

# **PART III – EXHIBIT C.2.**

***COGAN OWENS COGAN  
MEMORANDUM DATED  
SEPTEMBER 7, 2010***



## MEMORANDUM

**DATE:** September 7, 2010  
**TO:** KJ Won, Planner, City of Banks  
**FROM:** Arnold Cogan, Ellie Fiore, Ric Stephens and Larry Derr  
**RE:** City of Banks Proposed Plan Amendments

The Quail Valley Golf Course (QVGC) is located adjacent to the City of Banks. The City of Banks is preparing to expand its UGB and QVGC wishes to include the golf course in the City's expansion. QVGC owns approximately 172 acres adjacent to the east of the City of Banks. Approximately 140 acres is developed with an 18-hole golf course, driving range and supporting facilities. The golf course will remain in its current use and QVGC wishes to develop the remaining property for residential and commercial development over the next several years. During subsequent proceedings for adoption of the City's UGB expansion QVGC will submit a proposal to adjust the location of residential land in the current City UGB proposal and the golf course land so that the existing golf course facility will be protected without increasing the amount of residential land in the current City proposal.

To support this effort, QVGC is proposing amendments to the City of Banks Comprehensive Plan Goal 8 Recreation Element and the City's Park & Recreation Master Plan. The purpose of the Comprehensive Plan amendment is to include the Quail Valley Golf Course in a Goal 8 inventory of recreation needs and opportunities in the planning area and to adopt a policy for inclusion of the course in the City's UGB, annexation into the City, and protection under the City's Community Facilities zoning designation. The purpose of the Master Plan amendment is to conform the Master Plan to LCDC Goal 8 requirements and coordinate it with the amended Goal 8 Comprehensive Plan provisions so that it can be adopted as a resource element of the Comprehensive Plan.

Cogan Owens Cogan, LLC (COC) was retained as a consultant to QVGC to prepare these proposed amendments and associated findings. The following work products are attached to support this effort:

- Findings / Demonstration of Compliance with Goal 8 Planning Guidelines
- Proposed Goal 8 Text Amendments
- Proposed Park and Recreation Master Plan Amendments (electronic hypertext document *2010 Park and Recreation Master Plan Update*)

The proposed Goal 8 amendments are set forth below. The proposed amendments to the Park Master Plan are included in a separate document.

## Goal 8 Amendments

### Description and Purpose

The following text amendments are proposed for the Goal 8 element of the Banks Comprehensive plan. These amend the existing Banks Comprehensive Plan, last amended in 1989, to:

- include the QVGC in an inventory of recreation resources; add policies that more accurately reflect the City's current positions;
- add policies reflecting current City priorities, including supporting the QVGC in the City of Banks and
- preserve the golf course for open space and recreation uses.

The 2010 Revised Park and Recreation Master Plan should be adopted as a resource element of the Comprehensive Plan.

### Text Amendments (~~strikethrough~~/underline)

#### 8. Recreation

Goal: To provide programs and facilities to meet the recreational needs of area residents and visitors.

Objectives: a. Community ~~park~~parks and outdoor recreation areas should be protected, encouraged and enhanced.

b. Development of pedestrian~~and~~/bicycle pathways and trails should be promoted.

Policies: 1. The City will plan community recreation facilities in conjunction with existing and planned school facilities so that they ~~complement~~complement each other in function.

2. Proposed recreation facilities will be be evaluated by how well they meet ~~reviewed as to fulfilling~~ the needs of the community at large and ~~providing~~ opportunities for handicapped, elderly, low-income, and young people, ~~of different ages and sex, including handicapped~~.

3. Priority will be given to local needs.

4. The City will work with community groups in identifying specific sites, site development plans, and financing strategies for recreational facilities.

5. The City will coordinate with and encourage ~~both the~~Sunset

~~Chamber~~Banks Sunset Park Association Inc., Quail Valley Golf Course and Banks School District regarding the continued use of these recreational facilities by the city residents.

6. The City recognizes the Quail Valley Golf Course as a recreation resource that meets current and long-term recreation needs.

7. The City will add the Quail Valley Golf Course to the City's UGB, and upon annexation to the City include it in the Community Facilities Zone in order to protect and preserve it as an open space and recreation resource for city and state residents and visitors.

8. The City will amend the Community Facilities Zone by removing the restriction on its applicability to publicly owned facilities, thereby facilitating inclusion of Sunset Park and Quail Valley Golf Course within the Zone and its restricted uses.

*Note: This section will be replaced by the updated resource inventory and description in the Updated 2010 Park and Recreation Master Plan.*

## Recreation

~~The City has a large diversified recreational area of about 60 acres at the south end of the City facing both sides of Main Street. This land consists of the Sunset Chamber Grounds and the Banks School District property. The area is less than ½ mile from any residence in the City (see Urban Facilities and Services map).~~

### Sunset Chamber Grounds

~~The property (25.5 acres) is located inside the Banks city limits since 1980. The grounds are administered by the Sunset Chamber, a non-profit organization consisting of Washington County residents. The grounds has a large auditorium, gun club (skeet), two baseball diamonds and horseback riding area. The auditorium is used for social functions as dances and flea markets. The site is best known for the Banks Barbecue in August, which draws 5,000-8,000 people. Sunset Park also forms the City's primary open space area, and, as such, is identified a a "goal 5" resource.~~

### Banks School District

~~The School district property complex in Banks consists of the High School, Junior High School and an elementary School on 35 ½ acres. There are 3 softball diamonds, 2 tennis courts, 2 gymnasiums, a football field, dirt running track, and playground. The school district has no immediate plans for development of the 10 acres which were annexed in~~

~~1980. The property is currently used by Future Farmers of American for agricultural crops.~~

~~The Banks City Park at the corner of Main and Sunset streets is the site of the Banks Boy Scout cabin which is identified as a historic resource. The property is owned by the City of Banks.~~

#### ~~Henry Hagg Reservoir~~

~~This recreational facility is 13 miles southwest of Banks and provides trout fishing, boat launching and picnic areas.~~

~~Citizen workshops indicated a need for more outdoor recreation and that the Sunset Chamber grounds should be upgraded. Primary recreation activities now are fishing and hunting. The Land Use Plan underscores the need to centralize the Sunset Chamber area and Banks School District Property to residential growth. Future planning efforts to develop a bicycle/pedestrian system will help make this area more accessible to neighborhoods.~~

~~The National Recreation Association standards for a city of 1,000 is a 1.50-acre park and 2.75-acre playground. These standards would indicate that the City of Banks will have abundant recreation area throughout the planning period. The City encourages emphasis on improving the quality of local recreational facilities rather than land acquisition.~~

## ***Proposed Findings in Support of Comprehensive Plan and Park and Recreation Master Plan Amendments***

Golf courses occupy an unusual position in the scheme of land use planning in Oregon as a result of state statutes and LCDC Goals. Golf courses fulfill an urban need for open space and recreational activity. Because urban development is limited to areas within urban growth boundaries and expansion of the UGBs is tightly restricted, there are few or no large blocks of undeveloped land in the UGBs for a golf course. Any undeveloped land on the UGB fringe in the path of expansion is also too costly to permit golf course development. The result is that few new golf courses will be created within existing urban areas or on the fringes.

Banks has a unique opportunity to bring the existing Quail Valley Golf Course (QVGC) within the control of the City's UGB and City limits for the benefit of its citizens. In doing so, the City can realize the financial benefits of taxing the course without adding demand for additional urban services. Future residential uses adjacent to the golf course would add to the diversity of the housing supply in the City by providing homes with the amenity of the adjacent golf course and open space.

As a first step in this process, the Goal 8 Recreation Element amendment includes the Quail Valley Golf Course in a Goal 8 inventory of recreation needs and opportunities in the planning area and adopts a policy for inclusion of the course in the City's UGB and annexation into the City. The Master Plan amendment conforms the Master Plan with LCDC Goal 8 requirements and coordinates it with the amended Goal 8 Comprehensive Plan provisions so that it can be adopted as a resource element of the Comprehensive Plan.

The following narrative demonstrates how these amendments not only benefit the City and its residents, but are consistent with state and local plans and goals.

### **Statewide Land Use Planning Goals and Goal 8 Planning Guidelines (OAR 660-015-0000(8))**

*Goal 8: "To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

*The requirements for meeting such needs, now and in the future shall be planned for by governmental agencies having responsibility for recreation areas, facilities and opportunities: (1) in coordination with private enterprise, (2) in appropriate proportions and (3) in such quantity, quality and location as is consistent with the availability of the resources to meet such requirements. State and Federal agency recreation plans shall be coordinated with local and regional recreational needs and plans."*

DLCD defines “Recreation Areas, Facilities and Opportunities” as follows:

*“Recreation Areas, Facilities and Opportunities provide for human development and enrichment, and include but are not limited to: open space and scenic landscapes; recreational lands; history, archeology and natural science resources; scenic roads and travel ways, sports and cultural events; camping, picnicking and recreational lodging; tourist facilities and accommodations; trails; waterway use facilities; hunting; angling; winter sports; mineral resources; active and passive games and activities.”*

DLCD defines “Recreation Needs” as follows:

*“Recreation Needs refers to existing and future demand by citizens and visitors for recreation areas, facilities and opportunities.”*

#### **LCDC Goal 8 Planning Guidelines**

In OAR 660-015-0000(8), LCDC provides 11 guidelines to assist community planners. The narrative below demonstrates how these amendments conform to these guidelines.

1. *“An inventory of recreation needs in the planning area should be made based upon adequate research and analysis of public wants and desires.”*
2. *“An inventory of recreation opportunities should be made based upon adequate research and analysis of the resources in the planning area that are available to meet recreation needs.”*

These amendments support adding the QVGC, an existing recreational resource, to the City of Banks. The QVGC is a privately-owned public golf course that currently serves the recreational needs of Banks residents and students as well as attracting visitors from around the region and state.

An inventory of recreation opportunities was conducted as part of the *2007 Park and Recreation Master Plan (2007 Master Plan)*. The *2010 Park and Recreation Master Plan Update (2010 Update)* reflects additional/expanded recreation opportunities associated with The Intertwine, Sunset Park and Quail Valley Golf Course.

The Golf Course has been economically viable since 1996, demonstrating its ability to serve local and regional “wants and desires” for this recreation type. In addition to serving the recreation needs of Banks and the immediately surrounding area the golf course serves the recreational needs of high-density population centers in Washington County and the City of Portland and of visitors from within and outside of the State of Oregon.

The sport of golf has gained immense popularity in recent decades. The 2010 Statistical Abstract of the United States reported that there are over 22 million golfers in the United States and the number of golf facilities increased from 12,846 in 1990 to 15,979 in 2008, or an increase of 24%<sup>1</sup>.

A 2009 report, *A Recreation Assessment of Northwest Oregon*, identified golf as the second-fastest growing recreation activity in Oregon, with an 188% increase in participation between 1987 and 2002<sup>2</sup>.

In view of the significant growing national and statewide popularity of golf in recent years, it is reasonable to expect that the sport may be considered as a local form of recreation for Banks residents. This is especially important as Banks population is projected to almost triple by 2026 with a continued shortfall in large-area recreation. Moreover, the QVGC serves to implement the statewide planning goal, i.e., satisfy citizens' recreational needs.

Between 35,000 and 45,000 rounds of golf are played at QVGC annually. In addition to filling recreational needs for City and Metro-area residents, the QVGC contributes to the economic and educational vitality of the City as well. The Banks High School golf team uses QVGC during its season and in summers. This service is provided at no cost to the school or the players. QVGC has also made donations to the school district, including in-kind donations to support the school's new wrestling facility. Banks Elementary students have visited the QVGC on several field trips as part of career education programs. QVGC hosts the Pacific University golf team and a variety of other activities listed in the 2010 Park and Recreation Master Plan Update.

QVGC also hosts events for local civic organizations including the Banks Chamber of Commerce. The QVGC is a member of the Banks Chamber and supports several local businesses.

The golf course helps meet the recreational needs of City residents as well as residents of the Portland metro area. QVGC also contributes to the local economy by attracting these visitors, making charitable donations and directing its buying power to local businesses.

The QVGC is recognized as a recreational resource in the *2010 Banks Park and Recreation Master Plan Update* facilities inventory and identified as meeting special use needs in the the Needs Analysis.

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<sup>1</sup> 2010 Statistical Abstract of the United States, Table 1206 Selected Recreational Activities: 1990 to 2008.

<sup>2</sup> (Source: "A Recreation Assessment of Northwest Oregon: Current Conditions, Trends and Opportunities," James Kent Associates, February 2009, [http://www.oregon.gov/ODF/STATE\\_FORESTS/docs/Recreation/Analysis\\_of\\_Rec\\_Needs-Final\\_Report\\_3-09-09.pdf?ga=t](http://www.oregon.gov/ODF/STATE_FORESTS/docs/Recreation/Analysis_of_Rec_Needs-Final_Report_3-09-09.pdf?ga=t))

The Quail Valley Golf Course is a major recreational and community resource for the City of Banks. Since it is an existing use, the need for this use is demonstrated by current use levels by the public. It also helps meet the growing demand for golf in Northwest Oregon and fulfills the Goal 8 Goals of satisfying recreational needs of the citizens of Oregon.

*3. Recreation land use to meet recreational needs and development standards, roles and responsibilities should be developed by all agencies in coordination with each other and with the private interests. Long range plans and action programs to meet recreational needs should be developed by each agency responsible for developing comprehensive plans.*

The City of Banks developed and adopted the Park and Recreation Master Plan in 2007 and included the QVGC in its inventory of recreational resources. The 2010 Update includes additional information on use of the golf course, resource inventory and needs analysis. By bringing QVGC within the protection of City land use regulatory jurisdiction the City will coordinate preservation of this recreation resource with the private interests that originally developed the resource.

*4. The planning for lands and resources capable of accommodating multiple uses should include provision for appropriate recreation opportunities.*

This guideline is not relevant to this amendment.

*5. The State Comprehensive Outdoor Recreation Plan (SCORP) could be used as a guide when planning, acquiring and developing recreation resources, areas and facilities.*

This guideline is not relevant to this amendment since the golf course is an existing use. However, this amendment is supported by SCORP, which identifies several demographic shifts occurring in Oregon including an aging population and a more indoor-oriented youth. The Quail Valley Golf Course addresses recreation for both demographics. Golf is a sport that can be played by seniors and the golf course has programs designed for this demographic. The golf course also has programs tailored for students and youth.

*6. When developing recreation plans, energy consequences should be considered, and to the greatest extent possible non-motorized types of recreational activities should be preferred over motorized activities.*

The course is adjacent to the City, and requires minimal energy for residents to travel to the course. Golfing is a non-motorized recreational activity, with the exception of optional electric carts that enable persons with less mobility to play and the carts are energy-efficient.

The Park and Recreation Master Plan 2010 Update includes additional information on local, regional and statewide trails that contribute to non-motorized recreational activities.

*7. Planning and provision for recreation facilities and opportunities should give priority to areas, facilities and uses that*

- (a) Meet recreational needs requirements for high density population centers,*
- (b) Meet recreational needs of persons of limited mobility and finances,*
- (c) Meet recreational needs requirements while providing the maximum conservation of energy both in the transportation of persons to the facility or area and in the recreational use itself,*
- (d) Minimize environmental deterioration,*
- (e) Are available to the public at nominal cost, and*
- (f) Meet needs of visitors to the state.*

(a) The National Recreation and Park Association (NRPA) recommends that 18-hole golf courses are located within 20 miles of a population center. QVGC is located within 20 miles of several cities in Washington County as well as the City of Portland.

(b) The availability of electric golf carts allows persons of limited mobility to participate. The high school golf team is able to use the course at no cost.

(c) The proximity of QVGC to the City of Banks and its population centers as well as several other high-density centers allows visitors to reach the golf course with short car trips or by bike or foot. Very little energy is consumed by course maintenance and little or none is required by the recreation use itself.

(d) The golf course preserves open space and promotes increased biodiversity with ponds and varied ecosystems. (The DLCD definition of open spaces in OAR 660-023-0220(1) includes golf courses.)

(e) The golf course is open to the public. QVGC sponsors numerous recreational events with varying costs, allowing a wide range of demographic usage.

(f).The golf course provides a tourism venue for state and regional visitors. The golf course provides economic benefits to the local community and region.

*8. Unique areas or resources capable of meeting one or more specific recreational needs requirements should be inventoried and protected or acquired.*

The 2010 Update identifies the QVGC as an existing resource that contributes to the City's special use recreational needs. It is a unique resource in the area because it is highly unlikely that it could be replicated under current land use laws if it did not

currently exist. There is no large block of land of sufficient size within the existing Banks UGB to develop a golf course. Within the area surrounding the City any block of land of sufficient size and suitability for a golf course, including the existing site, includes high value farm land upon which new golf courses are prohibited under LCDC rules.

The QVGC also meets regional recreation, educational and other community needs. The plan amendments support adding the QVGC to the City of Banks which will protect this resource by bringing it under the City's planning jurisdiction. QVGC is currently part of Washington County's jurisdiction and zoned Exclusive Farm Use (EFU) and Agricultural and Forest (AF-5) which would allow the course to be converted to farm use by right. Under the Washington County zoning and jurisdiction, the City has no standing to protect the golf course as an open space and recreational resource. As interpreted in *Gruber v Lincoln County*, 2 OR LUBA 180 (1981), when a recreational resource has been identified Goal 8 requires that the applicable land use regulations provide some measure of protection for the resource. The plan amendments will allow the City to preserve the QVGC as a recreational and community asset through annexation and zoning.

*9. All state and federal agencies developing recreation plans should allow for review of recreation plans by affected local agencies.*

This guideline is not relevant to these amendments.

*10. Comprehensive plans should be designed to give a high priority to enhancing recreation opportunities on the public waters and shorelands of the state especially on existing and potential state and federal wild and scenic waterways, and Oregon Recreation Trails.*

The 2010 Park and Recreation Master Plan Update emphasizes Oregon Recreation Trails and identifies Banks as a potential link on the Path to the Pacific Trail connecting metropolitan Portland with the coast.

*11. Plans that provide for satisfying the recreation needs of persons in the planning area should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.*

This guideline is met because QVGC is an existing use and, as such, does not require the expenditure of any additional resources in its creation. The golf course provides and protects a large amount of land as open space. This use is well within the carrying capacity of the land, air and water.

## **City of Banks Comprehensive Plan**

The following Comprehensive Plan policies are also relevant to these plan amendments.

*Goal 5: Open Space, Scenic and Historic Areas, and Natural Resources*

*Policy 5: The city will continually explore ways to develop and maintain an open space network at a minimum cost to the public.*

These plan amendments support the City in its efforts to expand its inventory of open spaces by adding the QVGC to the City. Since the golf course is an existing, privately-owned resource, there is minimal cost associated with adding QVGC to the City's parks and recreation system.

*Goal 9: Energy*

*Policy 1a: Provide recreation in proximity to developed areas.*

QVGC is immediately adjacent to the current City boundary and existing City development, including some of the densest residential neighborhoods.



# **PART III – EXHIBIT C.3.**

***COGAN OWENS COGAN  
MEMORANDUM DATED  
SEPTEMBER 15, 2010***



## MEMORANDUM

**DATE:** September 15, 2010  
**TO:** KJ Won, Planner, and City of Banks  
**FROM:** Arnold Cogan, Ellie Fiore, Ric Stephens and Larry Derr  
**RE:** City of Banks UGB Expansion Amendment

The Banks City Council has expressed its interest to include the entire Quail Valley Golf Course in the area proposed for the Urban Growth Boundary (UGB) expansion. At the request of the Quail Valley Golf Corporation (QVGC) the Council can ultimately designate undeveloped land in the interior of the golf course for residential development, provided it can be done in compliance with applicable statutory and LCDC Goal requirements. By adding the entire QVGC property to the UGB expansion area, the City will bring the golf course within its land use regulatory jurisdiction. This will allow the City to preserve and protect this recreation resource.

The City has been working with planning consultants from CH2MHill to prepare a UGB Expansion Area Analysis and Justification, documented in Technical Memorandum 1.2 (Tech Memo 1.2) dated January 25, 2010. Tech Memo 1.2 describes the Preferred Alternative strategy decided by the City Council in January to guide additional planning work for the proposed UGB expansion. The Preferred Alternative includes a portion of the Golf Course, as well as additional property owned by QVGC for UGB expansion and residential and commercial development.

The purpose of this September 15, 2010 memorandum is to supplement Tech Memo 1.2 and modify the UGB expansion proposal to include the entire Golf Course. A map is attached showing the specific QVGC property that would be added to include the entire Golf Course (Figure 1) and a map showing the preferred UGB expansion alternative with the addition of the Golf Course (Figure 2).

Tech Memo 1.2 provides a detailed location and boundary analysis for the proposed 246.82-acre UGB expansion area, which includes the following QVGC tax lots and partial tax lot, as shown on Figure 1, Proposed Golf Course Addition. The total acreage of these four lots and partial lot is 31.29 acres.

- 1) 2N 3 31D 00100 (10.00 acres, partial)
- 5) 2N 3 31CA 06900 (8.93 acres)
- 6) 2N 3 31D 00400 (9.96 acres)
- 7) 2N 3 31D 00100 (1.50 acres)

8) 2N 3 31D 00101 (0.90 acres)

This September 15, 2010 modification will add the following tax lots and partial tax lot to the UGB Expansion area so that the entire Golf Course is included.

- 1) 2N 3 31D 00100 (55.60 acres, partial)
- 2) 2N 3 31 00100 (44.30 acres)
- 3) 2N 3 31 00201 (25.94 acres)
- 4) 2N 3 31 00500 (15.80 acres)

The total acreage of these three lots and partial lot is 141.64 acres. The total QVGC property is 172.93 acres.

Statutory and LCDC requirements for change of an UGB have three basic elements: (1) demonstration of need for the expansion; (2) demonstration that the need cannot be accommodated within the existing UGB; (3) consideration of alternative locations for the UGB expansion. The following information can be incorporated into findings supporting adoption of the UGB expansion with the inclusion of the entire Golf Course to satisfy these elements.

#### **Land Need**

LCDC Goal 14 and OAR 660-024-0040(1) and (2) provide that establishment and change of UGBs shall be based on need to accommodate a 20-year population forecast and need for various categories of urban uses.

*Establishment and change of urban growth boundaries shall be based on the following:*

*(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and*

Tech Memo 1.2 updates the coordinated population forecast for the 20-year planning horizon. The Memo demonstrates a need for residential and employment land to accommodate Banks' 20-year population growth, but does not separately address recreation uses. The 2010 Updated Park and Recreation Master Plan identifies the growing need for recreation uses, including special uses such as golf courses, associated with the 20-year population forecast.

*(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).*

The City has established a need for 123 acres of residential land together with an additional 25% or 31 acres under OAR 660-024-0040(10) for streets and roads, parks and school facilities. However, the residential land need and the safe harbor allocation for streets and roads, parks and school facilities does not consider specific recreation, open space and livability needs of the City. Golf courses are recognized open spaces

uses under OAR 660-023-0220(1), "For purposes of this rule, 'open spaces' includes parks, forests, wildlife preserves, nature reservations or sanctuaries, and *public or private golf courses*". The "uses such as" categories of Goal 14 are separate from and in addition to the "needed housing" and "employment" need categories, and may include recreation needs identified by a city. The Goal 14 Planning Guidelines provide that plans should designate sufficient amounts of land to accommodate, among other things, "*open space and recreational needs*". Golf courses satisfy both categories of needs.

The need for inclusion of the golf course to meet local, regional and state parks and open space needs is documented in the amendments to the Comprehensive Plan, including the Goal 8 Element, the Park and Recreation Master Plan update and the supporting findings for the adopting ordinances. The amendments and findings also demonstrate that the Golf Course fulfils a range of community uses that contribute to liveability for Banks residents.

### **Land Within the UGB**

Goal 14 and OAR 660-024-0050(4) provide:

*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.*

The LCDC rules further require that, after establishing the need for the golf course to meet the recreational needs of its growing population, the City must explore ways to accommodate the use within the existing UGB on vacant or re-developable land.

The National Recreation and Park Association (NRPA) establishes park and recreation standards to identify the minimum land area for community facilities, guide land requirements to meet recreation needs, and justify the need for parks and open space within the land use pattern of a community. The NRPA identifies a minimum of 110 acres for an 18-hole golf course such as Quail Valley.

The area within the current Banks UGB is almost entirely built out. Clearly, the City of Banks' UGB does not currently include this amount of vacant, undeveloped land and as such, cannot accommodate the need for this special use within its existing UGB.

### **Boundary Location**

Goal 14 requires an alternatives analysis to establish the location of changes to an UGB to meet demonstrated need. The alternatives analysis must be consistent with the priorities in ORS 197.298 and the four location factors in Goal 14. The steps and considerations in applying those factors are outlined in OAR 660-024-0060.

Tech Memo 1.2 established the alternative land to be considered by adopting a "Study Area" around the existing Banks UGB. The following analysis considers all of the land

within the Study Area in evaluating locations other than the four tax lots for inclusion to meet the golf course need.

The ORS 197.298 priorities and responses are:

*(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 (Urban reserves), rule or metropolitan service district action plan.*

There are no urban reserve lands in the Study Area.

*(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.*

All Priority 2 exception lands are included in the original proposed UGB expansion area to meet identified residential and employment land needs, except for a parcel on Sellers Road that was excluded in the Tech Memo 1.2 analysis. There are no additional exception lands in the Study Area.

*(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).*

The Study Area has no land designated by Washington County as marginal land.

*(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.*

All of the available land within the Study Area not already proposed for UGB expansion, including tax lots 1-4, is designated by the Washington County Comprehensive Plan as resource land and designated for agricultural use.

*OAR 660-024-0060(1)(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.*

When there is more than enough land in the applicable priority category to meet the established need, the four location factors of Goal 14 must be applied to determine the boundary change location. As demonstrated above, an insufficient amount of land is available within the UGB or in the first three priority categories to accommodate a golf course. The amount of land within the fourth category exceeds the need and therefore the location factors must be applied to determine the expanded UGB boundary location to satisfy the Golf Course need.

In addition to applying the Goal 14 location factors, ORS 197.298(2) requires that higher priority be given to land in a lower capability classification system for agricultural land. With the exception of small portions of various tax lots within the Study Area, all land that is not high value farm land is included in either the Preferred Alternative UGB expansion area or this additional expansion area. There are no blocks of lower soil capability class land that are large enough to accommodate a golf course use.

#### **Boundary Location Factors**

Only the land not included in the Preferred Alternative UGB expansion was considered as alternative locations. Also, only those blocks of land large enough or nearly large enough to accommodate a golf course use comparable to the QVGC Golf Course were considered as alternative locations. Those blocks of land are located east of Aerts Rd/south of Hwy 6, east of Aerts Rd/north of Hwy 6, north of Banks Rd/east of Courting Hill Rd, north of Banks Rd/west of Courting Hill Rd, west of Hwy 47/between Hwy 6 and Dierckx Rd, east of Hwy 47/south of Wilkesboro Rd/west of the railroad tracks. Land west of the Preferred Alternative UGB expansion and north and south of Cedar Canyon Rd was not considered because after deleting floodplain land the remaining land was either too small or would be separated from the UGB by the floodplain.

#### *1) Efficient accommodation of identified land needs;*

The QVGC Golf Course is an existing, fully-developed public golf course that meets recreational and local community needs. Because the expansion property will not continue and expand any existing residential, commercial or industrial uses in the City, it is essentially a stand-alone use that could theoretically be located anywhere on the fringe of the City. However, the land east of Aerts Rd and north and south of Hwy 6 and the land north of Banks Rd and east of Courting Hill Rd would be marginally connected to the balance of the UGB and therefore not an efficient location for expansion. Adding the remainder of tax lot 1 and tax lots 2-4 to the proposed UGB expansion area is an efficient strategy for meeting recreation needs, since this area is immediately adjacent to a portion of tax lot 1 and tax lots 5-8.

It is more efficient to add an existing use with all necessary infrastructure in place than to create the use and supporting infrastructure on any of the remaining lands considered. If alternative land was brought into the UGB and designated for golf course

use, so long as the QVGC Golf Course continued in operation, a new golf course on any other land in the Study Area likely would not succeed, would not be justified by the demonstrated need, and would not be built.

*2) Orderly and economic provision of public facilities and services;*

The property is currently adequately served with sewer, water and transportation facilities. Because the proposed addition of tax lots 1-4 to the UGB expansion area will not change or intensify the use, it will generate no need for different or additional services. Demand for fire and emergency services will be unchanged. The use makes no demand on the school system, while contributing tax revenue to its operation and providing a facility for the school athletic program and other educational purposes.

Each of the alternative sites not eliminated for other reasons as described above would require new utility services and would be separated at a minimum by County Roads from the balance of the UGB expansion.

*3) Comparative environmental, energy, economic and social consequences; and*

Because the golf course is an existing use and will not change with UGB expansion, there will be no negative environmental, energy, economic and social consequences as a result of this amendment to the UGB expansion. Preserving this existing use will require no additional energy nor create new impacts, nor will it displace any existing agricultural production. Meeting these needs by developing a new golf course on other parcels would have significant environmental, energy, economic and social consequences and on some of the alternative land would result in taking productive agricultural land out of use.

*4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.*

Compatibility of the golf course with nearby activities was a primary issue in the County's approval of the golf course in 1994. The result of the County's review was a conclusion that the Golf Course would be compatible with those activities. There have been no user conflicts since the Golf Course was established. Locating a golf course on any of the alternative lands, although a theoretical exercise at best, would not have the benefit of years of successful and compatible operation the QVGC Golf Course has experienced.

## **Traffic Impact Analysis**

As part of the planning process for the UGB expansion and adoption of a Transportation System Plan for the City of Banks, CH2MHill prepared Technical Memorandum 5.1

*Transportation Needs, Opportunities and Constraints Report (Tech Memo 5.1).*

Tech Memo 5.1 and subsequent work leading to adoption of a TSP is intended to, among other things, meet the requirements of the transportation planning rule, OAR 660-0125-0060, for an UGB amendment.

OAR 660-024-0020(1)(d) provides that the transportation planning rule need not be applied if an UGB amendment applies zoning that will not generate more vehicle trips than development allowed under the zoning prior to inclusion in the UGB. Because this amendment will apply the Community Facilities zone that will limit the use to the existing golf course use, there will be no change in the vehicle trips generated as a result of the UGB amendment.

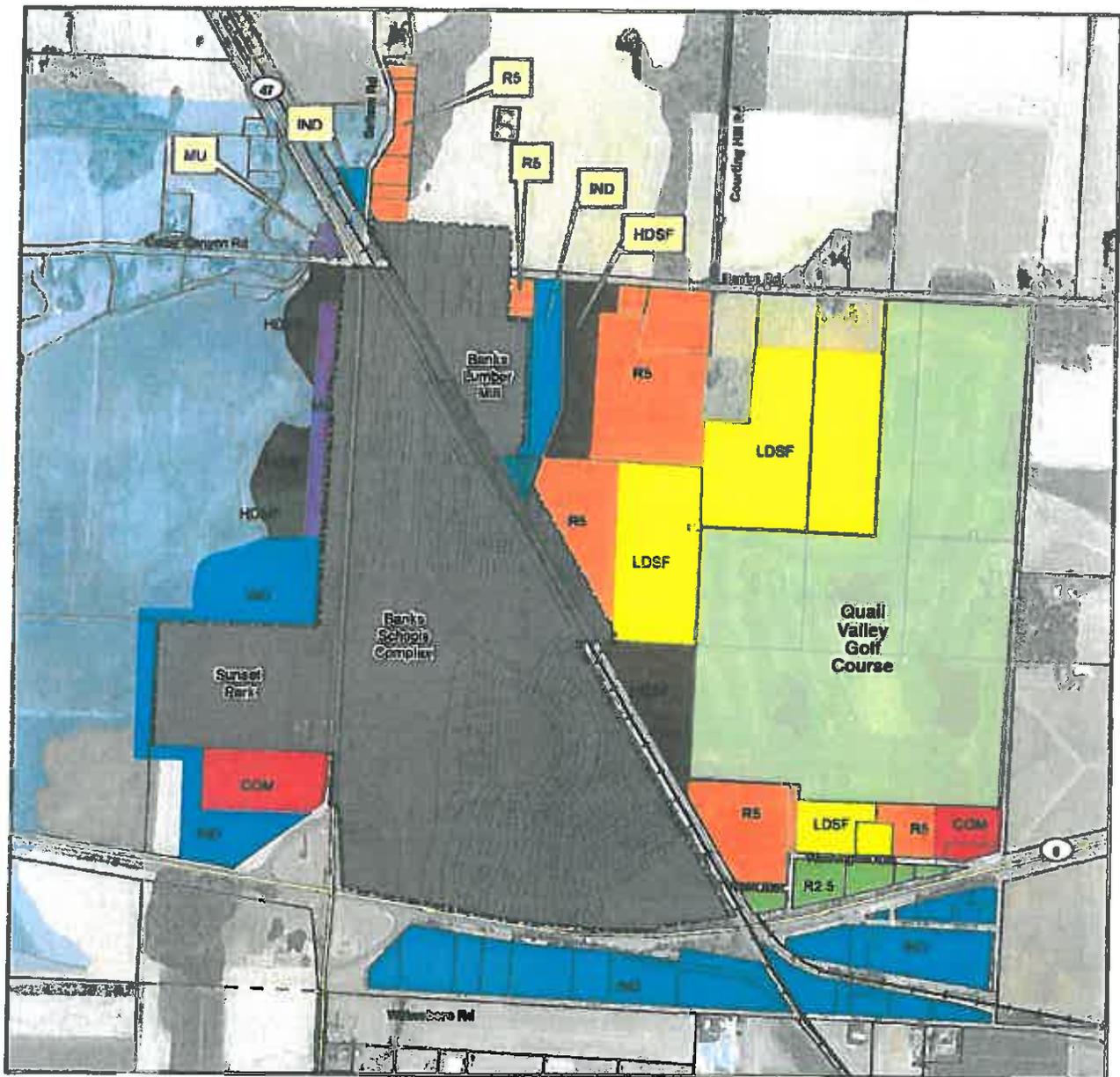
In addition, because the QVGC Golf Course is an existing use, Tech Memo 5.1 includes traffic analysis of existing uses, and no changes in use are included as part of this modification to the Preferred Alternative UGB expansion, the transportation planning work being done by the City fully addresses the transportation planning rule as it might relate to this modification.



# **PART III – EXHIBIT C.4.**

## ***CITY OF BANKS UGB EXPANSION INCLUDING QUAIL VALLEY GOLF COURSE***





VICINITY MAP



**Legend**

- Zoning Districts**
- Low Density Single Family Residential (LDSF)
  - Single Family Residential (R5)
  - High Density Single Family Residential (HDSF)
  - Multifamily Residential (R2.5)
  - High Density Multifamily Residential (HDMF)
  - Mixed Use (MU)
  - Industrial (IND)
  - Commercial (COM)
- Community Facilities
  - Tax Lot
  - Existing UGB
  - 100-Year FEMA Floodplain



**City of Banks UGB Expansion including Quail Valley Golf Course**

COGAN  
OWENS  
COGAN

Base map prepared by CH2M Hill



# EXHIBIT D

*11-24-10 DLCD  
CORRESPONDENCE*





# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

Community Services Division

800 NE Oregon Street, Suite 1145

Portland, Oregon 97232

Phone: (971) 673-0965

Fax: (971) 673-0911

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



November 24, 2010

K.J. Won  
Banks City Planner  
3178 SW 87<sup>th</sup> Ave.  
Portland, OR 97225

Re: City of Banks Proposed Comprehensive Plan Amendment (received October 29, 2010)  
(Local File No. PA-77-10; DLCDD File No. PAPA 001-10)

Dear K.J.,

Thank you for giving us the opportunity to review the proposed three part Comprehensive Plan amendment comprised of the following:

- Part I: Urban Growth Boundary (UGB) Expansion – Goal 14
- Part II: Transportation System Plan (TSP) – Goal 12
- Part III: Recreational Needs – Goal 8

We are very pleased that the City has been able to both evaluate a UGB expansion and develop a Transportation System Plan with a Transportation and Growth Management (TGM) grant administered by the Oregon Department of Transportation<sup>1</sup>. As indicated in the subject proposal, the Part III Recreational Needs element and updated Park and Recreation Master Plan were prepared separately and subsequent to the conclusion of the TGM Grant work program.

As you know, this Department was an active participant in both the TSP update preparation and the UGB expansion analysis together with city staff and the TGM consultant and we were generally supportive of the City's initial draft proposal for an approximately 247 acre UGB expansion (May 10, 2010 City Council Zoning Allocation Strategy Map). However, we are very surprised and concerned that the current proposal attempts to justify the addition of the approximately 142 acre Quail Valley Golf Course in the UGB expansion area via an amendment to the Statewide Planning Goal 8 Recreational Needs element of the City's Comprehensive Plan and the concurrent adoption of a revised Parks and Recreation Master Plan.

The fundamental issue is that the City has failed to establish the need for the existing Quail Valley Golf Course as an urban recreation facility consistent with Statewide Planning Goal 14 and the applicable criteria in Oregon Administrative Rules (OAR), Chapter 660, division 24. As noted in Goal 14, a UGB is intended to separate urbanizable and urban land from rural land, and urban growth boundary adjustments must be based on a demonstrated need to accommodate an urban population. To the contrary, the proposal from the City indicates that

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<sup>1</sup> Please note that the UGB map included in the final draft of the updated TSP was done prior to the proposed inclusion of the golf course and therefore, does not show the Quail Valley Golf Course in the city's expanded UGB. The UGB expansion and comprehensive plan and zoning maps in the various documents should be carefully checked and changed if necessary to ensure that they match.



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the Quail Valley Golf Course is a regional and possibly a state-wide recreational facility. In addition, the City previously used the OAR 660-024-0040(10) safe harbor of 25% of total housing unit land need to estimate the additional amount of residential land needed for roads, schools and parks. This means that land for 20-year park and open space needs was already accounted for without the addition of 142 acres for the golf course.

Even if the existing golf course can be shown to comply with state law regarding Goal 8, Planning as a "Local Park", it does not justify inclusion in the UGB without meeting the applicable criteria in Goal 14 and OAR 660-024 as noted above. Including the golf course in the amended Parks and Recreation Master Plan in and of itself does not justify its inclusion in the City's UGB. Inclusion in the UGB is about demonstrating need for the use under one or more of the statewide planning goals. The department believes that the City has neither demonstrated such an urban need nor shown compliance with Goal 14 and division 24 criteria with regard to the inclusion of the Quail Valley Golf Course in the UGB.

Please don't hesitate to call if you have any questions or need further clarification. I can be reached by phone at: 971-673-0965 or by email: [anne.debbaut@state.or.us](mailto:anne.debbaut@state.or.us). I would be glad to meet with you in person to discuss our comments and/or to explain our concerns in more detail.

Regards,



Anne Debbaut | Metro Regional Representative

cc: Jim Hough, City of Banks, City Manager (*email*)  
Brent Curtis, Planning Manager, Washington County Land Use and Transportation (*email*)  
Ross Kevlin, Seth Brumley, ODOT, Region 1 (*email*)  
Darren Nichols, Gary Fish, Gloria Gardiner, Richard Whitman, Tom Hogue, DLCD (*email*)



# EXHIBIT E

*11-24-10 1000  
FRIENDS OF OREGON  
CORRESPONDENCE*





534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org  
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389  
Willamette Valley Office • 220 East 11<sup>th</sup> Avenue, Suite 5 • Eugene, OR 97401 • (541) 520-3763 • fax (503) 575-2416  
Central Oregon Office • 115 NW Oregon Ave #21 • Bend, OR 97701 • (541) 719-8221 • fax (866) 394-3089

November 24, 2010

Honorable Mayor John Kinsky  
Banks City Council  
120 South Main Street  
Banks, OR 97106

Re: Banks UGB expansion proposal

Dear Mayor Kinsky and Council members:

Thank you for the opportunity to provide comments on the draft Banks UGB expansion proposal. 1000 Friends of Oregon is a nonprofit, charitable organization dedicated to working with Oregonians to enhance our quality of life by building livable urban and rural communities, protecting family farms and forests, and conserving natural and scenic areas.

We support the City of Banks' efforts to plan for its future, and maintain a keen interest in the outcome of these proceedings. It appears that a great deal of effort has gone into preparation of the draft plan now before you. Unfortunately, the population projections underpinning all of the work do not comply with ORS 195.025 and 195.036, and the associated administrative rules.

### **Population Forecast Problem**

OAR 660-024-0040(1)<sup>1</sup> requires all UGB evaluations or amendments to be based on a forecast that complies with the criteria in OAR 660-024-0030.

The Banks forecast purports to be a safe harbor forecast calculated under OAR 660-024-0030(4)(a), which allows a city to extend a coordinated forecast adopted by the county within the last 10 years.<sup>2</sup>

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<sup>1</sup> **OAR 660-024-0040(1):** The UGB must be based on the adopted 20-year population forecast for the urban area described in OAR 660-024-0030, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule. The 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.

<sup>2</sup> **OAR 660-024-0030(4):** A city and county may apply one of the safe harbors in subsections (a), (b), or (c) of this section, if applicable, in order to develop and adopt a population forecast for an urban area:

(a) If a coordinated population forecast was adopted by a county within the previous 10 years but does not provide a 20-year forecast for an urban area at the time a city initiates an evaluation or amendment of the UGB,

The safe harbor rule explicitly requires that the county forecast be adopted in accordance with OAR 660-24-0030(1)<sup>3</sup>, specifically: "In adopting the coordinated forecast, local governments must follow applicable procedures and requirements in ORS 197.610 to 197.650 and must provide notice to all other local governments in the county. The adopted forecast must be included in the comprehensive plan or in a document referenced by the plan."

Washington County has not adopted a coordinated countywide forecast, nor has it adopted the standalone Banks forecast relied upon by this UGB expansion proposal. All that happened is that the Chairman of the Board of County Commissioners wrote the attached letter in 2004, stating that the Board "concur[s]" with the Banks forecast. That is not the same as county adoption, let alone an amendment to the county comprehensive plan.

Because a forecast has not been adopted within the last 10 years as part of the county comprehensive plan, or in a document referenced by the plan, there is no forecast that can be extended by the safe harbor rule of OAR 660-024-0030(4)(a).

Without a valid forecast, the city cannot proceed with this UGB expansion proposal. 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. That decision is attached; see the second assignment of error on pages 9 through 13. Banks should correct the error now, rather than continue on as Newberg did. This would save city and county staff, decision makers and the public a great deal of time, effort and resources.

### **Population Forecast Solutions**

Banks has two options at this point. The first is to approach Washington County and request a countywide coordinated forecast meeting the requirements of ORS 195.036 and OAR 660-24-0030. Such a forecast would encompass all urban areas outside the Metro boundary, as

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a city and county may adopt an updated forecast for the urban area consistent with this section. The updated forecast is deemed to comply with applicable goals and laws regarding population forecasts for purposes of the current UGB evaluation or amendment provided the forecast:

(A) Is adopted by the city and county in accordance with the notice, procedures and requirements described in section (1) of this rule; and

(B) Extends the current urban area forecast to a 20-year period commencing on the date determined under OAR 660-024-0040(2) by using the same growth trend for the urban area assumed in the county's current adopted forecast.

<sup>3</sup> **OAR 660-024-0030(1):** Counties must adopt and maintain a coordinated 20-year population forecast for the county and for each urban area within the county consistent with statutory requirements for such forecasts under ORS 195.025 and 195.036. Cities must adopt a 20-year population forecast for the urban area consistent with the coordinated county forecast, except that a metropolitan service district must adopt and maintain a 20-year population forecast for the area within its jurisdiction. In adopting the coordinated forecast, local governments must follow applicable procedures and requirements in ORS 197.610 to 197.650 and must provide notice to all other local governments in the county. The adopted forecast must be included in the comprehensive plan or in a document referenced by the plan.

OAR 660-024-0040(9)(a)(B) does allow the city to assume that employment in an urban area will grow during the 20-year planning period at a rate equal to a population forecast meeting the requirements of OAR 660-024-0030. The city cannot use a forecast that does not meet these requirements.

As a related matter, Banks may not use its adopted EOA to compute job growth for 2010-2024, then switch to the OAR 660-024-0040(9)(a)(B) safe harbor for the latter half of the 20-year planning period. The safe harbor must be used for the entire 20-year planning period, or not at all.

### Conclusion

We recognize and commend the City of Banks' efforts to plan for its future. Additional work remains and it is our hope that the final product is one we can support. We hope these comments are helpful in achieving that outcome. Please include them in the official record of these proceedings and notify us of any decisions and/or future hearings in this matter.

I would be pleased to discuss our concerns in greater detail with your staff, with the intention of working toward solutions that allow Banks to move forward with its UGB evaluation as quickly as possible.

Sincerely,



Mia Nelson  
1000 Friends of Oregon  
220 East 11<sup>th</sup>, Suite 5  
Eugene, OR 97401  
541.520.3763

Attachments: 2004 letter from Board Chairman Tom Brian  
Friends of Yamhill County v. City of Newberg

Cc (electronic): Anne Debbaut, DLCD  
Gloria Gardiner, DLCD  
Andrew Singelakis, Washington County Land Use & Trans. Department  
Jim Johnson, Oregon Department of Agriculture



# ATTACHMENT B





**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**

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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



# ATTACHMENT C



CITY OF BANKS, OREGON  
Rescheduled Planning Commission Meeting  
December 15, 2010  
Banks School District Boardroom, Banks, OR

Chairperson Teresa Lyda called the meeting to order at 7:00 PM. The proceedings were recorded in digital format.

A. ROLL CALL: Present were Chairperson Teresa Lyda, Vice-Chairperson Sam Van Dyke, Ray Deeth, and Allan Polendey and Janet Towne.

Attending: Jim Hough, City Manager, K.J. Won, City Planner and City Recorder Jolynn Becker

B. APPROVAL OF MINUTES: November 30, 2010

S. Van Dyke moved to approve the minutes of November 30, 2010 as presented. R. Deeth seconded the motion, which passed unanimously, and the minutes were approved.

C. PUBLIC COMMENT – None.

D. PUBLIC HEARING:

PA-77-10: Recommendation to City Council for adopting a legislative plan amendment proposal that will amend the Banks Comprehensive Plan. The subject amendment proposal is organized into three parts:

- Part I: Urban Growth Boundary (UGB) Expansion – Goal 14
- Part II: Transportation System Plan (TSP) – Goal 12
- Part III: Recreational Needs – Goal 8

Chair Lyda read the opening statement regarding the legislative hearing format into the record. No Commissioner declared any ex parte contact or bias. Chair Lyda asked if any Commissioner had a conflict of interest. S. Van Dyke declared a conflict of interest, stating that he owned property within the proposed UGB, and stepped down from the dais. No other Commissioners declared a conflict of interest.

K.J. Won presented the Staff report for all three parts of the amendment proposal. He described the legislative process now being used, i.e., Post-Acknowledgment Plan Amendment (PAPA), which will include all the information, reports, written comments, and testimony received for Parts I-III to become part of the official record. He reviewed the issues cited in the correspondence received prior to the meeting from 1,000 Friends of Oregon and DLCD that were included in the packet. He distributed and entered into the record a supplemental report that addressed the 1,000 Friends arguments and described the steps taken by the City to update the population forecast. The City staff met with DLCD regarding their letter and the City received additional



correspondence from DLCD that clarified their position. He distributed and reviewed the second letter from DLCD dated December 15, 2010, which was entered into the record. Part III of the amendments, which was provided by Cogan Owens Cogan, was expected to address DLCD's initial concerns regarding the statute requirements. He explained that the memorandum from Cogan Owens Cogan dated September 15, 2010 addressed the state statute and administrative rule requirements for incorporating the golf course as part of the UGB expansion. He indicated that there was time to address the matter before the scheduled February 8<sup>th</sup> City Council meeting; so the issue should not delay action by the Planning Commission.

David Noren, Attorney, representing Banks Lumber Company, noted that members of the audience had not received copies of the materials discussed by Mr. Won. He confirmed with Mr. Won that the documents titled, "Amendments" and "Justification Technical Report" with all twelve of its attachments constituted the Part I UGB Amendment document. Also, the entire Part I document, including the "Justification Technical Report" and all its attachments, would become part of the Comprehensive Plan as would the TSP and Park Master Plan. The Staff report and supplemental report would not be part of the Comprehensive Plan, but would be part of the record.

Chair Lyda opened the public hearing and called for oral testimony on Part I. UGB Expansion Plan Amendment- Goal 14. Testimony was limited to five minutes per person.

Jim Spickerman, 975 Oak St, Eugene, OR 97401, representing the Portland and Western Railroad, submitted written comments to be entered into the record that were also distributed to the Planning Commission. He stated the railroad's concern was the amount of residential lands on the opposite side of the railroad from town and the schools, etc. and the proposed future road crossings. People will take the direct path to their destination, and would cross the railroad, creating a real safety concern. The other concern with having residential so close to the railroad were the natural conflicts, such as noise, which was further discussed in his letter. The railroad was in the city of Banks to stay, especially given the recent connection and future plans to move freight in from the coast. The plans suggest that the railroad may go away, but that was not realistic. Any crossings built would not be solely for pedestrians but also would accommodate vehicular traffic. Meanwhile, nothing prevents the residential land from being developed. Another conflict was that Goal 10 discusses the adequate supply of suitable lands, and those residential lands would not be very suitable for those residents.

David Noren, Attorney, 217 E. Main St, Hillsboro, OR 97123, representing Banks Lumber Company, asked that the Commission consider the amendments from a fresh perspective given the new record. As mentioned previously, they believed the City should put more industrial land east of the railroad tracks near the lumber mill and less, not more residential land, due to the many conflicts between residential land and industrial uses. Additionally, transportation access to Banks Rd would be effective for trucks moving in and out of an industrial area. He reviewed the legal standards he



submitted in the letter and discussed the importance of Goal 9 with regard to industrial lands. Goal 9 addressed the need for suitable lands, involving size and location, etc; adjacency to other industrial lands, as well as their protection and promotion; identifying the local economic advantages for area businesses, etc. Not addressing these issues would result in the City not being in compliance with Goal 9 and the entire Comprehensive Plan amendment process would be remanded. He urged the Commission to include more industrial land east of the railroad tracks and the lumber mill. He clarified that if the UGB plan amendment were remanded, the City would not be able to annex land or act on the TSP if tied to the UGB amendment.

J. Town moved to close the hearing regarding Part I, UGB Expansion Plan Amendment– Goal 14. A. Polendey seconded the motion, which passed unanimously. Ayes: Lyda, Deeth, Polendey, Towne. Nays: None.

Chair Lyda closed the public hearing for Part I and called for Commission deliberation on Part I only.

A. Polendey asked if the City would be in violation of Goal 9, as indicated by Mr. Noren. Jim Lucas, City Attorney, replied that LUBA would ultimately decide that question. The City had been working with DLCD throughout the TGM study process, and they had not raised an issue about the proposed plan being in violation of Goal 9.

A. Polendey moved to recommend that City Council adopt Part I. Urban Growth Boundary (UGB) Expansion – Goal 14. J. Towne seconded the motion, which passed unanimously. Ayes: Lyda, Deeth, Polendey, Towne. Nays: None.

Chair Lyda opened the public hearing]and called for oral testimony regarding Part II Transportation System Plan (TSP) – Goal 12. Testimony was limited to five minutes per person.

Jim Spickerman, representing Portland and Western Railroad, said that from the onset, the TSP has stated that east/west connections were essential to make the proposed plans work. A couple accesses were needed from where the city currently exists to the lands to be brought in via the UGB. Early drafts and technical memoranda held out hope that at-grade crossings would exist so the TSP could be accommodated at a reasonable price. As recent as August 17, 2010, Technical Memorandum 5.1 discussed avoiding elevated crossing due to the \$20 to 30 million cost. Now that ODOT has ruled out at-grade crossings, the elevated crossing costs had dropped to \$6 to \$7 million. Even at that price, it would be a long time before the crossings were a reality. Funding and time frame were very vague in the TSP. Meanwhile, the lands could be developed, and individual home owners could not be made to pay for an elevated crossing. Goal 12 requires that a facility be available and shown to be capable of being funded when needed. That was not the case here.



R. Deeth moved to close the public hearing on Part II Transportation System Plan (TSP) – Goal 12. A. Polendey seconded the motion, which passed unanimously. Ayes: Lyda, Deeth, Polendey, Towne. Nays: None.

Chair Lyda closed the public hearing for Part II and called for Commission deliberation on Part II only. There was no discussion.

R. Deeth moved to recommend that City Council adopt Part II Transportation System Plan (TSP) – Goal 12. A. Polendey seconded the motion, which passed unanimously. Ayes: Lyda, Deeth, Polendey, Towne. Nays: None.

Chair Lyda opened the public hearing and called for oral testimony regarding Part III. Recreational Needs – Goal 8. Testimony was limited to five minutes per person.

Larry Derr, 9400 SW Beaverton-Hillsdale Hwy, Suite 1311A, stated that he seemed to be wearing two hats as a consultant with Cogan Owen Cogan in helping to prepare the supporting information for the Goal 8 proposed amendment. The support documents included updating the Park and Recreation Master Plan and the Goal 14 justification for expanding the UGB with the golf course. He also represented Quail Valley Golf Corporation (other hat) and noted that in this type of proceeding the City Council was the final decision maker, not the Land Conservation and Development Commission (LCDC) or the Department of Land Conservation and Development (DLCD). Both entities could appeal a decision to LUBA, but essentially they submitted comments like any other citizen

He was more than willing to sit down with the DLCD staff and work through their submitted comments. However, both he and Elle Fiore of Cogan Owens Cogan have spoken to the author of the DLCD letter and she was not open to further discussion about clarifying any misinformation. Therefore, he did not feel meeting with DLCD would make a difference. Procedurally, City Staff separated the amendments into three pieces so there was no risk to the City in adopting each part because an appeal by DLCD on Part III would not jeopardize the other pieces. He believed the issues raised by DLCD in their letters happened due to the DLCD staff stretching to find some reason to say no. The DLCD staff seemed to ignore that a memorandum did in fact address Goal 14, for example. DLCD stated the golf course was a regional use that could not be in the City; did that mean it must be in farmland?

Chair Lyda announced Mr. Derr's five minutes had expired.

Jim Schauer mann, 20600 NW Quail Hollow Dr, Portland, OR 97229, Vice President and shareholder, Quail Valley Golf Corporation, said Quail Valley's attorney had addressed the key issues. Quail Valley shareholders had voted to fund the appeal should DLCD appeal Part III to LUBA.



A. Polendey moved to close the public hearing on Part III. Recreational Needs – Goal 8. J. Towne seconded the motion, which passed unanimously. Ayes: Lyda, Deeth, Polendey, Towne. Nays: None.

Chair Lyda closed the public hearing for Part III and called for Commission deliberation on Part III only. There was no discussion.

A. Polendey moved to recommend that City Council adopt Part III, Recreational Needs – Goal 8. R. Deeth seconded the motion, which passed unanimously. Ayes: Lyda, Deeth, Polendey, Towne. Nays: None.

E. PLANNING COMMISSION LIAISON TO CITY COUNCIL – ROTATE DUTY

J. Towne reported that the City Council meeting held last night was brief. The Council recognized Chair Lyda for her service on the Planning Commission and presented her with a Certificate of Appreciation. R. Deeth agreed to be the Planning Commission Liaison at the next City Council meeting.

K.J. Won advised that the Commission elect a Chair for upcoming meetings, considering that Chair Lyda's term will expire on December 31st.

A. Polendey nominated R. Deeth as the Planning Commission Chair. J. Towne seconded the nomination, which passed unanimously.

Jim Hough noted City Council adopted an ordinance that changed the Banks Municipal Code to provide that after three months, Council may reappoint a past Commissioner. He noted three vacancies now existed, and that all current Commissioners needed to be present for a quorum. The Code provided that up to two of the seven Planning Commissioners could be outside the city limits, but at this time, the UGB was all within the city limits. He encouraged the Commissioners to recruit new members. He added that the Planning Commission Liaison was very appreciated by the Council given its desire to have communication both ways. Council was limited from attending Planning Commission hearings.

J. Towne congratulated Mr. Hough and K.J. Won for all their hard work in getting the three amendments through the Planning Commission hearing stage.

F. ADJOURNMENT: The Planning Commission meeting adjourned at approximately 8:20 PM.

Submitted by:   
K.J. Won, City Planner

Respectfully Submitted by:  
Paula Pinyerd, ABC Transcription Services, Inc. for Jolynn  
Becker, City Recorder



# ATTACHMENT D





# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

Community Services Division

800 NE Oregon Street, Suite 1145

Portland, Oregon 97232

Phone: (971) 673-0965

Fax: (971) 673-0911

www.oregon.gov/LCD



December 15, 2010

Teresa Lyda, Planning Commission Chair  
City of Banks  
120 South Main Street  
Banks, Oregon 97106

Subject: Proposed Urban Growth Boundary Amendment (Local File No. PA-77-10; DLCD File No. PAPA 001-10)

Dear Chair Lyda:

Thank you for the opportunity to provide a follow-up to the Department's November 24, 2010 letter to your City Planner, Mr. Won. We have been asked to clarify our position regarding the inclusion of the Quail Valley Golf Course in the city's proposed UGB expansion.

One of the purposes of Statewide Planning Goal 14 - Urbanization is to accommodate needed urban uses within urban growth boundaries ("UGBs") and to keep rural uses outside UGBs. The purpose of a UGB amendment is to add land to the UGB for an urban land need, when the existing UGB does not have the physical capacity to accommodate that land need. The first step in a UGB amendment process is city and county co-adoption of a coordinated population forecast for the area inside the city's current UGB (Goal 14, OAR 660-024-0030). The next step is to demonstrate a need for urban uses based on that 20-year population forecast (Goal 14, OAR 660-024-0040). The third step is to determine the amount of land that the urban need requires for the 20-year planning period (Goal 14, OAR 660-024-0050). The fourth step is to determine whether the needed amount of land can be accommodated within the existing UGB (Goal 14, OAR 660-024-0050(4)). If it cannot, the next step is to study land outside the UGB to select which land to add to the UGB, using the process and criteria in Goal 14 and its rules, along with the priorities for adding land to a UGB that are in ORS 197.298 (Goal 14, OAR 660-024-0050(4), OAR 660-024-0060).

The Quail Valley Golf Course was legally established on rural land designated and zoned for Exclusive Farm Use. It has operated successfully as a regional rural recreation facility for many years.<sup>1</sup> Because the golf course is currently established on rural lands outside the UGB, the city has an extremely high burden to establish that the existing golf course is now an urban need and that the "need" justifies an amendment to the UGB. The documents provided with the city's 45-day notice to the department do not provide that justification and do not meet that high burden. Neither the changes to the comprehensive plan text, nor the updated Park and Recreation Master Plan, satisfy the requirements for amending a UGB (Goal 14, ORS 197.298, and OAR Chapter 660, Division 24 Urban Growth Boundaries). Specifically, the 2010 Park and Recreation Master Plan amendments and the Recreational Land Needs



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plan text amendments do not demonstrate that the existing rural golf course is an urban recreational use needed exclusively for city residents, and that it must be included within the UGB for that purpose.<sup>2</sup>

While we recognize the city's aspirations to bring the golf course within its UGB, without establishing a truly urban need for the golf course, there appears to be no legal basis for Banks to proceed to the boundary location analysis (steps 4 and 5 described above). Even if we assume for argument's sake that the submittal does establish a need, we still conclude that the proposal does not justify adding the golf course to the UGB. The UGB amendment does not include the supporting maps, data, analysis, findings, and conclusions for a boundary location analysis required by Goal 14, ORS 197.298, and OAR 660-024-0060.

Please enter these comments into the record for this plan amendment and the proceedings of the December 15, 2010 Planning Commission hearing. If you have additional questions or wish to discuss the issue further, please feel free to write or call me at [Anne.Debbaut@state.or.us](mailto:Anne.Debbaut@state.or.us) or at 971.673.0965.

Sincerely,

Anne Debbaut  
Regional Representative

cc: Mayor John Kinsky (*email*)  
City Manager Jim Hough (*email*)  
K. J. Won, City Planner (*email*)  
Brent Curtis, Washington County Planning Manager (*email*)  
Ellie Fiori, Cogan Owens Cogan (*email*)  
Ross Kevlin and Seth Brumley, ODOT Region 1 (*email*)  
DLCD Staff Files (*email*)

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<sup>2</sup> Also note that the comprehensive plan is internally inconsistent and duplicative regarding the amount of land need for parks and recreation facilities for the 20-year planning period. Banks used the safe harbor in OAR 660-024-0040(10) to add residential land for streets and roads, **parks**, and schools, in the amount of 25% of the total land need for housing units. The city then added another 142 acres for the golf course. The safe harbor is an approximation of total land need for certain non-residential uses on residential land; it may not be used in conjunction with a specific land need estimate for a specific use.



# ATTACHMENT E



**DAVID C. NOREN**  
**Attorney at Law**  
217 E. Main P.O. Box 586  
Hillsboro, Oregon 97123-0586  
Telephone: (503) 640-2661 Fax: (503) 648-7216  
e-mail: david@norenlaw.com

December 15, 2010

HAND DELIVERED

City of Banks Planning Commission  
100 South Main Street  
Banks, OR 97106

Re: Urban Growth Boundary Amendment

Dear Commissioners:

On behalf of Banks Lumber Company I urge you to recommend to the city council adoption of an expanded urban growth boundary that designates more industrial land east of the railroad tracks near the city's existing industrial base, rather than allocating most of the industrial land to the south where existing industry will be unable to adapt or expand.

The proposed amendment would designate most of the land east of the railroad tracks (and near the existing mill) as residential rather than industrial. It would not allow sufficient new industrial land for the existing mill to expand or for related industries to develop and take advantage of the cluster of industrial activity related to forest products at and near the mill.

The Banks Lumber Company mill and related operations comprise the most important industrial center in the city, employing up to 95 workers when running two shifts. Because of fluctuations in supply and demand, the mill needs additional land for storage of logs and possible expansion. It also needs a secondary access from Banks Road, to allow emergency vehicles to reach the mill without crossing the railroad tracks at the only existing access, and to allow the trucks that serve its operations to circulate efficiently, without delays on city streets, when rail traffic or other congestion delays access at the existing rail crossing. It also needs more nearby industrial land for industrial neighbors, not more residential land for residential neighbors.

The Banks Economic Opportunities Analysis and Economic Development Strategy prepared May 2005 by ECONorthwest provides the analysis for factors you must consider in amending the urban growth boundary. It identifies Banks Lumber as your leading private employer (page 2-2) and anticipates that "logging, lumber and related activities should continue to be important economic activities in the Banks area in the

future” (page 3-5). As the Strategy document explains, there is virtually no land suitable for industrial development now available in the city (Table 4-5).

State Goal 9, “Economic Development,” includes specific requirements for amending your comprehensive plan. The plan must “provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for a variety of industrial and commercial uses consistent with plan policies.” This proposal violates Goal 9 because it lacks adequate large-size industrial land located near the existing industrial cluster, which is already served with rail and other locational amenities.

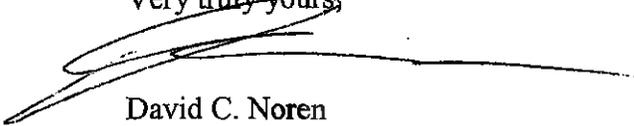
Goal 9 also requires that the city “limit uses on or near sites zoned for specific industrial uses to those which are compatible with such uses.” Planning for the bulk of the city’s new residential area to be located next to the mill violates this Goal 9 requirement.

The first Planning Guideline for Goal 9 provides that the comparative advantage of the region where the industrial development would be located should be a principal determinant in planning for industrial development. “Comparative advantage industries are those economic activities which represent the most efficient use of resources, relative to other geographic area.” Because the proposed UGB amendment does not capitalize on the proximity of Banks to the Tillamook Forest resource base and the existing mill and industrial infrastructure, it is inconsistent with this Guideline.

The proposed UGB amendment is also inconsistent with the fourth Planning Guideline for Goal 9: “Plans should strongly emphasize the expansion of and increased productivity from existing industries and firms as a means to strengthen local and regional economic development.” Limiting the availability of industrial land east of the railroad near the Banks Lumber mill will weaken rather than strengthen local and regional economic development.

Please urge the city council to return to the allocation originally recommended by the city’s expert consultant: most of the new industrial land should go near the mill east of the railroad, not in the south where it will likely never develop for industrial use.

Very truly yours,



David C. Noren

# ATTACHMENT F



December 15, 2010

Planning Commission  
City of Banks  
120 South Main Street  
Banks, OR 97106

Re: Urban Growth Boundary Expansion (UGB) and  
Transportation System Plan (TSP)

Dear Commissioners:

This firm represents Portland & Western Railroad, Inc. (PWRR). We submit the following comments for the record and your consideration in your deliberations concerning the above two planning documents before you.

All of the current alternatives for the Banks urban growth boundary location and land use designations provide for very limited industrial land adjacent to the railroad and propose residential land immediately adjacent to the railroad.

Residential use immediately adjacent to the railroad reduces the likelihood that those properties will be developed for residential purposes and creates public safety issues. Those problems and issues include the following:

1. There will be a conflict between the residential use and the railroad use due to the noise created by the railroad operation, including coupling and uncoupling of railroad cars and signal horns. Attached are materials from the Federal Railroad Administration discussing train horn noise, comparing it with other noise sources and describing human reaction to this noise.

An earlier alternative land use plan indicated the east side circulator road would be located, to a large extent, adjacent to the railroad, providing a buffer between the railroad use and residential use. The Transportation System Plan, at page 53, notes this but justifies moving the collector to the east by stating that there are "aesthetically pleasing mechanisms, such as berms or vegetated walls which could be used to provide buffer functions instead of the roadway..." No data is submitted indicating the effectiveness of such buffering if it were available.

The attached information discusses the substantial impact of train horn noise, which indicates that such buffering would not be effective. Note the indication of the high level of sound from locomotive horns at a distance of 100 feet as described on page 4 of the materials. Additionally, the substantial buffering will, in turn, reduce the amount of land available for residential development.

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97440-1147

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[info@gleaveslaw.com](mailto:info@gleaveslaw.com)  
Web-Site:  
[www.gleaveslaw.com](http://www.gleaveslaw.com)

Frederick A. Batson  
Jon V. Buerstatte  
Patricia L. Chapman\*\*  
Michael T. Faulconer\*\*  
Howard F. Feinman  
Thomas P. E. Herrmann\*  
Dan Webb Howard\*\*  
Cassie K. Kellogg  
Stephen O. Lane  
Valeri L. Love  
William H. Martin\*  
Laura T. Z. Montgomery\*  
Thomas K. N. Moseman  
Laurie A. Nelson  
Ian T. Richardson  
Martha J. Rodman  
Robert S. Russell  
Douglas R. Schultz  
Malcolm H. Scott  
Joshua K. Smith  
James W. Spickerman  
Jane M. Yates

\*Also admitted  
in Washington

\*\*Also admitted  
in California

2. The proximity of the rail lines and residential property creates a significant public safety issue, particularly where public schools and the existing City itself are located on the opposite side of the tracks. There can be no reasonable expectation that pedestrians and bicyclists will not use the most direct route to travel to these destinations, greatly increasing the possibility of accidents.

The TSP envisions that, at some time in the future, there may be an elevated vehicle and pedestrian railroad overpass and, possibly, additional pedestrian overpasses. First, such facilities are a number of years and millions of dollars down the road and will not be available soon. Furthermore, they will not be convenient to residents of the property adjacent to the railroad tracks. Due to the elevation of the overpass, access to the ramp at the east end of the bridge will be several hundred feet to the east of the railroad tracks.

The effect of proximity of the rails on desirability and livability of residential land should be carefully considered. Statewide Goal 10: Housing Lands requires an adequate supply of "buildable lands" and defines "buildable lands" as "lands in urban and urbanizable areas that are *suitable*, available and necessary for residential use." (Emphasis added.)

An Objective of the Housing Residential Land Needs portion of the Banks Comprehensive Plan states:

"e. Single family residential areas require settings conducive to the activities and needs of the family and need to be buffered from nonresidential areas through landscaping or open space."

The inevitable conflict between the operating characteristics of a railroad and residences immediately adjacent is not consistent with either the Statewide Goal or the Objectives of the Comprehensive Plan.

3. The offered alternative plans eliminate the possibility of attracting industrial use that might seek to locate near the railroad.

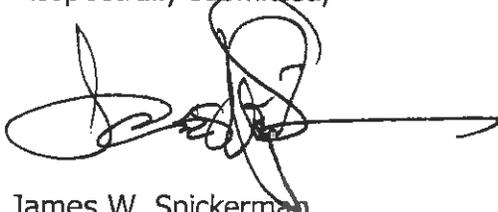
As referenced above, the TSP contemplates one and possibly two elevated crossings for the railroad. Earlier memoranda, which dealt with the possibility of at grade crossings, including the August 17, 2010 Technical Memorandum 5.1, estimated the cost of building an elevated crossing at \$20 to \$30 million. The present TSP puts the figure at \$6 to \$7 million for each. This discrepancy is not explained. In any event, it will be a substantial period of time before such an overpass would be put in place. In the meantime, railroad crossings will be at grade.

There is a discussion that the railroad presence might cease, thus eliminating the need for the elevated crossings. PWRR fully expects to maintain railroad facilities within the City of Banks. The Port of Tillamook Bay (POTB) has not abandoned its line and may resume rail service. If the POTB tracks are not restored, cargo may be trucked from the Port to Buxton and transferred to the train and train activity will continue in Banks.

The importance of rail transportation to the state is signified by the substantial investment in the Banks Connection project and it is inconsistent with that priority to adopt a land use transportation plan that conflicts with rail use.

A legal analysis is for another time and place but these obvious practical difficulties with the Plans should be addressed now.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James W. Spickerman', with a long horizontal line extending to the right.

James W. Spickerman  
spickerman@gleaveslaw.com

jca

Attachment

cc: Portland & Western Railroad, Inc.  
Jon V. Buerstatte



## Horn Noise Questions and Answers

### 1. How is noise described?

Noise in our environment can be described by three characteristics -- loudness, pitch, and time variation. Loudness is the intensity of sound or sound energy, and is described in terms of decibels (dB). For example, the louder the sound, the greater the decibel value. Pitch is the note or wavelength of the sound. There are many high and low pitch sounds that are inaudible to people, but can be heard by other animals or measured by instruments. For example, train wheel rumble is a low pitch sound and a squeal is a high pitch sound. Time Variation is the pattern of the sound being described over time. Time variation is used in combination with loudness and pitch to determine the sound energy exposure from a particular noise during a period of time, such as a 24 hour day.

To understand community annoyance from noise in the environment, sound must be measured the way the human ear interprets sound. To accomplish this a descriptor called "A-weighted sound level," abbreviated "dBA" is used. The letter "A" indicates that the sound has been filtered to reduce the strength of very low and very high-frequency sounds, much as the human ear does. Without this A-weighting, noise monitoring equipment would respond to noise events people cannot hear, such as high-frequency dog whistles and low-frequency seismic disturbances. On the average, each A-weighted sound level increase of 10 decibels corresponds to an approximate doubling of subjective loudness. Various "A-weighted" descriptors are used to calculate noise exposure from a noise event, as follows:

The *A-weighted Sound Level* (dBA) describes the noise at any moment in time.

The *Maximum Sound Level* (Lmax) is the loudest part of a single noise event.

The *Sound Exposure Level* (SEL) describes the cumulative noise exposure from a single noise event for its entire duration. In calculating SEL the noise exposure is normalized to a time duration of one second so that different noise events can be compared in terms of their sound energy.

The *Hourly Equivalent Sound Level* (Leq (h)) describes the cumulative noise exposure from all events over a one-hour period.

The *Day-Night Sound Level* (Ldn) describes the cumulative noise exposure from all events over a full 24-hour period, with events occurring between 10 pm and 7 am increased by 10 dB to account for greater nighttime sensitivity to noise. Ldn is the descriptor most commonly employed in environmental noise assessments.

### 2. How does train horn noise compare with other noise sources?

Train horns are installed on locomotives to warn motorists or pedestrians of an approaching train at a highway-rail grade crossing. In many geographic locations, and during much of the year, motor

vehicles operate with windows rolled up, air conditioning systems and radios in use. Therefore, audible warning signals must be sufficiently loud to be perceived. Unfortunately, the locomotive horn can significantly disturb those living or working near highway-rail grade crossings. A comparison of general noise levels from various commonly-experienced noise sources in our environment as well as typical ambient noise levels in the last column are shown in Figure 1. For instance, the noise resulting from the sounding of train horns has a similar impact to that of low flying aircraft and emergency vehicle sirens.

The preferred descriptor for environmental noise assessments is the day-night sound level (Ldn). Ldn provides an accurate measure of the overall "noise climate" of an area. Rather than representing the moment to moment variation in sound levels, Ldn describes the cumulative effect of all noise sources over a longer period of time. Typical Ldn's in various areas are shown in Figure 2.

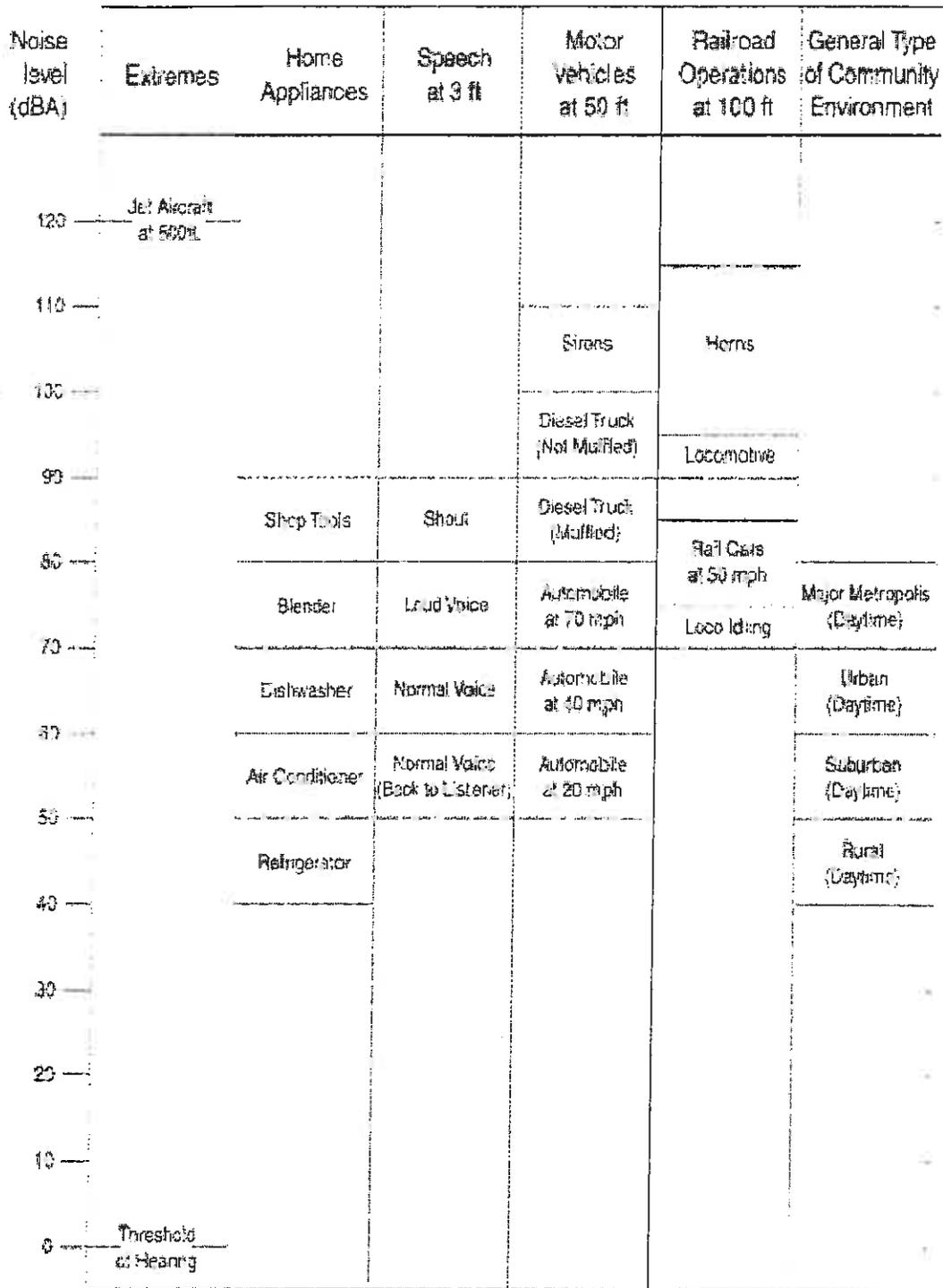
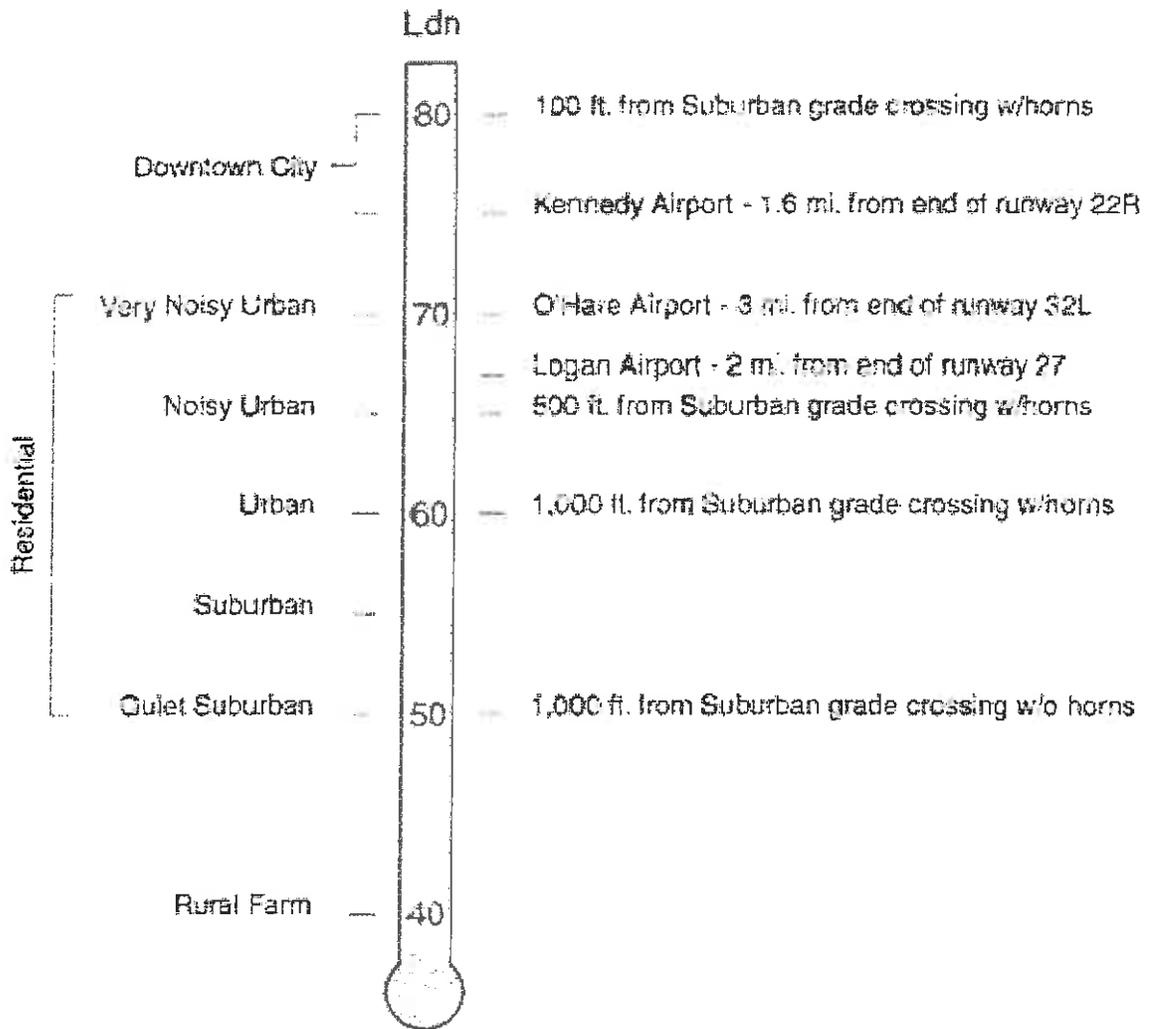


Figure 1. COMPARISON OF VARIOUS NOISE LEVELS



**Figure 2. DAY-NIGHT SOUND LEVELS IN TYPICAL ENVIRONMENTS**

(For example, noise from locomotive horns on a busy railroad at a 100 foot distance is somewhat louder than being 1 to 3 miles from the end of a busy airport runway, but at the 1000 feet away the train horn noise is similar to the average urban noise environment.)

### 3. How do people react to noise from train horns?

Excessive noise has the potential to disrupt routine activities, which can affect the overall quality of life, especially in residential areas. In general, most residents become highly irritated/annoyed when noise interferes significantly with activities such as sleep, interpersonal or telephonic conversation, noise-sensitive work, watching television or listening to the radio or recorded music. In addition, some land uses, such as outdoor concert or pavilions or recreational sports venues, are inherently incompatible with high noise levels.

Human annoyance to noise in the environment has been investigated and approximate exposure-response relationships have been quantified by the Environmental Protection Agency (EPA). The selection of noise descriptors by FRA is largely based upon this EPA work. Beginning in the 1970s, EPA undertook a number of research and synthesis studies relating to community noise of all types.

Results of these studies have been widely published and discussed, and are regularly cited by many professionals in the acoustics field. The basic conclusions of these studies have been adopted by the Federal Interagency Committee on Noise, the Department of Housing and Urban Development (HUD), the American National Standards Institute, and in some cases by international organizations and entities. Conclusions from this seminal EPA work remain scientifically valid to this day.

In a large number of community attitudinal surveys, transportation noise has been ranked among the most significant causes of community dissatisfaction in census surveys. A synthesis of many such surveys on annoyance appears in Figure 3. Different neighborhood noise exposures are plotted horizontally. The percentage of people who are *highly annoyed* by their particular level of neighborhood noise is plotted vertically. As shown in the figure, at 45 Ldn, the level of high annoyance in a community averages 0 percent. At 60 Ldn, approximately 10 percent of respondents reported being highly annoyed, while at 85 Ldn, the proportion of those being highly annoyed increases quite rapidly to approximately 70 percent. The scatter about the synthesis line is due to variation from person to person, community to community, and to slight differences among the various surveys.

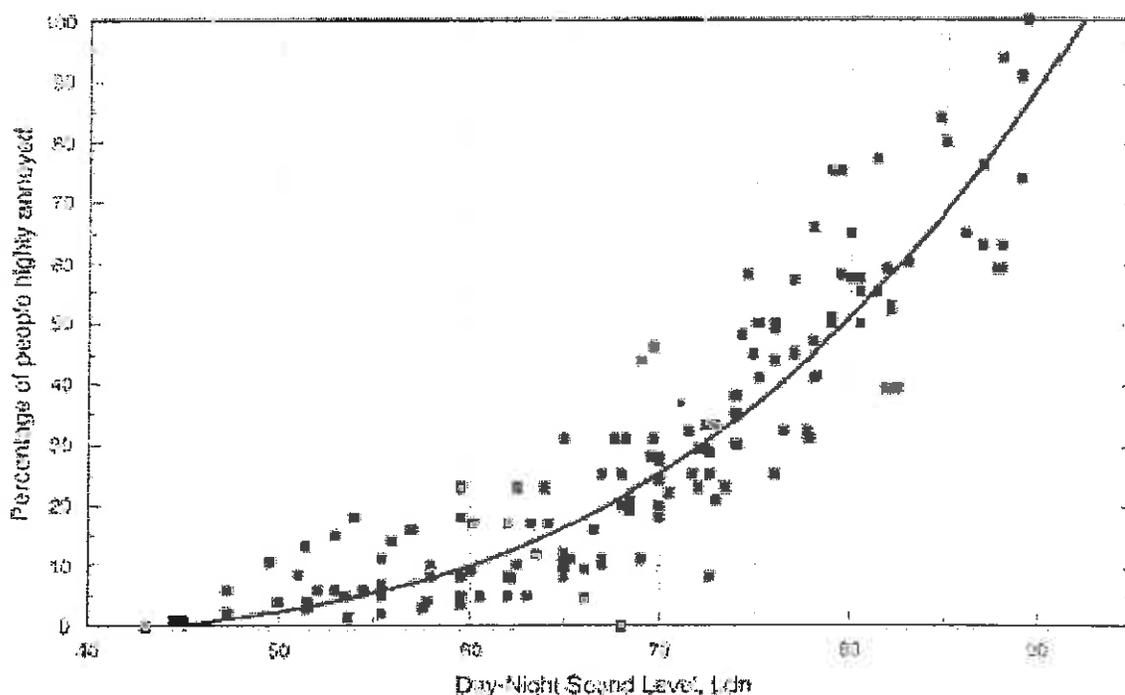


Figure 3. COMMUNITY ANNOYANCE DUE TO NOISE

Introduction of train horn noise may have two undesirable effects. First, it may significantly increase existing noise levels in the community beyond those to which residents have become accustomed. This effect is called "relative" noise impact. Evaluation of this effect is "relative" to existing noise levels. Relative criteria are based upon noise increases above existing levels. Second, newly-introduced horn noise may interfere with community activities, independent of existing noise levels. For example, it may be simply too loud to converse or to sleep normally. This effect is called the "absolute" noise impact, because it is expressed as a fixed level not to be exceeded and is independent of existing noise levels. Both of these effects, relative and absolute, enter into the assessment of noise impacts.

These two types of impact, relative and absolute, are combined for use as the noise criteria shown in Figure 4.

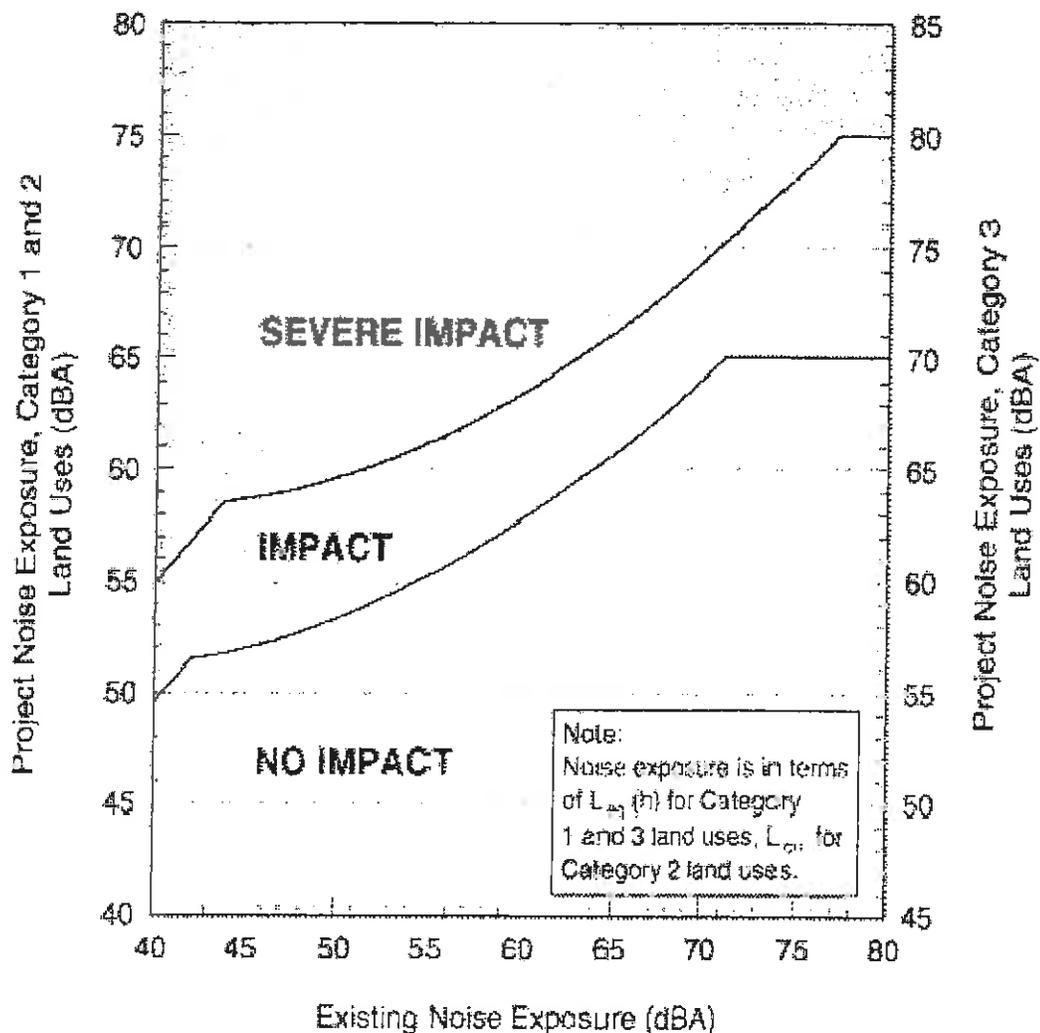


Figure 4. NOISE IMPACT CRITERIA

#### 4. How do the FRA Noise Impact Criteria compare with those of other Federal agencies

FRA's noise impact criteria are what is known as "ambient-based" criteria - they measure the impact of a change in the noise environment due to the introduction of a new noise source. As such, these criteria are ideal for determining the effect of re-introducing the sounding of the locomotive horn in urban and suburban communities where there was a previously existing whistle ban. For residential areas, the new noise environment with horns is computed in terms of  $L_{dn}$  and is compared with the prior ambient noise without horn blowing. The impact of the change in the noise environment is assessed and categorized as - No Impact, Impact, or Severe Impact.

The FRA noise impact criteria were originally developed by the Federal Transit Administration (FTA) for use in areas where new urban mass transit projects have been proposed. Other federal agencies utilize noise criteria that are oriented to the specific types of projects they evaluate or sponsor. However, none employ a sliding scale to assess a change in noise conditions and therefore cannot be

compared directly with the FRA criteria. For example, the Federal Highway Administration (FHWA) has "Noise Abatement Criteria" which provide guidelines when the absolute noise level from a new highway approaches a level where mitigation should be considered. (FHWA does allow a state to include a significant change in noise level as part of the consideration but does not define what is "significant.") The Federal Aviation Administration (FAA) has identified several levels of aircraft noise that are compatible with various land uses - for example, in residential areas an Ldn of 65 dBA has been identified. FAA does provide for assessment of increases over existing conditions, but only two steps, one for inside and one for outside the 65 dBA contour.

The U.S. Department of Housing and Urban Development (HUD) is the only agency with an existing standard for a residential noise environment. As a qualifying condition for funding proposed housing developments, HUD defines what level of ambient noise at a proposed location is acceptable for residential land use. In the HUD Standards, Ldn below 65 dBA is considered "Acceptable," Ldn above 75 dBA is "Unacceptable," with ambient levels between Ldn 65 dBA and 75 dBA categorized as "Normally Unacceptable." The Normally Unacceptable rating does not disqualify a site from receiving HUD funds; rather, the development planned in such an area must incorporate suitable mitigation measures to provide a satisfactory interior environment.

#### **5. How is the effect of train horn noise in a community quantified?**

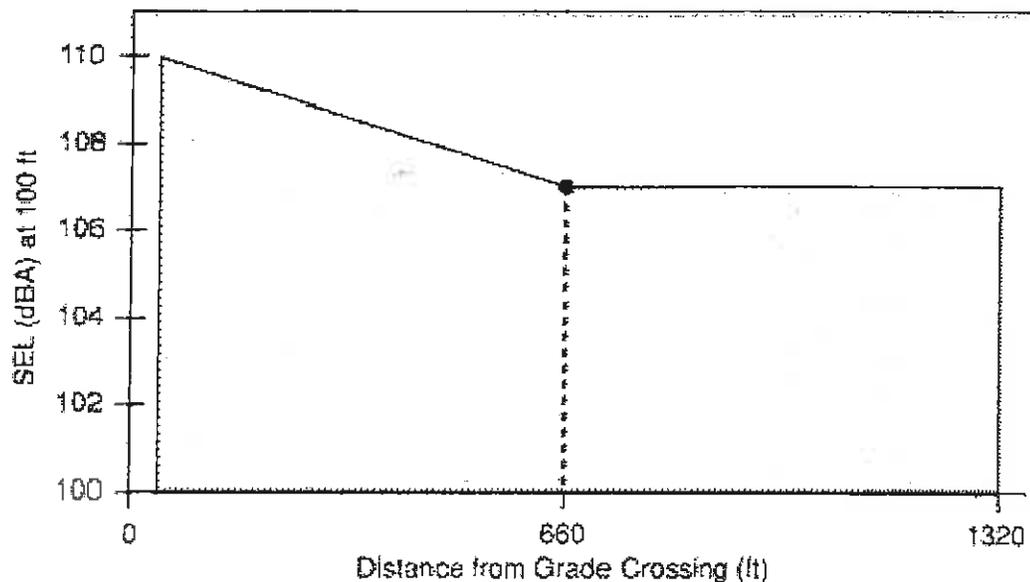
The Federal Railroad Administration has developed a noise computation method to assess the noise impact of train horns in the vicinity of highway-rail grade crossings. This method uses a special train horn noise model to predict noise levels to the side of the railway which incorporates the FRA noise impact criteria.

#### **6. What is the train horn noise model used by FRA?**

Noise from horns is analyzed by considering the problem in terms of a Source-Path-Receiver framework. The **Source** generates close-by noise levels, which depend on the type of source and its operating characteristics. The **Path** of sound between the source and the receivers includes the intervening distance, obstacles, terrain features and structures. The **Receiver** is the noise-sensitive land use exposed to sound from the source. The FRA horn noise model incorporates all three elements of the noise analysis as they relate to train horns near grade crossings.

#### **7. How is the noise source characterized in the FRA model?**

*Reference Level.* Although the maximum sound output of a horn can be determined in a laboratory, it is how the horn is sounded and perceived in the real world that determines its effect on the surrounding environment. Development of a source reference level to use in the horn noise model was based on field measurements at grade crossings from many railroads. Rather than employing a single reference level, a reference level that varies along the railroad beginning at 1/4 mile in advance and ending at the crossing was found to be more accurate. Field measurement data show an average Reference SEL of 107 dBA at 100 feet from the nearest track represents the horn noise in the distance from 1/4 mile to 1/8 mile from a crossing. Starting at the 1/8 mile point, the data show the horn is sounded more continuously, and more loudly, in the last part of the blowing sequence as the train reaches the crossing. Consequently, the SEL is assumed to increase linearly to 110 dBA at the roadways, as shown in Figure 5.



**Figure 5. HORN SOURCE LEVEL MODEL**

*Day-night Sound Levels.* The reference SEL and the number of train movements through a crossing during day and night are used as the basis for calculating the day-night sound level (L<sub>dn</sub>) for assessment with the FRA noise impact criteria.

#### **8. How does the train horn noise model simulate the propagation path?**

Sound propagation is the way sound spreads and dissipates from its source, and depends on several variables. The key effects of geometric spreading (divergence), ground effects, atmospheric effects, and shielding are built into the horn noise model as described in the following. The final result of the assumed propagation effects are shown in Figure 6.

*Divergence.* The sound from a horn is assumed to act as if it were emitting from a moving point source, which when averaged over the length of track looks like a line source. Therefore, there is a 3 dB reduction for every distance doubling applies.

*Ground effect.* The model takes into account a generalized soft ground condition such as grass or other vegetation, assuming that most grade crossings with whistle bans are located in residential areas. This assumption results in an additional 1.5 dB per distance doubling, resulting in a total of 4.5 dB reduction per distance doubling.

*Atmospheric effects.* The horn noise model does not take into account atmospheric effects such as air temperature and humidity, assuming that if averaged over an entire year, the average condition is a uniform, quiescent atmosphere.

*Shielding.* The model takes into account shielding from rows of buildings in a setting typical for urban and suburban grade crossings where whistle bans are likely to be in effect. Based on surveys, a reasonable assumption for a national average is that the first row of buildings occurs at 200 feet from the tracks, with succeeding rows of buildings at 200 foot intervals, with gaps between structures constituting between 35 and 65 percent of the length of the row. Given this assumption, the FRA

model attributes a 3 dB reduction at the first row of buildings at 200 feet from the tracks, and 1.5 dB reduction for each succeeding row at 400, 600, 800 and 1000 feet. It is important to understand that the national average configuration of buildings is not meant to model any specific neighborhood.

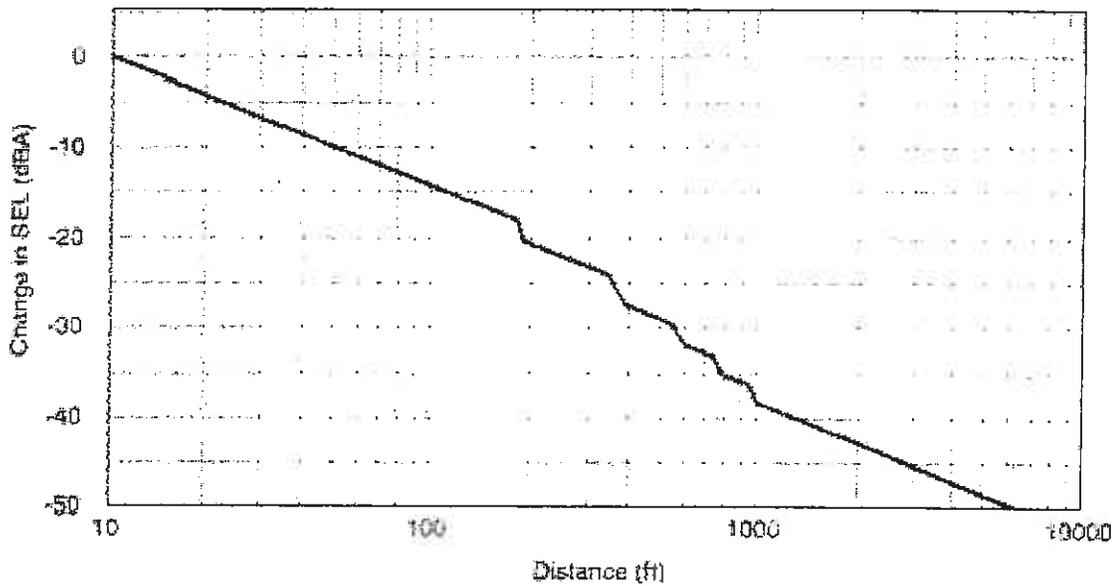


Figure 6. MODEL OF SOUND PROPAGATION FROM NOISE

9. How does the train horn noise model identify areas with noise impact?

Noise impact criteria used by FRA are based on noise exposure increases. Consequently, the existing noise exposure at every grade crossing must be estimated for in order to compare future noise exposure from the sounding of the locomotive horn. Trains are assumed to be the dominant existing noise source in the immediate vicinity of the tracks. The train noise Ldn depends on the number of trains traversing the area day and night. At some distance from the track, however, a general ambient noise level is attained which is characteristic of the general ambient environment away from the influence of incidental railroad noise. According to U.S. Environmental Protection Agency, the typical ambient level in a suburban residential area is Ldn = 55 dBA and in an urban residential area is Ldn = 60 dBA. These levels represent the noise "floor" in the noise impact calculation method.

The noise model computes the horn noise in terms of Ldn as a function of distance from the tracks, and the train noise without horns as a function of distance down to a noise floor established by the existing ambient noise. The two resulting curves are compared at each distance until the noise impact criteria ratings of "Impact" and "Severe Impact" are reached. Since the original source model was a polygon with 5 sides, the impact areas will be similar polygons. An example of noise impact areas is shown in Figure 7.

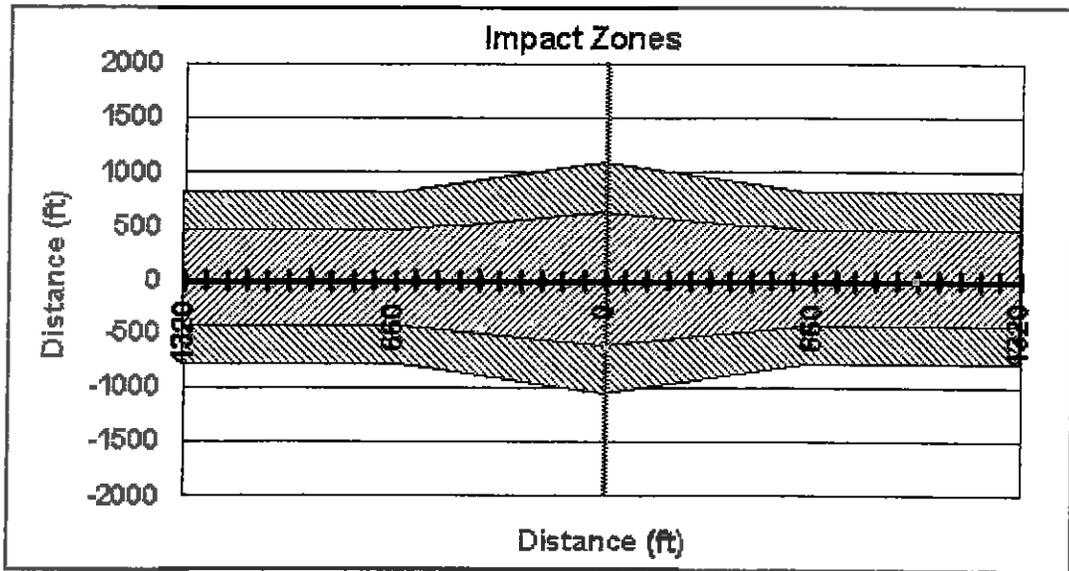


Figure 7. EXAMPLE CALCULATION FOR A SUBURBAN GRADE CROSSING

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# ATTACHMENT G





# Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

Region I Headquarters

123 NW Flanders

Portland, OR, 97209-4012

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Fax: (503) 731-8259

FILE CODE:

January 27, 2011

Mayor John Kinsky  
City of Banks  
120 South Main Street  
Banks OR 97106

Dear Mayor Kinsky:

This letter is in regard to the proposed inclusion of the Quail Valley Golf Course in the Banks Urban Growth Boundary (UGB).

As the City Council is aware, ODOT funded the preparation of the City's original UGB proposal, and the proposed Transportation System Plan (TSP) through a grant from our Transportation Growth Management program. When TSPs must consider expansion of a city's UGB, as was the case with Banks, it is important that the development of the proposed UGB and TSP are done in coordination. We were careful to coordinate the development of the TSP with the UGB work, both the earlier UGB work that was funded through TGM, and the later, City-funded effort to develop a UGB recommendation.

The recommendation to include the golf course in the Banks UGB was made as the TGM project was in its very final stage, and without consultation with ODOT or the Department of Land Conservation and Development (DLCD). Our project team worked closely with DLCD staff, particularly in the development of UGB recommendations upon which the TSP was based, to ensure that both the UGB and TSP documents were consistent with state rules governing urban growth. The city did at one time evaluate inclusion of a finger-shaped portion of land up through the middle of the EFU-zoned golf course in response to a request from the golf course owner. However, inclusion of this land was rejected largely because it used EFU-zoned land to create an inefficient urban growth boundary, in order to include uses that could be accommodated on other, more suitable and appropriate land, a major consideration under DLCD's Goal 14 and implementing rules governing urbanization.

Now the City is proposing to bring the entire golf course into the UGB, although this was not considered in the Goal 14 analysis done as part of the TGM and City-funded UGB efforts. DLCD, the state agency responsible for administering Goal 14 rules, has submitted detailed comments documenting their concerns regarding inclusion of the golf course in the UGB. We share DLCD's concern that Banks' UGB decision be based on sound application of state administrative rules for urbanization, because the urbanization process significantly impacts transportation systems and transportation planning.

Please note that although traffic analysis for the proposed Banks TSP did take into account existing and forecasted trip generation from the golf course, inclusion of the golf course in the UGB was otherwise not addressed in the TSP. Any future effort to urbanize the golf course, for example, a rezoning to allow residential development, would require a future transportation planning effort, including traffic analysis, transportation plans for all modes, and possible mitigation for any significant effects.

Please enter these comments into the record for the UGB/TSP adoption hearing.

Sincerely,

Ross Kevlin  
Senior Planner

cc (via e-mail):  
City Manager Jim Hough  
KJ Won, City Planner  
Anne Debbaut, DLCD  
Seth Brumley, ODOT Region 1

# ATTACHMENT H





January 31, 2011

TO: Jim Hough, City Manager  
K.J. Won, City Planner

FROM: Steve Kelley, Senior Planner

RE: City of Banks Periodic Review / UGB expansion

Jim & K.J.

This memo is a follow up to our prior discussions regarding the City of Banks proposed UGB expansion under Periodic Review. I wanted to remind you of a couple of important concerns that have been raised relating to the proposed land uses within the city's proposed UGB expansion area. Our concerns continue to focus on issues related to land-use compatibility and public safety as outlined below:

- 1) We agree with the concerns raised by Portland & Western Railroad (PWRR) in their April 2010, letter. As you may recall, this letter expresses concerns related to "The inevitable conflict between residential use and the railroad use". Active rail lines generate noise and vibration that may reduce the livability of housing located within close proximity to the lines and may, in turn, reduce the marketability of that housing.
- 2) We share the concern with PWRR related to the "...significant public safety issue, particularly where residential uses are located across the rail line from the public schools", and note that access to all public and commercial services available within the city of Banks would require a crossing of this rail line by future residents.
- 3) As further noted by PWRR, the recommended land-use alternative "...eliminates the possibility of attracting industrial uses by providing appropriately zoned large parcels adjacent to the rail lines."

There is currently a relatively significant supply of small industrial parcels in Washington County. These lands are generally located:

- a. Within the Sunset Corridor area (Hillsboro, Beaverton and Unincorporated Wash. Co.) with access to Sunset Highway;
- b. Within the Cities of Beaverton, Tigard and Tualatin, with access to Highway 217 and/or Interstate 5.

Only a very small percentage of these lands have existing or potential future access to heavy rail lines. From an overall market perspective, it would seem prudent to have rail access to enhance the market feasibility of industrial lands in the city of Banks. Moving the industrial lands proposed in the area south of Hwy. 6 to the area east of the Portland and Western and Port of Tillamook Bay rail lines (and south of Banks Lumber) could be beneficial. This change would potentially allow for the creation of larger industrial sites with rail access and could aid in providing a buffer between the rail line and proposed residential uses to the east.

If you have any questions regarding these comments, please give me a call.

c: Anne Debbaut; DLCD

