a Genesee & Wyoming Company

February 7, 2011

Mayor and City Council

City of Banks

120 South Main Street

Banks, OR 97106

Dear Mayor Kinsky and City Councillors:

The Portland & Western Railroad, Inc. ("PNWR") is a short-line railroad operating in the City of Banks on its own tracks and tracks owned by the Port of Tillamook Bay Railroad. PNWR currently operates two (2) trains a day from/to Eugene to Portland five (5) days per week on these tracks. Besides handling rail traffic over this route, these trains service the Banks Lumber facility in the city taking this shipper's freight to the BNSF or Union Pacific for furtherance to final destination on the North American freight railroad network, as well as to destinations locally in Oregon.

We are writing you regarding the proposed expansion of the urban growth boundary to include properties located east of our tracks in the City of Banks. PNWR is against this expansion as it will deprive the city and the Northwest Oregon regional economy of prime and unique industrial development property adjacent to our tracks and near highways US26, OR-6 and OR-8. The properties in question do not have prohibitive industrial development costs related to major railroad-road grade crossings, wetland fill challenges or major earth works. The properties east of the rail tracks also have the benefit of being accessible to both Western U.S. Class One railroad carriers (UP and BNSF) through the rail lines operating in the City of Banks. This is the only area in Northwestern Oregon that has such multi-railroad access and it is not in keeping with the State of Oregon's transportation policy to have such multi-modal industrial development sites taken into more restrictive development zoning. Given the depressed economic activity levels currently being experienced in the state, the need for jobs and increasing the diversity of the tax revenue base (now being felt by every

Portland & Western Railroad, Inc. 200 Hawthorne Ave. SE, Ste C-320 Salem, OR 97301 503-365-7717 FAX 503-365-7787

community), it is hard to understand why the removal of these properties from future industrial development is a sound decision.

We urge the City of Banks to work with PNWR and other stakeholders to develop these properties for the benefit of the Northwest Oregon regional economy, much like the City of Prineville was able to attract industry to multi-rail multi-modal accessible industrial sites for the benefit of the Central Oregon regional economy.

We appreciate your consideration of our submission.

Regards,

Ronald G. Russ

President & General Manager

cc: Sen. Betsy Johnson

City Manager, Jim Hough

Gleaves
Swearingen
Potter &
Scott LLP

ATTORNEYS AT LAW

Phone:
(541) 686-8833
Fax:
(541) 345-2034

975 Oak Street
Suite 800
Eugene, Oregon
97401-3156

Mailing Address:
P.O. Box 1147
Eugene, Oregon
97440-1147

Email:
info@gleaveslaw.com
Web-Site:
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

February 8, 2011

Mayor and City Council
City of Banks
120 South Main Street
Banks, OR 97106

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

Dear Mayor and Councilors:

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.

The preferred alternative for the Banks urban growth boundary location and land use designations provides for very limited industrial land adjacent to the railroad and proposes residential land immediately adjacent to the railroad for a distance of approximately 5/8 mile.

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. Materials from the Federal Railroad Administration discussing train horn noise, comparing it with other noise sources and describing human reaction to this noise, were submitted to the Planning Commission and are part of the record.

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 previously submitted 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.

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 clearly recognizes the need for east-west circulation in Banks to accommodate the UGB expansion and reduce reliance on highways for intra-city circulation (TSP, p. 48). The document 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 (approximately $7 million each) 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. The Council should carefully consider the ECONorthwest February 7, 2011 report discussing the effects of the location of insufficient industrially designated land near the railroad and the Banks Lumber Company mill.

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,

James W. Spickerman
spickerman@gleaveslaw.com

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

1000 friends of Oregon

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 11th Avenue, Suite 5 • Eugene, OR 97401 • (541) 653-8703 • fax (503) 575-2416
Central Oregon Office • 115 NW Oregon Ave #21 • Bend, OR 97701 • (541) 719-8221 • fax (866) 394-3089

February 5, 2011

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:

This is a follow up to our November 24, 2010 letter. We were provided with a copy of your staff's response to that letter yesterday, February 4.

In our earlier letter, we said that the Banks forecast claimed 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. We believed this because page 6 of the proposal's Technical Report stated that the city was using the safe harbor of OAR 660-024-0030 (3)(b); this provision has been renumbered to OAR 660-024-0030 (4)(a)(B).

Staff responded that in fact, "the City utilized the alternate population forecast as provided in ORS 195.034 (3)(a)." It appears that staff has misunderstood the function of this subsection; it is not a stand-alone method of forecasting. Instead, this subsection merely lays out the method of adoption for the two forecasting routes found in the preceding two subsections. Note the reference to these subsections within ORS 195.034 (3)(a):

> ORS 195.034 (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.* (emphasis added)

In other words, subsection (3)(a) only empowers a city to adopt a forecast that complies with the requirements laid out in either of the preceding subsections (1) or (2). No other kind of forecast can be adopted. These two forecast methods are essentially identical to those provided in OAR 660-024-0030 (4)(a) and (4)(b). The only significant difference is that the statutory provisions allow unilateral adoption by a city. We now turn to an examination of

the two forecasting routes provided under ORS 195.034, either of which proceeds to final adoption via the procedures laid out in ORS 195.034 (3)(a).

First Route Under ORS 195.034: Subsection 1

ORS 195.034 (1) method is analogous to the OAR 660-024-0030 (4)(a) method that was the subject of our first letter. It appears that staff believes the city can extend the forecast that was approved in 2004 by the city only. However, ORS 195.034 (1) clearly requires the prior existence of a forecast adopted by the county:

> ORS 195.034 (1): *If the **coordinating body under ORS 195.025 (1) has adopted**, within 10 years before a city initiates an evaluation or amendment of the city's urban growth boundary, a population forecast as required by ORS 195.036 that no longer provides a 20-year forecast for an urban area, a city may propose a revised 20-year forecast for its urban area by extending **the coordinating body's current urban area forecast** to a 20-year period using the same growth trend for the urban area assumed in the **coordinating body's current adopted forecast**.* (emphasis added)

Our prior letter explains why we believe that Washington County has not adopted a forecast for Banks. Staff writes, "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." Again, staff is incorrect that ORS 195.034 (3)(a) is a stand-alone method. Any forecast adopted under this subsection must also comply with the requirements of either ORS 195.034 (1) or (2).

The recent Newberg decision attached to our prior letter was included to show why the 2004 letter of concurrence from the Chairman of the Board of County Commissioners was not sufficient to constitute county adoption of Banks' 2004 forecast, and that the lack of formal county adoption resulted in a remand of the decision. Despite pursuing two different methods of forecasting, both Banks and Newberg would have needed a previously adopted county forecast in order to proceed with their original UGB expansion proposals. Both cities had forecasts considered by boards of county commissioners, and both failed to secure actual county adoption. This is the thread of relevance between the two situations.

We agree with city staff that the 2004 Banks forecast "is final and cannot be appealed." However, that only means the 2004 forecast is an unchallengeable part of the city's comprehensive plan. Such a forecast cannot be extended under ORS 195.034, unless the county has also adopted the forecast. Since that did not occur, the city cannot extend the 2004 forecast, despite it being validly adopted as part of the city's comprehensive plan. ORS 195.034 was adopted after 2004, so it is understandable that at the time the city forecast was adopted in periodic review, DLCD did not require concurrent adoption by the county. In other words, city adoption of a forecast is no longer adequate to enable UGB expansion proposals, because the laws and administrative rules have recently been changed.

Second Route Under ORS 195.034: Subsection 2

As explained in our earlier letter, the city could also choose to adopt a forecast under ORS 195.034 (2). That could be initiated right now, and would yield a 2030 forecast of 2,146 people. This method relies on a simple computation using readily available state data.

We 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 11th, Suite 5
Eugene, OR 97401
541.520.3763 cell
541.653.8703 office

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

320 WOODLARK BUILDING
813 SW ALDER STREET
PORTLAND, OREGON 97205-3111
503/225-0192 • FAX 503/225-0224
coc@coganowens.com • www.coganowens.com

COGAN
OWENS
COGAN

PLANNING
COMMUNICATIONS
CONFLICT RESOLUTION
SUSTAINABLE DEVELOPMENT
ENVIRONMENTAL PROJECT MANAGEMENT
GOVERNMENTAL/COMMUNITY RELATIONS

MEMORANDUM

DATE: February 7, 2011

TO: KJ Won, Planner, City of Banks

CC: Ann Debbaut, DLCD; Mayor John Kinsky and City Manager Jim Hough, City of Banks; Brent Curtis, Washington County; Ross Kevlin and Seth Brumley, ODOT Region 1; Don Kilgras, QVGC; and Arnold Cogan, Cogan Owens Cogan

FROM: Ellie Fiore and Larry Derr

RE: City of Banks Proposed UGB Expansion Amendment

This memorandum responds to issues raised by Department of Land Conservation and Development (DLCD) Regional Representative Ann Debbaut in December 15th, 2010 and February 2, 2011memoranda to the City of Banks regarding the proposed Urban Growth Boundary (UGB) Amendment proposal to include the Quail Valley Golf Course in its expansion area. The key issues raised by Ms. Debbaut are enumerated below (in italics), followed by information on how the City has addressed each of these concerns. Materials prepared for the February 8th City Council Meeting in support of the Part III Modification proposal (Exhibits 1-5 attached) are referenced and attached to this memo.

1) The City has not demonstrated that the existing rural golf course is an urban recreational use needed exclusively for city residents.

- The golf course is an urban use. This finding is supported by LUBA precedent (Exhibit 4, p.4).

- Urban uses are not intended or required to be "exclusively" for use by City residents. (Exhibit 4, pp. 5-6).

2) *The proposal does not justify adding the golf course to the UGB.*

- The City has identified a recreation and open space land need that can only be met by bringing the Golf Course into the urban growth boundary, annexing it to the City, and applying the City's Community Facilities zone. (Exhibit 4, pp.1-2, 13).

- The golf course meets additional needs consistent with Goal 14. These needs are addressed in detail in Exhibits 1 (pp. 7, 8, 22-3), Exhibit 3 and Exhibit 4 (pp.3-6) and include the following:
    - The golf course is clearly identified as meeting a long-range open space and recreation need for the City of Banks for the 20-year planning horizon.
    - The National Recreation and Parks Association (NRPA) recommends that special use category recreational uses should be located within the communities they serve.
    - Quail Valley Golf Course provides a recreational opportunity that will helps support business activity and employment growth by making the City an attractive location for households and businesses.
    - The Golf Course fulfils a range of community uses that contribute to livability for Banks residents.

3) *The UGB amendment does not include the supporting maps, data, analysis, findings and conclusions for a boundary location analysis required by Goal 14.*

- The original Goal 14 analysis has been included and expanded upon in Exhibits 4 and 5. These documents include the necessary maps, data, analysis, findings and conclusions to support the proposed amendment.
- There are three basic elements of a UGB amendment process. Each of these has been addressed and the analysis and findings are consistent with Goal 14, ORS 197.298 and OAR 660-024—00504) and -0060.

  These are
    - (1) demonstration of need for the expansion(Exhibit 4, pp.3-6);
    - (2) demonstration that the need cannot be accommodated within the existing UGB or elsewhere in the study area ; and
    - (3) consideration of alternative locations for the UGB expansion (Exhibit 4, pp.9-10, Figure 13 and Appendix G).

As an additional measure to protect the existing recreational use provided by the UGB, the City will include a policy in its Comprehensive Plan in connection with the UGB expansion that will assure that the Golf Course will not be converted to another use without considering and satisfying all requirements that would otherwise apply if the land was not already in the UGB (Exhibit 4, p.2).

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: davidnoren@worldnet.att.net

March 25, 2008

HAND DELIVERED

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

Re: Urban Growth Boundary Expansion
Tax Lot 00401, Map 2N 3 Section 31

Dear Chair McAllister and Commissioners:

I represent Banks Lumber Co. The Banks Lumber 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.

Banks Lumber has a long-term lease and option to purchase on a parcel of approximately five acres just outside the city, adjoining the east side of the Banks Lumber property and extending north to Banks Road. The property address is 41940 NW Banks Road, Map 2N 3 Section 31, Tax Lot 00401 (the Becker property). This land is the property most suitable for the mill's storage and could provide secondary access. This property should be brought into the urban growth boundary and annexed as soon as possible, so that it can support the Banks Lumber operation. The Becker family supports this request.

The 26-acre parcel east of Becker parcel, Tax Lot 400, is also appropriate for industrial development and would provide even better access to Banks Road. Banks Lumber therefore supports the inclusion of Tax Lot 400 in the urban growth boundary so it can annex and develop when its owners choose. Tax Lot 600, south of Tax Lot 400 and immediately east of the Banks Lumber site, approximately 32 acres, also has excellent potential for industrial development, with its rail frontage and proximity to existing industry and services.

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). Through careful analysis it concludes Banks has a need for industrial land ranging from a low-growth minimum of 27 acres to a high growth maximum (with adjustments for a large industrial site) of 71 acres (Tables 4-3 and 4-4). As the Strategy document explains, there is virtually no land suitable for industrial development now available in the city (Table 4-5).

Tax Lot 401 should be an easy choice for inclusion in the urban growth boundary, due to its proximity to existing industrial development, road access, and access to public services such as water. Tax Lot 400 should also be included in the urban growth boundary, and annexed when its owners are ready for city services and urban-level development. Tax Lot 600 should be considered for industrial use and included if you conclude there is sufficient need.

Banks Lumber looks forward to working with you, the city council, and city staff in meeting the needs of the City of Banks for an adequate 20-year supply of industrial land to provide jobs and support the city's tax base. To help meet the needs of Banks Lumber today, please recommend inclusion of the Becker property in the urban growth boundary as soon as possible.

Very truly yours,

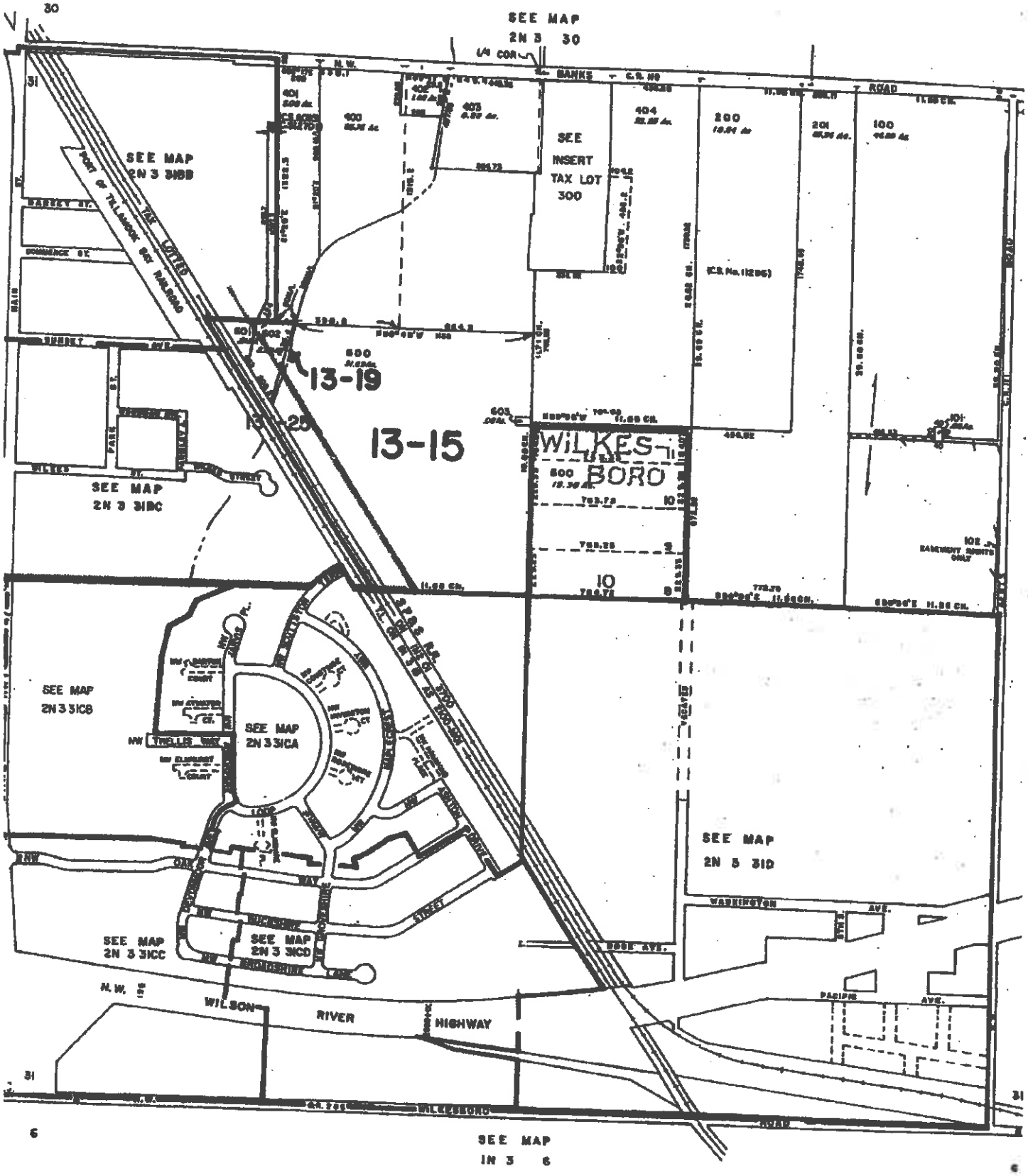
David C. Noren

cc Banks Lumber Co.
Mrs. Gen Becker

SECTION 31 T2N R3W W.M.

WASHINGTON COUNTY OREGON

SCALE 1"=400'



Banks Lumber Co.

January 12, 2010

Mr. John Kinsky, Mayor
City of Banks
120 Main Street
Banks, OR 97106

Dear Mr. Kinsky,

Banks Lumber Company has been doing business in the town of Banks, OR since 1961. During our 49 years of operations, we have been a good corporate citizen trying to minimize our impact on the community. We have been fully compliant with all regulatory agencies regarding safety, noise, pollution and other environmental impacts. Historically our employee base has ranged from 50 - 100 individuals many who have lived in or near the surrounding area of Banks. We are by far the single largest contributor for city operations through property taxes and use fees we pay. We enjoy being associated with the City of Banks and view our location to be a good strategic fit for access to logs and our ability to ship lumber on the rail lines.

We would like to offer our comments on the recent Urban Growth Boundary expansion plan for the city of Banks. In reviewing the "Banks UGB Parcel Identification Map" dated January 7, 2010 (attached), lots 47 and 51 are recommended to be rezoned residential. If this plan is enacted it would leave only lots 45 and 46 as buffers between our heavy industrial business and future residential homes. As part of our strategic plan, we acquired a long-term lease to use lot 45 for our future business expansion. This expansion could include adding dry kilns, additional log yard space and other possible manufacturing uses. This would leave no buffer between our plant site and the residential homes that would be developed on lot 47. Industrial and residential homes are generally not compatible neighbors. The following are some concerns and potential friction points if lots 47 and 51 are residential developments:

- Our log deck, mill site and the railroad could be an attractive nuisance for children living in new communities. As such we and the railroad companies would need to incur significant expense fencing off our property to ensure this liability is mitigated.
- Due to the recession we have cut back our production from two 9 hour shifts to one 8 hour shift. However, when we are able our plan is to restart the second shift extending our operating hours until 11:30 PM or 1:30 AM depending if we run 8 or 9 hour shifts.

PO Box 8
162 Commerce St.
Banks, OR 97106
(503) 324 - 2681

- There is no viable rail crossing access to connect the new communities in East Banks (lots 47 and 51) with the public services of the rest of Banks. The crossing at the southern part of our property is not conducive to allow residential traffic to flow through our industrial site as this is the unloading route for our log trucks, as well as a loading route for our lumber shipments.

We believe that the town is best served if lots 47 and 51 were zoned industrial instead of the planned residential. To help balance the City's needs to have a healthy mix of residential and industrial we would propose that the planned industrial area along Wilkesboro road be considered for residential growth. It is our understanding that the Wilkesboro road area has over 20 owners, many who have indicated that they will not annex their property into the city if it is zoned industrial. Even if the current landowners agreed to annex into the city, it would be hard to develop an industrial park as coordinating with this large number of owners would be difficult. Not to mention that there are terrain and wetland issues that also make the Wilkesboro road less desirable for industrial development. The opposite is true for lots 47 and 51 as there are a few owners of the properties and the terrain lends itself for easier industrial development.

We will have a representative at the City Council meeting tonight (01/12/10) as well as the joint City Council and Planning Commission meeting tomorrow (01/13/10) at 7:00 PM. We look forward to participating in the process to ensure that a plan is developed that best serves all interested parties.

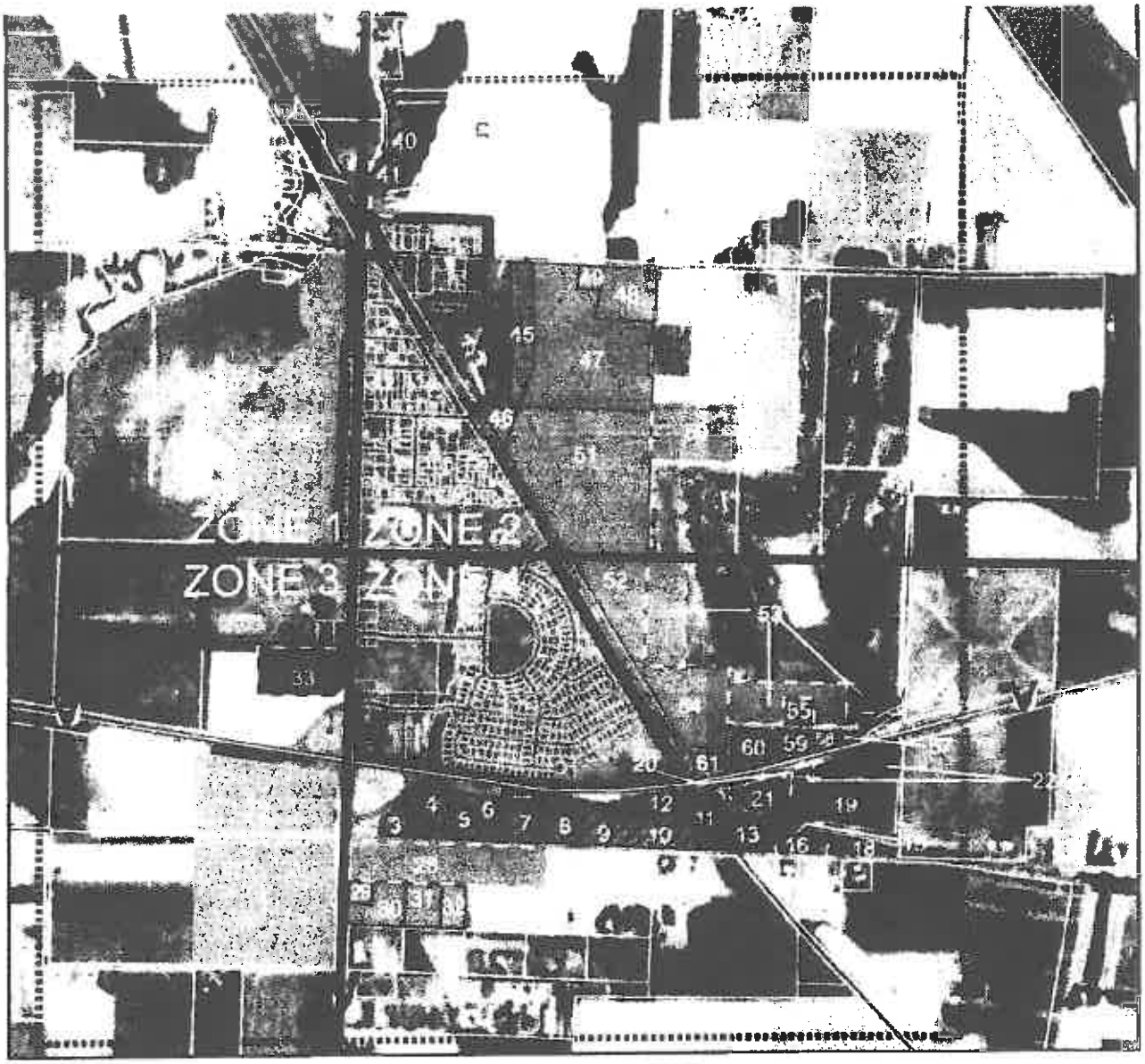
Regards,

George Girard, Owner

Fatima Girard, Owner

BANKS UGB PARCEL IDENTIFICATION MAP

MODIFIED BY HMC FOR PURPOSES OF PARCEL IDENTIFICATION AND EVALUATION OF GOAL 14 FACTORS



- UGB Study Area
- Existing UGB
- UGB Analysis Taxlots
- Priority 2 (Exception) Lands
- Taxlots Recommended for Addition to UGB as Residential
- Partial Taxlot Land Recommended for Addition to UGB as Residential
- Taxlots Recommended for Addition to UGB as Industrial
- Partial Taxlot Land Recommended for Addition to UGB as Industrial
- Taxlots Recommended for Addition to UGB as Commercial
- Partial Taxlot Land Recommended for Addition to UGB as Commercial
- 100-Year FEMA Floodplain

Banks UGB Location Alternatives Analysis

CH2MHILL

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: davidnoren@worldnet.att.net

January 13, 2010

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

Re: Urban Growth Boundary

Dear Mayor, Councilors, and Commissioners:

On behalf of Banks Lumber Co. I urge you to adopt the recommendations you have received recently from the property owners south of Highway 6 and west of Highway 47 to designate a portion of that property for residential use, to reduce the amount of employment/industrial property designated south of Highway 6, and instead to increase the amount of industrial property designated east of the Banks Lumber Co. mill. The Goal 14 factors indicate that the area south of Highway 6, rather than the area immediately east of the mill, should be designated for residential use.

In addition to the Goal 14 factors, as we have earlier testified, State Goal 9 requires that the city protect its existing industrial land. The massing of residential land immediately east of the mill property does not protect the city's existing industrial base, because noise and traffic conflicts between industrial and residential use will eventually strangle the city's only major employment area. At least a portion of that area adjacent to the mill property should be designated employment rather than residential to allow for needed expansion and for a buffer of light manufacturing, office park or similar uses. This would be more feasible for transportation given the limited rail crossing and more compatible with the city's industrial base.

Please direct your staff and consultant to analyze this alternative both with respect to the UGB amendment hearing process later this year and with respect to the Transportation System Plan work that is the next major component of the process.

Very truly yours,

David C. Noren

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

May 3, 2010

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

Re: Proposed Zoning for UGB Study --- May 10, 2010 Meeting

Dear Mayor, Councilors, and Commissioners:

At the community meeting on April 29, 2010, the one consistent message from the community, as reflected in the various "breakout" groups at individual tables and in the oral comments, was that the area south of Highway 6 and east of Highway 47 should be designated primarily residential rather than industrial, and that more industrial land should be added east of the existing industrial area in town.

On behalf of Banks Lumber Co. I urge you to heed those comments and increase the amount of industrial zoning east of the lumber mill. The most logical and productive location for new industrial land is west of the new north-south road that will be proposed in the transportation system plan. A portion of the new industrial area nearest the road could be zoned for light industrial uses to provide a buffer between the heavy industry of the mill area and the residential area proposed further east and south. Industrial and residential development can both help finance the new road.

As many folks commented at the meeting, the area south of Highway 6 is already developed with small rural residential acreage. It is not likely to develop for industrial use, which generally requires larger parcels or the likely prospect of consolidating small parcels for efficient development. The area is, however, suitable for residential development, as individual homeowners decide to divide their small parcels for infill-style small subdivisions or partitions. If the area is zoned industrial rather than residential, the city may be unable to provide an adequate factual base, as required by State Goal 2, to show that its 80-acre industrial needs can be met by relying primarily on this area.

Very truly yours,

David C. Noren

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

ECONorthwest
ECONOMICS • FINANCE • PLANNING

Phone • (503) 222-6060
FAX • (503) 222-1504
info@econw.com

Suite 1600
222 SW Columbia
Portland, Oregon 97201-6616

Other Offices
Eugene • (541) 687-0051
Seattle • (206) 622-2403

7 February 2011 Project #: 20515

TO: City Council, City of Banks
FROM: Terry Moore
(assisted by Bob Whelan and Beth Goodman)
SUBJECT: COMMENTS ON BANKS UGB EXPANSION: INDUSTRIAL LAND

This memorandum addresses the change proposed by the City of Banks to its Urban Growth Boundary. Specifically, it discusses how the proposed change addresses basic principles of economic development and industrial-land planning, the requirements of statewide Goal 9, and future operation of the Banks Lumber Company, the City's largest private employer. Its conclusions are that proposed change in industrial land (1) is inconsistent with some basic principles of economic development—principles that are embedded in the requirements of Goal 9; (2) does not help retain and expand the operations of Banks Lumber, and (3) is less likely to be good for industrial development in Banks than other plans for the location of new industrial land.

BACKGROUND

The City of Banks is adopting policies to expand its Urban Growth Boundary (UGB). UGB expansions in Oregon are highly regulated: cities expanding UGBs must document compliance with many state policies, the bulk of which are stipulated in the statewide goals of the Land Conservation and Development Commission. Goals 14 (Urbanization), 10 (Housing), and 9 (Economy) contain most of the rules about what analysis must be done and documented to justify the need for a boundary expansion.[1] In broad terms, UGB expansions are primarily justified based on expectations about growth in population and employment, and the attendant need for land for developing housing and buildings for industrial, commercial, and retail activities.

I have prepared this memorandum at the request of David Noren, for the benefit of his client, the Banks Lumber Company, which now operates a lumber mill within the existing city limits and UGB of Banks. Banks Lumber's interest derives from its desire to continue and potentially expand its operation, which is affected by both where the UGB is expanded and what uses will be allowed in different areas of that expansion.

[1] In practice, all statewide goals must be addressed in justifying a UGB expansion. But most of them are about the secondary effects of such an expansion (e.g., on farm and forest land, on natural areas, and on public facilities and services).

The City is proposing to add land to the UGB adjacent to and east and southeast of Banks Lumber property, but it is designating only a small amount of that land as "industrial." The bulk of the new industrially-designated land is in UGB additions to the west (around Sunset Park) and south (south of Highway 6). Banks Lumber believes both it and the City would be better served by having more of the land to its east and southeast designated for industrial development.

ECONorthwest (ECO) has worked on land-use, UGB, and economic development issues in Oregon for over 30 years. ECO prepared the *Banks Economic Opportunities Analysis and Economic Development Strategy* (2005). I was on governor Kulongoski's *Industrial Lands Task Force*, and have worked in the area of economic development for over 30 years. In 2006 I was invited by the American Planning Association to write a book on economic development: *An Economic Development Toolbox: Strategies and Methods*. Thus, I and others at ECO have experience with both broad economic planning and development issues, and with the economy of the Banks area.

I organize my comments in two parts, starting with general planning principles and then turning to their implications in the case of the Banks UGB expansion:

- **Principles for planning for economic development**. This section steps back from the facts of the situation in Banks to describe the principles that are commonly used when planning for economic development. Those principles, and the Oregon planning laws that support them, provide some rough standards against which to compare the actions that Banks is proposing to take with respect to industrial land in its expanded UGB.
- **Implications of the principles for the Banks UBG expansion**. This section compares the City's proposed plan to the principles that such a plan might typically be based on.

PRINCIPLES FOR PLANNING FOR ECONOMIC DEVELOPMENT[2]

The professional literature contains many definitions of economic development. The one I use is from my book:

> "Economic development is the process of improving a community's well-being through job creation, business growth, and income growth (factors that are typical and reasonable focus of economic development policy), as well as through improvements to the wider social and natural environment that strengthen the economy."[3]

Economic development programs to be structured to focus on the aspects of the definition related to business development and job growth, which come from the

[2] Terry Moore

[3] *An Economic Development Toolbox: Strategies and Methods*, Terry Moore, Stuart Meck, and James Ebenhoh, American Planning Association, Planning Advisory Service Report Number 541, October 2006.

creation of new firms, the expansion of existing firms, and the relocation or retention of existing firms. *Thus, a key question for economic development policy is, What are the factors that influence business and job growth, and what is their relative importance?*

Advantages to businesses in a region derive primarily from that region's ability to provide some factors or attributes at a better value than competing regions. It is not just the cost of these factors that matters, but their quality as well. Greater expenses for some factors are justified if they are more productive. Factors such as labor, land, and infrastructure (e.g., transportation, electricity) directly influence production costs. Other factors, such as environmental and cultural amenities, have indirect effects that can help maintain a skilled labor pool and reduce labor costs (wages and salaries) from what they would have had to be to retain skilled labor in a harsher environment.

A wide range of economic development policies and actions are available to cities that can affect the level and type of economic development in their community. To affect economic development, any policy or action must affect a factor of production that influence business locations and job growth. Those factors relate to the cost and amount and quality of:

- Labor
- Land
- Local Infrastructure
- Access to markets and materials
- Agglomerative economies (clusters)
- Quality of life
- Entrepreneurship

The supply, cost, and quality of any of these factors obviously depend on national and global market forces that local governments have no ability to influence But they also depend on public policy, which can generally affect these factors of production through:

- Planning
- Regulation
- Provision of public services
- Taxes
- Incentives

The location decisions of businesses are based heavily on the availability and cost of labor, transportation, raw materials, and capital. The availability (amount and quality) and cost of these production factors are usually similar within a region. Most economic development strategies available to local governments only indirectly affect the cost and quality of these primary location factors.

Thus, there are not many local-government policies that can have significant and direct effects on economic development. Those that can typically address (1) the cost and quality of public facilities and services (which affect businesses directly, or indirectly by affecting their employees), (2) regulatory requirements, and (3) tax rates (within the bounds of Measures 5 and 50), fee reductions, and other direct incentives.

Within the categories of public services and regulation are (or should be) *policies about the supply of buildable land*. If this category is defined broadly to include policies about the provision of infrastructure (without which land is not really buildable) and the efficiency of the land entitlement and permitting process, then *ensuring a sufficient and readily available supply of buildable land is one of the most important things that a local governments can do to accommodate and encourage economic development*. Local governments in Oregon play a central role in the provision of buildable land through its inclusion in an urban growth boundary, plan designation, zoning, provision public services, and protection from encroaching uses.

Goal 9 provides some detail about providing of industrial land. It requires that local governments consider the types of businesses likely to expand or locate in a community and provide land with the characteristics needed by these businesses. It states four requirements for comprehensive plans for urban areas, of which the second is most important for this matter:

> "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."

The fourth Goal 9 requirement is:

> "Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses."

The Goal has five planning guidelines, the fourth of which is:

> "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."

The Oregon Administrative Rules contain all the policies that the Land Conservation and Development Commission has adopted to provide specifics about what local governments must to meet the general requirements. OAR 660-009 suggests local planning actions for implementing Goal 9 that are consistent with the ideas of retaining businesses and providing adequate industrial land (location, size, services):

- **Assess community economic development potential.** This analysis considers the attributes of the community (e.g., location, availability of transportation facilities, or labor market factors) and their affect on the types and amounts of industrial and other employment uses likely to occur in the community (OAR 660-009-0015(4)).

- **Define community economic development objectives.** Communities are required to develop community economic development objectives that identifies specific types of industrial and other employment uses desired within the community (OAR 660-009-0020(1)(a)). The types of employment uses are typically described through identification of target industries that may locate in the community based on the community's competitive advantages.
- **Identify required site types.** Cities are required to provide the number and type of sites reasonably expected to be needed to accommodate expected employment growth. An analysis to determine the number and type should consider the preferences of expected employment users for site characteristics (OAR 660-009-0015(2). Site characteristics are defined as "...the attributes of a site necessary for a particular industrial or other employment use to operate." Site characteristics include: minimum acreage, site shape and topography, visibility, services or energy infrastructure, or proximity to a particular transportation or freight facilities (OAR 660-009-0005(11)).
- **Emphasize the expansion of and increased productivity from existing industries and firms** to facilitate local economic development (OAR 660-009-0020 (4)).
- **Examine existing firms in the planning area to identify the types of sites that may be needed for expansion** (OAR 660-009-0015 (2))
- **Protect existing employment operations from conflicting uses.** "Cities and counties are strongly encouraged to manage encroachment and intrusion of uses incompatible with industrial and other employment uses. Strategies for managing encroachment and intrusion of incompatible uses include, but are not limited to, transition areas around uses having negative impacts on surrounding areas, design criteria, district designation, and limiting non-essential uses within districts." (OAR 660-009-0025(6)
- **Adopt policies that provide land for businesses with special site needs,** such as large acreage sites, special site configurations, direct access to transportation facilities, prime industrial lands, or sensitivity to adjacent land uses (OAR 660-009-0025(8).

IMPLICATIONS OF THE PRINCIPLES FOR THE BANKS UBG EXPANSION

The previous section summarizes some economic development principles that are largely accepted by economic development professionals and codified by Oregon statute and administrative rule as standard practice. The overarching question I address in this section is: How well does the proposed location of new industrial land in Banks appear to address these principles?

There are, of course, many ways to meet the statewide planning goals, and the LCDC and staff at DLCD are justifiably reluctant to substitute their interpretation of stipulated facts for a local government's interpretation. The goals are clear, however, that an adequate factual base for decisions is required. If basic facts are not provided, if the facts are ignored in decisionmaking, or if the interpretation of the facts is not one that meets some qualitative test of reasonableness, then there is legal precedent for the state (the Land Use Board of Appeals) to send plans back to local jurisdictions to remedy the problems.

That last sentence describes the situation in Banks. Given the principles and goal requirements I described above, I think the state would be justified in requiring the City to provide a better justification of its designation of industrial land than what it has provided. My reasons follow and are organized to discuss how well the actions the City proposes comport with two basic principles of economic development related to job retention and industrial siting.

PRINCIPLE 1: RETAIN EXISTING BUSINESSES AND HELP THEM EXPAND, ESPECIALLY ONES WITH HIGH-PAYING JOBS AND THAT BRING NEW MONEY INTO A LOCAL ECONOMY

Banks Lumber is the type of business described by the heading above. It is one of the top 30 producers of softwood in Oregon, and on the top 200 in North America. It is in the mid-range in terms of employment for over 225 companies in Oregon that are generally classified as in sawmills and planning mills.[4] It is the City's biggest private employer, with about 60 employees now on a single shift and up to another 50 at two full shifts. It has relatively high-wage jobs: for a typical shift about 85% of the employees are making wages that average around $15 per hour, and 15% are making wages that average around $20 per hour. It provides full healthcare benefits for all employees and for the families of most employees, and provides both a defined benefit plan and 401k retirement benefits.

Many cities in Oregon would like to attract firms like Banks Lumber; certainly many towns that had mills that closed in the last two decades would be among them. Cities would consider getting a firm like Banks Lumber to open a plant of its size in their boundaries a huge economic development success.

Retaining such a business (doing things to avoid its demise or relocation) is the flip side of trying to attract such businesses. A key part of economic development policy is business retention. Subsets of such policies may include incentives (e.g., tax breaks, land at reduced prices), running government so that basic infrastructure and services are

[4] http://www.manta.com/mb_44_E01A5_38/sawmills_and_planing_mills_general/oregon. Accessed 25 Jan2011.

efficiently provided, and ensuring that buildable land is available for business expansion.

The City's decision about how to designate new land inside its UGB is not done in a way that might help Banks Lumber with its operation and potential expansion. It does not add industrial land adjacent to Banks Lumber's operations and, thus, does not:

1. Give Banks Lumber the opportunity to acquire adequate amounts of appropriately zoned industrial land to expand its operation.
2. Create the opportunity for compatible or synergistic business to locate around Banks Lumber to their mutual benefit. Instead, it creates the potential for greater conflict by zoning land that is now essentially open space for residential use instead. The open space is actually in agricultural use, which has similarities to industrial use in terms of the generation and tolerance of disamenities like noise and dust—residential use has much less tolerance for those disamenities.

In short, the UGB expansion and addition of industrial land in Banks is being done in a way that not only does not help the City's largest private employer, but probably hinders it.

One does not have to rely on theory for this conclusion: if the City wants to know what would be good for Banks Lumber because it cares about making things better for Banks Lumber, it can ask Banks Lumber what it needs. Banks Lumber's answer is that it is not requesting, much less demanding, the kinds of financial incentives that many big employers have extracted from local governments. It is asking only that new zoning allow for:

1. The possibility of its own future expansion. My conversations with Banks Lumber found five possible uses that the company is considering in the next 1 – 5 years:
   - Creating a roll-out area so that incoming logs can be inspected individually instead of scale measured on trucks (1.5 acres)
   - Storage and breakdown area for large logs (3 acres)
   - Kilns and storage area for dry lumber (1.5 - 2 acres)
   - Plant to cogenerate energy from waste wood (1.5 acres)
   - Containment area for water run-off from paved log yard (3 acres)

   The total: about 10 acres.
2. The possibility of proximate growth of compatible industrial uses. As one example, West Oregon Wood Products is located next to Banks Lumber and produces wood fuel pellets from waste wood primarily produced from Banks Lumber. In a communication to Banks Lumber, its general manager said "If we had more space, we would seriously consider adding at least a high-energy-log line, thereby, employing more people while increasing sales realization and

margin. Furthermore, we are looking at the fabrication of complementary product lines. Of course, space limitations will not allow us to construct such a production line." WOWP estimates a need for about two to five acres.[5]

3. Protection from new and proximate land uses that would be likely to object to its practices (i.e., protection from conflicting residential uses).

The facts in Banks are that a big, long-standing, primary and high-wage employer desires proximate urban land for potential expansion—land that a city can provide without legal impediment if it were to choose to do so. What theoretical arguments can there be for not providing such land to such an employer? First, perhaps the employer is in such decline that efforts and money to preserve it will not provide a sufficient return to the city. Second, perhaps the employer, though creating beneficial employment and tax revenue, is creating other problems or costs that more than offset those benefits. Third, perhaps there are better (higher value) uses for the land. In the next sections I address whether any of those possibilities is likely to apply to Banks Lumber.

Heavy subsidies to a declining industry?

Cities have an obligation to taxpayers to use their resources wisely. That is true whether the resources are cash (in the form of tax breaks) or regulatory support in the form of zoning. Big give-aways to declining industries, or ones that will leave soon anyway, are not good public policy. Is there any evidence that Banks Lumber is that kind of firm?

When assessing whether an industry is in the midst of a long-term decline, the natural temptation is to focus on recent trends on the supposition that these are apt to continue. But a thorough analysis must ascertain if recent trends are truly secular, and thereby a long-term trend, or are rather reflections of an economic cycle. Recent timber-industry data suggest the latter.

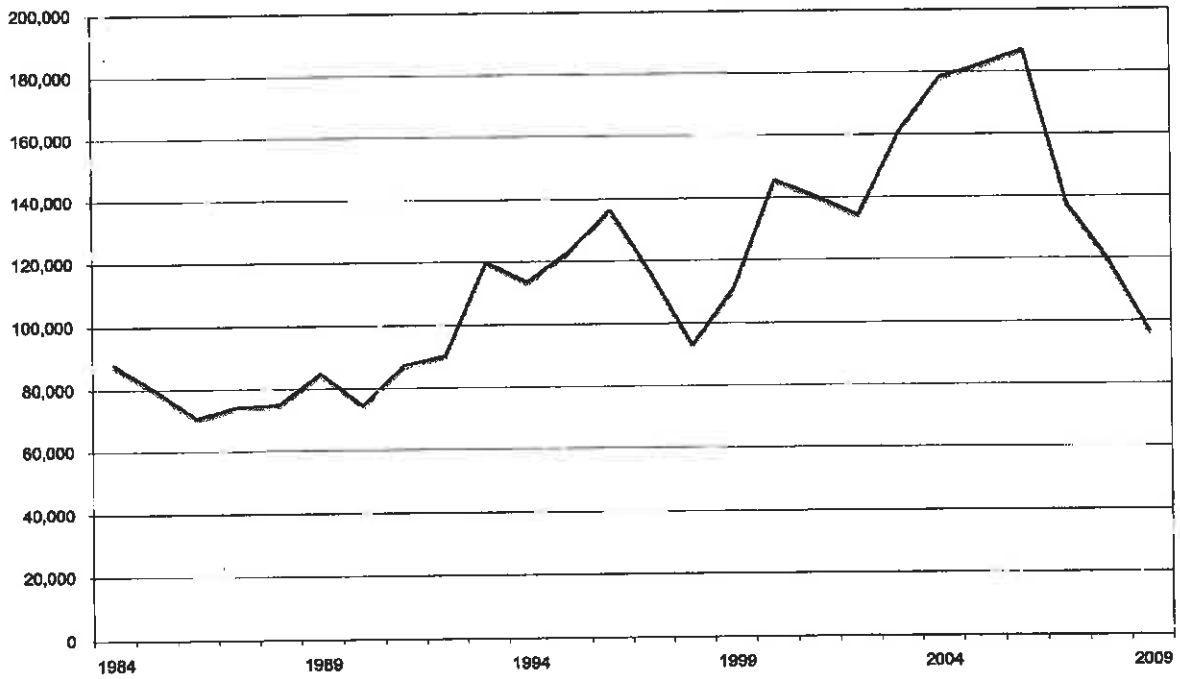
It is certainly the case that timber production is low today relative to 20 years ago. In the U.S. in 2009, the number of softwood mills was 2/3 of what it was in 1995. At the same time, however, mill capacity had increased by about 15%. Production was also up, but the broad trend masks that the fact that production grew rapidly until about 2006 and has dropped since then. Thus, the capacity-utilization rate has dropped: there is now excess capacity.[6] Exhibit 1 shows that the broad national trend reflected in the harvests for Washington County.

[5] Email from Mike Knobel (WOWP) to Dan Zeamer (BLC), 17 January 2011.

[6] Spelter, Henry, David McKeever, Daniel Toth. 2009. Profile 2009: Softwood Sawmills in the United States and Canada. Research Paper FPL–RP–659, United States Department of Agriculture, Forest Service, Forest Products Laboratory. Tables 1 and 2, page 1.

The decline of Oregon's forestry industry is attributed to several causes, and most often to (1) changes in environmental regulations (the "spotted owl" debates), (2) change in production techniques (e.g., substitution of machinery and computers for labor; changes in response to shifts from first- to second-growth timber),[7] and (3) changing market demand and supply (e.g., competition with Canada, changing demands for housing).

Exhibit 1: Washington County annual timber harvest, 1984 – 2009, thousands of board feet



Source: Oregon Department of Forestry.

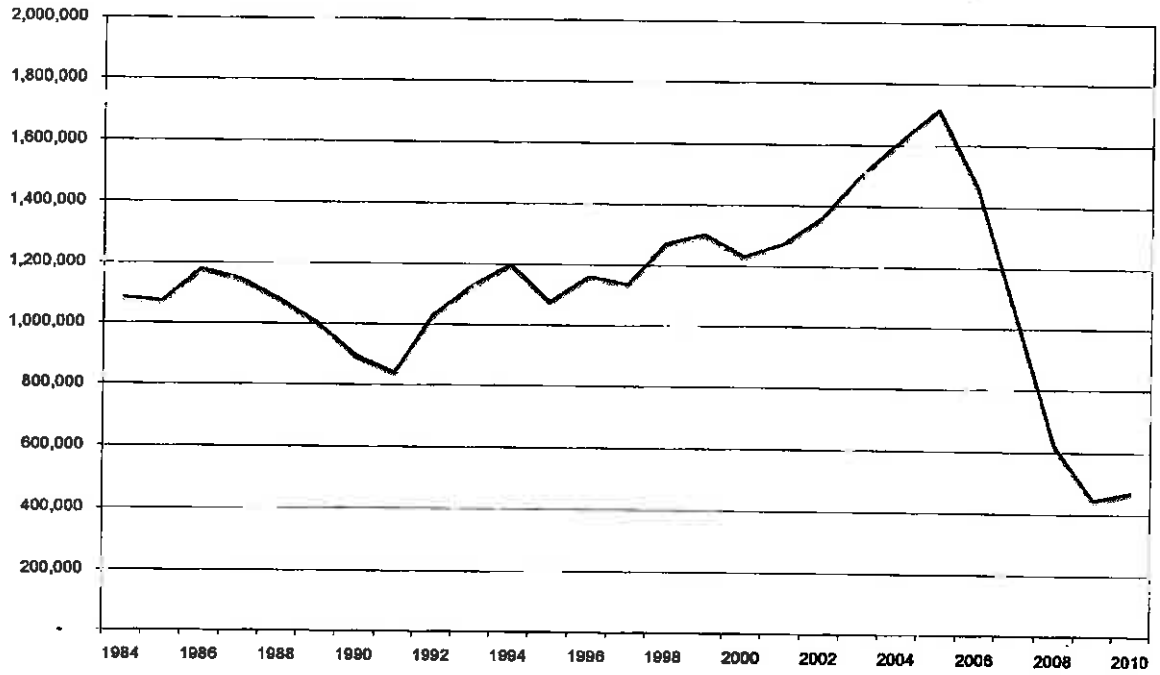
The Washington County trend does not show a long-run decline in timber harvest. The trend was slightly up over 25 years, with steady and relatively large increases for almost 10 years up to 2006, followed by recent steep declines. That trend does not suggest that environmental regulations and production technologies are the main causes of decline; Exhibit 2 points to housing markets as a bigger force.

Exhibit 2 shows that nationally single-family housing starts average about 1.1 million a year. This allows for replacement of obsolete housing and accommodation for growth through natural household formations and immigration. Exhibit 2 shows the now

[7] The effect of production technologies may not have much effect on board-feet cut, but it does have a large effect on the number of people employed as capital substitutes for labor

widely recognized housing bubble[8] began about 2002. Home construction and domestic demand for softwood lumber both peaked in 2005. That year over 1.7 million homes were built. Four years later housing starts fell to 445,000 — a 74 percent decline. The recession's impact was felt locally as well. According to F.W. Dodge, which tracks housing construction in the Portland metropolitan area, the total square footage of all housing built in Washington County fell 78 percent over that same period.

Exhibit 2: Annual single family housing starts, United States, 1984 - 2010



Source: The U.S. Census Bureau & the Department of Housing and Urban Development

It takes 15,000 board feet of lumber to build the average 2,500 square foot home. In 2003 over 80% of all softwood timber harvest was destined for a final use in the residential building industry. By 2009, the use of lumber for residential purposes had dropped to 45% of 2003 level, and residential end-use dropped to 65% of total end-use.[9]

In spite of the sharp decline, wood products still account for nearly one out of every eight manufacturing jobs in Oregon.[10] In Washington County as well, under conditions of extraordinarily weak lumber demand, wood products manufacturing still employs

[8] The Economist. "Housing prices: after the fall." June 2005.

[9] Spelter, Henry, David McKeever, Daniel Toth. 2009. Profile 2009: Softwood Sawmills in the United States and Canada. Research Paper FPL-RP-659, United States Department of Agriculture, Forest Service, Forest Products Laboratory. Table 4, page 3.

[10] Third quarter 2010 covered employment and payroll data from the Oregon Employment Department shows 20,346 wood products manufacturing jobs statewide compared to 166,809 for all manufacturing.

nearly 1,100 people at wages of $40,000 a year or more. Excluding the recent collapse in housing, which precipitated the recession, from 2001 to 2006 employment in wood products manufacturing within Washington County had been rising modestly. In contrast, computers and electronics, the county's largest manufacturing sector, exhibited declining employment (Exhibit 3).

Exhibit 3: Payroll employment, wood products and computer and electronics manufacturing, Washington County, monthly data 2001 - 2010

Source: Oregon Employment Department, covered employment and payroll data.

Since the housing bubble, lumber consumption has declined. To a small degree, the domestic industry was aided by falling imports whose share of the U.S. market fell from 38 to 29 percent.[11] Still, the industry does struggle. At issue then is what are its long-term prospects.

From the demand perspective, lumber will recover as housing does. Housing construction in the U.S. has averaged about 1.1 million units a year, but is currently less than a half million. This reflects the overhang of unsold homes built during the housing bubble and the subsequent contraction in the number of households as high unemployment due to the recession forced co-housing arrangements. Both causes are probably transitory. State and federal forecasting agencies all predict continued long-run growth of population in the U.S., and that growth will eventually require parallel

[11] RISI Inc., North American Lumber Forecast. Data comparing 2005 to 2009.

growth in housing products. Wood products demand will recover as construction rebounds toward its long-run sustainable rate.

But there is an international component to demand as well. According to one timber analyst exports logs and lumber to China may triple in only a few years because of increasing demand from China's economic boom and increases taxes in Russia (China's dominant supplier of logs) on log exports.[12]

On the supply side of the equation, Oregon has the timber. Oregon's forests have the biological potential to produce 10 billion board feet a year. That is the maximum sustainable harvest if almost all timberlands were managed for timber production. Not all land is managed in that way, and excluding that acreage leaves the state with about 5 billion board feet of annual sustainable long-run harvest capacity.[13] Current production is only 3 billion. The supply to ensure the industry's survival and recovery is ample.

The long-term supply outlook for the northwest corner of the state is also promising. The U.S. Forest Service estimates 116 million cubic feet of timber (about 640 million board feet)[14] were harvested annually in the decade from 1997 to 2006 in the region around Banks (Washington, Yamhill, Tillamook, Clatsop, and Columbia counties). Their Northwest Forest Plan base case estimates that over 159 million cubic feet of timber a year will be harvested in the 2017 - 2026 decade: a 37 percent increase in supply.[15]

Banks Lumber is in a well-positioned location for a wood products manufacturer: between a large and growing source of timber supply, and an urban area with strong transportation infrastructure, utilities, supporting industries, labor market, and buyers. Access to the Portland & Western Railroad is critical, as it provides a more energy-efficient and less costly means of moving finished products to market.

These advantages have allowed Banks Lumber to weather the current downturn and offer it strategic advantages for future growth. Currently Banks Lumber is the 174th largest mill in the United States. Banks is the 27th largest in Oregon—a high ranking for a state that currently has 452 wood products manufacturing plants in operation.[16]

---

[12] Bruce P. Glass, "Timber Trends," December 2010/ January 2011. The Campbell Group, LLC.

[13] Oregon Forest Resources Institute. "Oregon forest sector contributions and potential." June 2004. Page 35.

[14] Using a ratio of 5.5 board feet of finished lumber per cubic foot of raw wood.

[15] Zhou, X., *et.al.*, "Projections of timber harvest in western Oregon and Washington by county, owner, forest type, and age class." U.S. Forest Service. 2005. Page 21.

[16] Oregon Employment Department. 3rd quarter covered employment and payrolls. Establishment count for wood products manufacturing.

Banks Lumber could benefit if it were to expand via kiln drying. Such an expansion would improve the marketability of its lumber. Compared to air drying, kiln drying produces a lower moisture product (8 percent versus 15 percent), and does so more quickly and with less warping. Another change being considered at Banks Lumber is the addition of a waste recovery system that would yield energy savings. Both expansions would further enhance the competitiveness of the mill.

These changes, combined with the superior locational advantages, eventual domestic housing recovery, and anticipated local area timber production increases strongly suggest the Banks Lumber is not a declining business and not in a declining industry. It is, in fact, exactly the kind of business that local economic development in most Oregon cities would be aiming to retain and expand.

Negative spillover effects?

Uses of land by one user can have spillover effects on other users. Such effects can be positive: for example, a successful theatre complex can have the effect of making surrounding restaurants more vibrant and profitable. But it is the negative spillovers that get the attention, and industrial uses provide plenty of examples: they can generate congestion, noise, dust, air emissions, water discharges, and other impacts that fall outside the boundaries of their property.

Some negative spillovers are inevitable and generally accepted as a fact of life. Every business generates some traffic, and that traffic is accepted unless it is deemed out of proportion: a big firm with lots of employees may be required to mitigate traffic impacts by improving a road or intersection, or providing transit passes. The negative externalities of air and water discharges are supposed to be monitored and controlled by agencies like the Oregon Department of Environmental Quality: mitigation is required is stipulated thresholds are exceeded.

I presume that Banks Lumber has both positive and negative spillover effects on surrounding properties, and that the negative spillovers include those that are typical of any industry and are typical of lumber operations: traffic congestion and safety issues, noise, and dust almost certainly; probably air and water discharges. People living close to the property and who do not have any direct economic connection to its operation may believe that they would be better off if the operation were elsewhere.

Here, sorting out net effects is essential and difficult. Though some residents of Banks might be better off if Banks Lumber were located elsewhere in the City, others would not (some of those who would then be closer to the negative spillovers). And if Banks Lumber moved out of the City, some business that serve the mill and its workers would be worse off. That effect might spillover to other residents of Banks in the form of higher prices or taxes, or less selection and quality for private and public goods and services.

In addition, there are equity issues that cross over into legal issues about property rights. Banks Lumber has been in operation at its current site for 50 years. Its operation predates many of the houses in Banks and most of their occupants. Many people now living in Banks bought or rented their properties despite the obvious fact that a working mill was nearby. Economic theory suggests that the value they paid in sales price or rent reflects some subjective but real assessment on their part that living in Banks means living with whatever legal negative spillovers Banks Lumber may generate. In economic parlance, the obvious negative spillovers of a long-standing use have probably been capitalized into property values.

Economic theory touches property law when it addresses the question of whether a property owner has a right to do what he or she wishes on her property, or whether other property owners have right to use their property free of any spillover effects a neighboring use might create. If I have some operation that makes noise and dust and people, despite the fact that they can observe those spillovers, choose to build around me, am I compelled by law to change my operation or move? I can summarize decades of litigation by saying "it depends." Fairness is in the eye of the beholder.

I'm not well enough informed about the details of the Banks economic and fiscal situation to be able to comment with confidence on net effects; in fact, I believe that such comments would be speculative; based on substantially simplified models to the types, pathways, and incidence of impacts; and influenced by desired outcomes. What I can say with more confidence, however, is that if concerns about negative spillovers of the mill are, in fact, a reason for not supporting the City's biggest industry by designating land adjacent to it for expansion, there is nothing I found in the record making that argument.

Higher uses?

I'll be briefer here because the arguments parallel the ones in the previous section. Maybe the mill is a use with a lower land market value, and the land that it occupies or that is around it would have a higher market value in residential use. That might be true, but displacing the mill has some negative effects on the City and regional economy that are not fully reflected in the market value of individual parcels. One of the primary functions of regulation, including zoning, is to address external costs of economic activity that are not reflected in market prices. That is why Goal 9 requires the city to preserve suitable land for industry: the unregulated market may ignore important regional benefits that are not captured by individual businesses or property owners and, thus, may undervalue industrial land and encourage its displacement.

Some cities in high-amenity areas (e.g., resort towns like Aspen and Jackson Hole) have specialized in residential development and tourism, and have a limited industrial base. By many measures, they have been quite successful. What they have had trouble with, however, is getting a mix of job and housing types that allows a diversified

population to work and live within their boundaries. Service workers commute tens of miles from outlying areas where they can find affordable housing.

In the context of industrial land, regions and cities around the country (including Portland) are concerned about preserving industrial land, which gets pushed out by higher-value residential and commercial uses. Some relocation is probably advantageous, but if every jurisdiction wants higher-value commercial uses and allows (even encourages) industrial land to convert to commercial uses, then there will be a regional scarcity of readily available industrial land in places that industry might find acceptable. Larger firms looking for larger parcels will look to other regions unless there are compelling reasons to be in one particular region: usually there are options. This issue of scarcity of industrial land has been a perennial land-use and economic-development concern in Oregon and the Portland metropolitan area for at least a decade.

I find nothing in the record to suggest that Banks believes the mill site should be redeveloped for residential or commercial uses. That fact implies that it accepts Banks Lumber in its current configuration and volume. But the City's failure to provide land for industrial uses adjacent to the mill suggests that it does not see either the possibility or value of the mill's expansion.

PRINCIPLE 2: PROVIDE BUILDABLE LAND IN APPROPRIATE AMOUNTS AND LOCATIONS

It is clear that both the theory of economic development and statewide Goal 9 hold the provision of buildable industrial land to be an essential goal. What constitutes "appropriate" amounts has been debated technically and legally more in Oregon than any other state I am familiar with. Oregon has ample precedent for acceptable ways to estimate a city's aggregate need for employment land by type (though that precedent is continually being adjusted by appeals, legal opinions, and administrative rules). There is, however, much less guidance and no hope of formulas for how to distribute that land around a city. In the case of Banks, I mean "Where should the industrial land be located?"

There is some art and discretion in answering that question, so reasonable people may differ. Perhaps a case can be made for the City's proposed distribution of industrial land: its reports provide its reasoning. My point is that it is also possible to make the case that for several reasons the proposed assignment of industrial land is unlikely to be effective.

I've already explained why the allocation does not support the interest in expansion of the largest private employer in the City, and may, in fact, make its existing, unexpanded operation more difficult. Independent of Banks Lumber, however, the plan for the location of industrial land is weak on several fronts.

A standard practice for industrial siting is to look for access to rail. Thus, one would expect industrial land to be sited next to the freight rail that runs through the City. It looks like rail access to the City's northeast quadrant via the Banks Lumber siding is possible, but land along the rail line and adjacent to Banks Lumber is not designated industrial.

Where is the City envisioning industrial development?

- Near Sunset Park. There is no industrial base in that area to tie to. The northern half could require the displacement of existing residential along the west side Highway 47. The southern half is buffered from residential uses and is close to Highway 6 (though the Oregon Department of Transportation will probably not permit access directly from Highway 6). Neither area has rail. There is an odd sliver of industrial land west of the Park, presumably for a road connection. If the City is attempting to buffer the residential properties from the noise of the park, industrial use is not the preferred solution.
- South of Highway 6. The area has the advantage of being on the highway, at the urban fringe, and separate from encroaching and conflicting uses by the highway. Those theoretical advantages should be discounted, however, by the fact that the Oregon Department of Transportation will probably not allow direct access to Highway 6, and the land is in small parcels and largely developed with low-density residential uses: such low-density residential settings are poor choices for industrial development because of the difficulty of assembling sites of sufficient size to attract industrial users who can pay for infrastructure.

It is not just the placement of the industrial land that is debatable: it is that much of industrial designation is on small, developed parcels. Goal 9 requires "adequate supply of suitable sizes, types, locations and service levels of industrial and commercial lands." The administrative rules that implement the Goal are clear about the importance larger parcels are needed.

ECONorthwest prepared a Goal-9 "economic opportunity analysis" for Banks in 2005. At that point Banks wanted to have land available for fairly aggressive employment growth, based in part on its desires to achieve a greater amount of jobs in the City relative to people.[17] Moreover, it wanted to have a large site for a potential large employer.[18] Goal 9 has been interpreted to allow cities to include in their estimates of needed land some amount in larger sites, even if it is for business types and sizes that are not located within their boundaries now. We noted in our analysis, however, that we thought most of the businesses looking for industrial land would be looking for parcels in the range of 0.5 to 5 acres. We still believe that to be the case, but in the context of the discussion here:

[17] Referred to as a "jobs / housing balance."

[18] At that point it was pursuing the idea of a sound stage.

- It is still the case that Goal 9 allows the City to include needs for larger parcels in its analysis. That need is not necessarily a likely and easily documented demand. Rather, it based on the fact that without some large parcels the City has no chance of attracting larger firms: an inventory of some large parcels provides it the opportunity to pursue that type of economic development.
- Even if the demand for industrial parcels is likely to be concentrated on those in the range of 0.5 to 5 acres, having larger consolidations of acreage is still a big advantage. A 15 or 20 acre parcel, for example, could usually be more readily developed as an industrial park of 10 sites than could many sites totaling the same acreage. This is another reason to make sure there are some larger parcels in an inventory of buildable industrial land.

The two narrow strips of industrial added near the mill are unsuitable for any significant industrial development. The small residential parcels south of Highway 6 are marginal for industrial use.

Even if the areas at the west and south edges of the City were eventually to be made suitable for industrial development, would they be suitable for the expansion of the Banks Lumber operation? Probably not, and certainly not relative to the properties adjacent to Banks Lumber. Banks Lumber would have no economic incentive to move its full operation to one of these alternative sites. And if it expands, any of the uses it would be adding would need to be on adjacent property to operate efficiently (scaling, timber and wood storage, a kiln, energy generation). New industrial land even as close as a half mile away does not help.

Finally, the dispersion of industrial land away from the economic mass of Banks Lumber reduces the possibilities various types of economies of concentration and scale, and of funding needed infrastructure (e.g., through a local improvement district).

I understand that the City's consultant on the UGB expansion, CH2MHill, originally recommended designating much more industrial land in the vicinity of Banks Lumber rather than in the locations the Council is now considering. For all the reasons above I believe that original recommendation is far more consistent with State Goal 9 than the allocations now under consideration. Providing more industrial land east of the railroad, near existing industry and rail service, will be better for industrial development and the overall economy in Banks.