



STAFF MEMORANDUM

TO: Planning Commission

FROM: Banks City Planner

DATE: December 14, 2010

RE: **Supplemental Staff Report for Plan Amendment Proposal Regarding UGB Expansion, TSP, and Park & Recreation Master Plan, City File No. PA-77-10**

1. Staff Response to 1000 Friends Correspondence

The City received correspondence dated November 24, 2010 from 1000 Friends of Oregon. This correspondence was attached as Exhibit E to the staff report dated November 30, 2010 and given to the Commission members on this same date. The planning staff has reviewed the subject correspondence and provides the following response.

In 2004, DLCD staff approved the City's Periodic Review Task 1 (City no longer under Periodic Review) that included an updated 20-year (2024) population forecast. As stated in the DLCD correspondence dated June 17, 2004 (attached as Exhibit A.1), *"No objections to this task were received in response to the city's notice. Therefore, this order approving your work task is final and cannot be appealed."* Thus, the City's population forecast to year 2024 was officially approved by order of DLCD.

During the TGM study process which began nearly five years later, the City was required to update its 20-year population forecast to year 2029. In performing this updated forecast, the City was advised by DLCD to use the same method as was used to determine the 2024 forecast. The updated 2029 forecast was found acceptable by DLCD (see email dated March 4, 2009 from Gloria Gardner to K.J. Won and Ross P. Kevlin in Appendix B, Exhibit A, attached with the plan amendment proposal). The City also coordinated the population update with Washington County. However, the County staff was not prepared at the time to bring the updated forecast before the Board of County Commissioners for approval. Therefore, the City utilized the alternate population forecast as provided in ORS 195.034 (3)(a), which reads:

“(3)(a) If the coordinating body does not take action on the city’s proposed forecast for the urban area under subsection (1) or (2) of this section within six months after the city’s written request for adoption of the forecast, the city may adopt the extended forecast if:

(A) The city provides notice to the other local governments in the county; and

(B) The city includes the adopted forecast in the comprehensive plan, or a document included in the plan by reference, in compliance with the applicable requirements of ORS 197.610 to 197.650.”

On March 4, 2009, the City submitted a written request for the Board of County Commissioners to approve the updated forecast. The Board did not take action to approve the City’s forecast within the following six months. The City notified other local governments in Washington County about the updated forecast (attached Exhibit A.2) as required per sub-section (3)(a)(A) above. The adopted forecast is included by reference in the Part I plan amendment proposal and documented in Appendix B, “City of Banks Urban Growth Boundary Expansion Justification Technical Report” dated October 2010 and prepared by CH2M HILL. The City is reviewing the subject plan amendment

according to the post-acknowledgment procedures as required per sub-section (3)(a)(B) above. In view of these actions, the City's updated population forecast complies with the appropriate statute requirements as provided in ORS 195.034 (3)(a) and is a valid forecast.

Further, OAR 660-024-0030 (5) states:

“(5) A city may propose a revised 20-year forecast for its urban area by following the requirements described in ORS 195.034.”

The City is proposing a revised 20-year forecast for its urban area according to the requirements under sub-section (3)(a) of ORS 195.034. OAR 660-024-0030 (5) provides an administrative rule provision that allows the City to adopt a 20-year forecast despite the County not having adopted a coordinated 20-year population forecast. This OAR provision provides further support for the City's forecast to be valid.

1000 Friends cites the City of Newberg LUBA appeal in which *“The City of Newberg's housing needs analysis was recently remanded due to Newberg's mistaken reliance on a forecast that had not been adopted into Yamhill County's comprehensive plan”*. It would appear that the Newberg case is different than the Banks proposal which is based on ORS 195.034 (3)(a) allowing the City to adopt a 20-year forecast that does not require the county to adopt a coordinated population forecast or approve the forecast for the urban area. Such is the purpose for having this statutory provision.

The City Attorney has reviewed the 1000 Friends comments regarding the Newberg LUBA case and disagrees with their conclusions *that the City must now follow a different “forecast solution”*. As stated in the City Attorney's correspondence dated December 14, 2010 (attached as Exhibit A.3), *“I concur in your response to the 1000 Friends letter objecting to the City's procedure for adopting the population forecast.”*

EXHIBIT A.1



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Main/Coastal Fax: (503) 378-6033

Director's/Rural Fax: (503) 378-5518

TGM/Urban Fax: (503) 378-2687

Web Address: <http://www.lcd.state.or.us>

June 17, 2004

The Honorable Robert Orlowski, Mayor
City of Banks
100 South Main Street
Banks, Oregon 97106



PERIODIC REVIEW TASK 1 APPROVAL (ORDER 001639)

Dear Mayor Orlowski:

I am pleased to inform you that the Department of Land Conservation and Development has approved the City of Banks' Periodic Review Task 1 submittal regarding updated 20-year (2024) population and employment forecasts (Ordinance 110.02).

We note that the employment forecast adopted by the city contains high, middle, and low forecast options, and does not select from this range on a final employment forecast number. While the submittal is adequate to satisfy Task 1, the city will need to decide on a clear employment forecast number to use in subsequent land-needs analysis and related work tasks. The recently adopted range of options for employment forecasts does not provide clear guidance or direction for committing the city to deciding on future land needs. The department believes that a final forecast number decision must be accomplished prior to completing any further related planning studies, analysis, or land needs studies and analysis related to the periodic review work program or any proposal to expand the urban growth boundary.

No objections to this task were received in response to the city's notice. Therefore, this order approving your work task is final and cannot be appealed.

I appreciate the efforts of city officials and staff in completing this periodic review work task. The department looks forward to working with you and participating in remaining work tasks.

Please feel free to speak with your regional representative, Gary Fish, at (503) 373-0050, extension 254, if you have any questions or need further information.

Yours truly,

Rob Hallyburton
Community Services Division Manager

J:\PR\Smallcity\BANKS\Task 1 approval.doc

cc: K.J. Won, City of Banks Planner
Brent Curtis, Washington County
Larry French, DLCD

Electronic copy: Gary Fish, Regional Representative
Periodic Review Assistance Team



EXHIBIT A.2



STAFF MEMORANDUM

TO: City Recorder:

- o City of Beaverton
- o City of Cornelius
- o City of Durham
- o City of Forest Grove
- o City of Gaston
- o City of Hillsboro
- o City of King City
- o City of Lake Oswego
- o City of North Plains
- o City of Portland
- o City of Rivergrove
- o City of Sherwood
- o City of Tigard
- o City of Tualatin
- o City of Wilsonville

FROM: Jolynn Becker
Banks City Recorder

DATE: November 19, 2010

RE: **Notice of Updated Population Forecast**

As explained in the attached notice, the City of Banks has updated the 20-year population forecast in accord with ORS and OAR safe harbor provisions. The City is hereby providing notice to the other local governments in the County as required by ORS 195.034 (3)(a)(A).

Further questions regarding this memorandum may be directed to myself at 503 324-5112, x 200 or emailed to me at <recorder@cityofbanks.org>.

EXHIBIT A.3

Jim L. Lucas

LAW OFFICE OF JIM L. LUCAS P.C.

**1911 Mountain View Lane, Suite 400
Forest Grove, OR 97116**

PHONE: (503) 359-1201; FAX: (503) 359-1206; E-MAIL: JLLESQ1@aol.com

December 14, 2010

Mr. KJ Won and U. S. Mail
Banks City Planner
3178 SW 87th Ave.
Portland, OR 97225

Re: Preliminary Draft-Staff Response to 11/24/10 1000 Friends Correspondence

Dear KJ:

I concur in your response to the 1000 Friends letter objecting to the City's procedure for adopting the population forecast.

In regards to the letter citing and relying on the recent LUBA case Friends of Yamhill County, et al v. City of Newburg, I do not believe this case is on point with the facts and circumstances of the City of Banks' adoption of its population forecast. In the case Friends of Yamhill County, LUBA states that the City of Newburg decision in adopting their population forecast did not follow the provisions of ORS 194.034 and the Newburg decision was not a decision under ORS 194.034. Friends of Yamhill Co. v. City of Newburg, LUBA No. 2010-034, pg. 9. (2010).

This is unlike here where the City of Banks's decision was a decision under ORS 194.034. LUBA goes on to state in the Friends of Yamhill Co. case how ORS 195.034(3) works to adopt a forecast without a county adoption if certain notice requirements are followed. Id.. It is my understanding that the City of Banks complied with the notice requirements under ORS 195.034(3) following DLCD's directions. Therefore I disagree with Ms. Nelson's conclusions that the City must now follow a different "forecast solution."

Should you wish to discuss this issue further. Please let me know.

Regards,
Jim L. Lucas
cc: Jim Hough, Banks City Manager

Jim L. Lucas
Attorney at Law
1911 Mountain View Lane
Suite 400
Forest Grove, OR 97116
Telephone: (503)359-1201
Fax: (503)359-1206