PROJECT	0.12	Vac	0.10
051W18AB11500	CITY OF WOODBURN	0.09	Vac	0.08
051W18AB11800	ENGLEMAN,TODD	0.26	Vac	0.22
051W18AB12300	CITY OF WOODBURN	0.22	Vac	0.19
051W18AB12400	CITY OF WOODBURN	0.22	Vac	0.19
051W18AB13000	UNION PACIFIC RAILROAD CO	0.11	Vac	0.09
051W18AB13200	CITY OF WOODBURN	0.09	Vac	0.08
~~052W11 00100~~	~~WINCO FOODS INC~~	~~19.13~~	~~Vac~~	~~16.26~~
052W11 00105	HILLYER,LEO M & REYNE M	0.42	Vac	0.36

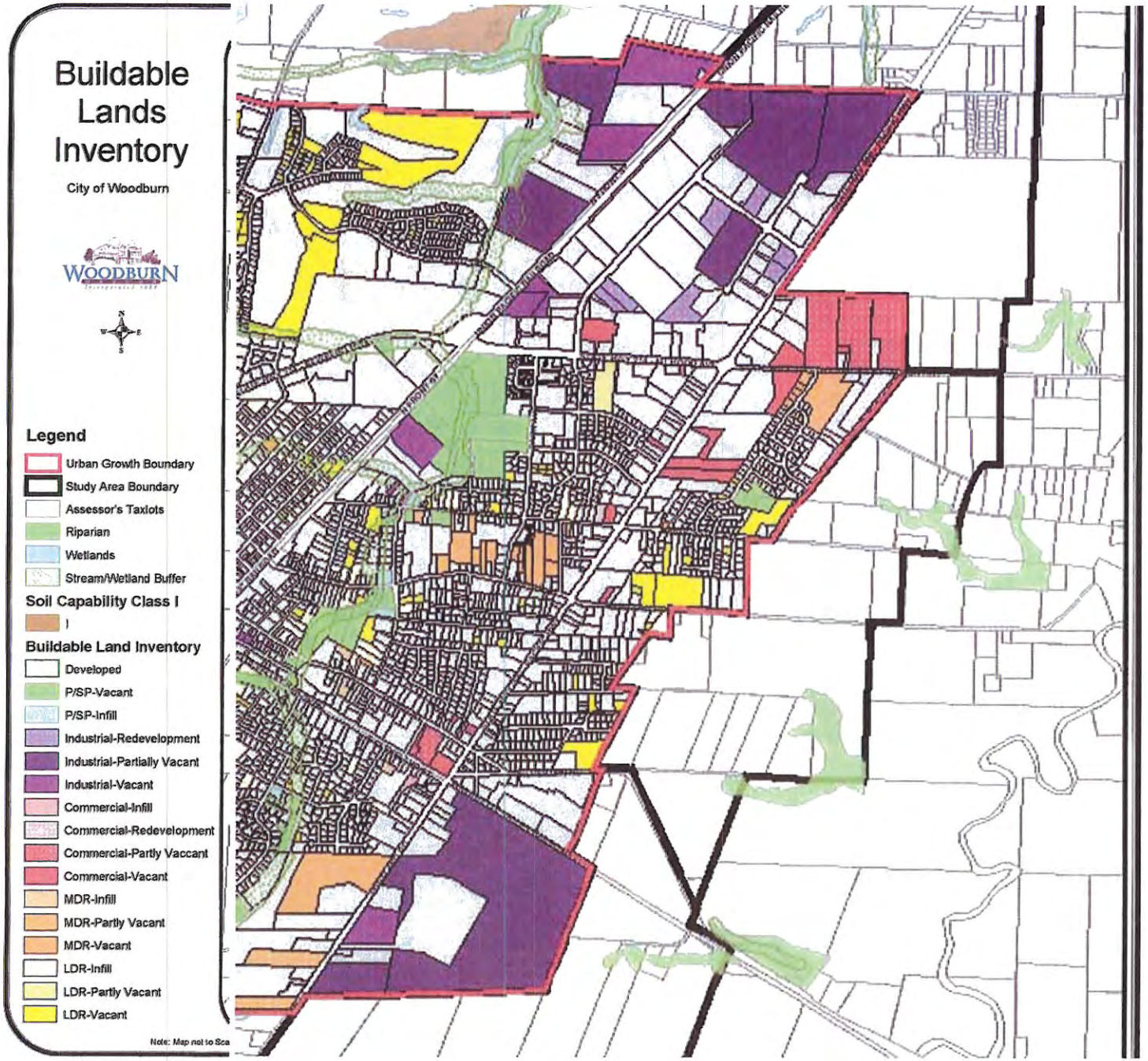
Table 20: Industrial Partially Vacant – Existing UGB

TAXLOT	ACRES	OWNER_NAME	Dev	IND Net Ac
~~051W05C 01000~~	~~13.60~~	~~KER CONTRACTORS INC~~	~~Pvac~~	~~5.54~~
051W05D 01800	7.05	FAR WEST FIR SALES COMPANY	Pvac	3.61
~~051W05D 03500~~	~~30.09~~	~~FLEETWOOD HOMES OF OREGON INC~~	~~Pvac~~	~~4.54~~
~~051W08A 02300~~	~~10.49~~	~~CREDO TOOL CO~~	~~Pvac~~	~~5.52~~
~~051W08B 00400~~	~~18.20~~	~~PELTIER REAL ESTATE CO~~	~~Pvac~~	~~7.03~~
~~051W17C 00700~~	~~92.59~~	~~COBANK,ACB~~	~~Pvac~~	~~19.20~~
~~051W19A 00300~~	~~9.60~~	~~CAM,PIRFIL G~~	~~Pvac~~	~~4.76~~
~~052W11 00101~~	~~28.18~~	~~HARDWARE WHOLESALERS INC~~	~~Pvac~~	~~6.95~~

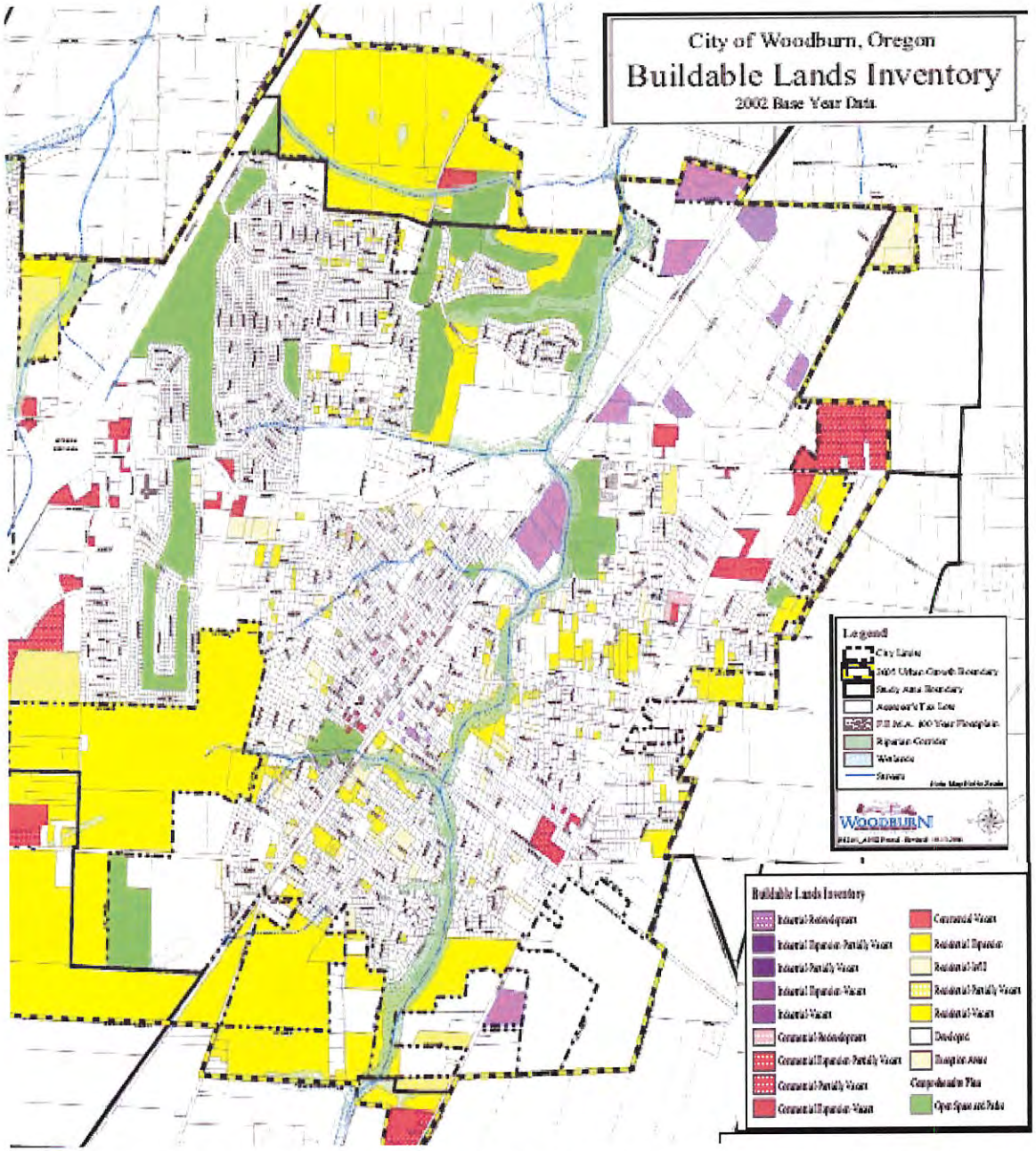
Table 24: Industrial Potential Redevelopment – Existing UGB

TAXLOT	OWNER_NAME	ACRES	Dev	IND Net Ac
051W08A 00300	BARRETT PROPERTIES	1.85	Redev	1.57
051W08A 00800	CARVER,DANIEL L DBA	1.39	Redev	1.18
051W08A 01200	CARVER,DANIEL L DBA	1.33	Redev	1.13
~~051W08A 02400~~	~~BARRETT PROPERTIES~~	~~2.86~~	~~Redev~~	~~2.43~~
~~051W08A 03600~~	~~MORGAN DRIVE AWAY INC~~	~~3.83~~	~~Redev~~	~~3.26~~
051W08B 02000	MORGAN DRIVE AWAY INC	1.91	Redev	1.62
051W08B 02100	MORGAN DRIVE AWAY INC	1.35	Redev	1.15
051W18AB12500	WILLAMETTE VALLEY LAW PROJECT	0.11	Redev	0.09

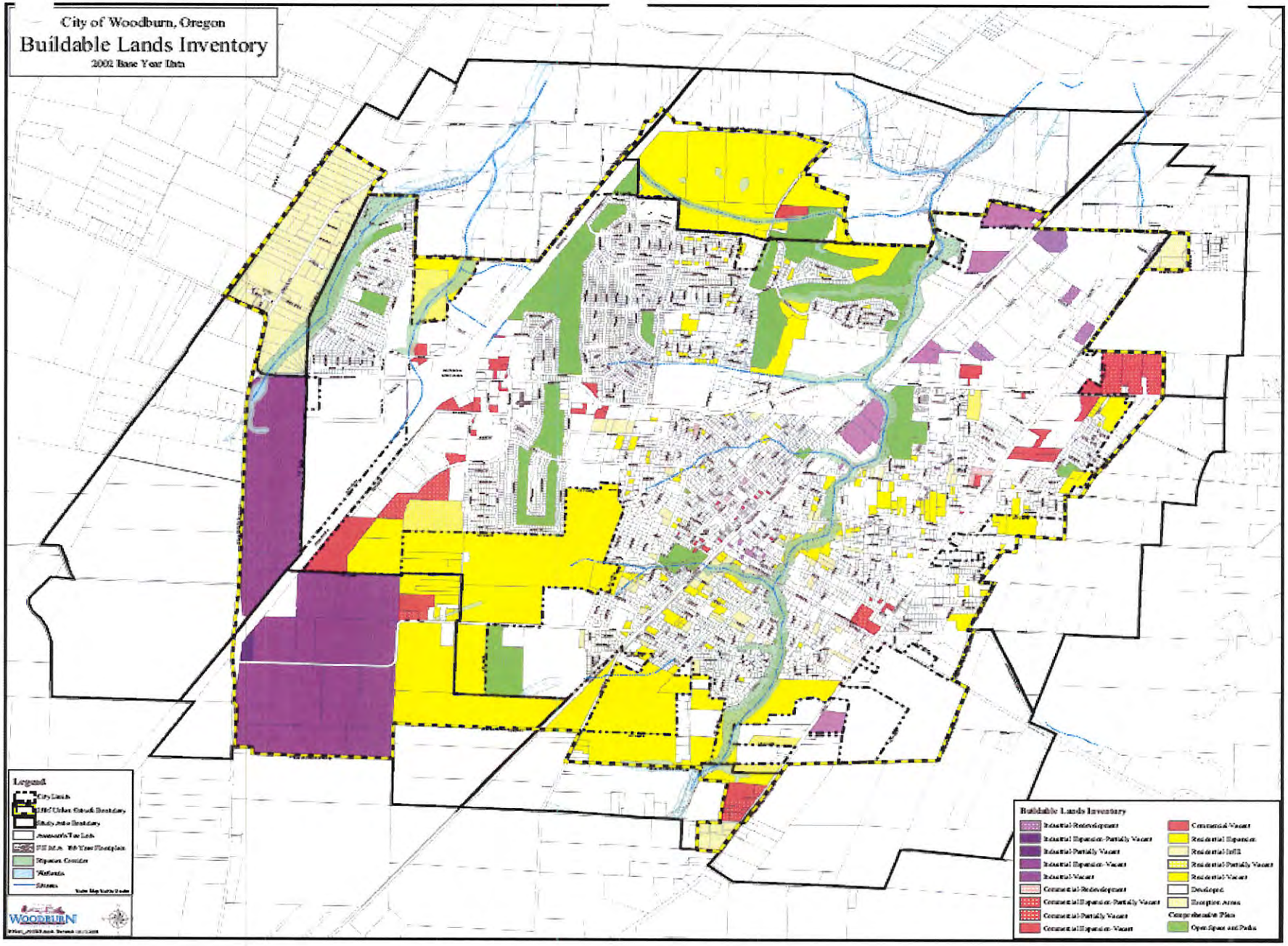
Buildable Lands Inventory – Rec. Vol. 5, p. 1591-92, 1594, 1596



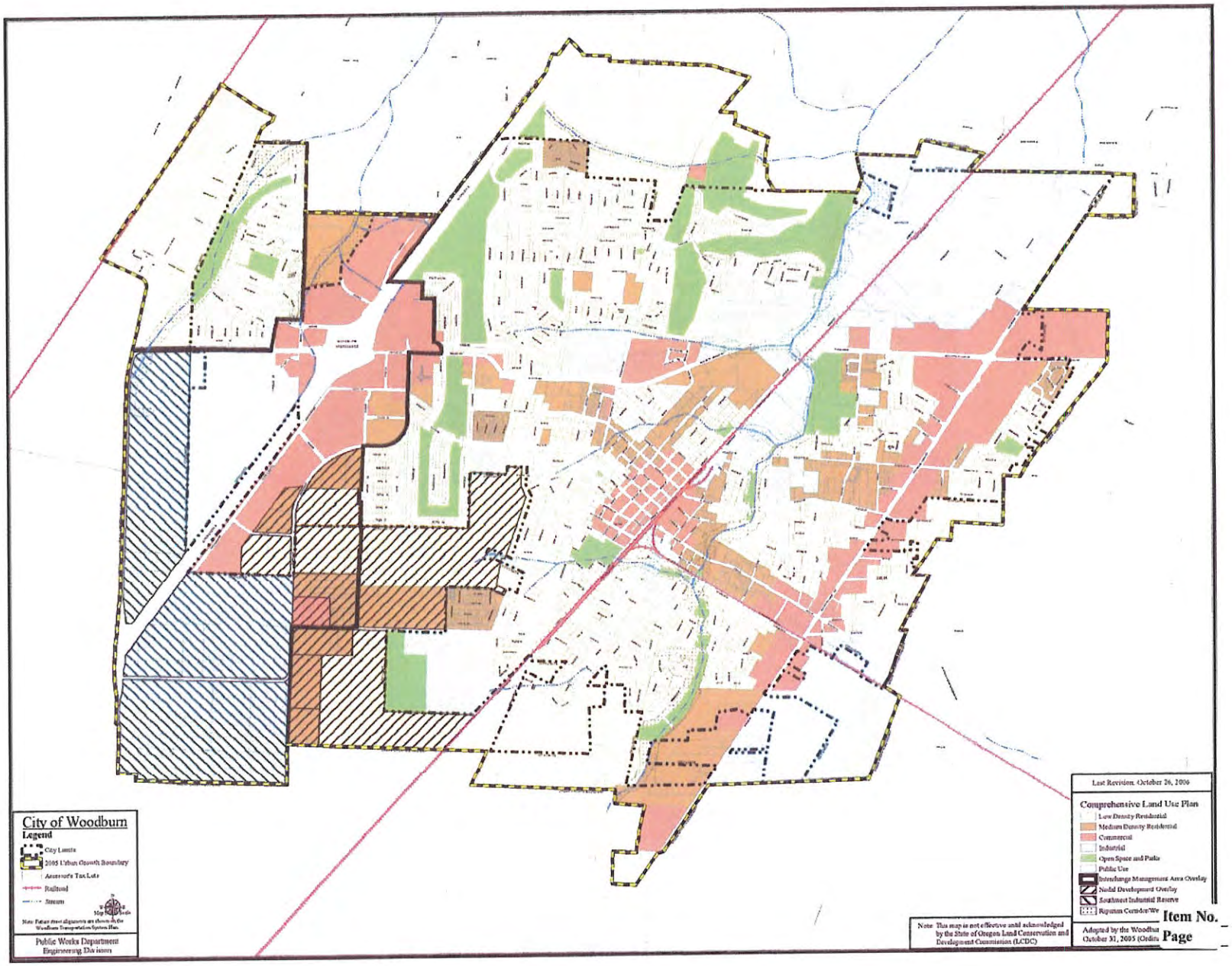
2002 Woodburn Buildable Lands Inventory (Detail) - Rec. Vol. 4, p. 29-30



Revised Woodburn Buildable Lands Inventory (Detail) - Rec. Vol. 6, p. 1237

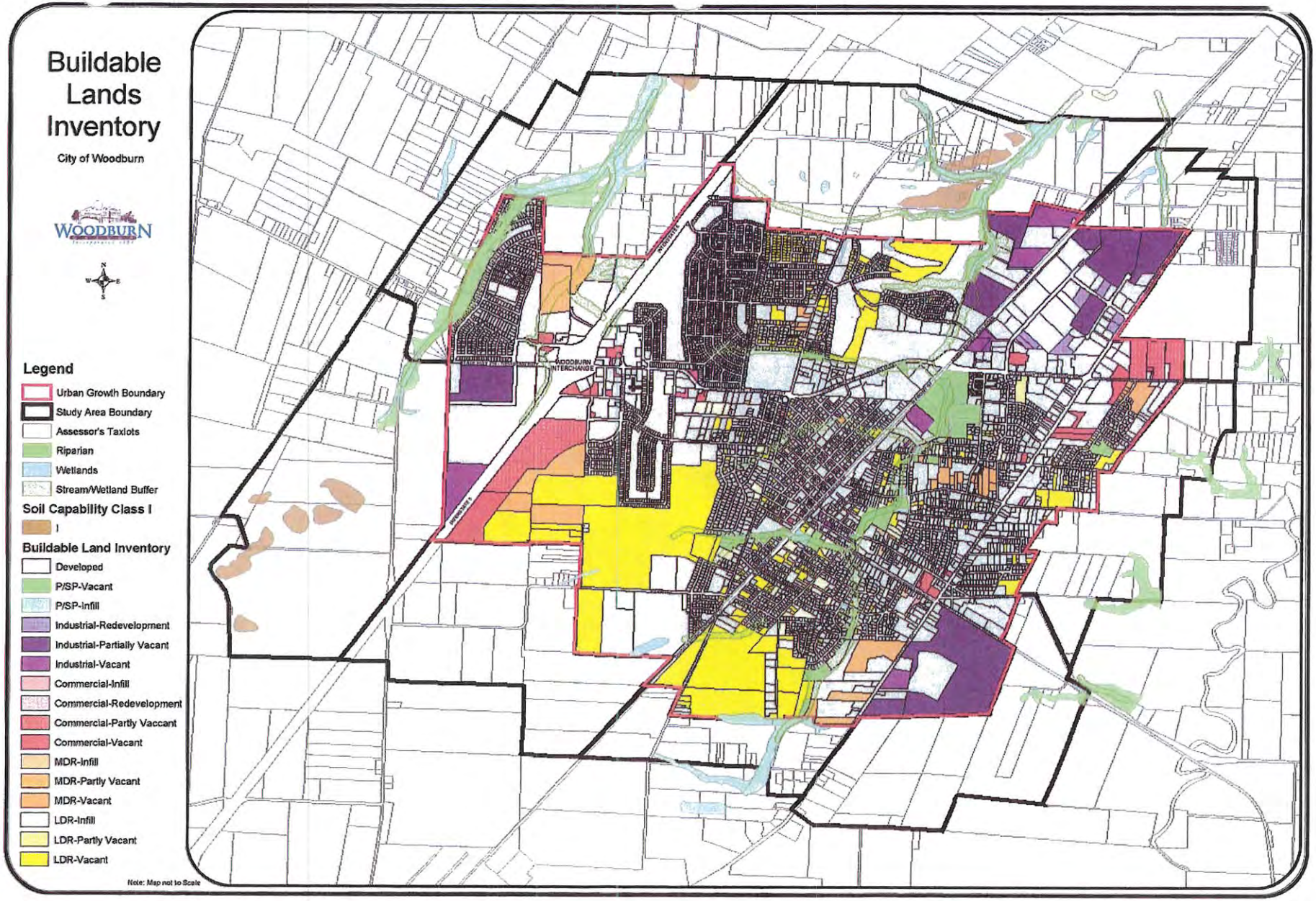


Revised Woodburn Buildable Lands Inventory - Rec. Vol. 6, p. 1237

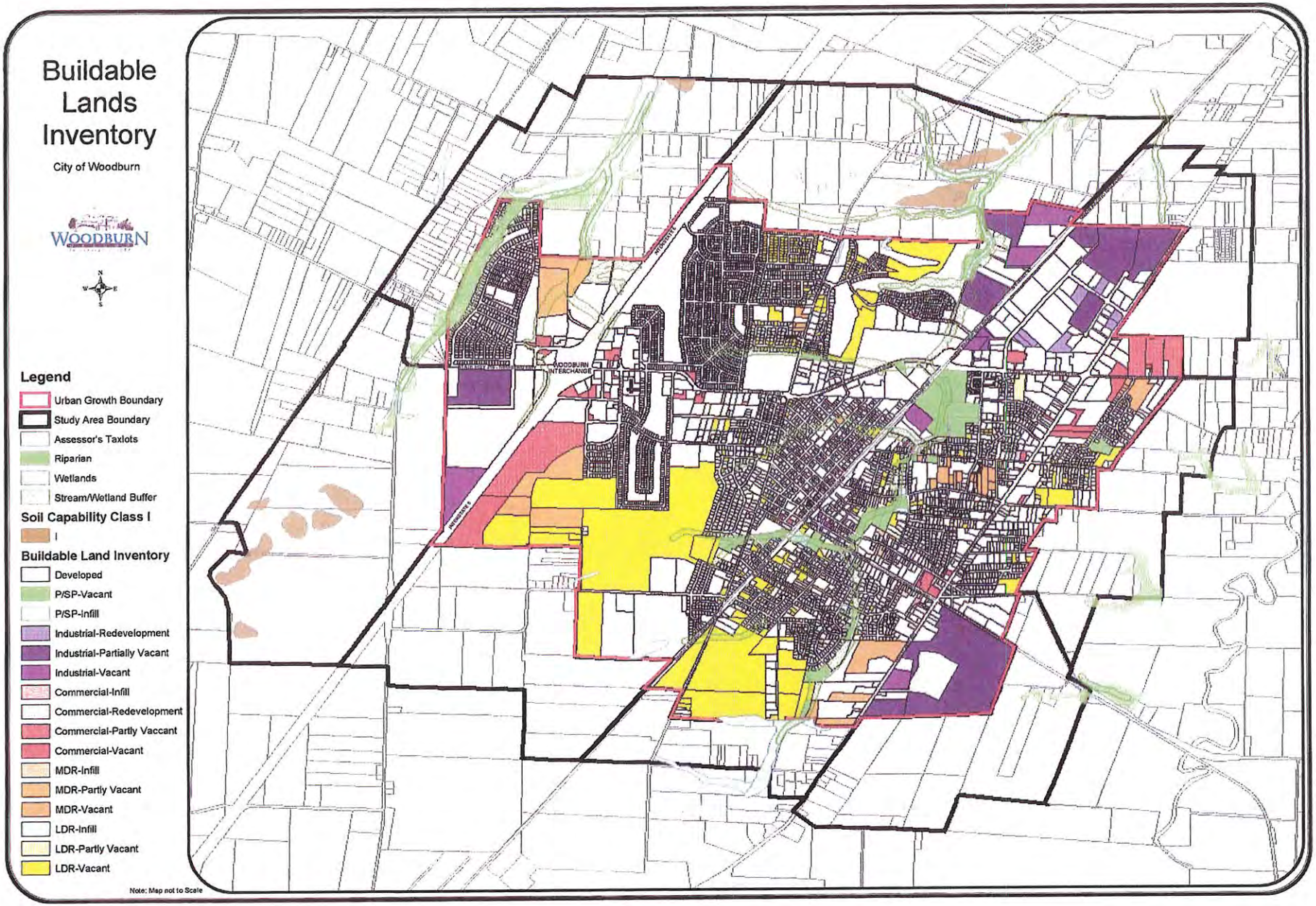


0196

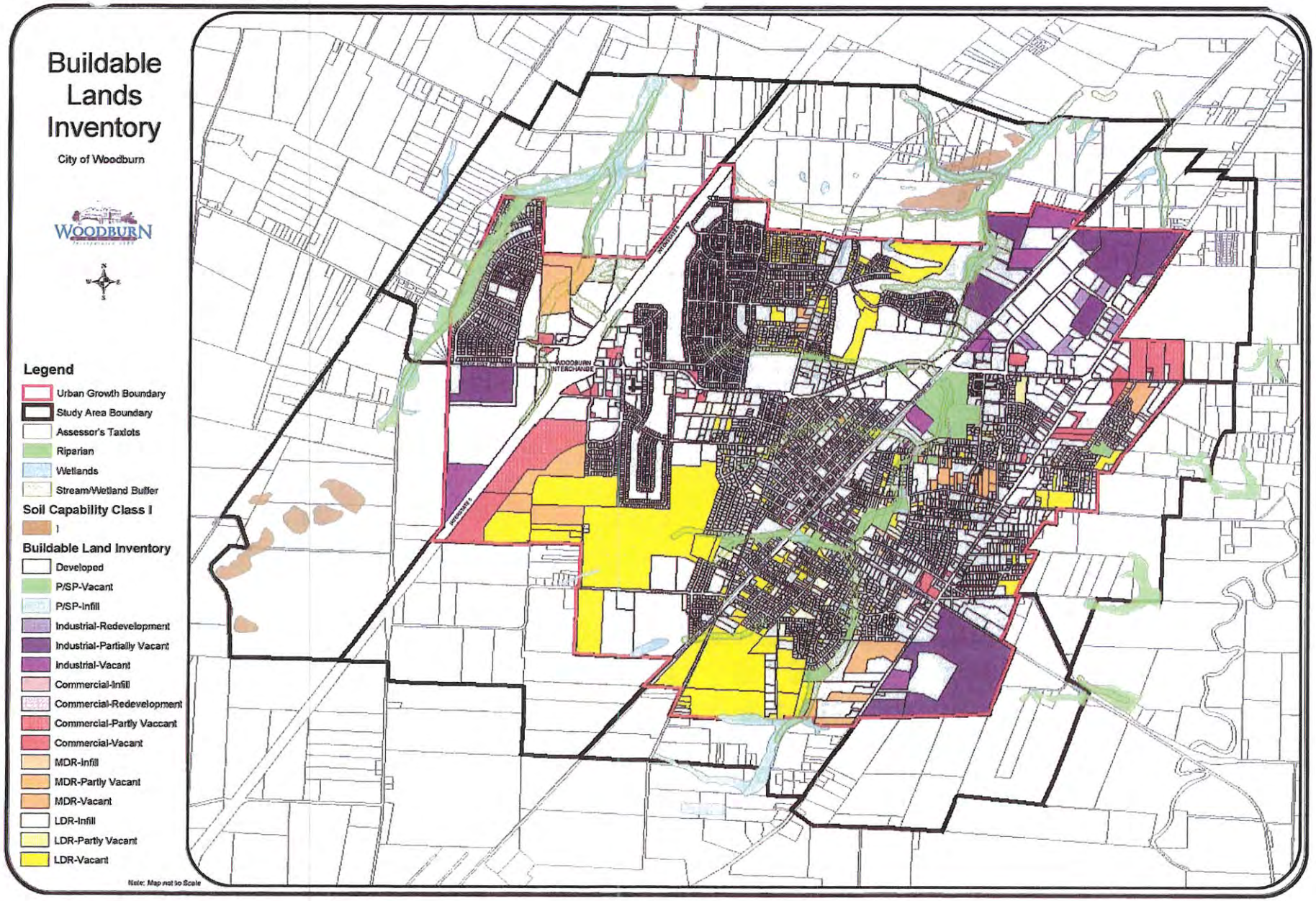
Woodburn Comprehensive Land Use Map - Rec. Item 7, p. 243



Woodburn Buildable Lands Inventory - Rec. Vol. 4, p. 29-30



Woodburn Buildable Lands Inventory - Rec. Vol. 4, p. 29-30

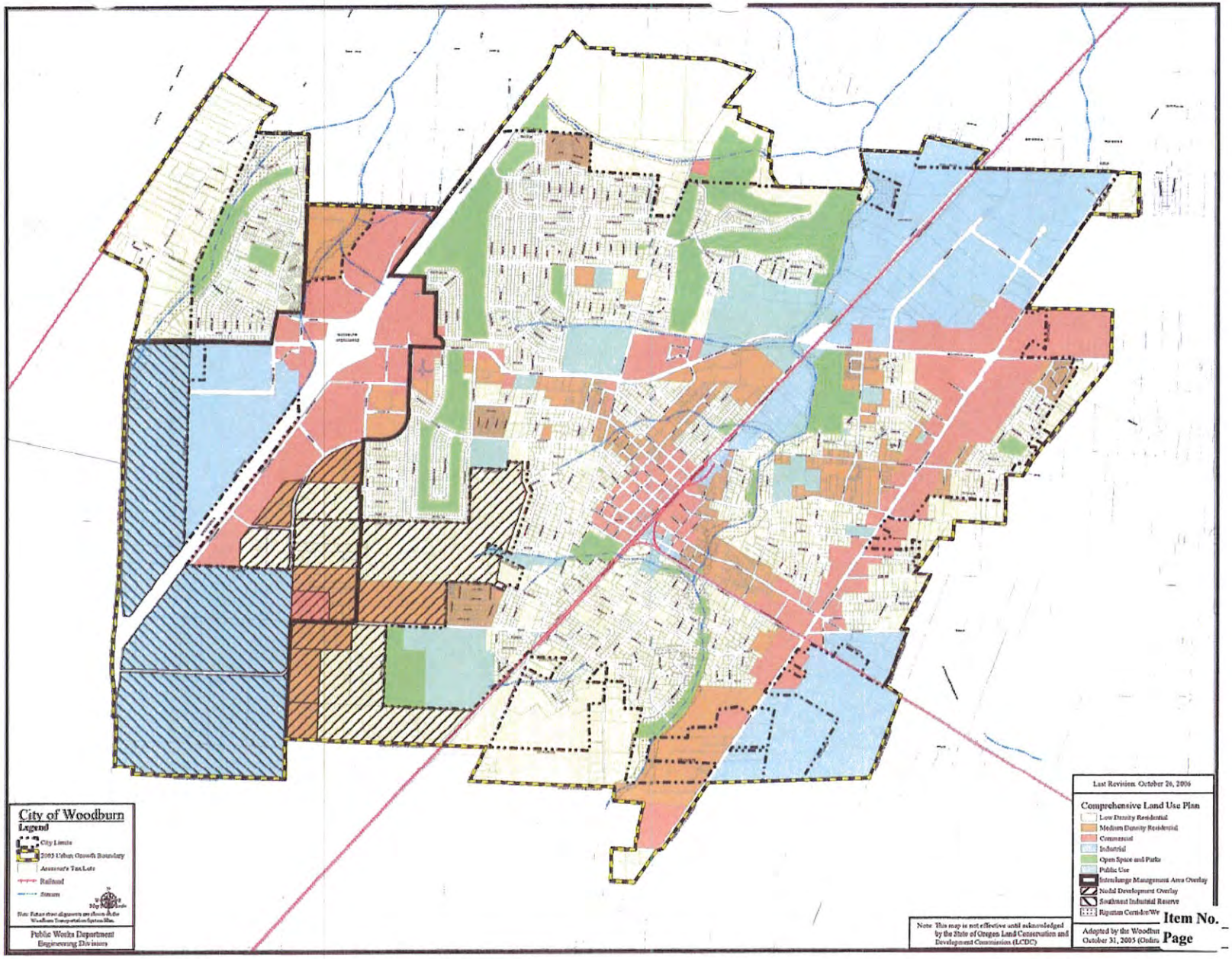


Woodburn Buildable Lands Inventory - Rec. Vol. 4, p. 29-30

Table 4. Summary of estimated site needs by size, Woodburn 2000-2020

Site Size (acres)	Number of Sites	Average Site Size	Estimated Acres
100 or more	1	125.0	125.0
50-100	1	70.0	70.0
25-50	3	35.0	105.0
10-25	5	15.0	75.0
5-10	7	8.0	56.0
2-5	10	4.0	40.0
Less than 2	15	1.0	15.0
Total/Average	**42**	**11.6**	**486.0**

ECONorthwest, *Site Requirements for Woodburn Target Industries*
October 2003
Rec. Item 10, p. 1287, Table 4



0201

Woodburn Comprehensive Land Use Map - Rec. Item 7, p. 243

Rec. Vol. 5, p. 417

Table 11. Employment growth in Woodburn's UGB by land use category, 2000 –2020

Land Use Category	Employment Growth 2000–2020 Low	Medium	High
Commercial	2,310	2,703	3,123
Office	1,147	1,332	1,530
Industrial	1,778	2,228	2,710
Public	747	876	1,011
Total	5,982	7,139	8,374

Source: ECONorthwest.

ECONorthwest, *Woodburn Population and Employment Projections, 2000-2020,* p. 18
April 2002
Rec. Item 10, p. 1096

"Commercial and office needs will be met largely through infill and redevelopment, and public uses will be largely met on residential land."

ECONorthwest, *Site Requirements for Woodburn Target Industries,* p. 9
October 2003
Rec. Item 10, p. 1287

Summary of Goals, Rules and Statutes Relative to Site Need

ORS 197.712 Economic Development

(2)(c) Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies.

Goal 14 Urbanization

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

Old Goal 9 Economic Development Administrative Rule OAR 660-009-0015(2)

The plan shall identify the approximate number and acreage of sites needed to accommodate industrial and commercial uses to implement plan policies. The need for sites should be specified in several broad "site categories," (e.g., light industrial, heavy industrial, commercial office, commercial retail, highway commercial, etc.) combining compatible uses with similar site requirements. It is not necessary to provide a different type of site for each industrial and commercial use which may locate in the planning area. Several broad categories will provide for industrial and commercial uses likely to occur in most planning areas.

Applicable Exceptions to ORS 197.298 Priorities for urban growth boundary expansion

(3) Land of lower priority under subsection (1) of this section [in Woodburn areas with Class II soils] may be included in an urban growth boundary if land of higher priority [in Woodburn areas with Class III soils] is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:

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

*** * ***

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

WOODBURN
OREGON
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January 10, 2011

Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301

Re: Woodburn Periodic Review Remand from Court of Appeals

Dear Mr. Whitman:

This letter is the response of the City of Woodburn and Opus Northwest, LLC, respondents in *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 239 P3d 272 (2010), to the letter submitted to you by 1000 Friends of Oregon and the other petitioners in that appeal (hereafter 1000 Friends) on January 5, 2011, only one week before the scheduled Commission hearing on the Court of Appeals' remand in the above referenced matter. 1000 Friends' letter asks you and the Commission to take "official notice" of an October 2009 Marion County population forecast, a 2010 population forecast by the PSU Population Research Center, and a February 2010 employment forecast by the Oregon Employment Department.

1000 Friends cites no authority for its request. Under the Periodic Review Rule, the Director and Commission have discretion to take official notice of "law." OAR 660-025-0085(5)(e). Of the three forecasts for which official notice is requested by 1000 Friends, only the 2009 Marion County population forecast, which was adopted by ordinance, arguably meets the rule's definition of "law." The PSU and Employment Department forecasts are clearly "new evidence." OAR 660-025-0160(5) provides that the Commission shall hear appeals of Periodic Review work tasks "based on the record unless the commission requests new evidence or information **at its discretion** and allows the parties an opportunity to review and respond to the new evidence or information." (Emphasis added.)

Thus, it is entirely within the Commission's discretion whether to take notice of law or accept new evidence. There is no reason for the Commission to do so here. The Commission is reviewing Periodic Review Work Task 2, a decision adopted by the City of Woodburn in October 2005. Woodburn's decision was governed by the legal standards in effect in 2005, when it adopted its decision amending the Woodburn Comprehensive Plan and Development Ordinance. The Commission's review is based on evidence in the record submitted by the City or submitted during the DLCD review process which culminated in the November 30, 2006, Director's referral order. It would be entirely unfair to the parties for the Commission to accept evidence generated in 2009 or 2010 into a review process where the evidentiary phase concluded in 2006.

Office of the City Attorney
270 Montgomery Street • Woodburn, Oregon 97071
Ph. 503-982-5228 • Fax 503-982-5243

1000 Friends real goal is in the letter's second request – that "LCDC must remand the underlying UGB [amendment] decision to the city to legally address the Court of Appeals decision." This is completely inaccurate. The Court of Appeals concluded that "LCDC's order is inadequate for judicial review with respect to its treatment of the [industrial land need issue], and, accordingly, [we] reverse and remand the order for reconsideration." *1000 Friends, supra*, 237 Or App at 216. Thus, the Court's decision was based solely on the inadequacy of the Commission's order. It did not make any decision regarding the merits of Woodburn Periodic Review Work Task 2, which was the subject of the Commission's review.

Basically, the Commission's review process has been dragged out for four years (and counting) because of the appeal filed by 1000 Friends. Now, rather than the Commission improving its order reviewing the City's 2005 decision, 1000 Friends wants LCDC to remand the City's decision so the City can start over on a process that initially began in the late 1990's and during which the City's 1999 Comprehensive Plan has remained in effect. Further, any UGB adopted by the City after considering the 2009 and 2010 population and employment forecasts would have to be reviewed by DLCD and could be appealed again, taking perhaps another 4-5 years, during which time more new forecasts could be adopted, creating an endless loop of planning.

Finally, what useful end would be achieved by sending the 2005 Plan back to the City? According to 1000 Friends the new Marion County forecast is for a 2020 population of 31,243 and a 2030 population of 41,718. Woodburn's 2005 Plan adopted a UGB based on a 2020 population forecast of 34,919. Under the new forecast, Woodburn's UGB is good for the population expected around 2025 – longer than Woodburn thought it was planning for, but well within a current 20-year planning horizon. In the meantime, Woodburn is still operating with a UGB originally adopted in the early 1980's, and which is clearly inadequate under any population forecast.

The Commission should deny 1000 Friends' request that it take official notice (or take new evidence) or remand the City's decision. Rather, respondents ask the Commission to adopt a revised order that better explains its responses to petitioners' objections, and is responsive to the remand by the Court of Appeals.

Sincerely,

N. Robert Shields
Woodburn City Attorney

Corinne C. Sherton
Attorney for Opus Northwest, LLC

cc: Steve Oulman
Mary Kyle McCurdy
Jane Ellen Stonecipher
Mark Shipman

Oregon
Theodore R. Kulongoski, Governor

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January 7, 2011

TO: Land Conservation and Development Commission (LCDC)

FROM: Richard Whitman, Director
Steve Oulman, Regional Representative
Tom Hogue, Economic Development Specialist
Gloria Gardiner, Urban Specialist

SUBJECT: **Agenda Item 4 (Woodburn UGB Expansion), Department's Response to Written Argument, January 12-13, 2011, LCDC Meeting**

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

This is a hearing on a remand from the Oregon Court of Appeals of a prior commission order approving work task 2 of the City of Woodburn's periodic review and an expansion of the city's urban growth boundary (UGB). This memo provides the department's written response to written argument by parties to the appeal. The department's report and draft proposed order were circulated earlier, on November 12, 2010. At the conclusion of the hearing, the commission will deliberate and make a decision to: (a) approve the city's decision based on revised findings; (b) to approve the city's decision based on revised findings and new conditions; or (c) to remand the decision back to the city for further action by the city.

B. Staff Contact Information

Questions about this agenda item should be directed to Steven Oulman, AICP, Regional Representative, (503) 373-0050 ext. 259, steve.oulman@state.or.us.

II. SUMMARY OF RECOMMENDATION

Following its review of the written argument of the parties, the department continues to recommend that the commission approve the city's UGB expansion for the reasons described below. The department recommends that the commission's final order further address the arguments made by the parties.

III. MAJOR ISSUES RAISED, AND DEPARTMENT'S RESPONSE

A. What Were the Standards for the City's Decision and What Are the Standards for the Commission?

At the outset, it is important to emphasize that this is a remand of a prior decision of the commission, upholding the city's decision to expand its urban growth boundary (UGB). The city's decision was made on October 31, 2005 (more than five years ago). The commission's role in this proceeding is to review what the city (and county) did, and determine if the decision complied with the standards that applied to the city's decision *at that time, based on that record.* The commission is not substituting itself for the city, and making a new decision, today, starting from scratch. The issues before the commission are, if the commission accepts the department's proposed draft order, almost entirely evidentiary issues, on which the question is whether a reasonable person could have determined what the city did, based on the record before it.

1000 Friends et al. assume that the city's decision in 2005 was subject to the commission's Goal 14 rules (division 24) and the most recent version of the commission's Goal 9 rules. That simply is not correct. The division 24 rules were not adopted until a year *after* the city's decision, and the most recent Goal 9 rules were not adopted until shortly *after* the city's decision (they did not take effect for over a year after that). This is important, because it means that the commission's decision in this matter has limited precedential effect in terms of other jurisdictions.

B. What Amount of Land Does the City Need for Future Employment Uses?

The main issue raised by *1000 Friends et al.* is the *amount* of land needed by the City of Woodburn for future employment uses (and, in particular, for industrial and office uses). According to *1000 Friends et al.*, the city included about twice as much land for industrial and office employment as the city showed was needed over the 20-year planning period. The department believes that this is not the case, and that the city's decision complies with applicable standards, for two main reasons.

First, the city's determination of the number, size, type and location of sites needed for industrial and office uses during the twenty-year planning period was based on its determination that that *number,* those *sizes*, those locations, and those *types* of sites were necessary to yield the employment growth it forecasted (and sought, as a policy matter). That is the determination required by Goal 9, and if the city had included fewer sites it would not be meeting its demonstrated need for industrial land. The basic structure of the city's decision was as follows:

- The city and county prepared and adopted a coordinated population forecast for the city;
- The city adopted an employment forecast that was reasonably related to the population forecast, and that reflected a policy decision to increase the ratio of employment to residents in the city over time;
- The city prepared and adopted an economic development strategy, and an economic opportunities analysis that documented that its aggressive employment forecast was reasonable (due largely to the city's competitive advantages provided by its location along interstate 5, in relation to Salem and Portland, and its labor force);

- The city documented that the types of businesses that it had a competitive advantage in attracting and growing over the planning period had certain site requirements (primarily in terms of size and location relative to the freeway);
- The city determined what sites should be included within the UGB expansion in order for it to have a reasonable likelihood of achieving the future employment growth forecasted during the twenty-year period.

Those steps are a permissible means of complying with the requirements of Goals 9 and 14, and ORS 197.712, and they do *not* result in adding more land for employment uses than is needed over the twenty-year planning period.

The second reason that the department believes Woodburn has not added an excess of industrial and office land is that even under the employee per acre method of estimating future land need, the approximately 360 net acres of land that the city has added to its UGB for industrial and office uses in the Southwest Industrial Reserve is reasonably related to the amount of land shown to be needed under a traditional employee per acre methodology. In its written argument on remand, 1000 Friends creatively contrasts net and gross land need numbers, and figures for particular categories of employment land, to make it appear that the city is grossly inflating its land needs.[1] The department does not agree that the city has done so.

Comparing apples to apples, under an employee per acre approach, the city's consultants estimated a land need of 41.2 acres for office uses and 224.1 acres for industrial uses (both of these categories are included in the target industries identified in the city's EOA). Note that commercial and public uses were, with the exception of a small amount of commercial land, entirely accommodated within the prior UGB. These estimates, however, were carried out in October of 2003 when the city was using the *medium* forecast for employment, of 7,140 new jobs (all sectors). As explained in the city's findings and the draft proposed commission order, the city subsequently made a different policy decision, and changed its employment forecast to 8,374 new jobs (all sectors). Although no new estimate of land need using an employee per acre methodology was made, applying the ratio of the overall increase in forecasted employment growth during the 20-year planning period from 7,140 to 8,374 ((41.2 + 224.1) x 8374/7140) would yield a total need for net (buildable) industrial and office land of 311 acres. This figure does not include that portion of future need met through redevelopment (the EcoNW analysis subtracted out a factor for redevelopment). For convenience, the key table in the city's record (Item 10, p. 1278) is reproduced below:

[1] 1000 Friends and the Oregon Court of Appeals both focused on language in the city's findings indicating that not all of the land within the expansion area may fully develop within the planning period. The department notes that there will almost *always* be further development capacity of land within an urban growth boundary, including land added most recently. If there were not further development capacity, there could be no redevelopment within the UGB. Business park type development is one of the main employment types anticipated by the city. See, e.g., rec. Item 10, pages 1284, 1285 (business park development for electrical equipment manufacturers, same for business services). Such development typically is in a campus setting where future expansion and redevelopment is possible. See rec. Item 10, pages 1063-65 (EOA).

DEMAND FOR COMMERCIAL AND INDUSTRIAL LAND

Table 1 shows the amount of new land and built space needed for each land use type in Woodburn over the 2000–2020 period. The results assume the medium employment forecast of 7,140 new jobs between 2000 and 2020. The amount of land needed (in acres) is calculated by dividing employment growth that will require new space by the employees/acre assumption for each land use type, with an adjustment for vacancy. Square feet of building space needed is calculated by multiplying employment growth that will require new building space by the square feet per employee assumption for each land use type, with an adjustment for vacancy.

Table 1. Woodburn vacant land and new built space need by land use type, medium employment forecast, 2000–2020

Type	Acres of land		Sq. Ft. of building space	
Commercial	70.6	19%	847,174	22%
Office	41.2	11%	577,391	15%
Industrial	224.1	61%	2,039,728	54%
Public	33.3	9%	332,800	9%
Total	**369.3**	**100%**	**3,797,093**	**100%**

Source: ECONorthwest.

Table 1 shows that about 370 acres of *new development* and 3.80 million square feet of building space are needed to accommodate the 6,346 new employees forecasted for the next 20 years to be accommodated in buildings that will be constructed on vacant land. Industrial uses are projected to need the most land and building space, almost 225 acres and 2.04 million square feet.

In sum, using an employee-per-acre approach, which the city was *not* required to do, approximately 310 acres of net buildable land would be required for industrial and employment uses in a UGB expansion in order to accommodate forecasted employment growth. Using its analysis of economic opportunities and required sites, the city added approximately 360 acres of net buildable land in the SWIR. Marion County Findings, at pages 14-15. Of that amount, 170 acres were in two large-lot sites that cannot be developed unless particular performance standards are met for new employment-intensive industries. Id., at page 15.

The fact that the employee-per-acre methodology yields a slightly lower number than a site-based approach does not mean that the city added more land than needed. In fact, the department believes that the relative proximity of the figures is important evidence that the city's economic development strategy and resulting site requirements were realistic and not overly aggressive. The department believes that the further a projection of land need based on site requirements departs from more traditional means of forecasting the need for land for employment opportunities, the greater the need for careful explanation of the basis for the former. In this case the two methods yield similar results. If a local government were to propose an employment lands expansion under the required sites methodology that was far out of line with a projection based on employees-per-acre, that would be an indication that the decision was proposing to add

more land than is needed, but that is not the case here, particularly where the city has shown strong economic advantages in terms of its location and labor supply that make more rapid and land-intensive growth possible. Rec. Item 10, pages 1031-1032. In sum, the department continues to believe that the city's decision complies with both Goal 9 and Goal 14.

Under the applicable standard, the question is whether a reasonable person could find as the city did, that there is a need for this amount of industrial and office land for the planning period. There is conflicting testimony, but there was credible expert testimony to the city and to the commission that the number, size, type and location of sites were required for the city to achieve its forecasted need for employment. LCDC Transcript, Rec. Item 2 at pages 54-55 (Transcript pages 52-54). That key testimony was an important basis for the commission's decision to uphold the city's UGB expansion in 2007, and the department is not aware of other evidence in the record that would make it unreasonable to rely on that testimony.

Finally, the department also notes the unusual nature of the performance standards that the city has placed on development of its two largest sites. Those requirements, adopted as an element of the city's UGB expansion, mandate that a large portion of the SWIR expansion area be developed only if performance standards for employment are met.

C. Location of Industrial Land Expansion

1000 Friends is correct that the Oregon Court of Appeals did not reach the arguments of the parties concerning *which* lands were selected by the city for its UGB expansion. Nevertheless, the department recommends that the commission revisit this issue in light of the arguments made by the parties to the Court of Appeals, and decide whether to supplement its findings.

On appeal to the court, 1000 Friends argued that instead of adding lands to the west of I-5 along Butteville Road, the city should have added lands to the south (east of I-5). The main reasons argued by 1000 Friends were that: (a) the lands along Butteville Road west of I-5 are class II farmlands (a lower priority for inclusion than lands with class III soils to the south); (b) expansion to the west of I-5 is more of an intrusion into important farming operations in the area around Woodburn (again, relative to the lands to the south); and (c) there is adequate access to I-5 from the SWIR UGB expansion area via planned road improvements east of I-5.

The city will bring an oversize exhibit to the commission hearing, showing soil classifications and the various UGB expansion areas. The department notes that most of the lands surrounding the city are class II, and that the area to the south referred to by 1000 Friends and analyzed by the city is not by any means a "clean" class III area. Rather, the area to the south is a mix of Class II and Class III (Class II lands must be included to get to Class III lands). The land to the west also is a mix of Class II and III soils, although more heavily weighted to Class II. The department believes that the city's findings adequately explain that (in particular for its large-lot sites) location in proximity to the I-5 interchange is a site requirement that justifies adding the lands to the west of I-5 rather than sites further south. Further, and contrary to 1000 Friends' argument to the Court of Appeals, the department believes that the record and the city's findings demonstrate that in order to succeed in balancing growth so that traffic impacts are balanced on both sides of the single I-5 interchange that is a critical link in any future growth in the city, a looped arterial

system connecting highway 99E with Butteville Road and the *west* side of the I-5 interchange is necessary. Restricting development to the east side of I-5 would load the resulting traffic on the already over-burdened east side of the interchange, contrary to the city's adopted transportation systems plan.

Regarding conflict with exiting agricultural operations, the city's findings contain an analysis showing that (based on advice from the department, and from Marion County) that it has planned for oversized road right-of-way within the UGB expansion area to provide separation from agricultural operations. The findings also show that the proposed uses are compatible with agricultural operations.

In sum, while the department recommends that the commission consider these issues on remand, and direct that its findings be supplemented to respond to the specific arguments of the parties to the Oregon Court of Appeals, the department continues to believe that the city has demonstrated that its decision regarding where to expand complies with the priorities of ORS 197.298, and with the Goal 14 factors. To the extent that the city has added some lands that contain a higher percentage of class II soils than alternative lands to the south of the expansion area, the department believes this decision is justified under ORS 197.298(3)(a) and (c): large lot industrial site with proximity to freeway, conditioned to restrict use to that specific type of employer (ORS 197.298(3)(a)), and inclusion of class II lands required to complete looped arterial system connecting to west side of I-5 interchange (ORS 197.298(3)(c)).

D. Late Submission of Materials Concerning New Population Projections

On January 5, 2011 (shortly before the department had intended to issue this report) the department received the attached letter from 1000 Friends et al. concerning population forecasts for the City of Woodburn. This letter was received well after the deadline set for submission of written argument, and caused some delay in the completion of this report.

The department recommends that the commission treat the letter as a request for it to consider new evidence, but the department also recommends that the commission not do so. The new coordinated forecast under ORS 195.036 is for a different planning period (starting in 2010) than the 2000-2020 period of the submittal under review. It was not before the city when it made its decision in 2005, and nothing in Goal 9 or Goal 2 requires the commission to remand this decision to the city for it to consider the new population forecast.

ATTACHMENT

A. Letter from 1000 Friends of Oregon et al.

1000 friends of Oregon

534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389
Willamette Valley Office • 220 East 11th Avenue, Suite 5 • Eugene, OR 97401 • (541) 653-8703 • fax (503) 575-2416
Central Oregon Office • 115 NW Oregon Ave #21 • Bend, OR 97701 • (541) 719-8221 • fax (866) 394-3089

January 5, 2010

VIA E-MAIL

Director Richard Whitman
Steve Oulman
Department of Land Conservation and Development
635 Capitol Street Suite 150
Salem, OR 97301

Re: Woodburn Periodic Review; remand from Oregon Court of Appeals

1000 Friends of Oregon asks the Department and Commission to take official notice of Marion County's updated, coordinated population forecast, adopted after the underlying Commission decision, which is the subject of the Court of Appeals remand.

The city of Woodburn's year 2000 population was 20,100. In the city's underlying UGB decision, Woodburn used a 2020 population forecast of 34,919. This was based on an average annual growth rate (AAGR) of 2.8%. This was coordinated with Marion County by county ordinance in 2004, and is in the record.

In September 2009, Marion County adopted a *new* coordinated population forecast for all cities in the county for the time frame 2010 to 2030. This coordinated forecast is online at http://www.co.marion.or.us/PW/Planning/population.htm . The coordinated population forecast for Woodburn for the year 2030 is 37, 216.[1] This is based on a 2.04% AAGR, which is considerably lower than that used in Woodburn's UGB decision of 2.8%.

Of equal significance is that while Marion County used a medium range population forecast to coordinate, its comprehensive plan includes a range forecast of low, medium, and high population projections. The *high* projection for Woodburn[2] is based on an AAGR of 2.53%, still considerably less than that used by Woodburn in its UGB expansion.

In addition, Marion County's current coordinated forecast starts at a 2010 baseline of 24,866 and projects a **2020 population** of 31,243.[3] This is almost 4,000 people, or more than 10% less, than the forecast Woodburn used.

---

[1] Marion County Ordinance No. 1291, Exhibit B, Table 22 (adopted October 7, 2009)
[2] Ordinance No. 1291, Exhibit B, Table 23. The high population projection for Woodburn for 2030 is 41,718.
[3] Ordinance 1291, Exhibit B, Table 22.

Woodburn's reliance on a population forecast that not only is inconsistent with the current coordinated forecast, but is also simply inaccurate, is reinforced by data from the Portland State University Population Center. PSU's certified 2010 population for Woodburn is 23,150, substantially less than even the Marion County's baseline 2010 number.[4]

Woodburn's use of an inaccurate and outdated population projection and one that is not the most recent coordinated one infects its employment projection. Woodburn started with a 2000 total employment of 10,388 (covered and uncovered). It then assumed a 3.0% AAGR and arrived at a 2020 employment projection of 18,762 (covered and uncovered). This translates to an 81% increase in total employment over the planning period.[5]

In contrast, the Oregon Employment Department's most recent forecast (February 2010) forecasts only 10% total job growth for the 10 year period of 2008-2018 for Region 3 (Marion, Polk, Yamhill counties).[6]

We ask that the Department and Commission take official notice of these officially adopted population and employment forecasts. In particular, the coordinated population forecast is legally required to be relied upon by all jurisdictions in maintaining and updating their comprehensive plans. ORS 195.025, 195.036.

1000 Friends and the petitioners believe that LCDC must remand the underlying UGB decision to the city to legally address the Court of Appeal's decision. The coordinated population forecast and most recent state employment forecasts will have to be part of that remand.

Sincerely,

Mary Kyle McCurdy

Mary Kyle McCurdy
Attorney for 1000 Friend of Oregon and Petitioners

[4] See http://www.pdx.edu/prc/
[5] This is in the Record at Item 10, p. 1095, Table 8.
[6] http://www.qualityinfo.org/olmisj/ArticleReader?p_search=Region%203%202008-2018.&searchtech=1&itemid=00006883

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
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(503) 373-0050
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www.lcd.state.or.us

December 29, 2010

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
Steven Oulman, Regional Representative
Tom Hogue, Economic Development Specialist
Gloria Gardiner, Urban Specialist

SUBJECT: **Agenda Item 4, January 12-13, 2011 LCDC Meeting**

WOODBURN PERIODIC REVIEW WORK TASK & URBAN GROWTH BOUNDARY AMENDMENT

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

The Oregon Court of Appeals reversed and remanded the Commission's 2007 decision approving Woodburn's periodic review work task 2 and urban growth boundary (UGB) amendment. The court directed the Commission to provide a better explanation about the relationship of Goal 9 and Goal 14 when amending a UGB for employment land. Draft revised findings, included as Attachment A, have been prepared by the Department to address the court's remand. The Court of Appeals opinion, the 2007 commission order and hearing transcript, and the Court of Appeals opinion are included in Attachments B-D.

The department has circulated the draft revised order to the parties, and asked them to provide written argument responding to the draft. The parties' arguments are included in Attachment E. The department will, by separate mailing next week, respond in writing to the arguments. That response will be sent to the commission and the parties. The parties will have the opportunity to make oral arguments to the commission at its hearing on January 12th.

B. Staff Contact Information

Questions about this agenda item should be directed to Steven Oulman, AICP, Regional Representative, (503) 373-0050 ext. 259, steve.oulman@state.or.us.

II. SUMMARY OF RECOMMENDATION

Staff recommends that the Commission review written argument from the parties and hear oral argument at the hearing. Staff will issue a supplemental report responding to written argument received from the parties. That report will be issued no later than January 7, 2011. Staff recommends that the Commission decide this matter based on the 2007 record, supplemented only by the written and oral argument (including the Department's draft revised order). As a substantive matter, and subject to argument from the parties, the Department recommends that the Commission approve Woodburn's decisions related to the periodic review task and the UGB amendment based on the record and the draft order contained in Attachment A.

III. BACKGROUND

A. History of Action

As part of periodic review, Woodburn evaluated its comprehensive plan to determine its long-term needs for land to accommodate housing and employment. It evaluated residential land, employment land, and public facilities. In October 2006, the City adopted comprehensive plan amendments including a 974-acre UGB expansion. The Director referred a portion of the submittal to the Commission for consideration; the referral included task 2, related to the economic development element of the City's comprehensive plan, and the UGB amendment.

After hearing objections to the City's submittal, the Commission approved task 2 and UGB amendment as submitted. Objectors appealed the commission's order, asserting that the City's action included too much land in the UGB or included the wrong land in the UGB.

B. Major Legal and Policy Issues

First, did Woodburn include more employment land in its UGB than was necessary to accommodate its needs over the 20-year planning period in violation of Goals 9 and 14? Second, assuming that there was a need for additional employment land, should the City have selected different land for inclusion in the UGB pursuant to ORS 197.298 and the locational factors in Goal 14?

IV. DECISION-MAKING CRITERIA AND PROCEDURES

A. Decision-making Criteria

The criteria applicable to the amendment of a UGB are found in Goals 9 and 14.

Goal 14: "To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

This goal requires cities to have a UGB to separate urbanizable land from rural land. Amendment of a UGB is based on consideration of the following criteria and factors.

Land Need. Establishment and change of urban growth boundaries shall be based on the following:

1. Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and
2. Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection.

In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.

Boundary Location. The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

1. Efficient accommodation of identified land needs;
2. Orderly and economic provision of public facilities and services;
3. Comparative environmental, energy, economic and social consequences; and
4. Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

The "need" criteria are used to determine whether there is sufficient land in a UGB to provide a 20-year supply of land. Additionally, need criterion 2 allows local governments to specify characteristics that are suitable for the need and requires a demonstration of how that need cannot be met within the existing UGB.

The need for employment opportunities is further defined in Goal 9, "Economic Development," and OAR chapter 660, division 9, "Industrial and Commercial Development."

The "boundary location" factors are used to determine which lands would best meet the identified needs and should be included in the UGB. These factors encompass a wide range of considerations such as: which lands can most efficiently accommodate the identified needs; which lands can be economically provided with public facilities and services; natural resources which should be protected; energy, economic and social impacts, both positive and negative; and protection of prime farm and forest land.

Specific requirements for which lands to include first within an expanded UGB are set forth in ORS 197.298. This statute establishes priorities for adding various types of land to a UGB. All lands of a higher priority must be brought into a UGB or shown to be unsuitable before lands of lower priority may be used. The priorities, in order, are:

1. Lands designated as an urban reserve;
2. "Nonresource" lands or "exception" lands that have rural residential or other development;
3. "Marginal lands" designated pursuant to ORS 197.247;
4. Lower quality farmlands; and
5. Higher quality farmlands.

Goal 9. "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." Goal 9 is implemented through OAR chapter 660, division 9, "Industrial and Commercial Development."

B. Procedural Requirements

On reconsideration of LCDC Order 07-WKTASK-001720, the Commission is tasked with making findings in response to objections by 1000 Friends of Oregon. The Commission's findings must explain the reasons the City's UGB amendment was consistent with Goals 9 *and* 14. To the extent that any of the 10 valid objections also pertain to the same issue as raised by the objection of 1000 Friends, the Commission should consider them as well, and explain why it either sustains or rejects those objections.

The Department recommends that the Commission conduct the hearing on reconsideration based on the record submitted to the Court of Appeals and that it not request new evidence or information pursuant to OAR 660-025-0160(5). However, in order to assure that the parties have an opportunity to address the agency's reasoning, the Department has prepared a draft order for the Commission on reconsideration. This draft has been provided to the objectors and the City with an opportunity for both written and oral argument. The draft order and those comments are part of the record of the proceeding on reconsideration. Oral argument is limited to objectors, the City of Woodburn, and other affected local governments, and issues are limited to the two issues identified in the court's remand.

C. The Written Record of this Proceeding

1. The record filed in *1000 Friends of Oregon v. LCDC* (A135375)
2. The Court of Appeals decision in *1000 Friends of Oregon v. LCDC*, 237 Or App 213 (2010).
3. The Department's proposed order on reconsideration of LCDC Order 07-WKTASK-001720.
4. Timely written exceptions to that proposed order.

V. <u>ANALYSIS</u>

The Department believes that a 20-year supply of suitable employment sites has a different meaning than a 20-year supply of buildable residential land. The City of Woodburn did not simply forecast employment land need based on past trends, rather it identified *suitable sites* for employment opportunities to achieve stated community policies. This is permissible under Goal

14 and Goal 9. While the amount of land in suitable sites must be reasonably related to the local government's long-term population forecast (Goal 14, factor 1), it is not necessarily a one to one relationship. Under Goal 14, factor 2 and Goal 9 a local government must also plan for needed employment opportunities. Where it has established that those opportunities require a portfolio of suitable sites, a local government may plan the amount and location of land based on a mix of appropriately-sized and serviceable sites related to the needs of potential employers.

The Department's recommendations to the Commission concerning the relationship between Goals 9 and 14, in the specific context of Woodburn, are contained in Attachment A, the draft findings on remand.

VI. COMMISSION OPTIONS

After reviewing the record and the argument on remand, the Commission may:

1. Approve the UGB amendment and Task 2 based on the reasoning in Attachment A, or based on other reasoning;

2. Deny the UGB amendment and Task 2; or

3. Remand the UGB amendment and Task 2 to the City for further proceedings by the City consistent with the remand from the Court of Appeals.

VII. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

A. Department's Recommended Option

The Department recommends that the Commission approve the UGB and Task 2, for the reasons set forth in the draft findings included in Attachment A.

B. Proposed Motions

Recommended motion. "I move the Commission approve the City of Woodburn's periodic review work task 2 and the urban growth boundary amendment as submitted to the Department and based on the draft findings included in Attachment A."

Alternative motion. "I move the Commission remand the City of Woodburn's periodic review work task 2 and the urban growth boundary amendment [*reasons for remand and work to be completed, with a deadline for completion*].

ATTACHMENTS

A. Draft revised LCDC order and findings
B. Oregon Court of Appeals opinion *1000 Friends of Oregon v. LCDC*

C. February 2007 LCDC order and findings
D. January 2007 LCDC hearing transcript
E. Written argument: City of Woodburn, 1000 Friends of Oregon, Kathleen and Lolita Carl, Marion County Farm Bureau, Opus Northwest

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

IN THE MATTER OF PERIODIC REVIEW	)	**APPROVAL**
TASK 2 AND THE AMENDMENT OF	)	**ORDER**
THE URBAN GROWTH BOUNDARY	)	**10-WKTASK-********
FOR THE CITY OF WOODBURN	)	

This matter came before the Land Conservation and Development Commission (Commission) on December 2, 2010 on remand for reconsideration from the Oregon Court of Appeals. The Commission considered a new order and findings for a completed periodic review work task and an urban growth boundary (UGB) amendment submitted by the City of Woodburn (City). The City submitted Task 2, "Commercial and Industrial Lands Inventory," of its work program to the department for review pursuant to ORS 197.633 and OAR chapter 660, division 25. The City also submitted the amendment of its UGB to the department for review pursuant to ORS 197.626 and OAR 660-025-0175. The Commission, having fully reconsidered the written record, including the City's Task 2 and UGB amendment submittal, and the oral presentations of the objectors, the City, and the Department, now enters the following findings, conclusions, and order:

RECITALS

1. On August 3, 2006, the department received Ordinance 2391 from the City. The department considered the submittal complete on August 4, 2006.
2. Between August 22 and August 24, 2006, the department received objections from 10 objectors. The objections were timely filed.
3. On November 30, 2006, the department referred Task 2 and the UGB amendment to the Commission by Order 001714 and notified the City and the objectors.
4. On January 25, 2007, the Commission held a hearing on the Task 2 and an UGB amendment.
5. On September 8, 2010, the Oregon Court of Appeals reversed and remanded the Commission's Order 001714
6. On November 12, 2010 the department issued a report and recommendation regarding the Commission's reconsideration of its previous order.
7. On November 30, 2010, the Court of Appeals issued an appellate judgment.

8. On December 20, 2010, the department received written comments on the November 12 report and recommendation.
9. On January 12, 2011 the Commission held a hearing on the Task 2 and UGB amendment.

FINDINGS OF FACT AND CONCLUSIONS

I. BACKGROUND

A. Procedural History

On August 3, 2006, the City of Woodburn (City) submitted Periodic Review Tasks 1–4 and 7–11, and an urban growth boundary (UGB) amendment to the Department of Land Conservation and Development (DLCD or the Department) for review. The Department approved Tasks 1.a, 1.b, 3.a, 4, and 7–10, partially approved and remanded portions of Task 3.b (TSP), and referred Task 2 and the UGB amendment to the Land Conservation and Development Commission (Commission) (Order 001714).

The Commission approved Task 2 (Commercial and Industrial Lands Inventory) of the City's periodic review submittal, and the City's proposed UGB amendment in its order 07-WKTASK-001720, entitled "In the Matter of Periodic Review Task 2 and the Amendment of the Urban Growth Boundary for the City of Woodburn," issued on February 14, 2007. Objectors 1000 Friends of Oregon, Friends of Marion County, Lolita Carl, Kathleen Carl, Diane Mikkelson, Carla Mikkelson, and the Marion County Farm Bureau sought judicial review of the Commission's order in the Oregon Court of Appeals. On September 8, 2010, the Oregon Court of Appeals reversed and remanded the Commission's order for reconsideration. *1000 Friends of Oregon v. LCDC*, 237 Or App 213 (2010). The Court of Appeals issued an appellate judgment on November 30, 2010. The court remanded the decision for the Commission to explain (in written findings that set forth the Commission's reasoning): (1) how the Commission determined that the City's UGB expansion for industrial lands complied with Goal 9 and 14 and, particularly, whether the City included more land within the UGB than it needed over the 20-year planning period; and (2) whether the City should have selected different properties for inclusion in the UGB under ORS 197.298 and the locational factors of Goal 14.

On remand, the Department prepared a draft revised order, addressing the two issues that the court directed the agency to consider. The Department circulated the draft revised order to the parties and other objectors on November 12, 2010. The parties and objectors were allowed to submit written argument concerning the draft revised order, and [TO BE ADDED FOLLOWING ARGUMENT] did so. The parties and objectors also were allowed to present their oral arguments to the Commission at a hearing on January 12, 2011. Following oral argument, and consideration of the court's decision, the record, the Department's draft revised order, and the arguments of the parties and objectors, the Commission directed [TO BE ADDED FOLLOWING COMMISSION DECISION].

B. The Submittal

1. Residential Lands: The City included 546 acres of land in the amended UGB for residential uses, including public and institutional uses. The lands are located in the north, northwest, south, southwest, and east. The lands in the northwest, east and south areas are primarily exception lands, and the lands located in the north and southwest areas are primarily resource land. The residential need analysis, efficiency measures, and locational analysis conducted by the City are summarized in the "Woodburn UGB Justification Report."

2. Commercial Lands: The land included for commercial uses include a small area adjacent to the golf course and two larger areas, one on the west side of 99W and one located in the southwest quadrant that is planned as part of a larger nodal development. The City has justified the inclusion of a relatively small amount of commercial land in the amended UGB as a way to ensure the redevelopment and infill potential of the downtown area and Highway 99W corridor. The City established that both of these existing commercial areas are underutilized.

3. Industrial Lands: The City undertook a multi-year evaluation of community vision/goals, economic opportunities, population forecasting, and determination of site needs. The City included 409 acres of land in the amended UGB for industrial uses. The lands are located in the west and southwest part of the UGB. The largest industrial area in the amended UGB is the Southwest Industrial Reserve (SWIR), which is comprised of large parcels bounded on the south and west by Butteville Road. The City performed a 2020 employment forecast, an Industrial Land Needs Analysis, and a refined Target Industry Site Suitability as well as an Economic Opportunities Analysis (EOA) and Economic Development Strategy (EDS). In these documents, the City established the need for 409 acres of industrial land, and the analyses address site sizes, types, and locations under the requirements of Goals 9 and 14.as required by Goal 14 and OAR 660-009. The City's analysis of industrial land needs and its locational analysis also are summarized in the "Woodburn UGB Justification Report."

The City applied ORS 197.298 and the Goal 14 location factors to determine which lands to include within its UGB expansion area. The City created eight UGB Expansion Study Areas (a total of 3,984 acres) for the purpose of evaluating the land around Woodburn in accordance with the ORS 197.298 and the Goal 14 location factors. The City based the UGB amendments on the results of the locational analysis, which included considered transportation impacts, constraints such as wetland and riparian areas, public facilities availability and serviceability, and impacts on abutting agricultural lands.

C. The Issues on Remand

The Court of Appeals identified two basic issues on review: (1) Did Woodburn include more industrial land in its UGB than was necessary to accommodate its employment land needs over the 20-year planning period, in violation of Goals 9 and 14; and (2) Assuming that there was a need for additional industrial land, should the City have selected different land for inclusion in the UGB pursuant to ORS 197.298 and the locational factors in Goal 14? *1000 Friends of Oregon*, 237 Or App at 216.

The court concluded that the 2007 LCDC order was inadequate for judicial review of the first issue, and the court therefore did not address the second issue. *Ibid.* The court indicated that if the Commission's decision to uphold the City's UGB expansion for industrial land relied on "market choice," the Commission must explain how that concept is consistent with both Goal 9 *and* Goal 14, and (in particular) the limitation in Goal 14 that an urban growth boundary not contain *more* than a twenty-year supply of land. *Id.* at 225-226.

D. The Applicable Law

The City adopted Ordinance 2391, amending its UGB, on November 2, 2005. Marion County co-adopted the UGB amendment on July 19, 2006, and the City then submitted the amendment to the Department on August 3, 2006. The City elected to apply the "new" version of Statewide Land Use Planning Goal 14, which was adopted by the Commission on April 28, 2005 (but which had a delayed effective date unless a local government elected to apply the "new" provisions). The Commission adopted rules implementing the "new" Goal 14 on October 5, 2006 (effective April 5, 2007). Those rules, OAR 660-024, do not apply to the City and County's decisions. The Commission's current rules implementing Statewide Land Use Planning Goal 9 were adopted on December 1, 2005, but did not take effect until January 1, 2007 unless a local government elected to apply the rules before that date. Those rules also do not apply to the City and County's decisions (the prior division 009 rules "Industrial and Commercial Development" do apply).

II. COMMISSION REVIEW

The portions of the Commission's 2007 order concerning residential lands and commercial lands were not challenged on judicial review. Those portions of the Commission's prior order are repeated, below and have not been changed. They are included for purposes of presenting a complete order and to avoid confusion, but are not at issue in this proceeding on remand.

A. Residential Land

The residential component of the UGB decision comprised 546 acres of land in the amended UGB residential uses and included public and institutional uses. The lands are located in the north, northwest, south, southwest, and east. The lands in the northwest, east and south areas are primarily exception lands, and the lands located in the north and southwest areas are primarily resource land. The residential need analysis, efficiency measures, and locational analysis conducted by the City are summarized in the "Woodburn UGB Justification Report." Rec. at 1367-1454. The Commission reviewed the record and the objections and approves the UGB decision related to residential land.

Objections

1. Renaissance Homes (Perkins Coie). This objection asserts the City misconstrued ORS 197.298 and failed to include the eastern part of OGA Golf Course despite identified "high-end" housing need.

Commission Response: The City has exhaustively documented the reasons for not including the subject area noted in the objection. Primary among those reasons is that the soils are almost entirely Class I. This makes the subject area the lowest priority for inclusion pursuant to ORS 197.298. Furthermore, the City found that the identified need for high-end housing could be met on other lands of higher priority. The Commission rejected the objection. Order 07-WKTASK-001720 at 2. That decision was not appealed and is not now before the Commission.

2. Tukwila Partners (Garvey Schubert Barer). This objection maintains the City failed to include an adequate amount of residential land and erroneously failed to include 277 acres around the OGA Golf Course for "high-end" housing.

Commission Response: The City identified the need for 1,074 "high-end housing units" (defined as having a selling price of $212,500 or higher, in 1999 dollars), and that need is proposed to be mostly met through an urban growth boundary amendment near the OGA Golf Course. The lands proposed for inclusion in this area will accommodate approximately 825 high-end units at 5.5 units per net buildable acre. The City found that the identified need for high-end housing also could be met on other lands of higher priority. The Commission rejected this objection. Order 07-WKTASK-001720 at 2. That decision was not appealed and is not now before the Commission.

3. Fessler (Saalfeld Griggs). This objection concerns the Woodburn Development Ordinance limitation on residential annexations to a five-year supply. The objector argues that the City erred by requiring that there be less than a five-year supply of land in a particular residential designation before annexing additional land from the UGB.

Commission Response: The Commission finds that there is no statutory or rule violation in this action, and the five-year supply requirement will serve to ensure that development occurs in an orderly and efficient manner, and that there are adequate public facilities and services available in accordance with Goal 14. The Commission rejected this objection. Order 07-WKTASK-001720 at 3. That decision was not appealed and is not now before the Commission.

B. Commercial Land

Woodburn determined that it may need up to 310 net buildable commercial acres to meet 2020 needs. However, as a matter of policy, the City determined that most future commercial employment need would be met through intensification and redevelopment. The City concluded a UGB expansion of 22 acres was needed to provide commercial opportunities in and near future residential areas. Rec. at 1391-92.

The Commission received no objections regarding Woodburn's findings and conclusions regarding commercial employment lands and the proposed UGB amendment; it approved the UGB decision related to commercial land and that decision was not appealed and is not now before the Commission.

C. Industrial Land

Issue 1. Did Woodburn include more industrial land in its UGB than was necessary to accommodate its needs over the 20-year planning period in violation of Goal 9 or 14?

a. Legal Standard

The applicable legal requirements are found in ORS 197.712, Goal 9 (and OAR 660-009 (2005), and Goal 14. As explained above, OAR 660-024 and the current version of OAR 660-009 did not apply to the City and County decisions to amend the UGB.

ORS 197.712 requires, in pertinent part, that:

> (2) By the adoption of new goals or rules, or the application, interpretation or amendment of existing goals or rules, the Land Conservation and Development Commission shall implement all of the following:
>
> (a) Comprehensive plans shall include an analysis of the community's economic patterns, potentialities, strengths and deficiencies as they relate to state and national trends.
>
> (b) Comprehensive plans shall contain policies concerning the economic development opportunities in the community.
>
> (c) *Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies.*
>
> (d) Comprehensive plans and land use regulations shall provide for compatible uses on or near sites zoned for specific industrial and commercial uses.
>
> * * *
>
> (g) *Local governments shall provide*:
>
> (A) Reasonable opportunities to satisfy local and rural needs for residential and industrial development and other economic activities on appropriate lands outside urban growth boundaries, in a manner consistent with conservation of the state's agricultural and forest land base; and
>
> (B) *Reasonable opportunities for urban* residential, commercial and *industrial needs over time through changes to urban growth boundaries.*
>
> (3) A comprehensive plan and land use regulations shall be in compliance with this section by the first periodic review of that plan and regulations." (Emphasis added).

Goal 9 requires that comprehensive plans provide opportunities for a variety of economic activities, based on inventories of areas suitable for increased economic growth taking into consideration current economic factors. Like ORS 197.712, the goal requires that comprehensive plans provide for at least an adequate supply of suitable sites, and limit incompatible uses to protect those sites for their intended function.

OAR 660-009-0025(2)(2005) requires the City to designate land suitable to meet its identified site needs, and requires that: "*The total acreage of land designated in each site category shall at least equal the projected land needs for each category during the 20-year planning period.*"

Goal 14 requires that:

> "Establishment and change of urban growth boundaries shall be based on the following: (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; *and* (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need." (Emphasis added).

b. Summary of Local Actions

In 2001, Woodburn prepared an economic development strategy outlining community actions to improve economic conditions for residents. The City Council endorsed a vision comprising seven parts:

- Locational advantage (explained in EOA)
- Intent to avoid becoming bedroom community
- Desire to provide higher wage jobs
- Identification of target industries, with City intent to not limit recruitment or support to these industries
- Policy intent to assure adequate land, infrastructure, amenities, and workforce
- A commitment to strategic economic development to promote livability
- Stated desire to provide range of housing to balance range of employment opportunities. (Rec. at 706-07.

Woodburn also adopted specific, interrelated objectives concerning the UGB amendment:

- Implement EOA and Economic Development Strategy
- Improve transportation connections
- Provide buildable land, improve efficiency, connectivity, livability
- Protect natural resources
- Minimize impacts to farmland. Rec. at 1377-78.

The City worked with Marion County to develop an updated coordinated population forecast through 2020 (adopted in 2004), and worked with its experts to develop an employment forecast for the corresponding period. The population forecast is for 34,919 in the year 2020, and is based on a 2.8% average annual growth rate applied to the City's 2000 census population of 20,100. Marion County Ordinance No. 1233, Exhibit A (findings), at page 2.

The City's findings for ORS 197.712, Goal 9 and Goal 14, are contained in its "UGB Justification Report." The UGB Justification Report explains how the City developed its employment forecast. The City's employment in 2000 was 10,388 employees. The City's experts (ECONorthwest) projected 2020 employment for the City of between

> "16,370 and 18,762, - or annual growth rates ranging from 2.3 - 3.0 %. The Council chose the higher projection [8,374 new employees by 2020] for several reasons:

- First, Woodburn currently has a relatively low employment-to-population ratio, when compared with the County as a whole. Using covered employment figures, Woodburn has 5% of total County employees - but 7% of the County population. Woodburn has only 1 job for every 2.4 residents, compared with 1 job for every 1.8 residents in Marion County. Thus, there is a substantial imbalance between jobs and housing in Woodburn - a situation that the City addresses in the Woodburn Economic Development Strategy (EDS). If Woodburn's economic development strategy is successful and Woodburn is able to attract 8,762 new jobs to go along with planned population growth, then Woodburn will have a more reasonable ratio of 1 job for every 1.9 people.

  Second, Woodburn's projected annual employment growth rate is reasonable given the City's 1-5 location and the availability of flat, vacant and serviceable land within the SWIR that will be master planned before annexation and urban development can occur. As noted in Winterbrook's February 16, 2005 memorandum, Woodburn's comparative advantages are similar to those of Wilsonville, which attracted substantial economic growth over the last 25 years and has more jobs than residents.

  * * *

  Contrary to views expressed by 1000 Friends and FAN, Woodburn's projected annual population growth rate of 2.8% AAGR is proportionate to its projected annual employment growth rate at 3.0% AAGR.

  Third, Woodburn Transportation Systems Plan (TSP) and Interchange Management Area Overlay District are based on the high employment projection of 18,762. If Woodburn were to attract fewer than the projected number of jobs, then impacts on the interchange would be reduced and interchange improvements would have a longer life. On the other hand, if Woodburn were to underestimate job growth near the interchange, and provide for lesser interchange improvements, then Woodburn would face a potential moratorium on higher employment growth under the City's IMA (Interchange Management Area) Overlay District."

Rec. 1388-89 (footnotes omitted). The City determined, based on a medium employment forecast of 7,140 new jobs through 2020 that it would need about 370 net developable acres of new land to meet the medium forecast. ECONorthwest, "Site Requirements for Woodburn Target Industries," at 2. Based on its Economic Opportunities Analysis, the City analyzed the site requirements of each of its target industries. The City's summary of its analysis is as follows:

> "Table 4 summarizes the number of sites by size class Woodburn will need to implement its economic development strategy. The land needs analysis concluded that Woodburn will need about 370 acres to accommodate 7,140 new employees between 2000 and 2020. Table 4 includes sites that total over 500 acres. Site needs can be conceived as a pyramid with few large sites at the top and many smaller sites at the bottom. Such a land

inventory scheme is consistent with OAR 660-009 which requires cities to maintain an adequate inventory of sites. The table identifies a need for five sites of 25 acres or larger. While inclusion of such sites in its land inventory will exceed the identified land need based on the medium range employment forecast, an adequate supply of sites will provide Woodburn more flexibility in its economic development efforts and by accommodating the siting requirements of industries targeted in the EOA.

Table 4. Summary of estimated site needs by size, Woodburn 2000-2020

Site Size (acres)	Number of Sites	Average Site Size	Estimated Acres
100 or more	1	125	125
50-100	1	70	70
25-50	3	35	105
10-25	5	15	75
5-10	7	8	56
2-5	10	4	40
less than 2	15	1	15
Total	42	11.6	486

"This hierarchy of need is consistent with the requirements of Goal 9 and OAR 660- 009. Specifically, 660-009-0015(2) requires that 'industrial and commercial uses with compatible site requirements should be grouped together into common site categories to simplify identification of site needs and subsequent planning.' Moreover, 660-009-0025(1) requires plans to identify needed sites:

'The plan shall identify the approximate number and acreage of sites needed to accommodate industrial and commercial uses to implement plan policies. The need for sites should be specified in several broad "site categories," (e.g., light industrial, heavy industrial, commercial office, commercial retail, highway commercial, etc.) combining compatible uses with similar site requirements. It is not necessary to provide a different type of site for each industrial or commercial use which may locate in the planning area. Several broad site categories will provide for industrial and commercial uses likely to occur in most planning areas.'

"Thus, the administrative rule that implements Goal 9 recognizes that sites designated for employment can accommodate different types of employment. This is made explicit in OAR 660-009-0025(2): 'Plans shall designate land suitable to meet the site needs identified in section (1) of this rule. The total acreage of land designated in each site category shall at least equal the projected land needs for each category during the 20-year planning period.'"

"Table 4 assumes that most site needs will be for industrial uses. Commercial and office needs will be met largely through infill and redevelopment, and public uses will be largely met on residential land. The analysis assumes that limited office and supporting commercial uses will be met on industrial lands. This is consistent with OAR 660-009-0025(2) which states "jurisdictions need not designate sites for neighborhood commercial uses in urbanizing areas if they have adopted plan policies which provide clear standards

for redesignation of residential land to provide for such uses." Discussions with City staff have identified a special need for a single commercial node the location of which has not been identified at this point. "

"Table 4 provides a preliminary allocation of land needed for employment by site size."

ECONorthwest, "Site Requirements for Woodburn Target Industries," at 8-10.

This summary, and the accompanying table, are largely repeated in the City's UGB Justification Report. Rec. 1391-92. The City determined that in order to meet the high employment projection, it had a need for 486 gross acres of employment land. Rec. at 1392, note 17.

The City undertook a buildable land inventory addressing residential and employment uses. (Rec. at 1165-1194) The City identified an industrial/employment land inventory comprising 23 sites totaling 47 buildable acres. Rec. at 1393, 1404.

Woodburn's determination of land needs started with the EOA, the economic development strategy, and City policies. Site needs and the amount of land necessary are targeted at fulfilling the City's objectives to bring higher wage jobs to the community. Rec. at 706. The City's economic development program is supported by the EOA and the economic development strategy, and is encouraged by policy directives in Goal 9 and ORS 197.712. Rec. at 1315.

In the EOA, the City identified 13 industries as well as the site characteristics that are typical of the industries and that have a meaningful connection to the uses. Rec. at 1059-64.

The City extensively documented the site requirements for target industries. Rec. at 1278-87. The City relied on expert opinion (Record, Transcript p. 52, 55), to identify the number of sites in a range of site sizes needed to achieve the City's economic objectives based on the documented economic opportunities available to the City. The City found that in order to accommodate long range population consistent with its coordinated population forecast, and its demonstrated need for employment opportunities it had an employment land need of approximately 486 acres of land in a range of types of sites with particular characteristics (size, proximity to freeway access, etc.). Rec. at 1392. After analyzing sites within its existing UGB along with sites in its proposed expansion area, the City elected to proceed with the addition of 409 gross acres of land for employment opportunities. Rec. at 1393-1395.

c. Commission Findings, Reasoning and Conclusions

OAR 197.712, and Goals 9 and 14 establish how local governments in Oregon plan to ensure that they provide a land supply for the future employment needs of their communities. The commission's rules in OAR chapter 660, division 9 provide additional detail to implement Goal 9. Under Goal 14, factor 1, local governments must include an amount of land within urban growth boundaries that is sufficient to accommodate long range urban population. Under Goal 14, factor 2, local governments also must include sufficient land for employment opportunities. This second factor of Goal 14 links to ORS 197.712 and Goal 9, which further detail what local governments must plan for and how local governments determine the amount and types of land

that are needed for employment opportunities. The fundamental requirements of Goal 14, factor 2, Goal 9 and ORS 197.712 is that local governments must maintain at least an adequate supply of suitable sites for employment opportunities based on their analysis of their competitive advantages and the limitations of adequate public facilities. Goal 14, factor 1, also provides context for the amount of employment land, in that the amount of land within an urban growth boundary must be adequate to accommodate long-term urban population, consistent with a 20-year population forecast coordinated with affected local governments. Thus, while a local government must provide at least an adequate supply of sites to meet the need of its current and projected future population for employment, it may not add more land than is needed over a 20-year period for employment or any other purpose.

A local government's total land supply[1] is the result of a series of policy choices. It is not a math formula, a forecast, or an allocation. Goals 9 and 14, and division 9 task local governments to explore options and assemble the facts needed to inform the policy choices. Local governments must make findings supported by evidence to explain their policy choices. The policy choices (the findings) must have an adequate factual basis and must be reasonable. This means that there must be reasons or findings that create a logical path from fact through analysis to findings.

Local governments use an economic opportunities analysis to explore and document the information, analyses and series of policy choices that determine the total land supply for employment opportunities under Goals 9 and 14. The local government uses the EOA to define the community objectives, likely opportunities, suitable sites and adequate supply for its circumstances.

Although OAR 660-009-0015(1)(2005) requires that the review of trends be the principal basis for estimating future employment land uses, the rule does not specify or limit acceptable methods to determine employment land need. It is up to local governments to assemble an adequate factual basis and select methods of analysis appropriate to its circumstances and community objectives.

Each planning project will be different. The resulting documentation will vary in size, complexity and clarity. There is no one prescribed method to do the work and the rules provide limits to the required research and analysis.[2] This flexibility is deliberate and necessary to encourage local governments to identify and pursue economic development opportunities appropriate for the community.

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1 OAR 660-009-0025(3) (2005) requires certain local governments to plan for a short-term supply of serviceable sites.

2 OAR 660-009-0010 (5) (2005): "The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division."

Cities are encouraged to engage in a variety of regional planning agreements by OAR 660-009-0030. The required employment land coordination is between city and county for UGB amendments unless some other mechanism is provided by law or mutual agreement.[3]

Goal 9 requires cities to designate an employment land supply of sites to provide opportunities for a variety of economic activities. Providing a mix of sites, in a range of sizes and types to provide choice is an appropriate component of the 20-year employment land need determination. Further, it is reasonable for a local government to determine (if there is an adequate factual base) that not all lands within all serviceable sites will develop during the planning period. Relatedly, a local government may determine (if it has an adequate factual base) that in order to provide lands to meet its demonstrated needs for employment opportunities under Goal 14, factor 2, and Goal 9, that some sites will not fully develop during the planning period due to the site requirements of particular target industries that typically seek sites that they will absorb over a longer period of time.

Considerable attention has been paid at both the local level and before the Commission about whether the City overestimated its land need and included more land in the UGB than is justified for the 20-year planning period. The discussion focuses on application of a target industries methodology, the identification of site characteristics and selection of needed sites, and the concept of "market choice."

The Commission finds, first, that the City's estimate of the amount of land needed for employment uses during the 2000-2020 planning period is consistent with Goal 14, factor 1 (demonstrated need to accommodate long range urban population, consistent with a 20-year coordinated population forecast). As explained above, the City and County have prepared and adopted an updated population forecast for the City. That forecast projects a 2.8% average annual population growth rate for the City. The City also has adopted an updated employment forecast, based on the work of its experts. That forecast projected a range in average annual growth in employment of up to 3% through 2020. The City chose the top end of the range, based on its policy choice to encourage a greater degree of balance between its population and employment, relative to the rest of Marion County, as well as its determination that this rate of growth is feasible over the planning period (as documented in its EOA), and its determination that encouraging industrial development west of I-5 is necessary to support needed transportation improvements. The Commission finds that the City's policy choices and determinations are consistent with Goal 14 factors 1 and 2, are based on an adequate factual base, and that the City has provided an adequate explanation of how it derived its estimate of future population and employment during the planning period.

The City's population and employment forecasts provide context for the City's determination of its need for employment opportunities under Goal 14 factor 2 and its determination of needed sites under Goal 9. The Commission finds that there is a reasonable relationship between the City's estimate of 8,374 new jobs during the 2000-2020 planning period and the amount of land it has determined is needed for employment opportunities and suitable sites. On a straight employee per acre basis, the City determined that approximately 370 net acres of land would be needed to accommodate 7,140 new jobs (before the City made a final policy decision about

where in the range of its employment forecast to plan for). At the higher level of projected employment (8,374), the City would need approximately 486 net acres of employment land to accommodate projected long term population growth. After adjusting for the small amount of suitable lands within the existing UGB (approximately 45 acres) that figure is reasonably related to the 362 net acres of suitable sites for employment that the City has added. The Commission finds, for these reasons, that the amount of land the City has added to its UGB is based on its demonstrated need for long term population, consistent with its coordinated 20-year population forecast.

The Commission further finds that the City has demonstrated compliance with Goal 14 factor 2 and Goal 9 (and the Commission's 2005 Goal 9 rules) through its analysis of target industries and suitable sites needed to provide employment opportunities that are reasonably likely to generate the employment needed for the City's current and projected future population. In this instance, the target industries methodology the City used is appropriate and complies with Goal 9 and Goal 14 factor 2. Using an employees-per-acre methodology is not required to demonstrate compliance with Goal 9 or Goal 14 factor 2, and the City did not use it to demonstrate total land need. The City's decision to use a targeted industries methodology instead of an employees-per-acre is not a reason to find that the City failed to comply with Goal 9 or Goal 14. And, as explained above, it does not mean that the City added more land than it needs for employment during 2000-2020.

Goal 9 and Goal 14, factor 2, and the Commission's Goal 9 rule (OAR 660-009-0025(2)(2005) require the City to plan for an amount of land in each site category that at least equals the projected land needs for each category during the 20-year planning period. The City projected land needs by size class –tied to the particular requirements of its target industries, and demonstrated a need for approximately 409 gross acres of land after accounting for sites within the prior UGB. The Commission finds that the City's analysis complies with Goals 9 and 14, as well as OAR 660-009 (2005).

The City's findings and the Commission's prior order do mention providing sites to allow for "choice" in several places. Rec. at 1392. "Market choice" is a term of art that typically means that redundant sites are provided in the *short-term* supply of employment land to address issues such as a lack of ownership diversity. The Commission discussed "choice", "market choice" and how the City determined its land supply. (Record, transcript, p. 51) The Commission finds that the City did not provide "market choice" in its long-term supply of land for employment uses. That is demonstrated most directly by the fact that the City planned for only *one* site in its largest site classes. It is also shown by the fact that the total amount of land the City has added to its UGB for employment uses (409 acres gross), when adjusted to a net basis to account for right-of-way and other non-buildable lands, is reasonably related to its projection of 370 acres of employment land need based solely on future employment. Rec. at 1391-1392.

The Commission finds that Woodburn's total land supply determination complies with the requirements of OAR chapter 660, division 9 (2005).

OAR 660-009-0015(1) requires that the EOA include a review of trends, an identification of required site types, an inventory of employment lands and an assessment of the community's economic development potential. The record contains extensive documentation and analyses the

City conducted toward compliance with the administrative rule. The documentation includes: 1-A The Woodburn Economic Development Strategy (Rec. at 699); 4-A Economic Opportunities Analysis (Rec. at 1019); 4-B Population and Employment Projections (Rec. at 1077); and 4-H Site Requirements for Target Industries. (Rec. at 1275)

These documents contain the necessary facts and analysis to meet the legal standard on review, primarily the requirements of OAR 660-009-0015 through 660-009-0030 (2005). The City based its planning effort on fact and coordinated with other local governments as required by making use of the best available information including trends and expert evaluation. The City's determination of the number and types of industrial sites needed for the 20-year planning period is affirmed, resulting in 42 sites in a range of site sizes.

The Commission finds that Woodburn's employment land supply determination complies with Goal 9.

Goal 9 requires that "...comprehensive plans for urban areas shall: 1. Include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends; 2. Contain policies concerning the economic development opportunities in the community; 3. Provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies; 4. Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses."

By complying with the administrative rule that implements Goal 9 the City has conducted the analyses and made the findings to demonstrate compliance with the goal. In addition to the materials provided in support of compliance with the administrative rule, the record includes: Findings of Fact (Rec. at 1307) and UGB Justification. (Rec. at 1365) These documents contain the necessary findings of fact, establish community objective plan policies and specify plan implementation policies to meet the requirement of Goal 9 to provide opportunities for a variety of economic activities, and provide for at least an adequate supply of suitable sites, and limit incompatible uses to protect those sites for their intended function.

The Commission finds that Woodburn's employment land supply determination complies with Goal 14 need criteria 1 and 2.

Goal 14 requires that "Establishment and change of urban growth boundaries shall be based on the following: (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need."

The City demonstrated compliance with Goal 14 factor 1 by using the Marion County coordinated population forecast as the initial step in its planning process (Rec. at 1090-93), and

selecting an employment projection that is proportional to and reasonably related to its population growth rate (Rec. at 1093-95). As explained in detail, above, the City made a reasoned policy choice to encourage employment growth to exceed projected population growth over the planning period in order to address an existing relative imbalance in population to employment in the City. The City demonstrated consistency with the population forecast by establishing a plan policy to improve the balance of jobs to the forecasted population by taking deliberate actions to accelerate job growth to better accommodate the needs of the long-range urban population. Rec. at 658-62. The City complied with Goal 14 factor 1 by developing an employment growth projection over the 20-year planning period that was related to its coordinated population forecast (Rec. at 1095) and by establishing plan polices to improve the balance of jobs to population (Rec. at 699, 1388), and to improve the wage and skill levels of the local work force. Rec. at 699, 706, 1377.

The City complied with Goal 14 factor 2 by identifying its employment opportunities through an economic opportunities analysis, and by establishing the site requirements for target industries needed to accomplish the 20-year economic development strategy and associated City policies.

The Commission finds that the City identified a reasonable set of site requirements for its target industries. The portfolio of sites chosen by Woodburn is a reasonable estimation, based on expert opinion, for the City to rely on as to its employment opportunities and corresponding land needs for the planning period.

Goal 9 and Goal 14 direct local governments to estimate need over a 20-year planning period. An appropriate method of estimating need involves forecasting population and employment growth within the jurisdiction. The Commission finds that the City has forecast both population and employment growth for the planning period, has made reasonable estimates about the number of new residents and desirable employment growth in the community, and coordinated those estimates with other jurisdictions.

The Commission finds that the City's use of target industries to identify employment need over the planning period is consistent with the City's population and employment projections. Employment forecasts inform policy decisions and afford local governments the ability to plan a future different than historical trends.

The Commission finds that Woodburn's employment land supply determination complies with ORS 197.712(2).

ORS 197.712 provides in part:

> "the Legislative Assembly finds and declares that, in carrying out statewide comprehensive land use planning, the provision of adequate opportunities for a variety of economic activities throughout the state is vital to the health, welfare and prosperity of all the people of the state.
>
> (2) By * * * the application, [or] interpretation * * *of existing goals or rules, the Land Conservation and Development Commission shall implement all of the following:

(c) Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies."

Goal 9's emphasis on employment opportunity is completely consistent with Goal 14's two need factors. As explained above, Goal 14 factor 1 requires that the amount of land within a UGB for employment purposes be reasonably related to the local government's coordinated population projection. Goal 14 factor 2 and Goal 9 (along with ORS 197.712) further refine the state's policy by requiring that this amount also provide sufficient land and types of land to allow communities to meet their future need for employment opportunities and suitable sites that provide those opportunities.. The Commission applies Goal 9 in concert with Goal 14. *Benjfran Development v. Metro Service Dist.*, 95 Or App 22, 26, 767 P2d 467 (1989).

As a practical matter this means that to support policy decisions local governments must develop an adequate factual base that demonstrates that: the land within the urban growth boundary will provide at least an adequate supply of suitable sites that are reasonably likely to lead to the employment opportunities needed for the community, given its projected long-range population and its policy choices. The overall amount of land may not exceed the total land need over the 20-year UGB planning period.

One other aspect of Goal 9 that bears on both the amount of land for employment opportunities, and the requirement to provide an adequate supply of suitable sites is the cost and risk of planning, financing and developing public infrastructure. While this aspect of Goal 9 has not been a major issue in this matter, it often plays an important role in deciding where a community can best provide opportunities for future employment. This aspect of Goal 9 is intended to "daylight" the true costs of future growth options to inform local policy decisions.

The Commission finds that Woodburn's total land supply determination has provided at least an adequate supply of suitable employment sites, and has not exceeded a 20-year supply of employment land, and complies with the requirements of Goal 9 and Goal 14.

For the reasons set forth above, the Commission finds and concludes that the City's determination of the amount of employment land to include within its UGB expansion provides at least an adequate supply of sites to meet plan policies, and has not exceeded an amount needed over the 20-year planning period.

d. Conclusions

Based on its reviews of the record, the argument of the parties, and the reasoning set forth above, the Commission concludes as follows:

1. The City's employment land determination complies with Goal 9 because it complies with OAR chapter 660, division 9 and identifies an adequate supply of suitable sites for a 20-year planning period.

2. The City's employment land supply determinate complies with Goal 9 because it provides a reasonable range of suitable sites of a variety of types and sizes.

3. The City did not plan for an "oversupply" of employment sites by use of "market choice" or something similar. The Commission finds that the amount of land the City has included within its UGB for employment opportunities and suitable sites is reasonably related to the City's coordinated forecast of long-range population growth over the 20-year period.

4. The amount of land the City has included within its UGB for employment opportunities and suitable sites complies with the Goal 14 need factors 1 and 2 because the City's planning process included an employment forecast consistent with its coordinated population forecast. The City's policy choice to encourage employment opportunities that will improve the balance of jobs to population and improve opportunities for higher wage jobs is based on the City's adopted EOA consistent with City economic development policies. The set of sites identified by the City are suitable for the targeted industries that would satisfy those City policies.

5. The Commission finds that Woodburn's total land supply determination is reasonable, complies with Goal 9 and complies with Goal 14 need criteria because the City's plan is consistent with the coordinated population forecast (using similar AAG for population and employment forecasts to achieve policy objectives) and provides an adequate supply of suitable sites including a mix of site sizes and types consistent site characteristics typical of and having a meaningful connection to target industries determined appropriate to meeting the City's economic development objectives.

e. Objections

1. OPUS NW (Johnson and Sherton). This party objects to the lack of a deadline to complete the master plan requirements for the SWIR) prior to annexation and contends the provision violates the OAR 660-009-0025 requirement to provide sufficient serviceable lands.

Commission Response: The City implemented a two-step master planning process for land in the SWIR prior to annexation. The first step, embodied in Policy E2.2, requires that the entire SWIR area be master planned for the provision, sizing, and general layout of water, sewer, storm drainage and transportation facilities, and that this be approved by the City Council. The City has adopted a public facilities plan and a transportation system plan that address the requirements of Policy E2.2. Policy E-1.6 requires a more detailed second step site specific master plan. This policy is designed and implemented through the Woodburn Development Ordinance to ensure that parcels of adequate size are reserved to meet the needs of the targeted industries identified in the EOA. Therefore, there is not a conflict between these two requirements.

In addition, the Commission finds that these master planning requirements are not inconsistent with OAR 660-009-0025(1)–(4). While the objection does not contain an allegation of specific rule violations, the Commission finds that the master planning requirement will not affect the designation of needed industrial sites nor will it affect the serviceability of the sites. Rather, it

ultimately ensures their serviceability and further ensures that needed site sizes and types are preserved.

2. 1000 Friends of Oregon (hereafter "1000 Friends"). This party's objection contained several parts.

a. Employment projections

1000 Friends objects that the City projected there would be 18,762 employees in the year 2020, reflecting a three percent average annual growth rate (AAGR). The City and County have adopted a population projection that provides for a 2.8 percent AAGR. 1000 Friends argues that the job growth projection is unrealistic in that Woodburn would be taking 23 percent of all the jobs forecasted for Marion County during the planning period (8,374 out of 36,199 forecast jobs).

Commission Response: The City states that the current jobs/population ratio of one job per 2.4 residents is lower than the one job for 1.8 residents for the rest of Marion County, which has created a jobs/housing imbalance that the City seeks to correct through its Economic Development Strategy. The City also points out that the projection is reasonable given the City's I-5 location and availability of relatively flat, serviceable land within the SWIR. Rec. at 1388. The City has coordinated its population and its employment forecast with Marion County, and the County has co-adopted the UGB amendment and has endorsed the City's policy choice in its findings. Given the circumstances and the information in the record, the Commission finds that the conclusions made by the City and County are reasonable and are supported by an adequate factual base.

b. Coordination

1000 Friends asserts that the City failed to properly coordinate with nearby cities in Marion County, Metro, Wilsonville, and other Marion County cities as part of this process, and has therefore violated Goal 2.

Commission Findings: The City coordinated extensively with Marion County during this process, as required. Furthermore, the objector provides no explanation of how the listed jurisdictions will be affected. Metro did submit a letter to the City, and the City took Metro's comments into consideration during its process. For the reasons set forth here and as discussed in more detail below, the Commission finds the City complied with the coordination requirements of Goal 2.

Goal 2 provides "[e]ach plan and related implementation measure shall be coordinated with the plans of affected governmental units."[4] As used in Goal 2, a comprehensive plan is "coordinated" once "the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." ORS 197.015(5). LUBA has described the coordination obligation as:

[4] Goal 2 defines "Affected Governmental Units" as "those local governments * * * which have programs, land ownerships, or responsibilities within the area included in the plan."

"We have explained on many occasions that the coordination obligation does not mean that local governments must 'accede to every request' made by an affected governmental agency. *Brown v. Coos County*, 31 Or LUBA 142, 146 (1996); *Waugh v. Coos County*, 26 Or LUBA 300, 314 (1993). However, the obligation imposed by Goal 2 and ORS 197.015(5) goes beyond the county's obligation to address and demonstrate compliance with other applicable approval criteria. The coordination obligation requires an exchange of information and an attempt to accommodate the legitimate interests of all affected governmental agencies. *Rajneesh v. Wasco County*, 13 Or LUBA 202, 210 (1985). Goal 2 and ORS 197.015(5) do not mandate success in accommodating the needs or legitimate interests of all affected governmental agencies, but they do mandate a reasonable effort to accommodate those needs and legitimate interests 'as much as possible.'[22] For LUBA to be able to determine that this coordination obligation has been satisfied, a local government must respond in its findings to 'legitimate concerns' that are expressed by affected governmental agencies. *Waugh*, 26 Or LUBA at 314-15 (1993).

"[22] The coordination obligation could be satisfied in a number of different ways, depending on the circumstances. For example a concern might be rejected as being based on an erroneous understanding of the facts. On the other hand, the local government might determine that the concern is legitimate and encourage or require that the proposal be modified or conditioned to eliminate or mitigate the concern, in whole or in part. Or the local government might take the position that, while a concern is valid, practical alternatives to address the concern are not available and the proposal is of a nature that overrides the legitimate concern. Other responses may be appropriate, depending on the nature of the legitimate concern and the circumstances.

"Our cases do not articulate a precise standard that an affected local government must meet to raise a 'legitimate concern.' We do not believe a local government is required to respond in its findings to every written and oral statement that an affected local government may present during the local proceedings. We explained in *ONRC v. City of Seaside*, 29 Or LUBA 39, 56-59 (1995) that 'the concern must be sufficiently developed to require a specific response by the [local government].' In other words, the concern must be explained in sufficient detail to (1) communicate the expectation of some sort of response from the local government and (2) provide the decision maker with a sufficiently detailed understanding of the concern that an appropriate response can be included in the decision." *Turner Community Association v. Marion County*, 37 Or LUBA 324, 353-354 (1999).

From the foregoing, the coordination requirement is satisfied where the City has engaged in an exchange of information regarding an affected governmental unit's concerns, put forth a reasonable effort to accommodate those concerns and legitimate interests as much as possible, and made findings responding to legitimate concerns.

The Commission notes the high level of coordination that has occurred between the City of Woodburn and Marion County, and takes particular notice of the oral comments of Marion

County Commissioner Patti Milne. (Record, Transcript, pp. 11-12) Commissioner Milne noted that the Marion County Growth Management Framework Plan identifies Woodburn as the employment growth center for North Marion County. She also noted that each of Marion County's 20 cities had received written notice of the County's proposal to amend the Marion County Comprehensive Plan to adopt the City's proposed 2020 population forecast. This forecast was based on the City's 2020 employment forecast, to which none of the cities objected.

c. More land than justified by target industry requirements

1000 Friends asserts that Woodburn added more industrial land to its UGB than can be justified by the target industry site requirements. 1000 Friends argues that the City concluded that it would need only 224 acres of land if they utilized the "employees per acre" methodology based on the number of projected jobs, and that even if the City is utilizing the site requirements for targeted industries methodology, the City has still included far more industrial land than is justified.

Commission Response: The City did not estimate its employment needs based on employees per acre. The reference to 224 acres of land comes from the ECONorthwest Analysis of site requirements, where "industrial" is defined more narrowly than in the City's Economic Opportunities Analysis or its Final UGB Justification Report. If all employment categories are includes, the amount of acreage is 370 acres, as noted above. The City has included sites with necessary characteristics identified by experts found credible by the City and by the Commission. The City established that 42 sites, comprising a range of site sizes with specific characteristics, are needed to meet the City's employment needs over the planning period. The Commission relied on testimony it received that basing the total land supply on needed sites is appropriate and necessary to achieve the City's economic development objectives. (Record, Transcript, pp. 54-56) The Commission understands and accepts the explanation of the City that identifying sites to meet employment needs is not an exercise where each potential site is matched with perfect information about a potential user at some point in the future. Rather, economic development planning in reality, and as provided for in Goal 9, evaluates opportunities and needs and provides appropriate, suitable sites.

d. More land than expected to be developed

1000 Friends objects that the City has include more industrial land in the UGB than it expects to develop over the planning period. 1000 Friends asserts that the City lacks authority to expand its UGB beyond its identified need for the planning period.

Commission Response: The Commission agrees with objector that as a matter of law, nothing in Goals 9, 14, or both, authorize the City to expand its UGB beyond its identified need for the 20-year planning period. The Commission disagrees with the objector that as a matter of fact the City has done so. The City findings note the possibility that some identified sites may not fully develop during the planning period. Rec. at 1392. That does not mean that the site size specified in the City's analysis is not "required." As documented in the City's Economic Opportunities Analysis, for some industries it is necessary to provide sites that are larger than a particular company will use immediately in order for that company to locate, because (particularly if the

company is making a large capital investment) the company may have a build-out plan that extends beyond 20 years. To the extent that such a site only develops partially during the 20-year planning period, that will be taken into account in the next buildable lands inventory carried out by the City. The Commission finds that this is not the same as including more than a 20-year land supply. Sites are identified to provide employment opportunities that meet a 20-year need. If only smaller sites were planned for, Woodburn would not be able to provide the employment opportunities that it has shown are needed under Goal 14 factor 2 and Goal 9. The City identified sites based on expert opinion regarding what is required to satisfy its economic development goals and objectives. Because this may result in more acres than another method of calculating need does not obviate the validity of the result. Potential employers do not look for acres, they look for sites that satisfy the needs of their operation. The City has researched and documented the size and type of sites pursued by industries it expects to attract, and justified the number of sites included in the UGB based on factual information in the record to which it applied appropriate policy decisions. Rec. at 1277-95.

The Commission finds that the applicable goals and rules do not require nor is it reasonable to limit the City to include only the number of acres expected to physically develop during the 20-year planning period within its UGB. The City cannot predict precisely the firm or industry that will locate within the boundary, and the City has documented that its target industries require a variety of available sites to achieve the employment opportunities the City has established are needed. Again, the City justified the types and sizes of sites it included based on evidence and appropriate policy choices. Whether some of this land is yet to be developed at the end of the 20-year planning period is immaterial since "need" as used in Goal 14 is not measured exclusively in physically developed acres.

e. Incorrectly removed buildable industrial land from inventory

1000 Friends of Oregon argues that the City failed to include 79 acres of industrial land that would be available for existing industries because owners of properties indicated that partially vacant land was being held for future expansion and was therefore not available.

Commission Response: The City conducted an extensive inventory and analysis of existing industrial lands in accordance with Task 2 and OAR 660-009-0015(3)(2005), which provides: "Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use."

The City's UGB Justification Report states:

> "City staff contacted owners of "partially vacant" and "redevelopable" industrial firms identified in Winterbrook's 2003 BLI. In most cases, the owners of industrial firms stated that partially vacant land *on their property* was being held for future expansion, and was not available for purchase to meet the needs of new targeted employers. In other cases, owners stated that "redevelopable" industrial land (i.e., land with an improvement to land value ratio of less than 1) was actually being used for storage of vehicles, equipment or materials." (Emphasis added.) Rec. at 1390.

Contrary to claims by objectors, the City did not exclude "partially vacant" and "potentially redevelopable" land from the Buildable Lands Inventory, it simply classified such land into two categories: land that is suitable to meet the needs of new targeted industries; and land that is owned by an existing industrial firm, and is either (a) reserved for future expansion by the existing owner, or (b) used for industrial storage. As noted in the UGB Justification Report, "there are only 47 buildable acres on 23 separate tax lots available to site new targeted employment in Woodburn['s] existing (2002) UGB." Rec. at 1390. The remaining 79 "partially vacant" or "potentially redevelopable" acres are "a valuable component of the City's industrial lands inventory," but are being used or held, by their industrial owners, for future industrial expansion and are not available as suitable sites to provide the employment opportunities identified in the City's EOA.

f. EOA ignores existing industries

1000 Friends argues that Woodburn's EOA ignores existing industries and firms, noting that most jobs are created by small to medium-sized businesses.

Commission Response: The Commission finds that the City evaluated businesses in Woodburn as part of a review of national, state, regional, county and local trends required by OAR 660-009-0015. Rec. at 1021-1030. The City assessed economic opportunities and constraints in the community to inform its choices about target industries. Rec. at 1031-1059. The Commission finds that, as a matter of local policy, Woodburn may rely on attracting new business, including those that rely on large parcels, as part of its economic development strategy. The Commission further notes that the City determined that its land needs for future commercial development would be largely satisfied on lands within the prior UGB rather than through expansion of the UGB.

Specifically, the City determined that to meet its needs for commercial land in 2020, it needed an additional 310 net buildable acres of land, of which 108 acres were available within the prior UGB. The City, as a policy matter, elected *not* to add significant (202 acres) amounts of land to its UGB for commercial purposes. The City's reasoning was as follows:

"The Council has intentionally under-allocated commercial land to encourage redevelopment along Highway 214, Highway 99E and in Downtown Woodburn. As explained further in Part II of this Report, as a measure to increase land use efficiency, the Council assumed that most future commercial and government employment will occur on existing commercial lands through intensification and redevelopment. In addition, the need for highway commercial uses can be met to a limited extent within the Southeast Commercial Exceptions Area. That Highway 99E area has a range of low-intensity development uses. The City has assumed that strip commercial properties along Highway 99E, and Highway 214 wilt redevelop over time, thus reducing the need to designate new commercial areas on resource land." Rec. at 1390-91.

g. Largest parcel added to UGB not justified

1000 Friends argues that the City has not justified inclusion of the largest industrial parcel in the UGB. 1000 Friends maintains that there is not an adequate factual basis to conclude that a large industrial user such as a silicon chip fabrication plant is likely to locate in Woodburn during the planning period.

Commission Response: First, ECONorthwest prepared both the Woodburn EOA (Rec. at 1019) and the Woodburn EDS. Rec. at 699. The EDS describes the need for "very large manufacturing and high-tech firms [that] want sites as large as 40-80+ acres," and notes that the pre-amendment UGB lacked such sites with freeway access. The EOA (Rec. at 1059-1060) further explains that these [large site] *users* typically require sites that exceed 100 acres.

Second, the EDS notes that of the three sites over 30 acres within the existing (2002) UGB, "one of the sites was under development in the Spring of 2001, and the other two are relatively distant from Interstate 5 and are not particularly well suited sites to accommodate target industries." Rec. at 709. The EOA responds directly to objector's claim that Woodburn is too far from existing electronics manufacturing "clusters" to attract large site industrial manufacturers. The EOA observes that "Woodburn is close enough to the high-tech areas of Wilsonville and Washington County to be a viable option for a corporate campus. Firms in the Electronic and Electric Equipment and Business Services have potential in this regard." Rec. at 1060.

Third, the Commission notes that the record shows that Wilsonville, only 12 miles north of Woodburn, has been very successful in attracting electronic firms such as In-Focus and Tektronix. As documented in the UGB Justification Report, Wilsonville in 1980 was much smaller than Woodburn is today, but had large tracts of serviced industrial land with I-5 access. Rec. at 1388. Approximately 80 percent of Wilsonville's 1,000 acre industrial land base has developed since 1980. Today, Wilsonville has over 18,000 covered employees, which is comparable to the 18,762 employees projected by Woodburn (up from 10,388 in 2000). The Commission finds that Woodburn's plans to take advantage of its I-5 access, to become a regional industrial center, are reasonable.

3. Other objectors

a. Jerry Mumper. This objection states the City overestimated industrial land need in violation of Goal 9 and objects to the targeted employer site size and type methodology.

   Commission Response: The City has appropriately estimated employment needs using a methodology consistent with Goal 9 and Goal 14. See response to 1000 Friends objections, above.

b. Diane and Carla Mikkelson. The objectors contend the City overestimated industrial land need, underestimated redevelopment potential of existing industrial land and facilities, and failed to coordinate with other jurisdictions. The objectors state the City's submittal violates Goals 2, 3, 9, and 14, and ORS 197.296.

   Commission Response: The City has not overestimated its employment needs in assessing the UGB amendment. See response to 1000 Friends objections, above. The

objectors do not provide sufficient detail about how the City has violated ORS 197.296 for the Commission to be able to respond.

c. Lolita and Kathleen Carl. This objection alleges the City failed to protect farmland in violation of Goal 14 and ORS 197.298, inadequately coordinated with other affected governments in violation of Goal 2 and ORS 197.015, and included too much industrial land in violation of Goal 14.

   Commission Response: The City has coordinated it actions with other affected local governments consistent with Goal 2 and has justified its employment needs consistent with Goal 9 and Goal 14. See response to 1000 Friends objections, above.

d. Friends of Marion County (Roger Kaye). This objector also states the City included too much industrial land in the expanded UGB.

   Commission Response: The City has correctly estimated its employment needs in assessing the UGB amendment. See response to 1000 Friends objections, above.

e. Marion County Farm Bureau. The objector maintains that the City included too much land in the UGB in violation of Goal 14, failed to adequately coordinate with other jurisdictions in violation of Goal 2, and unnecessarily included prime farmland in violation of ORS 197.298.

   Commission Response: The City has acted coordinated it actions with other affected local governments consistent with Goal 2 and has justified its employment needs consistent with Goal 9 and Goal 14. See response to 1000 Friends objections, above.

ISSUE 2. Assuming that there was a need for additional industrial land, should the City have selected different land for inclusion in the UGB pursuant to ORS 197.298 and the locational factors in Goal 14?

a. Legal standard

Statewide Planning Goal 14 and ORS 197.298 require local governments, when amending a UGB, to identify a 20-year need for land, determine how much of that need can be accommodated within the current UGB, and, if there is a deficit, select the land to meet the deficit according to the statutory priorities. To the extent there is more suitable land in a particular category than is needed, the Goal 14 locational factors are used to determine which of those lands to add to the UGB. The Commission amended Goal 14 in 2005, and the amendments became effective during Woodburn's UGB review. Pursuant to the applicability provisions giving cities already engaged in a UGB review to choose which version of the goal to use, Woodburn elected to use the new version. [5]

[5] The applicability provisions provide:

Applicability of Goal 14 Amendments and Related Goal Definitions Adopted April 28, 2005

The version of Goal 14 employed by Woodburn states: "In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need." The local government may use the site need characteristics during the boundary location analysis to determine which study area lands are suitable. All of the suitable study lands are analyzed, weighed, and balanced through application of the Goal 14 boundary location factors.

The local government must also follow the priority system in ORS 197.298 in deciding which land to add to the UGB. This statute does not provide direction on how to use the statutory priorities with the Goal 14 location factors. Until 2009, a local government amending its UGB chose a boundary location methodology, and LCDC determined whether the City's methodology, assumptions, data, findings, and conclusions were reasonable and consistent with Goal 14 and ORS 197.298. In 2009, the Commission adopted UGB amendment rules (OAR chapter 660, division 24), which established a specific methodology for applying ORS 197.298 and the Goal 14 boundary location factors (see OAR 660-024-0060(1)). Woodburn's UGB amendment preceded the new rules, and division 24 does not apply to the City's amendment.

b. Summary of Local Actions

In its EOA, the City identified 13 industries as well as the site characteristics that are typical of those industries and are required for those industries to operate successfully. (Rec. at 1059-64. The site requirements for its target industries are extensively documented by the City. Rec. at 1278-87. Based on the expert opinion relied on by the City, a specific number of sites in a range of site sizes was identified as needed to meet the City's demonstrated need for employment opportunities based on the City's Economic Opportunities Analysis. (Record, Transcript p. 52, 55) The City found that to meet its demonstrated need for employment opportunities, it needed 42 sites in a land portfolio comprising a range of site sizes, which totaled 407 acres. Rec. at 1395.

The City found that the existing inventory of developable industrial/employment land within the current UGB did not have the site characteristics needed by targeted industries. Rec. at 1390.

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(1) Goal 14 and related Statewide Goal Definitions, as amended on April 28, 2005, are applicable to the adoption or amendment of a comprehensive plan or land use regulation, or a land use decision made under a non- acknowledged comprehensive plan or land use regulation, on and after April 28, 2006, except as follows:

(a) Local governments are authorized, at their option, to apply the goal and related definitions as amended on April 28, 2005, to amendments to a comprehensive plan or land use regulation, or a land use decision made under a non-acknowledged comprehensive plan or land use regulation, on or after June 28, 2005.

(b) Local governments that initiated an evaluation of the Urban Growth Boundary (UGB) land supply prior to April 28, 2005, and consider an amendment of the UGB based on that evaluation, are authorized, at their option, to apply Goal 14 and related definitions as they existed prior to April 28, 2005, to the adoption of such UGB amendment regardless of the adoption date of such amendment.

(2) For purposes of section (1)(b), above, "initiated" means that prior to April 28, 2005, the local government either:

3(a) Issued a public notice of a proposed plan amendment for the purpose of evaluation of the UGB land supply and, if necessary based on that evaluation, amendment of the UGB, or

(b) Received Land Conservation and Development Commission approval of a periodic review work task for the purpose of evaluation of the UGB land supply and, if necessary, amendment of the UGB.

Goal 14 requires local governments to demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary prior to expanding an urban growth boundary. The City evaluated its existing inventory to determine how much need could be accommodated in the existing UGB. It found that the 2002 UGB contained 23 suitable sites totaling 45 acres. These 23 sites are arrayed in the lower range of the needed sites portfolio. Rec. at 1394.

Woodburn created eight UGB study areas totaling 3,984 acres. The City applied the priority of lands provisions of ORS 197.298 and the Goal 14 location factors to determine the lands that would accommodate the identified need. The locational analysis considered, among other things, transportation impacts, constraints such as wetland and riparian areas, public facility availability and serviceability, and impacts on agricultural lands.

To fulfill its need for 19 sites AND the appropriate portfolio mix (mostly larger sites), the City identified land in the SWIR. The City found land than in this area could be configured to meet the needed portfolio: number of sites and range of sizes. The SWIR comprises 362 acres (net) or 409 acres (gross). Rec. at 1450.

Adding 409 acres (gross) in the SWIR enabled the City to satisfy its 2020 need for 42 total industrial sites in a portfolio of site sizes. Rec. at 1395.

c. Commission Findings, Reasoning and Conclusions

Goal 14 provides that local governments may "specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need." This is exactly what Woodburn did. The City established the importance of interstate access for target industries (Rec. at 64-66) and concluded that, "for many targeted industries, being within one or two miles of an interstate is much more preferable than being three or four miles away. Each mile from an interstate represents a significant increase in travel time, particularly if traffic has to pass through an urban area . . ." Land in the SWIR is within two miles of the Woodburn interchange.

The Commission finds that site characteristics such as parcel size, topography or proximity are properly viewed as attributes that are typical of a use and that the characteristics must have a meaningful connection with the requirements of the use.[6] A local government may identify such attributes for industrial and other employment land through development of the EOA. The

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6 LUBA has recently explained:

> "While 'typical' attributes would presumably include those attributes that are absolutely necessary to construct and operate a business, 'typical' attributes would also likely include those attributes that while not 'necessary' in the dictionary sense of the word, are nevertheless typically required for a business to operate successfully." . . . "[W]e believe that site characteristics are properly viewed as attributes that are (1) typical of the industrial or employment use and (2) have some meaningful connection with the operation of the industrial or employment use."

Friends of Yamhill County, et al v. City of Newberg, __ Or LUBA __ (slip op at 14-15), (LUBA No. 2010-015, August 26, 2010), *rev pending*.

Commission rejects any notion that a local government may not employ site suitability characteristics in its analysis where the characteristics are not strictly linked as essential in the sense it would not be possible to construct or operate the industrial or employment use without the attribute.

The City established that most target industries significantly benefit from or require direct access to I-5. It follows that the SWIR—which provides for targeted industries in a master planned industrial park setting—must also be located with direct access to I-5. For the reasons stated in ECONorthwest's April 26, 2005 memorandum (Rec. at 64-65), the Commission finds that the two-mile radius criterion is reasonable, is typical of employment uses identified by the City in its EOA, has a meaningful connection to the employment uses, and provides a measurable standard for the more general "direct access to I-5 criterion." Such measurable standards are permitted by the Goal 9 rule and Goal 14.

The Commission does not agree with testimony it heard that similar attributes for different communities must lead to the same conclusions. (Record, Transcript, pp. 57-61.) The Commission heard that McMinnville and Woodburn identified similar needs despite the fact that McMinnville lacks freeway accessibility in the way that Woodburn has. The Commission finds that both communities have the potential to attract firms in the same general industrial categories, but Woodburn is at a distinct competitive advantage due to its I-5 location. Woodburn's findings quote directly from the City of McMinnville's EOA in noting that: "McMinnville's primary disadvantage for economic development is its poor access to I-5 and congestion on commuting routes to the Portland Metropolitan Area." Rec. at 66.

The City's decision to provide industrial land with direct access to I-5 is consistent with the Goal 9 requirement for cities to identify their locational advantages. It would not serve the state's, the County's, or the City's economic development efforts to handicap Woodburn by limiting the City's ability to capitalize on its I-5 location. For this reason, the Commission concludes that Woodburn has appropriately balanced the need for industrial development and preservation of agricultural land near the I-5 interchange.

The Commission concludes that the City's findings related to compliance with the Goal 14 boundary location factors and ORS 197.298 priorities for UGB amendment, as found in the UGB Justification Report, are reasonable and supported by substantial evidence in the record. Rec. at 1383-84, 1413-47. As documented in the City's findings, Woodburn has included almost all lower priority exception areas. Rec. at 1416. Except for a few exception areas (which have been included), the existing UGB is surrounded by Class I and II agricultural soils. Rec. at 1417. Therefore, Woodburn must include "prime" agricultural soils to meet 20-year growth needs that cannot reasonably be accommodated on higher priority lands. The UGB expansion avoided all but one acre of Class I soils. Rec. at 1418. To reach two large concentrations of lower priority and buildable Class III soils in Study Areas 2 and 7, the City must extend streets and urban services through higher priority Class II soils. Rec. at 418-21. To provide suitable sites for master planned industrial parks and targeted industries, Woodburn must include flat, agricultural land within two miles of I-5. Rec. at 1378-79, 1392-93.

The City's findings with respect to the "Opus Northwest site," in Study Area 8, are extensive. This site has about 88 acres of buildable land, most of which has Class II soils. The Opus site is the closest of any possible industrial site to the North Marion County (Woodburn) I-5 interchange. The site can be immediately served by sanitary sewer and water facilities. The site is located next to developed industrial land, between the existing (2002) UGB and Butteville Road, a planned arterial street. Land to the west of Butteville Road with Class I and II soils was excluded from the UGB to minimize impacts on agricultural land, based on comments from the Oregon Department of Agriculture. Rec. at 1445. The City has detailed how public facilities and services can be extended from the existing UGB to serve the site. Rec. at 775-873.

The Commission concludes that the City established that inclusion of the Opus site is necessary for the construction of Butteville Road, a planned arterial shown on the Transportation System Plan, to urban standards, which would allow the SWIR and other properties to access I-5 from the west. The City and ODOT have made it clear, throughout the record, that having access to the freeway from the west side is necessary due to the lack of capacity at the east access to the interchange. Rec. at 1380-81. The City established both that the Opus site satisfies all of the City's site requirements for targeted industries and that development of this site is necessary to provide access and services to the remainder of the SWIR. For these reasons, the Commission concludes that the City has justified inclusion of the Opus site under ORS 197.298(3)(c) and Goal 14.

The City explains why it included land within Study Areas 7 and 8 in the UGB Justification Report. Rec. at 1420-22:

> Study Areas 7 (Southwest) and 8 (West) also have predominantly Class II agricultural soils. However, SA 7 has by far the largest Class III soil area, which includes approximately 185 acres located generally south of Parr Road and east of Interstate 5. Class II soils in SA 7 and 8 separate this Class III area from the 2002 UGB. Most of this Class II and III soils area is designated for industrial use within the SWIR, although a portion to the east is designated for residential use. To provide access to I-5 for Class III soils within SA-7, Butteville Road must be improved to arterial standards to connect with the planned South Arterial. For this to happen, land in SA-8 between the UGB and Butteville Road must develop and help pay for needed road and utility improvements. Evergreen Drive, which will be extended by private developers to the 2002 UGB line next year, also must be improved to arterial street standards on Class II soils to connect with Parr Road and the South Arterial. In addition, urban sewer, water and storm drainage services must be constructed through intervening areas with Class II soils to allow development of lower priority Class III areas.
>
> The Class III soils found on the southern portion of Study Area 7 continue to the south and southwest of this study area. Although the City did include one 46-acre primarily Class III parcel located south of the original Study Area 7, it did not include additional areas of predominantly Class III soil further to the south and southwest, for two reasons.
>
> First, the two Class III parcels located between the 2005 UGB and I-5 are not needed at this time for industrial expansion. Although these parcels meet some SWIR siting criteria,

their development would not facilitate extension of the South Arterial, which is needed to provide direct access to I-5 from SWIR parcels to the north. Woodburn did not add these parcels to the UGB to meet the siting needs of target industries.

Second, the large concentration of Class III soils located further to the south extend beyond the two-mile (from the I-5 Interchange) locational need limit established by the Council for inclusion of parcels within the SWIR. This land is too far from the I-5 Interchange to be attractive to targeted industrial firms. Inclusion of this land would have meant that other more suitable land closer to the interchange and urban services could not be justified (on a strict need basis) for inclusion within the UGB. Further, inclusion of parcels with Class III soils south of the expanded SA 7 would have resulted in an inefficient urban form, would not have met the City's industrial siting need criteria, and would have increased substantially the cost of providing urban services.

The Council also considered the possibility of including land south of the SWIR to meet residential land needs. The Council rejected this option for several reasons:

- First, providing residential land directly abutting the SWIR would have created unnecessary land use conflicts, which would be inconsistent with the siting needs of target industries, ORS 197.712, and the Goal 9 administrative rule provisions requiring minimization of conflicts between industrial and residential development.

- Second, providing new residential land immediately south of the SWIR would be contrary to identified livability needs. The Council has carefully selected residential areas to encourage livable neighborhoods in nodal development centers and near the golf course. Providing residential land south of planned industrial development would be inconsistent with the City's goal of providing livable neighborhoods. Moreover, extension of urban services further to the south would increase housing costs in a manner inconsistent with Statewide Planning Goal 10.

- Third, the Council recognized livability policies in the Marion County Growth Management Framework Plan that discourage cities growing together. If residential growth were encouraged south of the SWIR, the mandated buffer between the cities of Gervais and Woodburn would be reduced. If the UGB were extended south of the SWIR to accommodate residential growth needs, then the new residential area would be separated from the neighborhood commercial areas, parks and schools by incompatible industrial development.

Woodburn has no large concentrations of Class III soils adjacent to the 2002 UGB. In Study Areas 2, 7 and 8, maximum efficiency of land use requires that intervening Class II soils be efficiently developed, to allow full development of more distant areas with Class III soil concentrations.

In other UGB Study Areas, Class II soils predominate, and there are no large concentrations of buildable Class III soils. Unlike the land included within the 2005 Woodburn UGB, there is no need to develop Class I and II lands in Study Areas 1, 3, 4, 5, or 6 to achieve urban efficiency

objectives or provide services to areas with predominantly Class III agricultural soils. In other Study Areas, no identified urban land use need would be served by extending urban services through Class I and II soils to reach relatively small, linear configurations of unbuildable Class IV-VI soils.

In summary, Study Area 8 is comprised predominantly of Class I and II soils. Study Area 7 is comprised primarily of Class II and III soils, with a large concentration of Class III soils in the southern part of the Study Area. As shown on the Woodburn Transportation System Plan (Rec. at 877), Butteville Road and the South Arterial must be constructed to serve the entire SWIR area; thus, both of these planned arterials must pass through Class II soils to serve areas with Class III soils. Development of the Opus site is necessary to pay for improvement of Butteville Road to arterial street standards. Construction of the Butteville Road and South Arterials is necessary to serve industrial land on Class II and III soils in Study Areas 7 and 8. Woodburn has prepared detailed drawings showing how sanitary sewer, water and storm drainage facilities will be provided to UGB expansion areas. As shown on the Woodburn Public Facilities Plan, to reach lower priority Class III soils in Study Area 7, public facilities must be extended through Class II soil areas in Study Areas 7 and 8. Rec. at 775-873.

d. Conclusion

The City of Woodburn has utilized all suitable exception lands for its 2005 UGB expansion. Rec. at 1416. The remaining lands are all agricultural lands in soil classes 1-IV. As required by ORS 197.298, the City has avoided the agricultural lands with the highest soil classifications to the extent possible. The Commission also concludes that the City has demonstrated compliance with the Goal 14 boundary location factors, and has provided an adequate factual base for its decision to include Study Areas 7 and 8 west of I-5 in the UGB instead of Study Area 6 east of I-5, and to locate the SWIR on both sides of I-5.

e. Objections

1,000 Friends of Oregon and the Marion County Farm Bureau objected that land that is predominantly prime Class II soils west of Interstate 5 (Study Areas 7 and 8, also known as "the Opus site") was included for industrial use, instead of land with Class III soils east of I-5, south of Parr Road between Boones Ferry Road and I-5 (Study Area 6). The objectors stated that the City's reasons were arbitrary and not supported by findings with an adequate factual base. The City's reasons for including this area were:

1. The lands to the west of Interstate 5 are needed to provide access to I-5 from the west side of the I-5 interchange via Butteville Road; and
2. The southern parcels east of I-5 were more than two miles from the I-5 interchange, which did not meet the site characteristics identified by the City in its Economic Opportunities Analysis.

(August 23, 2006 1000 Friends of Oregon objection letter, pp. 8-10; August 22, 2006 Marion County Farm Bureau objection letter, pp. 2-3; January 13, 2007 1000 Friends of Oregon exceptions letter, pp. 8-9)

Commission Response: The Commission finds that the lands south of Parr Road (Study Area 6) are not suitable for the demonstrated need for employment opportunities established by the City's economic opportunities analysis. That analysis establishes that in order to provide employment opportunities that are likely to meet the City's long-term needs, the City must provide large tracts that are within two miles of the I-5 interchange. Rec. at 1379. In addition, in order to provide access to the west side of the I-5 interchange, lands to the west of I-5 must be included in the expansion area. ORS 197.298(3)(b).

III. OVERALL CONCLUSIONS

A. Work Task 2 - "Commercial and Industrial Lands Inventory"

The Department referred Task 2 to the Commission because of its relationship to the UGB amendment. The City has conducted a thorough inventory of vacant, partially vacant, and potentially redevelopable commercial and industrial land within the existing UGB in response to this work task. The Commission finds that the City's inventory complies with applicable goals, rules, and statutes.

B. UGB Amendment

The City of Woodburn amended its UGB to include 979 acres for residential, commercial, and industrial uses. The amended UGB contains 546 acres for residential uses (including public and institutional uses), 24 acres for commercial uses, and 409 acres for industrial uses, of which 200 acres are exception lands and 779 acres are resource lands. The Commission finds that the City's UGB amendment complies with the applicable goals, rules, and statutes.

ORDER

THEREFORE, IT IS ORDERED THAT:

1. The City's UGB amendment as contained herein of Ordinance 2391 is approved.
2. Periodic Review Task 2, Commercial and Industrial Lands Inventory, is approved.

DATED THIS _____ DAY OF January, 2011.

FOR THE COMMISSION:

_____

Richard 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 provision 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.

DRAFT

FILED: September 8, 2010

IN THE COURT OF APPEALS OF THE STATE OF OREGON

1000 FRIENDS OF OREGON;
FRIENDS OF MARION COUNTY;
LOLITA CARL; KATHLEEN CARL;
DIANE MIKKELSON; CARLA MIKKELSON;
and MARION COUNTY FARM BUREAU,

Petitioners,

v.

LAND CONSERVATION AND DEVELOPMENT COMMISSION;
OPUS NORTHWEST, LLC; CITY OF WOODBURN;
FESSLER FAMILY, LLC; MARION COUNTY;
AND RENAISSANCE CUSTOM HOMES, LLC,

Respondents.

Land Conservation and Development Commission
07WKTASK001720
A135375

Argued and submitted on May 28, 2009.

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

Robin Rojas McIntyre, Assistant Attorney General, argued the cause for respondent Land Conservation and Development Commission. With her on the brief were Hardy Myers, Attorney General, and Mary H. Williams, Solicitor General.

Corinne C. Sherton argued the cause for respondent Opus Northwest, LLC. With her on the brief was Johnson & Sherton, PC.

N. Robert Shields argued the cause for respondents City of Woodburn and Marion County. With him on the joint brief was Jane Ellen Stonecipher.

No appearance for respondent Fessler Family, LLC.

No appearance for respondent Renaissance Custom Homes, LLC.

Before Haselton, Presiding Judge, and Armstrong, Judge, and Rosenblum, Judge.

HASELTON, P. J.

Reversed and remanded for reconsideration.

HASELTON, P. J.

Petitioners seek judicial review of an order of the Land Conservation and Development Commission (LCDC) approving the City of Woodburn's amendment of its urban growth boundary (UGB) to include an additional 409 acres for industrial uses.[1] Petitioners' myriad contentions on review pertain to two basic issues. *First*, did the city include more industrial land in its UGB than was necessary to accommodate its needs over the 20-year planning period in violation of Statewide Land Use Planning Goals 9 and 14? *Second*, assuming that there was a need for the additional industrial land, should the city have selected different properties for inclusion in the UGB pursuant to ORS 197.298 and the locational factors in Goal 14? For reasons that we will explain, we conclude that the LCDC's order is inadequate for judicial review with respect to its treatment of the first of those two issues, and, accordingly, reverse and remand the order for reconsideration, which, in turn, obviates the need to address the second issue.

We begin by describing the legal framework that provides the necessary context for understanding the parties' contentions in this case. "Oregon's statewide land use planning goals, adopted by [LCDC], set out broad objectives for land use planning in Oregon." *Save Our Rural Oregon v. Energy Facility Siting*, 339 Or 353, 361, 121 P3d 1141 (2005). In this case, two goals--each designed to promote a different policy--pertain to the parties' dispute concerning the expansion of the city's UGB.

Goal 9 pertains to economic development and is designed "[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." Towards that end, it provides that comprehensive plans shall "[p]rovide for *at least* an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies[.]" (Emphasis added.)

Among Goal 9's implementing rules is OAR 660-009-0025, which prescribes measures for the identification and designation of lands for industrial uses. Pursuant to that rule, a comprehensive plan must not only "*identify* the approximate number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses to implement plan policies," OAR 660-009-0025(1) (emphasis added), but also "*designate* serviceable land suitable to meet the site needs identified in section (1) of this rule," OAR 660-009-0025(2) (emphasis added). Generally, "the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period." *Id.*

Goal 14, which concerns urbanization, is designed "[t]o provide for an orderly and efficient transition from rural to urban land use."[2] Specifically, the goal provides that the establishment and change of a UGB shall be based on two "need factors":

"(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

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

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

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

Generally, and consistently with Goal 14, "a local government is not permitted to establish an urban growth boundary containing more land than the locality 'needs' for future growth." *City of Salem v. Families For Responsible Govt*, 64 Or App 238, 243, 668 P2d 395 (1983), *rev'd and rem'd on other grounds*, 298 Or 574, 694 P2d 965 (1985).

Further, this case implicates *both* Goal 9 and Goal 14. As we have noted in previous cases, "[t]here is, of course, no doubt that different statewide planning goals promote different land use values and, necessarily, there is some operational tension among them." *Port of St. Helens v. LCDC*, 165 Or App 487, 496, 996 P2d 1014, *rev den*, 330 Or 363 (2000). As pertinent in this case, in *Benjfran Development v. Metro Service Dist.*, 95 Or App 22, 26, 767 P2d 467 (1989), we reasoned that economic development as contemplated in Goal 9 cannot preempt the requirements of Goal 14.[(3)] In other words, even if a local government designates a needed supply of industrial land for use over the 20-year planning period consistently with Goal 9, an amendment to the UGB cannot be accomplished without demonstrating compliance with the requirements of Goal 14.

With that background in mind, we return to the undisputed, procedural facts of this case. In the late 1990s, the city began the periodic review process to update its comprehensive plan and other planning documents through 2020--that is, the end of the planning period.[(4)]

As part of that periodic review process, the city completed various work tasks. In addition, the city amended its UGB. That amendment expanded the UGB by over 900 acres, including 409 acres for industrial uses.

The expansion related to the 409 acres for industrial uses was predicated on the city's identification of an economic development strategy during the periodic review process to target specific high-wage industries that might reasonably locate in the city because of its comparative advantages over other locations. In developing that strategy, the city completed various studies and analyses, including those related to population and employment projections, economic opportunities, economic development strategies, industrial land needs, and site requirements for the targeted industries.

In the economic opportunities analysis, the city examined various factors affecting the city's comparative ability to attract industry (*e.g.*, location, natural resources, buildable lands, labor force, housing, transportation). Based on those factors, as well as national and local trends, the city determined that it had a comparative advantage in attracting 13 specific industries.[(5)] The city then identified the site and building requirements for those targeted industries. Ultimately, the city determined that, to further its economic development strategy, it needed 42 total additional industrial sites, which ranged in size from less than two acres to 100 or more acres.[(6)]

In the Woodburn UGB Justification Report, to which LCDC ultimately referred in the order on review, the city explained the reasons that it needed the additional industrial sites:

"Goal 14, Land Need factor (2), recognizes that changes to a UGB may be based on [a] demonstrated need for employment opportunities.

"* * * * *

"The employment land needs analysis in ECONorthwest's 'Site Requirements for Woodburn Target Industries' (October 2003) concluded that about 370 acres would need to be developed for basic employment uses to accommodate a mid-range need of 7,140 new employees between 2000 and 2020, based on employee-per-acre ratios. However, to attract targeted industries Woodburn *must provide choice among* and an adequate inventory of suitable sites. Under the site suitability method, it is possible that some sites may not fully develop during the planning period, either because a portion of the site will be held for future development or because a reserved site will not be selected by a targeted industry. As noted below, the proposed Plan includes measures to ensure that designated industrial parcels remain in agricultural use until a targeted employer needs them. Plan measures also ensure that such parcels cannot be re-designated for commercial use.

"Woodburn's employment land needs are designed to meet ORS 197.712 and the Goal 9 Rule (OAR Chapter 660, Division 009) requirements that cities 'identify the types of sites that are likely to be needed by industrial and commercial uses which might expand or locate in the planning area.' To be clear, industrial site needs are not based on floor-area ratios or employee per acre ratios. Table 1[, which identifies the need for 42 sites,] includes a select group of sites that have a reasonable likelihood of meeting the needs of targeted employers. This group of sites totals slightly less than 500 acres."

(Footnotes omitted; underscoring in original; emphasis added.) In sum, the city determined that the 42 sites were necessary to provide market choice and an adequate inventory of land to accommodate the siting requirements of the targeted industries.

Petitioners filed objections to the UGB amendment with the Department of Land Conservation and Development (DLCD). Although Petitioner 1000 Friends of Oregon (Friends) made several specific and pointed objections concerning the UGB amendment, it summarized its position by contending that

"[m]uch of Woodburn's UGB expansion is based on a very aggressive industrial development strategy. * * * It has included far more industrial land within its amended boundary than is needed to accommodate that projected industrial job growth, *more industrial land than is needed to accommodate its target industries, and more industrial land than it expects to develop over the 20-year planning period.*"

(Emphasis added.)

Friends of Marion County succinctly elaborated on that general concern by asserting that the targeted industries approach utilized by the city "inflates the number of acres to be included in the proposed UGB expansion for industrial job growth" and "does not address the demonstrated need for any additional industrial land to be included in the proposed UGB expansion as required by Goal 14." Further, Friends of Marion County noted that the city included more than a 20-year supply of industrial land in its UGB amendment, in violation of Goal 9 and its implementing rules. After receiving those objections, DLCD's director referred the UGB amendment to LCDC for consideration.

In the findings that accompanied its order, LCDC began by describing the expansion of the UGB to include land for industrial uses:

"The city included 409 acres of land in the amended UGB for industrial uses. * * * The city performed a 2020 employment projection, an Industrial Land Needs Analysis, and a refined Target Industry Site Suitability as well as an Economic Opportunities Analysis (EOA) and Economic Development Strategy (EDS). In these documents, the city established the need for 409 acres of industrial land, and the analyses address site sizes, types, and locations as required by OAR 660-009-0015."[7]

(Record citations omitted.) LCDC then addressed petitioners' objections. As pertinent here, LCDC stated that the Woodburn UGB Justification Report

"identif[ied] the total number of sites required for all the site size needs, and [found] 42 total sites needed for all targeted industries. According to 1000 Friends, this is an oversupply of sites that leads to more land than is justified. *However, the city has designated these sites* to provide for the required short-term supply as well as *to provide market choice among sites. The Commission finds that this is a key component of a successful industrial development strategy, and is required by OAR 660-009-0025.* In addition, the objection states that the city acknowledges that 'not all of the industrial land proposed for inclusion is expected to develop by 2020.' This is due to the fact that industrial users often choose to purchase a site larger than their immediate need in order to ensure that they have adequate land for future expansion, and the statement referred to by the objector is recognition of that fact. Additionally, OAR 660-009-[0]025(2) specifies that plans must designate serviceable land suitable to meet the site needs identified in Section (1) of this rule. Except as provided for in Section (5) of this rule, the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period.

"* * * * *

"In conclusion, the Commission finds that Woodburn's plans for economic development comply with the Goal 9 and Goal 14 rules. The city's employment projection and land needs assessment are reasonable, for reasons explained in these findings and more particularly described in the Woodburn UGB Justification Report[.]"

(Emphasis added.)

Significantly, although LCDC discusses Goal 9 and its implementing rules and concludes that the UGB amendment complies with both Goals 9 and 14, LCDC provided essentially no reasoning as to that conclusion with respect to Goal 14. In particular, LCDC offered no explanation concerning the reasons that the need factors of Goal 14 are satisfied under the circumstances of this case.

Ultimately, LCDC issued an order affirming the UGB amendment.[8] Petitioners sought judicial review of that order in this court.

On review, petitioners raise three assignments of error. The first concerns the propriety of the UGB amendment. The remaining assignments concern the city's selection of specific properties for inclusion in the UGB.

Reduced to its core, petitioners' first assignment of error pertains to a single, basic legal issue--that is, whether the city included more industrial land in the UGB than it would need over the 20-year planning period in violation of Goals 9 and 14. With regard to that legal issue, petitioners acknowledge the legitimacy of a "targeted industries" approach to economic development because "there is nothing inherent in [that approach] that requires exceeding the 20-year land supply." Nonetheless, they contend on review, as they did in their objections to DLCD and before LCDC, that the city's application of a targeted industries approach in this case resulted in a UGB amendment that includes "industrial lands far exceeding the 20-year planning period described by law."

Further and relatedly, petitioners assert that, although LCDC "justifies this oversupply by stating that it is required by OAR 660-009-0025 * * * to provide market choice among sites," "there is nothing in

Goals 14 or 9 that allows the 20-year UGB land supply to be exceeded to provide for market choice." (Internal quotation marks omitted.) According to petitioners, that justification is legally insufficient.

We need not address the substance of petitioners' challenges because, as amplified below, we conclude that, in certain essential respects, LCDC's order does not provide an adequate basis for judicial review of those contentions. *Marion County v. Federation For Sound Planning*, 64 Or App 226, 237, 668 P2d 406 (1983).

In *Federation For Sound Planning*, we held, in part, that

"[a] petitioner seeking judicial review under the terms of [ORS 197.650] must base the arguments on the objections (or the comments) filed with DLCD; those objections will therefore frame the issues on appeal. Unless we have [LCDC's] decisions on those issues before us, along with the bases for those decisions, we cannot perform the judicial review functions required by ORS 183.482."

64 Or App at 237. Further, we noted that our holding in that regard "simply extends to LCDC orders a rule that has long applied to the orders of other administrative agencies"--that is, the rule of substantial reason. *Id.* at 237 n 10. *See* Freeman v. Employment Dept., 195 Or App 417, 421, 98 P3d 402 (2004) (providing that, pursuant to ORS 183.482(8)(a) to (c), "[w]e review the challenged finding for substantial evidence in the record and the legal conclusion for substantial reason and errors of law"); *see also Drew v. PSRB*, 322 Or 491, 500, 909 P2d 1211 (1996) ("[A]gencies also are required to demonstrate in their opinions the *reasoning* that leads the agency from the *facts* that it has found to the *conclusions* that it draws from those facts." (Emphasis in original.)).

In this case, as previously described, the basic objection before DLCD was that the city

"included far more industrial land within its amended boundary than is needed to accommodate that projected industrial job growth, more industrial land than is needed to accommodate its target industries, and more industrial land than it expects to develop over the 20-year planning period."

That objection embodied a fundamental concern that, because at least some of the 409 acres of land designated for industrial use was included to provide market choice and would not be developed during the 20-year planning period, the city included more land than was needed for industrial development over the planning period in violation of Goals 9 and 14.

In response, LCDC concluded that "the city established the need for 409 acres of industrial land" and that the inclusion of that acreage in the UGB "compl[ied] with the Goal 9 and Goal 14 rules." LCDC's justification for those conclusions appears to be that the 409 acres was needed, in part, "to provide market choice among sites." That justification is inadequate to permit reasoned judicial review for two basic reasons--the first pertaining to Goal 9 and the second to Goal 14.

First, with respect to Goal 9, LCDC's mere reference to "market choice" is insufficient to explain the reason that the city's UGB expansion in this case is consistent with that goal. Although LCDC may be correct that, in the abstract, "market choice" can be "a key component of a successful industrial development strategy" as required by OAR 660-009-0025, "market choice" is an infinitely pliable and elastic term--and all forms and degrees of market choice are not necessarily consistent with Goal 9. As an extreme example, it is unlikely that a local government that sought to target a single industry with a projected 10-acre site need, could, consistently with Goal 9 and its implementing rules, designate hundreds of 10-acre industrial sites and amend its UGB accordingly simply because it wanted to provide

optimally attractive "market choice." Bluntly, "market choice" without amplification is a label without reasoning. Here, given the variety of the industries that the city targeted and the diversity and multiplicity of the sites that the city designated, it is incumbent on LCDC to cogently explain the reasons that the degree of market choice employed by the city in this case is consistent with the requirements of Goal 9 and OAR 660-009-0025.

Second, with respect to Goal 14, LCDC concluded, summarily, that the city established a need for 409 acres and that the UGB amendment was consistent with that goal. However, despite the fact that, generally, "a local government is not permitted to establish an urban growth boundary containing more land than the locality 'needs' for future growth," *Families For Responsible Govt*, 64 Or App at 243, LCDC did not explain the reasons *why* a UGB that includes more industrial land than will be developed during the planning period is consistent with Goal 14. In fact, as previously described, LCDC does not refer to or explain how the Goal 14 need factors are satisfied in this case. Further, as we have previously emphasized, compliance with Goal 9 does not necessarily establish compliance with Goal 14. *Benjfran Development*, 95 Or App at 26. Here, because petitioners objected to the UGB amendment asserting that it violated both Goal 9 and Goal 14, it is incumbent on LCDC to explain the reasons that, even if the UGB amendment is consistent with the economic development principles in Goal 9, it is also consistent with the requirements for urbanization specified in Goal 14.

In sum, because LCDC did not adequately explain the reasons that the UGB amendment--which included more industrial land than will be developed during the planning period so that the city could provide for market choice among sites--was consistent with both Goals 9 and 14, its order failed to respond to petitioners' objections and is inadequate for judicial review as it pertains to petitioners' first assignment of error concerning the propriety of the UGB amendment. Accordingly, we reverse and remand the order for reconsideration. That disposition obviates the need to address petitioners' remaining assignments of error, which concern the city's selection of specific properties for inclusion in the UGB and are ultimately derivative of the first assignment of error.

Reversed and remanded for reconsideration.

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1. A city, such as Woodburn, "with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres * * * shall submit the amendment or designation to [LCDC] in the manner provided for periodic review * * *." ORS 197.626. In turn, LCDC's resulting "order may be appealed to the Court of Appeals in the manner provided in ORS 183.482"--that is, the provision in the Oregon Administrative Procedures Act concerning review of contested cases. ORS 197.650(1).

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2. Goal 14 was amended on April 28, 2005. Those amendments were not effective until April 28, 2006. Specifically, the applicability provisions of the Goal 14 amendments provide, in part:

"(1) Goal 14 and related Statewide Goal Definitions, as amended on April 28, 2005, * * * are applicable to the adoption or amendment of a comprehensive plan or land use regulation, or a land use decision made under a non-acknowledged comprehensive plan or land use regulation, on and after April 28, 2006, except as follows:

"(a) Local governments are authorized, at their option, to apply the goal and related definitions as amended on April 28, 2005, to amendments to a comprehensive plan or land use regulation, or a land use decision made under a non-acknowledged comprehensive plan or land use regulation, on or after June 28, 2005.

"(b) Local governments that initiated an evaluation of the [UGB] land supply prior to April 28, 2005, and consider an amendment of the UGB based on that evaluation, are authorized, at their option, to apply Goal 14 and related definitions as they existed prior to April 28, 2005, to the adoption of such UGB amendment regardless of the adoption date of such amendment."

In this case, the city applied the version of Goal 14 that became effective in April 2006 because it appears to have understood that those amendments became effective on June 28, 2005, before its decision in October of that year. Although the city misunderstood the effective date of the amendments, its decision was predicated on the version of Goal 14 that became effective in April 2006, and we understand the parties to agree that the city *elected* to apply the amended version of the goal. For that reason, in this opinion, we refer to the amended version of Goal 14.

Further, after the city amended its UGB and after LCDC issued its order, the Department of Land Conservation and Development promulgated rules to interpret the amended version of Goal 14. *See* OAR 660-024-0000 - 660-024-0080. In light of our disposition, we express no opinion concerning whether, or how, those rules inform the merits of the parties' contentions on review.

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3. Specifically, in *Benjfran Development*, we rejected the argument that "Goal 9 require[s] local governments to treat economic development as a *per se* need to expand their UGBs and that developmental objectives either supersede the first two [need] factors of Goal 14 or are incorporated into the second as the prevailing consideration," reasoning that,

"[w]hatever the full relationship may be between the statutory and regulatory economic development provisions and the Goal 14 need factors, the former do not completely preempt the latter, as petitioner seems to postulate. Under petitioner's theory, local governments would be required to find a need to urbanize land to accommodate every developmental proposal, regardless of the adequacy of currently urbanized or urbanizable land to serve the economic development requirements of the locality. Petitioner suggests no reason why its proposal answers a need or why the current economic circumstances within Metro's UGB leave a need to be answered. Stated differently, petitioner's argument can succeed only if Goal 9, [the statutes related to economic development,] or the implementing provisions which localities must adopt pursuant to the statutes mandate the approval of every land use proposal with potential beneficial economic effects. We hold that the argument does not succeed."

95 Or App at 25-26 (emphasis omitted).

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4. "The purpose of periodic review is to ensure that acknowledged comprehensive plans and land use regulations continue to achieve the statewide planning goals." *Hummel v. LCDC*, 152 Or App 404, 409, 954 P2d 824, *rev den*, 327 Or 317 (1998). *See also* ORS 197.628 - 197.650 (describing the periodic review process). The periodic review process consists of two phases.

"The first phase involves 'the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations.' ORS 197.633(1). The second phase is 'the completion of work tasks outlined in the work program.' *Id.*"

City of West Linn v. LCDC, 201 Or App 419, 423, 119 P3d 285 (2005).

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5. The city identified the following targeted industries: (1) "Printing and Publishing"; (2) "Stone, Clay & Glass"; (3) "Fabricated Metal"; (4) "Industrial Machinery & Equipment"; (5) "Electronic and Electric Equipment"; (6) "Transportation Equipment"; (7) "Trucking & Warehousing"; (8) "Wholesale Trade: Durables"; (9) "Wholesale Trade: Nondurables"; (10) "Nondepository Institutions"; (11) "Business Services"; (12) "Health Services"; and (13) "Engineering & Management."

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6. Specifically, the city itemized the sites as follows: 1 site of 100 or more acres; 1 site of 50 to 100 acres; 3 sites of 25 to 50 acres; 5 sites of 10 to 25 acres; 7 sites of 5 to 10 acres; 10 sites of 2 to 5 acres; and 15 sites of less than 2 acres.

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7. OAR 660-009-0015 requires that certain local governments "must review and, as necessary, amend their comprehensive plans to provide economic opportunities analyses containing" particular information.

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8. LCDC's order also approved a periodic review work task concerning the city's commercial and industrial lands inventory.

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

IN THE MATTER OF PERIODIC REVIEW	)	**APPROVAL**
TASK 2 AND THE AMENDMENT OF	)	**ORDER**
THE URBAN GROWTH BOUNDARY	)	**07-WKTASK-001720**
FOR THE CITY OF WOODBURN	)	

This matter came before the Land Conservation and Development Commission (Commission) on January 25, 2007 as a referral by the Director of the Department of Land Conservation and Development (department) of a completed periodic review work task and an urban growth boundary (UGB) amendment submitted by the City of Woodburn (city). The city submitted Task 2, "Commercial and Industrial Lands Inventory," of its approved work program to the department for review pursuant to ORS 197.633 and OAR chapter 660, division 025. The city also submitted the amendment of its UGB to the department for review pursuant to ORS 197.626 and OAR 660-025-0175. The Commission, having fully considered the written record listed in Exhibit A, including the city's Task 2 and UGB amendment submittal, and the oral presentations of the objectors, the city, and the department, now enters the following findings, conclusions, and order:

Recitals

1. On August 3, 2006, the department received Ordinance 2391 from the city. The department considered the submittal complete on August 4, 2006.
2. Between August 22 and August 24, 2006, the department received objections from 10 objectors. The objections were timely filed.
3. On November 30, 2006, the department referred Task 2 and the UGB amendment to the Commission by Order 001714 and notified the city and the objectors.
4. On January 25, 2007, the Commission held a hearing on the Task 2 and an UGB amendment.

Conclusion

Based on the foregoing recitals, the findings and conclusions contained in Exhibit B, and the record of this matter, the Commission hereby approves the city's Task 2 and UGB amendment submittal, pursuant to OAR 660-025-0150 and 660-025-0160.

Order

THEREFORE, IT IS ORDERED THAT:

1. The city's UGB amendment as contained in Exhibit 2 of Ordinance 2391 is approved.
2. Periodic Review Task 2, Commercial and Industrial Lands Inventory, is approved.

DATED THIS 14th DAY OF FEBRUARY, 2007.

FOR THE COMMISSION:

Lane Shetterly, 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 provision 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.

EXHIBIT A
LCDC RECORD

1. DLCD staff report with responses to objections dated January 3, 2007

2. *Attachment A:* City of Woodburn correspondence identifying material in the record responsive to objections (11/13/06)

3. *Attachment B:* UGB and Task 2 submittals
   a. City Ordinance No. 2391, and the following exhibits thereto:
      - 1-A Woodburn Economic Development Strategy
      - 2 Woodburn Comprehensive Plan/UGB Map
      - 4-A Woodburn Economic Opportunities Analysis
      - 4-B Woodburn Population and Employment Projections
      - 4-C Woodburn Occupation/Wage Forecast
      - 4-E Woodburn Buildable Lands Inventory
      - 4-F Woodburn Residential Land Needs Analysis
      - 4-H Site Requirements for Woodburn Target Industries
      - 5-B UGB Justification Report

   b. County Ordinance No. 1233

4. *Attachment C:* Objections
   1. Opus NW
   2. Renaissance Homes
   3. Tukwila Partners
   4. Fessler family
   5. 1000 Friends of Oregon
   6. Friends of Marion County
   7. Marion County Farm Bureau
   8. Diane and Carla Mikkelson
   9. Lolita and Katherine Carl
   10. Jerry Mumper

5. *Attachment D:* City of Woodburn Periodic Review Work Program Summary

6. *Attachment E:* DLCD Order 001714

7. *Attachment F:* Statement of the record

7. *Attachment G:* Relevant rules from OAR 660, Division 9

8. Any valid exceptions to the department's report and response from the department.

EXHIBIT B
LCDC FINDINGS OF FACT AND CONCLUSIONS

(Note that attachments referred to in this Exhibit are listed in Exhibit A)

I. BACKGROUND

A. History of Action

On August 3, 2006, the City of Woodburn properly submitted Periodic Review Tasks 1–4 and 7–11 and a UGB Amendment. The department approved Tasks 1.a, 1.b, 3.a, 4, and 7–10, partially approved and remanded portions of Task 3.b (TSP), and referred to the Commission Task 2 and the UGB amendment (Order 001714).

Task 2, "Commercial and Industrial Lands Inventory," was approved as part of the city's periodic review work program on July 30, 1997. The UGB amendment was not part of the city's periodic review work program.

B. The Submittal

1. Commercial Lands: The land included for commercial uses include a small area adjacent to the golf course and two larger areas, one on the west side of 99W and one located in the southwest quadrant that is planned as part of a larger nodal development. The relatively small amount of commercial land in the amended UGB has been justified by the city as a way to ensure the redevelopment and infill potential of the downtown area and Highway 99W corridor. Both of these existing commercial areas are considered to be underutilized.

2. Residential Lands: The city included 546 acres of land in the amended UGB for residential uses, including public and institutional uses. The lands are located in the north, northwest, south, southwest, and east. The lands in the northwest, east and south areas are primarily exception lands, and the lands located in the north and southwest areas are primarily resource land. The residential need analysis, efficiency measures, and locational analysis conducted by the city are summarized in the "Woodburn UGB Justification Report" (Attachment B, pp. 27-79). The department has reviewed the residential needs analysis, efficiency measures, locational analysis, and other supporting documents contained in the record and approved the relevant periodic review task.

3. Industrial Lands: The city included 409 acres of land in the amended UGB for industrial uses. The lands are located in the northeast, southeast, and southwest part of the UGB. The largest industrial area in the amended UGB is the Southwest Industrial Reserve (SWIR), which is comprised of large parcels bounded on the south and west by Butteville Road. The city performed a 2020 employment projection (Attachment B, pp. 20-22), an Industrial Land Needs Analysis, and a refined Target Industry Site Suitability (Attachment B, pp.23-27) as well as an Economic Opportunities Analysis (EOA) and Economic Development Strategy (EDS) (Attachment B, pp. 10-12). In these documents, the city established the need for 409 acres of industrial land, and the analyses address site sizes, types, and locations as required by OAR 660-009-0015.

The city applied the Goal 14 boundary location factors and ORS 197.298 to determine the lands that would accommodate the identified need within the priority framework. The Woodburn UGB Justification Report, Part III, contains the UGB locational analysis. The city created eight UGB Expansion Study Areas, consisting of 3,984 acres, for the purpose of evaluating the land around Woodburn in accordance with the locational factors and Goal 14 priorities. The UGB amendments were developed based on the results of the locational analysis, which also considered transportation impacts, constraints such as wetland and riparian areas, public facilities availability and serviceability, and impacts on abutting agricultural lands.

II. Objections

The department received 10 objections to the City of Woodburn UGB amendment. The objections have been separated into 2 categories: Residential objections and Industrial objections.

A. Residential Objections

1. Renaissance Homes (Perkins Coie). This objection asserts the city misconstrued ORS 197.298 and failed to include the eastern part of OGA Golf Course despite identified "high-end" housing need.

Commission Findings: The city has exhaustively documented the reasons for not including the subject area noted in the objection. Primary among those reasons is that the soils are almost entirely Class I. This makes the subject area the lowest priority for inclusion pursuant to ORS 197.298. Furthermore, the city found that the identified need for high-end housing could be met on other lands of higher priority.

2. Tukwila Partners (Garvey Schubert Barer). This objection maintains the city failed to include an adequate amount of residential land and erroneously failed to include 277 acres around the OGA Golf Course for "high-end" housing.

Commission Findings: This objection is similar to Objection 1, above, regarding location of the subject area. In addition, the objection states that the city did not include enough land for high-end housing. The city identified the need for 1,074 "high-end housing units" (defined as having a selling price of $212,500 or higher, in 1999 dollars), and that need is proposed to be mostly met on Class II soils near the OGA Golf Course. The lands proposed for inclusion in this area will accommodate approximately 825 high-end units at 5.5 units per net buildable acre. Furthermore, the city found that the identified need for high-end housing could be met on other lands of higher priority.

3. Fessler (Saalfeld Griggs). This is an objection to a provision of the Woodburn Development Ordinance that limits residential annexations to a five-year supply.

Commission Findings: The objector argues that the city erred by requiring that there be less than a five-year supply of land in a particular residential designation before annexing

additional land from the UGB. There is no statutory or rule violation in this action, and the five-year supply requirement will serve to ensure that development occurs in an orderly and efficient manner, and that there are adequate public facilities and services available in accordance with Goal 14.

B. Industrial Objections

1. Opus NW (Johnson and Sherton). This party objects to the lack of a deadline to complete the master plan requirements for the SWIR (Southwest Industrial Reserve) prior to annexation and contends the provision violates the OAR 660-009-0025 requirement to provide sufficient serviceable lands.

Commission Findings: The city implemented a two-step master planning process for land in the SWIR prior to annexation. The first step, embodied in Policy E2.2, requires that the entire SWIR area be master planned for the provision, sizing, and general layout of water, sewer, storm drainage and transportation facilities, and that this be approved by the city council. The department believes this has already been done through the adopted a public facilities plan and transportation system plan that address these specific issues in the SWIR, and serve as the basis for the more detailed second step site specific master plan requirement contained in Policy E-1.6. This policy is designed and implemented through the WDO to ensure that parcels of adequate size are reserved to meet the needs of the targeted industries identified in the EOA. Therefore, there does not appear to be a conflict between these two requirements.

In addition, the Commission finds that these master planning requirements are not inconsistent with OAR 660-009-0025(1)–(4). While the objection does not contain an allegation of specific rule violations, the Commission finds that the master planning requirement will not affect the designation of needed industrial sites nor will it affect the serviceability of the sites. Rather, it ultimately ensures their serviceability and further ensures that needed site sizes and types are preserved.

2. Jerry Mumper. This objection states the city overestimated industrial land need in violation of Goal 9 and objects to the targeted employer site size and type methodology.

Commission Findings: See response to Objection 7, below. This objector quotes extensively from the Goal 9 guidebook. While the guidebook provides information and suggests various ways to achieve compliance with Goal 9, jurisdictions are not required to utilize it. In the case of Woodburn, the city has developed an employment projection in coordination with Marion County, has performed an industrial land inventory in accordance with OAR 660-009-015(3), and has developed a detailed EOA and site size for targeted industry analysis. The city's submittal contains an adequate factual base and the conclusions are supported by substantial evidence in the record.

3. Diane and Carla Mikkelson. These objectors contend the city overestimated industrial land need, underestimated redevelopment potential of existing industrial land and facilities, and failed to coordinate with other jurisdictions. The objectors state the city's submittal violates Goals 2, 3, 9, and 14, and ORS 197.296.

Commission Findings: See response to Objection 7, below. The objectors assert that the city has violated ORS 197.296, but fail to provide any details or cite relevant subsections. The requirements of 197.296 focus primarily on housing. There does not appear to be any part of the objection that addresses housing in relation to the UGB expansion. In addition, the objectors state that the city has violated Goal 3. Goal 14 no longer requires taking an exception to Goal 3, but rather, Goal 3, i.e., the preservation of farmland, is implemented through the locational factors of Goal 14 and the UGB priorities of ORS 197.298.

4. Lolita and Kathleen Carl. This objection alleges the city failed to protect farmland in violation of Goal 14 and ORS 197.298, inadequately coordinated with other affected governments in violation of Goal 2 and ORS 197.015,[1] and included too much industrial land in violation of Goal 14.

Commission Finding: See response to Objection 7, below.

5. Friends of Marion County (Roger Kaye). This objector also states the city included too much industrial land in the expanded UGB.

Commission Finding: See response to Objection 7, below.

6. Marion County Farm Bureau. This organization objects to the submittal, stating the city included too much land in the UGB in violation of Goal 14, failed to adequately coordinate with other jurisdictions in violation of Goal 2, and unnecessarily included prime farmland in violation of ORS 197.298.

Commission Finding: See response to Objection 7, below.

7. 1000 Friends of Oregon (Sid Friedman). This is a multi-part objection. Each allegation is addressed individually below.

7.a. Amount of Industrial Land – 1000 Friends' first objection contains four reasons why it believes the city overestimated the amount of needed industrial lands: unreasonable job growth projections, site requirements for targeted industries methodology and conclusions, the miscalculation of buildable land and vacant industrial buildings, and failure to coordinate with affected jurisdictions.

7.a.1. Job growth projections: The objection states the city projected there would be 18,762 employees in the year 2020, reflecting a three percent average annual growth rate (AAGR). The city and county have adopted a population projection that provides for a 2.8 percent AAGR. 1000 Friends argues that the job growth projection is unrealistic in

[1] ORS 197.015(6) defines "comprehensive plan" as: "a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. . . . *A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible.* (italics added)

that Woodburn would be taking 23 percent of all the jobs forecasted for Marion County during the planning period (8,374 out of 36,199 forecast jobs).

Commission Findings: The city states that the current jobs/population ratio of one job per 2.4 residents is lower than the one job for 1.8 residents for the rest of Marion County, which has created a jobs/housing imbalance that the city seeks to correct through its Economic Development Strategy. The city also points out that the projection is reasonable given the city's I-5 location and availability of relatively flat, serviceable land within the SWIR. Given the circumstances and the information in the record, the Commission finds that the conclusions made by the city and county are reasonable and supported by substantial evidence in the record.

7.a.2. Site requirements for targeted industries methodology and conclusions: The objection addresses the city's decision to base its economic development strategy on the siting needs of its targeted industries. 1000 Friends argues that the city concluded that it would need only 224 acres of land if they utilized the "employees per acre" methodology based on the number of projected jobs and that even if the city is utilizing the site requirements for targeted industries methodology, the city has still included far more industrial land than is justified. (The city has repeatedly stated in the submittal that they are not utilizing the employees per acre method and that the targeted industries site requirement methodology has no relationship to floor area ratios or employees per acre). The objection cites examples of this by pointing out the number of sites included in the various categories, including four industries that utilize sites smaller than five acres (25 sites) and 12 industries that utilize sites smaller than 50 acres (40 sites).

Commission Findings: This is somewhat misleading, as Tables 1 and 2 of the UGB Justification Report (Attachment B(5-B), pp. 24 and 26) identify the total number of sites required for all the site size needs, and find 42 total sites needed for all targeted industries. According to 1000 Friends, this is an oversupply of sites that leads to more land than is justified. However, the city has designated these sites to provide for the required short-term supply as well as to provide market choice among sites. The Commission finds that this is a key component of a successful industrial development strategy, and is required by OAR 660-009-025. In addition, the objection states that the city acknowledges that "not all of the industrial land proposed for inclusion is expected to develop by 2020." This is due to the fact that industrial users often choose to purchase a site larger than their immediate need in order to ensure that they have adequate land for future expansion, and the statement referred to by the objector is recognition of that fact. Additionally, OAR 660-009-025(2) specifies that plans must designate serviceable land suitable to meet the site needs identified in Section (1) of this rule. Except as provided for in Section (5) of this rule, the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period.

7.a.3. The miscalculation of buildable land and vacant industrial buildings: The city conducted an extensive inventory and analysis of existing industrial lands in accordance with Task 2 and OAR 660-009-015(3), which states "Inventory of Industrial and Other Employment Lands. Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning

area designated for industrial or other employment use." The objection asserts that the city failed to include 79 acres of industrial land that would be available for existing industries, and that buildable lands were removed from the inventory (Attachment C5, p.5).

Commission Findings: The city addressed the issue of vacant, partially vacant and potentially redevelopable industrial land in the Woodburn UGB Justification Report (Attachment B (5-B), p. 22) by stating that "... the 2002 [existing] Woodburn UGB included 126 acres of vacant, partially vacant, and potentially redevelopable industrial land, distributed among 36 parcels, with an average parcel size of 3.5 acres. The report goes on to note that "this land is a valuable component of the City's industrial land inventory" but "for the most part fails to meet the specific siting requirements of industries targeted in Appendix B of the Woodburn EOA [Economic Opportunities Analysis]."

Thus, it is clear from the record that the city inventoried all industrial land within the UGB. The city's Buildable Lands Inventory (Attachment B (4-E), pp.11-12) describes two objectives of the city's employment lands analysis:

> First, to determine vacant, partially vacant, and potentially redevelopable commercial and industrial lands. Second, to determine which of the available industrial lands can meet industrial siting needs identified in Woodburn's Economic Opportunities Analysis and further described in ECONorwest's 2003 memorandum titled 'Site Requirements for Target Industries.'

Partially vacant land in Woodburn has an existing industrial user but is not fully developed; potentially redevelopable land has a low improvement to land value ratio. The Buildable Lands Inventory (pp. 12-14) explains in more detail the process the city used to determine whether partially vacant and potentially redevelopable land would be available to meet the needs of targeted new employers, or of the existing industrial firm that owns the land. Tables 24 and 25 (pp. 28-29) identify all partially vacant and potentially redevelopable land (tax lots or portions thereof) within the UGB and their contiguous industrial owners. Tax lots that have been struck through are available to meet the expansion needs of the existing industrial firm that owns the adjoining land.

As summarized in the UGB Justification Report (p. 22), "City staff contacted owners of 'partially vacant' and 'redevelopable' industrial firms identified in Winterbrook's 2003 BLI. In most cases, the owners of industrial firms stated that partially vacant land *on their property* was being held for future expansion, and was not available for purchase to meet the needs of new targeted employers. In other cases, owners stated that 'redevelopable' industrial land (i.e., land with an improvement to land value ratio of less than 1) was actually being used for storage of vehicles, equipment or materials." (Emphasis added.)

Contrary to claims by objectors, the city did not exclude "partially vacant" and "potentially redevelopable" land from the Buildable Lands Inventory, it simply classified such land into two categories: land that is suitable to meet the needs of new targeted industries; and land that is owned by an existing industrial firm, and is either (a) reserved for future expansion by the existing owner, or (b) used for industrial storage. As noted in

the UGB Justification Report (p. 22), "there are only 47 buildable acres on 23 separate tax lots available to site new targeted employment in Woodburn['s] existing (2002) UGB." The remaining 79 "partially vacant" or "potentially redevelopable" acres are "a valuable component of the City's industrial lands inventory," but are being used or held, by their industrial owners, for future industrial expansion.

The objection further argues that the city did not take into account the employment capacity of existing occupied and vacant existing buildings. If that capacity were considered, objectors reason, less land would be needed to serve the targeted industries. The Commission notes that there is no statutory, Goal 9 or Goal 14 requirement that the city inventory vacant buildings. The objector cites other studies (City of Salem, City of McMinnville) that show that jobs can be ascribed to vacant buildings using an employee per acre approach, and that jobs will occur as part of expansion of existing industries or not occur on industrial lands. While this argument may be relevant to cities that choose to apply an employee-per-acre methodology, it has no relevance to the site needs approach applied by the City of Woodburn, and authorized by ORS 197.712 and the Goal 9 rule.

The objection also asserts that there is no reasonable basis for assuming that one of the city's targeted industries, a "silicon chip manufacturing plant," will locate in Woodburn and, therefore, the 125-acre parcel included in the UGB to serve this targeted industry is unneeded. The Commission disagrees. The city, in its oral presentation, pointed to the record to identify several reasons why it is reasonable to provide a 100+ acre site for a large industrial user.

First, ECONorthwest prepared both the Woodburn Economic Opportunities Analysis (EOA, Attachment B, 4-1) and the Woodburn Economic Development Strategy (EDA, Attachment B, 1-A). ECONorthwest is a highly respected economic and planning firm with extensive experience in economic land needs analysis. The Commission regards ECONorthwest as a highly credible expert in this area, and notes that objectors did not provide comparable expert testimony to support their claims. The EDA (p. 3-1) describes the need for "very large manufacturing and high-tech firms [that] want sites as large as 40-80+ acres," and notes that the pre-amendment UGB lacked such sites with freeway access. The EOA (Attachment B, 4-A, pp. 4-8 through 4-9) further explains that these [large site] *users* typically require sites that exceed 100 acres.

Second, the EDS (p. 3-2) notes that of the three sites over 30 acres within the existing (2002) UGB, "one of the sites was under development in the Spring of 2001, and the other two are relatively distant from Interstate 5 and are not particularly well suited sites to accommodate target industries." The EOA (p. 4-9) responds directly to objectors' claim that Woodburn is too far from existing electronics manufacturing "clusters" to attract large site industrial manufacturers. ECONorthwest observes that "Woodburn is close enough to the high-tech areas of Wilsonville and Washington County to be a viable option for a corporate campus. Firms in the Electronic and Electric Equipment and Business Services have potential in this regard."

Third, the Commission notes that Wilsonville is only 12 miles north of Woodburn, and has been very successful in attracting electronic firms such as In-Focus and Tektronix. As documented in the UGB Justification Report (p. 20), Wilsonville in 1980 was much

smaller than Woodburn is today, but had large tracts of serviced industrial land with I-5 access. Approximately 80 percent of Wilsonville's 1,000 acre industrial land base has developed since 1980. Today, Wilsonville has over 18,000 covered employees – which is comparable to the 18,762 employees projected by the City of Woodburn (up from 10,388 in 2000). The Commission finds that Woodburn's plans to take advantage of its I-5 access, to become a regional industrial center, are reasonable.

Fourth, the Commission notes the high level of coordination that has occurred between the City of Woodburn and Marion County, and takes particular notice of the oral comments of Marion County Commissioner Patti Milne. Commissioner Milne noted that the Marion County Growth Management Framework Plan identifies Woodburn as the employment growth center for North Marion County. She also noted that each of Marion County's 20 cities had received written notice of the county's proposal to amend the Marion County Comprehensive Plan to adopt the city's proposed 2020 population forecast. This forecast was based on the city's 2020 employment forecast, to which none of the cities objected.

Finally, Woodburn has take extraordinary measures to provide services to, and protect, the 104-acre site reserved for a large-scale industrial user, and the Southwest Industrial Reserve Area as a whole. The city's public facilities planning and master planning requirements establish a direct linkage between targeted industrial users and site allocation, and provides an exceptionally strong policy framework for protection of industrial sites for their intended purpose, as required by the Goal 9 rule. (See Woodburn Transportation Systems Plan (Volume VI, Exhibit 1-C), Woodburn Public Facilities Plan (Volume VI, Exhibit 1-B), the SWIR policies of the Woodburn Comprehensive Plan (Volume VI, Exhibit 1) and the SWIR regulations found in the Woodburn Land Development Ordinance (Volume VI, Exhibit 3).) In particular, the Commission notes that Woodburn requires that any future user of the 100-acre site must: (a) employ at least 300 people, and (b) participate in required improvements to the I-5 interchange and to the Southwest Arterial Street connection to the west side of the interchange.

In conclusion, the Commission finds that Woodburn's plans for economic development comply with the Goal 9 and Goal 14 rules. The city's employment projection and land needs assessment are reasonable, for reasons explained in these findings and more particularly described in the Woodburn UGB Justification Report (pp. 10-12, 15-17, 20-27.) The Commission agrees with the city's view that the site is needed as part of its hierarchy of sites and will serve its targeted industry needs in accordance with administrative rules, and that there is a reasonable likelihood of a silicon chip fabrication plant or other large site manufacturing use given the characteristics of the site.

7.a.4. Failure to coordinate with affected jurisdictions: The objection states that the city failed to coordinate with nearby cities in Marion County, Metro, Wilsonville, and other Marion County cities as part of this process, and has therefore violated Goal 2.

Commission Findings: The city coordinated extensively with Marion County during this process, as required. Furthermore, the objector provides no explanation of how the listed jurisdictions will be affected. While Metro did submit a letter to the record, the city is only required to take such information into consideration during its process. Finally, the

city is not required to send notice of work sessions or public hearing to the alleged "affected" jurisdictions, as intimated by the objector. The Commission finds the city coordinated appropriately as required by Goal 2.

b. Location of Industrial Land – The objection states that the inclusion of prime farmland on the west side of I-5 (the Opus site) is unnecessary for the stated purpose of ensuring a connection to I-5 from the SWIR east of I-5 and that the criteria for industrial land being within two miles of the freeway is arbitrary, which resulted in the city not including areas of poorer soils south of Parr Road between Boones Ferry Road and I-5.

Commission Findings: The Commission agrees with the city's findings related to compliance with Goal 14 locational factors and ORS 197.298 priorities for UGB expansion, as found in the UGB Justification Report (Attachment B (5-B) pp. 15-17 and 45-79 and documents referenced in these pages). As documented in the city's findings, Woodburn has included almost all lower priority exception areas (UGB Justification Report, p. 48). Except for exception areas, the existing UGB is surrounded by Class I and II agricultural soils (UGB Justification Report and referenced soils map, p. 49). Therefore, Woodburn must include "prime" agricultural soils to meet 20-year growth needs. The UGB expansion avoided all but one acre of Class I soils (UGB Justification Report, p. 50). To reach two large concentrations of lower priority and buildable Class III soils in Study Areas 2 and 7, the city must extend streets and urban services through higher priority Class II soils (UGB Justification Report, pp. 50-53). To provide suitable sites with for master planned industrial parks and targeted industries, Woodburn must include flat, agricultural land within two miles of Interstate 5 (UGB Justification Report, pp. 10-11 and 24-25).

Woodburn's findings with respect to the contested Opus Northwest site, in Study Area 8, are extensive. This site has about 88 acres of buildable land, most of which has Class II soils. The Opus site is the closest of any possible industrial site to the North Marion County (Woodburn) I-5 interchange. The site can be immediately served by sanitary sewer and water facilities. The site is located next to developed industrial land, between the existing (2002) UGB and Butteville Road, a planned arterial street. Land to the west of Butteville Road with Class I and II soils was excluded from the UGB to minimize impacts on agricultural land, based on comments from the Oregon Department of Agriculture (UGB Justification Report, p. 77). The city has shown, in detail, how public facilities and services can be extended from the existing UGB to serve the site. (Public Facilities Plan, Volume I, Exhibit 1-B sanitary sewer, water and storm drainage maps).

The Commission agrees with the city's finding that inclusion of the Opus site is necessary for the construction of Butteville Road (a planned arterial shown on the Transportation System Plan) to urban standards, which would allow the SWIR and other properties to access I-5 from the west. The city and ODOT have made it clear, throughout the record, that accessing the freeway from the west side is necessary due to the lack of capacity at the east access to the interchange (UGB Justification Report, pp. 12-13). Not only does the Opus site satisfy all of the city's site requirements for targeted industries, development of this site is necessary to provide access and services to the remainder of the Southwest Industrial Reserve. For these reasons, the Commission concludes that

exclusion of the Opus site would be inconsistent with the Goal 9 rule, and inclusion of the Opus site is justified under Goal 14 and ORS 197.298.

The city explains why it included land within Study Areas 7 and 8 in the UGB Justification Report (pp. 52-54). Because objectors have focused this issue, the Commission quotes directly from Woodburn's findings:

> Study Areas 7 (Southwest) and 8 (West) also have predominantly Class II agricultural soils. However, SA 7 has by far the largest Class III soil area, which includes approximately 185 acres located generally south of Parr Road and east of Interstate 5. Class II soils in SA 7 and 8 separate this Class III area from the 2002 UGB. Most of this Class II and III soils area is designated for industrial use within the SWIR, although a portion to the east is designated for residential use. To provide access to I-5 for Class III soils within SA-7, Butteville Road must be improved to arterial standards to connect with the planned South Arterial. For this to happen, land in SA-8 between the UGB and Butteville Road must develop and help pay for needed road and utility improvements. Evergreen Drive, which will be extended by private developers to the 2002 UGB line next year, also must be improved to arterial street standards on Class II soils to connect with Parr Road and the South Arterial. In addition, urban sewer, water and storm drainage services must be constructed through intervening areas with Class II soils to allow development of lower priority Class III areas.
>
> The Class III soils found on the southern portion of Study Area 7 continue to the south and southwest of this study area. Although the city did include one 46-acre primarily Class III parcel located south of the original Study Area 7, it did not include additional areas of predominantly Class III soil further to the south and southwest, for two reasons.
>
> First, the two Class III parcels located between the 2005 UGB and I-5 are not needed at this time for industrial expansion. Although these parcels meet some SWIR siting criteria, their development would not facilitate extension of the South Arterial, which is needed to provide direct access to I-5 from SWIR parcels to the north. Woodburn did not add these parcels to the UGB to meet the siting needs of target industries.
>
> Second, the large concentration of Class III soils located further to the south extend beyond the two-mile (from the I-5 Interchange) locational need limit established by the Council for inclusion of parcels within the SWIR. This land is too far from the I-5 Interchange to be attractive to targeted industrial firms. Inclusion of this land would have meant that other more suitable land closer to the interchange and urban services could not be justified (on a strict need basis) for inclusion within the UGB. Further, inclusion of parcels with Class III soils south of the expanded SA 7 would have resulted in an inefficient urban form, would not have met the city's industrial siting need criteria, and would have increased substantially the cost of providing urban services.

The Council also considered the possibility of including land south of the SWIR to meet residential land needs. The Council rejected this option for several reasons:

- First, providing residential land directly abutting the SWIR would have created unnecessary land use conflicts, which would be inconsistent with the siting needs of target industries, ORS 197.712, and the Goal 9 administrative rule provisions requiring minimization of conflicts between industrial and residential development.

- Second, providing new residential land immediately south of the SWIR would be contrary to identified livability needs. The Council has carefully selected residential areas to encourage livable neighborhoods in nodal development centers and near the golf course. Providing residential land south of planned industrial development would be inconsistent with the City's goal of providing livable neighborhoods. Moreover, extension of urban services further to the south would increase housing costs in a manner inconsistent with Statewide Planning Goal 10.

- Third, the Council recognized livability policies in the Marion County Growth Management Framework Plan that discourage cities growing together. If residential growth were encouraged south of the SWIR, the mandated buffer between the cities of Gervais and Woodburn would be reduced. If the UGB were extended south of the SWIR to accommodate residential growth needs, then the new residential area would be separated from the neighborhood commercial areas, parks and schools by incompatible industrial development.

As noted earlier, Woodburn has no large concentrations of Class III soils adjacent to the 2002 UGB. In Study Areas 2, 7 and 8, maximum efficiency of land use requires that intervening Class II soils be efficiently developed, to allow full development of more distant areas with Class III soil concentrations.

In other UGB Study Areas, Class II soils predominate and there are no large concentrations of buildable Class III soils. Unlike the land included within the 2005 Woodburn UGB, there is no need to develop Class I and II lands in Study Areas 1, 3, 4, 5, or 6 to achieve urban efficiency objectives or provide services to areas with predominantly Class III agricultural soils. In other Study Areas, no identified urban land use need would be served by extending urban services through Class I and II soils to reach relatively small, linear configurations of unbuildable Class IV-VI soils.

In conclusion, the adopted UGB expansion avoids the highest value farm land wherever reasonably possible, while including land with the lowest agricultural soil classification that can be served in an efficient and livable UGB configuration.

In summary, Study Area 8 is comprised predominantly of Class I and II soils. Study Area 7 is comprised primarily of Class II and III soils, with a large concentration of Class III

soils in the southern part of the Study Area. As shown on the Woodburn Transportation System Plan (Volume VI, Exhibit 1-C), Butteville Road and the South Arterial must be constructed to serve the entire SWIR area; thus, both of these planned arterials must pass through Class II soils to serve areas with Class III soils. Development of the Opus site is necessary to pay for improvement of Butteville Road to arterial street standards. Construction of the Butteville Road and South Arterials is necessary to serve industrial land on Class II and III soils in Study Areas 7 and 8. Woodburn has prepared detailed drawings showing how sanitary sewer, water and storm drainage facilities will be provided to UGB expansion areas. As shown on the Woodburn Public Facilities Plan, to reach lower priority Class III soils in Study Area 7, public facilities must be extended through Class II soil areas in Study Areas 7 and 8 (Volume VI, Exhibit 1-B). For these reasons, the city's findings are consistent with Goal 14 locational factors and ORS 197.298 priorities.

Goal 14 states that local governments may "specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need." This is exactly what the City of Woodburn has done. The city has established the importance of interstate access for target industries (Attachment A, pp. 4-6) and has concluded that, "for many targeted industries, being within one or two miles of an interstate is much more preferable than being three or four miles away. Each mile from an interstate represents a significant increase in travel time, particularly if traffic has to pass through an urban area. . ." The lands in the Southwest Industrial Reserve are within two miles of the Woodburn interchange. The Commission agrees with the city's finding that most target industries require direct access to I-5. It follows that the Southwest Industrial Reserve—which provides for targeted industries in a master planned industrial park setting—must also be located with direct access to I-5. For reasons stated in ECONorthwest's April 26, 2005 memorandum (Attachment A, pp. 4-5), the Commission finds that the two-mile radius criterion is reasonable, and provides a measurable standard for the more general "direct access to I-5 criterion." Such measurable standards are required by the Goal 9 rule and are permitted by Goal 14.

The objection references similarities between the target industries of McMinnville and Woodburn, and questions how the same target industries would locate 30 miles from the freeway if freeway access is so important. The answer is that both communities have the potential to attract firms in the same general industrial categories, but Woodburn is at a distinct competitive advantage due to its I-5 location. Woodburn's findings quote directly from the city of McMinnville's Economic Opportunities Analysis in noting that that:

> McMinnville's primary disadvantage for economic development is its poor access to I-5 and congestion on commuting routes to the Portland Metropolitan Area (Attachment A, p.6).

Woodburn's decision to provide industrial land with direct access to I-5 is entirely consistent with Goal 9, which requires cities to identify their locational advantages. It would not serve the state's, the county's, or the city's economic development efforts to handicap Woodburn by limiting the city's ability to capitalize on its I-5 location. For this reason, the Commission concludes that Woodburn has appropriately balanced the need for industrial development and preservation of agricultural land near the I-5 interchange.

In conclusion, the Commission finds that the city has demonstrated compliance with Goal 14, ORS 197.298 priorities, and provided an adequate factual base for its decision to locate the SWIR on both sides of I-5 in Southwest Woodburn.

III. CONCLUSIONS

A. Work Task 2 - "Commercial and Industrial Lands Inventory"

The department referred Task 2 to the Commission because of its relationship to the UGB amendment. The city has conducted a thorough inventory of vacant, partially vacant, and potentially redevelopable commercial and industrial land within the existing UGB in response to this work task. The Commission has not identified any elements of the submittal that conflict with applicable goals, rules, and statutes.

B. UGB Amendment

The City of Woodburn amended its UGB to include 979 acres for residential, commercial, and industrial uses. The amended UGB contains 546 acres for residential uses (including public and institutional uses), 24 acres for commercial uses, and 409 acres for industrial uses, of which 200 acres are exception lands and 779 acres are resource lands. The Commission has not found any conflicts with applicable goals, rules, or statutes.

1000 FRIENDS OF OREGON; FRIENDS OF MARION COUNTY, LOLITA CARL; KATHLEEN CARL; DIANE MIKKELSON; CARLA MIKKELSON; and MARION COUNTY FARM BUREAU, Petitioner, vs. LAND CONSERVATION AND DEVELOPMENT COMMISSION; OPUS NORTHWEST, LLC; CITY OF WOODBURN; FESSLER FAMILY, LLC; MARION COUNTY; AND RENAISSANCE CUSTOM HOMES, LLC, Respondent	Appellate Court No. A135375 Agency Case No. 07-WKTASK-001720 TRANSCRIPT OF LCDC MEETING January 25, 2007

CHAIR VANLANDINGHAM: Four – zero. Thank you. So we are going to take a break and set up for Woodburn, and what I'd like to ask is that the players think about…you've got a teenager, so that's with your use of words…the players think about the process. Typical, by rule process, is that the City and each of the objectors get to speak to us, as in a hearing. You get a certain amount of time. You get to sit there in front of us and say your peace, along with the staff – and the staff goes first and last. There is something called the "VanLandingham Modified Process, named after me, obviously, in which I try to have the players at the table and I try to have the dialogue. Frankly, after talking with Jason Locke, I don't see how that would work given the number of players here, unless we were to take a whole week. But I want the players to think about those choices, where there is a third choice and then take a few minutes during the break and then I would like to gather with you all up here with Jason and Lane, and talk about timing… how much time you think you need for each of you. We want to accommodate as much as possible. So, we'll take a 10-minute break and then the players up here please, in a few minutes in agreement on something. So, here's how we're going to do this. My deal with the VanLandingham Method is that any party can say "no", so I am going to use a modified VanLandingham Method. And that is that we are going to have Jason make an opening presentation. We are going to have the City, which estimates its presentation will take about 30 minutes and, as I've said, I'm fairly lenient on time. The City and Greg Winterowd will remind me, as there is somebody here from ODOT who has to leave by a certain time, so I am going to count on Greg to make sure that we get him up in time.

1 This City is going to open with Commissioner Milne, so she can get back to work. After the City, we will have Sid
2 Friedman from 1000 Friends, and Sid has estimated his time amount as about 60 minutes. We will have the Carl's
3 and the Farm Bureau with 10 minutes, together, and then we will have a panel of supportive lawyers – lawyers that
4 want to be – speaking today...they say briefly, so that will be a real test. Yeah, they are here to help us. And then
5 we will probably have the City back and then finish with staff and with us questioning the staff and trying to work to
6 a decision. So – I think I got that right. Lane, do you want to add anything?
7 LANE SHETTERLY: Just a word of explanation and a smidge of apology. I've been invited to a meeting over at
8 the Capitol. It was an invitation I could not refuse, so I will be leaving here in time to be over there for an 11:30
9 meeting. So, I will be stepping out of here in the course of the hearing, but I mean no disrespect to the members,
10 parties or witnesses. And then I'll be back as soon as I'm able.
11 CHAIR VANLANDINGHAM: Okay. Any other preliminary matters? Jason, you're on.
12 JASON LOCKE: Thank you Mr. Chairman, members of the Commission, Director. On August 3rd of 2006, the
13 City submitted a periodic review, tasks 1 through 4 and 7 through 11 and an Urban Growth Boundary amendment.
14 The City partially approved tasks 1 and 7 through 10, partially approved and remanded portions of task 3, and
15 referred to the Commission task 2 and the UGB Amendment. The UGB Amendment consists of 979 acres of which
16 approximately 200 acres are exception lands and the balance of 780 or so acres are resource lands. Task 2, which
17 was also referred to the Commission, is the Commercial and Industrial Lands Inventory, which was part and parcel
18 of the UGB decision. The major legal and policy issues here are: Number 1, whether the City correctly estimated
19 the need for land to be added to the UGB, both industrial and residential land, and whether or not the City correctly
20 applied the location factors and properly prioritized lands be added to the UGB. Upon receipt of that, the
21 department received 10 objections. Three of the objections were related to residential component of the UGB
22 expansion and the other seven were related to the industrial portion of the UGB expansion. I also have some
23 overheads that I am going to utilize with some low-tech technology in a minute, as kind of an overview of the
24 proposal. The City included commercial, industrial and residential lands in their expansion. The residential lands
25 portion included 546 acres of land for residential uses, which include public and institutional uses. The City also

1 included 409 acres of land for industrial uses. The bulk of those lands for industrial uses are in what is called the
2 Southwest Industrial Reserve, and I will put that overhead up. You also have the descriptions with I believe colored
3 maps of the City's comprehensive plan of the area, outlines of both the areas proposes for inclusion for residential,
4 commercial and industrial purposes. The City included actually very little land for commercial purposes and that
5 was not the subject of any of the objections at this point. Just as kind of a brief overview of the objections, there
6 were (as I indicated prior) three objections related to the residential lands; one filed by Renaissance Homes, one by
7 Tukwila Partners and one by a property owner known as Fessler. The residential objections, two of them, basically
8 focused similarly on the failure of the City to include land east of the golf course. As the City pointed out in their
9 submittal, the land that was referred to in these objections primarily contained large inclusions of Class I soils, and
10 the City did not feel that that was appropriate – that those need to be accommodated higher priority lands. The other
11 residential objection was filed by Fessler, and that had to do with the ordinance that the City passed as part of their
12 package, which limits residential annexations to a 5-year supply. Of these three objections, the department is
13 recommending that we not sustain these objections. Regarding the industrial lands objections - of the 10, seven
14 were related to the industrial lands and they kind of fall into two, well, three categories actually. The first was an
15 objection filed by Opus Northwest. That had to do with the City's adopted master plan requirements for the
16 Southwest industrial reserve prior to annexation and they contend that the provision violates OIR, 660-009-0025.
17 We did address that in our referral to the Commission and did not find that it was violative of Goal 9 or the
18 applicable administrative rule. The other objections related to industrial land fall into two categories: #1, the
19 amount of industrial land and, #2 the location of the industrial lands. In your packet you received a number of
20 attachments from the City's submittal on this matter; ones that staff felt were relevant and to the point, and there is
21 quite a bit of it. The issue again of alleged oversupply of industrial land was one that was raised by, I believe, all of
22 the objectors and when you look at the number of acres included, there were 409 acres for industrial uses. The City,
23 in following the Goal 9 rule, basically identified their targeted industries and from those targeted industries what
24 resulted was the site requirements for those targeted industries. In other words, if Industry A requires a site of such
25 and such acres, they utilize that methodology, which is the preferred methodology and was actually contained in the

1 Goal 9 rule. Some of the objectors argued that, in fact, a number of sites that the City supplied was too many; they
2 didn't need all of those sites. Now, kind of as some additional information, one of the other things that the Goal 9
3 rule speaks to is the fact that there needs to be market choice amongst these sites. So if you have a single site for a
4 part of the industry, it creates a situation where you either don't have availability or there are short-term supply
5 issues, which are defined in the rule as well. The department, after its review, including the economic development
6 staff, basically concluded that what the City had done in terms of their supply was, in fact, reasonable. I am going to
7 go over to the overhead right now briefly to talk about the location issues, but also to give the audience and
8 Commission an idea of how those site sizes and so forth actually were arrived at by the City.
9 CHAIR VANLANDINGHAM: Would you bring the microphone with you, if you can? I think it will reach.
10 JASON LOCKE: This is an overhead, or transparency reproduction, of the map that is in your packets and was
11 submitted by the City in the record. Just for orientation purposes, this is I-5 going south here, these are the
12 Woodburn factory stores, the Winco distribution center, Oregon 214 runs through here, and 99-East. The Southwest
13 Industrial Reserve area is this crosshatched blue area here. The areas where the City expanded their UGB to the
14 north is this area here, which is primarily for high-end housing needs and this area in here, also a crosshatched area,
15 which is identified as a nodal residential area with a small amount of commercial and higher density housing. Table
16 1 in the City's UGB Justification Report on page 24 basically shows the summary of the estimated industrial site
17 needs by size. Again, when you look at it, the total number of sites the City has included is 42 with the average site
18 size and the estimated acres. There is one large site that the City has included as part of their proposal. That is the
19 very southern end of the Southwest Industrial Reserve area. I believe you do have this map in your packet, as well.
20 What this is, is the agricultural soils map that basically shows the soil classifications outside the current UGB and it
21 breaks it up into eight sub areas that the City analyzed as far as their requirements for their industrial and residential
22 lands were concerned. You can see one of the points, or objections, related to the fact that there was land south of
23 area 7, which was in this area, this southern area here, which also had larger inclusions of Class 3 soils. The City in
24 establishing, however, its criteria - if you will – for industrial lands, one of their criteria, and you are going to hear a
25 significant amount about this issue, is essentially locating their industrial lands within two miles of the Woodburn

1 interchange, that they felt and made extensive findings in their report, was critical to successful industrial
2 development. Along those lines, the City established its locational needs criteria to identify their sites for targeted
3 employers and, again, this is in the information submitted to you but are of particular note, being comprised of large
4 blocks of land contiguous within the existing UGB, having direct access to I-5 and the interchange via an existing or
5 planned arterial relocated to take advantage of existing proposed arterial streets that direct industrial traffic to
6 Highway 214 west rather than east. That is essentially one of the cornerstones of creating what is called the South
7 Arterial, which essentially would back around on Butteville Road and come up to the west side of the interchange.
8 That is an area that is far less congested than the east side. It also precludes industrial vehicles and large trucks from
9 having to go through essentially densely populated developed areas. Table 14 on page 48 of the UGB report
10 essentially shows the study areas, the plan map designations, the gross acreages of all of the sites. So that is key to
11 the 2002 Soils Map where the City looked at transportation issues, they looked at natural resource constraint issues,
12 riparian areas, and so forth. By area, this table basically looks at the areas that are included and for what purposes.
13 For instance, in the southwest area the industrial gross acreage is 279 acres and in the west, which is that small, kind
14 of small, relatively narrow strip of land on the east side, I'm sorry, the west side of I-5, which of course you will
15 certainly hear more about. As I previously stated, the City did address all of the objections in our referral report and
16 concluded that both for work task 2 and the UGB amendment, we have not found any conflicts with any relevant
17 statutes in the City's action. The department is recommending approval of periodic review work task 2 and the
18 UGB.
19 CHAIR VANLANDINGHAM: Thank you Jason. Questions of Jason – we will have Jason back at the end to help
20 us work through the decision. Okay. You're done for the moment, other than you have to pay attention and be
21 prepared to answer and respond to what people say. So, City of Woodburn, you're up and I understand you were
22 going to start with Commissioner Milne. But you get to control who you do in your show.
23 KATHYRN FIGLEY: Oh, okay. Thank you very much Chairman VanLandingham and members of the
24 Commission, Director Shetterly. Actually, I will lead off, exercising my mayoral prerogative here... I do want to
25 say thank you for your prior courtesies. It's been a long time in coming, but we are very happy to be in front of you

1 this morning. Today's hearing is a milestone for the future of our community. It represents 10 years, a million and
2 a half dollars and counting, investing in studies, analyses and public input in connection with the various periodic
3 review tasks assigned to us. It has involved hundreds of hours of time on the part of City staff, elected officials and
4 local Board and Commission members. It contains the contributions of well respected consultants in the fields of
5 planning, economic development, engineering, and other disciplines. It also involves the contributions of many
6 additional community members who offered comments and certainly constructive criticism over these many years.
7 While not every opinion or every policy proposal voice has been included in this plan, not everything proposed was,
8 in our judgment, either wise or representative of our community's values. We do believe that we are presenting a
9 package that offers both a high degree of professionalism and a high degree of community consensus. Because of
10 Director Shetterly's approval of a significant part of our package, most of my further remarks will focus on the UGB
11 expansion and its industrial land component. I think that's where most controversy is. I will simply take the
12 opportunity to state that the residential component and the master plans that have been approved by the director
13 were extensively reviewed by our staff and elected and appointed bodies, and were also the subject of extensive
14 coordination with Marion County Staff. They were acknowledged after extensive additional discussions with the
15 Marion County Commission, as my friend Commissioner Milne will attest later. This is not simply a land use plan,
16 of course; but it is an economic development and livability roadmap for our community as well. The Eco Northwest
17 economic opportunities analysis is both consistent with and reflective of other policy decisions incorporated in this
18 plan and elsewhere. I think it is important for purposes of our discussion today to explicitly state what some of
19 those values reflected in this document are. First, for us, no growth is not even an option. Our location, our
20 demographics and the statutory requirement for a 20-year land supply guarantee that we will experience substantial
21 residential growth. We just will. People are not going to stop making babies any time soon. We don't want to be a
22 bedroom community. To some extent we have morphed into that and that is not something that we want to do for
23 many reasons, one of which is we cannot afford to be. We need a tax base sufficient to fund the services that are
24 required by our current and future residents. In addition to that, good sense, good conscience and an intelligent
25 reading of all of our land use laws requires us to provide opportunities for more of our working age residents to

1 make family wages without the lengthy commutes that are now made by so many of them. The Eco Northwest
2 analysis underlines the fact that while we have proportionately more youngsters and retired people than many
3 communities do, we have a startling number of people who are in their working years and are commuting to greater
4 Portland or Salem in pursuit of family wage jobs. A very common pattern is for someone to begin as a farm worker
5 and get into a manufacturing or trucking or construction job in Tualatin or Wilsonville or Salem or Southeast
6 Portland. But professional people hit the road too. We have a substantial cost on account of this in lost wages, lost
7 community connections, an unfortunate waste of energy resources of course and a burden on an already overloaded
8 transportation network. While we recognize that, our location will always gain us our share of couples splitting the
9 difference between jobs or people that like their job but don't want to live anywhere near it, but that is inevitable.
10 But we do want to create a better selection of job opportunities locally for Woodburn residents. We believe in
11 offering people opportunities to increase their skills, improve their incomes and achieve a level of financial stability.
12 The low wages of the agricultural and food processing sectors historically have not allowed this for many of our
13 residents. We have targeted industries that pay family wages and are actually doable by many residents of our
14 community, whether immediately or with training, through our community college or other agencies. We have not
15 tried to mismatch existing or prospective companies with sites that just happen to be vacant. Our proposal explicitly
16 includes large sites because there are desirable employers who won't accept anything else. At this point we have
17 identified core industries that are examples of firms that require substantial acreage, but we recognize that changes
18 in technology and society may mean that someone who does something that someone in this firm has not even
19 thought of yet may wish to site a core company on, say, the 125-acre site. There are things that are viable industries
20 that nobody had a clue were even coming down the pike 15 years ago, and I think we all know that. Finally, we
21 believe in concentrating the industrial expansion where the land is porous, the transportation capacity is greatest and
22 where developer financed improvements will also benefit the overall transportation network in our city. And that is
23 what we have attempted to do in our proposal. We find it telling that we have actually proposed expansion in the
24 opposite direction from the farms and homes of those objectors who are local community members in the more
25 broader sense. We have gone the extra mile to show that our industrial expansion plans are being made in good

1 faith. We have already entered into both an interchange management agreement and an intergovernmental
2 agreement with ODOT, requiring a significant community financial commitment to our interchange upgrade. By the
3 way, we have already paid $2.5 million specifically toward right of way acquisition in that area, out of city funds.
4 We have also specifically committed to either industrial use or, until then, continued farm use in the areas slated for
5 industrial expansion through the Southwest Industrial Reserve protective restrictions that are included in our
6 package. While we have been skeptical, I will say directly about the potential for significant industrial
7 redevelopment within the current UGB, we do recognize that there are parcels with real redevelopment potential for
8 commercial purposes. That is why you're only seeing 14 acres proposed for additional expansion of commercial
9 property. We do have some commercial land available for development, although not a lot; and we do have
10 commercially zoned property currently within the UGB that appears to be ripe for redevelopment certainly at the
11 time that the interchange is upgraded. In addition, we do have a new run renewal district and we believe some
12 commercial tenants and redevelopers have opportunities available to them there. In conclusion, we are pleased with
13 your staff's report supporting our proposal and its underlying analysis, and we do urge you to approve it as
14 presented. Thank you.
15 CHAIR VANLANDINGHAM: Thank you Mayor. Questions of the Mayor...thank you.
16 KATHRYN FIGLEY: You're welcome.
17 CHAIR VANLANDINGHAM: You are now...I should give you the gavel. You are calling on who is next.
18 PATTI MILNE: Okay...I need a booster chair!
19 CHAIR VANLANDINGHAM: We play the musical chairs game up here.
20 PATTI MILNE: That's okay...I'll just try to be tall. Good morning Chair VanLandingham, Director Shetterly and
21 Commission members. My name is Patti Milne and I am here today representing the Marion County Board of
22 Commissioners. And I'm very pleased to be sitting here with Mayor Figley and also City Administrator John
23 Brown. I would like to focus on the high level of coordination that has occurred between Marion County and
24 actually all of our cities, but especially of course I want to touch on the coordination with the city of Woodburn. I
25 have been a commissioner eight years, starting my ninth year, and it has been a long, long haul to get where we are;

1 but it has been a good working relationship. Marion County began working on the growth management project
2 during my first year on the Board of Commissioners. The framework plan adopted by Marion County in 2002 was a
3 result of this high level coordination between the county and our 20 cities. As you may recall, there were
4 differences between the city of Woodburn and Marion County on a number of issues. However, there were many
5 more points of agreement than there were points of disagreement. For example, the county framework plan
6 explicitly recognizes Woodburn's role as the primary employment and growth center in northern Marion County.
7 As a result of intergovernmental coordination during this period, both jurisdictions made extensive amendments to
8 our respective comprehensive plans. The Marion County Board of Commissioners adopted most changes to the
9 framework plan that were recommended by Woodburn in 2002. Woodburn, on its part, incorporated virtually all of
10 Marion County's coordination policies into the adopted Woodburn comprehensive plan in 2005. In May of 2002,
11 Marion County, DLCD, ODOT and Woodburn reached tentative agreement on a 20-year population and
12 employment projection to be used for planning purposes. This forecast served as the basis for transportation
13 planning and the city's proposed urban growth boundary expansion in 2003. In the fall of 2004, Marion County
14 initiated a county-wide coordination process before formally adopting Woodburn's projection. Each of Marion
15 County's 20 cities did receive notice of public hearing to review the proposed plan amendments. Each city also had
16 the opportunity to review the year 2020 population and employment forecast prepared by Eco Northwest. None of
17 our cities voiced an objection or spoken opposition to the county's decision to adopt the new forecast. I believe that
18 Woodburn's population and employment projections are based realistically on Woodburn's comparative economic
19 advantages. Flat service land with direct access to interstate 5 will help meet Oregon's need for shovel-ready sites.
20 In short, I support Woodburn's increasingly important role as a population and employment growth center. Marion
21 County was an active participant in the update of the Woodburn TSP from 2003 through 2005. This plan addressed
22 head-on the difficult issue of traffic at the north county, otherwise known as the Woodburn Interchange, and is
23 consistent with transportation policies in the Marion County framework plan. From the beginning we have all
24 realized that the success of Woodburn's economic strategies was dependent on relieving congestion at the I-5
25 interchange in Woodburn. Our transportation staff concurred with Woodburn and ODOT planners that the best way

1 to reduce traffic at the congested east access to I-5 was to facilitate access to I-5 from the west. The proposed south
2 and Butteville Road arterials are designed to move traffic from Woodburn's southwest industrial reserve to the west
3 side of the interchange without passing through the heart of Woodburn. These arterial streets also form the outer
4 boundary of the urban growth boundary, thus providing an effective buffer from high value farmland to the west and
5 to the south. Marion County has been actively engaged in the review of Woodburn's periodic review plan
6 amendment package. The Board of Commissioners held two work sessions and two public hearings before reaching
7 agreement to adopt extensive amendments to Woodburn's comprehensive plan, urban growth boundary, public
8 facilities plan, transportation system plan and land development ordinance. The Board of Commissioners is
9 supportive of Woodburn's economic development efforts, as documented in the city's adopted economic
10 opportunities analysis and economic development strategy. We view Woodburn's anticipated success in attracting
11 family wage jobs as benefiting Marion County's expanding economy and quality of life. As called for in the County
12 Framework Plan in October 2005, the Marion County Board of Commissions and the Woodburn City Council
13 approved a revised intergovernmental agreement. This agreement spells out roles, responsibilities and policies
14 applicable to the urban growth boundary amendments. Both jurisdictions followed the provisions of this agreement
15 in our joint decision to adopt the 2005 Woodburn periodic review amendment package. In closing, I would just like
16 to say that I have been very honored to serve as one of the Marion County commissioners these past several years,
17 and I am really proud of the work that we have done with the city of Woodburn to get where we are today and in
18 these efforts for the future growth and the viability and well being, actually, of the city of Woodburn – and I applaud
19 the city council's resolve to meet these local county and state economic and community development objections. So
20 on behalf of the Marion County Board of Commissioners I do urge you to follow the direction outlined in your staff
21 report, and we ask that you acknowledge our adopted amendments to the city of Woodburn's comprehensive plan,
22 land development ordinance and the urban growth boundary.
23 CHAIR VANLANDINGHAM: Thank you Commissioner. I'm probably the only LCD member who was serving
24 when the county and the city were here before, and it certainly was not as much fun as you seem to be having today
25

1 - not that others aren't having as much fun...Questions of the Commissioner? I think she may have to go... Thank
2 you very much.
3 PATTI MILNE: Thank you.
4 JOHN BROWN: Commissioner, members of the Commission, Director Shetterly, my name is John Brown, City of
5 Woodburn city administrator. I would like to thank you all for the opportunity to address you this morning. It has
6 been, for me, an awfully long nine years preparing at this point. And I'm very pleased to be here at long last and
7 I'm even more happy that we're here with so little really to talk about given the size of the plan delivered to the
8 State several months ago. It is really encouraging to see how much the plan has actually been acknowledged at this
9 point, and I think that's a testimony to a couple of things: One is what I see as the changing direction of the
10 department over the last several years to one that is more assistive of the jurisdictions in the state in trying to
11 accomplish the plan goals; and I think to the city's credit, a change in philosophy to some degree that, rather than
12 bucking the system which is where I found us nine years ago, that we were going to do our very best to work in that
13 system and ..(inaudible). You'll find as we talk today that I am not a land use planner; I am a generalist. I try to
14 keep my eye on the biggest picture and try to keep everything fitting together across all of the spectrums of our
15 various services and projects, so you won't find me quoting various sections of the law. I am not well-versed, and
16 we do have people like Greg Winterowd here today who are far better at that than I. I wanted to make some general
17 comments about our plan. I would like to focus more specifically on our economic development program. What I
18 wanted to assure you is that this plan is not the product of some kind of a preconceived notion. When we set out nine
19 years ago, we did not have any specific intention to add to the UGB. We didn't really know where we were going to
20 be. We didn't plan on bringing anybody in or leaving anybody out. We are not motivated by those kinds of
21 thoughts. What we wanted to develop here for you was an objective document, one that is the result of serious and
22 earnest study. You have seen the study areas before you on the mapping earlier today. So you know that we looked
23 at a number of different areas, we applied the same objective criteria to each one of those, and what has come out of
24 that is what we honestly believe are the best alternatives, given the various criteria that we all measure by. This plan
25 was developed by people that we believe are the most talented economists and planners that this state has to offer,

1 and some of the most talented people in the country in those areas. What I like about this plan is that it integrates
2 economic development with land use and with transportation planning, it is the way I think – or I understand - the
3 way long range planning ought to be done. You've heard how well coordinated this plan is, not only with the
4 county but also with DLCD and with ODOT. We consider these people our partners in having put this plan
5 together. All of those folks have really shaped this document, as well as the people that have come and addressed
6 the City Council, Planning Commission and County Board over the last several years. I think it reflects the best
7 efforts of the policymakers of both the City and the County to adhere to the law, as well as to try to address
8 community needs. It seeks to comply with what the law requires of us, both the statewide land use goals, applicable
9 statutes and adopted standards; and it complies, as you have heard with the County's growth management
10 framework guidelines. I believe that it takes in no more land than is necessary to meet the City's objectives or that
11 we believe can be justified. And we have made a real sincere effort to stay off of prime AG land when possible.
12 And we intend it to protect the land that will be brought in for the intended uses and until the right uses are cited
13 there. It also protects the interchange capacity, which is important to us and our partners at ODOT. It protects our
14 resource areas. It severely limits, as you've heard, new commercial lands relying on redevelopment to meet the
15 needs of Woodburn consumers over the next 20 years. And it's really going to support the city's urban renewal
16 program, which some of you may be familiar with. We have a $23 million program of work, which is intended to
17 revitalize our downtown and gateways coming into the downtown. There are potentially 15,000 new residents who
18 are going to require commercial services, and only 14 acres being added to service that. These underutilized
19 properties, both in downtown and the corridors leading to it, are really going to have no choice in the market but to
20 upgrade themselves in order to prepare for that number of consumers. We believe that the plan provides for a
21 variety of affordable housing types for all income levels and that is something that we haven't necessarily been able
22 to provide for in my tenure of the city. The economic development program is really at the heart of what we are
23 here to talk about today. Our plan is based on meeting the economic goals of the City Council. And Kathy has
24 talked to you, or, the Mayor, has talked to you a little bit about that. We are interested in creating living wages for
25 Woodburn residents rather than them having to work two and three jobs, in order to make ends meet. We would like

1 to see, in our vision, every Woodburn resident with one job that pays them well enough to live on. We would like to
2 raise their standard of living so that they will promote, among other things, home ownership, in Woodburn and more
3 disposable income be spent in those stores, as was talked about. We would like more of our residents to be able to
4 afford the homes that are now being built in Woodburn, rather than being priced out of the market. We want to
5 broaden the range of employment opportunities to further diversify our economy and, again, as the Mayor indicated,
6 we would like to provide Woodburn residents, approximately 1/3 of our work force who commute out of town, an
7 opportunity to stay in town. We want to attract responsible industry that is going to add value to the community –
8 and I'm not talking about just tax base there – I'm talking about them getting involved in the community and
9 participating in cleanup days, volunteer activities, and the kinds of things that you find responsible members of the
10 community and business community, like Nike, doing. I'm not saying we want to attract Nike, but I offer them as an
11 example. Important to us also are the attendant social consequences of the increased income that living wage jobs
12 provide. And that really translates into more free time for Woodburn residents. If you are working two and three
13 jobs, you don't have the opportunity to participate in your children's education; you don't have the opportunity to go
14 down to City Hall and get involved; you don't have time to volunteer – because you're trying to rest up from all of
15 that work. We think that we can keep people in Woodburn with affordable jobs. They are going to have a lot more
16 time to participate in those very important aspects communitywide that really will make Woodburn the kind of
17 community that we envision. The key to the amount of land that has been proposed for inclusion here is the site
18 specific planning that Jason talked to you about a little bit earlier. We took an approach that said who do we want
19 here and what do they need in the way of acreage, and then let's provide that. And at the time that we had that
20 notion, I think that was a somewhat novel thought. I don't think it had been really tried before. The State gave us
21 some money to do an economic opportunities analysis that focused us in that direction. And we identified a number
22 of target industries – 13 of them to be exact – that met the criteria that we were looking for, and we were looking for
23 those that would offer the living wage job, those that would be clean industry, those that would be diversified and
24 not leave us reliant on one particular kind of industry, those that would generate spin-off business and help support
25 those businesses that were already in the community as supply lines to them, and those that would participate as 1

1 participated, communitywide. So our list reflects those kinds of industries, and then we set out to find out how much
2 acreage each of them needed. What we found was that they required fairly large tracks of land, much larger than we
3 currently have or really have the ability to assemble in our town. We looked at our opportunities and it's our
4 location, the Commissioner talked to you about the flat topography – it's that, and it is also the access to the I-5
5 interchange and to a major interstate highway. It's the availability of a very motivated workforce. People who are
6 willing to work two and three jobs clearly have a good work ethic. And it is still relatively affordable land in the
7 Woodburn area and we have the sufficient infrastructure in the way of water and waste water capacity to service
8 these industries. We think these opportunities make the difference between Woodburn and some other communities
9 that may seek the very same kinds of target industries as we, but we don't believe have the same kind of competitive
10 advantage. We do acknowledge that there are disadvantages in Woodburn. We are completely out of land at this
11 point for these kinds of industries and they are passing us by. As we have talked to Opus Northwest who holds the
12 option on one of the largest pieces of land in this area that we are talking about bringing, in the years that they have
13 been working with us and trying to get this property into the city, they have lost over 2,000 jobs. I'm sure that
14 number has gone up because I haven't asked them recently. The number of prospective clients coming to Opus and
15 seeking to site could have resulted in 2,000 well paying jobs on that particular 100-acre parcel. So we know we are
16 losing these opportunities every day. We have a well motivated workforce but a lot of them lack training, so there is
17 a problem that we need to overcome, and we need to develop our transportation system. That's what this plan
18 anticipates doing. We are partnering at this point with different organizations, with the Woodburn area Chamber of
19 Commerce, with SEDCOR in Salem, with Chemeketa College to develop the workforce training. It will make us
20 responsive to the needs of the industries that we would like to see in Woodburn. Our transportation plan addresses
21 the construction of a ring road that is necessary to provide west side access to businesses on all sides of the
22 interchange, so that we can take advantage fully of that interchange and not just access it from one side of the road.
23 It was talked to you a little bit earlier about the interchange funding agreement and we have since worked that out.
24 At the time the plan was being developed, we hadn't. We now have an agreement with ODOT to pay $8 million of
25 the approximately $15 million cost of an interchange improvement there. It is now a planned facility in ODOT's

1 view and it is on the stick and we expect it will be a reality in a relatively short (in transportation years) period of
2 time. I mentioned that the plan takes in no more land than is necessary. We take in the marginal soils first, when we
3 can. We take in Class II soils only to get to Class III soils. We have added very little commercial property into this
4 mix to try to focus directly on industrial. We have designated about 400 acres of that industrial into the southwest
5 reserve where it will be protected until the proper uses come along. We have an interchange management agreement
6 that we have entered into with ODOT, which will protect transportation capacity. It creates some disincentives for
7 businesses that are not part of the target industry and it also prevents the bait and switch that some people are
8 concerned that we may try to do, between industrial land and commercial land. The trip budgets would provide a
9 tremendous disincentive to commercial uses in that area, if they were going to want the site. Well, I've pretty much
10 covered everything I wanted to say there. I would like to just conclude in saying to you that we think this is a
11 rational, objective and well reasoned plan. We think it balances the needs of the community with protection of
12 resources and we believe that it will allow the city to meet its economic development potential and increase the
13 standard of living for Woodburn residents. I appreciate your time this morning. Thank you very much.
14 CHAIR VANLANDINGHAM: Thanks John. Questions for John?
15 MARILYN WORRIX: We'll have another chance, won't we?
16 CHAIR VANLANDINGHAM: Yes, yes. Most likely. Thank you Mayor. As you all go down the next, I assume
17 that Woodburn has another panel, can I, we know who you are, but to help us would you all fill out a blue sheet? Is
18 there another Woodburn panel? Or is that it?
19 GREG WINTEROWD: The only person who must leave who would like to make a brief statement is Terry Cole
20 from ODOT.
21 CHAIR VANLANDINGHAM: Okay. Terry?
22 TERRY COLE: Actually I can come back a little bit later. I just have to step out for about ½ hour, so I will be
23 happy to come back and answer further questions, if they should come up later. I'm Terry Cole with the Oregon
24 Department of Transportation. Chair VanLandingham, Director Shetterly, and Commissioners, I appreciate the
25 opportunity to speak to you today. I represent ODOT through the Region 2 office at 455 Airport Road SE here in

1 Salem. We have been working with the City of Woodburn for years and years and years on transportation issues,
2 particularly related to the interchange and Highway 214. Highway 99, as well; but Highway 214 and the
3 interchange have really been sources of major concern for us for years. And I really just want to express our
4 gratitude to the City of Woodburn and our support and appreciation for the work that they've done with us over
5 these years. I could get into a lot of detail with respect to the transportation system and how the recently adopted
6 transportation system plan I think is supportive of the State transportation system, but many of those ways have
7 already been discussed with respect to the local transportation circulation system, how that should balance the
8 demand on the interchange, as it is currently planned. But the best thing I think that I can tell you is to express the
9 department's support for what the City of Woodburn has done, is that we have adopted the interchange management
10 plan. The Oregon Transportation Commission did that in August of this year, or last year, I should say; and to say
11 that they were pleased with the plan would be to sort of damn it with faint praise. They, particularly our chair Stuart
12 Foster, held out this plan as an example that they hope will be followed around the state. It is easily the most
13 comprehensive and the most innovative interchange area management plan that this state has seen adopted thus far.
14 Reference was made earlier to a trip budget, which is an innovative technique that we are using in order to assign
15 trips to various different parcels around the interchange so that build in accordance with our plan expectations. The
16 overlay zone that the City has adopted in conjunction with the trip budget and with the interchange area
17 management plan prevents conversion of this newly added to anything other than industrial; it is not allowed to
18 convert to residential or commercial land, and that is a part of their ordinance. The linking back of the
19 transportation plan to the economic development objectives of the City is also unique in Woodburn. One of the ways
20 that this is played out is that if an employer comes to the community and they can say "we are one of the target
21 industries", then they are allowed to make a case for an increase in their trip budget of 10%, but only if they bring
22 forward a transportation demand management plan for the large parcel, which says we are going to stagger work
23 hours, we are going to have employer carpooling, and demonstrate to this city that they can actually reduce the
24 overall demand in the peak hours of use of the interchange. So by doing that, that will really provide an overall
25 benefit to the transportation system, and, as has been mentioned several times before, the local circulation system

1 that allows the balancing of the demand on the interchange is also critically important to its long range operations.
2 Currently the vast majority of demand on the interchange comes from the east because that is where the largest part
3 of the community is, and the arterial system – both the State and local arterial system on the east side of the
4 interchange – is very much under stress, and being able to balance that out and actually utilize the full capacity of
5 the interchange, both in its current configuration and as it would be modified in the future, is critically important to
6 us. One other thing you should be aware of – we have recently completed an environmental assessment, a Federal
7 environmental assessment of the interchange, and the Federal Highway Administration has granted us the finding of
8 no significant impact (FONSI), which is our approval to move forward with preliminary and final design and
9 further right of way acquisition. In order to support all of the work that we have done with the interchange
10 management plan, the coordination with the TSP, the environmental assessment, as the City Manager mentioned, we
11 have entered into two intergovernmental agreements with the City of Woodburn. One intergovernmental agreement
12 really covers how we jointly, as partners, cooperatively administer this interchange management area. It is a large
13 area. It encompasses all of the area that has been brought into the UGB and the redevelopable areas around the
14 interchange. It talks about that approximately every three years we will do a review and assessment. We will take
15 fresh traffic counts. We will see basically how the area is playing out. The City's obligation in this is to keep track
16 of the development that comes into the area, keep a ledger relative to the trip budget - you can imagine the trip
17 budget is sort of a jelly beans and there are so many beans in that jar, when somebody comes in they are going to
18 take a handful. We are going to monitor that over time, so that we know well in advance if we are keeping track
19 with what our expectations were, with respect to the pace of growth in that area and the use of the transportation
20 system. And, again, that is our obligation through time. There is no end limit on that intergovernmental agreement.
21 We will manage it through time and we will update it and modify it as necessary as we go through time. The other
22 intergovernmental agreement that was mentioned was the funding agreement. The City has agreed to provide $8
23 million towards the ultimate improvement of the interchange. Based upon that agreement, our Commission has
24 agreed to view the Woodburn interchange improvement as a planned transportation improvement over the 20-year
25 planning horizon. We currently are about $25, approximately, million dollars short of the full money that we need

to improve the interchange but it is the number one priority along with the Newberg/Dundee bypass. Of the Mid Willamette Valley area Commission and in the world of transportation possibilities, it is highly likely that we will be able to find the balance of the Woodburn money, my guess is, before we can find the balance of the money needed to finish the Newberg/Dundee bypass. So, I think John's optimism is shared by ODOT, that we can move forward sooner rather than later with those interchange improvements, and we are quite confident that with those improvements that interchange will provide very good service to the City of Woodburn and its proposed comprehensive plan updates well through the 20-year planning horizon. So, with that, I will just say that the Department of Transportation is very much supportive of the City's action and will urge that you move approval today, as recommended by your staff.

CHAIR VANLANDINGHAM: Thanks Terry. I am not going to let Commissioner Worrix speak because you just slighted the Dundee bypass... And also I was hoping you could define a transportation year...

TERRY COLE: Well, it's kind of like a dog year. Actually, it's sort of the reverse of a dog year...the inverse of a dog year, how's that?

CHAIR VANLANDINGHAM: So what happens if, to get serious for a minute, the trip budget runs short? The jelly bean jar gets emptied earlier than we have all been hoping...

TERRY COLE: Well, a couple of things will have to come into play. That's why we will monitor it on a regular basis as we move through time. The whole theory of transportation planning is based on the law of averages. Some properties will come in and have a higher trip generation rate, some will have a lower, than the averages that we use in order to make these determinations. And so as we go through time, there is also a component of the transportation that is outside of the zone – so those are external trips to the zone, and they may grow either faster or slower than we anticipate as we go through time. So it's an inexact science as we look at transportation into the future. What we will try to do is monitor so that we know well in advance, "Are we keeping pace? Are we lagging? Or are we actually consuming those trips faster than we thought we were going to consume those trips?" If in fact we get to a point of having consumed those trips, say in 15 or 16 years rather than in 20 years, or in 20 years rather

1 than 25 years, we will have to look at additional mitigation as we look through time. As it stands right now, there is
2 not a provision to move beyond the budget. The budget is what it is and when those trips are allocated, they are
3 allocated; but I assume as we would move out – again, 10, 15, 20 years – we will look at ways to adjust and adapt to
4 those conditions that exist at that time. That is sort of the notion of even the periodic review process that you do
5 with your own comprehensive plans. It is an inexact science, and that is the purpose of the one agreement to
6 monitor and adjust as we move through time.
7 CHAIR VANLANDINGHAM: Thank you. Marilyn?
8 TERRY COLE: By the way, I work on the Newberg/Dundee bypass too and I try to hold up great optimism for it as
9 well. The needs there are also very great.
10 MARILYN WORRIX: I was just glad to hear you reference it at all, but the longer we wait, the higher the tolls, and
11 the harder to make it happen.
12 TERRY COLE: It's always a very complicated project. There's no question about that.
13 CHAIR VANLANDINGHAM: Questions by the Commissioners...? Thank you Terry.
14 TERRY COLE: Thank you.
15 CHAIR VANLANDINGHAM: So, Woodburn, more?
16 JOHN BROWN: No.
17 CHAIR VANLANDINGHAM: You're going to assume that I'm going to invite you back to respond?
18 JOHN BROWN: Yes.
19 CHAIR VANLANDINGHAM: Okay. Sid, I think you're next. Is that correct?
20 SID FRIEDMAN: Inaudible
21 CHAIR VANLANDINGHAM: Absolutely. So, I think it's a farm panel. I know that the last time we had farmers
22 speak to us in Pendleton, they brought us baskets of fruit... So you're at a disadvantage already...and I want to
23 apologize that one of our documents misspelled "CARL".
24 KATHERINE CARL: Thank you.
25 CHAIR VANLANDINGHAM: Sorry.

1 KATHERINE CARL: Tom Brawley is going to speak first for the Farm Bureau. This is not very coordinated...but
2 we are ready to hear what he says.
3 CHAIR VANLANDINGHAM: Great.
4 TOM BRAWLEY: I'm sorry to disappoint you about the basket of fruit. I can't even give you an apple. But I am
5 glad to be here and to be part of this process. I have watched you from a distance and I have known people who
6 have sat on your Board. I have tried to stay in contact with them and have been interested in your deliberations and
7 your process. So we thank you for the opportunity to be here today. I represent – I'm Tom Brawley. I'm a farmer in
8 Marion County. I've been here for many years. I represent today Marion County Farm Bureau, which has
9 approximately 650 farm operations registered with it; and therefore, I would like to say I represent many farm
10 entities here in Marion County. They have a substantial inventory in Marion County and, therefore, substantial
11 investments in this county. Their businesses generate $500 million plus for this county. They are not a targeted
12 industry. They're here. We're here. We've been here. We're necessary to life. And I would like to hear the extent
13 of the targeted industries. I know many of the industries that are targeted never show up. People miss their target. I
14 also would like to know if they are long-term industries that we are talking about, as compared to AG. Marion
15 County wrote a list of objections. I thought it was well written. I hope you have read it. It is short and concise and
16 direct. It gives you a list of the objections that Marion County has got by ORS numbers, by goals and guidelines
17 numbers and by administrative rules numbers, so it's easy. Marion County Farm Bureau. It's easy to read. It is, I
18 think, pretty straightforward, not in a lot of legal jargon, and I think you'll find it interesting. It does say in that
19 report that the economic figures that this whole thing is based on are skewed, which means we could be built on a
20 house of cards here, and that the ag figures are in fact larger than the industrial potential from this county and from
21 this location. Marion County Farm Bureau has objected to the size, to the location and to the soil types of this
22 projected UGB expansion. So we object to the loss of prime farmland. We think that this can be limited in size and
23 certainly in direction, and by that I mean North-South. Before I came here today I thought I'd try to find out what
24 your job description is. I know what mine is. And I asked a couple of folks that are on your Board, "Do you have a
25 job description? What are you tasked to do?" I hope all of you know. Because it's heavy. It's really heavy. You're

1 helping to decide how my industry goes. It is a burden that is put on your shoulders, and I hope you bear it well.
2 And I hope you know your job description. I don't envy your position but I certainly do know what the outcomes
3 are of your decisions. So I ask you to heavily consider this decision and all of the 37 decisions that you are going to
4 have – not only for our county but for the entire state. And I know there are many, many acres involved in
5 farmland. 20,000 in Marion County alone. 35,000 in Yamhill County. Thousands. So each bit is going to nibble
6 away at this well established, very essential industry that I am representing. And I hope you take these into
7 consideration in your deliberations and your burdens. I think it is very fitting that we come on a day that you have
8 honored Senator Hallock because it speaks to me of what you're sentiments are on this Board and what your
9 intentions are and where your deliberations are going. Thank you for the opportunity.
10 CHAIR VANLANDINGHAM: Thank you Tom. Questions for Tom?
11 MARILYN WORRIX: Just a brief one. I'm looking at this map showing the soil types around the current urban
12 growth boundary and I'm really sensitive to your arguments. Where would you have them go?
13 TOM BRAWLEY: First of all, reduced in size...excuse me, you folks can pick up...first of all, reducing size. That
14 makes a big difference right there. And secondly, south to the lesser classification of farmland.
15 MARILYN WORRIX: Could you tell me by number?
16 TOM BRAWLEY: No, I can't. No, I can't. I don't have that map. But that's a general consensus that we had.
17 CHAIR VANLANDINGHAM: Other questions? Thank you Tom.
18 TOM BRAWLEY: Thank you.
19 CHAIR VANLANDINGHAM: So now I get to say Ms. Carl, and be right. Put that microphone over in front of
20 you, please.
21 KATHLEEN CARL: My name is Kathleen Carl. I'm representing the Matt and Carl LLC Farm and I would like to
22 say that my father worked with Hector McPherson and Ted Hallock testified before that the legislature worked very
23 hard for senate bill 100. So I come here as somebody who feels that agriculture is very important and that is why
24 I'm talking. I would like to say very frankly that UGB does go down Carl Road even though that's not what part
25 I'm talking about. But it does go into our area, so...Anyway...under statewide planning goal 9 guideline 4 – and I

1 did submit this letter, it's on record – says the plan should emphasize the expansion and increase productivity from
2 established industries and firms as a means of strength of local and regional economic development and I believe
3 that Woodburn's plan focuses too much on attracting new industries and not relying on local and established ones.
4 In their economic opportunities analysis, there was no mention of agriculture, of the rich soil surrounding Woodburn
5 as one of the comparative advantages. In Woodburn's projections for 2020 they projected a 40% drop in AG jobs
6 from 2004. Yet ag's contribution to the economy has been growing. 519 million in 04, 554 million in 05. We are a
7 growing industry. And it's also growing in the Woodburn zip code. Technical background documents set loss of
8 agriculture jobs as a goal. Agriculture is a viable thriving part of Woodburn's economy and it should not be a goal to
9 reduce it. We also would like to talk about saving the highest class lands and I commend Woodburn for eliminating
10 some Class I land in the north. I do believe that the land that is west of the freeway is II and III level, Class II and
11 III, but with more Class II. Class II is wonderful land. Any of you from different counties know that Class II land is
12 still wonderful land and not only do I feel like there is too much industrial land, but that it should go south where
13 there is more Class III combined with the II. I worry about the large 125-acre parcel, I think for silicon chip
14 fabrication plant. I question whether Woodburn has the technological base for that. My other point, if I can find it,
15 is that under Goal 2, planning must be coordinated with affected governmental units and I listened to the testimony
16 about Woodburn being targeted to grow. They only have 8% of the current employment. There are plans to provide
17 land for 23% of all future jobs in the county. So my question is who takes the hit? If they are going from 8% to
18 23% of the pie, what municipality do the Commissioners go to and say "Okay, Woodburn's got this. You can only
19 have this." So I feel like it hasn't....it's not clear how coordinated that is. Also, I know that Metro sent Woodburn a
20 letter, worried about this huge expansion, and did talk about having a meeting. To my knowledge, I don't think the
21 meeting has taken place. If I'm wrong, I apologize to everybody. But I do think that we should look at this under
22 goal 14. It does say to confer with surrounding counties, if I read it correctly. Anyway, I would just like to think
23 about "does it have to be this big? Does industrial have to be this big?" This is a lot of acres and this is beautiful
24 farmland. I'm done.
25 CHAIR VANLANDINGHAM: You did well. Thank you very much. And did you wish to speak also?

1 LOLITA CARL: Yes. I'm Lolita Carl. 13324 Carl Road, Hubbard. I am here to urge you to think not 20 years into
2 the future, but 50, 75, 150 years. Our farm has already had five generations of our family living on it in only nine
3 years. If we think short-term, our beautiful valley of mild climate and abundant resource land will be paved over.
4 This is some of the nation's most valuable soil and the plants and crops that can be grown here include kiwis, wheat,
5 vegetables, berries, nuts, grapes and nursery stock. I my lifetime, on our farm, we have raised corn, peas, flax,
6 wheat, clover, alfalfa, hazelnuts, beef and dairy cattle, chickens, grass seed, fruit, berries, hogs, sheep and trees.
7 Perhaps you're looking at a grass seed field and think "What good is that? Let's put in some houses or a
8 commercial or industrial park". Because. We now have a planet of 6-1/2 billion people, one to two billion of whom
9 are starving because the oil reserves are being used up, and we might not be able to afford to import strawberries and
10 apples from thousands of miles away because agriculture is Marion County's number one industry. Yes. Marion
11 County leads all other counties in the state in agriculture production. 519 million in 2004 and 540 million in 2005.
12 And Woodburn is in the heart of Marion County. Agriculture exports rank number two in the state after all other
13 exports... I should say BEFORE all other exports. Agriculture exports account for 25% of Oregon exports. 80% of
14 them leave the state, 40% of them leave the country. Woodburn is ignoring the enormous ag production supporting
15 and surrounding it and the thousands if its residents who work in the ag industry. This is from Woodburn's
16 economic opportunities analysis. It says right here. "Hubbard employment does not include most farm
17 employment". Woodburn has a dependable and growing economic base in place with ag business. The farmers are
18 not pushing for new roads and infrastructure. There are presently acres and acres for industrial development in
19 Woodburn's current growth boundary. I urge you to drive Woodburn's current growth boundary and its expansion
20 request. There are fields out there that are in Woodburn's current boundary that are not yet developed. Many of
21 these sites have been abandoned or not yet developed. They already have sewer and power and roads. It behooves
22 us to take care of these acres first and conserve our precious prime farmland. We have to go for efficiency. I feel
23 like Woodburn is asking for the moon. The ones who are really pushing for development and expansion are
24 consultants who are paid to say "we need it". Greg Winterowd was simultaneously paid by Opus Northwest to try to
25 get its land and expand UGB while being paid by the City of Woodburn. A serious conflict of interest that cannot be

1 ignored. Please, take a moment to reflect on the importance of our decisions today. Think of early settlers who had
2 no idea what the value of what one old growth tree would be. Think of one acre of land. Our rich Willamette
3 Valley soil can produce new crops of food every single year to feed endless generations and the industry is aware of
4 that.
5 CHAIR VANLANDINGHAM: Thank you. I want to thank all three of you and note that often objectors in any
6 hearing process are viewed as a problem or creating trouble, but we would be in a sad state of affairs if people like
7 you didn't care enough to get involved. So, we really rely on you all to do this. I know its volunteer, and a hard
8 thing to do. I also want to note that it is very important to the Commission, and always has been, that a commission
9 has historically had a farmer as a member. Hector McPherson was one of a string of LCDC members. Our current
10 "designated farmer' is Ron Henry whom I've learned to describe as a corporate farmer, but still a farmer, from the
11 Jacksonville/Medford area with Harry and David. I started my service with Gary Harris who taught me to call him a
12 dirt farmer, from Madras. So regardless of the outcome here, I want you to know that we think that we care a great
13 deal about farming. Anyone want to ask questions of this panel? Actually, I do want to ask one question. You,
14 Lolita, asked us to think 75 to 150 years out. And I don't mean to be flip here. I've heard people describe global
15 warming as making Western Oregon the next Sacramento. Do you think 75 to 150 years out? What will you be
16 farming, or your children, in 75 years?
17 LOLITA CARL: I have asked where we are going to plant our orange grove.
18 CHAIR VANLANDINGHAM: That's a very good comeback...
19 LOLITA CARL: Well, I don't know but farmers are very adaptable. They can change their industry so fast to a new
20 crop, and that is not necessarily true of some of these targeted industries. We can change what we're growing. We
21 can adjust. And I think the wine industry and the nursery industry is a real indication. Maybe, whether you like it or
22 not, it is a changeable industry.
23 CHAIR VANLANDINGHAM: And we would be growing cabernet grapes instead of pinots. Thank you very much.
24 LOLITA CARL: Thank you.
25

1 CHAIR VANLANDINGHAM: Sid, I think you're up. Lane is going to leave while you are speaking because he's
2 got to go to the Capitol.
3 SID FRIEDMAN: Believe me, if I could leave while I was speaking, I would too!
4 LANE SHETTERLY: Nothing personal Sid. I will be taking Richard Whitman with me, I guess. Oh, he's not here
5 for this business anyway, so, we'll be back.
6 CHAIR VANLANDINGHAM: So let me ask a logistical question. Do you have a sense of how long, or Jason, how
7 long we are going to go with this? We've got one other item to do today, or that we were scheduled to do today.
8 We can always add items from Friday and move them over here. But the rule making probably is an hour or less,
9 since we don't seem to have too many objectors.
10 LANE SHETTERLY: Probably.
11 CHAIR VANLANDINGHAM: Any estimate of how much longer we are going to be with this issue? I'm trying to
12 figure out whether we should take a break. It's easy enough for the Commission to work through lunch because
13 somebody will bring us lunch. It's not as easy for the other parties, since they have to sit there and watch us eat.
14 I'm thinking maybe we actually would take a lunch break. Do you see a problem with that?
15 LANE SHETTERLY: I don't think so. I think, my expectation is that even with a lunch break we should be able to
16 wrap this up this afternoon in time to get the Measure 37 rule making done, and then of course remember that we
17 have a reception with legislators at 5:30 this afternoon. But I think we're in good shape for that.
18 CHAIR VANLANDINGHAM: Okay, great, thanks. So Sid, the goal is to do your presentation and then we're
19 going to break for, assuming you do in an hour, as you hope...
20 SID FRIEDMAN: I'll try to be brief...
21 CHAIR VANLANDINGHAM: Well, when you stop we are going to take a break and resume at about 1, so that
22 people, not before, let's say hard and fast so that you don't have to worry about we start before you get back. So
23 we'll start again at 1, so people can go get lunch. Okay.
24 SID FRIEDMAN: Commissioners, thank you for letting me testify before you here this morning. I'm afraid that the
25 Carl's and Mr. Brawley are a tough act to follow and I don't expect to be nearly as eloquent. I also expect to be a

1 little more specific than either the City panel or the previous objectors. So I encourage you to flag me with
2 questions during my presentation if there are questions you want clarified. To begin, Mr. Brown the City Manager,
3 talked about how long the periodic review has taken Woodburn the long process to get here. And we agree periodic
4 review has taken Woodburn too long. But is a result of choices that the City has made. The first consultant team
5 that the City hired funded by a grand provided by the State TGM Program concluded in February 2000, and I quote
6 for the record, "The amount of industrial land identified by the City Committee is unrealistic. The consulting team
7 does not include any land outside the existing UGB because the data does not indicate a need in the foreseeable
8 future". The City chose not to accept that conclusion. Instead, they hired a new team of consultants who developed
9 new growth assumptions to allow their different conclusions and recommendations. That is certainly within the
10 prerogative of the City, but they should have then complained about delay of the process. Of course, subsequent
11 actions by the City have resulted in additional delays and expense. The appeals of the Marion County Urban
12 Growth Management framework to LCDC, and then the Court of Appeals, and then finally the City, after losing
13 those appeals, went back to the County to negotiate and new higher population forecast. The City has now proposed
14 an Urban Growth Boundary Expansion of almost 1000 acres, most of which is prime farmland. Given the size of
15 the expansion and the importance of the agricultural industry of Marion County, it should be no surprise that the
16 proposal is controversial and has attracted opposition. We have no objection to the residential component of the
17 package before you, no objection to the commercial component and no objection to the natural resources component
18 or the interchange area management plan. Our objections focus solely on the amount of industrial land included in
19 the expansion and its location on prime farmland. There are important issues before the Commission here. Are
20 there any limits to how much industrial land the City can add to its UGB using the targeted site industries method?
21 And, if so, what are they? Can the City include substantially more than a 20-year supply of industrial land in its
22 urban growth boundary? Can the City exclude valuable industrial land from its land inventory because it will be
23 used for expansion of existing industries rather than new employers? Can the City add prime farmland to its UGB
24 instead of poorer soils because it believes potential users, who may or may not choose to locate in Woodburn, will
25 prefer it? Much of Woodburn's urban growth boundary is based on a very aggressive industrial development

1 strategy. It has adopted an unrealistically large projection for industrial job growth and it has included far more
2 industrial land within its amended boundary than is needed to accommodate that very large projected industrial job
3 growth. It has included more industrial land than is used to accommodate its target industries and it has included
4 more industrial land than expects to develop over the 20-year planning period. We believe the City also failed to
5 coordinate this disproportionate expansion with other affected jurisdictions. And, finally, as I think I said, the City
6 excluded valuable industrial land from its inventory because it might be used for expansion of existing industries
7 rather than target industries. I hope you'll bear with me. I have a, I'm fighting a bad cold, so if I stumble a little bit,
8 please bear with me. I want to talk about the employment projection and adequate coordination. Woodburn has
9 about 7% of Marion County's population and just under 8% of Marion County's jobs. It adopted a plan amendment
10 to project that it will capture 23% of Marion County's future job growth. This is double the portion of Marion
11 County job growth than what is historically located in Woodburn. Clearly, if even a few cities up and down I-5 all
12 decided that they were going to double the amount of job growth, their share of county job growth, we would wind
13 up in a situation with way too much land in urban growth boundaries and a very uncoordinated planning system in
14 the county. The Department concluded that the City of Woodburn based its inclusion of hundreds of acres of prime
15 farmland along I-5 on a sophisticated and technical economic opportunity analysis that identified target industries
16 and the location characteristics. But, in fact, the list if targeted industries is identical to the same list that the same
17 consultant developed for the city of McMinnville, 30 miles from the freeway. All the City has really done is
18 conclude that warehouses, distribution centers and certain other businesses are likely to locate at freeway
19 interchanges. The Department dismissed our exception on this point, our objection exception, because the amount
20 of land added to the UGB is based on target industries, not employment forecast. But that misses the point. Plan
21 amendments need to have an adequate factual base and they need to be coordinated with other jurisdictions.
22 Commissioner Milne talked about the high level of coordination between the City of Woodburn and the County.
23 And we don't allege that the City and the County fail to coordinate. But the City and the County did fail to
24 adequately coordinate this outsized employment projection with the other affected cities along the I-5 corridor,
25 including Wilsonville, which isn't in Marion County, and....well. Hubbard's urban growth boundary is less than

1 one mile from the expanded UGB. Gervais' urban growth boundary is just over a mile. The Salem, Wilsonville, Mt.
2 Angel, Aurora, Donald and St. Paul UGB's are all within 10 miles of the expected urban growth boundaries.
3 Woodburn did not notify Gervais, Hubbard, or any of these other cities of its work or public hearings on these
4 amendments. It's true that Marion County provided notice to the Marion County cities prior to the final hearing
5 before the County, but adequate coordination requires that affected jurisdictions have a right to be involved in the
6 development plan amendments that affect them and that they need to be brought in early in the process, so they can
7 help shape them and have their needs accommodated. The Department's response to our exceptions, or our
8 objections, dismissed our exception because none of these affected jurisdictions participated in the local proceedings
9 for filed objections. But how can they participate locally and file objections if they're not notified of the
10 proceedings? As I said before, Woodburn has not only adopted a very large employment projection, an
11 unrealistically large employment projection, it has also included far more industrial land in its UGB than can be
12 justified by its target industries site requirements. Even based on the inflated employment projection that I just
13 discussed, the City concluded it would need only 224 acres of industrial land. That's less than half of the 486 acres it
14 says it needs based on target industry job requirements. In comparison, and this is from the Woodburn record,
15 McMinnville with a similar job growth projection, for a much larger population projection, concluded it would need
16 174 acres of industrial land over the planning period. Woodburn, in contrast, 486. McMinnville, 174. And recall,
17 too, that they have identical targeted industries. Even based solely on the site requirements for targeted industries,
18 Woodburn is adding far more industrial land to its UGB than I think is justified. And I think Jason discussed this
19 issue a little bit in his initial presentation. The City has targeted 13 industries, yet it asserts a need for 42 sites. Each
20 city is targeting four industries that utilize sites smaller than 5 acres, yet it is asserting a need for, and including
21 within its UGB, 25 sub sites. The City is targeting 12 industries that utilize sites smaller than 50 acres, yet it is
22 asserting a need for and including within its UGB 40 sub sites. The Director's report in the response to exceptions
23 concludes that this is not an oversupply of sites because (a), it provides a short-term supply, and (b) it provides
24 market choice among sites. But the Department, despite our exception, does not explain why an excessive number
25 of sites are needed to provide a short-term supply of industrial sites. Indeed, an adequate long-term supply would

1 clearly provide an adequate short-term supply. The Department also doesn't explain why such an excessive number
2 of sites are needed to provide choice in the marketplace. The City has not found, for instance, that it is likely to
3 attract multiple firms in the same target industry. The need for market choice might justify some of more than 13
4 sites, but it cannot justify 42 sites. The Department asserts the City evidence to support the number of sites is
5 substantial but it doesn't actually identify any particular item in the record. In fact, nothing in the record explains
6 why the City needs such an oversupply of sites. As you heard previously, I think, the largest of the new large sites is
7 a 125-acre parcel of prime farmland intended to lure a silicon chip fabrication plant. This is an industry that is
8 shrinking, not growing, in the United States and the Pacific Northwest. Since 2000, the silicon chip industry in the
9 Northwest has closed many plants and significantly reduced, and retained significantly unused capacity. The City's
10 decision speculates that the silicon chip industry may recover during this period or that there may be other emerging
11 industries that require such a large site. That's speculation. The City does not explain why a silicon chip fab plant
12 could be reasonably expected to locate in the planning area, and that's what OJR 660-009-0015 requires. There
13 simply is not an adequate factual base to conclude that silicon chip fab plant is likely to locate in Woodburn over the
14 planning period and large blocks of prime farmland should not be included in the UGB based on some speculative
15 target industries. I would point out, as well, that high tech plants locate in clusters. That's clearly the case in the
16 local area. Washington County has achieved cluster status but few other areas in the state have been able to
17 maintain any electronic space for more than one or two employers or more in a few years. Intel's expansion has
18 been entirely within Washington County. There has been little tech development in Multnomah or Clackamas
19 Counties. There is no basis to believe the industry will leapfrog to Woodburn. We talked about the large
20 employment projection, the fact that Woodburn is using the targeted site, targeted industry site requirements to
21 include double the land for industrial than its employment projections would justify. And it is also, we believe,
22 unjustifiably including too many of those sites. But the City also acknowledges within this plan that not all of the
23 industrial land proposed is expected to develop over the planning period. Indeed, based on the number of new
24 employees, the City will use less than half of the industrial land that it is including. The Director's report does not
25 dispute this but concludes that this poses no violation of rules or goals. We think this conclusion is simply wrong

1 and that the Commission should reject it. Nothing in either statute or rule authorizes the City to expand its UGB
2 beyond its identified needs. Indeed, a DLCD memo from 2006 to cities, counties and interested parties states "The
3 Goal 9 administrative rules do not authorize the designation of more than a 20-year land supply nor do they
4 supersede the requirements of other goals, such as Goal 14". So it appears that the Department's conclusion
5 regarding this submittal is at odds with the memo it sent out less than a year ago. Regarding the size of the
6 expansion, Woodburn incorrectly removed buildable industrial land from its buildable lands inventory because it
7 would be used for expansion of existing employers rather than targeted new industries. I do have a handout here.
8 These are from the record, and I will hand one to the City. Woodburn inventoried 126 acres of vacant, partially
9 vacant, and redevelopable industrial land within its existing urban growth boundary. Woodburn removed 79 acres
10 from the inventory, reducing it to 46 acres because, and I quote, "The owners of industrial firms stated that partially
11 vacant land on their property was being held for future expansion and was not available for purchase to meet the
12 needs of targeted employers". The Department asserts that that land wasn't removed from the inventory, but if you
13 turn to the last page of the handout, you'll see there's the City's inventory of the partially vacant land and then back
14 have scratched the partially vacant parcels from the inventory. Now we don't contend, as the Department implies,
15 that these lands are suitable for the new employers that the City wants to attract. We do, however, contend that
16 these are buildable lands that are available to meet future land needs and they cannot be excluded from the buildable
17 lands inventory. The Department is also simply wrong in asserting in its response to our objections that the City
18 found the remaining 47 acres that have retained, that those acres provide for existing industry. As pointed out in our
19 exceptions, the opposite is true; and that is highlighted on the first page. So, to summarize, for the reasons I've just
20 covered, we believe the City of Woodburn included too much industrial land within its urban growth boundary, an
21 amount of land that cannot be justified under goals, the administrative rules, or statute. We also believe that the City
22 of Woodburn is including the wrong land under the statutory priorities for the industrial land it has included. Jason,
23 will you put that overhead of the soils back up there? With our objections, we also submitted a couple of color
24 maps, and they were reduced in size and reproduced in black and white in your packets; so I made color copies, so it
25 will be more legible for you. They are city maps we submitted from the record and these are copies. They were

1 submitted to local, county and the City, and they are included in the materials that the County and City submitted as
2 part of the record. Now, as I think you've heard, the City has included hundreds of prime farmland, hundreds of
3 acres of prime farmland within its expanded urban growth boundary....I'll get that map and will then go to the
4 overhead here. I'm not going to bring the mike; I'll just speak loudly. So, the City has included hundreds of acres of
5 prime farmland here, west of the freeway, the Opus site, instead of the predominantly Class 3 soils that continue
6 south, all the way through there down to Gervais. The inclusion of the land west of the freeway, the Opus site, is
7 particularly troubling because it is a large urban expansion on the prime farmland beyond the natural barrier formed
8 by the freeway. The Department of Agriculture, as we highlighted our objections, also testified that it was especially
9 concerned with the proposed expansion west of the freeway. Now, the Department and the City advance three
10 reasons to try and justify, including the Class 2 soils instead of the poorer soils south. The first one is that the land
11 west of the freeway must be included so that land east of the freeway can access I-5 from the west side of the
12 interchange. And, as the transportation map I passed out shows, the City has, in its adopted transportation systems
13 plan, has included a new frontage road – that yellow line on the east side of I-5, the Stacy Allison Drive extension as
14 well as the Evergreen Road extension, both of which provide new capacity, the freeway, from the new industrial
15 areas on the east side of the freeway, and would also provide access for industrial areas that continue south towards
16 Gervais, were they to be included. That land east of the freeway simply does not need to use land west of the
17 freeway to access I-5. In fact, the new frontage road on the east side that Woodburn has included in its TSP will
18 include a more direct route to the interchange than crossing over the freeway to Butteville Road. It is true, as you've
19 heard, that the east side of the interchange is congested and, yes, it may be in some ways easier, an easy fix...well,
20 let's just include a big block of farmland and we'll route everybody around to the west side rather than fixing the
21 transportation problem on the east side of the freeway. Most of those, a lot of those, congestion problems actually
22 occur further to the east of where the frontage road will hit 214. But, be that as it may, there are actual congestive
23 problems around the interchange, as well. But simply because it's easier or perhaps more desirable in some people's
24 minds to provide westside access rather that eastside access, we don't believe that means that the poorer soils will
25 not reasonably accommodate the identified need for industrial land. I hope I didn't get too complicated in that

1 explanation. I trust that if you have questions, you'll ask me. Now, the next thing I want to talk about, is that the
2 Director in both the November 6 submittal from the City to the Department, the Director's report and again the
3 response to exceptions repeats the assertion from the City's November 6 submission, it implies, it doesn't outright
4 state, but it implies that the southwest expansion area has predominantly Class 3 soil, and that's simply not true.
5 The southwest expansion area is predominantly Class 2 soils, as the soil map shows and as the soils maps we
6 submitted shows. Now, John Brown, the City Manager, testified that the City only included Class 2 soils to get to
7 Class 3 soils. Once again, that's simply not true. The City included this land west of the freeway, which is almost
8 completely Class 2 soils – the vast majority is prime Class 2 soil. They do include this to get to Class 3 soils. Here's
9 the Class 3 soils down here. Here's the chart on the city map and the chart on the map I handed out. Here's where
10 the City should be directing its industrial land. Finally, I want to go to the third justification that is advanced for
11 including the prime farmland west of the freeway – and that is this idea of the targeted industry site requirements
12 that require that those industries be within two miles of an interstate interchange. And the Director's report repeats
13 the statement for the record that for many target industries, being within one or two miles of an interstate is much
14 more preferable than being three or four miles away. Even if this were true, these references potential users are
15 insufficient reasons to include prime farmland instead of land with poor soils. As Eco Northwest went on to note in
16 the same statement, which wasn't included in the Director's report, there is no absolute distance from an interstate
17 beyond which targeted industries will not locate. And indeed, Eco Northwest, who developed one of those targeted
18 industries, developed an identical list of targeted industries in McMinnville some 30 miles from the freeway.
19 Furthermore, even that Eco Northwest statement that is signed by the Department does not assert that all targeted
20 industries prefer land near the freeway. Eco Northwest also listed many types of firms among Woodburn's targeted
21 industries that do not require close proximity to an interchange – including health clinics, doctors' offices, some
22 business services, engineering, accounting, research, management, and other related service firms. The City's own
23 site requirements for Woodburn's target industries, which is part of the packet and part of the record, also lists other
24 non-freeway locations as appropriate for several of the target industries. So while it's true that for a warehouse or a
25 distribution center, yeah, they might want to be near a freeway – or that might be a key consideration for them, even

1 Woodburn's site requirements for target industries analysis doesn't say it's a key criteria for all of the target
2 industries. Once again, the standard under 197.298, and this is what the Court of Appeals found in the residents of
3 Rosemont versus Metro, the statute asks whether higher priority areas, poorer soils, can accommodate the use of all,
4 not whether they can do so efficiently or beneficially as prime farmland. So that pretty much concludes what I want
5 to say. I do want to emphasize, and I perhaps didn't point this out in the beginning, we support Woodburn's
6 ambition to provide higher wage benefits and higher wage jobs for its residents. We support their efforts to achieve a
7 better housing to jobs ratio. What we don't support is the inclusion of way more industrial land than is necessary to
8 achieve that goal, and land that is prime farmland rather than poorer soils, which can also achieve the desired
9 outcome for Woodburn. Thanks. And if you have any questions, I'll try to field them.
10 CHAIR VANLANDINGHAM: Sid, earlier in your presentation you talked about what I would call some global
11 questions about the targeted industries approach. Could you expand on that?
12 SID FRIEDMAN: Sure. I think what you're referring to is I asked if there are any limits to how much industrial
13 land the City could add to assert the growth boundary using the targeted industries site required in its approach. And
14 that's the fundamental question here before you. Woodburn came up with a list of 13 targeted industries. They did it
15 and they said "well these industries need X amount of parcels of X size". They neither made any intent to correlate
16 the amount of land they were including to what they expected to use over the planning period or what their
17 employment projections would suggest they need; nor did they make any attempt to explain why they were
18 including so many sites for so few targeted industries. Once again, as I have pointed out for example, the City of
19 Woodburn targeted 12 industries that utilized sites smaller than 50 acres yet it included 40 such sites within its urban
20 growth boundary. Now the types of findings the City might make to justify that are, "Well, we targeted, you know,
21 widget makand gee, widget makers are hot, and we might attract 10 widget makers to our community. The City
22 didn't do that. If the City had said we were going to get 10 widget makers, then it would maybe make sense to
23 include 12 sites for widget makers so you'd have some market choice. But that's not what the City did. The City
24 simply included a very large number of sites for the number of targeted industries it has proposed without any
25 correlation between the two.

1 CHAIR VANLANDINGHAM: Sid, how does this relate (if at all) to what I'm sure you're aware of, in that earlier in
2 Governor Kulongoski's first term he made it a priority that the State have available shovel ready and large industrial
3 sites. Does that factor at all into what you're thinking or what you think the City is doing here?
4 SID FRIEDMAN: Yes it does. I think this points back to another issue that we have touched on, but I'll expand a
5 little bit. We don't content that Woodburn should not have shovel ready industrial sites. We don't content that
6 Woodburn should have no large industrial sites. But if every city along the I-5 corridor determine "well, if we
7 include a lot of flat farmland by a freeway interchange", there's no limit to what we might attract. We will not have
8 coordinated and we will have cities competing with each other in a way that I don't think we want to see. The City
9 of Salem (and I don't know if this is in the record, so...), but they've got the Mill Creek site, which is at I-5 and the
10 I-5 and Cordon Road interchange basically That's a 500-acre industrial site, some 12 miles or so, 13 miles from the
11 Woodburn interchange. It is important that we have shovel ready sites, but it is important that we not have an
12 oversupply that have cities, have 10 cities, competing for one industry, including one that is UGB when we're only
13 going to get one of them, let's say. But also, at the expense of the agricultural industry, which is the number one
14 industry in Marion County, that's not an industry that we have to go out and recruit. That's an industry that's here
15 now that's providing jobs and dollars and business to our community. Now, Woodburn talked about how well we
16 put this overlay so that we're only going to, the land will remain in farm use until it is developed. Well that's all
17 well and good but industries make investments, long-term investments, based on the signals that they receive from
18 the government. And the agricultural industry is no different from any other industry in that regard. If the signal
19 they are getting is that, well, the French Prairie area, the north valley is going to be urbanized, the decisions they
20 make about their investments are going to be very different and if they get a signal that this is a valued industry that
21 will be protected. Now for the specific parcels, once they are included in the UGB, nobody is going to be planting
22 any orchard crops on them, nobody is going to be tiling them, nobody is going to be putting any kind of investment
23 into that which would result in a continued and an enhanced valued product because they know that land is
24 committed to urbanization.
25

CHAIR VANLANDINGHAM: It's not your fault, and I don't mean to be flip, but Measure 37 does make it hard to talk about giving anybody a signal about anything.

SID FRIEDMAN: I couldn't agree with you more.

CHAIR VANLANDINGHAM: Clearly, Marion County is a huge income generator in AG. We get an annual AG report from Jim Johnson and the Department of AG. We see the numbers. I served for six years with Randy Franke, who was quick to brag about Marion County's AG base. I think I'm hearing the City, though, say that while it may produce lots of revenue, the jobs don't pay that well compared to the industries they're after. Do you want to respond to that?

SID FRIEDMAN: Well, I believe this is in the record but it may not be. Certainly, certain sectors – the nursery industry – has average wages that are higher than some of the average wages in the targeted industries that the City of Woodburn has. The average wage for Woodburn's targeted industries are in the record. They're in the Economic Opportunities Analysis and I believe elsewhere, but...I would invite you to look at those and decide for yourselves whether those jobs, some of those targeted industries, really do provide those higher wage jobs. And I don't know whether – I think we may have at one of the local hearings – put in evidence about the wage structure and certain AG structures. I'm not sure whether we did or not. But those are competitive with some of the lower paying targeted industries.

CHAIR VANLANDINGHAM: Other questions of Sid, Marilyn?

MARILYN WORRIX: I share Chairman VanLandingham's interest, really, in your introductory comments about this sort of broad approach. If you have target-based industrial goals, that dictates the size of the parcels and then the statute says you have to have at least enough to satisfy what you've said, and it ties in with the question that we discussed a fair amount, the Goal 14 Committee, which is whether or not communities can be aspirational in their economic development goals and their industrial land goals. The general consensus at the committee was you have to allow some of that, but you ask a very valid question – "Where do you stop?", and that is a huge door that you open up and you not only open a huge door but then you surround it with statutes that what you get in that arena, now you really need to go for the big numbers because you have no choice but to do that. You're not challenging,

1 however, their ability to do that. You're challenging their wisdom, maybe, in choosing that method. And you are
2 saying to us, "Be careful of that method because it can lead you astray", but you're not challenging the method
3 itself, are you?
4 SID FRIEDMAN: I'm not challenging Woodburn's ability to use the site requirements of targeted industries as the
5 basis for its industrial land use. What we are challenging is their ability to do without an adequate justification or
6 fact base – without any outside bookends, so to speak.
7 CHAIR VANLANDINGHAM: It sounds to me that what you're saying is that it's okay to use this, but they've gone
8 too far.
9 SID FRIEDMAN: Exactly. They have not just gone too far; they have gone way too far. And they've gone so far
10 beyond what we think can be justified by simple aspiration that you guys need to....
11 CHAIR VANLANDINGHAM: How would we recognize "too far"?
12 SID FRIEDMAN: Well, I think the Department could conclude, or the Commission could conclude yes, it is
13 reasonable to have maybe 50% more land than you need for market choice, or 10% more land than you need for
14 market choice. It is not reasonable to have 100% more land, or 150% more land, or 250% more land than you need
15 for market choice. You might conclude, for example, that while a city must have at least an adequate supply of sites
16 for its targeted industries, which is what the Goal 9 rule says, it still cannot grossly exceed the amount of land it
17 expects to use over the planning period. That Goal 9 rule is in direct conflict with Goal 14 provisions that say their
18 UGB amendments on power phase have to be based, have to be justified by anticipated land use. And that is
19 something you guys, one of your responsibilities is, is to balance those two. And I don't think you can just say "well,
20 at least enough means an unlimited number".
21 MARILYN WORRIX: You touch on one other thing in your broad comments that I think it's important to
22 remember. It is a question that has troubled me for quite some time and that is "How does the agriculture community
23 get into the discussion on economic development?" They're in a difficult spot. Cities don't target agriculture, you
24 know, within their city limits. So it is not part of the math or the formula or the discussion. Agriculture is always on
25 the defensive, which is a tough situation to be in when the name of the game is math and statistics and...

1 SID FRIEDMAN: I think Tom is sort of giving me the signal that he wants to respond to that, so...

2 TOM BRAWLEY: I can.

3 CHAIR VANLANDINGHAM: I'm going to allow this, but it's unusual. But you need to sit down.

4 TOM BRAWLEY: This is, these are unusual times.

5 CHAIR VANLANDINGHAM: And you're an unusual guy, I suspect.

6 TOM BRAWLEY: I'd gladly answer that in that the form that our present Marion County Farm Bureau sits on the

7 Economic Development Board for Marion County. So he is, and we are, familiar.

8 MARILYN WORRIX: In the County.

9 TOM BRAWLEY: Yes.

10 MARILYN WORRIX: Okay.

11 SID FRIEDMAN: In the broader sense, Commissioner, I think you're right. There is a problem in that cities too

12 often don't take into account and don't consider agriculture as contributing to the local economy because they're

13 focused on what happens strictly within their city limits or within their urban growth boundary. And I think all of us

14 were struck by the fact that here you have Woodburn sitting in some of the richest farm ground in the county, as

15 Commissioner Paramond once corrected me, in the world, and yet the Economic Opportunities Analysis didn't even

16 mention that as comparative advantage. So, I think you're right in that it's an issue and I'm not sure how to address

17 it.

18 CHAIR VANLANDINGHAM: Other questions of Sid?

19 MARILYN WORRIX: Just one last clarification. There's a considerable difference on the two maps that you

20 discussed in terms of soil types.

21 SID FRIEDMAN: I don't see the...

22 MARILYN WORRIX: I'm looking at the agricultural soils outside Woodburn 2002 urban growth boundary and

23 then I'm looking at your...

24 SID FRIEDMAN: Mine came from the Department of Agriculture. I'm not sure where the City of Woodburn got

25 theirs.

CHAIR VANLANDINGHAM: If you're just looking at colors, Area 8 does look to have more 2 than 3.

MARILYN WORRIX: Significantly different in Area 8 and some differences in 7.

SID FRIEDMAN: The City did not – I don't believe the City brought in all of the land in Study Area 8, and I'm sure I'll be corrected if I'm wrong. So when the Department or the City says there's a lot of Class 3 soils in Study Area 8, that may be true but they didn't bring in ... What they brought in was basically the portion of land, the piece of land, that is north of Parr Road and then a smaller strip south of Parr Road. Can you put that overhead back up?

CHAIR VANLANDINGHAM: You're not...it seems to me you're saying the same thing.

MARILYN WORRIX: The opposite. Well –

CHAIR VANLANDINGHAM: No, I thought he was saying the same thing, that Area 8 has too much 2.

SID FRIEDMAN: Right.

MARILYN WORRIX: Yes.

CHAIR VANLANDINGHAM: More 2 than 3.

SID FRIEDMAN: Yes. I simply said that Area 8 is not predominantly Class 3 soils. It is predominantly Class 2 soils.

MARILYN WORRIX: Right. Which is the difference between these two maps.

SID FRIEDMAN: The map that I have also shows that it is predominantly Class 2 soils.

MARILYN WORRIX: That's the one I'm looking at. The map that you passed out.

SID FRIEDMAN: I think both of these maps – when you look at this area – show that the area north of Parr Road, this area, is almost entirely Class 2 soils – or the vast majority is Class 2 soils. There is an intrusion of Class 3 soils that shows up on both maps, here north of Parr Road and then as you get south, further south, of Parr Road, there is a broad area of Class 3 soils, which extends beyond this line, and that's what I wanted to show on the map, that I disputed. That these Class 3 soils continue beyond here between the freeway and Boone's Ferry Road to Gervais.

CHAIR VANLANDINGHAM: Okay. More, Marilyn?

MARILYN WORRIX: No.

CHAIR VANLANDINGHAM: Hanley??

1 HANLEY JENKINS: Yeah, Sid, my comments are related to your remarks about the coordination between the City
2 and the County, and the fact that the City has identified 23% of Marion County's job growth, where they currently
3 have, I believe you said, 8%. And yet we had County Commissioner Milne come up and talk to us about how she
4 felt that the City and the County had coordinated, and in her testimony she talks about the planning process that the
5 County has gone through with the City and my presumption was that the County had adopted their population
6 projections fairly recently. And the work that the City and the County had done was coordinated between the two
7 jurisdictions. And so I guess I'm a little concerned about your remarks in that it wasn't coordinated, and it appears
8 that the County has recognized this anticipated growth by the City and that they feel it's appropriate. So, could you
9 speak to that?
10 SID FRIEDMAN: Sure. And maybe I wasn't clear enough on this. We agree that the City and the County have
11 adequately coordinated. We're not saying the City and the County didn't coordinate. We're saying the amendments
12 are uncoordinated with other nearby cities. Not the County, but other nearby cities that were affected by the amount
13 of industrial land and the amount of job growth.
14 HANLEY JENKINS: But you did agree that there was an opportunity for those other cities to participate at the
15 County level. But you're just saying that they didn't, you don't believe they had an adequate opportunity at the City
16 level.
17 SID FRIEDMAN: Correct. And I do believe they didn't have an adequate opportunity at the City level and I also
18 think it's one thing to send a notice to Salem/Keizer saying that the Marion County Board of Commissioners will be
19 holding a hearing on Woodburn's periodic review amendments on XYZ date, and it's another thing to send the
20 notice that says, "Oh, and by the way, they're projecting they will double their share of county job growth that they
21 had in the past".
22 HANLEY JENKINS: But I'm not seeing any testimony from those jurisdictions in opposition.
23 SID FRIEDMAN: They didn't. They could have shown up at the final hearing before Marion County, you're right.
24 They could have shown up. With the exception of Wilsonville, who did receive notice.
25 MARILYN WORRIX: Is the letter from Metro part of the records?

1 MAN'S VOICE: I don't know.

2 MARILYN WORRIX: It's referenced, but I don't remember seeing it.

3 SID FRIEDMAN: It's in the record and it's also attached to our objections, and it is, let's see if I can find it...not

4 our exceptions, but our objections dated August 23rd of 06 and...

5 CHAIR VANLANDINGHAM: It's not in my packet. And I've got your August 23rd letter here.

6 SID FRIEDMAN: It's also listed in the attachments. Here, I'll get it. I know right where it is in the record that you

7 guys got.

8 CHAIR VANLANDINGHAM: Why don't we look for it during lunch? Um...do you want to say anything about it?

9 SID FRIEDMAN: Well, yes I will since you asked. I think the letter from Metro shows that the scope of the

10 amendments that Woodburn adopted are of the magnitude that will have broad impact far beyond its immediate

11 boundaries. But I think that points to the heightened need for adequate coordination of affected jurisdictions. Now

12 this may be a little bit of a digression, but most of you know that there was a big push and Marion County interest to

13 keep Metro from expanding south of the Willamette River down from Wilsonville. And Metro backed off, and

14 Metro said "You know, we're going to respect this area as farmland", and I think there was some concern that, you

15 know, they were backing off on French Prairie, yet the very same folks that urged them to stay off French Prairie

16 and not urbanize French Prairie, were looking to urbanize it themselves in a way that would compete with what

17 Metro is trying to do. Metro was trying to direct a lot of its industrial and job growth to brownfield areas, to infill

18 sites, to sites that might have – that they want to redevelop – but might have greater challenges because they are

19 brown field rather than flat farm ground. And by supplying large blocks of this cheaper land in close proximity on

20 the freeway, I think the concern for Metro was that Woodburn was undermining some of their economic

21 development.

22 CHAIR VANLANDINGHAM: Other questions for Sid? Thank you Sid.

23 SID FRIEDMAN: Thank you Commissioners. I appreciate it.

24

25

1 CHAIR VANLANDINGHAM: It's 12:05. We will take a break and resume at 1. Actually, let me stop. Do you
2 lawyers want to do five minutes? The panel of supportive lawyers, so that you can stop billing your clients sooner
3 rather than...? I think there's four?
4 ED SULLIVAN: I have 30 seconds.
5 CHAIR VANLANDINGHAM: I don't mean to impose a time limit.
6 ED SULLIVAN: Let's give our names first. This is Ed Sullivan, 121 Southwest Morrison, Suite 1100, Portland,
7 97204, representing Tukwila Partners.
8 ROGER ALFRED: Roger Alfred, Perkins-Cooie, 1120 Northwest _____**Street,** Portland, 97209, here on behalf of
9 Renaissance Homes.
10 CORRINE SHERTON: I'm Corrine Sherton, 247 Commercial Street Northeast, Salem, and I'm here representing
11 Opus Northwest_.
12 BRIAN MOORE: Brian Moore, Saalfeld Griggs, 250 Church St SE, Salem, Oregon, representing the Fessler
13 family.
14 ED SULLIVAN: I'm not going to be presumptuous but I think I have the position of the three male lawyers here.
15 Ms. Sherton has a different set of issues to argue. We would support the staff report. We would urge you to affirm
16 the staff report and our objections by the staff report are resolved.
17 ROGER ALFRED: Yes, and we're in agreement with Mr. Sullivan's position. Our interests really lie in the
18 northern section, which was part of Study Area 2. What the City has decided to do is not bring in all of the area that
19 was originally proposed by the Planning Commission, but instead to exclude a portion of that area, which is the golf
20 course. What they are going to exclude, what they decided to exclude, was the area that is a little bit to the east
21 where you see Class 1 soils, and that was the basis for their decision to leave that out. But we are supportive of the
22 Staff position at this point.
23 BRIAN MOORE: The Fessler's (Inaudible) concerns we had, if any, and ....
24 CHAIR VANLANDINGHAM: Okay. Questions of the three boys before we go to Corrine? Okay, the three boys
25 are released. Corrine?

Item No. 2
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1 CORRINE SHERTON: Opus Northwest also supports the Staff report and are satisfied with the resolution of our
2 objection. I am not going to attempt to respond to individual arguments that were made by Mr. Friedman, but I
3 think there may be some confusion about the location of this property. Can you put on the one with the soils types.
4 I'm sorry...show the other one first. Okay. This area west of the freeway is already developed for industrial use
5 and is already inside the Woodburn UGB. This is the Opus property here and that is the only part of Area 8 that has
6 been brought in to the UGB by the City and is bounded on the west by Butteville Road. Could you put up the other
7 one showing the soils types?
8 CORRINE SHERTON: So this is the Opus area here so most of Area 8 that contains a lot of Type 2 soils was not
9 recommended. Just the Opus site here because it is going to provide the connectivity into an arterial, Butteville
10 Road, and access to the west side of the freeway. And I think the City and the transportation people can address to
11 you why that is. The only practical way to provide access to these industrial sites, it is not practical to do it from the
12 eastern side of the freeway.
13 CHAIR VANLANDINGHAM: So, Corrine, you're point is that the argument about the access to Class 3 is the
14 Class 3 to the south.
15 CORRINE SHERTON: The access to area, the industrial area that has been brought in, it is 7 there, is
16 predominantly type 3 soils that are in area 7, and also an actual additional parcel to the south end, this area shown as
17 white, was brought in, as well, rather than going west of the freeway. The plan is for those parcels to get freeway
18 access by connecting the southern arterial to Butteville Road and accessing the freeway from the west where there is
19 capacity. Mr. Friedman is suggesting that it would be practical to use other roads on the east or another road that
20 goes through the residential areas to provide access from these industrial parcels to the freeway and I think the
21 transportation guys would tell you that that wouldn't work ...congestion of the interchange and industrial traffic
22 through the interchange....the development of the Opus property, which is intended to go forward as soon as it's
23 legally possible, and there have been many clients that have been interested in the property over the years; so as
24 soon as possible that this will develop. And it is listed on the Governor's Industrial Task Force list of prime
25 industrial sites that was mentioned by the Commissioners earlier and the prime sites listed there. That would

1 provide partial development of Butteville Road and also contributes to the freeway interchange improvement. So
2 we believe the inclusion of our property is justified, as both the City and your staff found. I'll answer any other
3 questions.
4 CHAIR VANLANDINGHAM: Questions of Corrine? Okay, thank you. So we are going to break for lunch and we
5 are going to resume at 1. Thank you.
6 **BREAK.**
7 CHAIR VANLANDINGHAM: Reconvening in the afternoon....continue item 3B, I think it is...Greg? And
8 whoever you want to bring with you.
9 GREG WINTEROWD: I guess I will begin by responding to some of the issues we've heard . My name is Greg
10 Winterowd, a principal with Winterbrook Planning, 410 SW 4th Ave , Portland, 97204. And as the Mayor said this
11 morning and she has agreed to kick me (if I say anything wrong) under the table...
12 CHAIR VANLANDINGHAM: Ouch!
13 GREG WINTEROWD: I'm glad to be here. It's been a long haul and through this process we have become friends.
14 We have become colleagues in our experiences. I think what we'd like to do in our approach is not to respond to
15 each and all of the issues at hand...about 42 of them, which Mr. Friedman raised...because of the materials that you
16 have, there are responses, and we believe good ones, to all of the objection areas – with one possible exception.
17 That is attempting to determine the motive of Metro when they wrote us a letter two years and that was not in the
18 record and not responded to. I will note for the record, though, with Metro we offered to meet with them, and they
19 did not formally respond to our letter and was not in the records as there were many, many meetings that have
20 occurred with Metro and the City, so we are not documenting this record. It is no surprise to anyone that we a
21 program that brings in a large amount of agriculture and land. I think what is a little bit frustrating to us in this
22 process is that the M.O. of 1000 Friends throughout this process is to take arguments that we've made and positions
23 that we have taken, mischaracterize them and then cherry pick the record to make a point. And that is a frustrating
24 matter and we will be very happy to explain to you, if you have specific questions, where in the record they are
25 addressed and each and every issue they have raised. A couple of things that come to mind that I think are the most

1 important issues are: What about the need for industrial land? And, if there is a need, if you look at the first two
2 major items in your packet that we have provided to the Department and passed on to you in November from the
3 City. One is a letter from Eco Northwest that talks about the two-mile criteria; and the other is excerpts from the
4 UGB justification report going into great detail, addressing the need for industrial land back on the farm land and
5 why we located it exactly as we did. I'd also like to point out that we amended our plan many, many times in
6 response to comments from 1000 Friends, in response from comments from the Department of Agriculture, from the
7 County and the citizens of Woodburn and DLCD, and in doing that we needed to play by the rules. Many times in
8 my meetings with the City Council, Mayor Figley said "We don't like this. We don't want to do this. We don't
9 want to have to plan for these high densities because we feel it could affect the quality of life for residents. It was a
10 big issue for the County as well. The City ...(inaudible) We knew that there's a huge issue with the bait and switch.
11 CHAIR VANLANDINGHAM: Tell me what you mean by "bait and switch".
12 GREG WINTEROWD: You guys are going to develop a bunch of land for industrial purposes and then are going to
13 come back and do another Woodburn Company stores. We heard that from many sources, including this department,
14 and I said please read what we have done to make sure that doesn't happen. Policies in the Woodburn plan
15 absolutely prohibit industrial and commercial uses for anything that's not listed in the 13 groups of targeted
16 industries. There is a mischaracterization of the 13 industries. We have 13 industrial groups, which have, in some
17 cases, hundreds of subtypes. And those are the types of industries that we looked at and said these are the groupings
18 of industries we think you can attract, most of which require freeway access. That's your biggest comparative
19 advantage, we said over and over. Another question, which I think is a good one, is "What is too far? How do we
20 decide , it's a big policy issue. (inaudible)
21 CHAIR VANLANDINGHAM: I'm sure you will get some. I want to welcome Jim Allen, who seems to change
22 jobs whenever it allows him to appear before us...since he has such a great track record with us. Jim?
23 JIM ALLEN: Well, I'm up here primarily for questions regarding industrial land....become very familiar with the
24 southwest industrial reserve in Woodburn. I'm comfortable talking about that and how it will be implemented. I
25 think it's very unique and good strategy for reserving industrial. That's all.

1 CHAIR VANLANDINGHAM: Questions...I know there are some. Marilyn?

2 MARILYN WORRIX: There's been a couple of mentions of the public involvement process, but I would like to
3 hear just a little bit more about what kind of public involvement led to the goals and the vision that this is all based
4 on. The reference that I found to it in the materials was just in the compliance section, and that was only two
5 sentences. And I know there must have been a lot more involved, so I would just like to hear more about the public
6 involvement.

7 GREG WINTEROWD: Because Jim wasn't here then, I'll try this. Yeah, it's gone on...really the periodic review
8 process, has gone on for ten years. In the initial process, way back, before John was there, Jim Mulder had just
9 come on, as well. They did hire a consultant and found... (inaudible)

10 MAYOR FIGLEY: Well, I think at the point that it got to us, I believe we had a total of what, about 120 comments
11 of one kind or another that seemed to fall in a few clusters – some written, some oral – but the bottom line is a
12 cluster of people concerned with historic preservation in the residential core, people concerned that they wanted to
13 be in the UGB and they weren't in – that's where, if you're looking at the County transcript, you'll see some, you
14 know, quite a bit of discussion about a couple of large plots that are not included for residential expansion, and we
15 had that discussion at great length. We had testimony from farm workers who want to improve themselves and farm
16 worker advocates. And we had comments from the general business community, as well. I think it was very lengthy
17 and very challenging, you know, just from the point of view of pure physical stamina, but it was a process in which
18 many people participated. I think overall, in looking at the type of comment we received, much of it had to do with
19 the minutia of just the fabric of zoning and planning within an existing community. People thought some things
20 were great and didn't like some other things – but they were things that are probably more within the per view of the
21 normal planning and zoning process, rather than something more global like Comp Plan or UGB expansion. The
22 main issues were the increasing lack of industrial parcels of any size and the need for more opportunities for local
23 residents to work closer to home.

24 MARILYN WORRIX: It was more process than I felt, when I read all of the material.

25 MAYOR FIGLEY: Right. Right.

1 MARILYN WORRIX: Clearly. But it also points out one of the concerns, when the process goes on this long,
2 because the real, exciting visioning process takes place at the beginning, and goes on and on...you know, the
3 visionaries tend to fall off and the stakeholders really dig in. Then it's only the stakeholders, you know, that
4 compromise and make the final decision. But you feel comfortable that what you're presenting still maintains a
5 good element of the true vision that your citizens wanted for the community way back when you started this process.
6 MAYOR FIGLEY: I really think it does because I think underlying the whole thing...if there, you know, if I were
7 to distill this massive set of documents and do a brief statement, Woodburn is trying to improve itself. We are a blue
8 collar community that is trying to improve itself, economically and in the area of opportunity. And I think the focus
9 has been on how do we, even in areas not directly in front of the Commission or ones that were appropriate subjects
10 of administrative approval at one time, like our new, our zoning ordinance that was adopted a few years ago, there
11 has been an overriding vision of: We can do better this for ourselves and for the upcoming generations and let's look
12 at how to do better for ourselves. Whether it's increasing the employment opportunities or whether it's prohibiting
13 school bus yellow metal buildings in town. It's been a wider range in process, even that in the documents that are in
14 front of you today.
15 MARILYN WORRIX: Well, I had several reasons for asking the question. But one specific thing...I look at a
16 comment in the EcoNorthwest Economic Vision report that was done in 2001, and it says that the future economic
17 vision should be a balance between what the City would like to achieve and what resources and public support
18 would realistically give them. And it sounded like there was...you're trying to balance what the public wants with
19 what the City wants. Would anyone like to explain that?
20 MAYOR FIGLEY: You know, I think when you're talking about balance, as in any community there is a range of
21 opinion. And we certainly, most of the land available either in or out of the current UGB, is near a large retirement
22 community. And so, understanding that we certainly had concerns expressed about traffic, about having large
23 volumes of commercial development or redevelopment near that community with the associative traffic impacts.
24 Due to the fact that the face of our community changed a lot between 1960 and the year 2000, we, you know, are
25 dealing with issues like the rest of the general public going to Walmart by way of a retirement community. Some

1 issues like that. But I think while there's been a range of opinion, I think as we came closer to the home stretch,
2 what we were finding was most people within the community were most concerned with prohibiting some things
3 they didn't like and with upgrading the community overall. The other concern was frankly, do something about that
4 interchange, please. And in that area there was an enormous amount of consensus. Other than that, we had the
5 fascinating and I'm sure, very familiar to all of you, exercise of those who were recommended for inclusion in the
6 UGB were very happy and those who weren't were very upset, and that goes with the territory, I think.
7 MARILYN WORRIX: Last comment on this topic is... that frequently in the early parts of the discussion when
8 you're doing the visionary process, you address things in a broader scale and as it goes on, it gets narrower and more
9 mathematical and more analytical. And I'm looking now at the EcoNorthwest report where they say their research
10 did not include any cultural or social sort of components because those were not things that were important to
11 business. I would hope that between 2001 and now, that has changed. It seemed like an odd statement, even for
12 2001.
13 GREG WINTEROWD: Can you tell us, is that the EOA or the EDS? The Economic Development Strategy or ....?
14 MARILYN WORRIX: Strategy.
15 GREG WINTEROWD: Let's look at that.
16 MARILYN WORRIX: It's not a big thing. It just jumped out at me as something... I certainly would hope that the
17 cultural components would play a role in future planning of the city.
18 MARILYN WORRIX: You said it wasn't part of the reason a business would make a decision to come there. Also,
19 these facilities, because they're not particularly important considerations for businesses choosing location...so I
20 would just hope that at some point they would be...I'm taking this public input further than I intended to, and I
21 appreciate your patience and your answers. You said that, back to the Metro letter, you said you invited them to a
22 dialogue and then I lost what you were trying to say. What happened?
23 MAYOR FIGLEY: I think I feel duty bound to add that as a practical matter City staff and I, or I individually, have
24 been at various Metro sessions. Commissioner Park and one of his staffers had a meeting with me, I believe,
25 actually about a year and a half ago. And at that point he asked if I was interested in coming to some of the Metro

1 mirror events as do some of the other mayors from the satellite cities, and I have as a matter of fact. We've had a
2 meeting with John Brown and Michael Jordan and Commissioner Park. But the subject of the meeting has never
3 been this topic. And since there's no statutory requirement that we coordinate with Metro, we are doing it as a
4 matter of: (a) courtesy; and (b) recognition of the fact that the whole I-5 corridor has issues that probably need to be
5 addressed on some bases that transcends ODOT regions or county lines. I can say that I have talked from time to
6 time to the Mayor of Salem and meet at various times on various topics. And the Mayor of Wilsonville, for that
7 matter. To say that no communication happens or that we're willfully ignoring their wishes is one thing. However,
8 these conversations have not pertained to this particular proposal, other than for their information, because again
9 there's no statutory requirement. Therefore, it's not in the record that we're communicating because good sense
10 requires it.
11 CHAIR VANLANDINGHAM: Let me ask about that...because the letter actually...it is certainly carefully stated,
12 diplomatically stated, so it doesn't directly say "What in the world are you guys doing?". But it does start by saying
13 "We, Metro, were looking at expanding industrial use south of the river". In fact, that came to LCDC. We had land
14 users. The golf course owner there was very eager, and hired the former chair of LCDC to argue for him, them, that
15 that should be allowed to be part of Metro's industrial land supply. We weren't excited about that. Metro had its
16 own internal debate about that. So the letter refers to this issue of "should we expand Metro's industrial uses south
17 of the river?", and it implies that you all were part of saying "Please don't". And then says "we were concerned to
18 learn of the magnitude of your expansion, your UGB expansion". So it implies that they're saying "Wait a minute.
19 We didn't do industrial use. Now you are. There's a disconnect". That's the implication.
20 GREG WINTEROWD: And that is why Jim Mulder, the planning director, said "what do we do?". I said "Write
21 them a letter right away. We should coordinate with them. We should often meet with them at any time and talk
22 with them. This time the concern about the magnitude was not because they read the plan and read all the
23 background...they saw 400 acres on the map and said "This is pretty big. We should talk". So we offered to talk.
24 And that's what happened.
25

1 CHAIR VANLANDINGHAM: Okay. And that's all...the letter asked for a meeting and if you offered a meeting,
2 you responded....You want to keep going?
3 MARILYN WORRIX: Just two more quick points. Greg, could you try to give a little more specific definition for
4 me of market choice? I mean, I understand the concept, but how much is enough? How do you...?
5 GREG WINTEROWD: There are several points. I have trouble answering just....I don't think that we use the term
6 - "WE'RE GOING TO USE MARKET CHOICE". We didn't use a market factor, such as this Commission rejected
7 in 1980. We didn't throw a 25% market factor or anything like that. We did is, we said "Look, these are the types
8 of industries we want to attract". Eco told us how many of the type. Not three in this category and two in this
9 category. We would expect that within employment projections you have this many firms, these need more research
10 and it's pretty extensive background document says "you're going to need three in this category, four in this
11 category and six in this category". And we said "okay, that's what we'll do". This memo shows exactly what they
12 say we need, we compare that with our supply inside the UGB first, and said "Well, we are missing all of these other
13 sites, and so let's go find a place to buy them". Then the issue came up – and this is where Mr. Friedman is dead
14 wrong – we never said we needed 200 acres. We said that if we have all the employment that we expect to have,
15 there will be 200 developed acres of the 400 acres we are developing. But, to get 200 developed acres, we've got to
16 provide choice among sites – getting to your question now – that we think, for the types of industries we are going to
17 provide. The reason we don't expect all of that to be developed is because they typically, not sometimes, buy more
18 land than they need so that they can have room for expansion. And we have, in fact, found out that when we
19 interviewed all of the interested owners. All of the industrial owners in downtown Woodburn said "Hey guys, are
20 you going to expand? Do you have expansion plans?" No, yes, no... And the ones that said "yes, we want to
21 expand", they bought the land that we showed as redevelopable, because they wanted to expand to it. So we said we
22 really can't market that for our targeted industries. We didn't take that land off the buildable lands inventory. We
23 accounted for it in the buildable lands inventory. Getting back to the market choice – it's not like we expect two in
24 this size, and so we divide three. We said we can reasonably expect this many firms to come to our community,
25 here's the site sizes they typically need, let's make sure we have enough site sizes so if we are successful in our

1 economic development strategy, which has an aspirational element, which I think is totally appropriate, we will have
2 development of some kind on this many sites. But if they ALL develop to full capacity, we have a traffic problem.
3 But we don't expect them all to develop in 20 years to the maximum buildout. And that's the disagreement we have
4 with 1000 Friends. That's why they want to keep going back to the employees per acre ratio method – because it
5 invariably shows less land is needed, but it doesn't get the statutory requirement for adequate size.
6 CHAIR VANLANDINGHAM: Just to follow-up...so when Sid asked about the targeted industries method and
7 whether there is any limit on how much land you can justify with that, your answer is – and you said earlier, and
8 you're saying again now – the limit is that we have to have an expert that says "This is how much you need".
9 GREG WINTEROWD: And that expert ultimately has to be judged by the City, and the County, and you, to be
10 credible. I think, that's what I think, substantial evidence is meaning. That the reasonable person would think this
11 would happen. And so we get to the silicon chip factory. The background document, in the EDS, the economic
12 development strategy talks about the silicon chip factory that could use 100 to 300 acres or other large industries that
13 require large sites, such as listed in the EDS. And we look at that and we say we need a large site. We're not sure
14 what it would be for. It might be for high tech. It might not. Sure as heck in 1990 we didn't expect to have all the
15 high tech firms come to the silicon valley into the silicon forest. We didn't expect Sony to go to Springfield. We
16 hoped that they might. So what we're really saying, and what we said on the record, in the findings, is that the
17 silicon chip is manufactured on 100 acres. If they need 300 acres, we don't have that much; we have only 100 acres,
18 but not 125. We couldn't find 125-acre site, so we went to 100 acres and it could be other industrial uses, and to
19 make sure we don't squander this piece of property on something like, heaven for bid, a trucking firm that might
20 want to have a transfer station. We have a 300 employee minimum requirement on that 100 acres. Show me, please
21 – I don't mean to be sarcastic at all – but I don't think there's any other community in Oregon that has a 300
22 employee minimum employee requirement to use the site. In my view, if we are successful in getting a firm with
23 300 employees that wants that 100 acre site, it would be foolish to say no. And that's what the EDA says. That's
24 what our policies say. It doesn't say "You shall be a silicon chip factory". It says "You shall have 300 employees"
25 in one of the 13 categories that we have identified. We have the only ordinance that I know in Oregon that takes the

1 EOA targeted industries and brings them forward into the comp plan and the muni code. If you're not one of those
2 13 categories, you're not widget manufacturers. Without one of those, you can't come to our area. That's pretty
3 strong language that links the EOA to specifically on the ground zoning. We knew we had to do that kind of thing
4 because you'd be asking us the very questions you're asking us today.
5 CHAIR VANLANDINGHAM: Marilyn...
6 MARILYN WORRIX: Just...the last question. Several of the objections just evaporated before our eyes! And their
7 objections centered around a variety of things. Deadlines, inclusion of some property in the golf course – along the
8 golf course-, the five-year supply question...and they all indicated that discussions, compromises, negotiations had
9 satisfied them. I guess we should just be glad they went away and not have to deal with them. But I can't help but
10 ask if any of the compromises, negotiations or whatever affected any of the deadlines or other properties being
11 included, or...? Is there something we should know about the negotiations that is pertinent to the final plan?
12 JIM ALLEN: I feel that everyone's looking at me.
13 CHAIR VANLANDINGHAM: Feel the heat, huh?
14 JIM ALLEN: Well, I've had discussions with larger land owners and their concerns dealing with this concept of the
15 master planning, and the annexation and timelines associated with each of those. And the way that this would be
16 implemented at the City would be a joint review in the master plan in conjunction with the annexation. And after we
17 had several discussions on that, they agreed that that was a reasonable way to do that. Some of the other documents
18 that aren't before you today, but were acknowledged as part of this periodic review were the facilities plans for
19 sewer, water, and storm sewer and those were master planning issues that they had concerns with, about how to
20 master plan their neighbor's property when they're only going to be dealing with their property. So we've had those
21 discussions with the land owners and talked about, if you're annexing, you're going to be doing your property in this
22 master planning process and you want to make sure that what you're doing in terms of locating facilities for sewer,
23 water and storm sewer are consistent with what the City has adopted, what the needs are for the overall city area and
24 your property...are going to make you do that same master planning for all the properties that would be doing that
25

1 master planning. So it's a connection issue and how do you make these facilities work, in discussion with them,
2 they just have a better understanding of that process.
3 MARILYN WORRIX: That should've kept Opus happy, but how about the objections from Renaissance and
4 Tukwila? Those were very specific about properties coming in or not.
5 JIM ALLEN: Yeah, I've considered the high-end housing needs objection as a friendly objector from the very
6 beginning, in terms of their ability to come before you today and discuss something if they felt it was relevant. So
7 we kind of expected that issue to be short and sweet, just as it was. What was the final issue?
8 MARILYN WORRIX: Renaissance.
9 JIM ALLEN: The timing issue. I've had very little discussions on that, but I think that they may have seen some
10 market issues that are occurring right now and aren't as concerned with that. But the phases that have been going on
11 in Woodburn have been that they are not annexing the whole residential zone and developing it out in a two-year
12 period. So, I don't think that that is such an issue to them based on the way that their past development has
13 occurred. (inaudible) every year.
14 MARILYN WORRIX: Okay.
15 CHAIR VANLANDINGHAM: The pressure is off. Hanley?
16 HANLEY JENKINS???: I'm going to go back to 1000 Friends concerns about the number of sites, and I don't
17 know whether this is Jim or Greg, but you talked about the 13 individual industrial types or groups, and then there
18 are subparts of that, and I think I want to hear a little bit more about why so many sites and your justification for the
19 number of sites, which seems to be a big issue in their objection.
20 GREG WINTEROWD: It's probably THE issue. Again, what is not to me crystal clear in the administrative rule or
21 statute is how you go about determining the number of sites by site size. What Eco Northwest did, Bob Parker,
22 specifically, who worked on this thing – was I said "We need an expert opinion about the number of sites that are
23 needed to implement our economic opportunity strategy". He then explained his general method. And I think his
24 general method is a matter of "This is my expert opinion. I've been doing this a long time. Here's what I think is
25 likely to occur". That we would need X number of sites by site range. Have you looked at the memorandum? I

have trouble calling and handling my colleague, Commissioner Jenkins, sometimes. But I appreciate... (inaudible). That memo sets out the methodology that they use, but it doesn't do what 1000 Friends told us the first time that I heard today it should have been. It didn't say "Here's the industry. You need four of these and three of these and two of these". Rather it said, "Here's our economic opportunities analysis. Here are the 13 types of industries". We've gone around and interviewed people who are experts in the field...people like Greg Specht, who does industrial development in Portland. Here's what he told us we needed for site sizes for these types of industries. Four or five other experts said that together, that if we have this employment projection we would expect to have this many new firms and this type of new site sizes. You relate the size of the firm to the size of the site, generally. But in something like the silicon chip factory it is not just the number of employees; it's what you see elsewhere. And they said "We believe that in order to have your economic development program, here's the distribution site sizes you need".

HANLEY JENKINS: Chair VanLandingham? I think sizes are one issue and then the number of sites is another issue that is being raised.

GREGWINTEROWD: The number of sites comes from their expert opinion about, and having worked all over the country on these kinds of things, that if you have this many employees, it would be likely to have this breakdown in the need for site sizes, and they talked about the number by category. Beyond that, I cannot, I think the evidence you would have to rely on is not 1000 Friends test, that is "show me an industry if you are going to have three of these". No one, absolutely no one, can reasonably predict you are going to have three widget makers, two of something else. But you can say if you have an effective strategy you want to have this range of sites available. If you do that, then you will be meeting the needs of targeted industries. But you are going to find if you look at this that there's many, many sites in small categories and the large one is there for a reason. Because if we're able to get 2 50-acre employers and a 100-acre employer, we are going to successful in 20 years. But every community has reasonable advantages. Like Woodburn can expect to get many, many more parcels in the forms of 2 to 5-acre range and 5 to 10-acre range, which is by far the most common. So we had a lot of those. If you also look – I'm not implying you haven't – carefully at the findings we had at the table and added them up, we were short. We didn't

1 have more of the supply that Eco said we needed; we were short. And we said, "We're a couple short. But here's
2 how we think we can make up, some of the industries of downtown area that might not expand. We have some
3 additional land that might get used." In other cases, we assume that the range that Eco gave us – if it was 5 to 10,
4 and we assume 7-1/2 acres, we'd fall in the midpoint range. If we are wrong on that and somebody uses two 5's,
5 we'll have a little bit of extra land there. In our analysis of the tables, we don't. We could have gone out and added
6 a few more parcels to have the 20-year supply based on target use analysis. We didn't do that. The other thing that
7 we could have done so easily, had we not focused on basic employment, is we could have easily justified 100 to 200
8 acres of additional commercial land. No other community in Oregon has as little commercial land. We knew we
9 couldn't do that and meet our economic development objectives, so we put our eggs in the basic employment basket
10 because we didn't want to use up the capacity of the freeway with commercial. And that was a tough issue for the
11 community to swallow, to do that, because there's a lot of testimony in favor of adding commercial land on the west
12 side of the freeway, which would clog up the interchange. And we couldn't do both the employment, basic
13 employment, and the commercial development. That's the best answer I can give. One final thing. If we were
14 wrong, and I know I've said this before, if we were wrong, my requirement that those sites be reserved for the target
15 industries and in large parcels. They will remain vacant. And people are not foolish and will make money farming.
16 And they do that. Farming is a huge part of the Woodburn economy. If you look carefully at the EOA, it talks
17 about agriculture a dozen times. It talks about the value of agriculture to employment, the value to the community.
18 It talks about the number of agricultural employees in Woodburn. It just says that's not an industry we want to
19 target because it doesn't give us high-paying jobs. And implied in that is we would like to have farm workers have
20 more opportunity to have high-paying jobs and not be farm workers the rest of their life. And that was a big part of
21 EOA, as well.
22 CHAIR VANLANDINGHAM: You're actually referring to a conversation we've had as a Commission in
23 discussing the Goal 14 revisions that you helped develop for us, and that is that if we are good local governments
24 and State, and if requiring and making sure that we actually had efficient development on land that we allow in the
25

1 cities, then eventually over time it won't matter whether we're off by a certain number of acres because the next
2 time you do your UGB, which I'm sure the Mayor hopes she not Mayor...
3 MAYOR FIGLEY: I'll be retired...
4 CHAIR VANLANDINGHAM: ...then that should come into play. We should be saying, "Okay, Woodburn, you
5 added too much industrial land last time. You don't need any more this time". Of course, part of that is the great
6 fear about conversion to commercial...and the incredible appetite there seems to be for commercial land, and I think
7 you all made some significant efforts in trying to avoid that. But let me go back to this sort of general question here.
8 I come from a community, Eugene/Springfield, that spent a lot of time chasing new industry. Some people refer to
9 it as chasing smokestacks, although they're not really smoky anymore. And we had a ton of disappointment. For 20
10 years. Greg was the Planning Director for the City of Springfield. There's some successes now. But, you know, I
11 think some of the opposition here is that, "Why are you all chasing these jobs when you've got ag as jobs here?
12 Why not put your eggs here? Isn't this a pipe dream of some sort to chase these businesses.
13 GREGWINTEROWD: Let me try first and I think maybe the Mayor should chime in here – or more than chime in.
14 Put an exclamation point. We - as part of the background materials, you will see some research our firm did on
15 effective urbanization on agricultural economies. And if you look at the fastest growing counties in Oregon –
16 Jackson, Yamhill, Washington, Clackamas, and Marion – you will find from an agricultural perspective they are
17 also the greatest agricultural economies. I think what is going on – and this is in the record – is that one reason we
18 have wine in Yamhill County is because we have people in Portland metropolitan area and Yamhill County. One of
19 the reasons the nursery industry, which is by far the fastest growing industry in Marion County, is so strong and
20 pays so well is because we have a lot of suburban development occurring and there is a demand for nursery crops, as
21 well as an export. We looked at the export portion of the nursery crops as well as the locally consumed, and they are
22 both growing rapidly. If it were true that every time a UGB expanded that we took agricultural land out of
23 production and thereby damaged the agricultural economy – if that were true – then how would you explain the
24 statistics? And I am not arguing that you waste agricultural land or suburban development if it were to go
25 unimpeded. I am certainly not arguing that. I am saying it is not clear if this is a zero-sum game. Or even whether it

1 is clear if Woodburn gets more jobs because it is situated in a way very similar to Wilsonville – and that was 20
2 years ago – and Wilsonville has had (and this is in the record) 800 acres of development since the UGB (the
3 Metropolitan UGB) was established, 800 acres is a lot more employees than we are projecting than Wilsonville.
4 Wilsonville was much smaller than Woodburn is now and is very similarly situated. Woodburn can have a lot of
5 economic development at fairly high employee to land ratios, great markets for agricultural products, as other
6 growth has done. And I think that's a balance that has been achieved in this plan. It is not a zero-sum game.
7 CHAIR VANLANDINGHAM: Mayor, do you want to add anything?
8 MAYOR FIGLEY: Yes, I would like to add a couple of things. I think underlying the overall policy choice is the
9 list of average wages in various sectors that is included in the Economic Needs Analysis and the one that stuck in
10 my mind the very first time that I saw it, and has continued to stick in my mind, is agricultural worker 14,000;
11 manufacturing worker 28,000. There are dramatic differences and again, the people who start as farm workers go to
12 more permanent farm work and then go on to construction or manufacturing or trucking or running their own
13 business, is this type of factor. It is significant. In looking – so, underlying the policy decision is, yeah, it is
14 aspirational but we are talking about although we are proud of the local nursery industry, I certainly buy my share of
15 their products, as do my neighbors, as do my friends. I'm happy for their success. And, fortunately, their
16 employees are getting better money than migrant workers do, certainly; but we are talking about jobs that have a
17 future and that give families an opportunity to establish themselves and improve themselves. We have frankly not
18 done a lot of chasing of any kind of business. Generally we have been contacted and if we have had land available,
19 we've worked with businesses. I think, very honestly, with the large selection of smaller parcels, what we are going
20 to be more likely to do, rather than woo and win a few large companies – that's probably what will need to happen
21 on the very largest sites – but we are more likely to have Manufacturer A, like some of the ones that have contacted
22 Opus, for example, and because the land wasn't in the UGB and not able for development, they went on elsewhere.
23 But Plant A will locate, Supplier B may locate next store. Disgruntled employees or forward-thinking middle
24 managers may put a competitor across the road, and so forth. I mean, I think clustering happens in all fields, not just
25 in high-tech. And I think that particular feature of the plan recognizes that that type of clustering does happen. It is

1 normal. We see it in our existing industrial park that was planted in the late 60s, early 70s...and I think we'll see
2 some of that there.
3 CHAIR VANLANDINGHAM: Okay. Thank you.
4 MAYOR FIGLEY: You're welcome.
5 CHAIR VANLANDINGHAM: Any other questions for the City? Thank you.
6 MAYOR FIGLEY: Thank you.
7 CHAIR VANLANDINGHAM: Sid, do you want five minutes to add any other thoughts?
8 SID FRIEDMAN: Yeah. First, since this is in the record and this just came up – I think Mayor Figley misstated the
9 wages a little bit and I'll just briefly state that, since I just looked at it. The Economic Opportunities Analysis shows
10 that the average wage for an agricultural production worker in the Woodburn zip code is just under $20,000 a year.
11 The average manufacturing wage, annual wage, is about $25,000. So, while it is higher, the disparity is not nearly
12 as large as was suggested. Now, getting back to just a few general points...I don't believe we cherry picked from
13 the record or mischaracterized the submittals or the City's position. But that will have to be for you to judge, and
14 you are free to look through the record and make your own determinations. As I said, we have no problems with the
15 residential portion or the commercial portion, so I'm not going to talk about those issues that they brought up. I
16 will, however, talk just for a moment about you know, how much is too much – that issue. And that's really, I think,
17 the fundamental issue that you're going to grapple with here today. As I said before, and this is in the record,
18 McMinnville – slightly larger city, similar job growth projection, larger population projection, similar population
19 projection, identical set of target industries, 174 acres to meet those needs is what they determined. On the other
20 hand, Woodburn – slightly smaller job growth projection, identical set of target industries, almost triple that – 486 to
21 meet those needs – of which 409 will be new land added to the UGB. So I think that's something to keep in mind,
22 as you try and weigh the perspective of: How much is too much? Now, as Greg said, they looked and said, "How
23 much land would we, you know, expect to develop based on our employment projection?", and he said it was about
24 200. Actually, it is more than that. It is about 225 that I believe the City said they would expect to developed, based
25 on employees per acre; or based on the employment projection that they're expecting. So I think something you're

1 going to have to grapple with is that they took that employment projection and went to real estate experts and said,
2 "Well, based on this number, this employment growth and it's target industries, you know, what do you think we
3 should have in terms of sites?". Or I guess Bob Parker did it – not Greg. But – "What do you think we should have
4 in terms of sites and site ranges?". And, not surprisingly, real estate professionals will want to see an abundance of
5 sites and an abundance of market choice, even if it means , and I'd say an overabundance of market choice, even if it
6 means, as the City itself has suggested, that half the land that they're allocating for industrial development won't
7 develop over the planning period. So, we believe that that is too much. We think that, you know, having twice as
8 much as you expect to develop over the planning period we believe crosses the threshold. And I guess you'll have
9 to judge that for yourselves. In terms of the specific, Greg's absolutely right. When they said 13 target industries,
10 they didn't mean 13, you know, a widget manufacturer and an auto glass plant. They were talking about broad
11 ranges of categories of employment types. But nonetheless, as Greg has said, they didn't attempt to say, "Well, you
12 know, we've got a good chance to attract lots of people in the stone, glass and whatever it is, you know, printing
13 category, and maybe a few less in the warehouse distribution. They didn't attempt to correlate those categories to
14 the number of sites that they're saying they need. So we think that's a fundamental flaw. We think that just based
15 on the, you know, common sense test, there's too much industrial land. And we also think it's in the wrong place. I
16 don't know where you're going on that. I didn't hear too many questions about that. But, just once again, I think
17 that the two-mile criteria is arbitrary. Many of the, as you heard, many, not all, maybe not even most, but many of
18 the target industry type firms don't need to be near a freeway interchange. And those firms, there's no reason those
19 firms can't either use other lands, redevelopable lands, that the City considers to be unavailable because the existing
20 firms think they might expand. You know, 20 years is a long time. Planning period is a long time. A business
21 might think they're going to expand today and decide two years from now, five years from now, that they're going
22 to sell off that extra land. Or alternatively, there's no reason those other firms can't locate on the poorer soils south
23 of the expansion area, in the Parr Road area. That's all I had on this, unless you have any questions.
24
25

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1 CHAIR VANLANDINGHAM: Questions of Sid? Thank you, Sid. Greg, would you be willing to respond to Sid's
2 point about comparing McMinnville with Woodburn, in terms of industrial land and need, and the same sort of
3 property?
4 GREG WINTEROWD: McMinnville... and I've worked in both communities, and I know both communities
5 extremely well, are very different communities... McMinnville, from the very beginning, did not have an aggressive
6 economic development policy. It said "We'll take them if they come. We'll be hospitable but we're not going to go
7 around and actively recruit. This is not our key element". If you look at the demographics of McMinnville and the
8 locational characteristics for McMinnville, they're extremely different. McMinnville added much more commercial
9 land and much more residential land on a per person average than did Woodburn. McMinnville's economics are
10 better. People build larger houses. So when you take that into consideration they're entirely different communities.
11 The biggest thing is that, and since we worked right on the economic projections for McMinnville and since this has
12 come up, I wouldn't have recommended, and Eco didn't recommend, that they have the same site groupings that
13 Woodburn did, because Woodburn – from an economic industrial standpoint – is much better located than
14 McMinnville. McMinnville has a zillion other qualities, including a great place to expand commercial areas and all
15 kinds of things there, that came into Eco's analysis, but not basic industry. We wouldn't expect them to have the
16 same thing. And my last little dig – it is 12,000 for agriculture workers in the EOA. It's 20, it's twice that for the
17 average industrial.
18 CHAIR VANLANDINGHAM: Questions? Questions of Greg? Thank you. I think that comparison will change
19 once McMinnville gets the bypass. Jason...You can say as much or as little as you would like, Jason.
20 JASON LOCKE: Well, I guess what I would say in the Department's review of this submittal, one of the things that
21 we did have discussion, particularly amongst the economic development staff, was this issue of: Number one, how
22 much is too much, and is it reasonable, or it reasonably likely that these sites will develop over the planning period?
23 And I guess all I can say as far as that goes, in terms of the conclusions that we can to, when you look at, you know,
24 the number of sites may seem high – a total of 42 sites. Two of those sites are one large 125-acre site and one site
25 between 50 and 75 acres. So that leaves 40 sites within the various site types that are in fact left. And looking, in

1 comparison of their selected industries and what their site requirements were, and whether or not those parcels
2 would in fact be absorbed over the planning period - given the other issues, the other circumstances of Woodburn,
3 which are far different than McMinnville, we didn't feel it was unreasonable that, in fact, those sites would develop
4 over the planning period. If in fact – one of the things that we raised in the report and that 1000 Friends disagrees
5 with is this issue of reserving areas, reserving property or buying a larger site in order to accommodate future
6 expansion. We've seen so many cases where in fact either cities couldn't provide those sites or industries have
7 found themselves boxed in because they did not take that approach. In other words, they bought a site that was too
8 small for their future expansion needs when, in fact, 10 years down the road or 15 years down the road they simply
9 didn't have the capacity to expand because they didn't have the land and everything had developed around them.
10 So, all of those factors taken into consideration, and our addressing the objections and the subsequent exceptions,
11 that was...
12 LANE SHETTERLY: If I could, Jason has eluded to it, but just to make it crystal clear, the review of this submittal
13 on this was undertaken not just by Jason and Community Services or by urban planning specialists, but did entail
14 review with the Economic Development Planning team, and I think that was the effort of the Department to bring to
15 bear not only Goal 14 then, but also Goal 9, and everything else that plays into this...
16 CHAIR VANLANDINGHAM: And probably benefits from the work that the Department did on it.
17 LANE SHETTERLY: Absolutely.
18 CHAIR VANLANDINGHAM: Questions of Jason? Thank you, Jason. Commission discussion...Do you want to
19 take a break to prepare or are you ready to launch right in? Jim's always ready to launch right in. Okay...thoughts?
20 I guess, unless somebody else wants to start, I'll start. Grossly speaking, I see the issues as being: Is it too much
21 land? And, is it in the right places? Sid pointed out that we didn't have a lot of questions of the City about "Is it the
22 right places?". I guess, for me, I think that was because I didn't have that many questions after hearing from the
23 City about it. I'm impressed by the fact – looking at the map – that the city is surrounded by Class 2 soils. I do
24 believe that industrial users do care about interchange access. I certainly see it in my home community where
25 Springfield is now the economic engine of the Eugene/Springfield area because it has a freeway interchange that

1 Eugene does not. Eugene thought it was pretty clever when I-5 was built to stay away from that freeway
2 interchange, but might be second-guessing that decision. And I thought the City was persuasive to me about the
3 need to get, to use some Class 2 soils to get to the Class 3 soils on the south side, and how the consumers of that
4 land would get to the freeway. If I were a City Council or the Mayor, I certainly would not want to listen to the
5 complaints of the residential neighbors when those trucks started to go through their neighborhood. So I thought the
6 reasoning was persuasive there, and I don't know that it would benefit anybody to go through the "how much is too
7 much?" I am especially impressed with the economic analysis that the department did, and I have to say, frankly,
8 that I am influenced by my own experience as a commissioner, and my regard for the consultants that were used
9 here. There's just not another way to say that. I think it's important to understand. I would like to encourage all
10 cities to do the same, and I think we would all have better products and we will have an easier job. But, for those
11 reasons, I intend to support the Department's position. Others? Tim?
12 TIM JOSI: Well, as the other members know, I'm a strong proponent of the local process and my record has shown
13 that, but that only goes so far. I think when local jurisdictions cross a certain line, then I am not willing to support
14 them and my record has indicated that, too. This morning, for example, with Klamath County. I think that we are
15 pushing the envelope and I think that we have every reason to appeal a couple of their decisions – land use decisions
16 – as it pertains to Measure 37. This is a 10-year process and 1.5 million dollars. I question whether that's too long
17 and too much. One of the questions that I really wanted to ask the Mayor and I didn't and won't is, "Did you get
18 your money's worth out of it?" I mean, when you're all done with this thing, is it worthwhile? Because this is
19 really a visioning process and I'm sure the product is really good, and it's a great product. But is it worth 10 years
20 and 1.5 million dollars or could you have gotten a product that's just as good for half and half? Half the time and
21 half the expense, for example? Probably. But that's the deal we're in. You know, I'm not, I'm also not going to
22 spend a lot of time talking about whether it's too much industrial land or whether the location isn't right or not,
23 but... I come from ag background. I was raised on a dairy farm and I've got family that are in the dairy industry,
24 born and raised in Tillamook County, and I really understand the value of protecting ag land. In fact, my first real
25 political experience was being on the development of the Tillamook County comprehensive plan, and I was solicited

1 because of my interest in protecting ag land. So I certainly understand Sid and the agricultural community. But we
2 also need to grow in a constructive manner, and that's what this periodic review and the 20-year supply for
3 industrial, commercial and residential lands, and all the rest of that – that's why it's so important. I'm going to stick
4 with the recommendation of staff and side with the community and their very cooperative relationship that they've
5 appeared to have with the surrounding cities and, just as importantly or more importantly, with the County. And, so,
6 it's a good process; it's time to put a stop to the 10-year process and quit spending money. So I'm going to side with
7 staff on this.
8 CHAIR VANLANDINGHAM: Marilyn?
9 MARILYN WORRIX: I also vote to support the staff recommendation and, like some my fellow commissioners, I'd
10 just start by looking at the map. There are arguments and there is some validity that they might have gone further
11 south and picked some less valuable farmland, but it's clear there's a tremendous challenge with any movement on
12 the part of the city, and they're going to be hitting some pretty good farmland. It's a very difficult balance. I'm also
13 impressed by the thoroughness of their analysis and the process. I did find 1000 Friends' arguments considerably
14 more persuasive on the amount of industrial land than I did on the location because on the location questions that
15 appeared with things like the transportation issues really played an important role in taking them where they went. I
16 was also impressed that they came up with an intersection plan that is applauded by Stuart Foster. This really
17 speaks well for their ability to work hard. I did find the amount of land troublesome. This targeting industry
18 approach can pretty easily lead to very large amounts of land and perhaps even unreasonable amounts of land. And
19 then you add onto that the whole idea of market choice, and then it gets a little bigger, and it starts to feel pretty
20 uncomfortable. And, I'm still not sure that I got this quite right, but it looks to me as if there was a fair amount of
21 redevelopable land that just didn't get counted because they were using the targeted approach whereas that land
22 would be counted if you were using the employee per acre approach because then even in the growth it would be
23 counted. So it just kind of gets lost; and that would be okay if it was just a little bit, but I think we're talking about
24 over 70 acres, and that bothered me. So I do find the amount of land uncomfortably large, but it's not my job to be
25 comfortable with every component of what this City decides to do. That's not what we're here for. I feel that they

1 did meet the criteria in Goal 14 in terms of both their analysis for the need and the location. I am also sympathetic
2 to the time and money that has been put into this effort. And I hope you can trust that we're trying to resolve some
3 of those issues over the long-term. So I will support the staff recommendation, but would like it noted that I have a
4 significant discomfort with the way we're calculating some of this industrial land.
5 CHAIR VANLANDINGHAM: And we will continue to work on the Goal 14 process. Hanley, I hope you'll notice
6 that I'm calling on you last, spot first.
7 HANLEY JENKINS: Yeah. Well, I'm reminded of our discussion on the Metro UGB expansion and we were
8 asked to be precise in our analysis of industrial lands for Metro. And we found in that case that this is not a precise
9 science. We're trying to project to the future. None of us have crystal balls. What is interesting is when you go
10 through the industrial types analysis, as the City did, and you look at their table that lists the parcel sizes and the
11 sites, there is only one site 125 acres, there is only one site 70 acres in size, there's 15 one-acre sites and I think
12 that's probably where we need to be when we look at sites for industrial development based on the types that the
13 City has listed. Like everyone else, I am uncomfortable with the amount of acres and I wish we had more
14 justification -I've tried to drag it out of Greg – for those sites, a number of sites. But I am comfortable with the
15 City's land use regulations that will hopefully require that they meet... I think it's based on traffic and employees.
16 So I am comfortable that their land use regulations won't allow for the conversion to commercial use. That is always
17 our fear, in that we end up consuming industrial lands for other uses. As to where, I appreciate the maps that we've
18 gotten; they're all great. The argument that is made is that you stay on the east side of the interstate and you use the
19 Class 3 lands that are south of the area already identified. But what isn't clear is if you do that, then what does it do
20 to the traffic? (inaudible) to that area. Like Marilyn, I've sat with the OTC discussions about this interchange and I
21 am impressed with the City's ability to shift traffic impact from the east side to the west side. And it's not clear that
22 you could do that if you went south and took advantage of additional Class 3 soils in order to meet the need that's
23 identified by the City. So I am comfortable with the area that is identified on the west side of the interstate, even
24 though it does include Class 2 soils. The coordination issue that was raised – I'm confident that if the other cities in
25 the region had concerns about the 28% growth rate by Woodburn in relation for the County, that they'd be here

1 telling us about it. And we haven't seen that. We don't see that in the record and we don't see that in the objections
2 that have been presented to us. So, I'm going to assume, since we're not seeing objections, that those cities don't
3 have an objection to raise. I'm not as concerned about the coordination issue. We heard a lot of discussion about
4 the Citizen Involvement opportunity that was provided, and I'm confident that if folks had concerns they would
5 have participated in that process and we'd have heard more about it. I'm going to vote to support the staff's
6 recommendation.
7 CHAIR VANLANDINGHAM: Any other comments? Tim raised the issue of whether it was worth it, in time or
8 money. I don't know the answer. But I want to suggest that it's a better product now with that time and money than
9 it would have been, say five years ago or seven years ago. And I'm reminded – and I think it's a fair comparison –
10 I'm reminded of Bandon Dunes, which a bunch of land use lawyers in the state have been debating whether our land
11 use program almost prevented Bandon Dunes, and possibly it did. But at the same time, the land on which Bandon
12 Dunes was built – and it would not have been built but for – that being a marketable site, the land on which it was
13 built would not have been available for development if the land use program hadn't protected that land from the
14 pretty poor development that was proposed years before that. There's a book about the building of Bandon Dunes,
15 which is interesting in that regard and I suspect that, for example, the plans that you've developed for preserving
16 your industrial land - we've worried about conversion of industrial land to commercial forever. I think that's an
17 interesting and hopefully something that other communities will follow, and benefit from the money and time you
18 spent to develop it. All those in.... we need a motion.
19 TIM JOSI: I move that the Commission approve the City of Woodburn's periodic review submittal fulfilling Work
20 Task 2, commercial and industrial lands inventory, and amending the UGB based on the City's findings and oral
21 argument and the Department's oral and written staff reports.
22 CHAIR VANLANDINGHAM: Is there a second?
23 MARILYN WORRIX: Second.
24 CHAIR VANLANDINGHAM: Discussion? All those in favor say "aye".
25 VOICES IN ROOM: Aye.

CHAIR VANLANDINGHAM: Four – zero. Thank you. We'll take a break before we start the agenda at item 4.

Dated this 1st day of August, 2007

WOODBURN
OREGON
Incorporated 1889

December 20, 2010

John VanLandingham, Chair
Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524

Sent By: **E-Mail and First Class Mail**

Re: City of Woodburn Urban Growth Boundary Amendment

Honorable Chair and Commissioners:

As Mayor of the City of Woodburn, I am pleased that Director Whitman is again recommending that the Commission issue an Approval Order in the Woodburn UGB case.

The remand from the Court of Appeals to the Commission was extremely disappointing to our city. In a thirteen year period, Woodburn has spent over $1.5 million and countless hours of staff and citizen time in an effort both to meet our legal obligations and to create a vision that embodies our community's values and priorities.

Please include the attached City of Woodburn's Written Argument in Support of LCDC Approval Order into the Commission's record on remand.

I look forward to addressing the Commission at its January 12 meeting. Thank you for your consideration.

Sincerely,

Kathryn Figley
Mayor, City of Woodburn

Attachment: City of Woodburn's Written Argument in Support of LCDC Approval Order

Office of the Mayor
270 Montgomery Street • Woodburn, Oregon 97071
Ph.503 982-5228 • Fax 503-982-5243

City of Woodburn's Written Argument in Support of LCDC Approval Order

Introduction

This memorandum supports and supplements the Department's draft Approval Order by providing additional written argument.

At the outset, Woodburn agrees that "mere reference to market choice" is insufficient to explain why Woodburn's UGB expansion complies with Goal 14. "Market choice" is not a term that is used in either Goal 14 or the Goal 9 Rule, and did not serve as the basis for Woodburn's determination of employment sites needs or Woodburn's UGB amendment. The City's findings do reference providing "choice among sites" to address the site requirements of targeted industries, but not to artificially inflate land need.

In retrospect, Woodburn believes that LCDC's 2007 Order could have better explained the relationship between Goal 9 and Goal 14 in determining 20-year employment land needs and how these needs are "based on" the 20-year employment projection.

The Department's November 2010 draft Approval Order is a vast improvement over the 2007 LCDC Order.

Legal Argument

The "needed housing" statutes (ORS 197.295 – 197.314) and the Goal 10 Rule (OAR Chapter 660, Division 008) set forth standards for determining housing needs; whereas the "economic development statute" (ORS 197.712) and the Goal 9 Rule (OAR Chapter 660, Division 009) set forth standards for determining 20 year employment needs. Put another way, the local Economic Opportunities Analysis (EOA) is the primary means of determining whether the UGB has enough "suitable sites" to accommodate 20-year employment opportunities, whereas the local Housing Needs Analysis (HNA) is the primary means for determining whether the UGB has enough buildable land to meet 20-year housing needs.

There are other differences between Goals 9 and 10. ORS 197.295-197.314 (the "needed housing statutes) identify needed housing types that must be accommodated in city plans; there is no similar requirement for needed employment types. The definition of "buildable lands" in the Goal 10 rule (OAR Chapter 660, Division 8) is quite specific, whereas the definition of "suitable land" in the Goal 9 rule essentially leaves it up to local governments to determine site suitability criteria. (Compare OAR 660-008-0050 with OAR 660-009-0050 definitions.) While the needed housing statutes require "clear and objective" approval standards, there is no similar requirement in Goal 9 or the Goal 9 rule for employment use approval standards. In short, across the board, Goal 9 affords much greater discretion to local governments in the adoption of local employment land needs assessments and economic

development policies, than does Goal 10 with respect to housing land needs assessments and policies.

The reason that this is important is that Petitioners 1000 Friends *et al* analogize from Goal 10 to Goal 9, and insist that the 20-year coordinated population projection must be directly proportional to a 20-year employment projection (which is not required by Goal 9 or Goal 14), that provides the basis for an employment land need determination based on an estimate of the number of employees-per-acre. If an employment projection is not required by Goal 9 or 14, then the only reasonable basis left for determining employment land need is the Goal 9 rule and the EOA.

Woodburn's Six-Year Economic Development Planning Process

Woodburn took the following approach to justifying its employment land need determination:

1. 2001-2002: The Woodburn EOA identified targeted industries and general site requirements of these industries and the Woodburn Economic Development Strategy (EDS) included economic development objectives. ECONorthwest prepared a detailed memorandum estimating the number of industrial and other employment sites needed during the 20-year planning period ("Site Requirements for Target Industries", ECONorthwest, 2003.) This memorandum was supplemented by a more detailed description of required site characteristics in the Woodburn UGB Justification Report.

2. 2002: Based in part on the EOA and EDS, ECONorthwest prepared 2020 coordinated employment and population projections in 2002, which were adopted by Marion County in 2004.

3. 2003-2005: The City evaluated alternative UGB expansion areas consistent with ORS 197.298 and Goal 14 locational factors and modified the proposed UGB based on agency comments.

4. 2002-2005: Woodburn revised its Public Facilities Plan and Transportation System Plan based on revised population and employment projections and economic development policies. Woodburn demonstrated how, with support from private land owners, and state and federal government, the City can fund necessary public improvements to serve land within the Southwest Industrial Reserve (SWIR).

5. 2005: Woodburn prepared amendments to the Woodburn Comprehensive Plan and Development Ordinance to incorporate and carry out the policy direction provided in the EOA and EDS, and protect large industrial sites and lot sizes in the SWIR for 13 targeted industrial and other employment categories.

6. 2006: Woodburn adopted the amendment package as part of the Woodburn Comprehensive Plan and coordinated with Marion County in the co-adoption process.

Woodburn's Industrial Land Need Determination Accommodates 20-Year Employment Needs Projection

As was clear in the Woodburn UGB Justification Report, Woodburn did *not* rely on "mere market choice" to justify the addition of 409 gross acres (370 net acres) to its 2005 UGB. However, Woodburn did determine (consistent with ORS 197.712, Goal 9 and OAR Chapter 660, Division 009) that 42 sites with specific size and locational characteristics are necessary to meet Woodburn's economic development policies (as set forth in the EDS and comprehensive plan), and are needed during the 20-year planning period to: (a) satisfy the site number, size and locational requirements of 13 targeted industries identified in the EOA, and (b) accommodate from 7,139 to 8,374 projected new employees during the 20 year planning period. (Site Requirements for Target Industries, ECONorthwest, 2003)

Goal 9 Rule Requirements

The Goal 9 rule *requires* that the EOA and comprehensive plan identify the number, size and locational characteristics of sites that are "reasonably expected to be needed" to accommodate employment growth during the 20-year planning period.

The Goal 9 requirement to identify and designate suitable sites based on local economic development objectives is the fundamental difference between a 20-year need projection under Goal 9 (Economic Development) and a 20-year projection under Goal 10 (Housing). Under Goal 9, the EOA and economic development objectives are the primary basis for determining the number and size of sites that will be needed to attract and maintain targeted employment categories over the 20-year planning period.

While the estimate of sites needed must be related to the coordinated population projection (as it was in Woodburn), it is not determined by it. Provided that trends and comparative advantages are considered in the EOA, a city may choose an aggressive or restricted economic development policy.

In contrast, under Goal 10, the coordinated population projection is used to determine the number of households (and housing units) that must be accommodated on buildable land within the UGB. Once the county adopts a coordinated population projection, there is no local discretion regarding the amount of population growth – or the number of housing units – that a city must accommodate over the 20 year planning period. A local government has only limited discretion (through the housing needs analysis) in determining the type and density of needed housing units commensurate with the incomes of Oregon households.

ORS 197.712, Goal 9 and the Goal 9 rule also anticipate that the amount of land designated for protected employment sites *may* exceed the amount of land that is projected to develop during the 20-year planning period. With regard to "total" or 20-year land supply, the Goal 9 rule provides:

> "025(2) Total Land Supply. Plans must designate serviceable land suitable to meet the site needs identified in section (1) of this rule. Except as provided for in section (5) of this rule [related to institutional uses], the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period. (emphasis added)

The Woodburn UGB Justification Report explains why the amount of land designated by the City for industrial and other employment uses may exceed the amount of land that is projected to develop under an employee-per-acre method:

> "Under the site suitability method, it is possible that some sites may not fully develop during the planning period, either because a portion of the site will be held for future development or because a reserved site may not be selected by a targeted industry. As noted below, the proposed [now adopted] Plan includes measures to ensure that designated industrial parcels remain in agricultural use until a targeted employment needs them."

This approach is supported by definitions in the Goal 9 rule. The Goal 9 rule defines a large, partially-developed site as "developed" if it is five acres or greater and a half-acre or more is occupied by buildings. (OAR 660-009-005 (1) and (14)) Based on the Goal 9 rule, a 20 acre parcel with five or more acres of improvements is considered "developed". So, if each of the 8 sites in the SWIR of 10 acres or greater were to attract one of the 13 targeted industries, but only half of each of the sites was initially developed (the remainder being held for phased expansion), then there would be a theoretical "surplus" of 155 acres within the UGB. However, Woodburn will have made substantial progress in achieving its employment goals, and in providing jobs for its growing population.

On the other hand, had these 8 large sites not been made available, it is probable that Woodburn would not have attracted these targeted industries, because the City would have been unable to meet their site size requirements, since the sites available would not have included land for future expansion.

This is why the "employee-per-acre" method makes no sense when allocating land for larger employers: it has little to do with providing the type, size and location of sites demanded in the market place. This is the sense in which Woodburn used the phrase "providing choice among suitable industrial sites". This is also the intent of the Goal 9 rule – that suitable sites be provided within the UGB to meet the requirements of targeted industries.

Woodburn's Economic Opportunities Analysis (EOA) and Target Industries

In Chapter 3, the EOA identifies "comparative advantages" – the most important being the City's location between Salem and Portland and its direct access to Interstate 5. The EOA also notes that major improvements are necessary to Woodburn's I-5 interchange in order to accommodate planned economic growth. (EOA pp. 3-1 and 3-16 through 17)

In Chapter 4, the EOA identifies criteria for determining "target industries", which are actually "sectors" or groups of industries as defined by their Standard Industrial Classification (SIC) code. The identification of target industries is mandated by the Goal 9 Rule (OAR 660-009-0015(1)):

> "The economic opportunities analysis must identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends. This review of trends is the principal basis for estimating future industrial and other employment uses as described in section (4) of this rule. A use or category of use could reasonably be expected to expand or locate in the planning area if the area possesses the appropriate locational factors for the use or category of use."

The EOA includes specific criteria for selecting target industries, including existing employment in the North Willamette Valley Region, recent employment growth in Woodburn, and this region, expected employment growth based on data from the Oregon Employment Department, and regional payroll data. Based on this data, ECONorthwest identified 24 *potential target* industrial and other employment categories. ECONorthwest then applied a finer economic and social evaluation screen to arrive at 13 target industries in its final evaluation.

Thus, ECONorthwest provided substantial evidence in the EOA to identify 13 categories of industrial and other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends.

Woodburn's Economic Development Strategy (EDS) and Comprehensive Plan

The Goal 9 Rule (OAR 660-009-0020) requires that cities incorporate economic objectives and policies into their comprehensive plans.

The Woodburn EDS provides the basis for the City's economic objectives and policies as required by the Goal 9 Rule. The EDS policy framework was later incorporated into the Industrial Land Development and Employment Chapter of the Woodburn Comprehensive Plan that includes goals and policies to ensure implementation of the EOA and EDS. Goal E-1 directs Woodburn to:

> "* * * Provide and maintain an adequate supply of suitable industrial sites to attract targeted firms consistent with Statewide Planning Goal 9 (Economy), the recommendations of the 2001 Economic Opportunities Analysis and the Woodburn Economic Development Strategy."

Policy E-1.1 encourages local jobs to minimize the need for Woodburn residents to commute to employment; Policy E-1.6 requires master planning to reserve large parcels for targeted industries as called for in the EOA. Goal E-2 commits the City to "protecting suitable sites in the Southwest Industrial Reserve Area for targeted industrial firms, as directed by the Woodburn Economic Opportunities Analysis." Policy E-2.1 states that:

> "Woodburn shall designate industrial land near Interstate 5 with a SWIR (Southwest Industrial Reserve overlay) designation. Land within this designation shall be reserved exclusively for industrial uses identified in the EOA, and shall not be converted to another commercial or residential plan designation."

Importantly, the site sizes identified in the EOA shall be maintained according to "Policy Table 3: Site Sizes That Must Be Maintained on Specific Parcels through the Master Planning Process." These site sizes account for all of the "buildable" land within the SWIR (362 acres) and are derived from ECONorthwest's 2003 Memo describing site size requirements for targeted industries.

Coordinated Employment and Population Projections

Woodburn's decision to update its 20-year coordinated population projection and seek adoption of a 20-year coordinated employment forecast is clearly linked to an anticipated amendment to the Woodburn UGB and revision to the 1997 Transportation System Plan (Woodburn Population and Employment Memorandum, p. 1):

> "In June 2001, ECONorthwest completed a Goal 9 economic opportunities analysis (EOA) and economic develop strategy for the City of Woodburn. That project was the first step the City took to improve the chances that it will get the type and quality of economic development its citizens desire. It described (1) the City's vision for economic development, (2) issues related to achieving the economic development vision in Woodburn, and (3) recommended economic development policies and other changes to the City's Comprehensive Plan."
>
> "The outcome of that project was an economic development strategy that recognizes the City's locational advantages and encourages economic development and growth in the City. The strategy states the City does not want to become a bedroom community and targets specific high-wage industries for future growth."

The process of changing the existing 2020 population projection began with a revised forecast for employment growth (Woodburn Population and Employment Memo, p. 3):

> "We began the process of forecasting population growth in Woodburn by establishing the range of likely annual average growth rates for total employment over the twenty-year period. * * *"

The range of employment projections in ECONorthwest's memorandum was based on substantial evidence and city policy Woodburn Population and Employment Memo (Memo, pp.4-5):

> "We used Woodburn's historical employment growth relative to Workforce Region 3, the Portland PMSA, and Oregon and the forecast employment growth rates in these larger areas to establish a reasonable range of average annual growth rates for total employment in Woodburn over the 2000–2020 period."
>
> "* * * The City's policies intend to attract high-wage manufacturing and distribution industries; the employment forecasts assume a higher growth rate in the manufacturing sector than would otherwise be expected. The forecasts also assume corresponding decreases in the growth rate of other employment sectors. * * *"

In 2002, Marion County and DLCD agreed to these population and employment projections for use in the planning process. The Board of County Commissioners adopted these projections in 2004.

In 2002, the City was also in the process of working on an update to the City's Transportation System Plan. The employment forecast was necessary to ensure that planned transportation facilities would be adequate to accommodate the high range of projected employment during the 20-year planning period. The City chose the high range of the employment forecast to ensure adequate capacity at the I-5 Interchange with Highway 214, because this interchange was and remains critical to the success of the City's economic development program.

These factors, in addition to those cited in the Woodburn Justification Report and in the Department's draft findings, support the City's decision to base its economic development and transportation planning on the higher 20-year employment range found in the ECONorthwest Population and Employment Projection. (Woodburn UGB Justification Report, pp. 21-22)

Table 11 of the ECONorthwest employment projection identifies four categorizes of employment growth. The 13 targeted industrial and other employment sectors fall primarily within the Office and Industrial categories, which under the high range of the employment forecast account for 4,240 of the projected new jobs.

Table 11. Employment growth in Woodburn's UGB by land use category, 2000–2020

Land Use Category	Employment Growth 2000–2020 Low	Medium	High
Commercial	2,310	2,703	3,123
Office	1,147	1,332	1,530
Industrial	1,778	2,228	2,710
Public	747	876	1,011
Total	**5,982**	**7,139**	**8,374**

Source: ECONorthwest.

Employment growth by sector in Table 11 was allocated to four categories for use in projecting the demand for non-residential land in Woodburn: Commercial, Office, Industrial, and Public. The sectors included in each land use category are: Commercial: Retail; Office: Service; Industrial: Agriculture, Industrial and Other. Notably, the high employment range projects a total of 4,240 new jobs in the "industrial and other employment" categories.

Substantial Evidence in Support of ECONorthwest's Determination of Industrial Site Needs for 13 Targeted Industries

The Goal 9 rule leaves no doubt that cities are required to identify the number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses:

> Identification of Needed Sites. The plan must identify the approximate number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses to implement plan policies. Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories. Several broad site categories will provide for industrial and other employment uses likely to occur in most planning areas. Cities and counties may also designate mixed-use zones to meet multiple needs in a given location." OAR 660-009-0025(1).

Chapter 4 of the Woodburn Economic Opportunities Analysis defines "Target Industries" and ECO's analysis of:

- Existing local and regional employment
- Past local and regional employment growth trends
- Expected future local and regional employment growth
- Regional average payroll
- Local and regional employment quotient – the percent of each industry's overall market share
- Environmental characteristics
- Compatibility with public utilities

Chapter 4 of the EOA also describes three rounds of industry selection – starting with 70 industries, narrowing down to 24 potential target industries, then finally identifying 13 target industries through analysis of local and regional characteristics. The general characteristics and siting requirements of the target industries are also described in Chapter 4 of the EOA, and their Standard Industrial Classification (SIC) descriptions are provided in Appendix B to the EOA.

In short, there is substantial evidence in the record to support ECONorthwest's identification of target industrial and office clusters (target industries).

Safeguards

The Woodburn Development Ordinance and the SWIR

The Court of Appeals summarized the Petitioners' basic objection as follows:

> "[Woodburn] included far more industrial land within its amended boundary than is needed to accommodate the projected industrial job growth, more industrial land than is needed to accommodate its target industries, and more industrial land than it expects to develop over the 20-year planning period." *1000 Friends of Oregon v. LCDC*, 237 Or App at 221.

The unjustified implication is that Woodburn engaged in an unjustified land grab that will unnecessarily consume valuable farm land. Woodburn would like to point out the numerous safeguards that exist in the plan to ensure against this scenario.

First, in accordance with the Goal 9 rule, all of the large industrial and other employment sites added to the UGB are located in the Southwest Industrial Reserve (SWIR). The stated purpose of the SWIR is to "protect suitable industrial sites in Southwest Woodburn, near Interstate 5, for the exclusive use of targeted industries identified in the Woodburn Economic Opportunities Analysis. The broad objective is accomplished by master planning, retention of large industrial parcels, and restricting non-industrial land uses."

Second, if Woodburn had been intent upon maximizing the amount of employment land within its UGB, it might have gone to the high end of the estimated site sizes and included over 800 acres. The total of 486 acres identified in Table 4 of the ECONorthwest site needs memo represent the sum of average site sizes for target industries within each site size category. If Woodburn planned for the high end of the site size ranges (e.g. assuming 50 acres for each site in the 25-50 acre category, rather than 35, and 300 acres for the 100+ acre site, rather than 125), the site acreage would total 825 acres. Rather, Woodburn added 407 acres to its UGB - based on the lower end of the range of site sizes recommended by ECONorthwest. Woodburn made this decision to maximize efficiency of industrial land within the UGB and to minimize the

restrictions placed on property owners by requiring retention of larger sites than necessary to meet identified site size needs.

Third, Woodburn was acutely aware of the cost of providing urban services to the SWIR, as evidenced in the City's updated Public Facilities Plan. By minimizing the land area necessary to meet identified 20-year employment site needs, public and private costs to serve these areas were correspondingly reduced.

Fourth, Woodburn coordinated closely with Marion County and ODOT in updating the city's TSP and in preparing and adopting an Interchange Area Management Plan for the I-5 / Highway 214 Interchange (IAMP). As part of this process, the adopted IAMP includes a "trip budget" that corresponds to the high employment projection and is linked to the number of commercial and industrial acres served by the interchange. Woodburn also made a commitment to fund a substantial portion of the interchange improvements necessary to support its economic development objectives and to serve the industrial sites requiring good access to the interchange. Thus, the City has a huge incentive to conserve the capacity of the interchange for targeted industrial and other employment uses identified in its EOA.

Finally, the Woodburn Comprehensive Plan expressly prohibits re-designating land in the SWIR for commercial retail uses that are inconsistent with the 13 targeted industries identified in the EOA. (Woodburn Comprehensive Plan Policy E-2.1)

Conclusion

Woodburn agrees with the Department's draft order that "mere market choice" choice is an insufficient rationale for inclusion of more land than "needed" during the 20-year planning period. However, it is clear from the record that Woodburn did not rely on this simplistic rationale to justify its decision to include a 20-year supply of suitable employment sites within its 2005 UGB.

Rather, Woodburn determined (based on substantial evidence and consistent with ORS 197.712, Goal 9 and OAR Chapter 660, Division 009) that 42 sites with specific size and locational characteristics are necessary to carry out the City's economic development policies (as set forth in the EDS and comprehensive plan), and are needed during the 20-year planning period to: (a) satisfy the site number, size and locational requirements of 13 targeted industrial and other employment categories identified in the EOA, and (b) accommodate from 7,139 to 8,374 projected new employees during the 20 year planning period.

Importantly, in its 2002 population and employment memorandum, ECONorthwest used its employment projection as the starting point for the coordinated employment projection adopted

by Marion County. Thus, there is clear relationship between the coordinated population projection and the range of employment projections adopted by the City and Marion County. Later in 2002, ECONorthwest as a qualified expert, provided data that is the basis for the City's estimate of the number, size and characteristics of sites necessary to achieve the employment projection. Petitioners provided no expert testimony in the record to controvert the data produced by ECONorthwest.

Woodburn respectfully requests that the Commission recognize that the relationship with the coordinated population projection is different for Goal 9 (economic development) than it is for Goal 10 (housing).

- Under Goal 9, there must be *some relationship* between coordinated population projection and the determination of the number, size and characteristics of employment *sites* that will be needed to accommodate locally-selected (targeted) industrial and other employment use categories that are *likely* to locate in a community, but the local EOA is the principal basis for making this local determination. There are no "safe harbors" for determining targeted industries or their site characteristics.

- In contrast, under Goal 10, the coordinated population projection is the *principal means* of determining the number of housing units necessary to accommodate statutorily defined "needed housing types" on rule-defined "buildable lands" during the 20-year planning period regardless of local policy; the local "housing needs analysis" comes when assessing vacancy rates, household size and housing types and densities. The Goal 14 rule includes pages of "safe harbors" for each of these variables (i.e., for determining needed housing types and densities, household size and vacancy rates).

The alternative position taken by Petitioners 1000 Friends *et al* (that the local employment projection must be mathematically proportional to the coordinated population projection and that the employee-per-acre method is the only option for determining 20-year employment land need) fails to address the clear requirements of ORS 197.712, Goal 9 and the Goal 9 rule that *require* local governments to determine the number, size and characteristics of sites needed to accommodate locally targeted industries consistent with the local EOA and local economic development policies.

In contrast to Petitioners 1000 Friends position (which does not integrate the requirements of Goals 9 and 14), Woodburn believes that the approach taken by the City from 2000 through 2006 clearly complies with both Goal 9 and 14 requirements for reasons set forth above.

Woodburn is willing to work with the Department to make any changes to the Approval Order deemed necessary by the Commission based on information provided in this memorandum.

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Land Conservation and Development Commission
635 Capitol Street, Suite 150
Salem, OR 97301

December 20, 2010

Re: Oregon Court of Appeals Remand of Woodburn Periodic Review Order
Comments on Draft Commission Order

1000 Friends of Oregon and the other petitioners in this matter appreciate the opportunity to present written comments on the staff's draft order. We, as well as the petitioners we represented in the Court of Appeals, have participated in Woodburn's periodic review at every stage from the beginning. As explained below, we agree with several legal conclusions in the draft order. However, the city's decision and the draft order do not comply with those conclusions. The draft order seems to try to rationalize the same conclusions as the first, appealed order, when there is no legal or evidentiary basis for those conclusions.

I. Introduction

We would like to begin by framing the issue. Woodburn proposes to expand its urban growth boundary (UGB) by 979 acres to accommodate population and employment growth to the year 2020. The petitioners do *not* object to most of this expansion. However, of the total, 409 acres is for that portion of projected employment that will use industrial land, and this is where the disagreement lies. Woodburn may well need additional land to meet future employment needs. The city used the so-called "target industries" approach to estimate future land needs. While the petitioners do not object to that approach, we contend its *implementation* fails to comply with Goals 2, 9, 14, and related administrative rules

As explained below, the city and its consultants did not implement the targeted industries approach within the 20-year UGB planning period, resulting in a UGB that contains about twice as much land as is needed for industrial employment. Further, it resulted in the inclusion of large parcels of excellent farm land. In particular, and most objectionable to the petitioners, is inclusion of the land known as the Opus site. It consists of 130 acres of Class II soils, and is located on the west side of I-5, or on the opposite side of the freeway from most of Woodburn, including its downtown.

1000 Friends of Oregon and the other petitioners care about this decision for two primary reasons. First, it adversely impacts some of the best farm land in the world. Oregon agriculture is a multi-billion dollar industry, and Marion County ranks #1 among counties in gross agricultural sales. It is the top industry in Marion County. Agriculture is a traded-sector industry, whose value in the state and in Marion County has been increasing every year. 80% of Oregon's farm products are exported out of state, and 40% of those are exported out of the country. Agricultural sales in Marion County alone topped half a billion dollars in 2005.[1] As

[1] Rec. Item 6, p. 101

the Marion County Farm Bureau stated, "Agricultural land is industrial land, land that is supporting a successful portion of our county's economy." [2]

Second, the proposal is contrary to the urban goals of Oregon's land use planning program, of compact communities with a long-range, coordinated, and integrated plan for land use and infrastructure. The 20-year land requirement for UGBs is long-range, and by that nature contains market choice. Bringing land inside a UGB represents a commitment by the relevant city to invest substantial funds in infrastructure and governance, while continuing to serve the existing community. This proposal far exceeds 20 years, skips over vacant and underdeveloped land already inside the UGB, and jumps I-5 to bring in farm land that is the best of the best.

II. The Draft Order

Prior to addressing the substance of the draft order, we believe the Department staff has a misunderstanding of what the Court has asked the Commission to do on remand.

The draft order states (p. 2):

> "The court remanded the decision for the Commission to explain (in written findings that set forth the Commission's reasoning): (1) how the Commission determined that the City's UGB expansion for industrial lands complied with Goal [sic] 9 and 14 and, particularly, whether the City included more land within the UGB than it needed over the 20-year planning period; and (2) whether the City should have selected different properties for inclusion in the UGB under ORS 197.298 and the locational factors of Goal 14."

That is inaccurate, [3] in that the court did not direct the Commission to address issue (2). Rather, the Court stated:

> "For reasons that we will explain, we conclude that the LCDC's order is inadequate for judicial review with respect to its treatment of the first of these two issues, and, accordingly, reverse and remand the order for reconsideration, which, in turn, obviates the need to address the second issue.
>
> * * * *
>
> "In sum, because LCDC did not adequately explain the reasons that the UGB amendment – which included more industrial land than will be developed during the planning period so that the city could provide for market choice among sites – was consistent with both Goals 9 and 14, its order failed to respond to petitioners' objections and is inadequate for judicial review as it pertains to petitioners' first assignment of error concerning the propriety of the UGB amendment. Accordingly, we reserve [sic] and remand the order for reconsideration. That disposition obviates the need to address the petitioners' remaining assignments of error, which concern the city's selection of specific properties for inclusion in the UGB and are ultimately derivative of the first assignment of error."
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> *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 216, 226-27 (2010)

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[2] Rec. Item 6, p. 162

[3] This mischaracterization is also given in the staff's introductory memo, on p. 4 (reference to "two issues") and in the draft order on p. 3 ("The Issues on Remand").

The Department's draft order addresses the second issue starting on page 24. In response to the second issue, we rely on the arguments raised in our opening and reply briefs in the Court of Appeals on this issue, in the second and third assignments of error. These briefs are part of the record in this matter, we incorporate them by reference, and we also submit them with this.

We agree with several legal conclusions in the draft order; in particular the explanation of the interaction of Goals 9 and 14 regarding the amount of land that can be included in the long-term UGB to meet population and employment projections:

> "Thus, while a local government must provide at least an adequate supply of sites to meet the need of its current and projected future population for employment, it may not add more land than is needed over a 20-year period for employment or any other purpose."

Draft order, p. 11; *see also* draft order p. 16.

In addition, the draft order clarifies that "market choice" is not an issue in establishing a 20-year land supply for the UGB. The order states:

> "'Market choice' is a term of art that typically means that redundant sites are provided in the *short-term* supply of employment land to address issues such as lack of ownership diversity."

Draft order, p. 13 (emphasis in original).

This is consistent with the observation of the Court of Appeals that:

> "'[M]arket choice' is an infinitely pliable and elastic term – and all forms and degrees of market choice are not necessarily consistent with Goal 9. As an extreme example, it is unlikely that a local government that sought to target a single industry with a projected 10-acre site need could, consistently with Goal 9 and its implementing rules, designate hundreds of 10-acre industrial sites and amend its UGB accordingly simply because it wanted to provide optimally attractive 'market choice.'"

1000 Friends v. LCDC, 237 Or App at 225-26.

Another way of stating the conclusion of the draft order, that is consistent with early Court of Appeals' decisions on establishing UGBs, is that the 20-year land supply, with a periodic update, *is* market choice. By the very nature of providing a long-term supply of land, there is ample market choice. Land markets are short term, operating on 3-5 year cycles; the Goal 9 rule recognizes this short-term cycle. The UGB land supply is long-term and self-correcting. The land use planning system requires periodic updating of Woodburn's comprehensive land use plan every 10 years, just as the city is doing now. The city is free to update its plan and UGB more frequently. ORS 197.629 (1)(b), (5), (6). Thus, built into the system is the method by which a UGB is regularly updated to meet changing market needs and opportunities, expansion needs, land needs etc....

While we agree with the department's legal conclusions, we do not agree that the city's decision, and the draft order, comply with them. We also object to additional elements in the draft order. The objective of the draft order seems to be to rationalize the same conclusions as the first, appealed order, when there is no legal or evidentiary basis for that conclusion.

A. Incorrect Assumptions about Employment Projections and Land Need

The draft order appears to misunderstand a fundamental aspect of the city's projection of how much land it needs for industrial purposes, leading to violations of Goal 9 and the Goal 9 administrative rule.

The draft order correctly states that the city made a "medium" forecast of 7,140 new jobs through 2020,[4] and a "high" forecast of 8,374 jobs.[5] This is for *all* categories of employment – commercial, office, and public as well as industrial.[6] Of those new jobs, 2,710 are industrial jobs.[7] The city determined, and the draft order agrees, that the city would need about 370 net acres of new land to meet the medium forecast, of which 225 acres is for industrial uses.[8] This is based on an employee/acre methodology.[9]

The city then goes on to describe its target industries method for assessing the land needs of potential industrial users. The city concludes that using the targeted industries approach, it needs 486 acres – *just for the industrial employment*[10] - or only 2710 employees (about 1/3 of the projected new employees). The draft order reproduces the city's table showing the site needs for industrial uses under its targeted industries approach.[11] After accounting for existing sites in the UGB, the city proposes to add 409 gross acres for *industrial* use.

However, the Department, as reflected in the draft order, apparently and erroneously believes that the 409 acres is for *all* employment – all 7140 employees (or 8374 using a high forecast). The Department states that after adjusting for right-of-way, the 409 acres is essentially equivalent to the 370 acres originally found to be needed for *all* employment using the employee/acre method. The draft order states:

> "The City found that in order to accommodate long range population consistent with its coordinated population forecast, and its demonstrated need for employment opportunities it had an employment land need of approximately 486 acres of land in a range of types of sites. * * * [T]he City elected to proceed with the addition of 409 gross acres of land for employment opportunities.[12]
>
> * * * *
>
> "The City's population and employment forecasts provide context for the City's determination of its need for employment opportunities under Goal 14 factor 2 and its determination of needed sites under Goal 9. The Commission finds that there is a reasonable relationship between the City's estimate of 8,374 new jobs during the 2000-2020 planning period and the amount of land it has determined is needed for employment opportunities and suitable sites. On a straight employee per acre basis, the City determined that approximately 370 net acres of land would be needed to accommodate 7,140 new jobs (before the City made a final policy decision about where in the range of its employment forecast to plan for). At the higher level of projected employment

[4] Draft order p. 8; Rec. Item 10, p. 1278 (*Site Requirements for Woodburn Target Industries*).
[5] Rec. Item 10, p. 1095, Table 8 (*Woodburn Population & Employment Projections* memo)
[6] Rec. Item 10, pp.1278, and Table 1, p. 1392; Draft order p. 8.
[7]. Rec. Item 10, p. 1096, Table 11 (*Woodburn Population & Employment Projections* memo)
[8] Draft order p. 8; Rec. p. 1278 (*Site Requirements for Woodburn Target Industries*, p. 2)
[9] Rec. Item 10, p. 1278.
[10] Rec. Item 10, p. 1392, table 1.
[11] Draft order p. 8; Rec. Item 10, p. 1392 (*Woodburn UGB Justification Report*, Oct. 2005)
[12] Draft order, p. 10 and Errata sheet.

(8,374), the City would need approximately 486 net acres of employment land to accommodate projected long term population growth. After adjusting for the small amount of suitable lands within the existing UGB (approximately 45 acres) that figure is reasonably related to the 362 net acres of suitable sites for employment that the City has added. The Commission finds, for these reasons, that the amount of land the City has added to its UGB is based on its demonstrated need for long term population, consistent with its coordinated 20-year population forecast."[13]

However, as can be clearly seen in an examination of the city's decision and underlying reports, the original estimate of 370 acres is for *all* employment needs – commercial, office, public, and industrial – while the 409 acres is just for *industrial* needs.[14] The draft order's reliance on this "equivalency" is misplaced and fundamental, and leads to the incorrect legal and factual conclusion[15] that the 409 acres added for industrial use has a basis in substantial evidence. It does not.

In fact, as stated by the city in its decision and by the city's consultant,[16] the proposed UGB has approximately 200 more acres for industrial use – or twice as many acres - than is needed for the 20-year planning period.[17] *That* is exactly consistent with the employee/acre methodology that only 225 new acres are needed for industrial use, not 409 acres.

B. Employment Land Supply is for More than 20 Years

The draft order correctly states the legal standard that a UGB may contain only a 20-year land supply for future urban land needs. However, in several respects, the City's decision and the draft order approve a UGB for more than 20 years. The decision lacks substantial evidence and violates Goals 2, 9, and 14 and related administrative rules.

No Connection between Targeted Industries Approach and 20-Year Time Frame or Employment Projection

1000 Friends has stated several times that a targeted industries methodology may well be a suitable analysis approach – provided it is implemented within a 20-year time frame. However, there is no evidence that the dots are ever connected in this use of it, between the consultant's targeted industries analysis and a 20-year employment projection or land supply. The only place where this connection is made is in the caption of one table, in which "2000-2020" is added: "Summary of Estimated Industrial Site Needs by Size, Woodburn 2000-2020."[18] The text of the targeted industries report does not refer to the industrial employment projection. Rather, it describes "Typical lot requirements for firms in target industries,"[19] and then jumps to the table referred to above where it concludes how many sites of particular acreages are needed in Woodburn.[20] It is not explained how one gets from a generic description

[13] Draft order p. 12 and Errata sheet.
[14] This misreading by DLCD of the purpose of the 409 acres (industrial only) versus the 370 acres (all employment) is further illustrated by the *Woodburn UGB Justification Report*, in which it states that the 409 industrial acres cannot be "re-designated for commercial use." (Rec. Item 10, p. 1392; *UGB Justification Report* p. 24). And, that Report shows that in addition to the 409 acres for industrial use, the city is adding more acres for commercial employment. (Rec. Item 10, p. 1416; *UGB Justification Report*, p. 48, Table 14.)
[15] As explained above, using an employee/acre methodology, the projected 2,710 industrial employees need only 225 acres. Rec. Item 10, p. 1278.
[16] E.g., Transcript p. 51 in Record; p. 49 in Attachment D to Commission materials.
[17] Rec. Item 2, p. 19; Item 10, pp. 1169, 1392; Supp. Rec. Item 2, p. 15
[18] Rec. Item 10, p. 1392 (*Woodburn UGB Justification Report*)
[19] Rec. Item 10, pp. 1280-86 and Table 3, p. 1282.
[20] Rec. Item 10, p. 1287, Table 4.

of targeted industry needs to the particular table concluding that 486 acres in certain site configurations is needed. There is no explanation of how the 486 acres fits into a 20-year time frame.

Proposed UGB Exceeds 20 Years

The draft order approves an employment land supply for more than 20 years, but claims it isn't doing so by calling the excess land "land that will not fully develop during the planning period." How this is not more land than needed during the 20 years requires a semantic leap of faith for which we cannot find a practical or legal justification. The order states:

> "Goal 9 requires cities to designate an employment land supply of sites to provide opportunities for a variety of economic activities. Providing a mix of sites, in a range of sizes and types to provide choice is an appropriate component of the 20-year employment land need determination. Further, it is reasonable for a local government to determine (if there is an adequate factual base) that not all lands within all serviceable sites will develop during the planning period. Relatedly, a local government may determine (if it has an adequate factual base) that in order to provide lands to meet its demonstrated needs for employment opportunities under Goal 14, factor 2, and Goal 9, that some sites will not fully develop during the planning period due to the site requirements of particular target industries that typically seek sites that they will absorb over a longer period of time."[21]

This conclusion is flawed in many respects. First, it mis-states Goal 9.[22] Goal 9 does **not** require **cities** to provide opportunities for a variety of economic opportunities. Rather, Goal 9 requires that there be "adequate opportunities throughout the **state** for a variety of economic activities." Goal 9 sensibly requires that local comprehensive plans take into account local and regional factors: "the current economic base; materials and energy availability and cost; labor market factors...availability of key public facilities...current market forces; location relative to markets..." and more. This reflects the reality that not every city or town is, will be, or should be a full-service city. For historic, organic, geographic and other reasons, some towns are "bedroom" communities, some are retail hubs, some industrial centers, some have major cultural or sports facilities. Therefore, the legal premise for the remainder of this conclusion does not exist.

Second, if the land added to the UGB will "not fully develop" during the 20-year planning period, then, by definition, there is more land in the UGB than is needed for those 20 years.

In response to particular objections, the draft order expands on this notion. It states that some target industries need a site that is larger than what will develop "because...the company may have a build-out plan that extends beyond 20 years."[23] This is a conclusory statement; there is no evidence that any of the targeted industries that could potentially locate in Woodburn use land in that fashion.

The draft order goes on to state that "to the extent that such a site only develops partially during the 20-year planning period, that will be taken into account in the next buildable lands

[21] Draft order, p. 12.
[22] This incorrect description of Goal 9 is repeated throughout the draft order.
[23] Draft order, p. 20.

inventory carried out by the City."[24] This does not make sense. If vacant, unused land should be taken into account in the *next* buildable lands inventory, why shouldn't it be counted now – in *this* buildable lands inventory? At any given periodic review, that land might still be waiting for some illusive industrial expansion, and there will then be a continual cycle of adding more land. Which may well sit idle as the next ring of land is added. If vacant, buildable land exists in a current assessment, it must be counted in the buildable lands inventory. Market forces, changing landowners, and many other factors can alter a business's plans over the long-term, 20-year period.

Finally, the draft order explains:

> "Sites are identified to provide employment opportunities that meet a 20-year need. If only smaller sites were planned for, Woodburn would not be able to provide the employment opportunities that it has shown are needed under Goal 14 factor 2 and Goal 9."[25]

This is not the only option. A city using a targeted industries approach within a long-term 20-year land supply can provide for a smaller number of larger sites, or a mix of small and large sites, or only large sites, or other combinations that still add up to the 20-year planning period.

Draft Order Improperly Uses Market Factor

While the draft order concludes that it is not improperly using a "market factor," it seems to be. The order states:

> "….nor is it reasonable to limit the City to include only the number of acres expected to physically develop during the 20- year planning period within its UGB. The City cannot predict precisely the firm or industry that will locate within the boundary, and the City has documented that its target industries require a variety of available sites to achieve the employment opportunities the City has established are needed."[26]

This is contrary to the draft order's explanation of "market choice" as meaning that several sites are available over the *short-term*. Yet this statement clearly permits the inclusion of lands that will not be needed within the 20-years in order to provide "a variety of available sites." Consistent with past practice, case law, and on-the-ground practicality, 20 years does provide market choice.

As explained above, by providing a long-term supply of land, there is ample market choice. The draft order does not explain how "choice" among sites can be "an appropriate component" in determining the amount of land needed over the 20-year planning period[27] at the same time it disavows "provid[ing] 'market choice' in [the] long-term supply of land for employment uses."[28]

And this is *in addition to* providing sites that are larger than might be used within 20 years. Combined, these will result in – as they do in Woodburn – a land supply that exceeds 20

[24] Draft order, pp. 20-21.
[25] Draft order, p. 21.
[26] Draft order, p. 21.
[27] Draft order, p. 12.
[28] Draft order, p. 13

years by quite a bit – here, by twice at least twice as much for industrial land. The adverse impact of this is real – it takes farm land that is often in current production and puts it in a limbo state of providing "market choice" or awaiting a possible expansion of an industrial user that has not even located in the jurisdiction yet.

Finally, although the draft order states that it is not relying on market choice, clearly the Commission did so in its first order,[29] which was remanded. The underlying technical analyses and conclusion have not changed nor has the evidence changed, so it is difficult to see how the Commission can conclude the first time that it is only approving the industrial acreage because it is approving the use of long-term market choice to allow a UGB that exceeds 20-years, then for this order to state that is impermissible, and yet still approve this UGB. To stay both within the 20-year planning requirement and not impermissibly provide for so-called market choice beyond that period requires changing the underlying decision.

The Decision Includes More Land than Justified by the Target Industries Method

The city's decision and the draft order (e.g., p. 20) approve an implementation of the targeted industries approach that exceeds the 20-year land supply. An examination of that approach – as used by the city – demonstrates that it was not implemented with a 20-year UGB in mind. The city's consultants' reports identify various economic opportunities and needs and describe how these could be met through a targeted industries approach. But neither the studies nor the city's decision takes them to the next legally requires step of translating that into a 20-year land supply for reemployment.

The city targeted 13 industries it would like to attract and which might chose to locate in Woodburn.[30] The 13 targeted industries, and the "typical" acreage requirement for each site, are as follows, which is reproduced from the Record.[31]

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[29] For example, the Commission's 2007 findings of fact and conclusions: state:

> "According to 1000 Friends this is an oversupply of sites that leads to more land than is justified. However, the city has designated these sites to provide the required short-term supply as well as to provide market choice among sites...." Commission materials, Attachment C, p. 8 of 16.

See also, Woodburn's buildable lands inventory (p. 6): "The 2005 Plan creates a range of industrial sites and provides choice in the marketplace. Not all of the industrial land proposed by this plan is expected to develop by 2020." Also, *Woodburn UGB Justification Report*, Rec. Item 10 pp, 1377, 1391-92; Woodburn findings, p. 8.

[30] Rec. Item 2, pp. 15, 19; Item 10, pp. 613-17; *Economic Opportunities Analysis*, Rec. Item 10, pp. 1058-59 and Table 4-4; *Site Requirements for Woodburn Target Industries*, Rec. Item 10, p. 1282, Table 3.

[31] Rec. Item 10, p. 1060, Table 4-5 and p. 1281, Table 3.

Table 3. Typical lot size requirements for firms in target industries		
Industry	**Lot Size (acres)**	**Site Needs**
Printing & Publishing	5 - 30	Flat
Stone, Clay & Glass	10 - 65	Flat
Fabricated Metals	5 - 20	Flat
Industrial Machinery	10 - 20	Suitable Soil
Electronics - Fab Plants	100 - 300	Flat
Electronics – Other	5 - 30	
Transportation Equipment	10 - 20	
Trucking & Warehousing	varies	
Wholesale Trade	varies	
Non-Depository Institutions	1 - 5	
Business Services	1 - 5	
Health Services	1 - 10	
Engineering & Management	1 - 5	
Source: Woodburn Economic Opportunities Analysis, ECONorthwest, 2000.		

However, the city designated 42 sites to accommodate those 13 industries, or an average of 3-4 discrete sites for each possible target industry, in order to provide what it called "market choice." Following are those sites.[32]

Table 4. Summary of estimated site needs by size, Woodburn 2000-2020			
Site Size (acres)	**Number of Sites**	**Average Site Size**	**Estimated Acres**
100 or more	1	125.0	125.0
50-100	1	70.0	70.0
25-50	3	35.0	105.0
10-25	5	15.0	75.0
5-10	7	8.0	56.0
2-5	10	4.0	40.0
Less than 2	15	1.0	15.0
Total/Average	**42**	**11.6**	**486.0**

The site requirements of each targeted industry are described as a range of lot sizes. These site sizes overlap, as do the other locational requirements for each industry.[33]

The city, and the draft order, makes an unexplained jump from the target industries and their lot size requirements, to the number of sites, lot sizes, and the amount of land in the

[32] *Site Requirements for Woodburn Target Industries*, Rec. Item 10, p. 1287, Table 4.

[33] *Site Requirements for Woodburn Target Industries*, Rec. Item 10, pp. 1278-88. For example, each small Printing & Publishing business typically has fewer than 15 employees and can operate on a ½ acre, and should be within 20 miles of their clients. Fabricated Metal Products can also be on less than 5 acres and access to an interstate highway is not critical. Business Services and Non-Depository Credit Institutions can locate on a ½ acre, including in a business park of 20 acres with other businesses. Health Services can locate on sites from ½ acre to 5 acres. *Local* access is important for all.

proposed UGB. There is no explanation of how many businesses within each targeted industry are expected to locate in Woodburn during the planning period, or how those industries will absorb the land in the array of offered sites in Table 4. For example, the city targets four industries that use sites smaller than 5 acres, yet claims to need 25 such sites in the expanded UGB. It is targets twelve industries that use sites smaller than 50 acres, yet claims a need for 40 such sites in the expanded UGB.[34]

The city's decision also mixes land requirements for stand-alone industries with those that co-locate in, for example, industrial parks, by allocating the entire industrial park acreage to each industry located in it, although it is recognized that more than one industry locates in a given industrial park.[35]

The end result of this is a redundant projection of the land needed for industrial use over the 20-year planning period, in violation of Goals 9 and 14, and without an adequate factual base, in violation of Goal 2.

Lack of Substantial Evidence for Employment Projection

1000 Friends and petitioners objected to the city's projection of 18,762 employees by the year 2020.[36] This would be double the portion of Marion County's job growth that has historically located in Woodburn.[37] In 2000, Woodburn had 10,388 jobs, or 7.9% of all the jobs located in Marion County.[38] Adding 8,374 new jobs by 2020 means capturing 23% of all county job growth during that period, giving Woodburn approximately 15% of all county employment in the year 2020.[39]

Woodburn's plan to grow its employment by 3% average annual growth rate is due to a desire to "balance" a low employment-to-population ratio. Woodburn has 1 job for every 2.4 residents, compared to a county ratio of 1 job for every 1.8 residents. Woodburn therefore projects a job growth of over 8000 and a high growth rate to achieve a ratio of 1 job for every 1.9 residents.[40]

However, there is no examination of why Woodburn has these current jobs/residents ratio, how the projected growth rate will solve that, or why such a large growth rate relative to historic patterns in the county is reasonable – going from capturing 8% of the county's employment to capturing 23%.

For example, Woodburn's jobs-to-residents ratio could be due to having a higher percentage of the population that is older, younger, or undocumented than the county as a whole.

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[34] *UGB Justification Report*, Rec. Item 10, pp. 1059-60; Item 10 pp. 1280, 1392-94.
[35] Rec. Item 10, pp. 1059, 1279, Corrections to Rec. Supp. Vol. 4, p. 1545) Supp. Rec., Vol. 5, p. 857. For example, several of the targeted industries are expected to use sites ranging from ½ acre to 5 acres, including Printing & Publishing, Fabricated Metal Products, Business Services, Non-Depository Credit Institutions, and Health Services. Yet the range of site sizes used to designate the UGB for these industries ranges from 1-30 acres. Rec. Item 10, p. 1282 Table 3 and p. 1287, Table 4.
[36] Draft order, p. 18.
[37] Rec. Item 6, p. 102 and fn. 2.
[38] Rec. Item 10, p. 1028; Supp. Rec. Vol. III, pp. 182, 184. The draft order states that Woodburn currently has only 5% of total county employees and 7% of the county population. (p. 7). It is not clear where those figures come from.
[39] Rec. Item 2, p. 18-19; Item 4, p. 54.
[40] Draft order, p. 8.

In fact, that demographic is just what the record shows exists in Woodburn.[41] It could also include a higher percentage of farm workers who live in town and work in the nearby fields of Marion County's #1 industry – agriculture. The difference with the rest of the county could be due to the high number of government jobs concentrated in Salem.

The city explains that it is going to "accelerate job growth;" it is not clear what this means, but it may mean that it is doing so by adding more than a 20-year land supply[42] and/or hoping to attract employment that is currently projected to go elsewhere in the Willamette Valley.

The city's explanation for its population projection and underlying growth and capture rate is not supported by substantial evidence and violates Goals 2, 9,and 14.

City Incorrectly Removed Vacant Buildable Industrial Lands from the Inventory

The petitioners objected to the city removing vacant buildable land inside the current UGB from the inventory of available industrial lands. The draft order recommends approving the city's decision on this point.[43] Woodburn inventoried 126 acres of vacant, partially vacant, and redevelopable land zoned for industrial use inside its existing UGB. However, it reduced the amount available to just 47 acres because, the city claimed, the other vacant and partially vacant lands were being reserved by existing businesses for future expansion, and in some cases were being used for equipment storage in the interim.[44]

The petitioners believe the city, and the draft order, miss the point. The city acknowledges that these 79 vacant and partially vacant acres inside the UGB *will be used for future industrial use* – just not, apparently, by the targeted industries. Some portion of the city's future employment projection must still be allocated to those 79 acres, and this was not done, contrary to Goal 14.

The city's analysis is not even consistent on this point. The city does count one parcel inside the existing UGB in its inventory of land for targeted industries, because although it is being held for future expansion, the current owners might change their plans.[45] This simply proves the point of a long-term, 20-year land supply: changing economic conditions, change in ownership, and many other factors influence individual land use decisions, and the 20-year horizon accommodates that.

Failure to include all the vacant buildable land and account for the employees that will locate on it is contrary to Goals 2, 9, and 14.

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[41] "Woodburn has a high percentage of its population at the ends of the age spectrum. In 2000, 42% of Woodburn's population was under 25 years old, compared with
34% for Wilsonville, 37% for Salem, 31% for Portland, 38% for Marion County, and 34% for the state as a whole. Woodburn has retained a relatively large elderly population. In 2000, 18% of Woodburn's population was 65 years old or older, compared to 14% for Wilsonville, 12% for Salem, Portland, and Marion County, and 13% for Oregon. * * *
Woodburn has retained a high percentage of retirement-age residents, which can be explained by the presence of a large senior housing development (Woodburn Senior Estates) and by long-term residents. "Rec. Item 10, p. 1213 (*Technical Report 2: Woodburn Residential Land Need Analysis*).
[42] Draft order, p. 15.
[43] Draft order, p. 21.
[44] Rec. Item 10, p. 1390 (*UGB Justification Report*).
[45] Rec. Item 10, p. 1394 *(UGB Justification Report*).

III. Issue # 2

As explained above, the Court did not address "Issue 2," which comprises the second and third assignments of error in the petitioners' brief. We incorporate those by reference, and also submit electronic copies of those briefs with this testimony.

IV. Conclusion

The city's UGB decision is inconsistent with Goals 2, 9, and 14 in that it impermissibly contains more industrial land that will be needed or used during the planning period, and it lacks substantial evidence for its decision. This results in an expansion of the UGB by substantially more acres than can be justified. The lands chosen for that expansion are also contrary to Goals 9 and 14 and related statutes and rules. The petitioners renew all previous objections we made to the city's decision.

Thank you for consideration of our comments.

Sincerely,

Mary Kyle McCurdy
Policy Director

August 23, 2006

Lane Shetterly
Jason Locke
Department of Land Conservation and Development
635 Capitol Street, NE
Suite 150
Salem, Or 97301

Subject: Objection to City of Woodburn and Marion County submittal

Dear Mr. Shetterly and Mr. Locke:

On August 2, 2006, the City of Woodburn and Marion County mailed notice of adoption of ordinances approving City of Woodburn periodic review plan amendments. These amendments have been submitted to DLCD pursuant to 197.628 to 197.650.

The package of adopted amendments contains many positive elements, including new opportunities for a variety of housing-types, protection for riparian and other natural resources, and extensive public facilities planning.

Nonetheless, we continue to have significant concerns regarding the Urban Growth Boundary element of the amendments, particularly regarding the hundreds of excess acres included in the UGB expansion for industrial development as well as the inclusion of prime farmland west of I-5, rather than Class III soils adjacent to the southern expansion area.

1000 Friends of Oregon submitted written and oral testimony at the public hearings on these amendments and has standing to file objections. As explained below, we have several objections to the city's submittal.

To resolve our objections, the Department should not acknowledge the submittal. Instead, it should be returned to the city and county with instructions to develop a proposal that is consistent with the relevant statutes, goals, and administrative rules.

Introduction

The City of Woodburn has been engaged in a review of its Urban Growth Boundary for too long. Despite the advice of 1000 Friends of Oregon, other organizations, area residents, and previous consultants, since entering periodic review in 1997, the City of Woodburn has repeatedly taken actions resulting in lengthy delays and greatly increased expense. While Woodburn was entitled to delay the process and spend additional funds, it should recognize that these delays and expenses are the result of its own decisions.

At the beginning of the periodic review process, Woodburn hired a consultant, McKeever/Morris, to inventory Woodburn's buildable lands and to analyze the city's future land needs. The consultant's work was funded by a grant provided by the State's Transportation Growth management program. The consultant's report was issued in February of 2000. It concluded that

> "... the amount of industrial land identified by the [city] Committee is unrealistic... The consulting team does not include any land outside the existing UGB because the data does not indicate a need in the foreseeable future."[1]

The city chose not to accept this conclusion. Instead, they hired a new team of consultants who developed new growth assumptions to arrive at different conclusions and recommendations. We will not speculate as to the city's motivation in hiring new consultants, led by Greg Winterowd who concurrently worked for a development firm seeking inclusion of land in the boundary. However, we will point out that the additional time and expense that the city has incurred as a result is not the fault of the periodic review process. Instead, it results from a particular course of action chosen by the City.

Subsequent actions by the city have resulted in additional delays and expense. In 2002 Marion County adopted an "urban growth management framework," generally intended to encourage efficient use of urban land within existing UGB's prior to their expansion. The City of Woodburn appealed this decision to LUBA and, after losing at LUBA, to the Court of Appeals, which also rejected their appeal.

These appeals resulted in considerable delay and expense to the City that cannot be attributed to the periodic review process.

After losing these appeals, Woodburn agreed that their UGB amendment would conform to the County's adopted growth management framework. The city then negotiated a new, higher population forecast with the County. This resulted in further delays.

The city has now proposed a UGB expansion of roughly 1000 acres, most of which is prime farmland. Given the size of the expansion and the importance of the agricultural industry in Marion County it should be no surprise that the proposal is controversial and is subject to scrutiny.

At the well-attended public hearings on the submitted plan amendments Woodburn and Marion County heard from a large number of community members concerned about Woodburn's future. Many expressed a vision for Woodburn's economic future that is very different from that presented by the Greg Winterowd, the consultant from Winterbrook Planning. This community vision is consistent with the statewide planning goals and relevant statutes and rules. Indeed, for the reasons detailed in the following

[1] Woodburn Buildable Lands and Urbanization Project, Final Report, February 7, 2000, pp. 45-46. Volume II, item 8 in record

objections we believe the amendments adopted by the city and county are not consistent with these legal requirements nor are they in the community interest.

The adopted UGB expansion contains significantly more buildable land than the evidence demonstrates is needed, especially for industrial land. Almost all this acreage is **prime** farmland. Much of Woodburn's UGB proposal is predicated on a very aggressive development strategy that is both outdated and unrealistic. Therefore, it is not in Woodburn's best long-term interests or in the best interest of the surrounding community. It is also not legally supportable.

Most new jobs are created by small to medium sized businesses, especially those businesses that already have ties to the community. Nonetheless, the consultant's economic development strategy primarily relies upon the inclusion of very large parcels of land in the UGB to attract new large employers. The largest of these parcels is intended to lure a high-tech computer silicon plant. This is an industry that is shrinking, not growing, in the United States and the Pacific Northwest.

We believe Woodburn would be wiser to instead focus its efforts both on the retention and expansion of existing employers and on attracting new small to medium-sized employers who can:

a) Strengthen Woodburn's core business district. For example, an economic development strategy that attracts office workers to the periphery of the downtown core will provide potential downtown retailers with a pool of customers within walking distance of their businesses. The new Chemeketa campus on the north end of downtown is a good first step in this direction.

b) Complement existing industries and the existing local economy. Year in and year out, Marion County leads all Oregon counties in gross agricultural sales. Agriculture is a traded sector industry. Agricultural exports rank #2 among all Oregon exports, accounting for 25% of all Oregon exports in 2002. 80% of production leaves the state, 40% leaves the country. In 2002, agricultural exports increased 4% to $1.13 billion while high-tech decreased 31%. Woodburn is located in the agricultural heartland of Marion County, where direct agricultural sales topped half a billion dollars in 2004 for the first time and grew again in 2005 to $540 million.

Farmland is not undeveloped land waiting for urbanization. It is already developed land that supports the leading industry in Marion County. The agricultural industry is a primary driver of Woodburn's economy. Woodburn's submittal will harm the local economy by undercutting the land base that supports this leading industry.

OBJECTION 1: AMOUNT OF INDUSTRIAL LAND

Much of Woodburn's UGB expansion is based on a very aggressive industrial development strategy. It has adopted an unrealistically large projection for industrial job growth. It has included far more industrial land within its amended boundary than is

needed to accommodate that projected industrial job growth, more industrial land than is needed to accommodate its target industries, and more industrial land than it expects to develop over the 20-year planning period. The city failed to coordinate this disproportionate expansion with other affected jurisdictions. Finally, the city impermissibly excluded available industrial land, already inside the UGB, from its land inventory because it *might* be used for expansion of existing industries rather than "target industries."

Woodburn has about 7% of Marion County's population and just under 8% of Marion County's jobs.[2] The city forecasts that Woodburn will add 8,374 new jobs by 2020.[3] This accounts for 23% of all future Marion County job growth.[4] This is double the portion of Marion County job growth that has historically located in Woodburn.[5]

This disproportionate forecast is both unrealistic and uncoordinated with other affected jurisdictions including other cities in Marion County, which also aspire to increase their employment base, and with Metro, which has expressed concerns over the magnitude of the expansion and its impacts on Metro's planning.[6] Woodburn did not notify Gervais, Hubbard or any other cities in Marion County of its work sessions or public hearings on these amendments.[7] They also failed to notify Wilsonville of the proposed amendments. Hubbard's UGB is less than 1 mile and the Gervais UGB is about 1¼ miles from Woodburn's expanded Urban Growth Boundary. (See attached soils maps from local record.) The Wilsonville, Salem/Keizer, Mt. Angel, Aurora, Donald and St. Paul Urban Growth Boundaries are all within 10 miles of Woodburn's expanded UGB. (see Marion County Comprehensive Plan Map.)

The amount of industrial land Woodburn is adding to its UGB far exceeds what would be needed to accommodate this disproportionate, uncoordinated employment projection.

The city has explicitly based its industrial lands on the site "requirements" of its targeted industries rather than on the land needed for the number of employees.[8] Based on the number of projected employees, the city concluded it would need only 224 acres of

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[2] In 2000, total employment in Marion County was 131,622. Total employment in Woodburn was 10,388 or 7.9% of Marion County's total. Source: "Woodburn Economic Opportunities Analysis," phase one report, May 2001, p. 2-10, and "Woodburn Population and Employment Projections, 2000-2020" EcoNorthwest Memorandum to Winterbrook, April 29, 2002, p.16. Volume III, item 6 and item 9.a in record.

[3] Woodburn UGB Justification Report, October 2005. p. 20. Volume VI, Exhibit 5-B in record.

[4] Woodburn Economic Opportunities Analysis, p. 2-10. 36,199 new jobs projected county-wide. Volume III, item 6, in record.

[5] See pp. 4-5 of attached letter to Woodburn City Council, dated March 30, 2005

[6] See letter from Metro to City of Woodburn, dated February 3, 2005. Volume IV, item 4.h.Exhibit B-1 in record.

[7] See Notices of Work Sessions, Affidavits of Mailing and Notice of Public Hearing and Affidavit. Volume IV, item 1.a, item 1.d.i, and item 4.a in record.

[8] Woodburn UGB Justification Report, October 2005. p. 21. Volume VI, Exhibit 5-B in record.

industrial land over the planning period, less than half the 486 acres it says it needs based on target industry site requirements.[9]

Even based solely on site requirements for targeted industries, Woodburn is adding far more industrial land to its UGB than is justified. The city is targeting 4 industries that utilize sites smaller than 5 acres[10] yet it is asserting a need for and including within its UGB 25 such sites.[11] The city is targeting 12 industries that utilize sites smaller than 50 acres[12] yet it is asserting a need for and including within its UGB 40 such sites.[13]

The city acknowledges that, "*not all of the industrial land proposed by this plan is expected to develop by 2020.*"[14] (emphasis added). Nothing in either statute or rule authorizes the city to expand its UGB beyond its identified needs. Indeed, as noted in local testimony, an April 13, 2006, memo to Cities, Counties and Interested Parties from DLCD, Economic Development Planning Team states that, "The Goal 9 administrative rules *do not authorize the designation of more than a 20-year land supply nor do they supersede the requirements of other goals such as Goal 14.*" (Emphasis added).

The UGB adopted by Woodburn includes a total of 407 net buildable acres of industrial land, just for targeted industries.[15] This total does not include another 79 acres of industrial land available for expansion of existing industries. Buildable industrial land was removed from Woodburn's revised Buildable Lands Inventory.[16] Buildable land cannot legally be excluded from the buildable lands inventory simply because it might be used by industries already in the community rather than new industries. Today's land ownership and current market conditions do not dictate – either legally or in a practical sense - how land is inventoried; those are transitory conditions that can change quickly, while the city is engaged in a long term planning process.

Most new jobs are created by small to medium sized businesses, especially those businesses that already have ties to the community. Statewide Planning Goal 9, Economic Development, recognizes this. Guideline # 4 states:

> "Plans should strongly emphasize the expansion of and increased productivity from existing industries and firms as a means to strengthen local and regional economic development."

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[9] "Site Requirements for Woodburn Target Industries, October 20, 2003, p. 2. See also attached letter from 1000 Friends to Woodburn City Council, dated March 30, 2005, pp. 5-6. Volume III item 9.c in record and Volume V, Exhibit B-96 in record.

[10] Woodburn Economic Opportunities Analysis," May 2001, pp. 4-8, 4-9 and "Site Requirements for Woodburn Target Industries, October 20, 2003, p. 4 . Volume III, item 6, and Volume III item 9.c in record in record.

[11] Woodburn UGB Justification Report, October 2005. p. 24, p. 26. Volume VI, Exhibit 5-B in record.

[12] Woodburn Economic Opportunities Analysis," May 2001, pp. 4-8, 4-9 and "Site Requirements for Woodburn Target Industries, October 20, 2003, p. 4. Volume III, item 6, and Volume III item 9.c in record in record.

[13] Woodburn UGB Justification Report, October 2005. p. 24, p. 26. Volume VI, Exhibit 5-B in record.

[14] Buildable Lands Inventory, July 2005. p.4. Volume VI, item 4-E in record.

[15] Woodburn UGB Justification Report, October 2005. p. 85. Volume VI, Exhibit 5-B in record.

[16] Woodburn UGB Justification Report, October 2005. p. 22. Volume VI, Exhibit 5-B in record.

Nonetheless, the Woodburn's economic development strategy relies upon the inclusion of large parcels of land in the UGB to attract new employers. As noted above, the city has even excluded land that might be used for expansion of existing industries from its inventory of buildable industrial land.[17]

The largest of the new large parcels is a 125-acre parcel of prime farmland intended to lure a "silicon chip fabrication plant."[18] This is an industry that is shrinking, not growing, in the United States and the Pacific Northwest. Since 2000, the silicon chip industry in the northwest has closed many plants and retains significant unused capacity.

The February 16, 2005 memorandum the city relied on in reaching its decision speculates that, "the silicon chip industry may recover during this period… [or] that there may be other emerging industries that require such a large site."[19] The city does not explain why a silicon chip fabrication plant could be "*reasonably expected* to locate in the planning area." (OAR 660-009-0015, emphasis added)

There is not an adequate factual basis to conclude that a silicon chip fabrication plant is likely to locate in Woodburn over the planning period. Large blocks of prime farmland cannot be included in the UGB based on such speculative target industries.[20]

The city has found that in Woodburn, "Many commercial and industrial buildings are boarded up."[21] An economic development strategy that ignores this existing capacity turns its back on those areas of town most in need of economic revitalization.

At the hearing before the City Council on March 28th, 2005, the consultant conceded that he did not consider vacant or underutilized industrial buildings as having any capacity to accommodate need, unless the value of the buildings was lower than the value of the land.[22] Although not considered by the city, existing vacant and underutilized development can accommodate a considerable number of jobs, as illustrated by other testimony at the hearing.

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[17] Woodburn UGB Justification Report, October 2005. p. 22. Volume VI, Exhibit 5-B in record.
[18] "Woodburn Economic Opportunities Analysis," May 2001, pp. 4-8, 4-9 and "Site Requirements for Woodburn Target Industries, October 20, 2003, p. 3. Volume III, item 6, and Volume III item 9.c in record in record.
[19] Winterbrook Memorandum, February 16, 2005, p. 6. Volume IV, item 4.i, Exhibit C in record
[20] Even if the purported need for a flat, vacant, 125-acre industrial parcel acres was justified it could be accommodated within existing UGB on tax lot 052W13 00100, a vacant 141.56 parcel. This flat, vacant parcel is within the existing Urban Growth Boundary, in an unincorporated area southwest of the city limits and currently has no city zoning. It is general vicinity of the proposed Southwest Industrial Reserve. Given that it meets the site requirements laid out for target industries and given Goal 14 requirements for maximum efficiency of land use within and on the fringe of the existing urban area it seems like a logical place for the City to plan for industrial development. The City has not explained why it is instead planned for residential uses.
[21] Winterbrook Memorandum, February 16, 2005, p. 7. Volume IV, item 4.i, Exhibit C in record.
[22] Technical Report 1, p. 4. Volume III, item 5.b in record

At that hearing, evidence was presented of numerous vacant and available industrial buildings within Woodburn that Winterbrook considered to have no capacity. Ray Clor, from the Salem Economic Development Corporation (SEDCOR), testified that one of these, a vacant 137,500 square foot building, had been recently purchased by Universal Forest Products and will soon be providing industrial jobs. This is an illustration of one of the ways that existing developed industrial land accommodates new jobs and industry.

In response, the consultant, Mr. Winterowd, attempted to justify his decision to not consider vacant industrial buildings. He said, "Nobody knows how to ascribe jobs to vacant buildings." This is a curious statement, given that Winterowd's subconsultant, EcoNorthwest, does exactly this in other communities by estimating square feet per employee and then calculating the number of employees that can be accommodated in a given amount of building space.

In other Economic Opportunities Analyses recently prepared for the City of McMinnville and the City of Salem, EcoNorthwest concluded that some employment growth can be accommodated in vacant buildings on non-residential land, and that 650 square feet of built space will accommodate one industrial employee.[23] In those other analyses, EcoNorthwest also assumed that 5% of industrial job growth will occur on non-industrial land, that 7% of industrial job growth will be absorbed by firms adding employees without expanding space, and that redevelopment will accommodate an additional 5% of industrial job growth. None of these assumptions was applied in Woodburn.

For the foregoing reasons, Woodburn has included too much industrial land within its UGB.

Goal 2 requires that plans have an adequate factual basis and be coordinated with other affected jurisdictions. Because there is not an adequate factual basis for the amount of industrial land included within Woodburn's UGB and because the inclusion of this industrial land has not been adequately coordinated with other affected jurisdictions, the submitted plan amendments violate Goal 2.

Goal 14 requires that Urban Growth Boundaries be based upon demonstrated need. Because there is no demonstrated need for the amount of industrial land included within the UGB and because the city does not expect the included land to develop over the planning period the submittal violates Goal 14.

Remedy: For these reasons, the Department should remand the submittal with instructions to remove industrial lands included within the UGB expansion because they were included without an adequate factual basis, without adequate coordination, and without demonstrated need.

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[23] At 650 sq. ft./employee this one existing building will accommodate 211 jobs, about 2.5% of Woodburn's projected job growth.

OBJECTION 2: LOCATION OF INDUSTRIAL LAND INCLUDED WITHIN THE UGB EXPANSION

In addition to our concerns regarding the amount of industrial land within Woodburn's proposed UGB expansion, we also have serious concerns regarding its location.

ORS 197.298 establishes the priorities for inclusion of land within a UGB. Under this statute, if farmland must be included, land of lower soil classification must be included before land of higher classification *unless:*

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

Similar criteria are found in Goal 14.

The city has included hundreds of acres of prime farmland within its expanded UGB, instead of the predominantly non-prime soils south of Parr Road between Boones Ferry Road and I-5. These poorer soils are suitable for industrial use, are immediately adjacent to land that would be included in the UGB in this proposal, and are in close proximity to the proposed southern arterial and Butteville Road. As the Oregon Department of Agriculture stated in written testimony:

> "The department is concerned especially with the proposed expansions located west of Interstate 5 and north of the existing UGB. Both of these areas include prime farmland and Class II soils. Based on the soils priority established by both Goal 14 and the statute, the best place for any justified expansion onto agricultural land would be south of the existing UGB between I-5 and Boones Ferry Road. This area includes large tracts of "poorer" Class III soils."[24]

The city rejected inclusion of this large block of vacant flat parcels for industrial uses for two reasons.[25]

First, the city concludes that with inclusion of the prime farmland *west* of I-5 there is enough industrial land. The city maintains that this prime farmland west of the freeway (also known as the Opus site) *must* be included so that land *east* of the freeway can access I-5 via Butteville Road.

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[24] Volume V. Item 7. Exhibit B-103
[25] Woodburn UGB Justification Report, October 2005. p. 52-53. Volume VI, Exhibit 5-B in record.

The Department should reject this conclusion. Proposed industrial land east of the freeway does not need to use land west of the freeway to access I-5. Traffic from those lands can also access the interchange via the planned Stacey Allison Dr. Extension, which fronts the east side of I-5, does not pass through any residential neighborhoods and connects to the proposed South Arterial.[26] In fact, when the extension and arterial are completed, this will be a more direct route to the interchange than crossing over the freeway to Butteville Rd.

Second, the city concludes that these parcels are "too far from the I-5 interchange to be attractive to targeted industries." The Department should reject this conclusion as well.

The list of target industries prepared for Woodburn by EcoNorthwest is identical to the list of target industries they prepared for McMinnville.[27] McMinnville is least 30 miles from the nearest freeway interchange. How can the consultant team assert that the target industries will not consider sites in Woodburn that are over two miles from the interchange, when they believe the same target industries will consider sites in McMinnville, 30 miles from a freeway interchange?

The October 2005 *Woodburn UGB Justification Report* states that a locational criterion was applied in 2003 that eliminated sites over two miles from the I-5 interchange.[28] However, this criterion does not appear in the October 2003 *Site Requirements for Woodburn Target Industries* (Volume III. Exhibit 9.c in record).

For certain of the target industries, such as Trucking and Warehousing, access to a major interstate is listed as a key locational requirement. For other target industries, such as Business Services or Non-Depository Credit Institutions, there is no such locational requirement noted. In fact, for these and several other target industries, the October 2003 *Site Requirements for Woodburn Target Industries* lists downtown, mixed-use and/or other commercial areas as appropriate locations.

The 2-mile criterion is arbitrary. Woodburn and its consultants have not explained why 2 miles is the magic distance, rather than 3 miles or 1 mile. Distance does not equal accessibility or time of travel.

Woodburn and its consultants have also not explained why all target industries have an identical need to be within the same distance of the interchange. Woodburn contends that Metro applied a similar 2-mile criterion for industrial land in 2004. The city has failed to fully explain Metro's action. Metro determined that while some industries required a location within two miles of an interchange, other industries did not. These other industries include some of the industries Woodburn has targeted.

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[26] See attached map from record and various other transportation maps in record
[27] See attached excerpts from McMinnville and Woodburn Economic Opportunity Analyses.
[28] Woodburn UGB Justification Report, October 2005. p. 25. Volume VI, Exhibit 5-B in record.

The area of higher-priority soils south of Parr Road towards Gervais can reasonably accommodate some portion of Woodburn's identified industrial land needs. The Department should reject the conclusion that it cannot.

Because Woodburn has incorrectly included prime farmland in the UGB while excluding non-prime farmland that can reasonably accommodate some of the identified land needs, the submittal violates ORS 197.298 and Goal 14.

Remedy: For these reasons, the Department should remand the submittal with instructions to remove the prime agricultural soils west of I-5 included within the UGB expansion and replace them with predominantly Class III soils south towards Gervais.

Sincerely,

Sid Friedman

Attachments: 1. Testimony of 1000 Friends of Oregon to Woodburn City Council and to Marion County with selected attachments:
   a. Target Industries from McMinnville and Woodburn Economic Opportunity Analyses submitted at Marion County public hearing
   b. Soil maps submitted at Woodburn public hearing
   c. Transportation Map submitted at Marion County public hearing
2. Marion County Comprehensive Plan Map

Cc: (w/o attachments)
City of Woodburn
Marion County

IN THE COURT OF APPEALS OF THE STATE OF OREGON

1000 FRIENDS OF OREGON; FRIENDS OF MARION COUNTY; LOLITA CARL; KATHLEEN CARL; DIANE MIKKELSON; CARLA MIKKELSON; and MARION COUNTY FARM BUREAU, Petitioners, v. LAND CONSERVATION AND DEVELOPMENT COMMISSION; OPUS NORTHWEST, LLC; CITY OF WOODBURN; FESSLER FAMILY, LLC; MARION COUNTY; AND RENAISSANCE CUSTOM HOMES, LLC, Respondents.	Court of Appeals No.: A135375 Review of Order No. 07-WKTASK-001720 of the Land Conservation and Development Commission

PETITIONERS' OPENING BRIEF

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The Commission erroneously interpreted provisions of law (Goal 14, Goal 9, Goal 2, Part I, and OAR chapter 660, divisions 9 and 24), made a decision not supported by substantial evidence, and acted inconsistently with official agency position in approving the City of Woodburn's determination of the amount of acres by which the City expanded its UGB. 7

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I Statement of the Case

A. Nature of the Proceeding and Relief Sought

This is an appeal of an order of the Land Conservation and Development Commission (LCDC or Commission), issued on February 14, 2007. The order is 07-WKTASK-001720, entitled "In the Matter of Periodic Review Task 2 and the Amendment of the Urban Growth Boundary for the City of Woodburn."

The order approves a periodic review work task, including an urban growth boundary amendment (UGB), submitted by the City of Woodburn pursuant to ORS 197.633 (periodic review), ORS 197.626 (UGB expansion), and OAR chapter 660, division 025 (periodic review).

The petitioners seek reversal and remand of certain portions of the Commission's decision.

B. Nature of the Judgment Sought to be Reviewed

The judgment is a final order of the Land Conservation and Development Commission.

C. Statutory Basis for Appellate Jurisdiction

The Court of Appeals has jurisdiction over this appeal pursuant to ORS 197.650.

D. Nature of and Jurisdictional Basis for Agency Action

The Commission has jurisdiction over local government decisions concerning periodic review of comprehensive land use plans and regulations, pursuant to ORS 197.628 -.644. LCDC has jurisdiction over local government decisions to expand a UGB by 50 or more acres, if the relevant city has a population over 2,500 persons, which Woodburn has, pursuant to ORS 197.626.

E. Questions Presented on Appeal

Did the Commission erroneously interpret provisions of law (statewide planning Goals 2, 9, and 14 and OAR chapter 660, divisions 9 and 24), make a decision not supported by substantial evidence, and make a decision inconsistent with agency official position, in approving the amount of acres allegedly needed for industrial use in the expansion of the Woodburn urban growth boundary (UGB)?

Did the Commission erroneously interpret provisions of law (ORS 197.298, Goals 9 and 14, and OAR chapter 660, divisions 9 and 24) and make a decision not supported by substantial evidence, in approving Woodburn's proposal to expand its UGB onto certain lands planned and zoned for exclusive farm use, rather than onto other, higher priority lands?

Did the Commission erroneously apply Goal 14, in particular boundary location factor (3), in failing to analyze and compare the economic impact on the agricultural industry of Woodburn and the region, of removing large parcels of high value farm land from production and including that land in the UGB?

F. Summary of Arguments

In approving Woodburn's proposed expansion of its UGB, the Land Conservation and Development Commission approved too many acres for industrial use. And even if the number of acres allegedly needed for industrial use is accurate, the Commission approved designation of the wrong lands. In doing so, the Commission erroneously interpreted provisions of law and made a decision not supported by substantial evidence. This had several results contrary to Oregon land use planning laws: inclusion in the Woodburn UGB of far more land than the city is projected to need over the next 20 years,

inclusion of some of the best farm land in Oregon, and skipping over suitable lands inside the Woodburn UGB.

G. Summary of Facts

The city of Woodburn began the periodic review and update of its comprehensive plan and zoning ordinances in 1997. Its periodic review was designed to update the city's planning documents through the year 2020. This consisted of several "Tasks" addressing a variety of planning issues, most of which have been submitted to and approved by the Department of Land Conservation and Development without any objection. (Rec. Item 2, p. 15) However, petitioners objected to Task 2, titled "Commercial and Industrial Lands Inventory," and the accompanying UGB amendment.

To initiate its periodic review, the City adopted a population projection of 34,919 persons by the year 2020. (Rec. Item 10, p. 614) The city then translated that population forecast into a need for housing and jobs, concluding that Woodburn would have 18,762 jobs by 2020. (Rec. Item 4, p. 541) This is double the portion of Marion County's job growth that has historically located in Woodburn.[1] (Rec. Item 6, p. 102 and fn. 2)

In its decision, the Commission accepted Woodburn's use of a "targeted industries" methodology to estimate the city's future industrial land needs, as described in the city's Economic Opportunities Analysis[2] and Economic Development Strategy.[3]

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[1] In 2000, Woodburn had 10,388 jobs, or 7.9% of all the jobs located in Marion County. (Rec. Item 10, p. 1028; Supp. Rec. Vol. III, pp. 182, 184) Adding 8,374 new jobs by 2020 means capturing 23% of all county job growth during that period, giving Woodburn approximately 15% of all county employment in the year 2020. (Rec. Item 2, p. 18-19; Item 4, p. 54)

[2] The Woodburn *Economic Opportunities Analysis* of May 2001, by ECONorthwest, is

(Rec. Item 2, pp. 15, 19) The city aspires to higher wage jobs. (Rec. Item 5, p. 66) Under this methodology, the city targeted higher-paying industries that might locate in Woodburn, based on the city's "comparative economic advantages and local policy objectives." (Rec. Item 10, pp. 1378-79) The primary economic advantages of Woodburn, according to the city, are its location on Interstate 5, and the "availability of large tracts of flat land" near I-5; lands that are currently outside the UGB and zoned for exclusive farm use. (Rec. Item 10, *Woodburn UGB Justification Report*, pp. 1378-79)

The city identified 13 target industries (Rec. Item 10, p. 1280, Table 3; pp. 1389-95; Item 5, pp. 72-76) and determined that it needed 42 additional sites to accommodate these industries. The City examined eight study areas around its UGB, referred to as SAs 1-8. (*See* map, App. 1; Rec. Item 2, p. 16; Item 10, p. 1414, Table 12)

The city proposed, and the Commission approved, a UGB expansion of 979 gross acres, including 409 acres for employment use, all of which is expected to be industrial in nature. (Rec. Item 2, p. 15; Item 10, p. 1416, Table 14; *see* map, App. 2) The majority of the proposed industrial land expansion is in the Southwest Industrial Reserve (SWIR). (Rec. Item 2, p. 15)

The SWIR is itself made up of two sections. One section is the "Southwest," also called Study Area 7 (SA-7). SA-7 contains both Class II and III soils, but is predominantly Class III soils. (Rec. Item 2, p. 24; Item 10, p. 1437) The city studied 604 acres of SA-7, but brought in only the northern 433 acres. (Rec. Item 10, p. 1414, Table

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located at Rec. Item 10, pp. 1017-1075.

[3] The Woodburn *Economic Development Strategy* of June 2001, by ECONorthwest, is located at Rec. Item 10, p. 615; pp. 699-744.

12 and P. 1416, Table 14) This brief will refer to the *included* portion of SA-7 as "SA-7 North."

This included area, SA-7 North, lies south of the current city and east of Interstate 5. Parr Road runs though the center of SA-7 North. The portion of SA-7 North that is west of Evergreen Road is in the SWIR; the portion east of Evergreen is planned for residential use. The Woodburn TSP contemplates Evergreen will be improved to arterial standards. The South Arterial runs just inside the southern border of SA-7 North. Together, these two arterials are designed to serve the industrial lands of all of SA-7. (App. 1 and 2; Rec. Item 11, p. 1479; Rec. Item 10, p. 1436-37, 1451) The petitioners have not objected to inclusion of SA-7 North in the UGB, if there is a need.

South of and directly adjacent to the portion of SA-7 North that is in the SWIR is an extensive area of predominantly class III soils. (Rec. 10, p 1421; map at App. 5) And, south of and directly adjacent to the portion of SA-7 North that is included in the UGB for residential uses is another 171 acres with significant concentrations of class III and IV soils. It is located south of the planned South Arterial. (App. 1, 2, 4, and 5; Rec. Item 10, p. 1414, Table 12 and p. 1416, Table 14) Neither of these areas was included in the UGB. This brief will refer to these *excluded* areas as "SA-7 South."

The other section of the SWIR is located across Interstate 5, on the west side, and separated from most of the city. It is part of the former Study Area 8; the remaining part that is proposed for inclusion in the UGB is known as the Opus property. The Opus property is 130 gross acres, and lies between I-5 and Butteville Road to the west. (Rec. Item 10, pp. 1416, Table 14 and 1455; App. 2) The Opus property is prime, Class II farm land. (App. 5, Rec. Item 11, p. 1481; Item 10, p. 1442)

Agriculture in Oregon is a multi-billion dollar industry, and Marion County ranks #1 among counties in gross agricultural sales. Agriculture is a traded-sector industry, whose value in the state and in Marion County has been increasing every year. Agricultural sales in Marion County alone topped half a billion dollars in 2005. (Rec. Item 6, p. 101) As the Marion County Farm Bureau stated, "Agricultural land is industrial land, land that is supporting a successful portion of our county's economy." (Rec. Item 6, p. 162)

If there is a need for additional land in the UGB, the petitioners have argued that SA-7 South should be included, rather than the Opus site. The soils on SA-7 South are less valuable, and the location of SA-South will not cause as adverse an impact on agriculture in the region as inclusion of the Opus property. (Rec. Item 10, p. 1439)

II. Petitioners' Standing

The petitioners' statutory and constitutional standing is described in their affidavits filed with the Petition for Judicial Review. It is also demonstrated in their participation at every stage of the periodic review of Woodburn's comprehensive plan, including the urban growth boundary evaluation, through oral and written testimony, as required by ORS 197.650(1)(a). (Rec. Item 6, pp. 99-157, 159-60, 161-63, 165-67, 169-72; Supp. Rec[4]. Vol. IV, pp. 1518, 1521, 1527, 1549; Vol. V, pp. 371, 409, 595, 732, 735, 739; Corrections to Supp. Rec. Item 3, p. 908; LCDC hearing transcript of January 25, 2007 in the Supp. Rec. Transmittal pp. 22-42)

[4] In this brief we will use "Supp. Rec." to refer to the supplemental record filed by the Department of Land Conservation and Development, which is titled "Legislative Amendment 05-01 Record," and contains five volumes, numbered I-V.

III. Assignments of Error

INTRODUCTION

Evaluation and expansion of an urban growth boundary requires application of several interrelated statutes, statewide land use Goals, and administrative rules: ORS 197.298, Goal 14, and OAR chapter 660, division 24. The city of Woodburn opted to complete its periodic review under the new Goal 14[5] and its accompanying administrative rule.[6] Because the city was also evaluating its need for employment land, Goal 9 (Economic Development) and its administrative rule, OAR chapter 660, division 9, are also applicable.

FIRST ASSIGNMENT OF ERROR

The Commission erroneously interpreted provisions of law (Goal 14, Goal 9, Goal 2, Part I, and OAR chapter 660, divisions 9 and 24), made a decision not supported by substantial evidence, and acted inconsistently with official agency position in approving the City of Woodburn's determination of the amount of acres by which the City expanded its UGB.

A. Preservation of Error

The petitioners raised this issue in testimony and as objections and exceptions throughout the proceedings before the city and the Commission. (Rec. Item 6, pp. 101-05, 109-13, 118-20, 122-3, 138-39, 142-50, 159-60, 161-63, 165-67, 171) The Commission recognized these objections and exceptions and responded to them. (Rec.

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[5] Rec. Item 10, p. 1372.

[6] Goal 14 was amended, effective April 28, 2006. The new Goal 14 and OAR chapter 660, division 24 were designed to clarify and streamline the existing Goal 14 process, not to change it substantively. The department's website describes the new Goal 14 administrative rules as follows: "The adoption of the new rules culminated more than two years of work to clarify and streamline the UGB amendment process." http://www.oregon.gov/LCD/rulemaking_2005-07.shtml. Therefore, case law on old Goal 14 is largely relevant to interpretation of new Goal 14.

Item 2, pp. 17-23; Item 3, pp. 29-31)

B. Standard of Review

This court reviews an order of the Land Conservation and Development Commission to find if the agency erroneously interpreted a provision of law, acted outside the range of its discretion or inconsistently with official agency position or practice, acted in violation of statute or the constitution, or adopted an order that is not supported by substantial evidence. ORS 183.482(8).

ARGUMENT

The petitioners contend that the Commission approved an expansion of the Woodburn UGB by substantially more land than the City demonstrated is needed for industrial uses over the 20-year planning period of the urban growth boundary.

Statewide Planning Goal 14, Urbanization, is designed to "accommodate urban population and urban employment inside urban growth boundaries." The new Goal 14 is explicitly divided into "Land Need" and "Boundary Location" factors. A local government evaluating its UGB must first determine whether there is a need for additional land in its UGB, based on a 20-year planning period for the UGB. The two "Land Need" factors provide (emphasis added):

> "Establishment and change of urban growth boundaries shall be based on the following:
> (1) Demonstrated need to accommodate long range urban population, consistent with a *20-year* population forecast coordinated with affected local governments; *and*
>
> (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2)."

The Goal 14 rule is explicit that the UGB must be based on a 20-year population

forecast, and that the UGB must provide land for employment and housing needs over that 20-year period, no more and no less. OAR 660-024-0040 (1) provides:

> "The UGB must be based on the adopted 20-year population forecast for the urban area described in OAR 660-024-0030, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule."

The rule states that at periodic review, a UGB must provide employment lands for a 20-year period:

> "When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. * * * For employment land, the inventory must include suitable vacant and developable land designated for industrial or other employment use…."

OAR 660-024-0050(1).

This 20-year planning period for all urban land needs inside a UGB is repeatedly reinforced throughout the Goal 14 rule. *See* OAR 660-024-0030(3), (4) ("safe harbors" for 20-year population forecasts), OAR 660-024-0040(2) (determining when to commence 20-year planning period); 660-024-0040(4) (20-year period for residential land need); 660-024-0040(5) (20-year period for employment land need); 660-024-0040(6) (20-year period for transportation and public facilities land needs); 660-024-0040(7) , (8) , (9) (safe harbors for calculating 20-year residential, employment, and public facilities land needs); 660-024-0050 (accommodating 20-year land need inside UGB); 660-024-0070(2) (UGB adjustments must maintain 20-year land supply).

Statewide planning Goal 9, Economic Development, complements Goal 14. Goal 9 and its administrative rule direct and guide cities in how to assess their economic development needs and potential, inventory their employment lands, and provide land to

meet their employment needs, within a 20-year UGB. The Goal 9 rule defines "total land supply" inside a UGB as "the supply of land estimated to be adequate to accommodate industrial and other employment use for a 20-year planning period." OAR 660-009-0005(13); see also OAR 660-009-0025 (2) .

In Oregon's land use planning program, the state legislature balanced urban and rural land needs by providing a 20-year UGB, in recognition of the importance of the agriculture industry to the state's economy and the irreplaceability of the land that supports that industry. ORS 215.243[7] This court has also observed " 'the obvious overlap[] between the two [need] factors,'" and that an undue "emphasis on the 'employment opportunities'" of factor 2 of Goal 14 can lead a jurisdiction to incorrectly "disregard the standards of the other goals which are incorporated into factor 1, e.g., the resource land preservation and orderly urbanization requirements of Goals 3, 4, 5, Goal 11 and 14." *BenjFran Dev. v. Metro Service Dist.*, 95 Or App 22, 27, 767 P2d 467, (quoting Land Use Board of Appeals decision in same case, 17 Or LUBA 30 (1989)).

Finally, the Department's own guidance on Goal 9 and the Goal 9 rule explains that the UGB may contain only a 20-year land supply for employment uses:

> "Goal 9 requires that a 20-year land supply provide a diverse range of site sizes, types, and locations to meet the needs projected through the Economic

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[7] ORS 215.243 states:
"(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

" (3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion."

> Opportunities Analysis process. The Goal 9 administrative rules do not authorize the designation of more than a 20-year land supply, nor do they supersede the requirements of other goals such as Goal 14."

(April 13, 2006 *Memo to Cities, Counties, and Interested Persons from DLCD, Economic Development Team*, at Rec. Item 6, p. 103; App. 3; http://www.oregon.gov/LCD/docs/economicdevelopment/tips_for_cond_econ_opp_analysis.pdf)

The Commission violated Goals 9 and 14, both in the amount of employment land it approved in the expanded UGB, and in the way it accounted for employment land in the existing UGB.

Amount of Employment Land Included in Expanded Urban Growth Boundary

Woodburn proposed, and the Commission approved, a UGB expansion containing at least double the amount of employment land needed for the 20-year UGB. (Rec. Item 2, p. 15) The Commission's decision is legally flawed.

First, the city admits it included more than a 20-year supply of land for industrial use, and the Commission does not dispute this fact. In its *Buildable Lands Inventory*, adopted as part of this decision, the city stated: "Not all of the industrial land proposed by this plan is expected to develop by 2020." (Rec. Item 10, p. 1169) In its *UGB Justification Report*, the city concluded: "It is possible that some [employment] sites may not fully develop during the planning period." (Rec. Item 10, p. 1392) And, in its testimony before the Commission, the city flatly stated this again: "We said that if we have all the employment that we expect to have, there will be 200 developed acres of the 400 we are developing." (Transcript of January 25, 2007 LCDC hearing, Rec. Item 2, p. 51, lines 14-15)

In testimony before the Commission, the city administrator acknowledged that the city's evaluation of industrial land need was not based on a 20-year time frame, but rather

on a "if we provide it, they will come" basis: "We took an approach that said who do we want here and what do they need in the way of acreage, and then let's provide that. (Supp. Rec. Item 2, p. 15) The Commission recognizes that "not all of the industrial land proposed for inclusion is expected to develop by 2020." (Rec. Item 2, p. 19)

It is undisputed that the Commission approved a UGB with industrial lands far-exceeding the 20-year planning period prescribed by law, and contrary to the Department's own policy. For this alone, the Commission's decision should be reversed.

The Commission justifies this "oversupply" by stating that it is "required by OAR 660-009-0025" to provide the "short-term supply as well as to provide market choice among sites." (Rec. Item 2, p. 19) The Commission also states that the oversupply is because "industrial users often chose to purchase a site larger than their immediate need in order to ensure they have land for future expansion." (Rec. Item 2, p. 19) This reasoning is contrary to the plain language of the Goal 9 rule, as well as Goal 14 and the Goal 14 rule.

Under the plain language of the Goal 9 rule, the "short-term supply of land" for employment uses is a subset of the "total land supply." It is that portion of the total employment land supply that is "ready for construction within one year of an application for a building permit or request for service extension." OAR 660-009-0005(10). It is the ready-to-go land. The rule explains:

> "Total land supply *includes* the short term supply of land as well as the remaining supply of lands considered suitable and serviceable for the industrial or other employment uses identified in a comprehensive plan."

OAR 660-009-0005(13) (emphasis added).

The rule section cited by the Commission does not provide otherwise; in fact, it

restates that comprehensive land use plans must contain the land needed for employment "during the 20-year planning period." The Goal 9 rule requires certain jurisdictions, and allows others (such as Woodburn), to designate a short-term employment land supply within the total land supply and to replenish that short-term supply from the total, as the 20-year planning period progresses. OAR 660-009-0005(10), -0020(2)-, -0025(3) . There is nothing in Goal 9, its rule, or anywhere in law that provides that the 20-year UGB period otherwise required by Goals 14 and 9 may somehow be exceeded through the designation of lands to meet short-term employment needs. As the language clearly states, the short term employment land supply is part of the 20-year supply.[8]

In addition, there is nothing in Goals 14 or 9 that allows the 20-year UGB land supply to be exceeded to provide land for "market choice." LCDC's practice of requiring a 20-year UGB, now condified in regulation, builds "market choice" into the land supply by requiring a 20-year UGB. A purpose of Goal 14 is to "accommodate *long range* urban population, consistent with a 20-year population forecast." (Emphasis added) Goal 9 is designed to "provide adequate opportunities…for economic activities," based on "economic development opportunities in the community." As described above, the Goal 9 rule repeatedly states that its purpose is to provide an "adequate land supply for economic development" within the 20-year UGB. OAR 660-009-0000, -0025(2) .

Goal 9 is not inconsistent with Goal 14; moreover, this court has stated that Goal 9 does not prevail over any other Goals. In *BenjFran*, 95 Or App at 25-26, this court

[8] It would be inconsistent with the structure of the land use planning program and the way cities function to conclude otherwise. The planning program requires cities to provide a long term (20 years) supply of urban land and to plan for how and when it will be developed. It is other functions of cities that actually convert any of that land to a short-term supply – those functions that finance and build roads and other infrastructure.

rejected the argument that "developmental objectives either supersede the first two factors of Goal 14 or are completely incorporated into the second as the prevailing consideration." The court rejected the argument that economic development provides an independent basis to expand a UGB. The court stated:

> "Whatever the full relationship may be between the statutory and regulatory economic development provisions and the Goal 14 need factors, the former do not completely preempt the latter…"

See also, Port of St. Helens v. LCDC, 165 Or App 487, 496-97, 996 P2d 1014 (2000); *DLCD v. Yamhill County*, 99 Or App 441, 447-48, 783 P2d 16 (1989).

As described above, the Department's own guidance to cities and counties on the implementation of Goal 9 and the Goal 9 rule clarifies that the 20-year UGB "provide[s] a diverse range of site sizes, types, and locations to meet the needs projected through the Economic Opportunities Analysis process."[9]

Industrial developers, as well as developers of office buildings, shopping malls, residential subdivisions, and apartment complexes, may often buy more land that they immediately need, contemplating developing the rest in future phases or selling it off, depending on market conditions. The city even recognized this in determining that some land currently inside the UGB should be counted as part of its "targeted industries" land inventory because the current owner's expansion plans to use the land might change. (Rec. Item 5, p. 76; Item 10, p. 1394)[10] The flaw in the Commission's and city's decisions is that this land is not somehow non-existent simply because it is being held for

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[9] April 13, 2006 *Memo to Cities, Counties, and Interested Persons from DLCD, Economic Development Team*, App. 3. http://www.oregon.gov/LCD/docs/economicdevelopment/tips_for_cond_econ_opp_analysis.pdf

[10] The city found: "[T]here is a partially vacant parcel of 19 acres within the 2002 UGB that is being held for future expansion. If the existing industrial owner of this site changes expansion plans, this site may become available."

possible future use; rather, Goals 9 and 14 require that it be counted in the 20-year inventory. If not, the UGB will contain more than a 20-year land supply.

The land use planning program requires periodic updating of Woodburn's comprehensive land use plan every 10 years, just as the city is doing now. The city is free to update its plan and UGB more frequently. ORS 197.629(1)(b), (5), (6). Thus, built into the system is the method by which a UGB is regularly updated to meet changing market needs and opportunities, expansion needs, land needs etc…

Provision of land inside a UGB for substantially beyond the 20-year planning period of Goals 14 and 9 based on alleged "market choice" is not allowed by law. The Commission's decision should be reversed.

The Commission's and city's last argument to attempt to justify a UGB containing more than a 20-year supply of land is on the basis of the city's "targeted industries" approach. The Commission accepted the city's aggressive employment projection of 8,374 new jobs by the year 2020. Using the traditional method of projecting employment land need – assumptions concerning employees per acre and square footage of built space per employee – the city concluded it would need about 225 new acres of land for industrial use, or about half of what it is proposing. (Rec. Item 10, p. 1278 and Table 1) The Commission does not dispute this conclusion. (Rec. Item 2, p. 19) However, the Commission and city contend that use of the targeted industries approach for projecting employment land needs essentially allows the UGB to contain substantially more than a

20-year employment land supply. (Rec. Item 10, UGB Justification Report, p. 1389[11]; Item 2, p. 19)

This is legally incorrect for several reasons. First, as explained above, Goals 9 and 14, and the Department's own policy, do not allow the 20-year planning period for the UGB to vary based on a city's chosen economic development methodology.

Second, there is nothing inherent in the targeted industries methodology that requires exceeding the 20-year land supply. The primary flaw in the Commission's and city's *implementation* of the targeted industries approach is that it is not tied to the city's projected employment, or to a 20-year time span. The Commission has accepted an estimate of how many new employees will locate in Woodburn over the next 20 years. But nothing in the city's estimate of employment sites and sizes and resulting land total, or the Commission's acceptance of this, in any way relates to this projected number of employees or the 20-year planning period. As the city itself explains:

> "[T]he Council has projected land needs based on the characteristics that are required by targeted employers. Thus, reducing the employment projection to the mid or even the low range would not change the characteristics of the sites that Woodburn requires to be competitive in attracting family-wage jobs."

(Rec. Item 10, *UGB Justification Report*, pp.1390) The city ignores the Goal 14 and Goal 9 references to the 20-year planning period, and states that they "do not require the City's planning for economic growth to be based on the City's population projections." (*City of Woodburn Findings of Fact and Conclusions of Law*, Rec. Item 10, p. 1315)

The city continues:

"Under the site suitability method, it is possible that some sites may not fully

[11] The city concludes: "...Woodburn has projected employment land needs based on the siting needs of targeted basic employers – Woodburn's projections are not based directly on employee-per-acre or floor area ratios."

> develop during the planning period, either because a portion of the site will be held for future development or because a reserved site will not be selected by a targeted industry."

(Rec. Item 10, p. 1392) The Commission endorsed this oversupply (Rec. Item 2, pp. 15, 19).[12]

The disconnect between the Commission's and city's decisions, and the employment projection by Woodburn, is further illustrated by the fact that of the 8,374 projected future employees, *less than half* - 2,710 - are even expected to be employed in the industrial sector, and yet that is what every acre of the UGB expansion for employment is being provided for. (Rec. Item 10, p. 1096, Table 11) The rest of the future employees are expected to be in the commercial, office, and public sectors. (Rec., Item 10, p. 1096 and Supp. Rec. Item 6, p. 193[13]) Even if one assumes that every future office worker is located on new industrial land, that still only accounts for half of all future employees. (Rec. Item 10, p. 1096)

The Commission and city *could have* implemented a targeted industries strategy tied to the industries, numbers of employees, and site needs projected to locate in Woodburn over the 20-year planning period, but they did not. The Commission and city

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[12] The Commission's endorsement of this method of implementing the targeted industries approach is contrary to its own Department's earlier staff memo to that city, which explained:

> "The basis for all of the proposed policy choices, and the most important assumption in the planning process...has been the population and employment projections. It is the foremost driver in determining land needs for residential and employment lands, and in the context of this process, the proposed expansion of the urban growth boundary...." (Supp. Rec. Vol. III, p. 655)

[13] The city's *Economic Opportunities Analysis* projects that most employment growth in Woodburn from 2000-2020 will *not* be industrial. Rather, employment growth will "be led by the Services, Retail Trade, and Government sectors, which together are expected to add...77% of total employment growth in the region." (Supp. Rec., Item 6, p. 193

simply did not connect these dots, as they are required to do by Goals 9 and 14. Under the Commission's and city's implementation of the targeted industries approach, there is no limit to the amount of land by which the UGB could be expanded for employment use.

This lack of reliance on the population employment forecast is contrary to the Goal 14 need factors, which link the 20-year population forecast with a city's determination of its housing, employment, and other urban land needs.[14] As described above, Goal 9 does not override other Goals. This court has emphasized that "Goal 14 requires that the quantity of land added to an urban growth boundary be justified by a *calculated* or 'demonstrated' need to add land for … urban uses." *Hildenbrand v. City of Adair Village*, 217 Or App 623, 632, __P3d __ (2008) (emphasis added). There has been no calculation of the employment land needed over the 20-year planning period for Woodburn.

An examination of how the city determined the amount of employment land to include in the UGB under the targeted industries approach illustrates how the city arrived at a UGB with far more employment lands than are projected to be needed over the 20-year UGB planning period, which the Commission accepted. The city targeted 13 industries it would like to attract and which might chose to locate in Woodburn. (Rec. Item 2, pp. 15, 19; Item 10, pp. 613-17; *Economic Opportunities Analysis*, Rec. Item 10, pp. 1058-59 and Table 4-4; *Site Requirements for Woodburn Target Industries*, Rec. Item 10, p. 1282, Table 3) The 13 targeted industries, and the acreage requirement for each

[14] This is reinforced by the Goal 14 Planning Guidelines, which require that sufficient urbanizable lands be included in a UGB to accommodate future urban land needs, "taking into account …the needs of the forecast population." Goal 14 *Guidelines, A. Planning (1).*

site, are as follows, which is reproduced from the Record (Rec. Item 10, p. 1060, Table 4-5 and p. 1281, Table 3):

Table 3. Typical lot size requirements for firms in target industries

Industry	Lot Size (acres)	Site Needs
Printing & Publishing	5 - 30	
Stone, Clay & Glass	10 - 65	Flat
Fabricated Metals	5 - 20	Flat
Industrial Machinery	10 - 20	Flat
Electronics - Fab	100 - 300	Suitable
Plants	5 - 30	Soil
Electronics – Other	10 - 20	
Transportation	varies	Flat
Equipment	varies	
Trucking &	1 - 5	
Warehousing	1 - 5	
Wholesale Trade	1 - 10	
Non-Depository Insitutions	1 - 5	
Business Services		
Health Services		
Engineering & Management		

Source: Woodburn Economic Opportunities Analysis, ECONorthwest, 2000.

However, the city designated and the Commission approved 42 sites to accommodate those 13 industries, or an average of 3-4 discrete sites for each possible target industry, in order to provide "market choice." Following are those sites, from a table in the Record. (*Site Requirements for Woodburn Target Industries*, Rec. Item 10, p. 1287, Table 4)

Table 4. Summary of estimated site needs by size, Woodburn 2000-2020			
Site Size (acres)	**Number of Sites**	**Average Site Size**	**Estimated Acres**
100 or more	1	125.0	125.0
50-100	1	70.0	70.0
25-50	3	35.0	105.0
10-25	5	15.0	75.0
5-10	7	8.0	56.0
2-5	10	4.0	40.0
Less than 2	15	1.0	15.0
Total/Average	**42**	**11.6**	**486.0**

The site requirements of each targeted industry are described as a range of lot sizes. These site sizes overlap, as do the other locational requirements for each industry. (*Site Requirements for Woodburn Target Industries*, Rec. Item 10, pp. 1278-88)[15]

However, the Commission and city make an unexplained jump from the target industries and their lot size requirements, to the number of sites, lot sizes, and the amount of land in the proposed UGB. There is no explanation of how many businesses within each targeted industry are expected to locate in Woodburn during the planning period, or how those industries will absorb the land in the array of offered sites in Table 4, above. For example, the city targets four industries that use sites smaller than 5 acres, yet it claims to need 25 such sites in the expanded UGB. It is targeting twelve industries that use sites smaller than 50 acres, yet it claims a need for 40 such sites in the expanded

[15] For example, each small Printing & Publishing business typically has fewer than 15 employees and can operate on a ½ acre, and should be within 20 miles of their clients. Fabricated Metal Products can also be on less than 5 acres and access to an interstate highway is not critical. Business Services and Non-Depository Credit Institutions can locate on a ½ acre, including in a business park of 20 acres with other businesses. Health Services can locate on sites from ½ acre to 5 acres. *Local* access is important for all. (Rec. Item 10, pp. 1278-88)

UGB. (*UGB Justification Report*, Rec. Item 10, pp. 1059-60; Item 10 pp. 1280, 1392-94) There is no explanation of how the Commission or city got from a targeted industry to the number of sites for that industry or similar industries.

The Commission's and city's decisions appear to assume that no targeted industry would choose a site, or portion of a site, set aside for another target industry, despite the similarity in their acreage and other requirements. The Goal 9 rule provides that "Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories." OAR 660-009-0015(2). The rule further encourages '[c]ompatible uses with similar site requirements [to] be combined into broad site categories." OAR 660-009-0025 (1) . It is not clear if or how the Commission did this. As this court stated in *Home Depot U.S.A. Inc. v. City of Portland*, 169 Or App 599, 602, 10 P3d 316 (2000): "Goal 9 does not require local governments to make land available for every specific type of economically productive use...."

The decisions also mix land requirements for stand-alone industries with those that co-locate in, for example, industrial parks, [16] by allocating the entire industrial park acreage to each industry located in it, although it is recognized that more than one industry locates in a given industrial park. (Rec. Item 10, pp. 1059, 1279, Corrections to

[16] The city's *Economic Opportunities Analysis*, which is part of this decision, recognizes that some of these targeted industries will co-locate: "Smaller light industrial/office sites (4-20 acre parcels) and speculative space within office/flex and mixed-use developments could accommodate smaller manufacturing firms, firms in Wholesale Trade and all the Non-industrial target industries." Yet each of those industries is assumed to require a discrete site ranging in acres from "varies" or 1 acre to 20 acres. (Rec. Item 10, pp. 1059-60; 1279)

Supp. Rec., Vol. 5, p. 857)[17] Finally, the new employment land acreage in the decisions assumes that each of the 13 targeted industries will locate in Woodburn, even though the underlying technical reports do not assume that. (Rec. Supp. Vol. 4, p. 1545)[18]

The end result of this is a bloated, redundant projection of the land needed for industrial use over the 20-year planning period, in violation of Goals 9 and 14, and without an adequate factual base for doing so, in violation of Goal 2.[19] The Commission's decision should be reversed.

Evaluation of Land Inside the Current Urban Growth Boundary

Goal 14 requires that "[p]rior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary." For employment land, the Goal 14 rule requires that lands inventoried inside the UGB for employment use "must include suitable vacant and developed land designated for industrial or other employment use…." OAR 660-024-0050(1). The Commission must also ensure that a city has considered

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[17] For example, several of the targeted industries are expected to use sites ranging from ½ acre to 5 acres, including Printing & Publishing, Fabricated Metal Products, Business Services, Non-Depository Credit Institutions, and Health Services. Yet the range of site sizes used to designate the UGB for these industries ranges from 1-30 acres. (Rec. Item 10, p. 1282 Table 3 and p. 1287 Table 4)

[18] The city's consultant, Winterbrook Planning, found: "It is quite possible that all the reserved industrial sites will not fully develop over the next 15 years, because Woodburn may not be successful in attracting targeted industries to all the sites that have been reserved…"

[19] Goal 2 requires an adequate factual basis for comprehensive land use plans and all land use actions. "All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. * * * These measures shall be consistent with and adequate to carryout the plans."

whether lands can be redesignated from one zoning category to another to meet the need. *BenjFran,* 17 Or LUBA at 49; *DLCD v. Douglas County*, 36 Or LUBA 26, 34-35 (1999).

While Woodburn inventoried 126 acres of vacant, partially vacant, and redevelopable land zoned for industrial use inside its existing UGB, it reduced the amount available to 47 acres because vacant and partially vacant lands were being reserved by existing businesses for future expansion, and in some cases were being used for equipment storage in the interim. (*UGB Justification Report*, Rec. Item 10, p. 1390) The Commission agreed that these 79 acres of excluded land were "not available ...to meet the needs of new targeted employers." (Rec. Item 2, p. 20)

However, both the city and the Commission missed the point. They acknowledge that these 79 vacant and partially vacant acres inside the UGB will be used for future industrial use – just not, apparently, by the targeted industries.[20] The city and Commission are not consistent even in this. The city does count one parcel inside the existing UGB in its inventory of land for targeted industries, because although it is being held for future expansion, the current owner might change their plans. (*UGB Justification Report*, Rec. Item 10, p. 1394) This simply proves the point of a long-term, 20-year land supply: changing economic conditions, change in ownership, and many other factors influence individual land use decisions, and the 20-year horizon accommodates that. Some portion of the city's future employment projection must still

[20] Petitioners do not concede that none of the targeted industries will use these lands inside the UGB. *See* Second Assignment of Error.

be allocated to those 79 acres, and this was not done, contrary to Goal 14.[21]

SECOND ASSIGNMENT OF ERROR

The Commission erroneously interpreted provisions of law (ORS 197.298, Goals 14 and 9, and OAR chapter 660 divisions 9 and 24) and made a decision not supported by substantial evidence, in approving the City of Woodburn's proposal to expand its UGB onto certain lands planned and zoned for exclusive farm use, rather than onto other, higher priority lands.

A. Preservation of Error

The petitioners raised this issue in testimony and as objections and exceptions throughout the proceedings before the City and the Commission. (Rec. Item 6, pp. 106-08, 113-15, 130-32, 150-52, 161-63, 169-72; Supp. Rec. Vol. IV, pp. 1518-23, 1527, 1549; Supp. Rec. Vol. 5, pp. 4-5, 377-79, 409-11, 594-96, 732-40) The Commission recognized these objections and exceptions and responded to them. (Rec. Item 2, pp. 23-27; Item 3, pp. 29-31)

B. Standard of Review

This court reviews an order of the Land Conservation and Development Commission to find if the agency erroneously interpreted a provision of law, acted outside the range of its discretion or inconsistently with official agency position or practice, acted in violation of statute or the constitution, or adopted an order that is not supported by substantial evidence. ORS 183.482(8).

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[21] The city did not allocate future employment to these lands, and it may have even removed the lands entirely from the UGB inventory. The city's Technical Report I, Buildable Lands Inventory, Revised July 2005, states that the city contacted owners of vacant and partially vacant land inside the UGB, and found that most were being held for "future expansion of existing uses." Therefore, the city "removed [these industrial lots] from the inventory for purposes of industrial siting needs comparisons." (Rec. Item 10, p. 1177)

ARGUMENT

If the court reverses the Commission on the First Assignment of Error, there may be no need to proceed to the Second, because whether there is even a need for a UGB expansion and, if so, of what type and where, will be re-evaluated. However, the petitioners address this portion of the Commission's decision.

The petitioners objected to the Commission's approval of inclusion of over 100 acres of prime, high value farm land in the UGB, located west of I-5 and known as the Opus property. The Opus contains predominantly Class II soils, is located across I-5 from the majority of the city, and would be a large intrusion into an extensive agricultural region if urbanized. (Rec. Item 11, p. 1481; Item 6, p. 152; *see* Apps. 1, 2, 5) The city chose the Opus property-rather than the SA-7 South site on the east side of I-5, south of the SWIR and the South Arterial, and between Boones Ferry Road and I-5. The SA-7 South site contains predominantly Class III soils. (*See* maps at Apps. 5, 2) This alternative site consists of hundreds acres and is adjacent to the SA-7 North land that would be included in this proposal, and to which petitioners do not object, provided there is a need demonstrated. (Rec. Item 10, p. 1414, Table 12 and p. 1416, Table 14; Item 11, p. 1485) The planned South Arterial runs between SA-7 North and South. (App. 1, 4) SA-7 South is located slightly more than 2 miles from the Woodburn I-5 interchange. (Rec. Item 6, p. 114; Apps. 1, 2)

The Oregon Department of Agriculture also testified that bringing in the class III soils of SA-7 South was preferable to expanding the UGB west of the freeway, and was also required by Goal 14 and ORS 197.298. (Supp. Rep. Vol 5 p. 843) However, the Commission approved inclusion of the Opus site, contrary to ORS 197.298 and the

location factors of Goal 14.

ORS 197.298 is often referred to as the "priority statute." Assuming there is a need to accommodate population or employment growth, this statute directs where that growth should be accommodated. First, the jurisdiction must look inside the existing UGB to see whether lands there can accommodate that growth. Goal 14; OAR 660-024-0050(1); *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 373, 390, *aff'd* 130 Or App 406, 882 P2d 1130 (1994). This includes consideration of whether lands can be redesignated from one zoning category to another to meet the need. *BenjFran.,* 17 Or LUBA at 47; *DLCD v. Douglas County*, 36 Or LUBA at 34-35. As explained in the first assignment of error and below, Woodburn and the Commission incorrectly excluded industrial lands inside the current UGB that are suitable of accommodating the city's alleged industrial land need.

If some or all of the identified need cannot be accommodated inside the UGB, the jurisdiction must then look to lands outside the UGB to determine which can reasonably accommodate the need. In so doing, the jurisdiction must follow the priority statute, ORS 197.298[22], sequentially. *City of West Linn v. LCDC*, 201 Or App 419, 440, 119 P3d

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[22] "**197.298 Priority of land to be included within urban growth boundary.** (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

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

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

285 (2005); *D.S. Parklane Development, Inc. v Metro*, 165 Or App 1, 20-21, 994 P2d 1205 (2000); *DLCD v. Douglas County*, 36 Or LUBA at 35-37. The jurisdiction must look first to any lands designated as urban reserves, of which there are none around Woodburn. The city must then look to "second priority" lands - those designated as exception areas.[23] Woodburn did include some exception lands in its UGB expansion (Rec. Item 2, p. 15, Item 10, p. 1316)

If the amount of land designated as exception areas is "inadequate to

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

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

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

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

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

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

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

[23] In this case, "exception areas" are those lands for which an exception to the statewide planning goals for farm or forest lands, taken under ORS 197.732, has been acknowledged.

accommodate the amount of land needed,"[24] Woodburn may next look to "fourth priority" lands[25] – those designated for agriculture or forestry.[26] In selecting from among agricultural lands, higher priority must be given to those lands of lower productive capability as measured by soil classification. ORS 197.298(2). That is, agricultural lands with poorer quality soils must be included in the UGB before those with more valuable soils. *DLCD v. Douglas County*, 36 Or LUBA at 36-37 & n. 14. Class I and II soils are the most valuable agricultural soils. Under ORS 197.298, the Opus site is the last priority, and the SA-7 South site is a higher priority.

If there are more lands within a category than are needed to meet the need, then the jurisdiction must use the boundary location factors of Goal 14, "consistent with ORS 197.298," to choose among those "like" lands. *West Linn*, 201 Or App at 440. Those factors are:

> "(1) Efficient accommodation of identified land needs;
> (2) Orderly and economic provision of public facilities and services;
> (3) Comparative environmental, energy, economic and social consequences; and
> (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB."

A decision to include or exclude land from a UGB must be based on balancing all these factors, rather than reliance on any one factor. *Parklane*, 165 Or App at 25; *1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App 406, 409-10, 126 P3d 151 (2001).

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[24] Because whether and how much land is needed in an expanded UGB depends on the outcome of the First Assignment of Error, for the sake of argument petitioners will assume some farm land is needed and proceed to address the rest of the decision.

[25] There is a third priority category of lands – marginal lands – but that is not an issue here.

[26] There are no lands designated for forestry at issue in this appeal.

It is possible to include in a UGB expansion lands of lower priority ahead of lands of higher priority under ORS 197.298, but only if one or more of the three narrow reasons described in ORS 197.298(3) (a)-(c) is found to exist. Those exceptions to the priorities are:

> "(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:
>
> (a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;
>
> (b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or
>
> (c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands."

There is little case law on subsection (3). The UGB priority statute was adopted in 1995, and taken from the urban reserve rule, OAR 660-021-0000, et seq.[27] The

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[27] The Urban Reserve Rule was adopted in 1992 and amended in 2000. The relevant portion of the 1992 version, on which the *Parklane* case is based, provided:

"(1) Urban reserve areas shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the time frame used to establish the urban growth boundary.

"(2) Inclusion of land within an urban reserve area shall be based upon factors 3 through 7 of Goal 14 and the criteria for exceptions in Goal 2 and ORS 197.732. Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan Area Urban Growth Boundary, shall first study lands adjacent to the urban growth boundary for suitability for inclusion within urban reserve areas, as measured by Factors 3 through 7 of Goal 14 and by the requirements of OAR 660-004-0010. Local governments shall then designate for inclusion within urban reserve areas those suitable lands which satisfies the priorities in section (3) of this rule.

"(3) Land found suitable for an urban reserve may be included within an urban reserve area only according to the following priorities:

(a) First priority goes to land adjacent to an urban growth boundary and identified in an acknowledged comprehensive plan as an exception area or nonresource land. First

Parklane case concerned the urban reserve rule, and this corresponding priority provision. There, this court explained that the priorities "are to be applied sequentially" and "are to be the governing consideration in designating urban reserves [in this case, a UGB expansion]." *Id.,* 165 Or App at 20. The exceptions in (3) are "limited circumstances." *Id.* at 21. The rule is structured such that "sufficient suitable higher

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priority may include resource land that is completely surrounded by exception areas unless these are high value crop areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture;

(b) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, second priority goes to land designated as marginal land pursuant to ORS 197.247;

(c) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, third priority goes to land designated as secondary if such category is defined by Land Conservation and Development Commission rule or by the legislature;

(d) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, fourth priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

"(4) Land of lower priority under section (3) of this rule may be included if land of higher priority is found to be inadequate to accommodate the amount of land estimated in section (1) of this rule for one or more of the following reasons:

(a) Specific types of identified land needs including the need to meet favorable rations of jobs to housing for areas of at least 100,000 population served by one or more regional centers designated in the regional goals and objectives for the Portland Metropolitan Service district or in a comprehensive plan for areas outside the Portland area, cannot be reasonable accommodated on higher priority lands; or

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

(c) Maximum efficiency of land uses within a proposed urban reserve area requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.

"(5) Findings and conclusions concerning the results of the above consideration shall be adopted by the affected jurisdictions."

priority lands [will] be considered and classified pursuant to subsections [(1) and (2)] so that resort to [the exceptions of (3)] will not be necessary to *identify* any of the land that is *available* for designation as urban [growth boundary]." *Id.*

In *Residents of Rosemont v. Metro*, 173 Or App 321, 332, 21 P3d 1108 (2001), this court relied upon its *Parklane* interpretation of the urban reserve rule to interpret the UGB priority statute, ORS 197.298. Thus, the exceptions to the priorities contained in subsection (3) are *limited* – the standard for including valuable agricultural land ahead of exception areas and poorer quality farm lands is a high one.

The Commission justifies including the Opus site, and excluding sites inside the UGB as well as SA-7 South, for two reasons.[28] First, the Commission agreed with the city's conclusion that "for many targeted industries, being within one or two miles of an interstate is much more preferable than being three or four miles away." (Rec. Item 2, p. 26, quoting from city document) The Commission characterizes this as the "two-mile radius criterion," and found that it met the Goal 14 guidance that a "local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need." (Rec. Item 2, p. 26) The Commission also found that "Woodburn's decision to provide industrial land with direct access to I-5 is entirely consistent with Goal 9, which requires cities to identify their locational advantages." (Rec. Item 2, p. 26) The Commission erred in its application of Goal 14

[28] The city makes an argument, which the Commission is silent on, that it cannot extend the UGB further south without running afoul of a goal of the Marion County Comprehensive Plan to maintain physical separation between communities; here between Woodburn and Gervais. (Rec. Item 5, p. 77) This physical separation argument has already been rejected by this court. *Parklane* 35 Or LUBA 516, 583 (1999), *aff'd* 165 Or App 1 (2000).

and Goal 9, there is no factual basis to support the decision, and the Commission has ignored that the decision must also comply with ORS 197.298(3).

Goal 14 requires that specific characteristics, which, in this case, the Commission claims to be a 2-mile proximity to I-5, be "necessary" for the land to be suitable for industrial use. However, the Commission's and city's own decisions acknowledge that 2 miles is a *preference*, not a necessity, and that it is not even a preference for most of the targeted industries. Moreover, there is no factual basis to support a 2-mile requirement.

The Commission, quoting from the city's findings, states that "...being within one or two miles of an interstate is much more *preferable* than being three or four miles away." (Rec. Item 2, p. 26) The city repeatedly relies upon a document prepared for it titled *Site Requirements for Woodburn Target Industries*[29] for the proposition that *all* the sites for the 13 targeted industries must be within 2 miles of an I-5 interchange. (For example, *UGB Justification Report,* Rec. Item 10, pp. 1420-24; Woodburn response to objections, Rec. Item 5, pp. 63-65, 72-73) The city and the Commission rejected SA-7 South because it is located slightly farther than 2 miles from the I-5 interchange, even though it is comprised of Class III soils and otherwise meets the SWIR siting criteria, and instead included the Opus site, which is comprised of Class II soils. (Rec. Item 10, p. 1421) The city and Commission also rejected as much as 126 acres of industrial sites inside the existing UGB because they are too far from the I-5 interchange. (Rec. Item 2, p. 20; Item 10, p. 1390)[30]

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[29] *Site Requirements for Woodburn Targeted Industries*, ECONorthwest, October 2003, Rec. Item 10, pp. 1277-95.
[30] In its *UGB Justification Report*, the city found:

The rejection of higher priority lands and the inclusion of the lower priority Opus site is contrary to law and without a factual basis for at least three reasons: none of the underlying documents actually requires that the sites be within 2 miles of an I-5 interchange, most of the targeted industries actually don't need interstate access, and many actually prefer more downtown-type locations. The primary document on which the city and Commission rely, the *Site Requirements for Woodburn Target Industries*, never mentions a 2 mile proximity requirement. Rather, it states that the "required site and building characteristics of the target industries identified in the EOA range widely." (Rec. Item, 10, p. 1279)

Out of all 13 industries, there are only *two* that need interstate access, and no specific proximity is required. The city study finds that for the category of Motor Freight Transportation and Warehousing "access to a major interstate is critical." However, the city's study also found that a "recent survey" of this industry "placed the Northwest as the lowest priority for expansion. (Rec. Item 10, p. 1285) And this "need" is for access; it says nothing about proximity. The larger Printing & Publishing firms need "[i]interstate and airport transportation," but again, no mention of how close. (Rec. Item 10, p. 1282)

Other industries were found to need "good access," but access to an interstate

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"As documented in Technical Report 1, Buildable Lands Inventory (revised July 2005), the 2002 Woodburn UGB included 126 acres of vacant, partially vacant and potentially redevelopable industrial land – distributed among 36 parcels.* * * Although this land is a valuable component of the City's industrial land inventory, it is concentrated along Highway 99E and the Union Pacific railroad tracks west of this congested highway, and for the most part fails to meet the siting requirements of industries targeted in Appendix B of the Woodburn EOA."

freeway was not specified, much less being within 2 miles of an interchange.[31] For others, good *local* access was specified, not an interstate.[32] For one industry, it was impossible to specify a common transportation need.[33]

Finally, four of the 13 targeted categories prefer commercial zoned land in a business park, downtown, or other mixed-use area.[34] Local and foot traffic are actually important, not discouraged. All of these industries could locate on the 126 industrial acres inside the existing UGB. The decision violates Goal 14's requirement to use land inside the UGB before expanding onto new lands. Nothing in Goal 9 alters this.

The city's study concludes: "There is no absolute distance from an interstate beyond which targeted industries will not locate." (Rec. Item 5, p. 65)[35]

Therefore, none of the targeted industries are described as needing 2-mile access

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[31] Stone, Clay & Glass firms need "good access to the site" relative to a "freeway location." (Rec. Item 10, p. 1283) Electronic & Other Electrical Equipment & Components firms have "a variety of site needs." "Good access is also an issue, but the products manufactured by this industry tend to be smaller and will not generate heavy truck traffic." (Rec. Item 10, p. 1284) For Transportation Equipment, the needed access is to a "major airport or port." (Rec. Item 10 at 1284) Wholesale Trade-Durable Goods & Industry and Wholesale Trade – Nondurable Goods both require "good transportation access," without anything more specified. (Rec. Item 10, p. 1285)

[32] Small Printing & Publishing firms need "a good, local transportation system." (Rec. Item 10, p. 1282) Fabricated Metal Products locate on sites less than 5 acres and "[i]nterstate access is beneficial, but not as critical as it is for many other industries." (Rec. Item 10, p. 1284)

[33] The transportation issues for Industrial & Commercial Machinery & Computer Equipment "cover a vast range." (Rec. Item 10, p. 1284)

[34] Businesses Services & Industries and Non-Depository Credit Institutions "are most likely to locate in commercial zoned land. This could be located in a business park or in a downtown or mixed-use area." (Rec. Item 10, p. 1285) Health Services, such as smaller clinics and health services offices, "often locate in commercial zones." (Rec. Item 10, p. 1286) Engineering, Accounting, Research, Management & Related Services "can locate in commercial areas or business, high-tech, or science parks." (Rec. Item 10. p. 1286)

[35] In its testimony to the Commission the city's consultant admits that not all the targeted industries need freeway access. (Supp. Rec. Item 2, p. 47, line 18)

to an interstate or interchange, and 1/3 of them are not even expected to locate on industrially zoned land. There simply is no factual basis to support a conclusion that *all* the land for future employment needs must be located within 2 miles of a freeway interchange, or even have good freeway access. Therefore, there is no factual basis to support a conclusion under Goal 14 or Goal 9 that such proximity is a "necessary" characteristic for *all* future employment sites. And, although this argument was not explicitly made, there is no factual basis to use this rationale to circumvent the priorities of ORS 197.298. Rather, it appears the "2-mile" rule is an arbitrary distance designed to exclude the SA-7 South site and include the Opus site, especially given that the SA-7 South site is only slightly beyond 2 miles away. (Rec. Item 6, p. 114; Apps. 1, 2)

If there is a need for industrial land, there are alternatives both inside and outside the current UGB that do not require expansion onto high value, prime, Class II agricultural soils. The Commission's decision violates Goal 14, ORS 197.298, and Goal 2, Part I.

The second basis on which the Commission approved the inclusion of the Opus site is to pay for improvements to Butteville Road, on the west side of I-5:

> "[I]nclusion of the Opus site is necessary for the construction of Butteville Road (a planned arterial shown on the Transportation System Plan) to urban standards, which would allow the SWIR and other properties to access I-5 from the west. * * * [A]cessing the freeway from the west side is necessary due to the lack of capacity at the east access interchange.
>
> * * * *
>
> "Development of the Opus site is necessary to pay for improvement of Butteville Road to arterial street standards. Construction of Butteville Road and South Arterial is necessary to serve industrial land on Class II and III soils in Study Areas 7 and 8."

(Rec. Item 2, p. 23, 26)

The city explains:

> "In order to develop and provide access to I-5 for the Class III soils within SA-7, Butteville Road must be improved to arterial standards to connect with the planned South Arterial. For this to happen, land in SA-8 between the UGB and Butteville Road [Opus] must develop and help pay for the arterial street connection."

(Rec. Item 10, pp. 1384-85)

> "Leaving this site [Opus] out of the UGB would make it impractical to fund Butteville Road improvements."

(Rec. Item 5, p. 77)[36]

The improvements to Butteville Road seem solely to provide improved access to the existing I-5 interchange from the west. (Rec. Item 10, p. 1425) The Commission states that therefore, the city's decision complies with ORS 197.298, Goal 14, and Goal 9. (Rec., Item 2, pp. 23-24, 26) However, it is not clear how the Commission, or city, is applying ORS 197.298. We assume it is an application of one or more of the subsections of ORS 197.298(3) , because the Commission approved expanding the UGB onto the lowest priority agricultural lands rather than higher priority lands.

The Commission's decision is flawed for several reasons. First, as explained above, there is no factual basis for concluding that it is "necessary," as that terms is used in Goal 14, that any or all sites be located within 2 miles, or any particular proximity, of I-5 or the I-5 interchange, so there is no basis under ORS 197.298 (3) to bring in lower priority agricultural land in order to provide a specific type of access (from the west side of the interchange).

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[36] The city's consultant, in a memo adopted by the city, also states "[I-5] interchange improvements must also be made and paid for, in significant part, by industrial land developers. In order for Butteville Road to be improved as an urban arterial street, land to the east of Butteville Road (west of I-5) must be developed." (Supp. Rec. Vol. 4, p. 1547)

Second, there is planned freeway access for the "Southwest" area, or SA-7, without bringing in the Opus site or improving Butteville Road. The Woodburn Transportation System Plan (TSP) already plans for extensions of Evergreen Road and Stacey Allison Drive, and construction of the South Arterial to support the SWIR. (See TSP map at App. 4, Rec. Item 11, p. 1479) As the city states in its *UGB Justification Report* (Rec. Item 10, p. 1451, 1380):

> "In the southwest, the 2005 TSP shows extensions of Evergreen Road and Stacey Allison Drive, which will support and serve the Southwest Industrial Reserve (SWIR). There is also a new "South Arterial" that is shown as running from Parr Road, across the southern edge of the 2002 UGB, to Highway 99E on the east side. This South Arterial will support southwest industrial uses as well as new residential development in the Parr Road Nodal Overlay Area."
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> * * * *
>
> "The City Council expects SWIR parcels served by Parr Road and the planned extension of Evergreen Road to be development-ready within 2-5 years. * * * Evergreen Road will be extended to the southern edge of the 2004 UGB in 2006."

The TSP already includes a system to provide access from SA-7 to the freeway. The route planned in the TSP and described above is actually a more direct and shorter distance to the interchange than crossing I-5 to use Butteville Road. (Rec. Item 3, p. 42) It meets every city criterion for a transportation system to serve the targeted industries, except that is provides access to the interchange from the east. (Rec. Item 5, p. 64) It largely avoids passing though residential neighborhoods, it provides direct access to I-5 via an arterial, and it serves land meeting the siting criteria. That access for SA-7 is from the east side of the interchange and therefore might be more congested is not a legal consideration under Goal 14 or ORS 197.298 or factually supported. The Commission and city found that both "study areas 7 and 8 ...[have] *good* access to I-5." (*UGB Justification Report*, Rec. Item 10, p. 1439, emphasis added) It need not be the *best*

under Goal 14 or ORS 197.298. *Residents of Rosemont*, 173 Or App at 335, n. 6. And, as described above, there is no evidence to demonstrate that every target industry that might locate in SA-7 South or North even needs freeway access, from the east or west.

Development of the Opus site is not needed to provide transportation access for SA-7; the TSP provides freeway access without using Butteville Road. As the Commission even states, "Development of the Opus site is necessary to pay for improvement of Butteville Road to arterial street standards." (Rec., Item 2, p. 26) Improvement of Butteville Road might be necessary to serve the Opus property; but it is not needed for SA-7.

Thus, the city's own findings, and the supporting evidence, demonstrate that it is not necessary, under Goal 14, nor "required," under ORS 197.298 (3)(c) , to bring in the Opus property of SA-8 to provide the needed transportation for the industrial lands in SA-7.

Third, the fact that the would-be developers of the Opus site have apparently agreed to pay for improvements to Butteville Road is not a legal justification for bringing in the Opus site rather than higher priority, Class III agricultural land. The city has acknowledged that all the Study Areas are feasible to serve with infrastructure, including all of SA-7, and that "Study Area 7 can be efficiently provided with public facilities." (Rec. Item No. 10, pp. 1423-25, 1437) SA-7 has "good access to I-5." (Rec. Item 10, p. 1439) ORS 197.298 (3)(b) provides that lower priority lands can be brought in if "future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints." The alleged constraint here is neither topographical nor physical, it is financial. Even if improvement of Butteville Road is

necessary to serve SA-7, improvements can be made under law without bringing in the Opus site. ORS 215.283(2)(q), (r), (3). Allowing the lowest priority lands inside a UGB because the property owner agrees to pay for services would undermine any policy basis for UGB evaluations and expansions. This is simply an attempt to bootleg the Opus site into the UGB without any factual or legal basis for doing so.

Finally, assuming there is a need for as many acres of industrial land as the Commission approved, it is not legal to include the Class II Opus site, rather than the SA-7 South site. The city acknowledges that the SA-7 South site has good freeway access and is higher priority (Rec. Item 10, p. 1439):

> "Only study areas 7 and 8 (Southwest and West) contain appropriately sized parcels with good access to I-5. Inclusion of the southern portion of Study Area 7, which is comprised largely of Class III agricultural soils ... will have relatively less impact on Marion County's agricultural economy than inclusion of other more intensively farmed areas...."

The only reasons this area was excluded, and the Opus site included, are because the southern portion is farther than 2 miles from the I-5 interchange, and it would not, apparently, financially contribute to the road improvements needed. (Rec. Item 10, p. 1421) As explained above, this is not a legal basis on which to exclude higher priority lands under ORS 197.298 or Goal 14.

Removal of the Opus site will not thwart in the least the city's targeted industries approach. There will remain approximately 279 acres in the SWIR, on the east side, that has good freeway access – some of the land within 2 miles of the interchange and some slightly farther – even assuming that all targeted industries need this, which they do not. There are an additional approximately 80 acres inside the existing UGB that the city and Commission acknowledge are zoned industrial and can meet the needs of those targeted

industries that prefer mixed-use areas or do not need freeway access. If there is a need for more industrial land with good freeway access, the SA-7 South area provides that. The city can meet both its Goal 9 and Goal 14 obligations.

Because the Commission erroneously interpreted provisions of law (ORS 197.298, Goals 14 and 9, and OAR chapter 660, divisions 9 and 24) and make a decision not supported by substantial evidence in approving the City of Woodburn's proposal to expand its UGB onto certain lands planned and zoned for exclusive farm use, rather than onto other, higher priority lands, the decision should be remanded.

THIRD ASSIGNMENT OF ERROR

The Commission erroneously applied Goal 14, in particular boundary location factor (3), in failing to analyze and compare the economic impact on the agricultural industry of Woodburn and the region, of removing large parcels of prime farm land from production and including that land in the UGB.

A. Preservation of Error

The petitioners raised this issue in testimony and as objections and exceptions throughout the proceedings before the city and the Commission. (Rec. Item 6, pp. 101-05, 161-63, 165-67, 169-71) It does not appear the Commission responded to them.

B. Standard of Review

This court reviews an order of the Land Conservation and Development Commission to find if the agency erroneously interpreted a provision of law, acted outside the range of its discretion or inconsistently with official agency position or practice, acted in violation of statute or the constitution, or adopted an order that is not supported by substantial evidence. ORS 183.482(8).

ARGUMENT

If there is a need for an urban growth boundary expansion, a jurisdiction must use the Boundary Location factors of Goal 14 to compare alternative sites and determine which land to bring into the UGB, and the Commission must ensure the boundary location factors are properly applied.

Factor (3) requires that:

> "The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:
>
> * * * *
>
> "(3) Comparative environmental, energy, economic and social consequences."

The petitioners raised the issue, and submitted testimony, that inclusion of prime farm land in the UGB, including the Opus property, would have an adverse economic impact on the city's and county's agricultural and overall economy, especially when compared to other parcels of less valuable farm land that could instead be included in the UGB (such as SA-7 South). The city's findings do not address this and the Commission's decision is silent on the subject. This is not a situation where the respondents came to a different conclusion than the petitioners; they simply did not address it.

Agriculture is not only one of the most important industries in the state, it is the #1 industry in Marion County. The Marion County Farm Bureau, which exists to "serve the interests of Marion County's leading industry, agriculture," testified:

> "Agricultural production relies on available, affordable land protected from the property speculation and price inflation of urban development. Marion County Farm Bureau is concerned that Woodburn's development strategy emphasizes attracting new industries to the city that will be competing for the large, flat parcels of land that are currently in viable agricultural production. Agricultural land is industrial land, land that is supporting a successful portion of our County's

> economy. Marion County Farm Bureau objects to Woodburn's plan to convert farmland to other industrial uses."
>
> "In particular, setting aside a large block of productive farmland on speculation that high-tech industry such as silicon chip fabrication can be lured to locate in Woodburn, appears to undermine the importance of the County's top revenue producing industry. In 2002, Oregon agricultural exports grew by 4% while high-tech declined by 31%. In 2004, Marion County direct agricultural sales posted a record high. During the decade of the 1990s, employment in the agriculture, forestry, and fishing sector grew by 39% in the Woodburn zip code.[37]
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> * * * *
>
> "Marion County Farm Bureau objects to the inclusion of prime farm land in Woodburn's UGB expansion. * * * Whereas the farming industry depends on rich soil, prime farm land should not be squandered on industries that do not require a higher soil quality to generate revenue."

(Rec. Item 6, p. 162)

Petitioners Carla and Diane Mikkelson testified:

> "Taking farm land out of production is simply substituting one type of industry for another. Land taken out of farm use and converted to another industry … can never be converted back to farmland."

(Rec. Item 6, p. 166)

Lolita and Kathleen Carl represent a family farm on which five generations of Carls have lived and worked, which is located within a mile of the present Woodburn UGB. They testified to the wide diversity of crops and livestock they have grown over the past 90 years. The capability of growing a diversity of products is one of the primary attributes of the agricultural soils in the Woodburn area, and enables farmers to "quick[ly] adapt and respond to market changes and demands. *** The burgeoning wine and nursery industries are examples of this adaptability." (Rec. Item 6, p. 169) Yet, as the Carls point out:

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[37] Woodburn Economic Analysis, Rec. Item 10, p. 1022, Table 2-3.

> "Woodburn's Economic Opportunity Analysis does not analyze or even mention the importance of agriculture to the local economy. Instead, the plan targets a large parcel of industrial land for hi-tech industries and projects a loss in agricultural employment."

(Rec. Item 6, p. 170)

The Carls testified that not only will removal of the Opus site have an adverse impact on the agriculture economy because of loss of that parcel, but expansion of the UGB on to farmland in the region in general will have a spillover impact on surrounding farms, by creating urban traffic congestion in farming areas, and increasing conflicts such as vandalism, theft, trespassing, and complaints about common farm practices, such as night-time harvesting. (Rec. Item 6, p. 170)

The petitioners also offered evidence that Marion County is #1 among all counties in agricultural sales. It is a "traded-sector" industry, much like some of the targeted industries Woodburn is trying to court. Agricultural exports rank #2 in volume among all Oregon exports; 80% of all production leaves the state. (Rec. Item 6, p. 101) Woodburn is in the heartland of Oregon agriculture; direct agricultural sales topped half a billion dollars in 2004 in Marion County. (Rec. Item 6, p. 101)

Farm land is not undeveloped land waiting for urbanization, available to provide flat parcels for targeted industries, as the city put it. (Rec. Item 10, pp. 1378-79) Rather, it is already –developed industrial land that supports the leading industry of Marion County. Goal 14, factor (3) requires addressing the comparative economic consequences to the agricultural industry of expanding on to alternative sites, or to using land already inside the UGB, rather than the Opus site or other prime farm land sites.

However, the city simply did not do this. In addressing the economic consequences of expanding into the various study areas, including SA-8, the Opus site, the city merely touts that it will be economically beneficial to use SA-8 for the targeted industries because it provides large flat land near I-5. (*UGB Justification Report*, Rec. Item 10, p. 1439) The closest the city comes to acknowledging an agricultural impact of the UGB expansion is to state that "[i]nclusion of the southern portion of SA-7, which is comprised largely of Class III agricultural soils and is farmed for grains and grass seed ...will have relatively less impact on Marion County's agricultural economy than inclusion of more intensively farmed areas...." (Rec. Item 10, p. 1439) But then the city rejects inclusion of SA-7 South in the UGB.

A correct application of Goal 14, factor (3) requires more than comparison of soil types. Rather, it requires comparing alternative UGB expansion locations on characteristics such soil capabilities, crops grown currently and historically, the value of those crops, the relationship of those crops to local agricultural-related businesses, the geographic position of alternative sites to the larger agricultural community, the impacts of urbanization of each site to the agricultural area around it, potential conflicts with nearby urbanization, etc... It would compare the loss to the agricultural economy of taking the land out of production, and the impacts of urbanization on nearby farm lands, with the potential economic contribution of urbanizing the land. The Oregon Department of Agriculture, in supporting expanding south rather than west, describes the other factors that must be considered when comparing the impacts on the agricultural economy of these sites, including conflicting uses, provision of a hard edge between urban and farm uses, etc.. (Supp Rec Vol. 5, p. 844)

The closest the Commission comes to addressing this is:

> "In conclusion, the adopted UGB expansion avoids the highest value farm land wherever reasonably possible, while including land with the lowest agricultural soil classification that can be served in an efficient and livable UGB configuration."

(Rec. Item 2, pp. 25) This is not a comparison of the economic impact on the agricultural industry of urbanizing alternative sites; rather, it is an admission that the only economic consideration was that of the alleged needs of the targeted industries.

Neither the Commission nor the city addressed the comparative economic consequences to the # 1 industry in Marion County of taking over a hundred acres of the highest value farm land – the soils of the Opus site – out of production and the impacts on the surrounding area, versus any other site, including SA-7 South, although petitioners raised this issue and offered SA-7 South as a site with less impact to the agricultural economy. The Commission did not comply with Goal 14, factor (3). The decision should be remanded.

IV. CONCLUSION

The Commission's decision should be reversed and remanded.

Respectfully submitted this 12th day of March 2008.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on March 12, 2008, I served the original and twenty (20) copies of this **Petitioners' Opening Brief** with the State Court Administrator at the address given below, by Certified Mail deposited in the United States Post Office in Portland, Oregon, postage pre-paid to:

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I also certify that on March 12, 2008, I filed two (2) true copies of this **Petitioners' Opening Brief** with respondents' counsel, by Certified Mail deposited in the United States Post Office in Portland, Oregon, postage pre-paid to:

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SUMMARY OF ARGUMENTS

This brief is a joint reply to the response briefs filed by each of the respondents.[1] LCDC's approval of the city's UGB expansion for industrial use did not comply with Goals 9 and 14, Goal 2, Part I, and OAR chapter 660, division 9, and was not supported by substantial evidence. The issue is not whether the city could use, and the Commission could approve, a targeted industries methodology. They can. However, they applied it in a manner contrary to Goals 9 and 14, the Goal 9 rule, and without substantial evidence, contrary to Goal 2, Part I.[2]

LCDC incorrectly applied the laws applicable to UGB expansions, and made a decision without a factual basis, when it approved including land zoned for exclusive farm use and having Class II soils in the Woodburn UGB expansion. There is no "two-mile" criterion in the record for proximity of industrial land to an interstate freeway; for almost none of the targeted industries is any interstate proximity "necessary;" and those industries that do require or even only prefer proximity to an interstate do not total "most" of the targeted industries.

The only rationale left for including the Opus site in the UGB is so development of it can pay for improvements to an arterial road. This is not a legal

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[1] In this reply brief, the petitioners address the primary arguments made in response by the respondents. However, we maintain all legal and factual arguments raised in our opening brief, whether addressed directly in the reply brief or not.

[2] Goal 2, Part I requires the documents underlying a land use plan to factually support the plan and any specific implementation measures. As described here and in petitioners' opening brief, the underlying documents do not support the city's and Commission's decision.

basis to bring high value, Class II farm land into the UGB instead of lower quality, Class III farm land.

Reply to the Response to the First Assignment of Error

LCDC's approval of the city's UGB expansion for industrial use did not comply with Goals 9 and 14, Goal 2, Part I, and OAR chapter 660, division 9, and was not supported by substantial evidence.[3]

The respondents spend many paragraphs and pages claiming that the petitioners object to the city's use, and LCDC's approval, of the targeted industries approach to evaluating the city's need for industrial land under Goals 9 and 14. We do not and never have, and the opening brief is clear on this point. [4]

However, the petitioners do object to the respondents' *application* of the targeted industries approach because, in doing so, they have violated the requirements of Goals 9 and 14 and OAR chapter 660, division 9 that limit a UGB to a 20-year supply of land for employment uses. And 20 years *is* the operative span of time.

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[3] The petitioners agree with respondents that OAR chapter 660, division 24, regarding UGB expansions, did not become effective until after the decision, and therefore is not directly applicable. However, the respondents all agree that the division 24 rules "clarify many of the requirements that at are issue in this appeal and interpret Goal 14 as amended" (LCDC Br. p. 10, n. 9; *see also* Opus Br. p. 9: "OAR 660-024-0040 provides interpretive guidance ***"; City Br. pp. 9-10) and therefore offer guidance to the court on the application of new Goal 14. Respondent Opus Northwest LLC states that the new Goal 14 rules are "an indicator of how LCDC interprets the new Goal 14." (Opus Br. p. 4, n. 3)

[4] The petitioners state in their opening brief: "[T]here is nothing inherent in the targeted industries methodology that requires exceeding the 20-year land supply. The primary flaw in the Commission's and city's *implementation* of the targeted industries approach is that it is not tied to the city's projected employment, or to a 20-year time span. *** The Commission and city *could have* implemented a target industries strategy tied to the industries, number of employees, and site needs projected to locate in Woodburn over the 20-year planning period, but they did not." (Pet. Open. Br., pp. 16, 17)

Goal 14 governs the evaluation and expansion of UGBs. Goal 14 is focused on the supply of *land* for various urban uses, for a *20*-year period. It requires that the change of a UGB must be based on the land needs of a 20-year population forecast. The first two factors of Goal 14 are the "Land Need" factors, and provide (emphasis added):

> Establishment and change of urban growth boundaries shall be based on the following:
>
> (1) Demonstrated need to accommodate long range urban population, consistent with a *20-year* population forecast coordinated with affected local governments; *and*
>
> (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).

The Goal 14 Guidelines explain that UGBs should contain sufficient land for all urban uses, taking into account the "needs of the forecast population." Respondent LCDC concedes that Goal 14 requires "a determination of the need for jobs and housing over the next 20 years." (LCDC Br. p. 14)[5] The rule interpreting the new Goal 14 calls for the "determination of a 20-year employment land need for an urban area." OAR 660-024-0040(5). The Goal 9 rule defines "total land supply" inside a UGB as "the supply of land estimated to be adequate to accommodate industrial and other employment uses for a 20-year planning period." OAR 660-009-0005(13); see also OAR 660-009-0025 (2).

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[5] The petitioners describe at length in our opening brief how the new Goal 14 rule - OAR chapter 660, division 24 - reinforces the 20-year requirement for a UGB, including for employment land. (Pet. Open. Br., pp. 9-10)

The respondents argue two inconsistent positions. First, that the Commission and city did approve a 20-year supply of land for employment. Second, that they were not limited to 20 years.

In its brief and in the decision, LCDC acknowledges that "not all of the industrial land proposed by this plan is expected to develop by 2020."[6] (LCDC Br. p. 16; Rec. Item 10, p. 1169) Before LCDC, the city stated "[I]f we have all the employment that we expect to have, there will be 200 developed acres of the 400 we are developing." (Transcript Supp. Rec. Item 2, p. 51, lines 14-15)

In its brief, LCDC argues that this is because:

> "Goal 14 requires an identification of land needed for *employment opportunities* over 20 years, not necessarily for *industrial development* over 20 years, although the two needs often coincide. Stated differently, the land needed to attract industrial employers over the 20-year period, may be different from the amount of land those industrial employers will actually develop over the 20-year period." (LCDC Br. p. 16)

This is a new argument by LCDC, not relied upon in its decision. It is also a mis-reading of the plain language of the law. Goal 14 describes a need to provide for "*employment* opportunities" – that is jobs – not *employer* opportunities. The Goal 9 rule reinforces this by explaining that the land inside a UGB for Goal 9 purposes is "to accommodate *** *employment* uses for a 20-year planning period." OAR 660-009-0005(13) (emphasis added). The purpose of the Goal 9 rule is "to provide an adequate land supply for economic development and *employment growth* *** for a 20-year planning period." OAR 660-009-0000 and -0005(13).

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[6] Woodburn's proposed UGB should be for the period 2000-2020.

The new Goal 14 rule, which offers guidance to the application of Goal 14, states that "local governments must provide a reasonable justification for the *job* growth estimate," not the *employer* growth estimate. OAR 660-024-0040(5)(emphasis added). The Goal 14 rule also provides a "safe harbor" for determining employment needs, which again is calculated based upon "job" growth,[7] not employer growth.

Taken to its logical conclusion, the state's argument would place *no* limit on the amount of acres of land by which a UGB could be expanded for employment uses. Any city could argue, as Woodburn did, that one or more employers in each of its target industries could come in and occupy 1, 5, or 10 acres of a 20-, 50-, 100-acre, or larger, parcel of land for an indefinite period of time and possibly never use the remaining acreage for employment or anything else, or use it far beyond the 20-year period.

The state uses an example of an electronic chip manufacturer that acquires a 100-acre parcel, but uses only 70 acres in 20 years, "preserving 30 acres for future

---

[7] OAR 660-024-0040(8) provides (emphasis added):
"The following safe harbors may be applied in determining employment needs:

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

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

(B) The population growth rate for the urban area in the adopted 20-year coordinated population forecast specified in OAR 660-024-0030.

expansion." (LCDC Br. p. 16) This may be an appealing example, but there is no factual basis in the record for such a scenario, or any scenario regarding land absorption by any industrial users. How small could the percentage of a parcel occupied over 20 years be and still allegedly comply with Goals 9 and 14? Five acres of a 100-acre site? Thirty acres? A half-acre? The reality is that many of these targeted industries have similar site needs, and therefore some of the expected target industry employment will actually occur on these "surplus" portions of parcels. And, many of the targeted industries prefer to co-locate, such as in business parks and downtowns. In fact, LCDC and the city acknowledge this does and will occur. (LCDC Br. p. 19; Rec. Item 10, p. 1287) However, LCDC's decision assumes that each target industry will have a discrete site (or even several discrete sites). There is no 20-year time span in this interpretation of Goals 14 and 9.

Furthermore, the UGB land supply is self-correcting. The land use planning system requires periodic updating of Woodburn's comprehensive land use plan every 10 years, just as the city is doing now. The city is free to update its plan and UGB more frequently. ORS 197.629 (1)(b), (5), (6). Thus, built into the system is the method by which a UGB is regularly updated to meet changing market conditions and opportunities, expansion needs, land needs, etc…

Exacerbating the flaw in this application of the targeted industries method, and illustrating its ultimate logic, is that there is no relationship between the number or type of industries identified in Woodburn's Economic Opportunities Analysis and a 20-year land supply or 20-year employment projection. The EOA started out with 70

potential target industries, then narrowed those to 24. (Rec. Item 10, p. 1054) It narrowed that further to 13 industries based on various regional economic criteria related to the northern Willamette Valley, but not to a 20-year time span for the Woodburn UGB or a 20-year employment projection. (Rec. Item 10, pp. 1054-63, and Tables 4-1, 4-2, and 4-3)[8] In the EOA, the city's consultant acknowledges that the rationale for narrowing the field of possible target industries to 13 had nothing to do with a 20-year time frame: "[W]e believe that targeting 10-15 industries will provide potential for more focused analysis of site needs and for coordinated efforts to attract good jobs to Woodburn." (Rec. Item 10, p. 1052)

Under this rationale, Woodburn – and any other city using this method – has no limit to the number of target industries for which it might expand its UGB, or the amount of acres by which it might expand it. There is nothing in Woodburn's application of the targeted industries approach, or the Commission's approval of it, that inherently limits it to the 20-year time frame required of Goals 9 and 14.

The respondents' argument regarding "market choice" only amplifies the ultimate conclusion of this logic. Under their argument, a city may provide several parcels for each target industry, so that not only would one 100-acre site be provided, of which only 10 acres may be used in the 20-year UGB period, but several of those sites may be provided. Woodburn's decision does just that – it contains on average 3-

[8] The criteria used to narrow the 24 industries to 13 include "location quotients, environmental characteristics, [and] compatibility with public infrastructure." Rec. Item 10, p. 1056-57, and Table 4-3.

4 sites for each of its targeted industries. (Rec. Item 10, p. 1287, Table 4; Pet. Br. p. 19)

Goal 14 builds market choice into the UGB by requiring a "long range" land supply of 20 years. If, and as, that land supply is absorbed by development, the land use program requires a city to replenish the supply at periodic review, or sooner if there is a need.

Even if it is a proper application of Goals 9 and 14 to estimate future employment land needs based solely on employers, that still must be done within the 20-year land time frame of the UGB – but that is not how the city or LCDC applied this theory. The state's argument, as it acknowledges, would provide *land* for economic development and employment growth far beyond 20 years.[9] The state acknowledges that under its argument, the city "may…provide more land within its UGB than the targeted industry may actually develop over 20 years." (LCDC Br. p. 18) LCDC's decision also states that "not all of the industrial land proposed for inclusion is expected to develop by 2020." (Rec. Item 2, p. 19; Pet. Br. ER-9)

Providing more land within the UGB than needed over 20 years is clearly contrary to the plain language of Goals 9 and 14. And, it is not necessary to the legal application of the targeted industries approach to estimating employment land needs. The Goal 9 rule even provides guidance in how to do this: "Industrial or other employment uses with compatible site characteristics may be grouped together into

[9] As the city stated and the Commission approved, the city expects only half of the industrial land in its UGB expansion to develop over 20 years. (Rec. Item 10, p. 1392; Transcript p. 51, lines 14-15)

common site categories." OAR 660-009-0015(2). The rule further encourages '[c]ompatible uses with similar site requirements [to] be combined into broad site categories." OAR 660-009-0025 (1).[10] The city could have projected which and how many of the targeted industries are projected to locate in the city over the next 20 years, rather than using an open-ended time frame. The city could have estimated the number of employees expected to be generated by the targeted industries over a 20-year time frame, and then translated that into a land need. But that is not what the city did, nor the Commission approved, here.[11] Goal 14 accommodates a targeted industries method. The 20-year time span provides for market choice and recognizes that not all needs can be predicted and thus provides a long-term, not solely a short-term, land supply. The UGB process is self-correcting; it must be updated every 10 years, and can be updated at any time.[12]

The respondents may argue that the underlying studies on which the Commission and city relied in their decisions – *Site Requirements for Woodburn Target Industries* (Rec. Item 10, pp. 1275-95), *Economic Opportunity Analysis* (Rec. Item 10, pp. 1017-75), and the *Economic Development Strategies* (Rec. Item 10, pp. 699-743) are based on a 20-year time frame. Despite an occasional statement by

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[10] LCDC acknowledges that "many of the sites can be combined for one target industry," but that is not what the city did here, nor what the Commission approved in its decision. (LCDC Br. p. 19)

[11] As described in Petitioners' opening brief, the city adopted and the Commission approved a UGB expansion that includes an average of 3-4 sites for *each* of the targeted industries. (Pet. Br. p. 19; Rec. Item 10, p. 1287)

[12] ORS 197.629(1)(b), (5),(6).

LCDC and the city to that effect, these are conclusory[13] – there is nothing in these underlying documents that ties the targeted industries method to a 20-year land supply, or any other time frame for that matter.[14] And perhaps that is because that was not the purpose of these studies – they only go so far as to identify the city's economic needs and opportunities, and describe how those could be met through a targeted industries approach. But neither these studies, nor the city, nor LCDC takes the next legally required step of translating that into a 20-year land supply for employment.[15]

Finally, the respondents make several arguments that the city is not really required to designate a 20-year supply of land for employment uses, but rather can designate more. First, they cite OAR 660-024-0040(1) - the new Goal 14 rule - which provides that "the 20-year determinations are estimates which *** should not be held to an unreasonably high level of precision." (LCDC Br. p. 12, n. 11; Opus Br. p. 9;

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[13] For example, in its brief LCDC states that the city specified the land characteristics necessary to attract the targeted industries "within the 20-year planning period," and cites to the *Site Requirements* document in the record. (LCDC Br. p. 17) However, nothing at that record cite, or elsewhere, ties the target industries method to the 2000-2020 UGB time frame. The city repeats this inaccurate assertion in its brief. (City Br. p. 6)

[14] The only reference to the 2000-2020 timeframe in these documents is when the consultants describe the conclusions of the land forecasting method using the employee/acre formula, which the city rejected. For example, the *Site Requirements* study shows that using the employee/acre formula, the city would need only 225 new acres of industrial land between 2000-2020, and 370 acres to accommodate all employment growth from all sectors. (Rec. Item 10, p. 1278)

[15] And, as described in this brief (page 4 and note 17), the Commission and city state in their decisions that the land supply proposed in the expanded UGB exceeds 20 years.

City Br. p. 10) [16] But the petitioners are not even arguing about whether the city came close enough in its 20-year estimate of land needed for employment – we are arguing that they did not even try. And as previously described, both the city and LCDC acknowledge that the land supply they each approved for industrial uses exceeds by about twice any rough estimate of a 20-year need.[17]

The respondents then point to another section of the new Goal 14 rule, OAR 660-024-0040(5), which explains "Goal 14 does not require that job growth estimates necessarily be proportional to population growth." (LCDC Br. p. 12, n. 11; Opus Br. p. 10; City Br. p. 10) Again, this is irrelevant to the petitioners' argument. The rule cited simply recognizes that the rate of future job growth in a city could be more or less than the projected rate of population growth. But whatever the rate of growth, the projections are still for a 20-year period.

Then, the state makes the rather surprising claim that the city "was not required by statute, goal, or rule to prepare a job growth projection," but that even though it did, it "was not required to tie its 20-year land need to that job growth." (LCDC Br. p. 22). Opus adds: "There is no requirement in Goal 14, Goal 9, or the Goal 9 rule that a determination of land needed for employment opportunities be based on a 20-year population forecast or employment forecast ***." (Opus Br. p. 13)

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[16] The rule section cited by respondents also supports the petitioners' argument that the land supply requirement is for 20 years, not some other amount of time, or an indefinite amount.

[17] Presumably, this comparison to a 20-year land supply is based on the 225 acres of land the city acknowledges it would need based on an employee/acre methodology, but this is not clear. (Rec. Item 10, p. 1278)

Basically, the state and Opus are claiming there is *no* time limit on the amount of land a city can include in its UGB for employment use, effectively expunging all references to a 20-year requirement in Goal 14 and the Goal 9 and 14 rules.

Goal 14, factor 1 requires that change of a UGB must be based on a "demonstrated *need* to accommodate a long range urban *population,* consistent with a 20-year population forecast." (Emphasis added) Factor 2 describes those urban needs, which include "employment opportunities." Thus, the land need for employment opportunities must be tied to the 20-year population forecast.[18] This is supported by the Guidelines to Goal 14, which explain that UGBs should contain sufficient land for all urban uses, taking into account the "needs of the forecast population." The new Goal 14 rule, which respondents agree provides "interpretive guidance" to the Goal, clearly ties the 20-year land supply to the 20-year population forecast, including for employment.[19]

And, the Goal 9 rule ties the 20-year land supply and employment projection together. It requires that the Economic Opportunities Analysis "must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth ***." OAR 660-009-0015(2). Local governments must

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[18] As described above, this does not mean that the rate of change in employment must mirror that of the population forecast, but they must be related, and over a 20-year period.

[19] OAR 660-024-0040(1) states "The UGB must be based on the adopted 20-year population forecast for the urban area *** and must provide for needed *** employment *** over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule." OAR 660-024-00040(5) requires that "local governments must provide a reasonable justification for the job growth estimate ***."

then designate the "total supply" of employment lands for the "20-year planning period. OAR 660-009-0025(1), (2).

However, that is not what the city did. As LCDC acknowledges in its brief:

> "[A]lthough the city did predict its job growth over 20 years, it was not required to tie its 20-year land need to the job growth projection. The city instead focused on the type – not the number – of jobs it wanted to attract over the 20 year period * * * the targeted industries the city desires and reasonably expects within 20 years…." (LCDC Br., p. 22)

So, contrary to Goal and rule requirements, the Commission approved an expanded UGB that is unrelated to any employment projections for Woodburn.

Finally, the respondents argue that the language of ORS 197.712(2)(c) allows LCDC to approve a UGB with more than a 20-year land supply. That statute provides:

> Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies.[20]

Nothing in that language provides for exceeding the 20-year land supply required by Goal 14 and the Goal 9 rule, and case law. Several decisions of this court have emphasized that Goal 9 and "economic development" do not override Goal 14. *BenjFran Development v. Metro Service Dist.*, 95 Or App 22, 25-26, 767 P2d 467 (1989) ; *Port of St. Helens v. LCDC*, 165 Or App 487, 496-97, 996 P2d 1014 (2000); *DLCD v. Yamhill County*, 99 Or App 441, 444-48, 783 P2d 16 (1989).

The Goal 9 rule explains how to provide for "at least" an adequate supply of sites in a UGB, within a 20-year time span. A city must identify the land needs of the

[20] Goal 9 contains similar language.

various types of its projected future employment. The rule then recognizes that not each type will require a different site, but rather recommends combining "compatible uses with similar site characteristics … into broad site categories." OAR 660-009-0025(1). So, while the total land designated in the UGB in individual employment categories must "at least equal the projected land need for *each* *** category," in the *aggregate* that land supply may not exceed 20 years. OAR 660-009-0025(2). The rule is clear that the *total* land supply is for the "20-year planning period." OAR 660-009-0025(2). While LCDC and the city recognize that different types of employment often use the same type of land, and that different employers often co-locate on a parcel, such as in an industrial park, neither took this into account in their decisions.

LCDC's decision should be reversed and remanded.

Reply to Response to the Second Assignment of Error

LCDC incorrectly applied the laws applicable to UGB expansions, and made a decision without a factual basis, when it approved including land zoned for exclusive farm use and having Class II soils in the Woodburn UGB expansion.

The petitioners and respondents agree that under the prioritization scheme of ORS 197.298, lands zoned for exclusive farm use (EFU) are to be brought into the UGB in reverse order of their soil value. That is, farm soils with a Class III or IV value should be brought in prior to land with highly productive Class I or II soils. Therefore, if there is a need, and all else being equal, there is no disagreement that site SA-7 South, with Class III soils, should come into the UGB prior to the Opus site, which has Class II soils. However, the respondents argue that because "SA-7 South is outside of the two-mile radius [from an I-5 interchange] *** it lacks the specified

characteristic necessary to be suitable for the city's identified need and did not have to be included in the prioritization of alternative expansion areas," based on Goal 14. (LCDC Br. p. 32)

Goal 14 explains how a city may evaluate lands for a UGB expansion:

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

Respondents argue that the SA-7 South site may legally be excluded, and the Opus site included, because the SA-7 South site lacks the "necessary" characteristic of being within two miles of the Woodburn I-5 interchange.[21]

However, there is simply no factual basis to support the conclusory statements made by LCDC and the city for excluding SA-7 South. First, there is no "2-mile criterion" for any of the Woodburn targeted industries. Second, while some targeted industries prefer being proximate to interstate freeways, for only one of them is it described as a "necessity," as required by Goal 14. And third, even for those industries that prefer being proximate to an interstate, they make up, at best, two of the Woodburn targeted industries. Excluding the Opus site, all the industrial land brought into the UGB (close to 300 acres) with this proposal is within 2 miles of the I-5 interchange; therefore, there is no factual or legal basis for including the Opus site.

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[21] Webster's Third New Int'l Dictionary defines "necessary" as a characteristic that "cannot be done without : that must be done or had : absolutely required : ESSENTIAL, INDISPENSABLE." (unabridged ed. 1981) Merriam Webster's Collegiate Dictionary (10the Ed.) defines it as "INESCAPABLE *** COMPULSORY."

The "two-mile criterion" has taken on a life of its own without a basis in fact. Although LCDC and the city both state it as a fact,[22] there is no reference to it in the underlying documents on which they rely. The petitioners do not disagree that for some target industries, proximity to the interstate is important. However, it is not a 2-mile or less proximity.

The primary document relied upon is the *Site Requirements for Woodburn Target Industries*. It identifies the targeted industries for Woodburn, as well as their site characteristics. It does not find a two-mile requirement for any of the 13 target industries. (Rec. Item 10, pp. 1277-95) For each targeted industry, the *Site Requirements* study draws conclusions about transportation, such as:

- "The required site ...characteristics for the target industries identified in the EOA range widely." (Rec. 10. p. 1279)
- For "[t]he smaller [printing and publishing] firms *** access, in the form of a good, local transportation system, is key." (Rec. Item 10, p. 1280)
- "Freeway location and transportation issues are important to all types of glass manufacturing." (Rec. Item 10, p, 1283)
- For fabricated metal products, "[i]nterstate access is beneficial, but not as critical..." (Rec. Item 10, p. 1284)
- For electronic and other electrical equipment, "good access" is noted, but access to what is not. (Rec. Item 10, p. 1284)
- "Many of the businesses listed in Industry 87 [Engineering, Accounting, Research, Management and Related Services] can locate in commercial areas or business, high-tech, or science parks." (Rec. Item 10, p. 1286)

There are other, similar statements in this document, but none specifies a "two-mile criterion." In fact, in *none* of the descriptions of the 13 targeted industries, or anywhere in the study, is *any* distance from an interstate mentioned as a necessary

[22] The LCDC brief refers to it as the "two-mile criterion." (LCDC Br. p. 32) LCDC's order stated that "the Commission finds that the two-mile radius criterion is reasonable ***" (Rec. Item 2, p. 26 and ER-16)

criterion. The closest any statement in the record comes is the following: "For many targeted industries, being within one or two miles of an interstate is much more preferable than being three or four miles away." (Rec. Item 5, pp. 65-66 and Item 9, p. 409) Below, we discuss the legal difference between "preferable" and "necessary." However, even this statement is not an immutable two-mile criterion, it is not for all industries, and it is not part of the *Site Requirements* study on which the decision is based.

In its decision, LCDC stated that it "agrees with the city's finding that most target industries *require* direct access to I-5," and that therefore designation of the Opus site as part of the expanded UGB for industrial lands, and not the SA-7 South site, is legal under Goal 14's "necessary" standard. (Rec. Item 2, p. 26, emphasis added)

However, only one of the 13 industries targeted by Woodburn has a need for access to the interstate that could be deemed "necessary" under Goal 14. That is Motor Freight Transportation & Warehousing, for which the *Site Requirements for Woodburn Target Industries* finds: "Transportation in the form of access to a major interstate is *critical* to all firms in this category." (Rec. Item 10, p. 1285, emphasis added) For one other target industry, it might be. For the large Printing & Publishing firms, the *Site Requirements* study concludes "interstate and airport transportation will be a larger concern," although this conclusion says nothing about *proximity* to the interstate or airport, nor does it define "larger." (Rec. Item, 10, p. 1282)

As described in the petitioners' brief in detail, of the remaining 11 target industries, four need "good access," but not to an interstate.[23] Two others specified a need for good *local* access.[24] And four more prefer commercially-zoned land, located in a business park, downtown, or other mixed-use zone,[25] which may well disqualify much of the industrial land in this UGB expansion. The remaining industry's transportation needs were described as having "such variety" that it is "impossible to generalize regarding site requirements." [26]

For **only one** of the 13 targeted industries is interstate access "necessary" under Goal 14, and that is the one which may be the least likely to even locate in Woodburn. [27] For one more, it is arguable whether interstate access is "necessary." But for the remaining targeted industries, proximity to an interstate is not "necessary," and for 1/3 of them, it may not even be a desirable location. Even without the Opus site or the SA-7 South site, there are almost 300 acres of industrial land in the expanded UGB within 2-miles of the I-5 interchange, providing plenty of opportunity for the one target industry for which proximity is necessary, as well as opportunity for others of the target industries if they so desire.

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[23] Pet. Br. pp. 33-34 and n. 31; Rec. Item 10, pp. 1283-85.
[24] Pet. Br. p. 34 and n. 32; Rec. Item 10, pp. 1282, 1284.
[25] Pet. Br. p. 34 and n. 34; Rec. Item 10, pp. 1285-86.
[26] Industrial & Commercial Machinery & Computer Equipment (Pet. Br. p. 34 and n. 33; Rec. Item 10, p. 1284).
[27] As pointed out in the petitioners' brief, this industry is unlikely to locate here or anywhere in Oregon. The *Site Requirements* study found that a freight industry survey "placed the Northwest as the lowest priority for expansion." (Rec. Item 10, p. 1285)

The city, and its consultants' reports, focus on the needs and desires of urban industries, and economic development within the urban area. Therefore, words like "prefer," "beneficial," and "reasonable" may seem close enough to "necessary." But it is the statutory role of the land use planning program to balance the needs of all users of land – including that of the agriculture industry, and it is *those* industrial lands that will be lost if the UGB expands where and when it is not "necessary."[28]

The Commission and city cannot construe the word "necessary" in such a strained fashion[29] as to "render the selection of the subject property [here, Opus] a foregone conclusion." *VinCEP v. Yamhill Co.*, 43 Or LUBA 514, 539, aff'd [on this point], 42 Or App 414 (2007)

Finally, despite the Commission's statement that "most" of the target industries require direct I-5 access, or the city's statement that "many *** prefer[]" being within 2-miles, as demonstrated above, only one target industry requires interstate access and one other has a "concern" about interstate transportation.[30] For the 11 other target industries, access to I-5 simply is not an issue.

Assuming there is a need for the acreage, this simply comes down to the Opus site (SA-8), which is Class II soils, or the SA-7 South site, which is Class III soils. Under ORS 197.298(1)(d), (2), the only legal basis to include the Opus site rather than the SA-7 South is if, as the state says, the SA-7 South site "lacks the specified

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[28] ORS 197.243 states that the "preservation of the maximum amount of the limited supply of agricultural land is necessary to the *** state's economic resources and *** in maintaining the agricultural economy of the state."
[29] See definition of "necessary" at n. 20.
[30] LCDC at Rec. Item 2, p. 26 and ER-16; city at Rec. Item 5, p. 65.

characteristic *necessary* to be suitable for the identified need," as that is defined by Goal 14.[31] As described above, this standard has not been met, and therefore the Opus site cannot be included in the prioritization of alternative expansion areas, under ORS 197.298(1)(d), (2).

The Commission's other rationale for approving inclusion of the Opus site, that: "[d]evelopment of the Opus site is necessary to pay for improvement of Butteville Road to arterial street standards,"[32] has no remaining legal basis. As stated in the petitioners' brief, it is not clear the legal basis on which LCDC relied to bring in the Opus site.[33] In its brief, LCDC states that ORS 197.298(3) – which describes when lands of lower priority may be included over those of higher priority - is *not* the basis because SA-7 South was already eliminated under ORS 197.298(1), (2); that is, because SA-7 South did not have the specific characteristic necessary to meet the identified need under Goal 14. Therefore, LCDC did not address ORS 197.298(3) as the basis for including the Opus site.[34]

Therefore, if the court agrees with the petitioners that there is no Goal 14 basis for excluding the SA-7 South site, then there is no basis for further considering the Opus site, because that site is not an alternative under ORS 197.298(1), and because the Commission did not address the petitioners' argument that the Opus site does not meet ORS 197.297(3).[35]

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[31] LCDC Br. p. 32 (emphasis added).
[32] ER-16, Rec. Item 2, p. 26.
[33] Pet. Br. p. 36.
[34] LCDC Br. pp. 34-35.
[35] LCDC Br. p. 34-35.

The Opus brief recognizes that LCDC's findings "do not identify the particular provisions of ORS 197.298 with which LCDC believes the City has complied,"[36] and therefore it argues that the Opus site qualifies under ORS 197.298(3)(c). If the court chooses to consider this argument, the petitioners rely on their arguments in their opening brief[37] and will only summarize them here.

The standard under ORS 197.298(3)(c) is that "*maximum* efficiency" of land inside a UGB "*requires*" the inclusion of lower priority lands – here, Opus rather than SA-7 South – to provide services to higher priority lands, which the city says is the SA-7 North land, also part of this UGB proposal.[38]

As explained in the petitioners' brief, the Commission and city found that the SA-7 site has "good access" to I-5 without the Opus site, and that it "can be efficiently served with public facilities,"[39] without the Opus site. The legal standard is "required." The Opus site is not required. If access to the I-5 interchange is necessary, that can be accomplished without bringing in 100 acres of Class II farm land. ORS 215.283(2)(q), (5), (3).[40]

The only basis for including the Opus site is that the developers of it will pay for improvements to Butteville Road. However, that is not a criterion under ORS 197.298(3). The land use system is not a "pay to play" system.

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[36] Opus Br. p. 23.
[37] Pet. Br. pp. 35-40.
[38] As stated in our testimony and brief, the petitioners do not object to inclusion of the SA-7 North area.
[39] Pet. Br. pp. 37-38; Rec. Item 10, p. 1439, 1423-25, 1427.
[40] See Pet. Br. pp. 38-9.

CONCLUSION

The Commission's decision should be reversed and remanded.

Respectfully submitted this 13th day of August 2008.

Mary Kyle McCurdy, OSB #88353
Attorney for Petitioners

RE: Woodburn UGB

Land Conservation and Development Commission
Richard Whitman, DLCD Director
635 Capitol Street, Suite 150
Salem, OR 97301

DEPT OF
DEC 16 2010
LAND CONSERVATION
AND DEVELOPMENT

Dear Commissioners and Staff:

We, Lolita and Kathleen Carl, are representing the Manton A. Carl LLC, a family farm on which five generations of Carls have lived and worked. Part of the farm is within the Hubbard zip code and part of the farm is within the Woodburn zip code. Our farm is within a mile of the present Woodburn UGB, but only a few hundred feet from Woodburn's sewage treatment property.

In the past 95 years the Carl farm has produced a variety of crops and livestock, including flax, wheat, corn, peas, dairy and beef cattle, sheep, horses, hogs, chickens, fruit, hazelnuts, oats, grass seed, alfalfa hay, grass hay, clover, and berries. This diversity is characteristic of agricultural practices in our area. Farmers are quick to adapt and respond to market changes and demands and the Willamette Valley's mild climate and fertile soil are ideal for a number of crops. The wine and nursery industries have been examples of this adaptability. Bio-fuel production may be one the next uses of Oregon's agricultural versatility.

We participated orally and/or with written commentary before the City of Woodburn's Planning Commission, the Woodburn City Council, and the Marion County Commissioners (two hearings) as these groups considered Woodburn's proposed Urban Growth Boundary and Periodic Review package. We filed objections to Woodburn's submittal and appealed your approval to the Court of Appeals.

We still have the same objections to Woodburn's UGB expansion.

Objections

(1) Failure to protect farm land

(a) Woodburn is in the heart of Marion County where agriculture is the number one industry; direct agricultural sales regularly reach half a billion dollars. The agricultural industry is a primary driver of Woodburn's economy. Agriculture's increasing economic importance is a testimony to its success and sustainability. Under Goal 9, Economic Development, OAR 660-015-0009, "Comprehensive plans for urban areas shall: 1. Include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends." Yet Woodburn's Economic Opportunites Analysis does not analyze or even mention the importance of agriculture to the local economy. Instead, the plan targets a large parcel of industrial land for hi-tech industries and projects a loss in agricultural employment. This is contrary to what has actually been happening in Marion County in the recent past. Even in Woodburn's Economic Opportunities Analysis by EcoNorthwest for the 97071 zip code it stated that

HAND DELIVERED

"covered employment does not include most farm employment"(Table 2.2, pages 2 and 3).[1] This underestimates the growing economic importance of the area's increasing agricultural industry.

(b) Under Goal 14 OAR 660-015-0000(14)#(6) boundaries should be based on "Retention of agricultural land as defined with Class I being the highest priority for retention and Class VI the lowest priority." Also ORS 197.298 dictates priority for inclusion of classes of land within urban growth boundaries. Class I and II soils west of I-5 and also in the north are included in Woodburn's UGB expansion while the expansion excludes the Class III soils directly and contiguously to the south of ParrRoad continuing towards Gervais. Woodburn has incorrectly included prime farmland in the UGB while excluding non-prime farmland which can reasonably accommodate the identified land needs.

(c) Also under Goal 14 is (7), "compatibility of the proposed urban uses with nearby agricultural activities." Urban pressures do impact agriculture negatively. There is already difficulty for Woodburn area farmers to safely travel with large trucks and equipment to Ag West, the Woodburn Auction and Woodburn Fertilizer. As Woodburn pushes out to Crosby and Butteville Roads, the city will simply push the congestion and development further onto farm land.

Not only will this UGB increase traffic congestion for farmers and others, but also create more potential conflicts with non-farming neighbors. Trespassing, theft, vandalism, and dumping have increased dramatically on our farm. More non-farming neighbors will only exacerbate conflicts about dust, odors and night-time harvesting.

(2) Inadequate coordination with affected governmental units

Under Goal 2 (OAR 660-015-000) planning must be coordinated with affected governmental units. Under statute 197.015 "a plan is coordinated when the needs of all levels of governments, semipublic and private agencies and citizens of Oregon have been considered and accommodated as much as possible." Woodburn's expansion claims too much of Marion County's land and future job growth and is not in the best interests of other communities such as Silverton, Aurora, Stayton, Donald, Canby or Hubbard. Although Woodburn had only 8% of Marion County's current employment, its plan is to provide land for 23% of all future jobs in the county. Woodburn is not balancing the needs of other communities. Even Metro expressed concerns about Woodburn's plan.[2] (see volume IV, item 4.H. in the record .) Plans should consider the needs of all Oregonians.

[1] Woodburn Economic Opportunities Analyses, May 2001
[2] Letter from Metro to City of Woodburn, dated February 3, 2005

(3) Too much industrial land

Under Goal 14 (OAR 660-015-0000(14) local governments should demonstrate that their needs cannot be reasonably accommodated on land already inside urban growth boundaries. Woodburn may need more industrial land, but the amount proposed is unrealistic and exceeds even that needed for the city's future job projections---the same aggressive job projections objected to in the previous paragraph. The city acknowledged that they would not use all this land by 2020. They also excluded land available for expansion of existing industries. Les Sasaki, Principal Planner for Marion County said that the county sees "the inclusion of approximately 430 acres of existing farmland in these areas as being more than is needed to meet the economic development objectives of the city and provided for the site needs of targeted industries."[3] Woodburn does not demonstrate the need for this much industrial land.

Under Statewide Planning Goal 9, guideline 4 says that "Plans should emphasize the expansion of and increased productivity from established industries and firms as a means to strengthen local and regional economic development." Woodburn's plan relies too heavily on attracting only new industries and ignores the local and regional agricultural economy. In Woodburn's Economic Opportunities analysis there was no mention of agriculture or the rich soil surrounding Woodburn as one of the comparative advantages of this area. In Woodburn's projections for 2020 they projected a 40% drop in agriculture jobs from 2000[4]; yet agriculture's contribution to the economy has been growing. In technical background documents, Woodburn set loss of agriculture jobs as a goal![5] Agriculture is a viable, thriving part of Woodburn's economy and it should not be a goal to reduce it.

High-tech jobs are going overseas and setting aside a 125 acre parcel for a silicon chip fabrication plant does not increase production from established industries. Woodburn's high school and middle schools have not been making Adequate Yearly Progress on their Oregon Report card and if any software-type jobs do come to Woodburn those jobs will likely be filled by commuters. Woodburn's labor pool may not have the skills to fill these jobs.

SPECIFIC CHANGES TO THE TO THE WORK TASK

(1) Reduce the amount of Class 1 and 2 soils included in the UGB by expanding to the south on poorer class lands, rather than to the north (towards Crosby Road) or west of I-5 to Butteville Road.
(2) Recognize the importance of agriculture to the Woodburn economy by reducing the amount of UGB expansion on to EFU land, thereby protecting farmland..

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[3] Letter from Marion County to Jim Mulder, City of Woodburn, March 21, 2005, p. 8
[4] Parker and Moore to Winteroad and Armstrong April 2002, page 17
[5] Technical Report 2.B, Winterbrook Planning, May 2003, p. 7 Table 5

(3) Reduce the industrial land to be more commensurate with Woodburn's population in relation to other communities in Marion County and nearby Oregon counties

(4) Include all available industrial parcels to accurately account for eligible industrial land within UGB

Sincerely,

Kathleen L. Carl

Kathleen L. Carl

Lolita Carl

Lolita Carl

PO Box 149
Hubbard, Oregon 97032

MARION COUNTY FARM BUREAU
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December 15, 2010

Land Conservation and Development Commission
Richard Whitman, DLCD Director
635 Capitol Street NE, Suite 150
Salem, OR 97301

Dear Commissioners and Staff:

Marion County Farm Bureau maintains a keen interest in Woodburn's Urban Growth Boundary proceedings. We participated at the local level, filed objections with LCDC, and appealed your prior decision to the Court of Appeals. We were gratified when the Court of Appeals agreed with our contention that the gross oversupply of industrial land had not been justified. We are therefore extremely disappointed to see that rather than recommending a more reasonably sized expansion, your staff has recommended that you adopt a new justification for your previous decision.

We object to Woodburn's plan amendments for the following reasons.

First, the unreasonable size and scope of Woodburn's Urban Growth Boundary (UGB) expansion results in too much land being brought into the UGB in violation of Goal 14. The record establishes that Woodburn has included *twice* the industrial land that it expects to develop over a twenty year period. Throughout the local proceedings the city's consultants insisted that an oversupply of industrial land was needed to have choice in the market place. Three years ago this commission approved the oversupply of land based on the city's contention that market choice was needed. Now your staff recommends that you disavow the market choice rationale. We urge you to reject that recommendation as well as the size of the UGB.

Second, if you allow Woodburn to include twice as much industrial land as it expects to develop over twenty years, you will have established a dangerous precedent. How will you say no to any other city? Goal 14 will no longer have any meaning.

Third, removing large blocks of high value farmland from farm production for uses that do not require high value farmland violates ORS 215.243.[1] Agriculture is an industry,

[1] **215.243 Agricultural land use policy.** The Legislative Assembly finds and declares that:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is

too. This land supports the leading industry in Marion County: Agriculture. Annual direct sales in the county regularly top $500,000,000, supporting tens of thousands of jobs. And agriculture is a growing industry, unlike manufacturing or high-tech.

We support the principle of land use planning for the purpose of protecting the resources and the agricultural environment and infrastructure needed for farmers and ranchers to produce food and fiber for current and future generations in a profitable manner. We are philosophically opposed to efforts to remove economically productive farm and forest land from farm and forest zones. (Farm Bureau Policy 3.010)

Fourth, we object to the inclusion of prime farmland in Woodburn's UGB instead of lower quality soils in violation of ORS 197.298. We especially oppose Woodburn's plan to extend onto prime farmland west of Interstate 5 rather than on to Class III soils south of Woodburn.

Woodburn's UGB expansion is predicated on an aggressive industrial development strategy that exceeds forecasted growth and fails to balance growth forecasts throughout Marion County as a whole. Eight percent of Marion County employment is currently located in Woodburn. However, Woodburn is predicting that 23% of Marion County's new employment will locate in Woodburn by 2020.[2] Marion County Farm Bureau objects to Woodburn including more land in their UGB expansion than what can be reasonably justified. Other cities in Marion County that are also pursuing and expecting employment growth, resulting in an overall surplus of land slated for development throughout the County.

Marion County Farm Bureau serves to support the interests of Marion County's leading industry, agriculture. Agricultural production relies on available, affordable land protected from the property speculation and price inflation of urban development. Marion County Farm Bureau is concerned that Woodburn's development strategy emphasizes attracting new industries to the city that will be competing for the large, flat parcels of land that are currently in viable agricultural production. Agricultural land is industrial land, land that is supporting a successful portion of our County's economy. Marion County Farm Bureau objects to Woodburn's plan to convert farmland to other industrial uses.

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necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones. [1973 c.503 §1]

[2] Woodburn Economic Opportunities Analysis, Table 2-10.

In particular, setting aside a large block of productive farmland on speculation that high-tech industry such as silicon chip fabrication can be lured to locate in Woodburn, appears to undermine the importance of the County's top revenue producing industry. Over the past decade Oregon agricultural exports have grown substantially, even in years when high tech exports have declined. Marion County Farm Bureau recognizes the importance of Woodburn's location in the center of Marion County farmland and seeks to support the sustainability of agriculture and agricultural employment in Woodburn.

Marion County Farm Bureau objects to the inclusion of prime farm land in Woodburn's UGB expansion. Oregon Revised Statute (ORS) Chapter 197.298 dictates priority factors for bringing land into a UGB. The statute requires that land of lower soil classification be included in a UGB before land of higher soil classification.[3] If Woodburn can prove a factual basis for needing to include more land, it should expand further south onto the lands of lower soil quality. Whereas the farming industry depends on rich soil, prime farm land should not be squandered on industries that do not require a higher soil quality to generate revenue. Marion County Farm Bureau wishes to preserve the highest quality of lands for valuable farm production.

We believe that UGB expansion is not an automatic right. Any boundary expansion on land protected under Goal 3 must not impair the agricultural environment and infrastructure needed to produce food and fiber for current and future generations. Marion County Farm Bureau believes, (Farm Bureau Policy 3.800) the expansion of a UGB should not occur on land(s):

- That is predominantly irrigated or non irrigated soil classes I, II and irrigated class III and IV soils in western Oregon;
- Parcels that are predominantly soils that, if irrigated, are capable of producing the average of other irrigated land in the area;
- Any parcels that are predominantly soils capable of producing the average non irrigated yield for the county; and
- Any soils that the county determines to be necessary to support the agricultural community.
- Exceptions should include parcels that are smaller than the applicable minimum lot size *and* at least 75% of its perimeter is contiguous to a UGB, urban reserve or exception area, or soils not listed in ORS 215.710.

In conclusion, Marion County Farm Bureau objects to the excessive amount of land being added to Woodburn's UGB; the removal of protections on agricultural land and the subsequent conversion of agricultural land to other industrial uses; and the location of

[3] Oregon Revised Statutes Chapter 197.298 2

refuse to acknowledge Woodburn's periodic review plan amendments and Woodburn and Marion County's adoption of ordinances approving these amendments. The Commission should remand the UGB expansion to the City of Woodburn and Marion County with instructions to correct the parts of the proposal that are inconsistent with Oregon Revised Statutes, Oregon Administrative Rules and Statewide Planning Goals by reducing the size of the expansion and protecting the highest class soils.

Respectfully,

Dan Goffin

Dan Goffin, President
Marion County Farm Bureau

LAW OFFICE OF
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A PROFESSIONAL CORPORATION

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December 20, 2010

Land Conservation and Development
Commission
635 Capitol Street, Suite 150
Salem, OR 97301

VIA FIRST CLASS MAIL AND
E-MAIL TO steve.oulman@state.or.us

Re: Court of Appeals Remand of Woodburn Periodic Review Order LCDC 07WKTASK001720
Comments on Draft Commission Order

Dear Commissioners:

This letter is submitted on behalf of Opus Northwest, LLC (Opus). Opus participated in the periodic review proceeding that resulted in LCDC Order 07WKTASK001720, and as a respondent in the Court of Appeals case that resulted in the remand of that Order. Opus appreciates the opportunity to submit written comments on your staff's draft of a new order to be issued regarding Woodburn Periodic Review Work Task 2 and UGB Amendment on remand.

Opus thinks the Draft Order's Findings of Fact and Conclusions are responsive to the concerns expressed by the Court of Appeals, present the Commission's reasoning more clearly and cite supporting evidence more thoroughly than the original order. Opus also supports adoption of the policy memorandum and suggested edits to the Draft Order submitted by the City of Woodburn, as providing additional support for the Commission's decision.

Opus would also like to propose two relatively minor changes to the findings in the Draft Order on Issue 2 (UGB location). First, Opus suggests that the final sentence of the following paragraph on page 27 of the Draft Order be deleted:

> "The City's decision to provide industrial land with direct access to I-5 is consistent with the Goal 9 requirement for cities to identify their locational advantages. It would not serve the state's, the County's, or the City's economic development efforts to handicap Woodburn by limiting the City's ability to capitalize on its I-5 location. ~~For this reason, the Commission concludes that Woodburn has appropriately balanced the need for industrial development and preservation of agricultural land near the I-5 interchange.~~" (Deletion indicated with strikethrough.]

The sentence shown as deleted above is not essential to the decision, and could create the impression that the Commission has applied a general balancing test between the need for industrial development and the preservation of agricultural land, rather than basing its decision on ORS 197.298, Goal 14 and Goal 9.

The second change proposed by Opus is that the statutory citation at the end of the Issue 2 (e) Objections section, on page 31, be changed from ORA 197.298(3)(b) to ORS 197.298(3)(**c**). This appears to be merely a typo, as section (c) (Commission Findings, Reasoning and Conclusions cites only ORS 197.298(3)(**c**).

Thank you for your consideration of our comments and suggestions.

Sincerely,

Corinne C. Sherton

Corinne C. Sherton

cc: Richard Whitman (via e-mail only)
Steve Shipsey (via e-mail only)
Robert Shields (via e-mail only)
Mary Kyle McCurdy (via e-mail only)
Roger Alfred (via e-mail only)
Mark Shipman (via e-mail only)
Tom Parsons (via e-mail only)

IN THE COURT OF APPEALS OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, FRIENDS OF MARION COUNTY, LOLITA CARL, KATHLEEN CARL, DIANE MIKKELSON, CARLA MIKKELSON, and MARION COUNTY FARM BUREAU,
Petitioners,

v.

LAND CONSERVATION AND DEVELOPMENT COMMISSION; OPUS NORTHWEST, LLC; CITY OF WOODBURN; FESSLER FAMILY, LLC; MARION COUNTY; and RENAISSANCE CUSTOM HOMES, LLC,
Respondents.

Land Conservation and Development Commission
07WKTASK001720

A135375

APPELLATE JUDGMENT

Argued and submitted on May 28, 2009.

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

Robin Rojas McIntyre, Assistant Attorney General, argued the cause for respondent Land Conservation and Development Commission.

Corinne C. Sherton argued the cause for respondent Opus Northwest, LLC.

N. Robert Shields argued the cause for respondents City of Woodburn and Marion County. With him on the joint brief was Jane Ellen Stonecipher.

No appearance for respondent Fessler Family, LLC.

No appearance for respondent Renaissance Custom Homes, LLC.

Before Haselton, Presiding Judge, and Armstrong and Rosenblum, Judges.

HASELTON, P. J.

REVERSED AND REMANDED FOR RECONSIDERATION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Petitioners [X] No costs allowed.

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SALEM, OR 97301

Appellate Judgment
Effective Date: November 30, 2010