

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 (~~striketrough~~/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

~~ChamberBanks 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 "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%¹.

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 2002².

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.

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

² (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)

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 fulfills 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

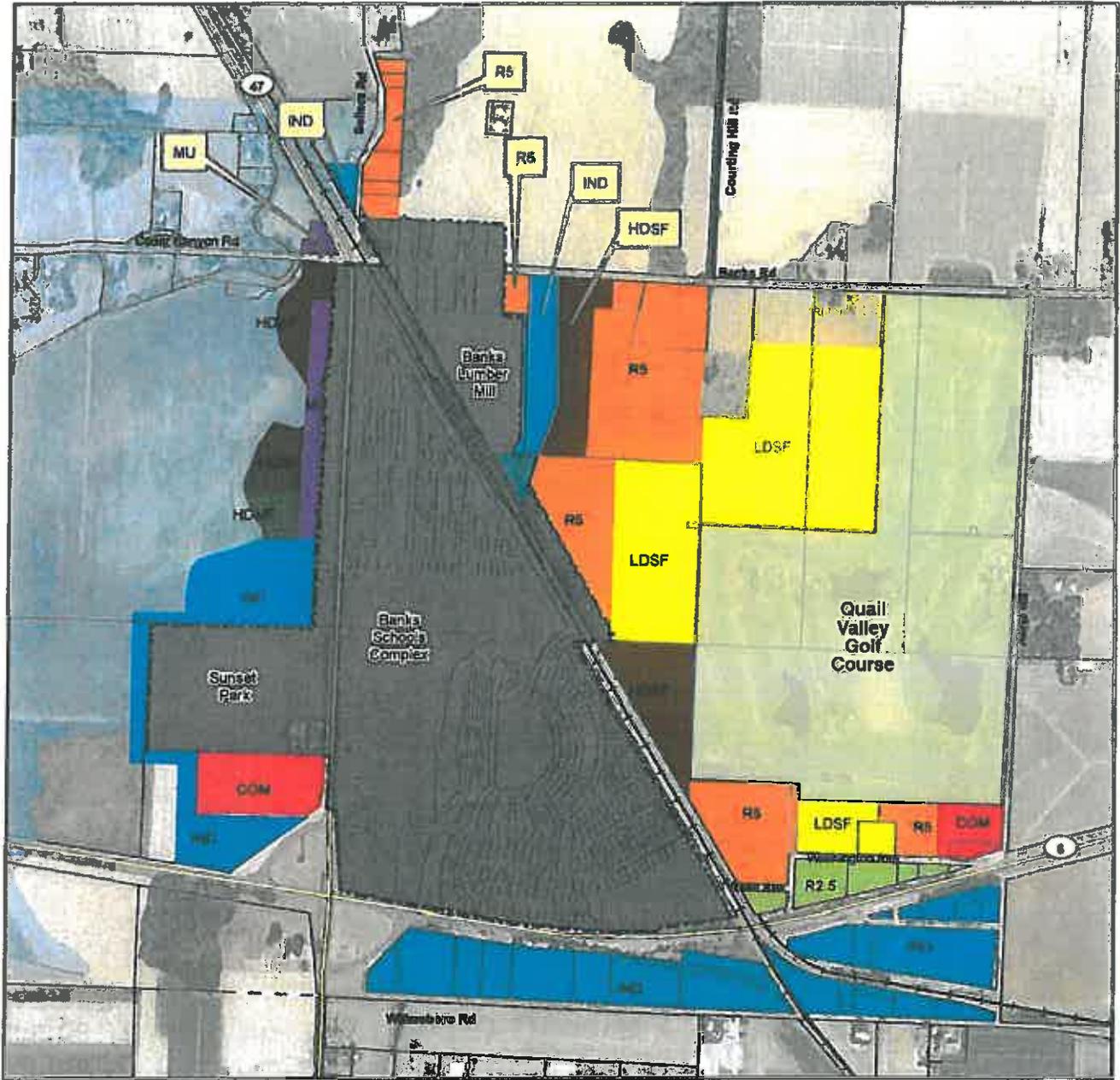
other things, meet the requirements of the transportation planning rule, OAR 660-0125-0060, for an UGB amendment.

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



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

Legend

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

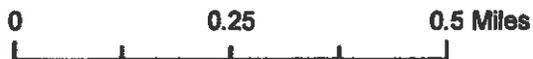


EXHIBIT D

*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



November 24, 2010

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

Re: City of Banks Proposed Comprehensive Plan Amendment (received October 29, 2010)
(Local File No. PA-77-10; DLCDC 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 Transportation¹. 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

¹ 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.

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. 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 11th 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)¹ 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.²

¹ **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.

² **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)³, 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

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.

³ **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.

well as the rural parts of the county. This could be a lengthy and expensive process. If the county agrees, then once that decision is final, Banks could proceed with a UGB expansion that relies upon the county's forecast.

The second option allows immediate, unilateral action by the city. There is another safe harbor at ORS 195.034(2)⁴ which would enable the city to compute a forecast using the 2030 OEA forecast for Washington County (788,162 people), and the 2009 PSU certified population estimates for Banks (1,435 people) and Washington County (527,140 people). This safe harbor method yields a 2030 forecast for Banks of 2,146.⁵

The 2030 safe harbor forecast of 2,146 people is considerably less than the 4,869 people that would result if a 4.5% growth rate were applied to the un-adopted 2024 Banks forecast.⁶ However the safe harbor still results in an annual growth rate of 2.0%⁷, which is higher than Banks might be able justify under a reasonable inquiry into its past growth rates.

There were 1,286 people in Banks in 2000. Nine years later, there are 1,435. This represents only a 1.23% rate of growth⁸ during some of the best years on record for real estate development. It should not be assumed that a countywide coordinated forecast would result in a forecast for Banks that is any higher than the 2% safe harbor forecast that Banks could avail itself of right now.

Employment Forecast

The problem extends beyond just the residential land need analysis; the employment land need analysis is also dependent on a first obtaining a valid population forecast. The city's adopted EOA only forecasts to 2024, and so cannot be used as the basis for a 20-year land need determination. It appears the city believes it can extend the EOA's 2024 forecast by applying the 4.5% growth rate in the standalone Banks forecast from 2004. This is in error.

⁴ ORS 195.034(2): If the coordinating body has not adopted a forecast as required by ORS 195.036 or if the current forecast was adopted more than 10 years before the city initiates an evaluation or amendment of the city's urban growth boundary, a city may propose a 20-year forecast for its urban area by:

(a) Basing the proposed forecast on the population forecast prepared by the Office of Economic Analysis for the county for a 20-year period that commences when the city initiates the evaluation or amendment of the city's urban growth boundary; and

(b) Assuming that the urban area's share for the forecasted county population determined in paragraph (a) of this subsection will be the same as the urban area's current share of the county population based on the most recent certified population estimates from Portland State University and the most recent data for the urban area published by the United States Census Bureau.

⁵ Calculation: $1435 * (788162 / 527140) = 2146$

⁶ Calculation: $3739 * 1.045^6 = 4869$

⁷ Calculation: $(2146 / 1435)^{(1/20)} - 1 = .0203 = 2.03\%$

⁸ Calculation $(1435 / 1286)^{(1/9)} - 1 = .0123 = 1.23\%$

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 11th, 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



February 24, 2004

Mayor Robert Orłowski
City of Banks
100 So. Main Street
Banks, Oregon 97106

Re: Request for County Concurrence with Banks Population Forecast

Dear Mayor Orłowski:

This response is on behalf of the Board of County Commissioners.

As you are aware, I have had the opportunity to discuss this matter with you several times. As well, the entire Board of Commissioners discussed the City of Banks request contained in your letter of February 4, 2004, at our work sessions of February 10 and February 24, 2004.

Briefly stated, you have requested the Board of County Commissioners concur with the City of Banks population forecast for the year 2024 so the city can proceed with the city's periodic review program.

At the heart of this issue is ORS 195.036 which states:

"195.036 Area population forecast; coordination. The coordinating body under ORS 195.025 (1) shall establish and maintain a population forecast for the entire area within its boundary for use in maintaining and updating comprehensive plans, and shall coordinate the forecast with the local governments within its boundary."

Our staff have explained that Washington County and Metro are each a "coordinating body" as defined by ORS 195.025.

Our staff and the staff at Metro have been discussing undertaking jointly the requirements of ORS 195.036. Unfortunately, the effort has yet to begin. In the absence of such an effort and the results of such an effort, the City of Banks has asked the county to concur with the City of Banks' proposed population forecast.

The City of Banks points to the similar circumstance in which the Board concurred with a City of North Plains request of a similar nature.

The City of Banks' population forecast utilizes a number of assumptions that were used in the City of North Plains' population forecast.

The Board has evaluated your request carefully and does concur with the City of Banks' population forecast. Our concurrence has several caveats.

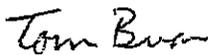
First, because the population forecast depends so heavily on the City of North Plains' work, we expect similar overall density requirements and infill and redevelopment policies to be achieved by the City of Banks.

Second, while ORS 195.036 talks only about population forecasts, the underlying rationale of ORS 195.036 should include an associated employment forecast. We note you have not requested our concurrence with your employment forecast although it is included in the analysis you have provided. Our staff has some concerns about your employment forecast and the extent it may imply a land need. Given that the City of Banks has expressed a desire to maintain its rural character we expect you to continue to evaluate your employment forecast, with the notion that maintenance of rural character will strongly influence the employment forecast.

Finally, given the very productive recent symposium which focused on both agricultural economic and urban economic needs, we expect the dialogue and examination of these issues to move forward. The continued involvement of the City of Banks is crucial. Likewise, when Washington County and Metro proceed with a comprehensive population and employment forecasting effort we will count on the City of Banks willing participation.

Given these caveats, the Board concurs with your request.

Sincerely,



Tom Brian
Chairman

Cc Board Of Commissioners
Brent Curtis

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 FRIENDS OF YAMHILL COUNTY,
5 LEE DOES, AMY DOES,
6 and GRACE SCHAAD,
7 *Petitioners,*
8

9 vs.

10
11 CITY OF NEWBERG,
12 *Respondent.*
13

14 LUBA No. 2010-034
15

16 FINAL OPINION
17 AND ORDER
18

19 Appeal from City of Newberg.
20

21 David O. Black Jr., Portland, filed the petition for review and argued on behalf of
22 petitioners. With him on the brief was Opton and Galton.
23

24 Terrence D. Mahr, City Attorney, Newberg, filed the response brief and argued on
25 behalf of the respondent. With him on the brief was Corinne C. Sherton.
26

27 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
28 participated in the decision.
29

30 REMANDED

11/08/2010

31
32 You are entitled to judicial review of this Order. Judicial review is governed by the
33 provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioners appeal a city ordinance that amends the city’s comprehensive plan housing element.

INTRODUCTION

The challenged decision adopted revisions to the Housing Element and Land Need and Supply section of the Newberg Comprehensive Plan (NCP). The revisions to the NCP were the result of the city’s evaluation of its urban growth boundary (UGB) to determine whether the UGB contains enough land to meet the city’s future residential needs and were based in part on the results of a Buildable Lands Inventory (BLI). The evaluation identified a need for an additional 1,100 acres of land to meet the city’s residential land needs by the year 2030, and an additional 634 acres of land by the year 2040, based on the city’s proposed residential densities for various housing types. The revisions also identified a need for an additional 339 acres of land for institutional needs by 2030 and an additional 207 acres by 2040. Finally, the revisions identified a need for more affordable housing within the city and provided seven possible actions the city could take to address that need.

REPLY BRIEF AND MOTION TO STRIKE

Petitioners move to file a reply brief to respond to new matters raised in the response brief. The reply brief is allowed.

In the response brief, the city requests that the Board take official notice of an excerpt from a 2010 Land Conservation and Development Commission (LCDC) order that is attached as Appendix E to the response brief. That order remands the city’s designation of an urban reserve area. Petitioners move to strike Appendix E to the response brief and all references to Appendix E that are found in the response brief. Petitioners argue that the remand order “is not relevant to the issue at hand, as a factual or legal matter.” Motion to Strike 1.

1 Petitioners do not dispute that the remand order is an official act of LCDC, and as
2 such, we may take official notice of the remand order under Oregon Evidence Code (OEC)
3 202(2).¹ The motion to strike is denied.

4 **FIRST ASSIGNMENT OF ERROR**

5 OAR 660-024-0050(1) provides that in evaluating a UGB, a local government must
6 include “vacant and redevelopable land” located within the UGB in its analysis of whether
7 there is already adequate development capacity to accommodate 20-year residential land
8 needs under OAR 660-024-0040. Although “redevelopable land” is not defined in OAR 660
9 Division 24, which concerns urban growth boundaries (UGBs), it is defined in OAR 660-
10 008-0005(6), the administrative rule that implements Statewide Planning Goal 10 (Housing),
11 as:

12 “* * * land zoned for residential use on which development has already
13 occurred but on which, due to present or expected market forces, there exists
14 *the strong likelihood* that existing development will be converted to more
15 intensive residential uses during the planning period.” (Emphasis added.)

16 **A. Redevelopable Land**

17 In their first subassignment of error, we understand petitioners to argue that the city
18 failed to include all potentially redevelopable land within the UGB in its analysis of land
19 need because it only included “infill land” in its analysis. We understand petitioners to
20 define “infill land” to mean land on which dwellings are located on over-size lots but where
21 there remains existing capacity for partition and additional residential development. We
22 understand petitioners to contend that infill land is a narrower concept than redevelopable

¹ OEC 202(2) provides in relevant part:

“Law judicially noticed is defined as:

“ * * * * *

“(2) Public and private official acts of the legislative, executive and judicial departments of this state, the United States, any federally recognized American Indian tribal government and any other state, territory or other jurisdiction of the United States.”

1 land because the city failed to consider land that could be redeveloped by removing existing
2 structures and replacing them with more intensive residential development such as multi-
3 family dwellings.

4 The BLI explains that in assessing redevelopable land, the city considered both
5 “[t]hat portion of a lot not developed for other uses, including a portion of a non-residential
6 or multi-family lot not used or required for landscaping, lot coverage, parking, setbacks, or
7 other uses” (i.e. infill) and “* * * lot[s] without generally sound structures * * *” that could
8 be removed and replaced with more intensive development. Record 263.

9 The OAR 660-008-0005(6) definition of “redevelopable land” specifically
10 encompasses land on which the city determines there is a “strong likelihood” that the lots
11 will be redeveloped more intensively. The city responds that the city in fact considered the
12 potential for residential development on both infill land and on land where there is a strong
13 likelihood that existing structures will be replaced with more intensive development. In
14 considering whether land is redevelopable by removing existing structures and replacing
15 them with more intensive development, the city explains that it based its assessment of
16 whether a “strong likelihood” for redevelopment exists in part on the arrangement of existing
17 development. Record 122-123. We understand the city to have concluded that there is not a
18 strong likelihood that redevelopment will occur on any lands within the city, due to the
19 arrangement of existing development and market factors.² We think the city’s response is
20 adequate to demonstrate that the city included all “redevelopable land” in its analysis.

² The staff report at Record 122-23 states:

“[T]he inventory does factor in the potential for removal of existing development and replacement with new dwellings. Redevelopment could mean removing an existing house and replacing it with a new house. While this may or may not be desirable, it is a zero net-sum game in terms of development capacity, since it only adds a dwelling by taking one away. Redevelopment could mean removing an existing house and replacing it with two or more. The buildable land inventory does factor in the probability of this happening. In the example above, the 0.45 acre lot could be redeveloped by removing the existing house and placing new dwellings. The ‘development capacity’ gained still must be decreased by the loss of the

1 This subassignment of error is denied.

2 **B. Highway Corridor**

3 In their second subassignment of error, petitioners argue that the city erred in
4 excluding more land than warranted from its inventory of “buildable land,” which is defined
5 in OAR 660-008-0005(2) in relevant part as:

6 “* * * residentially designated land within the urban growth boundary,
7 including both vacant and developed land likely to be redeveloped, that is
8 suitable, available and necessary for residential uses. * * *”

9 According to petitioners, the city excluded the entire width of a study corridor for a future
10 highway from consideration as buildable land, when the city should have excluded only the
11 much narrower anticipated right of way for the highway. The city responds, and we agree,
12 that the inventory excluded only land in the right of way, and not all the land in the study
13 corridor. Record 47, 264.

14 This subassignment of error is denied.

15 **C. Park Land**

16 In their third subassignment of error, petitioners argue that the city erred in
17 overestimating the amount of land that will be needed for parks because it only considered
18 land as suitable for park land if that land also qualifies as “buildable land.” According to

one existing house. In some cases the arrangement of existing development indicates there is not a ‘strong likelihood that existing development will be converted to more intensive residential uses during the planning period,’ thus such lots are appropriately excluded from the buildable land inventory. Note that one of strategies in the Newberg Affordable Housing Action Plan is to encourage retention of existing affordable house through such things as maintenance and rehabilitation, so Newberg should use caution in considering such demolition. The final possibility is removal of some non-residential use in a residential zone, such as a church, and replacement with dwellings. This too, however, is a zero-net sum game, as that use would simply have to be replaced with a new church or other use, which likely could be placed in residential land. Newberg simply is not a community with much developed but unused land available for redevelopment, with great amounts of non-conforming uses in residential zones, nor one where market forces would force push such changes to any great extent. The ambitious redevelopment factor used would cover any development capacity gained if this occasionally happened.”

1 petitioners, limiting its consideration in this way eliminated wetlands, riparian areas, sloped
2 areas, and floodplains, all lands that could be suitable for some parks.

3 The city responds that the inventory identified the city's park land needs as needs for
4 ball fields, playgrounds, and picnic shelters, and determined that lands that are difficult to
5 build structures on or otherwise have development constraints will not meet those identified
6 needs. Record 169, 298, 450-51. While we agree with the city that playgrounds, ball fields
7 and picnic shelters could be difficult to develop on wetlands, in riparian areas or on sloped
8 areas, the city does not explain why it is inherently difficult to develop those types of park
9 uses in floodplains, which do not contain the same development constraints as the other
10 category of lands that the city excluded.

11 This subassignment of error is sustained.

12 **D. Suitable and Available Land**

13 In their fourth subassignment of error, petitioners argue that the city erred in
14 excluding from consideration as "buildable land" "* * * [l]ots or portions of lots that,
15 because of odd shape, topography, irregular placement of buildings, or limited accessibility
16 could not be readily developed if urban services were available." Record 264. Petitioners
17 argue that the city's exclusion of those lands is inconsistent with the definition of "buildable
18 land" at OAR 660-008-0005(2), which provides:

19 "Land is generally considered 'suitable and available' unless it:

20 "(a) Is severely constrained by natural hazards as determined under
21 Statewide Planning Goal 7;

22 "(b) Is subject to natural resource protection measures determined under
23 statewide Planning Goals 5, 15, 16, 17, or 18;

24 "(c) Has slopes of 25 percent or greater;

25 "(d) Is within the 100-year flood plain; or

26 "(e) Cannot be provided with public facilities."

1 The rule contains a presumption that land is “buildable land” unless it possesses one
2 or more of the characteristics listed in the rule, in which case the city may exclude it from the
3 definition of buildable land. However, the qualifier “generally” does not suggest that the five
4 characteristics listed in the definition are the exclusive set of characteristics that a city can
5 consider in determining whether land is “suitable and available.” The city may conclude that
6 other lands with other limiting characteristics are not “suitable and available,” and hence not
7 “buildable land,” if the city explains why those characteristics render those lands not suitable
8 or available for residential development, and that explanation is supported by an adequate
9 factual base.

10 The city responds that the characteristics that it considered including shape,
11 topography, placement of buildings and access issues, were all reasonable bases to conclude
12 that land is not “suitable” for residential land needs. The city cites to evidence that all of the
13 irregularly shaped lots that the city excluded were in fact undevelopable for other reasons in
14 addition to their shape. Record 263, Response Brief App. 7. We agree with the city that the
15 exclusion of irregularly shaped lots is supported by an adequate factual base.

16 However, nearly all land has some development constraints, and the city does not
17 explain why the other factors that it listed – topography, placement of buildings, and access
18 issues -truly render the excluded land undevelopable for residential uses. For example, the
19 city does not explain how excluding land due to “topography” relates to or differs from the
20 portion of the rule identifying land that has slopes of 25% or greater as unbuildable land, or
21 explain how the placement of buildings or access constraints make land unbuildable. We
22 agree with petitioners that there is not an adequate factual base in the record to support the
23 city’s exclusion of land from the inventory based on topography, location of buildings, or
24 access issues.

25 This subassignment of error is sustained, in part.

1 **E. Vacant Land**

2 In their fifth subassignment of error, petitioners argue that the city erred in excluding
3 from its inventory of “buildable land” some lands that do not contain structures but which are
4 in use as large lots that are used in part as yards, yards in use in connection with development
5 on adjacent lots, parking areas, landscaped areas, and storage areas for nearby structures.
6 According to petitioners, all of those types of lands should be classified as “vacant land” or
7 evaluated for redevelopment potential.

8 The city responds that many of the types of lands identified are in fact “developed”
9 because they are dedicated to a developed use. As an example the city points out that the
10 NCP and the city’s development code require adequate off-street parking, and that the NCP
11 contains a requirement that the city provide adequate recreational resources. We agree with
12 the city that it was not error for the city to exclude parking areas, landscaped areas or storage
13 areas that are developed or in use in conjunction with developed areas from its inventory of
14 buildable land.

15 Regarding the city’s exclusion of some lots which are in use in conjunction with
16 developed uses as yards, the city points out that on balance it counted some lots that are
17 developed and that contain large yards as potential infill development, and that the inventory
18 as a whole classified more land as buildable than as developed. The city explains that even
19 when the city could have classified existing lots that are smaller than one-half acre as fully
20 developed, it considered many lots with houses that are smaller than one-half acre as
21 buildable. Petitioners do not point to any specific lot that is used as a yard that was wrongly
22 excluded from the inventory of vacant land. We agree with the city that it was not error for
23 the city to exclude some large yards from its inventory of buildable land and that its decision
24 to do so is supported by an adequate factual base.

25 This subassignment of error is denied.

26 The first assignment of error is sustained, in part.

1 **SECOND ASSIGNMENT OF ERROR**

2 OAR 660-024-0040(4) is one of the administrative rules governing the city’s
3 amendment of its housing element, and provides in relevant part:

4 “The determination of 20-year residential land needs for an urban area must
5 be consistent with *the adopted 20-year coordinated population forecast for*
6 *the urban area * * **.” (Emphasis added.)

7 In 1995 Yamhill County adopted a 20-year population forecast (from 1994 through 2014) for
8 the county and for each urban area within the county as part of the county’s Transportation
9 System Plan.³ That forecast projects a 2014 population for the Newberg urban area of
10 30,656. In 2005, the city adopted a 35-year population forecast for the Newberg urban area
11 as a post-acknowledgement plan amendment to the NCP. That forecast projects a 2015
12 population of 28,559 and a 2040 population of 54,097. After adopting that forecast, the city
13 sent it to the county and requested that the county adopt it as the “coordinated population
14 projection” for the city’s urban area. Record 399. The city takes the position that in 2007,
15 the county adopted the city’s 2005 forecast as “the adopted 20-year coordinated population
16 forecast” referenced in OAR 660-024-0040(1) when the county approved an amendment to
17 the city’s UGB that added approximately 29 acres to the UGB based on the 2005 city
18 forecast. In support of its argument, the city attaches copies of six pages of the county’s
19 decision approving that UGB amendment to its brief, at Appendix 1 through 6.

³ OAR 660-024-0030(1) provides in relevant part:

“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 * * *. 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.”

1 According to petitioners, the 2005 city forecast has not yet been adopted by the
2 county as “*the* coordinated forecast,” for the city and therefore under OAR 660-024-0040 the
3 city cannot rely on the 2005 city forecast to evaluate its 20-year residential land needs.
4 Petitioners maintain that the county’s 2007 UGB amendment decision did not adopt the
5 city’s 2005 forecast as the county’s coordinated forecast.

6 We agree with petitioners that the 2007 county decision approving an amendment to
7 the city’s UGB based on the city’s 2005 forecast did not adopt that forecast as the county’s
8 coordinated forecast for the Newberg urban area. First, the decision itself approves an
9 application to amend the city’s UGB to add 29 acres, and nothing in the recitals or the
10 decision itself refers to the county’s approval or adoption of a coordinated population
11 forecast as part of that decision. The decision contains a list of items that the county is
12 approving, and none of those items mentions adoption of a coordinated population forecast.
13 Response Brief App. 3. Although there is a finding in the 2007 county UGB amendment
14 decision reciting that the city “received a population coordination letter from the County,
15 agreeing with the population forecast [in the NCP],” that language does not indicate that the
16 county intended the UGB amendment, to adopt the 2005 forecast as the coordinated
17 population forecast for the city.⁴

18 Second, another indication that the county 2007 UGB amendment decision was not
19 intended to and did not have the effect of adopting the city’s 2005 forecast as “the
20 coordinated forecast” for the city’s urban area, within the meaning of OAR 660-024-0030, is
21 that the 2007 UGB decision is not included in the county comprehensive plan or embodied in
22 a “document referenced in the [county’s comprehensive] plan” as those words are used in

⁴ That letter is an October 31, 2006 letter from the county planning director to the city planning director indicating that the county had received a copy of the city’s adopted 2005 forecast and would recommend that the forecast be “adopted in the next appropriate amendment to the [UGB] or Urban Reserve Area.” Record 399. That letter also states that the county planning director had notified other local governments about the city’s forecast and had not, as of the date of the letter, received any objections.

1 OAR 660-024-0030. See n 3. No party has argued that the 2007 UGB decision is included
2 or adopted by reference anywhere in the county's comprehensive plan. While the UGB map
3 amended by the 2007 UGB decision is presumably part of the county comprehensive plan,
4 we do not believe that an amended UGB map is sufficient to adopt a coordinated population
5 forecast by inclusion or reference. In our view, the phrase "document referenced in the plan"
6 as used in the rule means background document or similar document, such as an inventory or
7 study, that is adopted by reference into the comprehensive plan.

8 Finally, the city argues that the county's 2007 UGB amendment decision was not
9 appealed and is now deemed acknowledged under ORS 197.625(1), and thus may not now be
10 challenged by petitioners. However, the acknowledged status of the county's 2007 UGB
11 amendment decision has no bearing on the relevant legal question, which is whether the
12 decision in fact adopted the city's 2005 forecast as the county's coordinated population
13 forecast. Petitioners' argument that the county's 2007 UGB decision did not have the intent
14 or effect of adopting the city's 2005 forecast as the county's coordinated forecast for the city
15 is not a collateral attack on the 2007 county decision.

16 As noted, the county adopted population forecasts as part of its TSP in 1995, and
17 projected populations through 2014. ORS 195.034(2) provides a remedy for a city that is
18 faced with a county population forecast that the city believes needs to be updated.⁵ It allows

⁵ ORS 195.034 was enacted in 2007 and provides in relevant part:

"(2) If the coordinating body has not adopted a forecast as required by ORS 195.036 or if the current forecast was adopted more than 10 years before the city initiates an evaluation or amendment of the city's urban growth boundary, a city may propose a 20-year forecast for its urban area by:

"(a) Basing the proposed forecast on the population forecast prepared by the Office of Economic Analysis for the county for a 20-year period that commences when the city initiates the evaluation or amendment of the city's urban growth boundary; and

1 a city to propose an alternative population forecast using the methodology and assumptions
2 set forth in ORS 195.034(2), if the county forecast was adopted more than ten years before
3 the date the city is evaluating its UGB. Under ORS 195.034(3), after a period of time, the
4 city's proposed forecast is deemed to be *the* coordinated forecast after certain notice
5 requirements are fulfilled and the city's forecast is adopted into the city's comprehensive
6 plan. However, the city's 2005 decision adopting a city forecast was not a decision under
7 ORS 195.034.

8 In addition, OAR 660-024-0030(4)(b) provides a method for a city and county to
9 jointly adopt a 20-year forecast.⁶ Under the rule, the county and the city can adopt a 20-year

“(b) Assuming that the urban area's share for the forecasted county population determined in paragraph (a) of this subsection will be the same as the urban area's current share of the county population based on the most recent certified population estimates from Portland State University and the most recent data for the urban area published by the United States Census Bureau.

“(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.

“(b) If the extended forecast is adopted under paragraph (a) of this subsection consistent with the requirements of subsection (1) or (2) of this section:

“(A) The forecast is deemed to satisfy the requirements of a statewide land use planning goal relating to urbanization to establish a coordinated 20-year population forecast for the urban area; and

“(B) The city may rely on the population forecast as an appropriate basis upon which the city and county may conduct the evaluation or amendment of the city's urban growth boundary.”

⁶ OAR 660-024-0030(4)(b) provides:

“A city and county may adopt a 20-year forecast for an urban area consistent with this section. The forecast is deemed to comply with applicable goals and laws regarding

1 forecast for an urban area according to the procedures set forth in the rule and using the
2 methodology and assumptions set forth in the rule. Either method is available to the city in
3 the present circumstances in order for it to proceed with an evaluation of its 20-year
4 residential land needs.

5 In sum, we agree with petitioners that the city erred in relying on the city's 2005
6 forecast, because the record does not establish that that city forecast has been adopted by the
7 county as "the adopted 20-year coordinated population forecast for the urban area" referred
8 to in OAR 660-024-0040(1).

9 The second assignment of error is sustained.

10 **THIRD ASSIGNMENT OF ERROR**

11 As noted, the challenged decision identified a need for more affordable housing
12 within the city. The decision explains that the city's Affordable Housing Ad Hoc Committee
13 developed the Affordable Housing Action Plan in May, 2009, and that plan identified seven
14 actions that the city could take to ensure that an adequate supply of affordable housing is
15 available. Record 31.⁷

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;
- "(B) Is based on OEA's population forecast for the county for a 20-year period commencing on the date determined under OAR 660-024-0040(2); and
- "(C) Is developed by assuming that the urban area's share of the forecasted county population determined in subsection (B) of this rule will be the same as the urban area's current share of county population based on the most recent certified population estimates from Portland State University and the most recent data for the urban area published by the U.S. Census Bureau."

⁷ Those include:

- "Amend [NCP] Goals and Policies
- "Retain the existing supply of affordable housing
- "Insure an adequate land supply for affordable housing

1 Petitioners argue that the city erred in failing to contemporaneously address the
2 identified need for more affordable housing by revising its planned mix of housing types,
3 minimum densities, and/or minimum lot sizes to meet the need for more affordable housing.
4 According to petitioners, Goal 10 (Housing) and the statute and rules that implement Goal
5 10, ORS 197.307(3)(a) and OAR 660-008-0000 *et seq* require that the city address the
6 identified need now.

7 Although petitioners neither cite nor rely on ORS 197.296, the city responds that
8 because it is exempt from compliance with ORS 197.296(6), it is not required to take
9 concurrent action to address the identified need. ORS 197.296(6) provides that if a local
10 government's housing need is determined to be greater than its housing capacity, the local
11 government is required to:

12 “(a) Amend its urban growth boundary to include sufficient buildable lands
13 to accommodate housing needs for the next 20 years. * * *;

14 “(b) Amend its comprehensive plan, regional plan, functional plan or land
15 use regulations to include new measures that demonstrably increase
16 the likelihood that residential development will occur at densities
17 sufficient to accommodate housing needs for the next 20 years without
18 expansion of the urban growth boundary. * * *; or

19 “(c) Adopt a combination of the actions described in paragraphs (a) and (b)
20 of this subsection.”

21 ORS 197.296 applies to cities with a population of 25,000 or more. ORS 197.296(1). The
22 City of Newberg has a population of less than 25,000, and therefore ORS 197.296 does not
23 apply to the city of Newberg. Record 62.

“Change development code standards

“Amend the development fee schedule

“Develop and support public and private programs

“Strengthen economic development efforts.”

1 The Court of Appeals' holding in *GMK Developments, LLC v. City of Madras*, 225
2 Or App 1, 199 P3d 882 (2008), addressed the relationship between ORS 197.296 and Goal
3 10. In *GMK*, the city adopted an urbanization report that identified an eventual shortfall of
4 buildable land over the course of a 50 year planning period. Petitioners argued that the city
5 was required to address the projected shortfall concurrently with its adoption of the
6 urbanization report as a part of the city's comprehensive plan, by amending its urban growth
7 boundary.

8 The Court agreed with LUBA's decision that nothing in the language of Goal 10,
9 OAR 660-008-0010 or ORS 197.307(3)(a) requires that a local government take any action
10 to increase the supply of available land in response to a need projected to occur 20 or 50
11 years in the future. The Court concluded that:

12 "[i]f Goal 10 already obligates local governments to amend urban growth
13 boundaries to accommodate projected housing needs, as petitioners suggest,
14 then ORS 197.296 is completely unnecessary and, in fact, a redundancy. * * *
15 The fact that the legislature enacted ORS 197.296 strongly suggests that the
16 existing regulatory framework was understood *not* to impose the requirements
17 that petitioners now contend that it independently does. Moreover, the fact
18 that the legislature expressly provided that the requirements of ORS
19 197.296(6) apply only to cities with a population of 25,000 or more strongly
20 suggests that the same requirements *not* apply to cities with smaller
21 populations." *Id.* at 7 (emphasis in original).

22 The factual circumstances and arguments in the present appeal differ from the
23 circumstances and arguments in *GMK* in two respects. First, in the present appeal, the city
24 identified a current, unmet need for more affordable housing, whereas in *GMK* the
25 urbanization report identified a shortfall of buildable land 20 to 50 years in the future.
26 Second, in the present appeal, petitioners do not argue that the city should add land to the
27 UGB to address the need for affordable housing, as the petitioners argued in *GMK*. On the
28 contrary, they argue that the city should instead increase densities and minimum lot sizes to
29 address the shortfall, which may have the effect of decreasing the amount of land that is
30 needed to remedy the city's identified shortfall of residential land.

1 However, in the present appeal, similar to the petitioners in *GMK*, petitioners argue
2 that the source of the obligation to address an identified housing need is Goal 10 and its
3 implementing statute and rules, an argument that that the Court rejected in *GMK*. Thus we
4 agree with the city that where ORS 197.296 does not apply, Goal 10 and its implementing
5 statute and rules do not require the city to concurrently address a current, unmet need for
6 more affordable housing when it conducts an evaluation of its residential land needs.

7 The third assignment of error is denied.

8 **FOURTH ASSIGNMENT OF ERROR**

9 In a section labeled “Recent Trends,” the BLI suggested a 25% increase in overall
10 residential densities compared to current density levels. In their fourth assignment of error,
11 petitioners argue that the city erred in relying on outdated data regarding density by housing
12 type to determine current density levels. According to petitioners, the analysis of “Recent
13 Trends” considered only density patterns from 1990 to 2004. Petitioners argue that if more
14 recent data after 2004 were considered, the base-line density might be different.

15 The city responds that there is no legal requirement that the city’s plan must include
16 an analysis of residential density over a particular period, that petitioners have not argued
17 that the data relied on is inaccurate, and that the conclusion that residential density should be
18 increased is supported by an adequate factual base. We agree with the city.

19 The fourth assignment of error is denied.

20 **FIFTH ASSIGNMENT OF ERROR**

21 In their fifth assignment of error, petitioners argue that there is not an adequate
22 factual base to support the city’s conclusion that the city has a need for a 30 to 50 acre high
23 school and academic campus. Petitioners argue based on a letter from DLCD that
24 commented that the acreages for schools appear to be too high, and guidelines published on
25 DLCD’s website dedicated to transportation growth management, that the city’s estimate for
26 needed acreage for schools is too high. Record 162-63.

1 The city responds that it based its determination of acreage needed for schools based
2 on estimates prepared by the city, the Newberg School District, a parks and recreation
3 district, and on a report from the Ad Hoc Committee on Newberg's Future that was presented
4 to the city in 2005 and that was incorporated into the NCP in 2005. Record 401-498. We
5 agree with the city that its determination of a need for 30-50 acres for a high school and
6 academic campus is supported by an adequate factual base.

7 The fifth assignment of error is denied.

8 **SIXTH AND SEVENTH ASSIGNMENTS OF ERROR**

9 These assignments of error challenge the number of new dwelling units that the city
10 projects will be needed between 2010 and 2040.

11 **A. Sixth Assignment of Error**

12 The city projected a future need for 11,972 dwelling units between 2010 and 2040,
13 based on an average household size of 2.76 persons and an assumed vacancy rate of 5.2%.
14 Record 27. According to petitioners, the city miscalculated the number of dwelling units
15 needed, with the result that it overestimated the land need by more than 100 acres.
16 Petitioners argue that under the city's forecasted population increase of 29,600 people, the
17 number of future needed dwelling units is actually 11,282 or 690 units less than the city
18 calculated. Petitioners argue that a population increase of 29,600 persons divided by 2.76
19 person per household results in 10,724 households, and applying a 5.2% vacancy factor
20 yields a total number of 11,282 needed dwelling units, not the 11,972 units the city
21 calculated. Assuming 6.8 dwellings per acre, petitioners calculate, this means that the city
22 overestimated its land need by approximately 100 acres.

23 The city responds that petitioners' calculation left out the year 2009 for population
24 estimates, even though the buildable lands inventory was prepared in 2009, and that one full
25 year of population growth changes the calculation and result. The city also responds that
26 petitioners' calculation fails to include the 49 dwellings that are projected to be displaced by

1 the bypass project discussed in the first assignment of error. Finally, the city responds that
2 petitioners' calculation errs in application of the assumed 5.2% vacancy rate.

3 In determining the future need for dwelling units, the city relied on a report prepared
4 in 2004 (the Johnson Gardner report) that projected the future need for dwelling units from
5 2004-2040, based on a population forecast prepared in 2004 that was eventually adopted by
6 the city in 2005. Record 25, 574-591. According to that report, "[t]he demand numbers
7 reflect an assumed structural vacancy rate of 5% for residential units within the UGB."
8 Record 532. That seems to us to say that the final projected number of dwelling units
9 already includes accommodation for the projected vacancy rate. However, because it is not
10 clear from the city's response or any of the record pages that the city cites, we elect not to try
11 to resolve the parties' disagreement about how the assumed vacancy rate should apply or was
12 applied in any calculation of dwelling units needed. We simply cannot tell from the record
13 how the numbers that appear at Record 25 were calculated.⁸ On remand, the city must
14 explain how it arrived at the numbers that are included in the table at Record 25.

15 In addition, if the report's projection of the number of future dwelling units needed
16 was based on the population projections that were eventually adopted by the city in 2005 as a
17 part of the NCP, for the reasons discussed in the second assignment of error, that forecast has
18 not been adopted by the county as the coordinated forecast and may not be relied on in
19 determining the city's future residential land needs until it or some other forecast is adopted

⁸ Although the number of projected dwelling units from 2010 - 2015 that is contained in the challenged decision does not appear in the Johnson Gardner report, the number of projected dwelling units needed from 2016 - 2020 and from 2021 - 2025 tracks exactly the number of dwelling units set forth in the Johnson Gardner report. *Compare* Record 25 and 532. The city does not explain how it calculated the number of dwelling units needed from 2010 - 2015, 2026 - 2030, 2031 - 2035, and 2036 - 2040, but we assume that the city extrapolated the numbers found at Record 532 based on the projected growth rate or on some other formula.

1 by the county as the coordinated forecast or the city adopts a forecast pursuant to ORS
2 195.034.

3 The sixth assignment of error is sustained.

4 **B. Seventh Assignment of Error**

5 In their seventh assignment of error, petitioners argue that the city’s projected number
6 of new dwelling units is too high because it assumes that all new people living within the city
7 will need new dwelling units. According to petitioners, that projection fails to account for
8 population increases that are the result of annexation and expansion of the city’s urban
9 growth boundary, which mainly include people who already have dwellings and thus who
10 will not require new buildable land. The city responds that the projected number of new
11 dwellings needed does not take into account population increases from UGB expansions
12 because those future expansions are entirely speculative and may not occur.

13 Because this assignment of error and the city’s response rely on the 2005 city
14 population forecast that we have determined in the second assignment of error that the city
15 was not entitled to rely on, it would be premature to address this assignment of error.
16 Therefore we need not address it.

17 The county’s decision is remanded.