

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
REPORT ON CITY OF McMINTNVILLE  
URBAN GROWTH BOUNDARY**

**DLCD Order 001926**

April 9, 2021

**I. DECISION**

For the reasons explained in this report, the Department of the Land Conservation and Development (DLCD, or department) concludes that the submittal from the City of McMinnville (city) and Yamhill County, containing an urban growth boundary (UGB) amendment and supporting comprehensive plan amendments, complies with the requirements of the applicable statewide planning goals, statutes, and administrative rules. The submittal is approved.

**II. REVIEW PROCEDURES AND CRITERIA**

**A. Procedural Considerations**

As discussed in detail in Section III below, the city initiated the subject land use decisions in response to Work Task 1, which was established through the periodic review process for the City of McMinnville prior to January 1, 2016. The city provided notice of the proposed UGB amendment on June 4, 2003. The city adopted the McMinnville Growth Management and Urbanization Plan (MGMUP) and the Economic Opportunities Analysis on October 14, 2003. Consequently, the city has proceeded to address a remand from the Oregon Court of Appeals and from the Land Conservation and Development Commission (LCDC or commission) pursuant to statutes and administrative rules that were previously in effect as authorized by Oregon Laws 2016, chapter 81.<sup>1</sup> OAR 660-024-0000(2) authorizes the city to utilize prior provisions in Statewide Planning Goal 14.<sup>2</sup> The city's findings note that "[t]herefore, the City Council finds

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<sup>1</sup> Oregon Laws 2016, chapter 81, provides in part:

"Notwithstanding ORS 197A.320, a city outside of Metro that submitted to the Director of the Department of Land Conservation and Development, pursuant to ORS 197.610, a proposed change to an acknowledged comprehensive plan or a land use regulation that included an evaluation or an amendment of its urban growth boundary, or that received approval of a periodic review work program that included a work task to amend or evaluate its urban growth boundary pursuant to ORS 197.633, prior to January 1, 2016, but did not complete the evaluation or amendment of its urban growth boundary prior to January 1, 2016, may complete the evaluation or amendment pursuant to statutes and administrative rules in effect on June 30, 2013."

<sup>2</sup> OAR 660-024-0000(2), as in effect on June 30, 2013, provided:

"The rules in this division interpret Goal 14 as amended by the Land Conservation and Development Commission (LCDC or commission) on or after April 28, 2005, and are not applicable to plan amendments or land use decisions governed by previous versions of Goal 14 still in effect."

that it will complete the MGMUP UGB proposal based on the Goal 14 provisions that were in place prior to April 28, 2005, and the ORS 197.298 provisions that were in place prior to June 30, 2013.” Findings Report at 38.

ORS 197.626 to 197.650 and OAR 660-025-0175 authorize the director’s review of work submitted “in the manner provided for periodic review.” The director of DLCD has 120 days from the date of the city’s submittal to make a decision under ORS 197.633(5)(a) and OAR 660-025-0150(3). The director may approve the submittal, remand it, or refer the matter to the commission. OAR 660-025-0150(1). The director elected to make a decision in this case.

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

## **B. Validity of Objections**

The department received one letter identifying two objections to the submittal (see Attachment B). The first objection argues that the city’s rationale for including certain lands within the UGB in order to accommodate wastewater infrastructure is flawed, “because waste water could be satisfied without our class II soils by including class III or IV soils somewhere else, or by using sump pumps.” The second objection argues that the city should have evaluated the potential for additional housing production to meet residential needs as a result of the anticipated adoption of middle housing allowances required by passage of House Bill 2001 in 2019. Additionally, this objection asserts that city staff misinformed the City Council that they were prevented from considering new laws passed since 2013.

Regarding objections, OAR 660-025-0140 provides:

- “(2) *Persons who participated orally or in writing in the local process leading to the final decision may object to the local government's submittal. To be valid, objections must:*

  - “(a) *Be in writing and filed with the department's Salem office no later than 21 days from the date the local government sent the notice;*
  - “(b) *Clearly identify an alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;*
  - “(c) *Suggest specific revisions that would resolve the objection; and*
  - “(d) *Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.*

(3) *Objections that do not meet the requirements of section (2) of this rule will not be considered by the director or commission.”*

The department has determined that both of the objections satisfy the requirements of a valid objection in OAR 660-025-0140(2).

### **C. Substantive Criteria**

As noted above, the principal legal provisions that govern this review and decision are Statewide Planning Goal 14 (Urbanization), as it existed prior to April 28, 2005, and statutes and administrative rules in effect on June 30, 2013, including ORS 197.298.

#### **1. Statewide Planning Goal 14 (prior to April 28, 2005)**

The relevant Goal 14 provisions that were in place prior to April 28, 2005, are noted below:

*“Goal 14 (Urbanization), OAR 660-015-0000(14), provides particular standards for setting or changing a UGB.*

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

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

Statewide Planning Goal 14 is: “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.” Compliance with Goal 14 is guided by administrative rules regarding housing (OAR chapter 660, division 8), economic development (OAR chapter 660, division 9), and urban growth boundaries (OAR chapter 660, division 24). However, Division 24 does not apply to this review, because it was adopted after April 28, 2005 (see footnote 2). Relevant considerations for planning for expanded

urban areas are also found in the administrative rules regarding public facilities planning (OAR chapter 660, division 11), transportation (OAR chapter 660, division 12), and natural resources (OAR chapter 660, division 23).

## **2. Oregon Revised Statutes**

ORS 197.296 sets out requirements for demonstrating that the UGB contains a 20-year supply of buildable residential land. These requirements address buildable lands inventories, housing needs analyses, and planning and zoning of residential lands. This statute directs, along with the need factors of Goal 14, how the city is to calculate its residential land needs.

Once land need has been established, determining where to expand the UGB is governed by the priority of lands in *former* ORS 197.298 (in place prior to June 30, 2013) along with boundary location factors in Goal 14 as noted above (in place prior to April 28, 2005).

*Former* ORS 197.298 that was in place prior to June 30, 2013 provides as follows:

*“(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.*

*“(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) High 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 of 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 with a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.”

#### **D. Scope of Remanded Decision**

As detailed in the “Background” in Section III below, the city’s submittal addresses the Court of Appeals’ remand of the commission’s approval order in *1000 Friends of Oregon v. Land Conservation and Development Commission and City of McMinnville*, 244 Or App 239, 259 P3d 1021 (2011) (*McMinnville*) and the associated commission remand of the city’s UGB submittal, issued on February 29, 2012 (see Attachment A). In the LCDC remand letter, the commission states, “On remand, the City of McMinnville must either determine its land use needs and apply ORS 197.298 and Goal 14 in the manner announced by the court’s decision, or otherwise fulfill the requirements of accommodating its identified needs in compliance with the statewide planning goals and consistent with the court’s decision.”

In summary, the Court of Appeals held that the commission erred in finding that McMinnville had followed the appropriate process for quantifying its residential land needs, and then applying ORS 197.298(1) and (3) to each of the quantified needs. Additionally, the court held that the city had excluded land from further consideration under ORS 197.298(1) for “immaterial reasons.” The court concluded by providing the following direction:

*“On remand, LCDC should respond to petitioners’ contentions by making additional findings or taking appropriate action in its review of the city’s submissions to (1) determine what particular and quantified land use needs are to be accommodated by any additional land to be added to the McMinnville UGB; (2) apply ORS 197.298 to determine the land available to accommodate those quantified land use needs; (3) apply Goal 14 to justify the inclusion of suitable land in any amended UGB; and (4) take any other necessary action under a correct interpretation of the governing standards, including a determination of whether the city’s submission, “on the whole, conform[s] with the purposes of the goals and any failure to meeting individual goal requirements is technical or minor in nature” under ORS 197.747.”<sup>3</sup> McMinnville, 244 Or App at 287-288.*

Consequently, the city could limit its response to the remanded decision to the tasks outlined above.

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<sup>3</sup> ORS 197.747 was renumbered to ORS 197.627 in 2019.

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

In response to periodic review Task 1, the McMinnville City Council adopted the McMinnville Growth Management and Urbanization Plan (MGMUP) and the Economic Opportunities Analysis on October 14, 2003. On October 16, 2003, Yamhill County adopted Ordinance 730, supporting the plan amendments. On October 20, 2003, notice of the decision was provided to DLCD and interested parties.

On April 22 and September 10, 2004, the commission held hearings on appeal of the department's approval order to consider objections to the local government decisions. LCDC acknowledged some elements of the MGMUP, and remanded other elements.

On January 11, 2006, the city adopted amendments to the MGMUP and related implementing measures to address the issues identified by the LCDC. Yamhill County adopted an ordinance supporting the plan amendments on October 25, 2006.

On November 8, 2006, LCDC approved the MGMUP, as amended, with Approval Order 06-WKTASK 001709. On August 1, 2007, 1000 Friends of Oregon, Friends of Yamhill County, and Ilisa Perse sought judicial review of LCDC's approval decision by the Court of Appeals. The court granted multiple time extensions to allow time for parties to resolve disputes, but ultimately heard oral arguments in 2010, and issued a decision reversing and remanding the commission's approval of portions of the MGMUP on July 13, 2011. On February 29, 2012, LCDC rescinded its approval of the MGMUP and issued a remand order to the city (Remand Order 12-WKTASK-001814).

On January 18, 2013, the McMinnville City Council adopted Ordinance 4961, which suspended further work on the MGMUP and UGB amendment. The ordinance repealed Ordinance 4841 entirely and modified portions of the MGMUP amendments that were approved in Ordinance 4840. The ordinance left in place the "Phase 1" UGB amendments that added 259 acres of land in three exception areas and a school site. The ordinance also left in place the Population Forecast, 2001 Residential Land Need Analysis, and the 2003 Economic Opportunities Analysis that the city relied on to determine urban land needs.

In January 2020, the City Council directed staff to resume work on the MGMUP and UGB amendment after confirming with DLCD that the city is still subject to the revised 1994 Periodic Review Work Program item to update the comprehensive plan to address identified land needs. The City Council elected to prepare a revised Urbanization element that would respond to the court and LCDC remand decisions. The court's remand order is limited and primarily effects the selection of land to include in the UGB. The city referred to the remand work as the "Phase II UGB amendments."

On October 27, 2020, the city provided notice to DLCD that it would take up amendments to the comprehensive plan to consider and address the LCDC remand order. On November 10, 2020, the city sent individual notice of upcoming public hearings to all property owners directly affected by the proposed UGB amendments and to nearby property owners. General notice of

the public hearings was published in the McMinnville News Register on November 24 and 27 of 2020.

The City Council held three public hearings to consider the Phase II UGB amendments on December 1, 2, and 3 of 2020. A second reading of the ordinance (Ordinance 5098) occurred on December 8, 2020, and the City Council voted to approve the Phase II UGB amendments. On December 10, 2020, the Yamhill County Board of Commissioners adopted Ordinance 912, adopting the MGMUP and amended McMinnville urban growth boundary as part of the Yamhill County Comprehensive Plan.

Passage of Ordinance 5098 resulted in the following:

- 1) Adoption of the “McMinnville Growth Management and Urbanization Plan (MGMUP), December 2020” and its appendices. The action:
  - a. Amends the urbanization element (Volume 1) of the McMinnville Comprehensive Plan;
  - b. Amends the goals, policies, and proposals of Chapter II (Natural Resources), Chapter IV (Economy), Chapter V (Housing), Chapter VII (Facilities and Services), and Chapter IX (Urbanization) of the McMinnville Comprehensive Plan per Appendix D of the MGMUP; and
  - c. Adopts amendments to the McMinnville Municipal Code adding a Neighborhood Activity Center Planned Development Overlay District, a new Chapter 17.22, “High Density Residential Zone” per Appendix E of the MGMUP.
  - d. Appendix A and Appendix B provide the factual basis for the population, housing, and employment land needs to which the plan responds. Appendices C, D, E, and G provide supporting evidence for the application of the urban growth boundary land selection analysis and related implementation policies and procedures. Appendix F provides the Comprehensive Plan Map amendments for the urban growth boundary amendment.
- 2) Amendment of the McMinnville Comprehensive Plan Map to add land to the UGB. The UGB amendment results in the inclusion of an additional 862.40 gross acres and 662.40 gross buildable acres in the McMinnville UGB.
- 3) Amendment of the McMinnville Comprehensive Plan Map by designating or re-designating land within the UGB with Comprehensive Plan designations for both Phase I and Phase II of the UGB expansion. The Comprehensive Plan designations include Urban Holding, Industrial, Commercial, and Floodplain, as identified in Exhibit B of Ordinance 5098.

On December 11, 2020, the city provided notice to DLCD of the adopted change to its UGB. Also on December 11, 2020, the city mailed notice to all interested persons who participated or requested notification orally or in writing during the city or county decisions on this matter. The city provided notice consistent with the requirements of OAR 660-025-0140. Based on the date notices were sent, the deadline to file any objections to the local decisions on this matter was January 2, 2021; the department allowed an additional day for submittal due to the New Year’s Day holiday on January 1, 2021 consistent with ORS 174.120(2)(a).

Prior to the January 2, 2021 deadline, the department received an objection letter from Jennifer Redmond-Noble and Janet Lee Redmond on December 31, 2020. Both Ms. Redmond-Noble and Ms. Redmond had provided testimony at the public hearings held to consider the Phase II UGB amendments. The letter identifies two objections to the McMinnville Phase II UGB amendments.

#### **IV. DEPARTMENT REVIEW**

The department has reviewed the Court of Appeals remand decision, which announces a methodology for addressing *former* ORS 197.298 as construed by the court in sequence with the applicable Goal 14 location factors and the exceptions provisions in Goal 2 and ORS 197.732.<sup>4</sup>

The department notes that the analysis contained in Appendix C of the UGB decision details the process for identifying and evaluating study areas as required by *former* ORS 197.298 and the Goal 14 factors. Specifically, the city describes its methodology for this analysis in pages C20 through C30 of Appendix C, which is followed by the city's documentation of the described analysis.

Before beginning the location analysis, McMinnville first looked at the city's land need, noting that the court affirmed LCDC's approval of the city need determination. The city updated that land need to include changes related to McMinnville School District property, a permanent conservation easement on otherwise buildable lands, and identification of lands needed for industrial uses due to repurposing of existing industrial lands for commercial land uses inside the existing UGB. All of these modifications are appropriate adjustments for changed circumstances since the original submittal and commission and court decisions. Submittal, Appendix C at C20-C21 and C31-C35.

The city then established a one-mile boundary from the existing UGB for the UGB study area. This is consistent with the city's prior analysis, which was affirmed by LCDC and the court. Submittal, Appendix C at C21.

Next, the city identified land within the established study area that is unbuildable for urban uses. The city employed the definition of "buildable lands" in OAR 660-008-0005(2) to exclude lands with steep slopes, hazards, environmental constraints, and unavailability of public services from those available to meet its identified need for housing. Submittal, Appendix C at C22 and C36-C39.

Then the city defined primary study areas, 31 of them, within the one-mile boundary, and mapped the study areas. The city correctly defined study areas using the predominant type of land use in an area, divisions resulting from natural features such as waterways, and other

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<sup>4</sup> OAR 660-024-0020 and OAR 660-004-0010(1) currently specify that an exception is not required for a UGB amendment; however, this decision is not subject to the current version of these rules. Therefore, the city made findings for a goal exception as part of the UGB amendment process. OAR 660-004-0010(1) clarifies that the Goal 2 exceptions process applies to UGB amendments initiated prior to these changes.

physical barriers such as roadways. The city also correctly created subareas based upon the priority of lands to be added to a UGB required by *former* ORS 197.298. Submittal, Appendix C at C22-C23 and C40-C47.

McMinnville then developed screening criteria, measures that reinforced the planning principles and that allowed the city to objectively assess the impact of urbanization of the land in a study area taking into account each location factor in Goal 14. The city then rated each subarea against the screening criteria, using objective measurement tools. Submittal, Appendix C at C23-C24. The city consulted technical and academic studies, as well as using its mapping tools and comprehensive plan policies, to develop these criteria. Technical studies used by the city to inform the screening criteria are found in the Submittal Appendix C, Attachment 2. Academic studies used by the city to inform the screening criteria are found in the Submittal, Appendix C, Attachment 3. These screening criteria correctly apply the requirements of Goal 14 and applicable state law.

McMinnville then applied the screening criteria to each of the delineated subareas. The process required the city to start with the provisions of *former* ORS 197.298, which sets priorities for lands to be brought into the UGB, and then consider some, but not all, of the Goal 14 criteria (the criteria that the court determined did not replicate provisions of ORS 197.298, Factor 5 related to economic, social, environmental, and energy consequences and Factor 7 related to compatibility with nearby agricultural lands) in determining the priority of lands for consideration. The city then applied all five locational factors in Goal 14 to the subareas in priority of consideration. The department determined that Appendix C at C25-C30, of the submittal demonstrates that the city successfully navigated this process.

The department has reviewed this analysis and finds it to be consistent with the requirements of ORS 197.298 and the Goal 14 factors, as announced in the Court of Appeals remand decision.

## **V. ANALYSIS OF OBJECTIONS**

The objection letter from Ms. Redmond-Noble and Ms. Redmond (Objectors) presented two objections to the UGB amendments.

### **A. First Objection – Subject Properties not Necessary for Sewer Service to Adjacent Properties**

This objection asserts that all lands containing class II soils that have been included in the UGB to accommodate waste water infrastructure (including the two study areas owned by the Objectors, identified as W-OSR2-R2 and W-OSR2-R1) should be removed from the UGB because necessary waste water services could be provided on land containing class III and IV soils somewhere else, or through the use of sump pumps on adjacent lands without class II soils. The city's findings note that one reason for inclusion of W-OSR2 (the study area in which the lands owned by Objectors is located) in the UGB is to provide services to higher priority lands and to include higher priority lands. Urbanization Report at C-318. Specifically, Study Area WH-S contains predominantly class III soils, and is consequently a higher priority for inclusion within the UGB than lands with class II soils, per *former* ORS 197.298. Study Area WH-S is

located to the northwest of the two study areas owned by the Objectors. Due to hills located to the north and east of the property, the city determined that gravity-flow waste water service is most easily provided through the W-OSR2-R2 and W-OSR2-R1 sites to the southeast.

The Objectors' recommended resolution is as follows:

*"Require that the resubmitted Yamhill County Comprehensive Land Use Plan and Yamhill County Comprehensive Land Use Plan Map remove from the McMinnville Urban Growth Boundary all of the "orange" lands that are class II lands that are being added for "Waste Water infrastructure" because waste water could be satisfied without our class II soils by including class III and IV soils somewhere else, or by using sump pumps. This includes, but is not limited to, the properties labeled as W-OSR2-R2 (tax lot R4430 01900) and W-OSR2-R1 (tax lot R4430 01800)."*

**Department Response:** The objection provides no specificity regarding how or where waste water services could be provided on adjacent lands containing class III or IV soils. Consequently, there is not a sufficient basis to evaluate this alternative option for purposes of determining whether Objectors' suggested specific revisions would resolve the objection for all similarly situated properties with class II soils. In relation to the question of using sump pumps to provide waste water service to neighboring properties, the analysis provided by the Objectors relates specifically to the identification of W-OSR2-R2 and W-OSR2-R1 as necessary to provide gravity-flow waste water service to the study area identified as WH-S. No other site-specific analysis is provided for similarly situated lands with class II soils, therefore the department finds no basis to look beyond the study areas owned by the Objectors.

At this point it is necessary to refer to the Court of Appeals decision regarding how locational criteria are to be applied, per *former* ORS 197.298(1). The court concluded as follows:

*"Based upon the text and context of ORS 197.298, we conclude that not all of the Goal 14 locational criteria are applied under ORS 197.298(1) to determine if priority land "is inadequate to accommodate the amount of land needed." Instead, only the consequences and compatibility factors of Goal 2, Part II, and Goal 14 are applied. Whether the priority land is inadequate due to the unavailability of public facilities and services or because of land use efficiencies is determined by the separate application of ORS 197.298(3). Thus, we agree with petitioners' general claim that LCDC improperly applied ORS 197.298(1) in approving the city's resort to lower-priority land because of the relatively higher costs of providing a particular public facility or service to the higher priority area." McMinnville, 244 Or App at 265.*

To implement this direction, the city developed a "first step" scoring methodology (see Urbanization Report at C-314 – C-335 regarding analysis of Study Area WOSR-2, which includes W-OSR2-R1 and W-OSR2-R2a and R2b) to apply the environmental, energy, economic, and social consequences considerations of Goal 2 and Goal 14, Factor 5; and the agricultural compatibility considerations of Goal 14, Factor 7. The city determined that any study area scoring less than 1.5 (on a scale from 1 – 3) as the average score of composite

screening criteria for Factors 5 or 7 would be removed from consideration for inclusion within the UGB. The entirety of Study Area WOSR-2 received an average score of 3.0 on Factor 5 criteria and 1.5 on Factor 7 criteria. The city determined that removing the portion of the study area south of Cozine Creek from the UGB study area would improve the Factor 7 score related to screening from agricultural activities to 2.0. This reduced portion of Study Area WOSR-2 is referred to as the “Mitigated Option,” which is the area the city identified for inclusion within the UGB. Based on this “first step” scoring system, the city determined that the three identified study areas with higher quality resource lands (class II and lower soils) should be considered for inclusion within the UGB, including SW-2, W-OSR2, and SW-06. Urbanization Report at C-296.

The “first step” analysis described above is consistent with the court remand direction because it was limited to the parameters identified from *former* ORS 197.298(1), limited to the “consequences and compatibility factors of Goal 2, Part II, and Goal 14.” As articulated in the Court of Appeals remand decision, the second step of analysis consistent with *former* ORS 197.298 allows a city to include land of a lower priority in the UGB if land of higher priority is found to be inadequate to accommodate the amount of land needed based on one of three determinations under *former* ORS 197.298(3) or the environmental, energy, economic, and social consequences considerations of Goal 2 and Goal 14, Factor 5; and the agricultural compatibility considerations of Goal 14, Factor 7.

For Study Area WOSR2, findings in relation to *former* ORS 197.298(3) may be found on Page C-318 of the Urbanization Report. Those findings are summarized as follows:

*“The City finds that the provisions of ORS 197.298(3) apply to the W-OSR2 study area because there is unmet need remaining after evaluating higher priority areas for inclusion. The City further finds that inclusion of W-OSR2 is needed to provide services to higher priority lands and to include higher priority lands.”*

It is important to note that these findings first reference a need to include W-OSR2 in the UGB based on ORS 197.298(1), ORS 197.298(3), and the environmental, energy, economic, and social consequences considerations of Goal 2 and Goal 14, Factor 5; and the agricultural compatibility considerations of Goal 14, Factor 7 regarding the lack of sufficient higher priority lands to meet identified needs. Only then do the findings add consideration under ORS 197.298(3)(c), regarding the inclusion of lower priority lands to provide services to higher priority lands, which is also a basis for inclusion of W-OSR2 within the UGB.<sup>5</sup> Consequently,

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<sup>5</sup> This is more fully explained, with references to the city’s submitted Urbanization Report, in the city’s March 19, 2021 response to the objection:

The City began its adequacy review with exception area lands because the City does not have identified urban reserve areas. See Chapter 7 of the Urbanization Report. Through the adequacy review, approximately 91 acres of exception area lands were identified as adequate. The City then moved on to lower quality resource lands, that is, lands with Class III or Class IV soils. The City identified another 180.30 gross buildable acres of land that met the adequacy requirements (see Urbanization Report, Chapter 8), leaving a balance of 393.80 gross buildable areas still needed.

the implication by the Objectors that Study Areas W-OSR2-R2 and W-OSR2-R1 were included in the UGB solely to provide waste water service to neighboring properties is incorrect. Therefore, the question of whether other means are available for providing waste water service to neighboring properties is not the determinative factor as to whether the two properties should be included within the UGB. Objectors do not make an objection to the city's analysis found in Chapters 7 and 8 of the Urbanization Report.

Additionally, Objectors' assertions that the city has not properly applied *former* ORS 197.298(3)(c) is not borne out by the record or judicial precedent. The Court of Appeals discussed *former* ORS 197.298(3)(c) in *City of West Linn v. LCDC*, 201 Or App 419, 119 P3d 285 (2005). The court rejected a challenge to a Metro UGB amendment that, similarly to McMinnville, included lower priority agricultural land in an urban growth boundary expansion area pursuant to findings that the agricultural land was necessary in order to include or provide services to higher priority exception lands. The court determined that Metro's findings in that case, "adequately explain why efficiency of land uses within the proposed UGB expansion area requires inclusion of the lower priority land," and that the petitioner did "not offer a convincing argument that LCDC erred in accepting those reasons as adequate." *City of West Linn v. LCDC*, 201 Or App at 444.

The submittal provides a detailed serviceability analysis for all potential UGB expansion study areas in Attachment 3b to Appendix C of the Urbanization Report. This serviceability analysis addresses the question of wastewater service in the context of the step three analysis of Goal 14 Locational Factors. In the Serviceability Analysis prepared by Jacobs Engineering, dated October 30, 2020, the consultant details the methodology used to evaluate infrastructure serviceability for water, sewer, stormwater, and transportation infrastructure that the city would need to serve all potential UGB expansion areas. The serviceability analysis included consideration of infrastructure service costs and included the following hierarchy for sewer serviceability from easiest to most challenging to serve. Urbanization Report, Appendix C, Attachment 3b at 7.

- Short length local gravity extension
- Intermediate length gravity extension
- Long gravity extension
- Regional/service area pump station, and
- Long gravity extension and regional pump station

The serviceability analysis assigns scores for each infrastructure type (water, sewer, stormwater, and transportation) for each candidate UGB expansion study area. Ultimately, composite scores for all four infrastructure types are calculated for each UGB expansion study area. Both Study Area W-OSR2-R2 and Study Area W-OSR2-R1 received a composite serviceability score of three, which indicates areas most easily served. Study Area WH-S received a composite serviceability score of two, which indicates medium serviceability. The Director finds that the

city's analysis as required by *former* ORS 197.298(3)(c) provides sufficient factual basis to support the city's decision.

In conclusion, the department finds that the provision of gravity-flow sewer service through the subject properties is not the sole basis for inclusion of the subject properties in the McMinnville UGB. The submittal demonstrates that the subject properties were appropriately included for consideration consistent with the provisions in *former* ORS 197.298(1) and the direction from the remand decision from the Court of Appeals, with a finding that the identified land needs cannot be reasonably accommodated on higher priority lands. In addition, the city has demonstrated that the provisions of ORS 197.298(3)(c) justify the city's decision to provide a sewer infrastructure pathway to serve abutting higher priority land. The director rejects this objection.

**B. Second Objection – Failure to Account for “Middle Housing” Production Resulting from Requirements of House Bill 2001 (2019)**

Objectors argue that the city failed to adequately address direction from the Court of Appeals remand decision to “separately quantify its needs for low-density residential land, higher-density residential land, and mixed-use land (Step One) and then apply ORS 197.298(1) and (3) to each of those quantified needs (Step Two)[.]” *McMinnville*, 244 Or App at 287. Specifically, this objection asserts that the city should have evaluated the potential for “Middle Housing” to address some of the identified residential land needs.<sup>6</sup> Additionally, the objection asserts that decision-makers were misinformed regarding the operation of Oregon Laws 2016, chapter 81. *See* Footnote 1.

This objection asserts that the City Planning Director and City Attorney misled the City Council in stating that the City Council was required to apply only the rules in effect as of the date of initiation of the UGB expansion decision and not later, noting that Oregon Laws 2016, chapter 81, allows, but does not require, a local government to continue analysis based on the rules in place on June 30, 2013.

The Objectors' recommended resolution is as follows:

*“We request that LCDC send Ordinances 912 which amended the Yamhill County Comprehensive Land Use Plan and Yamhill County Comprehensive Land Use Plan Map to reflect the decisions made by the City of McMinnville in its adoption of Ordinance 5098 back to McMinnville and instruct the City Council that they MAY use HB 2001 to lower the inventory necessary to infill within the existing UGB which could justify removing our 28 acres and additional Class II soils in adjoining farms from the proposed*

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<sup>6</sup> Due to the passage of House Bill 2001 in 2019 (commonly referred to as the “Middle Housing Bill”) many Oregon cities, including McMinnville, are required to allow middle housing types on lots and within zones where single family detached dwellings are allowed. Allowed “middle housing types” include duplexes, triplexes, quadplexes, townhomes, and cottage cluster development. The rules requiring local government adoption of middle housing measures may be found in OAR 660-046-0000 through 660-046-0235. McMinnville is required to adopt middle housing allowances, or to directly implement the “Large City Model Code,” by June 30, 2022, per OAR 660-046-0040(4).

*Urban Growth Boundary. Require that the McMinnville City Council and Yamhill County Commissioners be provided information regarding these considerations and that a plan be presented for their consideration that considers the impact of House Bill 2001, specifically the expected increase in residential capacity above achieved density. We believe that once this analysis is completed the current 662.40 acres of class II soil lands that are in the proposed UGB expansion can be reduced significantly, allowing our 28 acres (tax lot R4430 01900) and the adjoining parcel (tax lot R4430 01800) of class II soil to be removed from the proposed UGB because they are not needed to accommodate the housing as forecasted.”*

### **Department Response:**

McMinnville’s decision to address the remanded decision from LCDC from 2012, as discussed earlier in this report, is authorized by Oregon Laws 2016, chapter 81. HB 2001, requiring cities in Oregon such as McMinnville to allow middle housing in residential zoning districts, is codified as an amendment to ORS 197.296(6). This amendment allows cities such as McMinnville to assume up to a three percent increase in residential capacity as part of a residential land need analysis resulting from city actions to increase density of residential development in existing developed areas, and a greater increase if the city can provide “quantifiable validation” to justify such an increase.<sup>7</sup> ORS 197.296(6) does not require McMinnville or other cities to make such assumptions when calculating residential land need and a residential buildable lands inventory.

Relating to the city’s decision not to update its residential buildable lands inventory to account for the potential for future middle housing development, the city throughout this process was faced with the choice of answering the 2012 remanded urban growth boundary decision using the

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<sup>7</sup> ORS 197.296(6) provides in part:

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

\*\*\* \*

“(b) Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall adopt findings regarding the density expectations assumed to result from measures adopted under this paragraph based upon the factors listed in ORS 197.303 (2) and data in subsection (5)(a) of this section. The density expectations may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures. For a local government located outside of a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region. For a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the metropolitan service district.”

information in that record or updating that record. Oregon Laws 2016, chapter 81, provided the city that choice. The city's Response to Objection details some of the decision points at which time the City Council discussed and gave the city's planning department direction on how to proceed.<sup>8</sup> That direction was consistently to use the existing factual database, because introducing additional data and analysis into the record would: 1) open up the record to challenges and appeals of the new data; and 2) likely increase the UGB land need due to reduction in capacity assumptions on 259 acres of exception land brought into the UGB in 2004, and the loss of the density that was envisioned in the neighborhood activity centers.

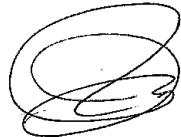
In reviewing the record, the Director determines that the McMinnville City Council, throughout the process, was presented with the alternatives of either relying on existing information in the record to make its UGB decision or to access additional information, and consistently decided to rely on existing information. This record of the proceedings carries more weight than isolated quotes from the proceedings provided by the objector. Even assuming that the city mistakenly determined it did not have the choice to implement middle housing at this time, the objection would not establish that the city was required to do so prior to June of 2022; thus, the objection does not provide a basis for remanding the submittal.

Finally, the objection does not establish that the city's utilization of the authority provided in Oregon Laws 2016, chapter 81 is erroneous as a matter of law. Therefore, the director rejects this objection.

## **VI. CONCLUSION AND DECISION**

The submittal from the City of McMinnville and Yamhill County containing an urban growth boundary amendment and supporting comprehensive plan amendments complies with the requirements of the applicable statewide planning goals, statutes, and administrative rules. The submittal is approved.

**DATED THIS 9TH DAY OF APRIL 2021.**



Jim Rue, Director  
Department of Land Conservation and Development

**ATTACHMENT A:**

DLCD REMAND LETTER, FEBRUARY 29, 2012.

**ATTACHMENT B:**  
MS. REDMOND

OBJECTION LETTER FROM MS. REDMOND-NOBLE AND

<sup>8</sup> McMinnville Response to Objection, March 19, 2021, at 8-10.

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

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

## History and Summary of Task 1 and UGB amendment

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

## Recitals

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

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

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

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

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

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

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

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

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

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

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

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

#### Findings of Fact

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

#### Conclusion

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

THEREFORE, IT IS ORDERED THAT:

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

DATED THIS 29th DAY OF FEBRUARY, 2012.

FOR THE COMMISSION:



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Jim Rue, Acting Director  
Department of Land  
Conservation and Development

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

December 31, 2020

**Attention: Public Review Specialist**  
**Department of Land Conservation and Development**  
**635 Capitol Street, NE**  
**Suite 150**  
**Salem, OR 97301**

Subject: Objection to City of McMinnville and Yamhill County submittal to amend the McMinnville Urban Growth Boundary.

Public Review Specialist:

On December 11, 2020, the City of McMinnville mailed notice of adoption of City of McMinnville Ordinance 5098 and Yamhill County Ordinance 912 which amended the Yamhill County Comprehensive Land Use Plan and Yamhill County Comprehensive Land Use Plan Map to reflect the decisions made by the City of McMinnville in its adoption of Ordinance 5098. These amendments have been submitted to DLCD pursuant to ORS 197.615, ORS 197.628 to 197.650.

Jennifer Redmond-Noble provided oral testimony at the public hearings on the *McMinnville Growth Management and Urbanization Plan* testimony before the McMinnville City Council objecting to the proposed McMinnville Urban Growth Boundary change. Janet Lee Redmond submitted written testimony at the public hearings on the *McMinnville Growth Management and Urbanization Plan* objecting to the proposed McMinnville Urban Growth Boundary change to both the McMinnville City Council and The Yamhill County Board of Commissioners. We collectively represented ourselves and our 146-year-old family owned and operated farm. We thus have standing to file objections to the above referenced ordinances with the Department of Land Conservation and Development.

A brief history and our objections, including the specific goals and statutes we believe have been violated are explained below. Our proposed overall resolution to our objections, is that the Department and/or Commission should not acknowledge the submittal by the City of McMinnville, but rather return it to the City and County with instructions to develop a proposal that is completely consistent with the relevant statutes, goals, and administrative rules. More specific recommendations are provided below for each objection.

#### **History:**

On July 13<sup>th</sup>, 2011, The Oregon Court of Appeals (COA) issued its decision to reverse the McMinnville remand that granted LCDC's approval of portions of the MGMUP. In the COA's conclusion it states that the "...commission erroneously interpreted ORS 197.298 by failing to require that the city first separately quantify its needs for low-density residential and, higher-density residential land, and mixed-use land (Step One) and then apply ORS 197.298(1) and (3) to each of those quantified needs (Step Two), and in permitting the city to exclude land from further consideration under ORS 197.298(1) for immaterial reasons. Further, correct application of ORS 197.298 would compel different actions by the commission in its evaluation of the city's justification for excluding particular exception and resource areas under ORS 197.298. Thus, a remand is appropriate under ORS 183.482(8)(a)(B) (allowing remand to an agency for "further action under a correct interpretation of the provision of law"). On remand, LCDC should respond

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

The City of McMinnville answered the remand by "pausing" and leaving in place the Population Forecast, 2001 Residential Land Need Analysis, and the 2003 Economic Opportunities Analysis that had been relied on to determine urban land needs. It also left in place the 259 acres of land in the three exception areas and a school site. This remand Order (Remand) is limited and primarily effects the selection of land to include in the UGB. The city also updated land needs, plan policies, and developed procedures to urbanize these land additions through subsequent planning steps.

### **Objections:**

First, we are not lawyers. Our objections follow the regulatory criteria for opposing the City's current UGB expansion plan using the plain language of the specific goal or regulation. Goal 1 of Oregon's land use provides lay people such as ourselves this opportunity without requiring additional legal research. Our sincere concern is for protecting our and surrounding farmland. We are objecting because this expansion of the Urban Growth Boundary is both excessive and it is our farm that is directly impacted. Our family has well over 100 years farming this land, it is the primary or a significant source of income for two families, and we have made significant investments in the land to keep it productive. However, we really appreciate the need for McMinnville to develop somewhere. We are all looking to do the same thing in the big picture; resist needlessly developing farmland while adding to the long-range housing needs by stabilizing inventory and costs.

We are not objecting to increasing the UGB per se. We are objecting to the way the Remand was interpreted that led to a higher than necessary target UGB expansion acreage. That larger than would be required acreage has needlessly caused the proposed UGB to overlay our and neighboring productive farm land. Goals and administrative rules that inappropriately prevented the City of McMinnville from considering House Bill 2001 when adding up its housing acreage necessary to satisfy the future needs of McMinnville. We feel that the 2011 Remand required the City to take into consideration Goal 14 and ORS 197.298 considerations in 2020 that would include HB 2001. We challenge The City of McMinnville's legal interpretation of HB 4126 and strongly object to the McMinnville Planning Director and legal staff telling the voting City Council members that they were legally forbidden (HB 4126) from considering HB 2001. We discuss specific deficiencies in the two specific objections presented below.

### **Objection 1:**

Our farmland and that adjacent to us is not a convenient sewer pathway. Throughout the testimony presented by the City Planning staff, our class II farmland was referred to as the land necessary to accommodate sewer lines for the Class III buildable acres called West Hills South. "In order to provide services to West Hill South, the sewer lines because of the way this area drains that are south and southeast of it have to be included in the Urban Growth Boundary..."

and those areas have to be included in order to be included in West Hills South." McMinnville Planning staff report 12/1/2020. In fact, the city has not fully demonstrated that it is necessary to accommodate the bigger development through our and neighboring land, it has only inferred it is less expensive to run sewer lines because of slope.

We are not going to annex our property to let someone dig up our Class II farmland as a sewer conduit for a neighboring housing development of class III soils. The next generation of our family have completed agricultural or related degrees and some have chosen to farm our land as their livelihood. There is no plan or desire to turn even a small part of our farm to a housing development, yet it appears the development of the West Hills South area would require us to accommodate sewer systems for a development. It appears that our land, included into the UGB, is added to provide less expensive sewer systems to the bigger development. It also gave the additional acreage their "sandbox" Remand calculations needed. ORS 198.298(c) requires the city to place our class II soil above their need to run sewer lines as they must first consider other measures, such as sump pumps to take care of the utility needs of the main development.

Goal 14 has you analyzing how proposed land can accommodate efficient utilities but it does not have you "taking" class II soils solely to accommodate nearby urban development on Class III and IV soils.

*"The only way to bring that in was to bring the south west properties that were just south of it to service it with waste water infrastructures. And so, when we looked at those properties, we were done, we never looked at class II or class I soils, because law would not let us do that."*

*"Once we acknowledged that we needed the orange lands just below West Hills South."*

**Heather Richards**, UGB Amendment Public Hearing #3; Dec 3, 2020.

The "orange" lands include our class II lands that are being added for "Waste Water infrastructure" that we are asking to be removed because waste water could be satisfied without our class II soils by including class III and IV soils somewhere else, or by using sump pumps.

The city does not have the right, nor should have assumed the right, to plan to crisscross our or other income producing fields for an urban sewer system when well known systems such as sump pumps are available to take care of the needs. We reason that our agricultural lands will remain necessary to permit farm practices to be undertaken on our adjacent or nearby agricultural lands. (Goal 14, factors 3 - 7) We cannot be expected to lop it off for development, thereby encumbering our other ag lands so as to accommodate a sewer system for non-agricultural lands we do not own. It's a matter of cost and expediency, not necessity as explained by staff. Pump stations are common usage and you do not need our land to accommodate the West Hills South development.

We bought up the issues of buffers and setbacks and the City responded that our 28 acres was being added for the purposes of being the buffer to the larger development. That presumes we will farm it. But they then state that our "wedge" would make it hard to farm. City Planning staff concluded that it would be very hard to have buffers on the large development because of the land inventory needs of the housing. Therefore, our 28 acres of farmland is being added as the

buffer making it un-useable for farming. Goal 14 says that farm and urban divide must be in sync, not the farmland needs to be sacrificed for adjacent housing.

**Recommended Resolution:**

Require that the resubmitted Yamhill County Comprehensive Land Use Plan and Yamhill County Comprehensive Land Use Plan Map remove from the McMinnville Urban Growth Boundary all of the “orange” lands that are class II lands that are being added for “Waste Water infrastructure” because waste water could be satisfied without our class II soils by including class III and IV soils somewhere else, or by using sump pumps. This includes, but is not limited to, the properties labeled as W-OSR2-R2 (tax lot R4430 01900) and W-OSR2-R1 (tax lot R4430 01800)

**Objection 2:**

Now that we have the issue specific to the specific parcels out of the way, we get to our broader objection. The COA 2013 Remand clearly states that LCDC erred in its certification of McMinnville’s UGB Plan. Here is the conclusion from the Remand.

“...commission erroneously interpreted ORS 197.298 by failing to require that the city first separately quantify its needs for low-density residential and, higher-density residential land, and mixed-use land (Step One) and then apply ORS 197.298(1) and (3) to each of those quantified needs (Step Two), and in permitting the city to exclude land from further consideration under ORS 197.298(1) for immaterial reasons. Further, correct application of ORS 197.298 would compel different actions by the commission in its evaluation of the city's justification for excluding particular exception and resource areas under ORS 197.298. Thus, a remand is appropriate under ORS 183.482(8)(a)(B) (allowing remand to an agency for "further action under a correct interpretation of the provision of law"). On remand, LCDC should respond to petitioners' contentions by making additional findings or taking appropriate action in its review of the city's submissions to (1) determine what particular and quantified land use needs are to be accommodated by any additional land to be added to the McMinnville UGB; (2) apply ORS 197.298 to determine the land available to accommodate those quantified land use needs; (3) apply Goal 14 to justify the inclusion of suitable land in any amended UGB; and (4) take any other necessary action under a correct interpretation of the governing standards, including a determination of whether the city's submission, "on the whole, conform[s] with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature" under ORS 197.747.”

Zeroing in on the salient COA conclusion “...to require that the city first separately quantify its needs for low-density residential and, higher-density residential land, and mixed-use land (Step One) ...”

We do not agree with the statement found on page 14 of the findings that:

“The City's updated and supplemented findings demonstrate that the revised UGB proposal resulting from the applying the Court's road map, fully address the single assignment of error, and correctly apply Goal 14 and the applicable statutes. The resulting proposed UGB and revised MGMUP are consistent with Goal 14.”

Given that the COA told the city to analyze Middle Housing in its Remand we are unsure how the City has claimed in its findings that they are fine with the Middle Housing analysis from before the Remand. Clearly the Remand requires the city to look again at high density housing. In 2013 the city repealed, by ordinance 40xx many of the appendixes but left in place the first two, which freezes the appendixes that would have the city otherwise re-qualify its housing needs in accordance with Goal 14. Furthermore, in its zeal to get this 20+ year UGB expansion conflict to a finale, the qualifying two factors of Goal 14 have been lopped off the analysis the city used to demonstrate need.

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

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

As the court of appeals made clear, these factors must be considered in addition to the statutes Goal 14 and ORS 196.298.

We ask that the City do as the Remand requires and analyze the need of high-density housing. The city has no authority to ignore the conclusions in the Remand and interpret the Remand order to only include a portion of Goal 14.

Even without assignment of errors 2) and 3) of the Remand, assignment 1) of the COA Remand conclusion says that the city must apply Goal 14 in its *Implementation Methodology* to justify the inclusion of suitable land in any amended UGB. It does not say to only use factors 3 through 7 of Goal 14 as the City has had us believe.

We feel Goal 14 can only be done in 2021 by applying HB 2001 to the housing unit needs and to the REAL POPULATION numbers relative to the need in the next two years (the sandbox.) Planning Director Richards has locked her analysis into the "...Date set from 2003." At data set, that had it been fully realized in 2003 would have resulted in a gross expansion of development that we can all agree is not backed up by real time population and urban infill results. In response to Ramsey McPhillips concerns that the Remand was too old to have merit, the City attorney said that HB 4126 (passed in 2016) prevented the city from considering new laws that have come about 2013

*"... that is reinforced that the legislature passed a law specifically saying that UGB amendment procedures that had been initiated prior to 2016 would be subject to the rules in place as of the date of initiation of those proceedings and not later." Spencer Parson, 3<sup>rd</sup> hearing McMinnville 12/3/2020.*

Mr. Parsons led the Council to believe that they are legally bound to ONLY use the laws in place at the time of the Remand but that is not what HB 4126 says.

AN ACT

HB 4126

**...approval of a periodic review work program that included a work task to amend or evaluate its urban growth boundary pursuant to ORS 197.633, prior to January 1, 2016, but did not complete the evaluation or amendment of its urban growth boundary**

**prior to January 1, 2016, may complete the evaluation or amendment pursuant to statutes and administrative rules in effect on June 30, 2013.** (emphasis added)

**SECTION 2. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect upon passage.**

Approved by the Governor March 29, 2016  
Filed in the office of Secretary of State March 29, 2016 Effective date March 29, 2016

Relating to evaluation and amendment of urban growth boundaries outside Metro initiated prior to January 1, 2016; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Notwithstanding ORS 197A.320, a city outside of Metro that submitted to the Director of the Department of Land Conservation and Development, pursuant to ORS 197.610, a proposed change to an acknowledged comprehensive plan or a land use regulation that included an evaluation or an amendment of its urban growth boundary, or that received ap-**

**Mayor Hill reiterated Legal Council's interpretation of HB 4126 in his opening statement on all three nights of the December hearings; "The City Council must make their decision based on the Federal, State and local regulations governing the project at the time of the time it was submitted."**

HB 4126 says "may complete the evaluation or amendment..." (emphasis added) We request that LCDC send the plan back to the city and instruct City Council and Planning Staff to properly inform City Council that if they so choose, they **MAY** consider HB 2001 when adding up the inventory of needed middle housing units. They would do this in good faith.... The faith that it is likely such an analysis would show they could preserve more farmland than was originally thought.... Similar to the acres saved by enacting a misconstrued need back in 2010 that has proven inaccurate in real time.

HB 2001 was signed into law to do many things. In the context of this objection, HB 2001 provided a roadmap for cities calculating the need to increase their UGB. Below is the language in the bill that we believe the City should consider.

## **HB 2001**

6 (b) Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall *[monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or]* adopt findings regarding the density expectations assumed to result from measures adopted under this paragraph based upon the factors listed in ORS 197.303 (2) and data in subsection (5)(a) of this section. The density expectations may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures. For a local government located outside of a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region. For a metropolitan service district, a quantifiable validation must demonstrate that the assumed

**housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the metropolitan service district.**

HB 2001 provides at least some guidance as to how much redevelopment a jurisdiction could reasonably anticipate as a result of adopting middle housing development standards. The bill states that a local government may not assume an increase in residential capacity above achieved density by more than 3% for the purposes of accommodating needed housing over a 20-year planning period. For the purposes of calculating if existing infrastructure can accommodate this growth by December 31, 2023, draft administrative rules currently under development have simplified this redevelopment rate to a growth rate of 1% in infill development situations and 3% in greenfield development situations.

HB 2001 requires cities such as McMinnville to analysis its Middle housing needs during the very window for which the City now “sandboxes” its plan... 2000 – 2023. If the state is mandating the city do this now, why is it ignoring it in the current process to amend its Comp Plan and UGB? HB 2001 was legislated for the very issues the City now finds itself passing into ordinances (5098.)

**SECTION 3. (1) Notwithstanding ORS 197.646, a local government shall adopt land use**

**regulations or amend its comprehensive plan to implement section 2 of this 2019 Act no later than:**

- (a) June 30, 2021, for each city subject to section 2 (3) of this 2019 Act; or**
- (b) June 30, 2022, for each local government subject to section 2 (2) of this 2019 Act.**

**(2) The Land Conservation and Development Commission, with the assistance of the**

**Building Codes Division of the Department of Consumer and Business Services, shall develop a model middle housing ordinance no later than December 31, 2020.**

**Recommended Resolution:**

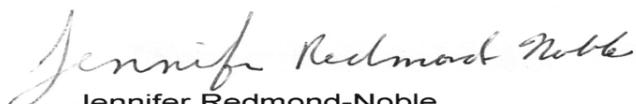
This is a good point to remind those of you reading this... lawyers, city planners, state agency officials that we are not trying to unravel all the great work you have done to get to this point. We are matriarchal farmers trying to preserve our farmland business. We have shown the Goals, Administrative Rules of Oregon's great land use system have been misinterpreted by the City of McMinnville. The Remand does not prevent the city from prescribing ALL factors of Goal 14, HB 4126 does not prevent it from using housing inventory numbers that include the 3% rule of HB 2001. Adding our land so it can augment a giant housing development septic network does not fit into Goal 14s factors or ORs 196.298.

**Recommended Resolution:** We request that LCDC send Ordinances 912 which amended the Yamhill County Comprehensive Land Use Plan and Yamhill County Comprehensive Land Use Plan Map to reflect the decisions made by the City of McMinnville in its adoption of Ordinance 5098 back to McMinnville and instruct the City Council that they MAY use HB2001 to lower the inventory necessary to infill within the existing UGB which could justify removing our 28 acres and additional Class II soils in adjoining farms from the proposed Urban Growth Boundary. Require that the McMinnville City Council and Yamhill County Commissioners be provided information regarding these considerations and that a plan be presented for their consideration that considers the impact of House Bill 2001, specifically the expected increase in residential capacity above achieved density. We believe that once this analysis is completed the current 662.40 acres of class II soil lands that are in the proposed UGB expansion can be reduced

significantly, allowing our 28 acres (tax lot R4430 01900) and the adjoining parcel (tax lot R4430 01800) of class II soil to be removed from the proposed UGB because they are not needed to accommodate the housing as forecasted.

If the City of McMinnville, Yamhill County and LCDC really want to preserve class II farmland, the City of McMinnville will be required to “run the numbers” of how many Middle Housing units HB 2001’s 3% deduction model will reduce the 2,511 units the current UGB plan has used to justify taking 662.40 acres into the UGB. Why would the City not want to know if the use of HB 2001 saves farmland while satisfying the city’s housing growth needs? The Remand does not prevent the City from conducting this evaluation. It had a choice to use this avenue, we believe the Planning Staff did not correctly let the City council know it had a choice and we ask that LCDC require McMinnville to offer the Council the use of HB 2001 to achieve a compromise and preserve farmland. This is the “roadmap” we feel best suits the needs of McMinnville.

Thank You,

  
Jennifer Redmond-Noble

  
Janet Lee Redmond