



# Oregon

Kate Brown, Governor

## Department of Land Conservation and Development

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March 5, 2019



SENT VIA E-MAIL

Christine Lundberg, Mayor  
City of Springfield  
225 Fifth Street  
Springfield, Oregon 97477

Pat Farr, Chair  
Lane County Board of Commissioners  
125 E. 8th Avenue  
Eugene, Oregon 97401

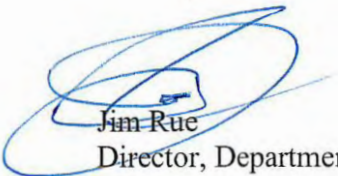
**RE: City of Springfield Urban Growth Boundary Amendment (Order 001900)**

I am pleased to inform you that the Land Conservation and Development Commission (commission) has approved the City of Springfield and Lane County urban growth boundary amendment. The matter initially came before the commission as a referral from the director on November 16, 2017, and January 25, 2018.

The order implementing the approval is attached.

This decision is subject to judicial review pursuant to the provision of ORS 197.650 and 197.651. Please feel free to speak with Patrick Wingard, your DLCD regional representative, at (541) 393-7675 or [patrick.wingard@state.or.us](mailto:patrick.wingard@state.or.us) if you have any questions or need further assistance.

Thank you,



Jim Rue

Director, Department of Land Conservation and Development

cc: Tom Boyatt, Springfield Community Development Division Manager  
Sandy Belson, Springfield Comprehensive Planning Manager  
Linda Pauly, Springfield Principal Planner  
Keir Miller, Lane County Planning Supervisor  
Bill Kloos, Law Office of Bill Kloos PC, Counsel for Johnson Crushers International and Willamette Water Company  
Mary Kyle McCurdy, 1000 Friends of Oregon  
Kari Johnson  
Steve & Sheri Tofflemoyer  
DLCD (Howard, Wingard, Abbott, Hoge)

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

<b>IN THE MATTER OF REVIEW</b>	)	
<b>OF THE SPRINGFIELD URBAN</b>	)	<b>APPROVAL ORDER</b>
<b>GROWTH BOUNDARY IN THE</b>	)	<b>19-UGB-001900</b>
<b>MANNER OF PERIODIC REVIEW</b>	)	

This matter concerns the review of certain ordinances adopted by the City of Springfield (city) and Lane County (county) relating to a legislative amendment of the city’s urban growth boundary (UGB). This matter came before the Land Conservation and Development Commission (Commission) on November 16, 2017, and January 25, 2018, upon a referral of the submittal from the director of the Department of Land Conservation and Development (department) on September 19, 2017. The Commission fully considered the written record and the written argument and oral presentations of the objectors, the city, and the department.

**I. INTRODUCTION**

**A. Procedural History**

The 2030 Plan submittal before the commission for review is comprised of City of Springfield Ordinance No. 6361, and Lane County Ordinance Nos. PA 1304 and PA 1341.

1. On December 31, 2009, the city provided notice of a proposed amendment to its comprehensive plan pursuant to OAR 660-018-0020.
2. On August 9, 2011, the Springfield 2030 Refinement Plan Residential Land Use and Housing Element and its Technical Supplement Residential Land Use and Housing Needs Analysis and a separate city UGB pursuant to ORS 197.304 were acknowledged.
3. On December 5, 2016, the city adopted Ordinance No. 6361, amending the Springfield UGB to add a total of 781 acres of land for employment uses, parks and recreation, and open space, along with associated amendments to the Eugene-Springfield Metropolitan Area General Plan (Metro Plan), the Springfield Comprehensive Plan, and the Springfield zoning map, and the Springfield Development Code.
4. On December 6, 2016, the county adopted Ordinance Nos. PA 1304 and PA 1341, amending the Springfield UGB, the Metro Plan, the Springfield Comprehensive Plan text and map designation, the Springfield zoning map, the Springfield Development Code, and the Lane County Rural Comprehensive Plan.
5. On March 31, 2017, the department received notice of adoption of the UGB amendment.
6. On March 31, 2017, Kari Johnson timely filed an objection pursuant to OAR 660-025-0140(2).

7. On April 20, 2017, 1000 Friends of Oregon (1000 Friends) timely filed an objection pursuant to OAR 660-025-0140(2).
8. On April 20, 2017, Johnson Crushers/Willamette Water Company (Johnson Crushers) timely filed an objection pursuant to OAR 660-025-0140(2).
9. On April 21, 2017, Johnson Crushers timely filed a supplemental objection pursuant to OAR 660-025-0140(2).
10. On May 3, 2017, Steve and Sheri Tofflemoyer filed an untimely objection pursuant to OAR 660-025-0140(2).
11. On July 27, 2017, the department received a request from the city to waive the 120-day period for making a director's decision on the submittal.
12. On September 19, 2017, the director referred this matter to the Commission for a decision on the submittal pursuant to OAR 660-025-0150(1)(c).
13. On October 24, 2017, the department issued a staff report. The report recommended approval of the submittals. The report found the objections filed by 1000 Friends and Johnson Crushers to be valid, but recommended their rejection by the Commission. The report found the objections filed by Kari Johnson and Steve and Sheri Tofflemoyer to be invalid.
14. On November 3, 2017, the department received three exceptions to the staff report. Exceptions were filed by the city, 1000 Friends, and Johnson Crushers.
15. On November 9, 2017, the department issued a supplemental staff report in response to the exceptions that modified the October 24, 2017 recommendation to require additional information from the city prior to a decision on the UGB expansion.
16. On November 16, 2017, the Commission heard this matter, receiving a staff report, materials from the local record from the city and objectors, and argument from the city and objectors. The Commission continued this matter to allow for consideration of the additional material provided by the city and 1000 Friends after the November 9, 2017 staff report, and allowed submittal of additional written comments by the city and 1000 Friends prior to January 8, 2018.
17. On January 26, 2018, the Commission resumed the hearing on this matter, receiving a staff report from the department and argument from the city and objector 1000 Friends. At the close of the hearing, the Commission moved to reject the objections and approve the submittal, with findings and conclusions as set forth in this order.

## **B. Description and Overview of 2030 Plan Submittal**

The 2030 Plan submittal includes amendments to the UGB and related sections of the city's and county's comprehensive plans and implementing ordinances. The Commission reviews UGB amendments that include more than 50 acres for cities with population greater than 2,500 in the manner provided for periodic review. ORS 197.626(1)(b). This matter came before the Commission as the result of a referral from the director. The Commission reviewed the objections and exceptions, the director's staff reports, and additional written argument submissions from the parties; heard arguments from the parties; and decided to approve the submittal. This order is a review on the record submitted by the city.

## **C. The Written Record for This Matter**

1. Written argument provided by the city and 1000 Friends prior to and at the January 26, 2018 Commission hearing.
2. The department staff report for the January 26, 2018 Commission hearing, dated January 18, 2018.
3. Written argument at the November 16, 2017 Commission hearing, submitted by the city, 1000 Friends, and Johnson Crushers. The Commission marked the items Exhibits 1 to 7, Agenda Item 12.
4. The department supplemental staff report for the November 16, 2017 Commission hearing, dated November 9, 2017.
5. Exceptions filed by the city, 1000 Friends, and Johnson Crushers, dated November 3, 2017.
6. The department staff report for the November 16, 2017 Commission hearing, dated October 24, 2017, including responses to objections.
7. Objections, submitted by:
  - 1000 Friends
  - Johnson Crushers
  - Keri Johnson
  - Steve and Sheri Tofflemoyer

8. UGB amendment submittal (“Record”) by the city including:
- Springfield Ordinance No. 6361, with exhibits A to F-1, amending the UGB, the Metro Plan, the Springfield Comprehensive Plan text and map designation, the Springfield zoning map, and the Springfield Development Code.
  - Lane County Ordinance No. PA-1304, with exhibits, amending the UGB, the Metro Plan, the Springfield Comprehensive Plan text and map designation, the Springfield zoning map, and the Springfield Development Code.
  - Lane County Ordinance No. PA-1341, with exhibits, amending the Lane County Rural Comprehensive Plan.
  - An index of correspondence, public testimony, draft products, meeting minutes, and background studies beginning July 2008. The index indicates whether each item from the local record was included as part of the submittal as provided in OAR 660-025-0130(3)(b).

## **II. COMMISSION’S REVIEW**

### **A. Jurisdiction**

The Commission has exclusive jurisdiction to review certain UGB amendments pursuant to ORS 197.626 and OAR 660-025-0040(2)(b). ORS 197.626(1) provides, in pertinent part:

“A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided by periodic review for a work task under ORS 197.633:

“\* \* \* \* \*

“(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary[.]”

In addition, ORS 197.825(2) provides:

“The jurisdiction of the [Land Use Board of Appeals]:

“\* \* \* \* \*

“(c) Does not include a local government decision that is:

“(A) Submitted to the Department of Land Conservation and Development for acknowledgment under ORS \* \* \* 197.626 \* \* \*, unless the Director of the Department of Land Conservation and Development, in the director’s sole discretion, transfers the matter to the board[.]”

Springfield has a population over 2,500. Record 488-89. The submittal expands the city's UGB by adding over 700 acres – more than 50 acres. Record 362. The Commission concludes that the city correctly determined that review of the 2030 Plan submittal is within the exclusive jurisdiction of the Commission. Record 353, 362.

## **B. Scope of Review**

Where the Commission reviews a UGB amendment under ORS 197.626, it does so “in the manner provided for review of a periodic review task.” That review is to determine whether the decisions amending the UGB and any related matters, comply with the applicable statewide planning goals, their implementing rules, and applicable state statutes. OAR 660-025-0175(1)(b). In reviewing the 2030 Plan submittal for compliance with the foregoing, the Commission also considers the objections and exceptions leveled against that submittal.

## **C. Standard of Review**

The Commission reviews the submittals in the manner provided for periodic review. ORS 197.626(1)(b). Review in the manner of periodic review is subject to the standard of review provided in ORS 197.633(3):

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

“(b) For procedural issues, is 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, is whether the local government’s decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, \* \* \* and land use regulations. The Commission shall defer to a local government’s interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, ‘complies’ has the meaning given to the term ‘compliance’ in the phrase ‘compliance with the goals’ in ORS 197.747.”

Thus, on review, the Commission considers whether the submittal is consistent with the applicable statutes, goals, and administrative rules and is supported by substantial evidence. OAR 660-025-0160(2)(a) and (c). The UGB submittal is a legislative decision. *Home Builders Ass’n of Metropolitan Portland v. Metro*, 184 Or App 633, 57 P3d 204 (2002). The Goal 2 requirement for an adequate factual base requires that a legislative land use decision be supported by substantial evidence. *DLCD v. Douglas County*, 37 Or LUBA 129, 132 (1999). Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). Where the evidence in the record is conflicting, if a reasonable person could reach the decisions that the city and county made in view of all the evidence in the record, the choice between conflicting evidence belongs to the local governments. *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). Because the submittal embodies both basic findings of fact and inferences drawn from those facts, substantial evidence review involves two related inquiries: “(1) whether the basic fact or facts are supported by substantial evidence, and (2) whether there is a basis in reason connecting the inference to the facts from which it is derived.” *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 271, 639 P2d 90 (1981). Where substantial evidence in the record supports the city’s and county’s adopted findings concerning compliance with the goals and the Commission’s administrative rules, the Commission nevertheless must determine whether the findings lead to a correct conclusion under the goals and rules. *Oregonians in Action v. LCDC*, 121 Or App 497, 504, 854 P2d 1010 (1993).

There is no statute, statewide planning goal or administrative rule that generally requires that legislative land use decisions be supported by findings. *Port of St. Helens v. City of Scappoose*, 58 Or LUBA 122, 132 (2008). However, there are instances where the applicable statutes, rules or ordinances require findings to show compliance with applicable criteria. In addition, where a statute, rule or ordinance requires a local government to consider certain things in making a decision, or to base its decision on an analysis, “there must be enough in the way of findings or accessible material in the record of the legislative act to show that applicable criteria were applied and that required considerations were indeed considered.” *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002). Such findings serve the additional purpose of assuring that the Commission does not substitute its judgment for that of the local government. *Id.*; *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304, 314 (2004).

Finally, the Commission also considers the objections and exceptions. In reviewing objections, the Commission only need 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, 259 P3d 1021 (2011).

#### **D. Applicable Law**

The 2007 Oregon Legislature enacted HB 3337, codified at ORS 197.304, requiring the city and the City of Eugene to establish separate UGBs. On December 31, 2009, the city initiated the UGB amendment by providing the department notice as required by OAR 660-018-0020 of a proposed comprehensive plan amendment.<sup>1</sup> Record at 360. Oregon Laws 2016, chapter 81, section 1, *compiled as a note after* ORS 197A.320 (2016), provide that in this circumstance the city may complete the evaluation and amendments in the 2030 Plan submittal “pursuant to statutes and administrative rules in effect on June 30, 2013.”<sup>2</sup> Thus, the

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<sup>1</sup> Providing notice of the proposed plan amendment determines the applicability of certain rules in OAR chapter 660, division 24. OAR 660-024-0000(3) provides in part:

“(b) For purposes of this rule, ‘initiated’ means that the local government either:

“(A) Issued the public notice specified in OAR 660-018-0020 for the proposed plan amendment concerning the evaluation or amendment of the UGB[.]”

<sup>2</sup> The statute provides:

Commission identifies the applicable statutes and rules in effect for its review of the 2030 Plan submittal to include *former* ORS 197.298, the version of Goal 14 effective April 28, 2006, and OAR chapter 660, division 24 effective April 16, 2009, pursuant to OAR 660-024-0000(4). The current version of all other statewide planning goals, implementing rules, and statutes apply to the review of the 2030 Plan submittal. The city identified as applicable, and made findings for, Goals 1, 2, 5 through 9, and 11 through 15. Record 369. The primary focus of the Commission's review are Goal 2, Goal 9, *former* Goal 14, OAR chapter 660, divisions 9 and *former* 24, and *former* ORS 197.298. Some of these provisions include other goals and rules by reference.

Goal 2 establishes a land use planning process and policy framework as a basis for all decisions and actions related to use of land. Goal 2 also requires an adequate factual base for such decisions and actions.

Goal 9 includes requirements for urban area comprehensive plans to contribute to a stable and healthy economy through various measures designed to encourage economic growth.<sup>3</sup> The Commission adopted OAR chapter 660, division 9 to implement Goal 9. Of particular relevance to this decision, OAR 660-009-0005 provides various definitions of terms used in division 9.<sup>4</sup>

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"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>3</sup> Goal 9 provides, in part:

"Comprehensive plans for urban areas shall:

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

<sup>4</sup> OAR 660-009-0005 provides the following relevant definitions:

"(1) 'Developed Land' means non-vacant land that is likely to be redeveloped during the planning period.

"(2) 'Development Constraints' means factors that temporarily or permanently limit or prevent the use of land for economic development. Development constraints include, but are not limited to, wetlands, environmentally sensitive areas such as habitat, environmental contamination, slope, topography, cultural and archeological resources, infrastructure deficiencies, parcel fragmentation, or natural hazard areas.

"\* \* \* \* \*

"(11) 'Site Characteristics' means the attributes of a site necessary for a particular industrial or other



OAR 660-009-0015 requires a city to adopt an economic opportunities analysis (EOA), which must include identification of required employment land site types and an assessment of community economic development potential.<sup>5</sup> OAR 660-009-0020 sets forth required employment development policies for cities to include in their comprehensive plans. OAR 660-

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employment use to operate. Site characteristics include, but are not limited to, a minimum acreage or site configuration including shape and topography, visibility, specific types or levels of public facilities, services or energy infrastructure, or proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes.

“\* \* \* \* \*

“(14) ‘Vacant Land’ means a lot or parcel:

“(a) Equal to or larger than one half-acre not currently containing permanent buildings or improvements; or

“(b) Equal to or larger than five acres where less than one half-acre is occupied by permanent buildings or improvements.”

<sup>5</sup> OAR 660-009-0015 provides, in part:

“Cities and counties must review and, as necessary, amend their comprehensive plans to provide economic opportunities analyses containing the information described in sections (1) to (4) of this rule. This analysis will compare the demand for land for industrial and other employment uses to the existing supply of such land.

“\* \* \* \* \*

“(2) Identification of Required Site Types. The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses. Cities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that may be needed for expansion. Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories.

“(3) Inventory of Industrial and Other Employment Lands. Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use.

“(a) For sites inventoried under this section, plans must provide the following information:

“(A) The description, including site characteristics, of vacant or developed sites within each plan or zoning district;

“(B) A description of any development constraints or infrastructure needs that affect the buildable area of sites in the inventory[.]

“\* \* \* \* \*

“(4) Assessment of Community Economic Development Potential. The economic opportunities analysis must estimate the types and amounts of industrial and other employment uses likely to occur in the planning area. The estimate must be based on information generated in response to sections (1) to (3) of this rule and must consider the planning area’s economic advantages and disadvantages.”

009-0025 requires cities to designate and facilitate future development of employment lands adequate to implement employment development policies.<sup>6</sup>

Goal 14 establishes requirements for amending UGBs, determining land need within UGBs, and establishing the boundary location for UGBs. The Commission adopted OAR chapter 660, division 24 to provide guidance and requirements for completing the land need and location determinations under Goal 14. Goal 14 includes a requirement for cities to consider whether land needs can be accommodated within an existing UGB before considering expansion of the UGB.<sup>7</sup>

At the time the city submitted notice of this proposed plan amendment, *former* OAR 660-024-0030 provided requirements for the population forecast that supported the demonstrated need to accommodate long-range urban population. *Former* OAR 660-024-0040 included requirements for determining land need in setting a UGB. *Former* OAR 660-024-0050 required cities to inventory land inside the UGB to determine whether lands already within the boundary can accommodate 20-year land needs, and inventory suitable vacant and developed land designated for employment land use. *Former* OAR 660-024-0060 described required methodology for conducting a boundary location alternatives analysis.

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<sup>6</sup> OAR 660-009-0025 provides, in part:

“Cities and counties must adopt measures adequate to implement policies adopted pursuant to OAR 660-009-0020. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, public facility plans, and transportation system plans.

“(1) Identification of Needed Sites. The plan must identify the approximate number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses to implement plan policies. Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories. Several broad site categories will provide for industrial and other employment uses likely to occur in most planning areas. \* \* \* \* \*

“\* \* \* \* \*

“(4) If cities and counties are required to prepare a public facility plan or transportation system plan by OAR chapter 660, division 011 or division 012, the city or county must complete subsections (a) to (c) of this section at the time of periodic review. \* \* \* Cities and counties must:

“\* \* \* \* \*

“(b) Estimate the amount of serviceable industrial and other employment land likely to be needed during the planning period for the public facilities plan. Appropriate techniques for estimating land needs include but are not limited to the following:

“(A) Projections or forecasts based on development trends in the area over previous years[.]”

<sup>7</sup> *Former* Goal 14 provides, in part:

“Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.”

Finally, *former* ORS 197.298 provided the methodology for prioritizing candidate lands considered for addition to the UGB based upon current non-urban classification.<sup>8</sup> While ORS 197.298 has been supplanted by ORS 197A.320 for UGB amendments as of January 1, 2016, it governs consideration of the 2030 Plan submittal. In *1000 Friends of Oregon v. LCDL*, the court opined on “the fit between Goal 14 and ORS 197.298.” 244 Or App at 245. The court concluded that ORS 197.298 works on types of land uses that generate the need for specific quantities of land. 244 Or App at 257. The Commission’s evaluation of the 2030 Plan submittal is instructed by that 2011 opinion.<sup>9</sup>

### III. COMMISSION EVALUATION

The Commission reviews the 2030 Plan submittal findings of fact and conclusions of law in Ordinance No. 6361, Exhibit F that demonstrate that the adopted or amended plans, policies

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<sup>8</sup> *Former* ORS 197.298, as it existed prior to January 1, 2016, provides:

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

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

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

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

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

<sup>9</sup> Having established the applicable law, the Commission will dispense with designating these laws “*former*” in the remainder of this order.

and other implementing measures comply with the applicable statewide planning goals, statutes, and administrative rules, identified in Section II. D. OAR 660-025-0040(1). ORS 197.175(1) requires cities and counties to exercise their planning and zoning responsibilities in accordance with state land use statutes and goals. ORS 197.175(2) directs local governments to amend comprehensive plans “in compliance with goals” approved by the Commission. In its review for compliance with the applicable statewide planning goals, ORS 197.747 provides:

“‘compliance 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 2030 Plan submittal included findings related to Goals 1, 2, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 15. Record at 369 – 873. The Commission has reviewed those findings and concludes that the 2030 Plan submittal complies on the whole with the goals. Additionally, the Commission makes the following focused conclusions.

**A. Goal 2 Process and Factual Base**

The Commission concludes that the city identified issues and problems related to economic development in the city in its EOA, compiled an inventory of lands and other factual information related to Goals 9 and 14, particularly in the Commercial and Industrial Buildable Lands Inventory (CIBL), evaluated alternative courses of action, and made ultimate policy choices taking into consideration social, economic, energy, and environmental needs as required by Goal 2. Details regarding the city’s decision are elaborated upon in the remaining findings.

**B. Goals 2 and 14 Coordination**

Goals 2 and 14 require the city and the county within which the boundary is located to adopt UGB amendments through a cooperative process. The Commission concludes that the submittal complies with both goal requirements because the city coordinated with and jointly adopted its UGB amendment with Lane County. City of Springfield Ordinance No. 6361 was adopted December 5, 2016; and Lane County Ordinance Nos. PA 1304 and PA 1341 were adopted December 6, 2016. Record at 1-4, 1864-1869.

**C. Goal 9 and division 9**

Goal 9, as implemented by division 9 requires the city to adopt an EOA, which must include identification of required employment land site types and an assessment of community economic development potential. Ordinance No. 6361 adopts the Springfield 2030 Comprehensive Plan Economic Element and the Springfield Commercial and Industrial Buildable Lands Inventory and Economic Opportunities Analysis (CIBL/EOA). Record at 48–272. The adopted Economic Element replaces Metro Plan Economic Element policies applicable to lands within the city’s jurisdictional area with city specific goals, policies, implementation measures and findings to address the city’s land needs for economic development and employment growth for the 2010-2030 planning period. The Commission concludes that the 2030 Plan submittal complies with Goal 9 and division 9.

#### **D. Consistent with Coordinated Population Forecast**

In 2009, the city and county adopted a coordinated population forecast (City of Springfield Ordinance No. 6248; Lane County Ordinance No. PA 1261) that estimated the city population to be 81,608 in 2030. By adopting a 20-year population forecast in coordination with the county, the Commission concludes that the 2030 Plan submittal complies with the Goal 14, Land Need Factor 1 requirement to determine land need “consistent with a 20-year population forecast coordinated with affected local governments” and OAR 660-024-0030. Record at 306. The Commission finds that the forecast uses commonly accepted practices and standards for population forecasting, and is based on current, reliable and objective sources and verifiable factual information. The forecast accounts for both documented long-term demographic trends as well as recent events that have a reasonable likelihood of changing historical trends. Record at 306.

#### **E. Demonstrated Need – Employment and Recreation Land**

In expanding an UGB, the first step is to determine the amount of land needed. *1000 Friends of Oregon*, 244 Or App at 255-257. That determination is made under the Land Need factors of Goal 14. The findings provide a description of the need determination. Record at 472–478; 493-495. The EOA differentiated the land use types according to their land consumption attributes in Table 5-4. *1000 Friends of Oregon*, 244 Or App at 256; record at 147. The 2030 Plan Economic and Urbanization Element comprehensive policies identify specific industrial site needs and commercial mixed-use employment site needs and establish special planning requirements and zoning regulations to reserve these sites for the intended large site employment purposes. Record at 479. The UGB expansion in the North Gateway and Mill Race sites provides land to accommodate industrial and commercial mixed-use target industries’ site needs on sites larger than five acres, including two large industrial employment sites on 126 acres and five large commercial mixed-use employment sites on 97 acres that the city determined could not reasonably be accommodated on land already inside the urban growth boundary. Record at 473. The Commission concludes that the 2030 Plan submittal complies with the requirements of Goal 14, Land Need Factor 2 and OAR 660-024-0040 by demonstrating a need for land with specific site characteristics that were both typical and necessary to provide suitable employment land within the city. The city prepared an EOA which complied with the requirements of OAR 660-009-0015 except in one instance related to “vacant land” discussed in the objections below. The EOA establishes the city’s demonstrated land needs. Record at 18-307.

The acknowledged 2011 Springfield Residential Land & Housing Needs Analysis determined that the city had a deficit of 300 acres of public/semi-public land to meet Parks and Open Space needs for the 20-year planning period ending 2030. The Commission finds that the city has also complied with the requirements of the applicable Goal 14 provisions related to determining land need and OAR 660-024-0040 by demonstrating a need for parks and recreation land to be added to the UGB. Record at 495-496.

## **F. Land Inventory and Response to Deficiency**

Chapter 2 of the CIBL/EOA, “Land Available for Industrial and Other Employment Uses” presents the inventory. Record at 72-108. The city’s findings under Goal 9, OAR 660-009-0015(3) Inventory of Industrial and Other Employment Lands, Record at 405-411; OAR 660-009-0025(1) Identification of Needed Sites, Record at 451-456; and under Goal 14, Record at 472-478, explain how the city inventoried land inside the UGB — including potentially redevelopable sites — in accordance with OAR 660-009-0015 to determine that there is not adequate development capacity to accommodate 20-year employment land needs determined in OAR 660-024-0040. Subject to further discussion under Consideration of Objections (*see* Section IV) below, the Commission concludes that the city has complied with Goal 14 and OAR 660-024-0050 by providing for a 20-year land supply of employment lands. After establishing the need for employment land (*see* subsection E of this section), the city translated the identified need for employment land into an amount of land with appropriate site characteristics necessary to satisfy that need. Record at 62-67. To respond to this land need, the city took a combination of measures to (1) assume that much of this land need would be met by redevelopment of employment lands within the existing UGB and (2) add land to the UGB for future employment development. Record at 39-41. The Commission also finds that the city has complied with Goal 14 and OAR 660-024-0050 by providing for a 20-year land supply of parks and recreation lands.

## **G. Boundary Location**

After determining the amount of land needed, the second step is to accommodate the need by locating and justifying the inclusion of land to fill that identified need. *1000 Friends of Oregon*, 244 Or App at 257-265. The city accounted for *1000 Friends of Oregon*, referred to as the “McMinnville” decision, in its analysis.<sup>10</sup> Record at 508. City outlined its sequencing of steps to apply Goal 14 factors in the analysis of each priority of land under ORS 197.298:

### **“A. APPLY THE FOLLOWING FACTORS TO EXCLUDE (OR INCLUDE LOWER PRIORITY) LANDS FROM THE UGB:**

- “a. Exclude lands that are not buildable
  - “b. Exclude lands based upon specific land needs ([ORS] 197.298(3)(a))
  - “c. Exclude lands based upon inability to reasonably provide urban services due to physical constraints ([ORS] 197.298(3)(b))
  - “d. Include lower priority lands needed to include or provide services to urban reserve lands ([ORS] 197.298(3)(c))
  - “e. Exclude lands based upon analysis of comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
  - “f. Exclude lands based upon analysis of compatibility with agricultural & forest activities (Goal 14, Boundary Location, Factor 4)
- “QUESTION: Where are UGB Goal 14 Locational Factors 1 and 2?

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<sup>10</sup> Where the city analysis refers to Goal 14, Boundary Location Factors 3 and 4, that correlates to the court’s discussion of *former* Goal 14, Locational Factors 5 and 7 as the “consequences and compatibility factors of Goal 2, Part II, and Goal 14.” 244 Or App at 265.

“ANSWER: According to “McMinnville” logic, they are redundant and less restrictive than two of the corresponding factors in ORS 197.298, and thus drop out at this stage of analysis.

**“B. IF THE AMOUNT OF LAND REMAINING AFTER EXCLUSIONS IS GREATER THAN THE AMOUNT OF NEEDED LANDS, THEN:**

Apply the following factors INTERDEPENDENTLY to pick and choose among the land remaining after exclusions:

- “a. Efficient accommodation of identified land needs (Goal 14, Boundary Location, Factor 1)
- “b. Orderly and economic provision of services (Goal 14, Boundary Location, Factor 2)
- “c. Comparative ESEE consequences (Goal 14, Boundary Location, Factor 3)
- “d. Compatibility with agricultural and forest activities (Goal 14, Boundary Location, Factor 4)

**“C. IF THE AMOUNT OF LAND REMAINING AFTER EXCLUSIONS IS LESS THAN THE AMOUNT OF NEEDED LANDS, THEN GO TO THE NEXT LOWER PRIORITY” Record at 508-509.**

The city summarized how it applied that analytical framework and the conclusions that it reached. Record at 509-513. The city set forth the evidence and analysis that formed the basis of its boundary alternatives analysis conclusions in detail. Record at 514-773.

The Commission finds that the city has complied with ORS 197.298, Goal 14, and OAR 660-024-0060 in determining the location of lands to be added to the UGB to meet its identified need. The city identified buildable land that is contiguous to the existing UGB to create appropriate study areas around the existing UGB in all directions. The city evaluated all land studied for addition to the UGB for consistency with the priorities for exception lands and less valuable agricultural lands over higher value agricultural lands. Record at 507-773. After appropriately applying the four “location” factors contained within Goal 14, the city then included higher priority exception lands totaling 781 acres into the UGB. Record at 507-773.

#### **IV. CONSIDERATION OF OBJECTIONS AND EXCEPTIONS**

##### **A. Objections Received**

The department received objections from four parties during the objection phase of the review, which ended on April 21, 2017. Objections were received from the following parties:

1. 1000 Friends
2. Johnson Crushers
3. Kari Johnson
4. Steve and Sheri Tofflemoyer

As required by OAR 660-025-0140(3), the director determined that two of the objections, from 1000 Friends and Johnson Crushers, were valid, and two of the objections, from Kari Johnson and Steve and Sheri Tofflemoyer, were invalid.<sup>11</sup> The department determined that the Johnson objection did not meet several of the criteria under OAR 660-025-0140(2) and that the Tofflemoyers' objection was untimely. October 24, 2017 Staff Report at 7. Pursuant to OAR 660-025-0140(3), the Commission does not consider the invalid objections of Johnson and the Tofflemoyers.

## **B. Commission Consideration of Objections and Exceptions**

1000 Friends and Johnson Crushers presented objections to the Commission. For each valid objection that the Commission considers, it must either sustain or reject it based on the statewide planning goals, applicable statutes, or administrative rules. OAR 660-025-0140(6). 1000 Friends' four objections pertain to the city's determination of the amount of land needed, the first step in an UGB expansion. *1000 Friends of Oregon*, 244 Or App at 255. Johnson Crushers' four objections all pertain to the city's determination of the adequacy of lands in the Seavey Loop area to fill the quantified need, the second step in an UGB expansion. *Id.* at 257. Accordingly, the Commission first considers the objections from 1000 Friends and then turns to those of Johnson Crushers.

### **1. 1000 Friends Objection #1**

The city identified an employment land need for three sites 20 acres and larger; two for industrial and one for commercial and mixed use that cannot be accommodated within the existing UGB. Record 145-147. The objection accepts the determination of need for sites 20 acres and larger. 1000 Friends objection at 4. However, the objection asserts that the city overestimated the amount of commercial and industrial land needed during the planning period by developing a site characteristic for size that did not meet the definition for such set forth in

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<sup>11</sup> OAR 660-025-0140(2) and (3) provide:

“(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.”



OAR 660-009-0005(11) and thus did not correctly identify site types needed for employment uses as required by OAR 660-009-0015(2). 1000 Friends contends that no relevant evidence supports the city's determination that its need for 20+ acre employment sites can only be met by sites that average 60+ acres in size. The objection describes the test that the Land Use Board of Appeals (LUBA) crafted to interpret the site characteristics provisions of division 9:

“To be a valid site characteristic: (1) the attribute must be typical of the expected use and (2) the attribute must have some meaningful connection with the operation of the use. LUBA further held that ‘typical’ attributes are those that are ‘typically required for a business to operate successfully.’ [*Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010).] The Court of Appeals upheld LUBA’s test, noting that “‘necessary’ site characteristics are those attributes that are reasonably necessary to the successful operation of *particular* industrial or employment uses, in the sense that they bear some important relationship to that operation.’ (Emphasis added) *Friends of Yamhill County v. City of Newberg*, 240 Or App 238 (2011).” 1000 Friends objection at 3 (footnote omitted).

The objection does not question any of the city's specified site characteristics related to matters such as slope, transportation access, access to city services, flood hazards, or environmental constraints. It limits the objection to an assertion that the city did not arrive at the average needed site size consistent with the definition of “site characteristics” in OAR 660-009-0005(11), and in compliance with OAR 660-009-0015(2), and Goals 9 and 14.

The objection asserts that, rather than merely averaging the size of a small number of existing large industrial and commercial sites, the city must complete a more in-depth analysis of the specific industrial and commercial land use types that are targeted in the city's EOA for location into the city, and determine the necessary site sizes of these large sites based upon that analysis. 1000 Friends objection at 9. Furthermore, according to the objection: (1) the existing large industrial sites used to create the “average site size,” consisting of paper mills, are not indicative of the type of large industrial users that can be expected to locate in the city in the future; and (2) the existing large commercial sites used to create the “average site size,” consisting of a regional shopping center and a large health services “campus,” are not indicative of the type of large commercial users that can be expected to locate in the city in the future. 1000 Friends objection at 6-7. The objection contends that the city is required to differentiate between categories of industrial and commercial employment uses that are actually being targeted by the city, and find attributes that are “typical” and “necessary” for each “particular” use in terms of needed size. The objection asserts that the city cannot group all such uses together into one or two general categories so as to determine average site sizes that are legally defensible. 1000 Friends objection at 4.

The Commission concludes that the objection does not establish that the methodology the city used to determine the needed site sizes for large commercial and industrial sites for which it is adding land to its UGB resulted in a submittal that violates the administrative rules. OAR 660-009-0015(2) specifically encourages cities to “examine existing firms in the planning area to identify types of sites that may be needed for expansion.” OAR 660-009-0025(1) specifies that “the plan must identify the appropriate number, acreage and site characteristics of sites needed to

accommodate industrial and other employment uses,” differentiating “acreage” and “site characteristics.” OAR 660-009-0025(4) includes appropriate techniques for estimating land needs to include “projections or forecasts based on development trends in the area over previous years.”

However the Commission agrees that the concern of the objection – that determining needed site sizes by simple averages could inflate needed site sizes for large employment land users to a level inconsistent with the site sizes set forth in a city’s own EOA for target industries and other employers – could cause a city to overestimate its employment land need. For example, a city with two existing large industrial users, one 20 acres and the other 300 acres, might find an “average” needed site size of 160 acres, even if the high end of a range of needed large industrial sites for targeted industries was, as with Springfield, 60 acres. In confronting a factual situation such as that, the Commission may not be able to conclude that such an identified need represents a proper application of OAR 660-009-0015(2), and OAR 660-009-0025(1) and (4).

Therefore, the Commission determines that an average site size that is determined for large employment land users must fall within the range of such site sizes for employers that are identified as target industries and other employers by a city in its adopted EOA. If the average site size falls outside of this range, that city would need to employ an alternative method of determining average site sizes for large employers. That is because determining the amount of land needed to be added to a UGB under the Goal 14 need factors requires differentiation of land use types according to their land consumption attributes. *1000 Friends of Oregon v. LCDC*, 244 Or App at 256.

In this matter, the Commission determines that the city’s average site sizes for large industrial and commercial employment sites are within the range of sizes for such sites determined by the city’s EOA. For industry, the EOA identifies target industries that include medical equipment, high-tech electronics and manufacturing, recreational equipment, furniture manufacturing, and specialty food processing. Record at 151. The estimated site sizes for these target industries range from nine to 60 acres. *Id.* Given these numbers, the city’s estimate of the average size of needed large industrial sites, at 63 acres, approximates the upper end of this range. *Id.* While the city used an average site size for large industrial sites (63 acres) that is slightly higher than the range of site sizes contained within the EOA (60 acres), it does not result in a significant inflation of the amount of land added to the urban growth boundary to require remand. That is because OAR 660-024-0040(1) recognizes that “the 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.” For commercial, the EOA identifies target industries that include high tech services, corporate headquarters, biotech, professional and technical services, back office, and medical services. The estimated site sizes for these target users, on an individual basis is from four to 24 acres, and if users aggregate into a single corporate business park then site sizes rise to up to 75 acres. The Commission finds that given these numbers, the city’s estimate of average size of needed large commercial sites, at 60 acres, is within this range. Record at 151.

Therefore, the Commission rejects this objection, finding that the site sizes for needed large commercial and industrial sites in the 2030 Plan submittal correspond to the identified

needs of the industries and commercial uses targeted by the city. In this matter, the city's methodology produced a site characteristic for size under OAR 660-009-0005(11) that correlates to the estimated acreage for sites needed to accommodate large employment uses as required by OAR 660-009-0025(1).

## **2. 1000 Friends Objection #2**

After comparing estimated employment land need with existing employment land supply within its UGB, the city determined that, for the 20-year planning period, it had a deficit of four commercial sites of five to 20 acres and a surplus of six industrial sites of 5 to 20 acres. Record at 145. The city identified an average size of needed 5 to 20 acre sites of 9.3 acres. Record at 145. Thus, for four needed commercial sites of five to 20 acres, the city identified the total need as 37 acres. Record at 147. The city did not re-designate any of the six surplus industrial sites to meet the deficit of commercial sites. This objection asserts that the city dismissed the ability to re-designate surplus industrial sites for commercial uses without an explanation of how the site characteristics are different. Thus, according to the objection, the city did not comply with the relevant provisions of Goal 14 and OAR 660-024-0050(4), which require that the city demonstrate, prior to expanding its UGB, that its estimated needs cannot "reasonably be accommodated" within the existing UGB. 1000 Friends Objection at 10.

The objection reasons that the EOA identifies industrial and commercial site needs that are nearly identical, the exception being a provision that commercial sites should have access to mass transit within one-half mile. 1000 Friends objection at 8, 11. The objection asserts that several of the 18 industrial sites that are five to 20 acres in size are surrounded by commercially zoned land and commercial uses, would likely be ideal candidates for re-designation, and are served by mass transit. 1000 Friends objection at 11. Alternatively, the objection notes that the city's Campus Industrial zoning district allows all but one (medical services) of the targeted commercial uses expected to locate on five to 20-acre sites. 1000 Friends objection at 11-13. The proposed remedy includes requiring the city to provide additional evidence and rationale demonstrating that the identified need for four additional five to 20 acre commercial sites cannot be met on any of the surplus five to 20 acre industrial sites. 1000 Friends objection at 13.

To resolve the objection, the Commission considers whether the 2030 Plan submittal demonstrates that the need for 37 acres of commercial sites could not reasonably be accommodated on surplus industrial sites within the UGB. Both Goal 14 and OAR 660-024-0050(4) require a demonstration that the city's identified needs cannot "reasonably be accommodated" within the existing UGB before proceeding with an expansion of that boundary. This demonstration consists of two questions: (1) are there sites already planned and zoned for the needed uses within the UGB that can satisfy that need? – and (2) are there sites that could reasonably accommodate the commercial use and that could be converted from existing planned uses to commercial use without creating a new deficiency as a result of the conversion? The 2030 Plan submittal has a Commercial and Industrial Buildable Lands Inventory that addresses the first question. Record at 48-272. This objection pertains to the second question, because, as noted above, the EOA determined that the city has a need for four additional five to 20-acre commercial sites, but has six surplus five to 20 acre industrial sites that potentially could be converted to commercial uses while continuing to meet the identified needed 20-year supply of such industrial sites.

The Commission agrees that Goal 14, as a matter of law, requires a city to consider whether an identified need can be reasonably accommodated within the existing UGB prior to an expansion. In considering whether land conversions can reasonably accommodate an identified need, a city is not simply looking at mere acreage, but must consider whether the surplus land has site characteristics that are necessary for a particular employment use to meet the identified need. The objection presumes that because mass transit access is only distinction in the EOA site needs of commercial and industrial, then surplus industrial sites could only be deemed unsuitable for commercial use in the event that the required mass transit service could not be provided. 1000 Friends objection at 11. The city counters that its comprehensive plan calls for the protection of sites zoned for heavy and special industrial uses that impose significant impacts on neighboring areas due to their operations, and the importance of such heavy industrial uses to the city's economic base means that these sites, with their existing heavy industrial zoning, must be preserved for those purposes. Record at 1932-1936. Because the Commission disagrees that a policy basis of preserving industrial sites alone demonstrates compliance with Goal 14, it turns to whether the city demonstrated that the identified need for commercial and mixed use sites cannot reasonably be accommodated on the superfluity of industrial land already inside the UGB. The Commission concludes that the city has, as explained below.

1000 Friends is correct that the 2030 Plan submittal does not include a site-by-site *redesignation* analysis of the 18 inventoried five to 20-acre industrial site or an express finding that the identified need cannot reasonably be met through redesignation. The city offers that neither the goal nor the rule prescribe any particular analytical framework, but that the city has made the required demonstration in the 2030 Plan submittal because it "examined all potentially vacant lands and considered them in the context of adjacent lands and existing plan and zoning requirements, to reach conclusions about the appropriate land use designations." City letter dated January 8, 2018 at 2.

The city identifies several instances in the record where the city makes specific findings that the Commission should understand to support the conclusion that the city's existing industrially-zoned parcels were not suitable for redesignation to commercial use. Even absent an express finding on redesignation, the city contends that the record provides adequate information to establish that these industrially-zoned parcels were implicitly found to be inappropriate for such redesignation, *i.e.*, these parcels could not reasonably accommodate the identified commercial need.

Overall, the city found that existing vacant parcels with heavy industrial zoning designations are ill suited for redesignation to other employment use because such uses impose significant impacts on neighboring areas due to their operations. That finding is the basis for the comprehensive plan protections for sites zoned for heavy and special industrial. Record at 1932-1936.

The city's analysis of the industrial sites within the East Main Refinement Plan (three sites) concluded that the sites were appropriately designated for continued heavy industrial uses (and thus unsuitable for redesignation for commercial use), or had already been committed to other uses. Record at 895. The city determined that two of these sites were associated with the 200 acre Weyerhaeuser/IP paper mill complex (a heavy industrial use) and were unsuitable for

redesignation to commercial use because residential and commercial development creates conflicts with ongoing heavy industrial uses. Record at 893-896. The third site, shown on the map in the record, page 895 as area 2a, is designated as a mixed use site in the East Main Refinement Plan and is planned for a mixture of high density residential and either commercial or industrial use – with the commercial or industrial use occupying less than five acres of the site.

The city found that industrial sites within the Glenwood Refinement Plan (three sites) were either committed to continued industrial uses or were already committed to mixed use/nodal development. The two industrial sites were designated and committed as such in the Glenwood Refinement Plan. Record at 93. The third Glenwood site was designated as mixed use/nodal area in the Glenwood refinement plan, and thus was found to be unavailable for commercial redesignation. Record at 6053.

The city found that four industrial sites within the Gateway Refinement Plan Area had been committed to campus industrial uses by that refinement plan, and were committed by that refinement plan to their future use. While the Gateway Refinement Plan is not contained within the record, the city requested that the Commission take official notice pursuant to OAR 660-025-0085(5)(h)(F) of an acknowledged Post-Acknowledgment Plan Amendment for the Gateway Refinement Plan, Ordinance No. 6109. The Commission grants the request.

Existing sites in the Jasper-Natron area that are industrially-zoned in the Metro Plan have since been discovered through subsequent analysis by the city to have significant wetlands, providing a basis, supported by substantial evidence, that these lands cannot reasonably accommodate a commercial use. Record at 47.

The objection secondarily contends that nearly all of the identified commercial land needs are allowed on the lands zoned for “campus industrial” by the city. The objector’s point that under contemporary land use codes the once-clear distinction between industrial and commercial lands and uses has become more of a continuum has merit. However, the city has made the distinction in its code between commercial and industrial lands, and determined that there are enough differences between the list of allowed uses and types of development to justify that distinction. The city’s decision is supported by substantial evidence in the record as a whole. ORS 197.633(3). The city identified that the campus industrial plan designation does not allow one specific target use type, medical services, and several other needed commercial use types, services for seniors, services for residents, and tourism, that are all allowed in commercial land use designations. Record at 136, 151. The Commission notes that the EOA identified four tax lots with a Campus Industrial plan designation in the five to 20 acre size range as vacant and that total 30.5 suitable acres in size. Record at 90. Changing the plan designating of all 30.5 acres would not meet the 37 acre total need and would leave the city no suitable acres of vacant tax lots with a Campus Industrial plan designation.

To summarize, the objector presented an argument that surplus industrial land inside the UGB may be suitable and available for commercial use, but the city had not undertaken the analysis required to comply with Goal 14. The city originally argued that its plan policies made this proposition generally unreasonable. The Commission concludes that this argument is

insufficient to demonstrate compliance with Goal 14. However, the city has subsequently demonstrated that the specific characteristics of the industrially-zoned parcels, as detailed above, make the accommodation of the identified commercial need unreasonable in specific circumstances.

The standard of review for issues concerning compliance with applicable laws is “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.” ORS 197.633(3)(c). In this case, OAR 660-024-0050(4) and Goal 14 require demonstration of whether land needs can be reasonably accommodated inside the existing UGB. On the whole, the Commission finds that the city undertook an extensive redevelopment analysis of all identified employment sites five acres and larger. Record at 94-106. Twenty-eight percent of the land within the current UGB is included in the employment land base. Record 84-85. The city classified and mapped 3,415 acres of employment land by tax lots as master plan, vacant, developed, and potentially redevelopable. Record at 84, 87, 91, 99. In Table 12-2, the city evaluates each potentially redevelopment site five acres and larger. Record at 100-105. The city’s supplemental findings explain the methodology the EOA employed. Record 880-881. Here, the EOA provides basic facts regarding redevelopment potential that are supported by substantial evidence of improvement to land value and bases the inferences drawn from those facts in reason:

“Redevelopment potential can be thought of as a continuum—from more redevelopment potential to less redevelopment potential. The factors that affect redevelopment are complicated and include location, surrounding uses, current use, land and improvement values and other factors. To facilitate a discussion with the CIBL advisory committees about redevelopment, we established a set of three increasingly inclusive criteria: improvement-to-land value ratio, lot coverage, and amount of employment on the site.” Record at 94-95.

The city made two assumptions about redevelopment of industrial and commercial land, (1) all sites five acres and smaller identified as having redevelopment potential may redevelop over the 2010-2030 period; and (2) five sites five to 20 acres and one site 20 acres and larger are likely to redevelop over the planning period. Record at 100, 144. The Commission concludes that the redevelopment analysis is supported by substantial evidence. *City of Roseburg v. Roseburg City Firefighters*, 292 Or at 271. Ultimately, the city accommodated 22 percent of needed jobs on lands classified as “potentially redevelopable.” Overall, the city determined that 46 percent of new employment would not require vacant land. Record at 55, 65, 163, 885. The city expanded the UGB to provide employment land sites with characteristics that cannot be found within the existing UGB. Record at 885. The expansion “accommodates a more diverse range of employment uses in the planning period than currently exist in the city’s existing land base of commercial, industrial and mixed use designated lands.” Record at 887.

The question for the Commission is whether the 2030 Plan submittal complies on the whole with Goal 14 and OAR 660-024-0050(4). The Commission concludes that it does because in considering the propriety of maintaining existing industrial zoning, the record demonstrates implicitly that the surplus industrial lands cannot reasonably accommodate the identified need for commercial sites. Further, based on the thorough analysis of redevelopment capacity, the Commission concludes that on the whole, the 2030 Plan submittal complies with the requirement of Goal 14 and OAR 660-025-0050(4) that the city determine, prior to expanding its UGB, that its need for land cannot be “reasonably accommodated” within the existing UGB. Therefore the Commission rejects this objection.

### **3. 1000 Friends Objection #3**

The objection contends that the city’s vacant land inventory is inaccurate and incomplete because it omitted two large, vacant master-planned sites: the commercially designated portions of the master planned Marcola Meadows and Riverbend sites. This omission involves more than 40 acres in the Marcola Meadows site and 26 acres in the Riverbend site. 1000 Friends objection at 16-18.

The objection also alleged that the city’s factual findings regarding the site sizes available in the Marcola Meadows site do not provide adequate justification for why the site must be counted as multiple five to 20-acre sites instead of one 20+-acre site. 1000 Friends objection at 18. This part of this objection does not provide a basis for remand, because the Marcola Meadows sites were properly not considered available for development in the city’s buildable lands inventory.

In its exception to the original department staff report, the city clarified that it had not included any undeveloped sites within the Riverbend or Marcola Meadows Master Planned Areas as part of its inventory of vacant and available employment lands. Springfield Exception at 1-2. The city then submitted a large amount of material to justify the assertion that the city had not, in fact, included these sites in its inventory of vacant and available employment lands. The city also asserted that it was justified by circumstances in 2008 in excluding these lands from the inventory of vacant and available employment lands. Finally, the city asserted that, even if these sites had been included in the inventory of vacant and available employment lands, they would not have significantly changed the calculation of the amount of land that needed to be added to the city’s urban growth boundary.

The Commission finds that in 2008, Springfield excluded employment lands within the Marcola Meadows and Riverbend Master Planned Areas from land it deemed available for development (*i.e.*, “vacant land”) in its buildable land inventory. In September and October of 2008, the city staff, technical advisory committee, and stakeholder advisory committee made a determination to classify employment land in the Marcola Meadows and Riverbend Master Planned Areas, which had previously been approved for development by the city, as “Master Planned” and the equivalent of “developed” land for the purposes of the buildable lands inventory. The city then carried forward this determination throughout the rest of its decision-making process. November 16, 2017 City Submittal to Commission, Exhibit 5 at 1-7.

The city has explained its decision to classify the Marcola Meadows and Riverbend sites as “developed” in its buildable lands inventory in 2008. However, the Commission cannot

reconcile the decision the city made to exclude then-vacant land in the Marcola Meadows and Riverbend master planned areas with the plain language of OAR 660-009-0005(14), which defines vacant land as not “currently containing permanent buildings or improvements.” Even though the city may have had a reasonable expectation that these master planned sites would be developed by the start of the planning period, as a matter of fact those sites did not *currently* contain permanent buildings or improvements in 2008 and the city needed to consider the sites as vacant land as a matter of law under Goal 9 and implementing administrative rules. The fact that Marcola Meadows has not in fact developed as was anticipated in 2008 exemplifies the pitfalls of deviating from this rule in a city’s development assumptions.

Underlying this objection is the implicit assumption that if the CBIL had classified the Marcola Meadows and Riverbend Master Planned Areas sites as “vacant” the employment land need for this urban growth boundary expansion would be significantly reduced. The city disputes this premise, contending that as a matter of fact, the vacant sites would not reasonably accommodate the identified commercial land need. First, the Riverbend Master Plan Area contains only one five to 20 acre commercial site that could have been classified as vacant. Second, the four Marcola Meadows commercial sites cannot satisfy the identified commercial land need in the EOA because these sites are designated for retail commercial uses, and the identified commercial land need was for office and similar commercial sites. November 16, 2017 City Submittal to Commission, Exhibit 5 at 8-15.

The Commission turns to whether the failure to properly apply OAR 660-009-0005(14) and identify the Marcola Meadows and Riverbend Master Planned Areas sites as “vacant” employment land leads to a determination that the submittal does not comply with the goals.<sup>12</sup> The Commission concludes that the city has established that the failure to classify the Marcola Meadows and Riverbend Master Planned Areas sites as “vacant” is minor in nature pursuant to ORS 197.747, because, even if properly classified as “vacant” those lands could not have reasonably accommodated the identified need.

The city has established that redesignation of the Marcola Meadows Master Plan Areas sites from retail to office commercial is not reasonable because the Marcola Meadows Master Plan is a detailed plan for a specific area of the city with specific uses and mixes of uses approved. The master plan map shows a mix of commercial and residential uses designed to be compatible with existing developed areas of the city on all sides. November 16, 2017 City Submittal to Commission, Exhibit 5 at 11. To require the city to meet its identified need for office-type commercial uses on the land planned for retail commercial uses is not reasonable because office uses generally are neither appropriate nor compatible with the residential areas of Marcola Meadows and the surrounding neighborhoods.

The city also established that accommodating one needed 5-20 acre commercial on the site that is located in the Riverbend Master Plan, would reduce the acreage justified for expansion by only nine acres, from 223 to 214. OAR 660-024-0040(1) provides, in relevant

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<sup>12</sup> The Commission recognizes that in other respects, the city used a definition of vacant land that assumes more development can occur on developed land than what OAR 660-009-0005(14) requires; thereby considering more land available in the inventory than would be if the OAR 660-009-0005(14) were used. *See* Record at 77, 382, 383, 384-385, 407, 409.



part: “The 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 .....” In considering OAR 660-024-0040(1), the Commission concludes that a nine acre reduction does not merit remand because it falls within the level of precision for determining an amount of land in a UGB expansion; therefore, the Commission may approve the proposed expansion despite this minor change in the number of needed 5-20 acre commercial sites.

Therefore the Commission sustains this objection in part, finding that the city did not include vacant sites in the Marcola Meadows and Riverbend Master Planned Areas in its inventory of vacant employment land parcels; and was not in compliance with OAR 660-009-0015(3) when it did not include these lands in its inventory of vacant employment land parcels. Nonetheless, the Commission does not reach the conclusion proposed by the objection – that the city failed to demonstrate that its need for four additional 5-20 acre commercial sites cannot be met on lands within the Marcola Meadows and Riverbend Master Planned Areas, prior to expanding the UGB – because, as discussed above, the Commission concludes that the omission of these parcels from the vacant land inventory did not result in a significant “inflation” of land need for the city.

#### **4. 1000 Friends Objection #4**

The CIBL denotes a 25-acre portion of the several hundred-acre Weyerhaeuser/IP site as vacant industrial land. 1000 Friends designated the site as “I-3” in its objection. Of these 25 acres, the city removed 13.5 acres from the buildable lands inventory as being constrained by wetlands. As a result, the buildable lands inventory does not classify site “I-3” as a 20+ acre site, for which the city has a deficit, but as a 5-20 acre industrial site, for which the city has a surplus.

The objection contends that the city incorrectly identified jurisdictional wetlands as occurring on a 25-acre portion of a several-hundred-acre Weyerhaeuser/IP site that is vacant. According to the objection, this problem is alleged to have occurred because the city used a GIS data layer that erroneously identified every mapped area in the city’s adopted Local Wetlands Inventory (LWI) as a jurisdictional wetland, even though only some of those mapped areas were actually identified as wetland. 1000 Friends objection at 20. In the case of site “I-3”, two abandoned paper mill sludge ponds are not jurisdictional wetlands. Since they are not jurisdictional wetlands (and therefore not protected under Goal 5), the objection asserts that they cannot be removed from the buildable lands inventory. 1000 Friends objection at 20. The objection notes that the city’s “backup” arguments that the sites are not vacant because they are part of the “sludge pond” use are inconsistent with the city’s own methodology in determining what constitutes a “vacant” parcel. 1000 Friends objection at 21-22.

The Commission finds that the city incorrectly identified the site in its GIS data layer as representing jurisdictional wetlands. However, the Commission concludes that the city did not error in inventorying site “I-3” in the five-20 acre size class and not the 20+ acre size class as the objection contends. The city identified evidence for the Commission that when the city conducted its employment land inventory in 2008, a sludge pond associated with forest products processing existed on the site and that this constitutes a “development constraint,” as that term is defined in OAR 660-009-0005(2) under OAR 660-009-0015(3)(a)(B). The definition in OAR

660-009-0005(2) provides examples of conditions that could constrain economic development, but it does not include an exhaustive list.<sup>13</sup>

The objection recognizes that the two abandoned paper mill sludge ponds are mapped in the LWI as “other waters” and that the waters occupy 13.58 acres of site “I-3.” 1000 Friends objection at 20. The city determined that the two abandoned paper mill sludge ponds were development constraints, albeit as wetlands, and removed the sludge pond area from its inventory of buildable employment land, thus reducing the buildable area on the 25-acre “I-3” site to below 20 acres. LCDC November 16, 2017, Agenda Item 12, Exhibit 4 at 15. That the city erroneously identified the development constraint as “wetlands” is of little moment where as a matter of fact there is no dispute that 13.58 acres of the site are constrained. The record demonstrates the existence of sludge ponds on the site in question, which reasonably act to reduce the amount of developable land on this site from the category of “greater than 20 acres” to the category of “between 5 and 20 acres.” Record at 891-893. While the objection points to conflicting evidence, the city is not required to give greater weight to that evidence if its own evidence is sufficient. The Commission concludes that at most, the objection identified where evidence in the record is conflicts as to the nature, but not the existence of, a development constraint, thus, because a reasonable person could reach the decision the city and county made in view of all the evidence in the record, the choice between conflicting evidence belongs to the local government. *Mazeski*, 28 Or LUBA at 184; *Barkers Five, LLC*, 261 Or App at 349.

## **5. Johnson Crushers Objections**

Johnson Crushers filed three objections by letter dated April 20, 2017, and filed a fourth objection by letter dated April 21, 2017. All four written objections were filed within 21 days of the March 31, 2017 Notice of Urban Growth Boundary Amendment from the city and county and thus satisfy OAR 660-025-0140(2)(a). Johnsons Crushers attached letters dated October 13, 2016, August 22, 2016, February 5, 2014, and February 17, 2010 as enclosures to its April 20, 2017 objection to demonstrate that they participated in writing in the local process leading to the final decision as required by OAR 660-025-0140(2)(d). In accordance with OAR 660-025-0140(2)(c), the Johnson Crushers objections each suggest specific revisions that would resolve the objection; in short, to remand the 2030 Plan submittal with instructions to the city to comply with the UGB expansion methodology in the manner advocated for in the objections.

Additionally, to be valid, an objection must clearly identify an alleged deficiency in the 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. OAR 660-025-0140(2)(b). The Commission concludes that the four objections comply with OAR 660-025-0140(2)(b), but to a very limited extent. In each objection, Johnson Crushers quotes extensively or refers to prior comments to the local governments and refers the

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<sup>13</sup> OAR 660-009-0005(2) defines “Development Constraints” to mean:

“factors that temporarily or permanently limit or prevent the use of land for economic development. Development constraints include, but are not limited to, wetlands, environmentally sensitive areas such as habitat, environmental contamination, slope, topography, cultural and archeological resources, infrastructure deficiencies, parcel fragmentation, or natural hazard areas.”

Commission to attached materials for “more detailed support.” April 20, 2017 objection at 1. However, in reviewing objections, the Commission only need consider those that “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon*, 244 Or App at 268. Thus, in rejecting an exception, the Commission has held that a general reference to “applicable reserves administrative rules” in attachments to an objection are insufficient to specify a rule under OAR 660-025-0140(2)(b), when a valid objection requires clear identification of the administrative rule the submittal has violated. Compliance Acknowledgement Order 18-ACK-001894 at page 48. The Commission declined to assume that attachments to an objection had some import beyond establishing that the objector participated at the local level as required by OAR 660-025-0140(2)(d). *Ibid*. It is not for the Commission to go through all of an objector’s prior communications to a local government to divine what the arguments and facts are that support an objection and to further determine whether the concerns still pertain to the actual final submittal. Johnson Crushers objections presented here do not address any of the city’s findings responding to Johnson Crushers’ arguments in Ordinance No. 6361, Exhibit F-1 at 44-52. Record at 918-926.

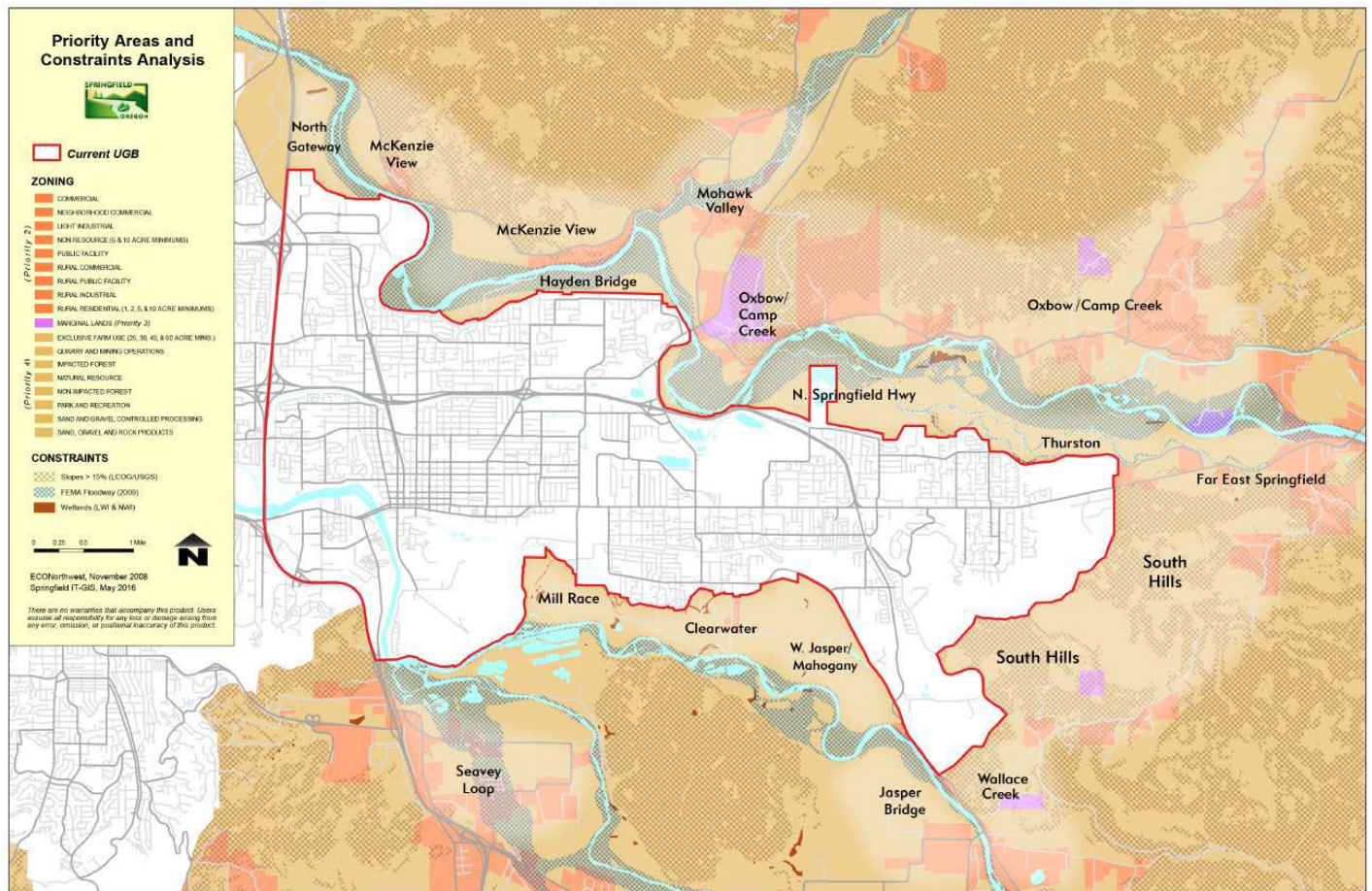
To the extent that the arguments in support of the objections are made in attached documents rather than the objection, they are not arguments that are presented to the Commission about the “final decision” as required by OAR 660-025-0140(2)(b). By not addressing the findings in Exhibit F-1 or explaining how those findings are in error, the Commission concludes that the Johnson Crusher objections fall short of making an explicit and particular specification of error by the city regarding why the 2030 Plan submittal, which includes the findings in Exhibit F-1, is in error. The Commission therefore rejects these objections on that basis.

The Commission finds Johnsons Crushers to be procedurally valid, but to fall short of providing a substantive basis for remand. The Commission now turns to an initial background for the context of Johnson Crushers objection and then a discussion of each objection and why the 2030 Plan submittal demonstrates compliance with the applicable standard.

#### **a. Background**

The first two objections and the supplemental, fourth objection from Johnson Crushers pertain to what is known as the Seavey Loop area, south of the city. The third objection pertains to the unincorporated community of Goshen. The Commission includes the maps in Figures 1–3 to provide context for its analysis and decision.

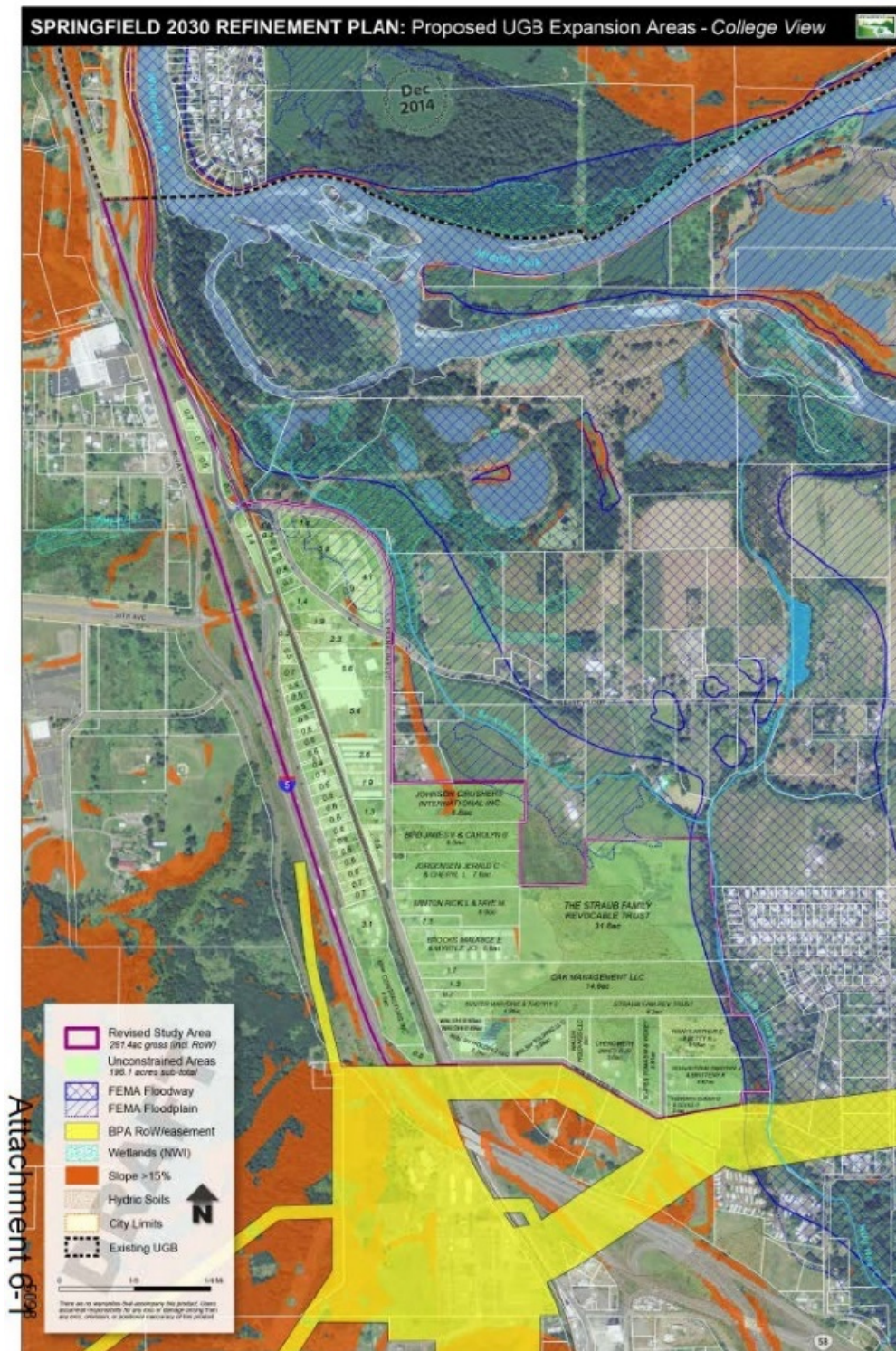
**Figure 1. Springfield and surrounding area**



This is a map of the Springfield Urban Growth Boundary and areas surrounding the city. Record at 522. The Seavey Loop area is in the lower center of the map, south of Springfield.



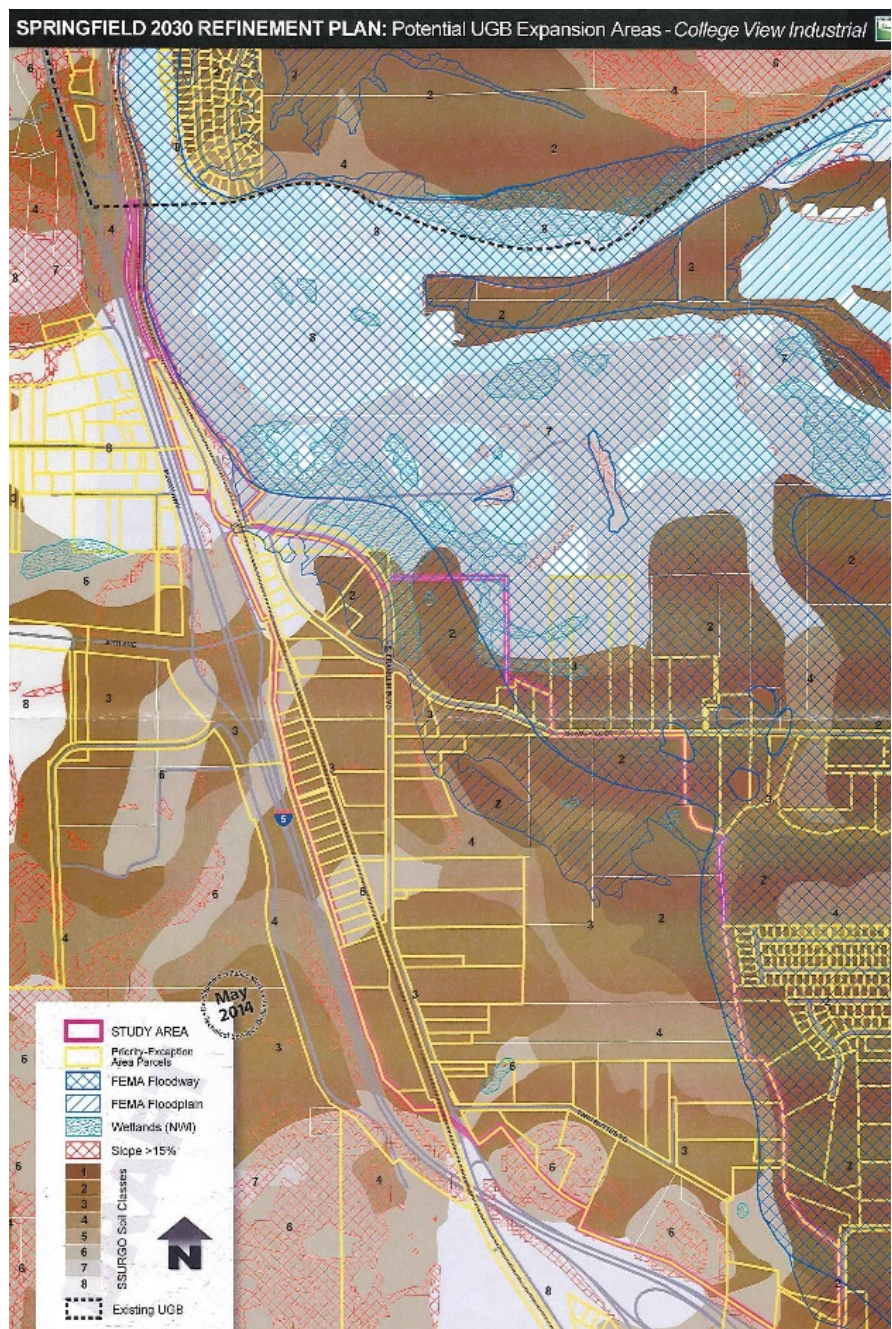
**Figure 2. Seavey Loop area with flood constraints**



The aerial photo map in Figure 2 shows the Seavey Loop area, alternatively known as the “College View” area. Record at 5098. The City of Springfield and its existing UGB are located at the north (upper) end of the map. The cross-hatched areas are the floodways and floodplains of the main branch of the Willamette River and the Coast Fork of the Willamette River, which join in the northwest corner of the map. Interstate 5 runs north-south in the left portion of the map. South of the BPA transmission line easement, shown in yellow, is the unincorporated community of Goshen, which is not within a UGB.



**Figure 3. Seavey Loop area soils, floodplain, and wetlands**



The map in Figure 3 shows soil types within the Seavey Loop, or College View, area. Record at 7109. The purple line delineates land that was within several different study areas that the city considered in its UGB expansion analysis. The numbers and colors indicate Class I-IV soils in the area. The area is a mix of high value and non-high value farm soils. The parcels outlined in yellow are rural exception lands, whereas the rest of the study area is zoned exclusive farm use by Lane County. The soil types on the rural exception parcels outlined in yellow are irrelevant for the purposes of determining which parcels in this area constitute “high value farmland.” As shown in these maps, the Seavey Loop study areas, constituting several hundred acres, are a mix of different-sized parcels, with various zoning and soil types; the development capacity of some are constrained by floodway and floodplain overlays. Actual current uses in this area include a mix of rural residential (including a rural manufactured home park), commercial and

industrial uses, farms, and public facilities. Record at 542-547.

The city considered the Seavey Loop area for expansion of its UGB. Record at 522, 524. The 2030 Plan submittal did not bring any of this area into the UGB. The city did not bring these lands into the UGB for several reasons. First, the city determined that much of the Seavey Loop area was unable to reasonably accommodate its specific types of identified land needs pursuant to ORS 197.298(3)(a) and OAR 660-024-0060(5), because the site characteristics of most of the parcels in these areas did not exhibit the needed site characteristics for the target

industries for employment lands. Record at 555-556. In terms of size, the city determined that no parcels in this area met the identified need for industrial sites greater than 20 acres, and only eight parcels potentially met the need for commercial sites of between five and 20 acres. Second, the city determined that future urban services could not reasonably be provided to the higher priority lands of the Seavey Loop area due to topographical or other physical constraints pursuant to ORS 197.298(3)(b). Record at 606-610. The city analyzed water, sewer, storm drainage, and transportation service barriers in coming to that determination. Cost of service was not estimated or evaluated at this point in the analysis. Record 594. Thus, based upon the methodology set forth in *1000 Friends of Oregon v. LCDC*, the city determined that lands within the Seavey Loop area could not accommodate a needed type of land use, and thus were not adequate to add to the UGB pursuant to ORS 197.298(3)(b). Third, the city noted that although already excluded, the Seavey Loop area would also fall out of further consideration for expansion under the Goal 14 Boundary Location Factor that requires evaluation of the comparative environmental, social, energy, and economic (ESEE) consequences. The high costs of providing urban public services to the Seavey Loop area constituted an economic consequence of significant enough severity to justify exclusion of these lands from consideration. Record at 613-615. Finally, the city found that the Seavey Loop area contains some parcels designated as farmland on the Lane County Comprehensive Plan, and thus are fourth priority for consideration in a UGB location analysis. ORS 197.298(1)(d). The farm parcels in Seavey Loop were all, with one exception, found to be Class II, III, and IV soils. The exception is a parcel of non-high-value farmland surrounded by exception land, so it is considered to be of the same priority as rural exception or nonresource land for the purposes of UGB locational considerations. ORS 197.298(1)(b). Record at 677-678. These parcels are also part of a larger area, not considered for UGB expansion, which has a large amount of high-quality agricultural soils. Record at 695. The city excluded these lands from inclusion in the UGB in comparison to other higher-value agricultural lands based on the infeasibility of providing public facilities and services per Boundary Location Factor 2 and the economic prong of the ESEE consequences found in Boundary Location Factor 3. Record at 734-736, 754.

Johnson Crushers submitted four objections. Three of them focus on the Seavey Loop area. The first is related to the statutory priorities (Objection 1, Johnson Crushers objection at 2-3), the second is related to the use of public facility costs in the city's analysis (objection 2, Johnson Crushers objection at 3-4), and the last of these objections alleges that the city's findings and evidence, taken as a whole, do not establish a basis for making the Seavey Loop area a lower priority than the employment land sites that were selected for addition the UGB. Johnson Crushers supplemental objection at 1.

### **Johnson Crushers Objection #1**

The first objection contends broadly that, under the ORS 197.298 priorities for UGB expansions, any proposal for the city to expand its UGB for employment land purposes that does not include the Seavey Loop area does not comply with applicable law. The objection asserts that the Seavey Loop area contains not only exception areas dedicated to employment uses, but it also contains more exception areas than any other area under consideration. Furthermore, according to the objection, agricultural lands within the study area contain soils of poorer quality, and thus higher priority, than the areas selected for inclusion. Johnson Crushers objection at 2.

In addition to the Seavey Loop area having exception land adjacent to the UGB, it also contains, adjacent to the UGB, land that is considered “nonresource land” for purposes of the statutory priorities. Johnson Crushers objection at 3.

It is somewhat unclear to the Commission whether the objection is asserting that the city erred by misapplying ORS 197.298 or if the city erred as an evidentiary matter in properly classifying the lands into ORS 197.298(1)(a)-(d) priorities. The Commission understands the concern to be the former. As to the latter, the city clearly identified Seavey Loop as a study area that contains second priority exception lands under ORS 197.298(1)(b). Record at 526. Johnson Crushers is correct that because the city has no urban reserves, there are no lands of higher priority to look to accommodate the identified need. Record at 525. The city conducted a parcel-by-parcel analysis of the ORS 197.298(1)(b) second priority exception lands. Record at 527. The analysis included the second priority lands of Seavey Loop. Record at 542-548, 550-551. The city then excluded parcels or portions of parcels with absolute development constraints, and excluded exception land with pre-existing development and parcelization patterns that limit the suitability of lands for use as future employment sites. Record 552. As an example noted in its findings, the city:

“considered that 5.5 and 5.6 acre parcels in Preliminary Study Area grouping Seavey Loop B that are developed with the Johnson Crushers International plant to be developed with an industrial use expected to continue in the planning period thus not suitable to meet the city’s need for employment land sites larger than 5 acres and sites larger than 20 acres in the planning period.” Record at 552-553.

After applying characteristics of parcel size, topography, and absolute development constraints (floodway, wetlands, riparian resources) to all second priority exception land parcels in the UGB Study Area to identify potentially suitable land to meet the employment land need, the city excluded study areas, including Seavey Loop A, D, F, and Seavey Loop/Goshen exception parcels from further consideration under ORS 197.298(3)(a). Record at 555-557. This included the park land adjacent to the UGB considered “nonresource land” in Seavey Loop A that objector specifically mentioned. Record at 542. The city conducted a public facilities and services analysis to determine whether the identified potentially suitable exception parcels, including Seavey Loop B, C, and E could reasonably be provided with the public water, sewer, stormwater and transportation facilities needed to serve industrial and commercial mixed use employment uses within the 2010-2030 planning period. Record 606-609. The city determined that Seavey Loop B, C, and E could not reasonably be provided urban services due to physical constraints under ORS 197.298(3)(b). Record at 611-612. In section III, G., above, the Commission found that the city properly undertook the boundary location analysis. In order to sustain this objection, the Commission would have to construe ORS 197.298 to omit section (3), but that would be contrary to the rules of statutory construction under ORS 174.010 and the holding in *1000 Friends of Oregon*. The Commission concludes that while the statutory priorities in ORS 197.298 require the city to study the Seavey Loop Area for inclusion, the statute does not require as matter of law that the city include the Seavey Loop Area before any other lands where it determines that the lands cannot meet the identified need; therefore the Commission rejects this objection.



## **Johnson Crushers Objection #2**

The second objection presented by Johnson Crushers is that “[t]he record and the city’s findings supporting the lands that were chosen for expansion appear to improperly rely on the cost of providing public facilities and services and the policy issues about who should provide services.” Johnson Crushers objection at 3. Johnson Crushers elaborates on that objection by quoting its October 13, 2016 letter to the city. *Id.* Specifically, the quoted letter states:

“While the findings before you purport to not consider the cost of providing public facilities and services to the various areas, there is evidence in the record that the rough costs were evaluated, which begs the question of whether it factored into the recommendation.”

Having begged the question, Johnson Crushers does not further develop the objection with arguments directed at the 2030 Plan submittal.

The objection does not establish that the analytical deficiency alleged actually is present in the 2030 Plan submittal. The city’s findings state that second priority lands, including Seavey Loop, were:

“excluded from further consideration for inclusion in the UGB based on physical constraints that preclude serviceability. It is important to note that although the city did not exclude lands on the basis of comparative environmental, social, energy, and economic consequences, all of these excluded lands would be excluded under Goal 14 Location Factor 3: Comparative environmental, social, energy, and economic consequences solely on the basis of cost, at the point in the analysis when cost to provide public infrastructure and urban services is considered.” Record at 614.

Thus, as a factual matter of fact, the record does not support objector’s supposition that the city reached its decision to exclude the Seavey Loop area based on cost under ESEE analysis. The cost of service was not estimated or evaluated at the city’s assessment of the relative degree of difficulty of providing public facilities and services point in the analysis. Record 594. Assuming for purposes of discussion only that it would have been legal error for the city to have done so, that fact that it did not means that the Commission does not have to reach that question because the objection provides no basis to remand the decision.

This exemplifies the problem with relying solely on previous comments to local government, as opposed to making a precise objection to the Commission based on the submittal under review. The Commission’s rule specifies that an objection is to “[c]learly identify an alleged deficiency in the work task sufficiently to identify the relevant section of the final decision[.]” OAR 660-025-0140(2)(b). An assertion that a decision may “appear” to be based on some analysis does not give the Commission a basis for remand where the actual submittal establishes that it is not so based.

The second objection also asserts that the city required that all facilities and services be city services, contrary to this Commission’s previous determination that a requirement that utility

systems be “city” systems was not allowed. Johnson Crushers argues that there are existing water facilities that provide water throughout the Seavey Loop area adequate to accommodate any UGB expansion. Johnson Crushers objection at 3. The city’s findings for water in Seavey Loop area state “Existing public rural water system and service provided by Willamette Water Company.” Record at 606. The city noted that the exception parcels are located more than two miles from the nearest Springfield Utility Board water main. *Id.* The city rated the area “medium difficult” to serve with water and “difficult” in terms of wastewater, stormwater, and transportation. Record at 606-609. The objection neither establishes that the city’s findings were not supported by substantial evidence nor explains how the 2030 Plan submittal does not comply with applicable law. The Commission rejects the second objection.

#### **Johnson Crushers Objection #4**

Johnson Crushers objects that “The city’s findings and evidence, taken as a whole do not establish a basis for making the Seavey Loop area a lower priority than the Goal 9 sites that were selected” directing the Commission to pages 6-9 of their August 22, 2016 letter to the local governments for the supporting analysis. First, the Commission observes that, as detailed above, the city analyzed the Seavey Loop area in accordance with the statutory priorities of ORS 197.298(1); Seavey Loop was not deemed “a lower priority”, but was determined to be an area that was not suitable to reasonably accommodate the city’s employment need. Second, the city adopted additional findings that respond to the August 22, 2016 letter. Record at 918-926. Johnson Crushers’ objection does not address those findings. The Commission turns to these pre-submittal issues raised by Johnson Crushers and the city’s response.

Johnson Crushers presented the local governments the argument that the Seavey Loop area includes multiple vacant or nearly vacant parcels of between four and 14 acres, as well as at least one parcel over 30 acres. Johnson Crushers identifies two individual parcels of at least 20 acres available in Seavey Loop. Each of the parcels, either individually or collectively for adjacent vacant parcels, can help the city meet its employment land needs and reduce the pressure to bring farmland with even higher value soils into the UGB. August 22, 2016 letter at 4. The city responded that its findings identified the zoning of each parcel in the study area, including all industrially zoned parcels and all residentially zoned parcels in the vicinity, and found none to be suitable. Other industrially and residentially zoned parcels in other UGB study area groupings exist in similar arrangements. The city identified, evaluated, and rejected them all and provided substantial evidence to explain why lands are not suitable to meet the identified needs. Record at 923.

The Commission rejects this sub-objection. In essence Johnson Crushers quarrel is that the city’s use of existing parcels in all situations was misguided, because, among other things, adjacent parcels under the same or different ownerships might be combined to create additional sites between five and 20 acres, or sites greater than 20 acres, to meet the city’s need for such size employment sites. However, the city used a consistent methodology for all UGB study areas in determining what constituted a “site” for the purposes of determining site size and suitability. Record at 552-553. In comparison, the Commission’s rule for inventorying industrial or employment lands within a UGB authorizes, but does not require, a city to inventory contiguous lots together: “(w)hen comparing current land supply to the projected demand, cities

and counties may inventory contiguous lots or parcels together that are within a discrete plan or zoning district”. OAR 660-009-0015(3)(b). The sub-objection does not establish that the city has violated a statute, goal or rule by not considering such lot assembly.

Johnson Crushers also argued that the findings substantially misrepresent the footprint of the Seavey Loop area under consideration. The findings make statements that are correct only if the “Seavey Loop area” is an area substantially greater than what has actually been proposed for inclusion into the UGB. There are no blocks of predominantly Class I and II soils in the Seavey Loop area actually considered. August 22, 2016 letter at 6. The city responded that the discussion of soils in the “Seavey Loop area” refers to the greater Seavey Loop area, not to specific parcels. The city’s general discussion of soils in the vicinity of Springfield was included to provide context and “big picture” for the urbanization study. Record at 922. At best, this aspect of the objection demonstrates an evidentiary disagreement; the choice among conflicting evidence, to the extent there is any, belongs to the city. *Barkers Five, LLC*, 261 Or App at 349. The Commission finds that the city’s analysis of the soils of the area is reasonable and this sub-objection provides no basis for remand.

Johnson Crushers identifies assumptions that it deems questionable and designed to make the Seavey Loop area look less desirable for addition to the UGB. When examining the exception areas within Seavey Loop, the analysis breaks the area down into six or seven different smaller segments identified as Seavey Loop A through F and Seavey Loop/Goshen. Johnson Crushers observes that no other areas are similarly broken down. Johnson Crushers also remarks that the analysis failed to recognize that there is one industrially zoned parcel and three adjacent rural residential parcels that are each larger than six acres and are minimally developed. Finally, Johnson Crushers faults the analysis for failing to recognize that three rural residential parcels totaling 21 acres are adjacent to its property and represent a substantial opportunity of providing a 30- to 40-acre site. Further noting that one of the smaller parcels abuts the 31-acre Straub Family Revocable Trust property, which could lead to a 60- to 70-acre site for possible industrial development. August 22, 2016 letter at 7. The city responds that its analysis, as presented in the findings, examined all parcels in the study area in order of their priority under ORS 197.298. The city did not “gerrymander” defined study areas in its UGB Alternatives Analysis. Instead, the city conducted a thorough parcel-by-parcel analysis to identify potentially suitable lands, in order of their priority under ORS 197.298. The city similarly broke down geographic areas with multiple groupings of exception land parcels to clearly discuss each grouping of parcels in other study areas as well for ease of analysis, identification, and documentation. Record at 922-923. The Commission finds that the city’s approach was a reasonable approach to determine the adequacy of candidate lands under ORS 197.298.

Johnson Crushers next contend that the findings misapply ORS 197.298(2) and ORS 197.298(1)(d) in failing to prioritize the available agricultural land at Seavey Loop above lower-priority lands in the Mill Race area and the North Gateway area. Further, Johnson Crushers argues that the findings improperly group soil types in ways that are not allowed by the statute, which requires a Class I-VI hierarchy. August 22, 2016 letter at 8. The city responds that the findings address and apply the correct statutory definitions of high-value and prime farmland. The city analyzed all resource land in the UGB study area by soil capability as required by statute. The city’s findings clearly identify soils and percentages thereof on each parcel. The

city's findings provide substantial evidence, based on available Natural Resource Conservation Service (NRCS) soil survey data and distribution of soil units and high-value farmland soils on the parcels. Record at 921. The city notes that the statutory definitions address high-value and prime farmland. ORS 197.298(1)(b) includes a reference to ORS 215.710 (high-value farmland definition) cited in city's findings. This portion of the statute clearly recognizes that resource land with high-value soils is a factor to be considered when applying the priority scheme in the boundary alternative analysis. The general NRCS soils classification map does not depict the high-value agriculture and prime soils listed in statute. Record at 921. The Commission finds that the city, in Table 14, classified the soils by type in the study areas, including North Gateway, Mill Race, and Seavey Loop. Record at 648, 652, 675, 677. In each instance, the city found the areas to have predominately Class II soils. Under that circumstance, ORS 197.298(2) does not serve to prioritize the study areas. The Commission concludes that this sub-objection does not provide a basis for remand.

Turning to ORS 197.298(3)(a), Johnson Crushers acknowledges that the statute allows an exception to the statutory priority scheme for instances where "specific types of identified land needs cannot be reasonably accommodated on higher priority lands." Johnson Crushers observes that the findings seek to invoke various provisions of OAR chapter 660, divisions 9 and 24, pertaining to economic development and UGBs, to define what is meant by "reasonably accommodate." However, Johnson Crushers argues that the findings attempt to use those regulations to lower the statutory bar to make it easier to deviate from the priority scheme. August 22, 2016 letter at 8. In response, the city agrees that it considered and excluded second-priority lands based upon specific land needs under ORS 197.298(3)(a). The city excluded exception parcels with less than five unconstrained acres. Pursuant to ORS 197.298(3)(a), the city excluded exception land parcels smaller than five acres and portions of parcels with absolute development constraints (*i.e.*, slopes greater than 15 percent, floodway, inventoried wetlands, waterways, and riparian resources) when it analyzed the potentially suitable acreage of each exception land parcel or group of parcels, as allowed under *former* OAR 660-024-0060(5). This step excluded many of the Seavey Loop exception parcels from further consideration. Record at 555. Under ORS 197.298(3)(a), the city also excluded exception land with pre-existing development and parcelization patterns that limit the suitability of lands for use as future employment sites. For example, the city considered 5.5- and 5.6-acre parcels in Seavey Loop B preliminary study area that are developed with the Johnson Crushers International plant. This plant was considered to be developed with an industrial use expected to continue during the planning period, and thus not suitable to meet the city's need for employment land sites larger than five acres and sites larger than 20 acres in the planning period. Record at 552-553. The Commission disagrees with Johnson Crushers that the findings are merely an attempt to use the Commission's regulations in divisions 9 and 24 to lower the statutory bar to make it easier to deviate from the priority scheme. The adequacy of lands to meet an identified need addresses suitability. *City of West Linn v. LCDC*, 201 Or App 419, 440, 119 P3d 285 (2005). The Commission does not construe ORS 197.298(3)(a) so narrowly as to require a local government to expand its UGB to include lands that are not suitable for the target industries for employment as identified in the EOA. This sub-objection is rejected.

Finally, Johnson Crushers contend that the city misconstrued ORS 197.298(3)(b) because the statutory finding that “future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints” provided express circumstances for when that exception is available. Johnson Crushers contends that the statutory circumstances are not met for the Seavey Loop area, because water is already provided to the area, wastewater requires only the addition of a couple of pump stations along with line extensions, storm water services can be made with little or no impact on existing storm water systems requiring only the coordination with several other regulatory agencies; and that traffic services are feasible despite expected challenges at certain locations. Likewise, distance of the length involved for Seavey Loop is not a physical constraint; it simply increases the cost of the utility improvements, which is not a permissible consideration. There are no “topographic” constraints described in the analysis despite the statement that there are. August 22, 2016 letter at 9.

It is the city’s position that distance and topography (Willamette River) are physical constraints that preclude provision of urban services within the 20-year planning period. The Willamette River is a substantial physical barrier between Springfield and Seavey Loop and the length, width and physical configuration of narrow South Franklin Boulevard corridor and I-5 ramp system linking Springfield to the Seavey Loop area is a physical barrier that creates a high degree of uncertainty about the city’s ability to support and deliver urban services during the planning period. The corridor is physically and spatially constrained — squeezed between the freeway, railroad tracks and the Willamette River Greenway and state parkland, creating substantial physical challenges to providing for safe, logical and efficient delivery of urban services within the planning period. Record at 923-924.

The Commission agrees with the city that there are topographic constraints and that the city appropriately applied ORS 197.298(3)(b) in determining that land within Seavey Loop could not reasonably accommodate the identified employment need. ORS 197.298(3)(b) provides an exception to the ORS 197.298(1) hierarchy of land if “future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints.” The objection casts the issue to be resolved as whether high costs of public facilities are the reason for determining certain lands cannot meet the identified employment need. The issue to be resolved is whether topographical or other physical constraints make it unreasonable to serve an area with urban services in the planning period. The city expressly did not estimate or evaluate cost of services at the ORS 197.298(3)(b) consideration. Record 594. In summary, the existence of two rivers (the main stem and coast fork of the Willamette River) between the existing city and the Seavey Loop area, along with the existence of an interstate freeway and rail line, which require crossing or constrain the location of necessary facilities connections between the existing city and the Seavey Loop area, make it unreasonable to provide future urban services in the planning period to the entire Seavey Loop area. The Commission rejects this objection.

In its own evaluation, section III, G., above, and in its consideration and rejection of Johnson Crusher Objection #1, the Commission determined that 2030 Plan submittal has established that the city applied the proper methodology under ORS 197.298 and Goal 14 as detailed in *1000 Friends of Oregon v. LCDC*, to assess whether the lands in Seavey Loop are suitable for inclusion in the UGB at this time to accommodate the identified employment need.

Thus, the Commission rejects the global aspects of this objection that contend the city misapplied ORS 197.298.

Turning briefly to whether the city erred with regard to findings and evidence related to vacant lands, footprint or configuration of the study area, or the application of soils and high-value farmland, those objections, even if sustained, would not provide a basis for remand. The issues raised in this objection regarding the correct designation of the Seavey Loop lands in terms of the statutory provisions of ORS 197.298(1) – whether certain lands are “non-resource” lands, whether certain lands are high-value or prime farm lands, etc. – are not determinative if the entire area cannot reasonably accommodate the UGB expansion. Both the objector and the city agree that most of the Seavey Loop area is either rural exception land or lower-quality farmland that is the highest priority for inclusion in the city’s UGB under ORS 197.298(1)(b). However, because the city has properly determined that that regardless of those matters, the lands in the Seavey Loop area are not suitable for inclusion at this time to accommodate its identified employment need, the Commission determines that on the whole the 2030 Plan submittal complies with the goals under ORS 197.747.

## **6. Johnson Crushers Objection #3**

The Goshen unincorporated community lies south of the Seavey Loop area. Goshen is a collection of mostly rural industrial uses located adjacent to Interstate 5, State Highway 58, and the Union Pacific railroad. Goshen is separated from the city of Springfield by the intervening Seavey Loop area and the main stem and coast fork of the Willamette River. Most of the land within Goshen, containing rural industrial uses, is “exception” land not suitable for farm or forest uses, and thus the type of land that, if adjacent to a UGB, would be a high priority for inclusion in an UGB pursuant to ORS 197.298(1)(b).

The objection points out the land of Goshen is exception land that, like most of the Seavey Loop area, are the highest priority for UGB expansion under the statutory priority scheme. Since Johnson Crushers Objections #1, #2, and #4 assert that Seavey Loop should have been included within the UGB, the objection contends that the city should have also considered the Goshen area for inclusion in its UGB. Additionally, as noted in the objection, while there is some concern about the linear expansion of the UGB along I-5, prior decisions discussed in the attached letters have concluded that the form of urban growth is an insufficient reason to deviate from the priority scheme. Johnson Crushers objection at 4.

The Commission rejects this objection. The Goshen area is not adjacent to the existing Springfield UGB. It is separated from the UGB by the Seavey Loop area. If the Seavey Loop area is not added to the UGB, then there is no reason to consider adding Goshen to the UGB. The Commission herein approves the UGB amendment; therefore, this objection is rejected.

## V. CONCLUSION

Based on the foregoing, the Commission has sustained or rejected all objections, regardless of whether they are discussed herein, and approves the submittal from the City of Springfield and Lane County.

### THEREFORE, IT IS ORDERED THAT:

1. Springfield Ordinance No. 6361, with exhibits, amending the UGB, the Eugene-Springfield Metropolitan Area General Plan, the Springfield Comprehensive Plan text and map designation, the Springfield zoning map, and the Springfield Development Code, is approved.
2. Lane County Ordinance No. PA-1304, with exhibits, amending the UGB, the Eugene-Springfield Metropolitan Area General Plan, the Springfield Comprehensive Plan text and map designation, the Springfield zoning map, and the Springfield Development Code, is approved.
3. Lane County Ordinance No. PA-1341, with exhibits, amending the Lane County Rural Comprehensive Plan, is approved.

DATED THIS 5 DAY OF MARCH 2019.

FOR THE COMMISSION

  
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Jim Rue, 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.