

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

<b>IN THE MATTER OF REVIEW</b>	)	
<b>OF THE MCMINNVILLE TASK</b>	)	<b>WORK TASK 1 APPROVAL AND</b>
<b>SUBMITTAL FOR THE SEQUENTIAL</b>	)	<b>REMAND ORDER</b>
<b>UGB WORK TASK IN THE MANNER</b>	)	<b>26-UGB-001967</b>
<b>OF PERIODIC REVIEW</b>	)	

This matter came before the Land Conservation and Development Commission (Commission) on October 25, 2024, as two appeals of a decision of the director of the Department of Land Conservation and Development (DLCD or department) issued August 1, 2024. This matter concerns the Commission’s review of appeals of DLCD Order 001943, the director’s decision on the City of McMinnville Sequential Urban Growth Boundary Amendment Task Submittal. The Commission fully considered the city’s submittal, the written record, the written argument and oral presentations of the appellants and the city, and the report of the director, and the exceptions to that report.

**I. INTRODUCTION**

**A. PROCEDURAL HISTORY**

1. On February 7, 2024, the director approved a sequential urban growth boundary (UGB) work plan pursuant to OAR 660-025-0185(4).
2. On March 5, 2024, the city submitted the first work task, consisting of a housing needs analysis (HNA), economic opportunities analysis (EOA), and buildable lands inventory (BLI).
3. On March 8, 2024, the director determined that the city’s work task submittal was incomplete, because it did not include the complete record of the city’s decision as required by OAR 660-025-0130 (Submission of Completed Work Task) and OAR 660-025-0185 (Review of Urban Growth Boundary Amendment Components).
4. On May 6, 2024, the city resubmitted the work task with a complete record. The director deemed the submittal complete. Simultaneously, the city provided notice to all parties entitled to receive notice of the city’s submittal as required by ORS 660-025-0140 (Notice and Filing of Objections (Work Task Phase)).
5. In response to the city’s notice, the department received two timely objections to the work task submittal. The department determined the objections to be valid pursuant to OAR 660-025-0140(2).

6. On August 1, 2024, the director issued a decision, DLCDC Order 001943, approving the work task in part and remanding the work task in part as authorized by OAR 660-025-0150(1)(d). The director's decision was timely under ORS 197.626(3)(b)(A).
7. In response to DLCDC Order 001943, the department received two appeals to the director's decision. The department determined the appeals to be valid pursuant to OAR 660-025-0150(6). The department scheduled a hearing before the Commission for October 25, 2024.
8. On October 3, 2024, under the provisions of OAR 660-025-0160(3) and (4), the department issued a staff report to the Commission.
9. In response to the department staff report and as authorized by OAR 660-025-0160(5), the department received two exceptions to the department staff report. The department chose to not provide the Commission a response by supplemental staff report.
10. On October 25, 2024, the Commission considered the appeal of the director's decision. Pursuant to OAR 660-025-0160(7), the Commission affirmed the director's decision and directed the preparation of this order.

## **B. THE WRITTEN RECORD FOR THIS MATTER**

Pursuant to OAR 660-025-0160(6), the Commission hears appeals based on the local record. The written record consists of the submittal, timely objections, the director's report, timely exceptions to the director's report including materials described in OAR 660-025-0160(5), the director's response to exceptions and revised report, the appeals, and exceptions. Specifically, the record in this matter is:

1. Exceptions to the department staff report:  
From Mark Davis, dated October 10, 2024.  
From Friends of Yamhill County, dated October 11, 2024.  
From the City of McMinnville, undated and received October 14, 2024.
2. The department staff report for the October 25, 2024 Commission hearing, dated October 3, 2024, containing responses to objections.
3. Appeals of the director's decision, submitted by:  
Friends of Yamhill County and 1000 Friends of Oregon received August 21, 2024.  
Mark Davis received August 22, 2024.
4. The director's decision, DLCDC Order 001943, approving in part and remanding in part the McMinnville sequential UGB task submittal, dated August 1, 2024.
5. Objections to the McMinnville sequential UGB task submittal, submitted by:  
Friends of Yamhill County and 1000 Friends of Oregon, dated May 23, 2024.  
Mark Davis, dated May 23, 2024.

6. Sequential UGB Task 1 Submittal from the City of McMinnville, dated May 6, 2024 (Ordinance No. 5141).<sup>1</sup>

#### **IV. COMMISSION REVIEW**

##### **A. Jurisdiction**

A decision by the director on a work task may be appealed to the Commission. On appeal, this Commission has jurisdiction to review a sequential UGB amendment work program task submittals pursuant to ORS 197.626(3)(c), OAR 660-025-0150, and OAR 660-025-0185(6). The subject city ordinance consists of a sequential UGB amendment work program Task 1 Submittal for which the department received two separate letters of objection. DLCD Order 001943 responded to the filed objections and partially approved the subject task submittal. Each objector appealed within the 21-day appeal period following issuance of DLCD Order 001943 pursuant to OAR 660-025-0150. Both appeals met the requirements of OAR 660-025-0150(6)(a) and (c) for appeals of a director’s decision because they were filed by parties who also filed valid objections to the city’s initial task submittal, and they were submitted within the 21-day appeal period. Both appeals also meet the criteria of OAR 660-025-0150(6)(d)(A) to (C), because the appellants participated in the local process, clearly identified alleged deficiencies in the decision, and proposed remedies for those deficiencies.

Following its hearing, the Commission must issue an order that does one or more of the following, pursuant to OAR 660-025-0160(7), as relevant here:

“(a) Approves the work task or plan amendment or a portion of the task or plan amendment;

“(b) Remands the work task or plan amendment or a portion of the task or plan amendment to the local government, including, for a work task only, a date for resubmittal;

“(c) Requires specific plan or land use regulation revisions to be completed by a specific date. Where specific revisions are required, the order shall specify that no further review is necessary. These changes are final when adopted by the local government. The failure to adopt the required revisions by the date established in the order shall constitute failure to complete a work task or plan amendment by the specified deadline requiring the director to initiate a hearing before the commission according to the procedures in OAR 660-025-0170(3)[.]”

This is the Commission’s order.

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<sup>1</sup> McMinnville’s submittal, constituting the record for this review, is in two parts. The city initially submitted its record to the department on March 5, 2024. References to this document in this decision are referred to as the “Task 1 Submittal.” On March 8, 2024, the department replied to the city’s submittal and noted that it did not include some material. On May 3, 2024, the city resubmitted the record, including the missing materials in a separate document. References to this document in this decision are labeled “Task 1 Addendum.”

## **B. Scope of Review**

A director's decision on a work task submittal under ORS 197.626, is done "in the manner provided for review of a periodic review task." ORS 197.626(1). That review is to determine whether the sequential UGB work task submittal complies with the applicable statewide planning goals, their implementing rules, and applicable state statutes. OAR 660-025-0175(1)(a). A director's decision may be appealed to the Commission under ORS 197.626(3)(c) and ORS 197.633(5)(b). In reviewing an appeal of a director's decision, the Commission does not review the work task submittal for compliance with the applicable statewide planning goals, their implementing rules, and applicable state statutes anew; the Commission only considers the appeals leveled against the director's decision and exceptions to the director's report. This is a different and more limited scope of review than the Commission undertakes on a director's referral of a submittal. The Commission confines its review of evidence to the record. ORS 197.633(3).

## **C. Standard of Review**

OAR 660-025-0160(2) provides the commission's standard of review:

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

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

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

## **C. Background on Applicable Law**

Along with the rules surrounding sequential UGB amendment work programs, the principal legal provisions that govern review of the submittal and the Commission's decision on the appeals are related to Statewide Planning Goals 2 (Land Use Planning), 9 (Economic Development) and 10 (Housing), including relevant statutes and implementing rules. The city submitted the initial notices of proposed amendment for the EOA and for the HNA to the department on May 14, 2020 (DLCD file Nos. 003-20 and 001-20, respectively). A UGB evaluation is considered "initiated" on the date that it is submitted as a proposed PAPA. OAR 660-024-0000(3)(b) referencing OAR 660-018-0020. While the HNA and EOA are not UGB amendments, they are components of a sequential UGB evaluation approved in part and remanded in part by the director under OAR 660-025-0185. Consequently, this review will consider the appeals based on the rules and statutes identified in

DLCD Order 001943. Because the city’s adoption of the EOA, HNA, and public land need analysis is the first step of the City of McMinnville’s sequential UGB work plan, the director determined that some of the rules and statutes implementing Goal 14 (Urbanization) are also relevant to this review.

**1. Statewide Planning Goal 9**

Statewide Planning Goal 9 is:

“To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens. \* \* \* Comprehensive plans for urban areas 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.”

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

**2. Statewide Planning Goal 10**

Statewide Planning Goal 10 is:

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

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

**3. Oregon Revised Statutes**

*Former* ORS 197.296 (2019) set out requirements for cities to determine the amount of buildable residential lands within their urban growth boundaries (UGBs). These requirements addressed buildable lands inventories, housing needs analyses, and planning and zoning of residential lands. This statute directed how the city had to calculate its residential land needs.

Of most relevance from this statute were *former* ORS 197.296(5)(a) and (6)(a) and (b) (2019) as key criteria for the determination of residential land needs. In relevant part these provisions read as follows:

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

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

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

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

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

and

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

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

“(b) Amend its comprehensive plan, \* \* \* 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.”

The legislature renumbered *former* ORS 197.296 as ORS 197A.350 in 2023 and made it only applicable to cities inside Metro, and enacted ORS 197A.270 pertaining to determination of housing capacity and needs outside Metro. Or Laws 2023, ch 13, §22; ch 326, §12.

#### 4. Sequential UGB Rules

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

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

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

On review, the director considers whether the submittal is consistent with the applicable statutes, statewide planning goals, administrative rules, the city’s comprehensive plan, and is supported by substantial evidence. OAR 660-025-0160(2)(a) and (c). The Commission considers the issues raised in the appeals against the same criteria. *Id.*

The city processed this task submittal as a legislative land use decision. The Commission has 90 days from the date the appeal was filed to take final action on an appeal. OAR 660-025-0085(2)(b). The date of the Commission’s hearing (October 25, 2024) was within 90 days after the date the appeals were filed (August 21 and August 22, 2024). Pursuant to OAR 660-025-0160(7), the Commission affirmed the director’s decision and directed the preparation of this order.

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

decisions must be consistent with substantive requirements in state statutes and the statewide planning goals.

LUBA has explained that adequate findings identify the applicable law and the evidence relied upon and explain how the evidence led to the conclusion on compliance with approval standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). Local governments may incorporate documents from the record into their decisions. But such incorporations must clearly specify which documents are incorporated. *Freedman v. City of Grants Pass*, 57 Or LUBA 385 (2008). Findings must address all applicable statutes, administrative rules, and land use regulations and all of the elements in those individual authorities. If not, then the findings are inadequate to demonstrate compliance with all applicable law. *Kliwer v. City of Bend*, 73 Or LUBA 321 (2016).

Finally, in reviewing objections, the director only needed to consider those that “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 268 (2011). In instances where the director finds an objection invalid, the Commission does not consider those objections on appeal. OAR 660-025-0140(3).

#### **D. Background for Commission Evaluation of Appeals**

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

“[C]ompliance with the goals’ means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.”

The city submittal includes Exhibit “D” to Ordinance No. 5141, that presents the city’s determination that the Task submittal complies with all relevant statewide planning goals. Task 1 Submittal at 348. The director reviewed those findings and concluded that the Task submittal complies with the requirements of the applicable statewide planning goals, statutes, and administrative rules, except that the submittal erred in calculating park land needs as discussed below. To resolve this error, the director remanded the parks and recreation BLI portion of the submittal.

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

##### **1. Goal 2, Land Use Planning**

##### **Coordination**

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

The city findings related to Goal 2 are contained in the record submitted. Task 1 Submittal at 353-355. In this situation the primary need for city coordination was with Yamhill County. Yamhill County's signature on the submitted notice of intent to proceed with a sequential UGB work program indicates that the city did coordinate with the county. Task 1 Submittal at 408. The city also requested comments from various potentially affected state and local agencies, and special districts. Task 1 Submittal at 350-353.

### **Reliance on Acknowledged Documents**

Goal 2 requires as follows:

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

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

Regarding the HNA and the BLI, the city has prepared and updated an inventory of buildable residential lands and a HNA consistent with the applicable requirements of *former* ORS 197.295 (2019) *renumbered as* ORS 197A.015, *former* ORS 197.296 (2019), and OAR chapter 660, division 8. Task 1 Submittal at 450-588. The city is required to update its HNA (also referred to as a “Housing Capacity Analysis”) by the end of 2024, per the 2024-2032 Housing Capacity Analysis-Housing Production Strategy Schedule updated on January 8, 2024.<sup>2</sup> The director decision provided a detailed analysis regarding the sufficiency of the BLI and HNA in response to Objections 1, 2, 8, 9, and 10. DLCD Order 001943 at 14-17, 27-30. In summary, the director determined that the BLI and HNA complied with all applicable requirements, because the city inventoried existing residential land uses, projected suitable land needs by land use classifications, compared these needs with potentially suitable land within the McMinnville UGB, and used data from reputable sources such as the Census, City of McMinnville, and Yamhill County. Additionally, the city's Goal 10 conclusions provide more detailed information about the background analyses and inventories and rely on specific data to establish findings that provide a technical basis for developing policy recommendations.

The director found that the EOA complied with all applicable requirements because the city has primarily relied on safe harbor employment forecasting methods to estimate future job growth. Task 1 Submittal at 777. For economic sectors for which the city exceeded safe harbor forecasts, the EOA relies on a locally adopted economic development strategy that includes community vision and community development aspirations. Task 1 Submittal at 777-779. The director found that the city justified its specific site needs included in the EOA through local interviews with appropriate community members and feasibility studies. Task 1 Submittal at 598, 738. The director concluded

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

that the cited plans, methodology, and justification provided constitute an adequate factual basis for the conclusions of the EOA.

The director ultimately concurred with the Goal 2 consistency findings included by the city in the Task 1 Submittal at 353-355. DLCDC Order 001943 at 9-10.

## **2. Goal 8, Recreation Needs**

The director reviewed the submittal in relation to Goal 8. Task 1 Submittal at 356. The director remanded that portion of the submittal related to the parks and recreation lands BLI. DLCDC Order 001943 at 11, 25.

## **3. Goal 9, Economic Development**

The director identified the methodology that McMinnville applied as a combination of approaches in its EOA. Starting by estimating job growth based on the Portland State University (PSU) population growth forecast, the city adjusted the forecast in certain sectors, and additionally including specific target industries identified in the city's Economic Development Strategic Plan. Task 1 Submittal at 589-758. EOAs that employ the target industries approach include site requirements for specific industries and sometimes specific site needs for existing businesses.

The director found that the city built its EOA upon the previously adopted EOA from 2013 with updated data on employment trends and commercial and industrial land needs. Task 1 Submittal at 356. Thereafter, the city carried out an updated BLI, with supportable assumptions on land capacity and availability. Task 1 Submittal at 357-359. Next, the EOA documented the city's economic development potential. Task 1 Submittal at 363. After first documenting land need using safe harbors, the director found that the city then made sufficient justification for additional, special land needs to address specific community needs for specific land uses and to address issues such as retail leakage. Task 1 Submittal at 364-368. Concluding that the EOA summary, expressed in the Task 1 Submittal at 370, is supported by the analysis and is consistent with the requirements of Goal 9 and provisions of OAR chapter 660, division 9, the director concurred with the Goal 9 consistency findings included by the city in the submitted record at Task 1 Submittal at 356-370. The director found that the Task submittal and Ordinance No. 5141 were consistent with Goal 9.

## **4. Goal 10, Housing**

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

### **Housing Needs Analysis**

The city's adopted HNA accounts for housing needs for the 2021-2041 planning period. Task 1 Submittal at 45. The HNA forecasts that McMinnville is planning for 4,657 dwelling units to accommodate an increase of 11,260 people over the 20-year period. Task 1 Submittal at 102.

McMinnville’s housing needs are for more diverse housing types, with more attached and multifamily dwellings than in the city’s current housing stock. Task 1 Submittal at 81. In addition, McMinnville needs more housing that is affordable to households with income below 120 percent of median family income, accounting for 59 percent of future housing needs. Task 1 Submittal at 371.

McMinnville assumes that eight percent of the 4,657 dwelling units will be accommodated through infill and redevelopment (eight percent of new housing). Task 1 Submittal at 48. That leaves need for 4,284 new units that could require buildable land. Task 1 Submittal at 145. McMinnville’s vacant and partially vacant buildable residential land has capacity for 3,183 dwelling units. Task 1 Submittal at 49. The result is a deficit of land for 1,101 dwelling units. Task 1 Submittal at 49.

McMinnville has proposed to adopt its HNA prior to identifying land use efficiency measures or an UGB expansion to meet its land needs, based on ORS 197.626(3). Consideration of efficiency measures, a UGB expansion, or some combination thereof are scheduled for a subsequent phase of the city’s sequential UGB work task.

### **Buildable Lands Inventory**

*Former* ORS 197.296(2) (2019) required the city to “demonstrate that its comprehensive plan \* \* \* provides sufficient buildable lands within the urban growth boundary \* \* \* to accommodate estimated housing needs for 20 years[.]” The statutory requirement for a BLI, along with direction concerning what lands are to be inventoried as “buildable,” is contained in *former* ORS 197.296(3) and (4) (2019) and in OAR chapter 660, division 8, which provides standards of compliance with Goal 10.

The director found that the city’s BLI started with the categorization of all residentially developed land as either vacant or partially vacant with feasible additional development capacity. The city then applied layers of appropriate constraints to refine that capacity analysis. Task 1 Submittal at 60-62. The city then layered on an analysis of redevelopment capacity which the director found to be grounded in reasonable and factual assumptions. Task 1 Submittal at 71-73. The director concluded that BLI in the HNA meet the requirements of *former* ORS 197.296 (2019), and OAR chapter 660, divisions 8 and 24. Task 1 Submittal at 60-73; DLCDC Order 001943 at 12.

This Commission decision addresses a specific objection to a part of the BLI relating to institutional lands in considering the appeals.

### **Planning Period and Population Forecast**

*Former* ORS 197.296(2)(a) (2019) required that an affected city, when amending its UGB, must “demonstrate that its comprehensive plan \* \* \* provides sufficient buildable [residential] lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years[.]” The statute continued, “the 20-year period shall commence on the date initially scheduled for completion of the review under [periodic or legislative review].” *Former* ORS 197.296(2)(b) (2019). The planning period sets the foundation for forecasts and everything that follows. The sequential UGB process must be coordinated with the statute.

Concluding that the “date the UGB amendment is initially scheduled for completion” was heretofore undefined for UGB amendments outside periodic review, the director determined that for sequentially reviewed UGB amendments, the planning period is that that is established by the department in the work program under OAR 660-025-0185(3)(b). DLCD Order 001943 at 12. The director concluded that the “planning period the city used in the adopted HNA is consistent with the planning period in the approved work program.” *Id.* at 12-13.

OAR 660-024-0040 requires that the 20-year population forecast is the basis of the UGB land determination. OAR 660-032-0020 requires that, when a city uses population as a basis for forecasting employment, the city must use the most recent final forecast issued by the PSU Population Research Center (PRC). McMinnville started the process for developing the HNA and EOA in 2018, completing a draft of the HNA in 2019 and the EOA in 2020. McMinnville used the 20-year planning period of 2021-2041, with the anticipation of adopting the HNA and EOA in 2021. Task 1 Submittal at 3. McMinnville noticed the intention to adopt the HNA and EOA to the department on May 14, 2020 and held its first evidentiary hearing on May 20, 2021. Task 1 Submittal at 4. Subsequently, the city elected to enter the sequential UGB amendment process and received work program approval from DLCD in 2024. The director found these actions to be consistent with *former* ORS 197.296(2) (2019). DLCD Order 001943 at 13. McMinnville used the PRC forecast for June 30, 2017, which was the most recently completed forecast at the time of development of the HNA. The PRC finalized its next forecast on June 30, 2020, after the city had drafted the HNA and EOA and McMinnville provided notice to the department. Task 1 Submittal at 362. Therefore, the director determined that the city had used an appropriate planning period and population forecast for its work to comply with Goal 10. DLCD Order 001943 at 13.

Ultimately, the director concurred with the Goal 10 consistency findings included by the city in the submitted record (Task 1 Submittal at 370-388) based in part on the additional Goal 10 findings made in considering the objections in Section V of DLCD Order 001943.

#### **5. Goal 14, Urbanization**

The director agreed with the Goal 14 consistency findings that the city included in the Task 1 Submittal at 389-390. The director noted that because this work task represents the first step in the sequential UGB process set forth in *former* ORS 197.296(4) (2019) and OAR 660-025-0185, the director will review later phases of the sequential UGB process including those related to efficiency measures and an adopted UGB expansion, in the city’s subsequent work task submittals.

#### **6. City Comprehensive Plan Consistency**

Finally, the director considered the city’s consistency findings with relevant provisions of its comprehensive plan for this submittal found at Task 1 Submittal at 390-394. The city’s findings addressed consistency with provisions related to:

- a. Natural resources, by excluding lands with natural resources and hazards constraints from its BLI;
- b. Planning for future schools, by including an institutional land need calculation in its buildable land inventory;

- c. Planning for future economic growth, industrial development, and as a commercial center for Yamhill County, by adopting an EOA that implements these policies;
- d. Planning to ensure efficient use of commercial lands, by not assigning residential development capacity to commercially designated lands;
- e. Planning to provide a diversity of housing choices by the adoption of the HNA with increased assumptions for housing types that are not single-detached dwellings;
- f. Planning for sufficient parks and recreation lands to serve McMinnville residents by including park land needs into the BLI;
- g. Providing for community input into the comprehensive plan and its provisions by conducting a far-reaching and inclusive public involvement process.

The director followed OAR 660-025-0160(2)(c) in deferring to the city’s interpretation of its Comprehensive Plan policies (Task 1 Submittal at 390-393), and found that as provided in OAR 660-025-0160(2)(c), none of the alternative reasons for a finding of non-compliance with the city’s comprehensive plan contained in ORS 197.829 were met.<sup>3</sup> DLCD Order 00193 at 13-14.

**G. Appeals and Exceptions Received**

The Commission considered appeals of the director’s decision in DLCD Order 001943 from two parties. Appeals were received from the following parties:

- 1. Friends of Yamhill County/1000 Friends of Oregon (hereafter, “Friends”)
- 2. Mark Davis

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<sup>3</sup> OAR 660-025-0160(2)(c) provides:

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

ORS 197.829(1) provides:

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

“(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

“(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

“(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or

“(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.”

Both appeals satisfied the requirements set forth for such appeals in OAR 660-025-0150(6).<sup>4</sup> The Commission also considered exceptions to the department staff report filed by Friends, Mark Davis, and the City of McMinnville. All three exceptions satisfied the requirements for exceptions to the department staff report.<sup>5</sup>

## **H. Commission Consideration of Appeals and Exceptions**

Friends and Mark Davis presented appeals of the director's order to the Commission. The Commission considered each of the appeals. Friends, Mark Davis, and the City of McMinnville all filed exceptions to the director's staff report to the Commission, which the Commission considers along with the appeals. Friends appealed the director's decision resolution of seven of their ten objections focused on the HNA and EOA approvals. Friends did not appeal on issues related to the BLI and did not pursue their objections number 2, 6, or 10. Mr. Davis appealed the director's decision resolution of two of the three aspects of the Friends' seventh objection related to the city's

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<sup>4</sup> OAR 660-025-0150(6) provides:

“(6) Appeals of a director's decision are subject to the following requirements:

“(a) A director's decision approving or partially approving a work task or plan amendment may be appealed to the commission only by a person who filed a valid objection.

“(b) A director's decision remanding or partially remanding a work task or plan amendment may be appealed to the commission only by the local government, a person who filed a valid objection, or by another person who participated orally or in writing in the local proceedings leading to adoption of the local decision under review.

“(c) Appeals of a director's decision must be filed with the department's Salem office within 21 days of the date the director's action was sent;

“(d) A person, other than the local government that submitted the work task or plan amendment and an affected local government, appealing the director's decision must:

“(A) Show that the person participated in the local proceedings leading to adoption of the work task or plan amendment orally or in writing;

“(B) Clearly identify a deficiency in the work task or plan amendment sufficiently to identify the relevant section of the submittal and the statute, goal, or administrative rule the local government is alleged to have violated; and

“(C) Suggest a specific modification to the work task or plan amendment necessary to resolve the alleged deficiency.”

<sup>5</sup> OAR 660-025-0160(5) provides:

“The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to the director's report within 10 days of the date the report is sent. Objectors may refer to or append to their exceptions any document from the local record, whether or not the local government submitted it to the department under OAR 660-025-0130. The director may issue a response to exceptions and may make revisions to the director's report in response to exceptions. The department may provide the commission a response or revised report at or prior to its hearing on the referral or appeal. A revised director's report is not required to be sent at least 21 days prior to the commission hearing.”

identified need for land for parks. Neither Friends nor Mr. Davis challenged the partial remand aspect of the director’s decision.

### **1. Friends Appeal: Additional Employment Sites for Specific Uses**

Friends appealed the director’s decision based on their objection to the methodology the city used for the EOA’s inclusion of employment sites for specific uses. Friends claims that the McMinnville EOA is inconsistent in its application of a “safe harbor” approach, noting that the city used a safe harbor to forecast employment growth, but identified land needs beyond those identified in the employment forecast. Friends appeal at 3. In its exception, the city states that it did not use the safe harbor, clarifying that it “used the same underlying methodology and assumptions as used in the safe harbor as a starting point and made rational adjustments to some parts of the underlying assumptions using methods that are well documented in the adopted plan and based on empirical analysis.” City exception at 5.

In its appeal, Friends reiterates its objection that the city’s use of an employment growth safe harbor in its analysis precludes the city from identifying “additional” land demand for employment uses. Friends contend that use of a safe harbor to estimate employment growth in an EOA is “designed to supplant *all* the analysis a city would otherwise be required to do under Goal 9, Goal 14, and the related cited laws.” Friends appeal at 4 (emphasis in original).

*Former* OAR 660-024-0040(9) (2019) pertaining to land need provides a choice of two safe harbors that cities may rely on to estimate employment growth for the purposes of determining land need.<sup>6</sup> While *former* section (9) provided safe harbors from challenge to job growth forecasts included in an EOA that are then used to derive an amount of needed land, it does not specify a method of analysis for translating job growth to land need. There is no safe harbor approach defined in OAR chapter 660, division 24 (Urban Growth Boundaries) or division 9 (Economic

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<sup>6</sup> The rule section on safe harbors for employment needs is now in section (8) because it was renumbered in the Oregon Housing Needs Analysis rulemaking, effective January 1, 2026. The applicable rule section provided:

“(9) The following safe harbors may be applied to determine its employment needs for purposes of a UGB amendment under this rule, Goal 9, OAR chapter 660, division 9, Goal 14 and, if applicable, ORS 197.296.

“(a) A 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 appropriate 20-year coordinated population forecast determined under rules in OAR chapter 660, division 32.

“(b) A local government with a population of 10,000 or less may assume that retail and service commercial land needs will grow in direct proportion to the forecasted urban area population growth over the 20-year planning period. This safe harbor may not be used to determine employment land needs for sectors other than retail and service commercial.”

Development), governing economic development planning, that a city may rely on to derive employment land demand from a forecast.

Friends has suggested that using an average employment density to calculate land need is a “traditional” approach. Friends appeal at 5. While commonly used, this method is not prescribed anywhere under Goal 9 (Economic Development), Goal 14 (Urbanization), or the related cited laws or rules. Even if a city were to use employment density as its sole method of determining employment land demand, it would still need to determine a distribution of site sizes and characteristics that accommodate forecasted employment growth. Concerning EOAs, ORS 197.712(2) and OAR 660-009-0015 provide the required elements of an EOA but neither specifies how a city must conduct the analysis. OAR 660-009-0015(2) provides “[c]ities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that may be needed for expansion.” McMinnville’s EOA incorporates specific feedback from existing employers to reach a well-justified conclusion about sites needed for future employment included as “other needed sites.” Task 1 Submittal at 283.

The department supported flexibility for cities in complying with Goal 9. The Commission finds that approach is consistent with the legislative direction provided in ORS 197.712(1) and (2). The director noted that department staff regularly review EOAs that rely either on safe harbor employment forecasts or those that exceed the employment safe harbors with aspirational employment growth projections. Land need resulting from both types of forecasting methods varies significantly. The Commission does not construe its rules to require a city to rely on the safe harbor for employment growth provided in *former* OAR 660-024-0040(9). The rules do not explicitly require that a city derive employment land need from employment forecasts. Department review of EOAs focuses on justification provided by the city for asserted land need.

On appeal, the Commission reviews whether the appeal establishes that the EOA does not comply with applicable laws and that the local government’s decision on the whole does not comply with applicable statutes, statewide land use planning goals, administrative rules, and the comprehensive plan. OAR 660-025-0160(2)(c). To the extent that the city went beyond the safe harbor, its EOA may no longer enjoy the benefit of the safe harbor provided in *former* OAR 660-024-0040(9), but it does not mean that the EOA is invalid. The director reviewed McMinnville’s EOA in the same manner as it would review an EOA that exceeds safe harbor employment growth and found it to be in compliance with relevant rules and laws. The Commission finds that this appeal has not established that the EOA is the result of an unlawful application of the applicable laws.

The Commission rejects this appeal.

## **2. Friends Appeal: Retail Leakage**

Friends appeals the director’s decision, arguing that the city’s augmentation of the employment growth forecast and related land need to capture local “retail leakage” is inconsistent with the safe harbor approaches described in the prior objection. Friends argue that DLCDC Order 001943 misstated their position when the order characterized their interpretation of the EOA as having “not relied on a safe harbor to forecast employment growth.” Friends appeal at 5. Friends clarifies that the EOA “*does* rely on the safe harbor, but then impermissibly adds more jobs to the

forecast[.]” *Id.* (emphasis in the original). Friends contend that the city “needed to either use the safe harbor or prepare a customized employment forecast.” Friends appeal at 5.

The Commission finds that the department did not review this EOA as a safe harbor analysis protected from scrutiny. DLCD Order 001943 at 20. Many EOAs base employment growth forecasts on safe harbor sources before adjusting projections to reflect local needs or preferences. While when they do so they lose the legal immunity of the safe harbor, that does not mean that the city cannot justify its analysis by findings and evidence presented in the record. McMinnville has prepared a customized employment forecast that adjusts its job growth forecast in the retail sector and is well justified through its inclusion of the McMinnville Three Mile Lane Area Plan in the EOA. Task 1 Submittal at 366.

As discussed under the prior appeal, Friends argues that the EOA constitutes an incorrect application of a safe harbor that instead needed to be a customized employment forecast. The Commission again finds that the department did not review the city’s approach based upon the city using a safe harbor approach and found that the city appropriately justified its analysis of retail leakage. As to the issue of fact of whether the city used the safe harbor, the Commission finds that the city did not do so as a safe harbor *per se*, but as a foundation for a justified EOA analysis. The director did not error in analyzing the EOA accordingly. The Commission reviews appeals to determine whether the issue raised concerns of compliance with applicable laws and whether the local government’s decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, and the comprehensive plan. OAR 660-025-0160(2)(c). Based on the evidence and analysis in the record, the Commission concludes that the appeal has not established that McMinnville has not sufficiently justified its employment growth forecast.

The Commission rejects this appeal.

### **3. Friends Appeal: Refill, Redevelopment and Employment on Non-Employment Land**

Friends appealed the director’s decision on their objection to the EOA’s consideration of future job creation that Friends contends is likely to occur on residential land. Friends appeal at 6. Friends assert that the EOA “failed to account for employment that is currently located on residentially zoned lands and failed to account for new jobs that will locate on residentially zoned land in the future[.]” Friends appeal at 10. Friends contend that the director’s decision is in error regarding this issue.

The city documented the issue raised by this appeal in the record. The city’s consultant, EcoNorthwest, described the Project Advisory Committee’s consideration of refill and redevelopment impacts on the analysis in a September 2023 memo to the city titled “Information in Response to 1000 Friends of Yamhill County’s Letter.” Task 1 Addendum at 69.

The city responded to Friends’ assertion that the EOA did not properly account for employment on residential land in a September 2023 memo to its planning commission that future jobs accommodated in residential zones had been considered by a city project advisory committee. The city’s position is that most remote workers work from an office at least part time; so associated land need should be reflected in the EOA rather than deducted based on assumptions about hybrid

work locations. The city also asserted that there are no data available that indicate how many new jobs expected over the 20-year planning horizon are entirely remote versus other types of employment locations, nor how many job losses the city has experienced as a result of remote work trends. Task 1 Addendum at 12.

In the same memo, the city also responded to Friends' assertion that job openings at assisted living facilities located on residential land reflect likely future trends about the location of new jobs created in this sector. The city's position is that job advertisements are not indicative of job creation but reflect turnover in the industry. Task 1 Addendum at 11. The department agreed with the city's response on this issue as expressed in DLCDC Order 001943. Requiring a city to forecast job creation location by industry over a long-range planning horizon to this degree of specificity could conflict with OAR 660-009-0010(5).<sup>7</sup> The appellants object to the director's decision on this point, arguing:

"The department asserts that accounting for what is probable requires an unreasonable degree of detail over a long-range horizon. However, that statement is inconsistent with the fact that the EOA forecasts highly specific employment types and corollary land use outcomes when it added specific low-density employment uses at eight sites specific (see section 1 above regarding Friends Objection 3), which the department allowed. There is no basis to distinguish between these. It is reasonable to require what cities and consultants do all the time: estimate total employment at the city's assisted living facilities and for the other uses, estimate how much of that is occurring on residential land, and carry that percentage forward as a percentage of total employment." Friends appeal at 9.

The department disagreed that an equivalency can be made between a) the detailed research required to assess specific land needs of institutions and employers identified as priorities in the city's economic development strategic plan (the basis of Friends' objection) and b) job growth forecasted for the varied employer types across several industries identified by Friends. The department reasoned that such data is not readily collectible and would significantly increase the city's research burden and expenses to satisfy an inquiry that is not required anywhere in statute or rule. The department observed that the level of detail necessary to conduct this analysis was not reflected in McMinnville's previous planning efforts; the city's 2013 EOA did not address specific industry types that may develop on residential land. The Commission agrees with the department that the city identified substantial evidence in the September 2023 memo. Where the evidence in the record is conflicting, if a reasonable person could reach the decisions that the city made in view of all the evidence in the record, the choice between conflicting evidence belongs to the city. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995); *Barkers Five, LLC v. LCDC*, 261 Or App 259, 349, 323 P3d 368 (2014). Although Friends present argument for other ways the city could have determined its refill and redevelopment assumptions, the city provided a reasonable basis for the assumptions it arrived at in the EOA. To the extent the issue raised on appeal concerns compliance with applicable laws and whether the local government's

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<sup>7</sup> OAR 660-009-0010(5) provides:

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

decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, and the comprehensive plan under OAR 660-025-0160(2)(c), the Commission determines that the appeal does not establish that McMinnville’s EOA fails to comply with the relevant statutes and rule.

The Commission rejects this appeal.

#### **4. Friends and Mark Davis Appeal: Land for Parks**

Both objectors, Friends and Mark Davis, appealed the director’s decision based on the city’s identified need for parks. Because both appellants’ arguments are similar, they are summarized below. The department considered the appeals jointly in the department’s staff report.

Friends reiterate two sub-objections raised previously contending that the city inflated park land need and wrongly assigned park land needs to buildable land. Regarding inflated park land needs, Friends note that the city’s adopted parks plan calls for 14 acres of park land for every 1,000 residents of McMinnville. Friends argue that this metric should only be applied to the forecasted additional population over the 2021-2041 period, which is 11,260 residents, rather than the total forecasted population of McMinnville in 2041, which is 47,498.

Regarding wrongly assigning park land needs to buildable land, Friends argue that despite Comprehensive Plan Policy 163.05, the city assumed that all park lands will be located on buildable lands. McMinnville’s Comprehensive Plan Policy 163.05 states as follows:

“The City of McMinnville shall locate future community and neighborhood parks above the boundary of the 100-year floodplain. Linear parks, greenways, open space, trails, and special use parks are appropriate recreational uses of floodplain land to connect community and other park types to each other, to neighborhoods, and services; provided, that the design and location of such uses can occur with minimum impacts on such environmentally sensitive lands.”

Friends further explain that “[t]he city has applied its assumption to hundreds of acres of undeveloped land in the existing UGB, thereby heavily discounting its capacity to accommodate other uses, especially housing.” Friends appeal at 13. Friends allege that the director’s decision “misconstrued the record and misread our objection.” *Id.*

Mark Davis raises the same topics in his appeal and exception: arguing that the city has inflated park land projections and assigned all park land needs to buildable lands. In addition to arguments made by Friends, Mr. Davis suggests that the newly adopted 2024 Parks, Recreation and Open Space (PROS) Plan be consulted regarding the extent of park lands planned on buildable and unbuildable lands. The Commission finds that the PROS Plan is not a part of the record pursuant to OAR 660-025-0160(6).<sup>8</sup> The city adopted the PROS Plan by resolution on June 25, 2024, after it

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<sup>8</sup> OAR 660-025-0160(6) provides:

“The commission shall hear appeals based on the local record. The written record shall consist of the submittal, timely objections, the director’s report, timely exceptions to the director’s report including materials described

had adopted the HNA and EOA; the city did not include the PROS Plan in the record in draft or final form. The Commission finds that the city did not error in not consulting the PROS Plan in conjunction with this work task submittal.

The director's decision remanded a portion of the parks and recreation BLI to correct a calculation error. *See* Sub-Objection 2, Order 001943 at 25. The Commission affirms this part of the director's decision, and the appellants do not appeal this portion of the director's decision. The city's exception notes that the city corrected this remand in Ordinance No. 5184. City exception at 1. Turning to the remaining two appeals, the department determined that the appeals had been adequately addressed in the director's decision. The Commission affirms the director's analysis:

“Cities must rely on adopted land need analyses to plan for the community's future land needs and may not rely on non-adopted land need analyses. Consequently, the city may rely on the park land needs identified in the adopted parks master plan. Although the city might have chosen to wait and include adoption of the draft park plan in the sequential UGB work plan, the city is not required to update the parks master plan as a step in this process, as noted in OAR 660-025-0185(2) - ‘A city and a county may elect to submit a component of an urban growth boundary amendment under section (1) when the city and county determine that the final urban growth boundary amendment is likely to exceed 50 acres.’ Because housing capacity analyses are the only type of land need analysis that may not be adopted without addressing an identified deficit in land needs, cities may adopt other land need analyses, such as economic opportunity analyses and public land need analyses, prior to the determination of the need for UGB expansion, and may be used to inform land needs for that expansion.

“Regarding the city's ability to achieve the goals of its adopted parks and recreation master plan, the director does not presume, as the objectors appear to presume, that the city's lack of implementation of its 1999 parks and recreation master plan means that it must be assumed the city will be unable to achieve implementation of its assumptions going forward. McMinnville has stated a goal of providing 14 acres per 1,000 population of park land for its residents. There is no evidence in the record, nor do objectors provide any evidence, that this standard is oversized compared to other cities in Oregon or elsewhere, nor is there any numerical standard or guideline for such matters within Statewide Planning Goal 8: Recreation. The sub-objection does not provide a basis for remanding the submittal and is rejected.” DLCD Order 001943 at 24-25 (footnotes omitted).

The Commission also recognizes that some aspects of the appeals will be more appropriately addressed in subsequent work tasks when the city makes decisions regarding the accommodation of its identified land needs, including park land needs.

Additionally, Friends' argument that the 14 acres per 1,000 population standard for park land should apply only to the projected increase in population, and not to the existing city population, is misplaced. The city is not obligated to consign its existing population to a permanently substandard amount of parks and recreation land and facilities, nor is there any foundation in any statutes or rules

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in section (5) of this rule, the director's response to exceptions and revised report if any, and the appeal if one was filed.”

that prohibits a city from adding land to its UGB to correct an existing shortage of land within the existing UGB that impacts the existing city population, not just future city population.

Based on this analysis, the Commission finds that the appeals do not establish that it is contrary to any law for McMinnville to apply the 14-acre-per-thousand ratio to the total projected population of the city to determine the community's park land needs.

Turning to the issue of assigning park land to buildable land areas raised by both Friends and Mr. Davis, the approved Sequential UGB work plan includes two work tasks, of which the first is the completion of an HNA, an EOA, and a BLI. The director's partial approval of this work task submittal in DLCD Order 001943 is the subject of this appeal to the Commission. The second work task in the established work program is the evaluation of land use efficiency measures and UGB expansion, which will also require department review, opportunity for objections, and a director's decision. The director's decision on the current task identifies the second work task as the most appropriate area for the city to consider efficiency measures regarding park land needs, including an estimation of the portion of future park land needs that are likely to be accommodated on unbuildable lands. The Commission agrees with the director's determination regarding this issue.

As noted above, Friends argue that the city inappropriately allocated a large portion of the lands added to the UGB in 2020 for identified park needs. Friends appeal at 13; Task 1 submittal at 1665. However, the city made that land need determination as part of the 2020 Update to the McMinnville Growth Management and Urbanization Plan, which informed land needs identified in the 2020 McMinnville UGB amendment. That decision has been adopted and acknowledged and is not subject to appeal in relation to the city's adoption of the updated HNA and EOA.

As defined in *former* OAR 660-008-0005(2), lands that may be considered unbuildable for residential uses include floodplains, slopes of 25 percent or greater, and lands constrained by natural hazards or subject to natural resource protection measures. For the same reasons, some of these areas may not be appropriate for park uses as well, and it is reasonable and conforming with the purposes of the Goals (ORS 197.627) for the city to make the determination of where and what type of park lands are needed to meet the community's needs. The process of park land acquisition is complicated by property owner interest, available resources, development activity, and other factors. Therefore, the Commission would not expect McMinnville to come to an overly precise determination of park lands to be located on unbuildable lands for this work task. The city has committed to including this analysis in the land-use efficiencies analysis later in the process. Task 1 Submittal at 1699. Based on these considerations, the Commission will expect discussion, analysis, and estimation of the portion of park lands that the city may locate on unbuildable lands as a component of the efficiency measures analysis required by OAR 660-024-0050(4). The Commission finds that the city's current estimation of park land needs is compliant with applicable laws and statutes, statewide land use planning goals, administrative rules, and applicable comprehensive plan policies and upholds the director's decision in DLCD Order 001943 on this issue.

The Commission rejects this appeal.

## **5. Friends Appeal: Exclusion of Buildable Land from Inventories Based on Ownership**

Friends argue that the director's decision did not adequately consider the validity of the conclusions the city reached regarding additional development potential on lands owned by churches and Linfield University, resulting in an inaccurate land inventory. Specifically, Friends points to 30 buildable acres owned by churches and 57 owned by Linfield. They argue that the director's decision neglected to consider that existing churches may expand their facilities to accommodate future growth in the community rather than selling portions of their lands to other churches or for alternative uses.

The submittal demonstrates that the city surveyed churches regarding their interest in using surplus lands to support affordable residential development, as allowed under recent legislation, and none expressed interest. Task 1 Addendum at 15. The city also consulted with Linfield University regarding its plans for 57 acres of undeveloped campus lands. In addition to noting that the university does not anticipate the need for new lands, Linfield officials stated, "For planning purposes, the City should not assume non-college use or sale of further property during the planning period." Task 1 Submittal at 347. Regarding consideration of housing needs in "group quarters," which includes dormitories and other college-related residences, the HNA notes the total number of McMinnville residents in group quarters has declined over the last decade. Given this information, the HNA project advisory committee decided not to allocate additional residents to group quarters over the planning period. Task 1 Submittal at 134. Because relatively large land holdings owned by private institutions may provide development capacity, it is appropriate and necessary to consult them regarding future development plans. Based on the evidence and analysis in the record, the Commission finds that McMinnville has sufficiently consulted institutional land holders in the city and made appropriate decisions regarding the potential for development on those lands, in compliance with applicable laws, applicable statutes, statewide land use planning goals, administrative rules, and the comprehensive plan.

Appellants cite the Commission's definition of "buildable land" and contend that the city erred by excluding church and university lands.<sup>9</sup> The operative term in this instance is the term "generally" in "Land is *generally* considered 'suitable and available' unless . . ." *Former* OAR 660-008-0005(2) (emphasis added). Here, the submittal explains why the city found that its evidence overcame that presumption when considering the church and university lands. Likewise, Friends cites the inventory provision of the Commission's division 9 rules, OAR 660-009-0015(3) for their argument that the commercially zoned church and university owned lands had to be on the city's BLI as employment lands and that the city must "make a corresponding reduction in the deficit of land it has identified in the UGB." Friends Appeal at 18. Assuming the city should have included the commercially zoned church and university owned lands in its BLI, the Commission does not agree that Friends have established the city erred by not reducing the deficit. That is because the city has determined that those lands do not, as a matter of fact, reduce the deficit at this point in their sequential UGB process. The director's decision also addresses this issue in some detail. DLCD Order 001943 at 27-28.

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<sup>9</sup> Appellants cite *former* OAR 660-008-0005(2), which has been amended and renumbered as OAR 660-008-0005(7).

Pertaining to land need, OAR 660-024-0040(1) provides in part, “[t]he 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.” Friends insist that the city must predict the portion of 26 acres of residential land owned by churches and four acres of employment land owned by churches that will serve church expansions over the next 20 years. Friends also insist that the city must estimate the extent to which Linfield University will utilize its surplus lands for residential and employment purposes over the next 20 years. This expectation rises to the level of “an unreasonably high level of precision,” in conflict with OAR 660-024-0040(1).

The Commission rejects this appeal.

## **6. Friends Appeal: Urban Reserves**

Friends request the Commission to require the city to use an updated population forecast for the establishment of urban reserves if the city should do so in the future. Friends argues that because the city did not file a PAPA for the establishment of urban reserves, it may not use the 2017 population forecast as a basis for urban reserves and must conduct a subsequent analysis to support an urban reserve decision based on the population forecast in place at the time a PAPA is filed for an urban reserve decision. Friends further elaborates on their understanding of OAR 660-021-0030(1).<sup>10</sup> Friends state:

“There is no requirement, or even suggestion, that establishment of urban reserves must rely solely on 20-year land-need analyses such as an HNA or EOA. While the analysis under this rule must *be consistent with* the acknowledged plan, the estimate for the urban reserve land need is a separate action and subject to an updated population forecast.” Friends appeal at 20 (emphasis in original).

The department recognized that there are several necessary components to support the determination of future land needs necessary to establish a UGB or urban reserve area, including a population projection, at least one type of adopted land need analysis, *e.g.*, HNA, EOA, or public land need, and a BLI. All of these components are necessary to determine future land needs for a planning period of 20 years for a UGB and up to 50 years for an urban reserve. However, Friends appears to argue that a local government may choose to establish an urban reserve area to serve land needs from 30 to 50 years into the future without first determining 20-year land needs with the analysis of the sufficiency of current lands within a UGB. The Commission does not construe its rules in that manner. For urban reserves, OAR 660-021-0030(1) provides that cities must first determine lands needs and the sufficiency of the UGB for a 20-year period before establishing urban reserve areas to serve land needs for “at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year timeframe used to establish the urban growth boundary.”

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<sup>10</sup> OAR 660-021-0030(1) provides:

“Urban reserves 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 20-year time frame used to establish the urban growth boundary. Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land.”

OAR 660-021-0030(1) requires the determination of a city's 20-year land needs, and the sufficiency of the current UGB, prior to establishing urban reserves to provide for land needs from 30 to 50 years into the future. Without the same Goal-required factual base of population projections, determination of remaining buildable lands within a UGB, and future land need analyses, a local government could utilize completely different assumptions about population growth, available lands, and future land needs to establish an urban reserve area. This would be in conflict with the provisions of OAR 660-021-0030(1) pertaining to urban reserves. The director's decision also addresses this issue in some detail in DLCDC Order 001943 at 28.

The Commission is mindful that the city's sequential UGB program approved by the director does not include a component addressing urban reserve areas. If McMinnville considers establishing an urban reserve, it would occur after adoption of any amendments to its UGB or establishing that the current UGB could accommodate the identified needs. If the city and Yamhill County designate an urban reserve at some future time, either the director and Commission will review the adoption in the manner of periodic review pursuant to ORS 197.626(1)(c). The designation of an urban reserve is not before the Commission for review at this time; the Friends appeal provides no basis for remand at this time.

The Commission rejects this appeal.

## V. CONCLUSION

Based on the foregoing, the Commission has rejected all appeals, regardless of whether they are discussed herein, and affirms the director's DLCDC Order 001943 affirming in part, and remanding in part the McMinnville sequential UGB task submittal.

### **THEREFORE, IT IS ORDERED THAT:**

The Commission approves the sequential UGB work task submitted by the City of McMinnville except for the parks and recreation BLI, which is remanded.

DATED THIS 4<sup>th</sup> DAY OF MAY, 2026.

FOR THE COMMISSION



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Brenda Bateman, Ph, D., Director  
Department of Land Conservation and Development

NOTE: You may be entitled to judicial review of this order. Judicial review may be obtained pursuant to ORS 197.651(3) by filing a petition for review within 21 days from the service of this final order. Judicial review is pursuant to the provision of ORS 197.650.

Copies of all exhibits are available for review at the department's office in Salem.

### **Certificate Of Service**

I certify that on May 4th, 2026, I served the attached “**Department of Land Conservation and Development Work Task 1 Approval and Remand Order, In the Manner of Review of the McMinnville Task Submittal for the Sequential UGB Work Task in the Manner of Periodic Review**” by mailing in a sealed envelope, with first-class postage prepaid, a copy thereof addressed as follows:

**Kim Morris, Mayor McMinnville City Hall**

230 NE 2nd Street  
McMinnville, OR 97128  
[Kim.Morris@mcminnvilleoregon.gov](mailto:Kim.Morris@mcminnvilleoregon.gov)

**Adam Garvin, City Manager**

The City Manager's Office  
City Hall  
230 NE 2nd Street  
McMinnville, OR 97128  
[Adam.Garvin@mcminnvilleoregon.gov](mailto:Adam.Garvin@mcminnvilleoregon.gov)

**Heather Richards, (via email only)**

[Heather.Richards@mcminnvilleoregon.gov](mailto:Heather.Richards@mcminnvilleoregon.gov)

**Mark Davis**

652 SE Washington Street  
McMinnville, OR 97128  
[mark@startlivingthetruth.com](mailto:mark@startlivingthetruth.com)

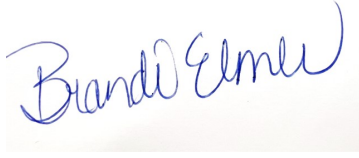
**Rob Hallyburton, Friends of Yamhill County**

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**Mary Kyle McCurdy, 1000 Friends of Oregon**

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**Melissa Ryan-City Counsel**  
1000 SW Broadway, Suite 1910  
Portland, OR 97205  
[mryan@batemanseidel.com](mailto:mryan@batemanseidel.com)

A handwritten signature in blue ink that reads "Brandi Elmer". The signature is written in a cursive style and is positioned above a horizontal line.

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Executive Assistant to the Director