

TO: Hearings Officer

FROM: Lisa Anderson-Ogilvie, AICP
Deputy Community Development Director and
Planning Administrator

DATE: February 9, 2022

SUBJECT: **Conditional Use / Class 3 Site Plan Review / Class 2 Adjustment / Class 2 Driveway Approach Permit / Class 1 Design Review Case No. 21-05 – 4900 Block of State St; Open Record**

On January 26, 2022, the Hearings Officer held a public hearing for CU-SPR-ADJ-DAP-DR21-05. The hearing was closed, and the record was left open until February 9, 2022 at 5:00 p.m. for anyone to provide additional written testimony. The applicant has until February 16, 2022 at 5:00 p.m. to submit final written rebuttal.

The comments received for this case are attached to this memo.

Attachments:

1. Staff Rebuttal – Dated February 9, 2022 – pages 2-276
2. ELNA Comments – Dated February 9, 2022 – page 277
3. Applicant Additional Comments – Dated February 9, 2022 – pages 278-468

cc: CU-SPR-ADJ-DAP-DR21-05 File



MEMO

TO: Hearings Officer

FROM: Lisa Anderson-Ogilvie, AICP
Deputy Community Development Director and
Planning Administrator

DATE: February 9, 2022

SUBJECT: **Conditional Use Permit, Site Plan Review, Adjustment Driveway Approach Permit and Design Review Case No. CU-SPR-DAP-DR21-05 – 4900 Block of State Street – 97301; Rebuttal Testimony**

On December 22, 2021, a public hearing was conducted for a proposed twenty-six building apartment complex with a total of 291 dwelling units with associated site improvements for property located at the 4900 Block of State Street.

The Hearings Officer continued the public hearing to January 26, 2022 to allow for additional findings and testimony to be submitted. At the December 22, 2021 hearing the applicant granted a 35-day time extension to the state mandated decision deadline for this collective application to allow for additional time for the continued hearing, extending the deadline from March 31, 2022 to May 5, 2022.

On January 26, 2022 the applicant submitted updated development plans and written response included as **Attachment A**.

At the January 26, 2022 continued hearing, the applicant granted a 21-day time extension to the state mandated decision deadline to allow for addition time for written comments to be submitted into the record. The Hearings Officer closed the public hearing on January 26, 2022 and left the record open for additional testimony to be submitted. February 2, 2022 at 5:00 PM was the deadline for any new testimony to be submitted by any party, no comments were received during this period. February 9, 2022 at 5:00 PM is the deadline for rebuttal testimony, and February 16, 2022 at 5:00 PM is the deadline for the applicant's final argument.

1) Needed Housing

ORS 197.303 states:

“Needed housing” means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C 1437a.

Further, ORS 197.307(4) provides that, “a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing.”

Staff understands the needed housing provisions of the ORS apply to a broad range of housing types and that the Salem Housing Needs Analysis 2015-2035 undoubtably demonstrates that Salem is in need of a wide range of housing types to support a growing population. Staff concurs with the applicant’s claim that the proposed apartment complex is needed housing. However, staff does not necessarily concur with the assessment that the needed housing provisions apply to land zoned for commercial use. ORS Chapter 197 states, “needed housing means all housing on land zoned for residential use or mixed residential and commercial use.” Staff interprets this to mean that needed housing provisions apply to land zoned for residential use, including all residential zones, and to land that allows mixed residential and commercial use, meaning mixed-use zones or commercial zones which allow residential use as an outright permitted use.

The subject property is zoned CR (Retail Commercial), a zone that does not allow housing as an outright permitted use¹. Per SRC Chapter 522, Table 522-1, multi-family residential uses are allowed in the CR (Retail Commercial) zone with a Conditional Use Permit. The purpose for the conditional use permit process is to provide an approval process to review and allow uses that are similar to other uses permitted outright in a zone, but because of the way which the use may be conducted, or the land and buildings developed for the use, and because of the impact of other potential uses abutting the property, review is required to determine whether a proposed uses is compatible with the surrounding area and the imposition of conditions may be necessary to minimize the negative impacts on uses in the surrounding area. Staff was unable to find any guidance from case law before the Land Use Board of Appeals on how the needed housing provisions of the ORS apply to zones where residential uses are not permitted outright.

Staff is recommending that the Hearings Officer find that the conditional use permit criteria in SRC Chapter 240 are clear and objective. In evaluating whether the criteria for approval listed in SRC 240.005(d)(2 and 3) are met, staff finds that if the development proposal is in compliance with all applicable standards of the SRC, then the reasonably likely adverse impacts of the proposed multi-family use are minimized (SRC 240.005(d)(2)) and that the multi-family use is reasonably compatible with and will have minimal impact on the livability or approved development of surrounding property (SRC 240.005(d)(3)).

A full review of applicable standards of the SRC, including, but not limited to SRC Chapter 522 (Retail Commercial Zone), Chapter 702 (Multiple Family Design Review Standards), Chapter 800 (General Development Standards), Chapter 806 (Off-Street Parking, Loading, and Driveways) can be found addressing the Site Plan Review

¹ See attached zoning map included as **Attachment B**.

and Design Review approval criteria in the staff report, supplemental staff report, and this rebuttal testimony. The applicant's request does include three adjustments. Due to revisions in the site plan, the adjustment request to allow an off-street parking area near Greencrest Street NE to be located in front of adjacent buildings, instead of behind or beside buildings as required by SRC 702.020(d)(2) is no longer needed as the revised site plan removes the parking area between the proposed multi-family buildings and Greencrest Street NE.

There are two development standards that the applicant still needs relief from; 1) to allow buildings to be placed at the 20-foot setback along State Street and Cordon Road NE instead of five-ten feet as required by SRC 702.020(e)(4); and 2) to eliminate the direct pedestrian access to adjacent sidewalk requirement for ground level units adjacent to State Street and Cordon Road NE as required by SRC 702.020(e)(5). As indicated in the staff report dated December 22, 2021, staff is supportive of the adjustments requested by the applicant.

In summary, staff finds that with the applicant's revised site plan and with the exception of the two adjustments requested by the applicant, all clear and objective standards applicable to the proposal have been met. However, as discussed below in Section 2, the clear and objective approval criteria for evaluating a development proposal for compliance with an approved conceptual plan in SRC Chapter 260 have not been satisfied.

2) Annexation Conceptual Plan

The subject property was annexed into the City in 2011 (ANXC-689) as part of a larger development site containing approximately 120 acres. At the time of annexation, a commercial zoning designation (CR – Retail Commercial) was added to approximately 18 acres of the property in order to address the deficit of commercial services in the surrounding area.

Per SRC 260.035(d), if a comprehensive plan or zone designation is proposed which is different from the existing or equivalent comprehensive plan designation or equivalent zone designation, as set forth in Table 260-1, then a conceptual development plan is required to be submitted with the annexation.

Annexation Case No. ANXC-689 included a request for concurrent rezoning and the applicant submitted a conceptual site development plan (**Attachment C**) which is binding on the property. Eventual development of property which was subject to a conceptual plan at the time of annexation shall be in substantial conformance with any conceptual plan approved under SRC 260.035. SRC 260.090 states that development of property is found to be in substantial conformance with the conceptual plan if the criteria listed below are met. The following is staff's analysis of the development proposal compared to the approved conceptual plan for the subject property².

² SRC 260.090 provides clear and objective standards related to the analysis of the proposed site plan for

- (1) SRC 260.090(a)(1) – [The plan] Is consistent with the character and intent of the conceptual plan.

Staff Response: The conceptual plan approved with the annexation identified an intensity of dwelling unit density in the four proposed zoning designations, RS (Single Family Residential), RM-I (Multi-Family Residential), RM-II (Multi-Family Residential) and CR (Retail Commercial). The conceptual plan did not indicate any residential units on the CR (Retail Commercial) zoned portion of the property. The applicant also provided a shadow plan (**Attachment D**) to further illustrate to the Planning Commission and City Council and the public how the property could be developed, and no multi-family residential units were indicated on this plan. The intent of the commercial zoning for the subject property was to enhance and complement the existing and proposed residential uses in the area, providing a neighborhood center with a variety of uses and services that are lacking in the nearby area. Findings from the April 26, 2010 staff report to City Council for ANXC-689 indicate that the comprehensive plan map change and zone changes proposed result in a mixture of residential and commercial uses that provide a diversity of housing types while providing the opportunity for commercial uses to be integrated into a residential neighborhood. Further, the Planning Commission recommendation to City Council dated March 16, 2010 indicates that providing retail, services, and office uses for the new residential units within this proposed development and the existing residential uses will create a mixed-use area. The combination of these uses creates a synergy to result in a dynamic neighborhood.

The proposed site plan calls for the vast majority of the commercially zoned land to be developed with a multi-family residential use which is not consistent with the character and intent of the conceptual plan. Staff finds that this approval criterion has not been satisfied.

- (2) SRC 260.090(a)(2) – The impacts from the development, including, but not limited to, noise, vibration, dust, odor, or fumes, detectable at the property line will not exceed the maximums typical for the categories of uses proposed in the conceptual plan;

Staff Response: The proposed multi-family residential use does not create or generate noise, vibration, dust, odor, or fumes that would exceed the maximums typical for other uses allowed in the CR (Retail Commercial) zone, therefore, staff finds that the proposal is consistent with this approval criterion.

- (3) SRC 260.090(a)(3) – The number and types of vehicular trips to and from the site will not exceed the maximums typical for the categories of uses proposed in the conceptual plan.

conformance with the conceptual plan approved for the property at the time of annexation. Further, because the process for reviewing proposed development plans for conformance with approved conceptual plans at the time of annexation is not a procedure regulating the development of housing, included needed housing, the provisions of ORS 197.307 do not apply to this analysis.

Staff Response: The applicant has provided a memo from a traffic engineering consultant, Lancaster Mobley, dated January 24, 2022 which concluded that development of the property with a commercial use consistent with the conceptual plan would result in an approximately 600 percent increase in the vehicle trips during the evening peak hour as compared to the proposed multi-family use.

The proposed multi-family use generates fewer vehicular trips compared to development of the property as a retail shopping center. The vehicle trips for the proposed multi-family use will not exceed the maximums typical for a retail shopping center, and it therefore consistent with this approval criterion.

- (4) SRC 260.090(a)(4) – That the amount and types of outside storage, loading, and parking will not exceed the maximums typical for the categories of uses proposed in the conceptual plan.

Staff Response: Outdoor storage areas are not included in the multi-family residential development proposal. Off-street parking and loading spaces are consistent with the minimum and maximum ranges provided in SRC Chapter 806. Therefore, staff finds that the proposed multi-family residential use is consistent with this approval criterion.

Conclusion:

The approved conceptual plan did not anticipate residential uses in the commercially zoned portion of the property, therefore, the proposed multi-family use on the commercial zoned property is not consistent with the conceptual plan and cannot be approved without a substitution.

SRC 260.090(b) provides the process for the Director to approve substitutions of a modified or alternative plan that is found not to be in substantial conformance with an approved conceptual plan as follows:

“If proposed development of the property is not in substantial conformance with the conceptual plan approved under SRC 260.035, on application the Director shall approve the substitution of a modified or alternative plan if the landowner demonstrates the plan complies with the land use and development regulations applicable to the property, the plan is consistent with the character of, and development patterns in, the surrounding area and the plan minimizes any reasonably likely adverse impacts on the surrounding area.” And that the “Director may approve changes to a conceptual plan, if such changes are necessary to comply with land use and development regulations in effect at the time development occurs, to comply with conditions of approval imposed as part of a land use decision or to comply with any permit or license required for development to occur, and may impose conditions necessary to minimize reasonably likely adverse impacts resulting from revisions to the conceptual plan, or the substitution of a new conceptual plan.”

Findings submitted by the applicant with the Annexation (ANXC-689) indicate that:

“[the proposed commercial zoning designations allow for] proposed community and neighborhood shopping that will offer a wide variety of goods and services for a market area of several neighborhoods. Although specific future tenants have not been identified, it is anticipated that the proposed community and neighborhood shopping will be anchored by a grocery store, with small variety stores such as a drugstore, hair salon, etc., or possibly a bank, as principal tenants. Applicants anticipate that the grocery store will be approximately 50,000 square feet to 80,000 square feet. The intent is to provide community and neighborhood shopping that will provide for the sale of convenience goods, such as food, drugs and sundries, and personal services to meet the daily needs of the existing and future residential neighborhoods.”

The applicant has not explained how the proposal to provide less commercial services in the area than shown at the time of annexation is consistent with the character of, and development patterns in, the surrounding area or how the plan minimizes any reasonably likely adverse impacts on the surrounding area.

The City has a documented deficit of commercial land as evidenced by the 2014 Economic Opportunities Analysis (EOA) (**Attachment E**). The EOA examined Salem’s need for industrial and commercial land through 2035 and determined that the City has a projected commercial land shortage of 271 acres, with about 60 percent needed for office and commercial services (about 170 acres), and about 40 percent needed for retail and retail services (about 100 acres). This property was approved for annexation and rezoning by the voters as a commercial area that would serve the existing residential area and the new residential developments in the adjacent East Park development. The nearest commercially zoned property is approximately 4,900 feet to the west located at Lancaster Drive NE. There are no other commercially zoned properties located within one mile of the subject property available to serve the surrounding residentially zoned area. At the time of annexation, commercial zoning was applied to approximately 18 acres in order to address the deficit of commercial services in the surrounding area. However, the development proposal under consideration does not align with the intent of the commercial designation applied to this land at the time of annexation. The current proposal includes a future City Park to occur on approximately 6.25 acres of commercially zoned land, reducing the supply of land available for commercial development to approximately 12 acres. Further, this proposed multi-family use would occupy approximately 10.77 acres, leaving only 1.23 acres (less than 7 percent) of the land originally envisioned for providing commercial services in a largely residential area available for actual commercial development.

While the development plan may comply with applicable land use regulations, the character and development patterns in the area call for needed commercial services. Reducing the amount of commercial development to 1.23 acres is likely to have an adverse impact on the surrounding area, requiring nearby residents to travel further

from their homes to receive needed goods and services.

Therefore, the Director finds that the proposed substitution does not comply with SRC 260.090(b). SRC 260.090(c) provides the opportunity for the Director to impose conditions necessary to minimize reasonably likely adverse impacts resulting for revisions to the conceptual plan, however the Director finds that no conditions can be placed on the approval that would minimize impacts resulting from the loss of commercial land in the area.

The Director does not approve a substitution or modification of the conceptual plan.

3) Updated Site Plan dated January 26, 2022, Development Standards, Sound Wall along Cordon Road NE

Prior to the January 26, 2022 hearing, the applicant submitted into the record a letter and updated site plan dated January 26, 2022 (**Attachment A**). Staff requested additional time to review and comment on the updated site plan, the following is an analysis by staff.

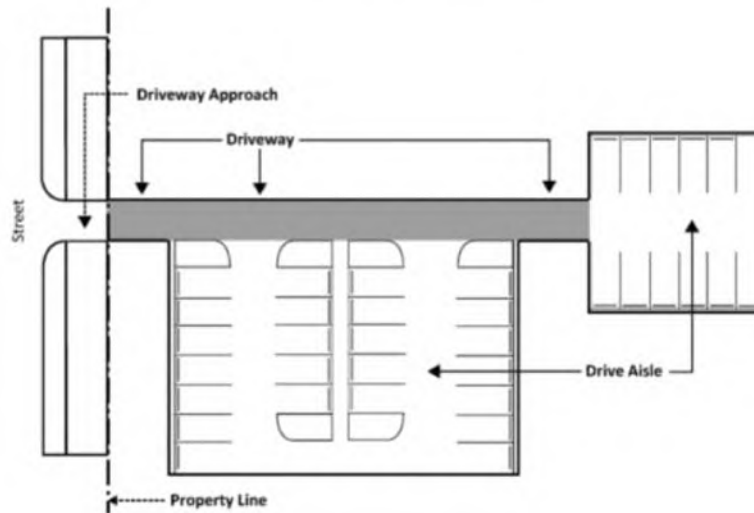
a. Buffering and setbacks between proposed multi-family use and future commercial use.

The January 26, 2022 site plan clarifies the location of common lot line, which will shift to the north and east to match the proposed fence line. SRC Chapter 522, Table 522-3 provides that multi-family uses require a minimum interior setback of 10 feet for buildings, accessory structures and vehicle use areas. This 10-foot setback applies to all interior property lines (front, side and rear). Per SRC 112.050, setbacks are measured along a line that is perpendicular to the property line and extended from the property line inward. At the continued hearings on January 26, 2022 the applicant questioned the code authority for not allowing a shared drive aisle crossing a common property line. The minimum setbacks and method for measuring setbacks as identified is the reason for the conflict.

SRC 806.040(c)(1) does provide a similar provision which allows for common driveways to cross over an interior setback and landscape area. However, this only applies to driveways and not drive aisles, which are part of the vehicle use area. Driveway is defined in SRC Chapter 111 found below:

Driveway means an area providing vehicular access to a site that begins at the property line and extends into the site; or an area providing vehicular circulation between parking areas on a site (see Figure 111-2). A driveway does not include maneuvering areas or drive aisles within parking areas.

FIGURE 111-2. DRIVEWAY



The updated site plan provided January 26, 2022 seems to have addressed the setback issue by moving the property line to match the proposed fence line and providing the full 10-foot-wide building and vehicle use area setback measured from the property line. The proposed development will occur on Lot 350 from Phase 3 of the East Park Estates Planned Unit Development/Subdivision (CPC-ZC-PUD-SUB-ADJ19-08MOD2). The final plat for Phase 3 has not yet been recorded, and the applicant is allowed some degree of flexibility in comparing the lot configuration for proposed Lot 350 that received tentative approval verse what is proposed at the time of final plat. If Lot 350 does not have vehicular access to Greencrest Street NE, then an access easement meeting applicable standards of the SRC shall be provided across Lot 351. Compliance with applicable standards will occur at the time of final plat review for Phase 3 of the subdivision. If the Hearings Officer decides to approve the collective applications, staff recommends a condition of approval requiring the final plat for Phase 3 of the East Park Estates Planned Unit Development/Subdivision to be recorded prior to building permit issuance.

Future commercial development at the southwest corner with be reviewed under a separate site plan review application and checked for compliance with all applicable interior setback requirements, including setback and buffering to the proposed access easement on Lot 351.

b. Sound wall along Cordon Road NE.

Staff recommended a sound wall along Cordon Road NE due to previous, ongoing complaints from residents in the area regarding noise and light pollution

from the high volume of traffic on Cordon Road, which is designated as a Parkway in the Transportation System Plan (TSP). Staff has reviewed the Salem Revised Code and the TSP for clear and objective standards relating to screening of residential uses adjacent to Cordon Road NE. There are no applicable provisions requiring screening along parkway streets, therefore, staff does not recommend that the Hearings Officer impose any conditions of approval requiring a sound wall along Cordon Road NE.

4) **Conclusion**

Staff recommends that the Hearings Officer find that the development proposal is not in substantial conformance with the conceptual plan approved for the property at the time of annexation and deny the applicant's collective application request to develop the subject property.

If, however, the Hearings Officer approves the applicant's development proposal, staff recommends the following conditions of approval related to the Site Plan Review application:

- 1) Convey land for dedication to equal a half-width right-of-way of 48 feet along the entire frontage of State Street, including sufficient right-of-way to accommodate public infrastructure at the property corners.
- 2) Construct a half-street improvement along the entire frontage of State Street to Major Arterial street standards as specified in the City Street Design Standards and consistent with the provisions of SRC Chapter 803.
- 3) Convey land for dedication to equal a half-width right-of-way of 30 feet on the development side of Greencrest Street NE, including sufficient right-of-way to accommodate public infrastructure at the property corners.
- 4) Construct a half-street improvement along the frontage of Greencrest Street NE to Collector standards as specified in the City Street Design Standards and consistent with the provisions of SRC Chapter 803.
- 5) As specified in the TIA, construct eastbound-to-northbound and westbound-to-southbound left-turn lanes at the intersection of State Street and Greencrest Street NE.
- 6) Construct a minimum 12-inch water main in State Street from Cordon Road NE to Greencrest Street NE.
- 7) Construct a minimum 12-inch water main in Greencrest Street NE along the entire frontage of the proposed development.
- 8) Design and construct a storm drainage system at the time of development in compliance with SRC Chapter 71 and PWDS.

Attachments:

- A. Applicant's Updated Plans and Written Response Dated January 26, 2022
- B. Zoning Map
- C. Annexation Case No. ANXC-689 City Council Staff Report Dated April 26, 2010
- D. Shadow Plan
- E. Economic Opportunities Analysis adopted on October 26, 2015

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January 26, 2022

Via E-mail Only

Aaron Panko
apanko@cityofsalem.net

Re: East Park Apartments - CONDITIONAL USE / CLASS 3 SITE PLAN REVIEW / CLASS 2 ADJUSTMENT / CLASS 2 DRIVEWAY APPROACH PERMIT / CLASS 1 DESIGN REVIEW
CASE NO. CU-SPR-ADJ-DAP-DR21-05 4900 BLOCK OF STATE STREET - 97301
AMANDA NO. 21-117429-ZO, 21-117432-RP, 21-117433-ZO, 21-117435-ZO & 21-121189-DR

Dear Aaron:

Thank you for the revised staff report of January 26, 2022. We have made several revisions to the site plan to address the concerns, and the revised site plan is attached.

First, the driveway easement across the driveway throat leading east from Greencrest St. into the apartments area as described on the top of page 3 of the revised staff report is shown on the site plan.

The 10-foot landscaped buffer, and a 6-foot fence, done to the Type C standard of Chapter 807, are shown along the property line.

The southerly drive aisle parallel to State St. has been closed between Building 1 and the commercial area. This closure allows the 10-foot pedestrian pathway from State St. leading north into the site to be uninterrupted, and the pathway will be screened by the 10-foot landscape strip and the 6-foot fence from the commercial area.

The 10-foot landscape strip with the 6-foot fence is also illustrated south and southeast of Building 15, between that apartment building and the smaller commercial building to the south.

For fire access, the applicant is expediting the completion of Stella St, which will be open prior to stockpiling of combustible building materials. We propose a condition of approval that states:

"Stella St. will be constructed and approved for use by the Fire Department prior to the stockpiling of combustible materials."

Finally, the staff concerns about compatibility remain, for the reasons stated in my earlier letter, inapplicable to this application for housing under ORS 197.307(4).

Aaron Panko
January 26, 2022
Page 2

Thanks again for your assistance.

Sincerely,

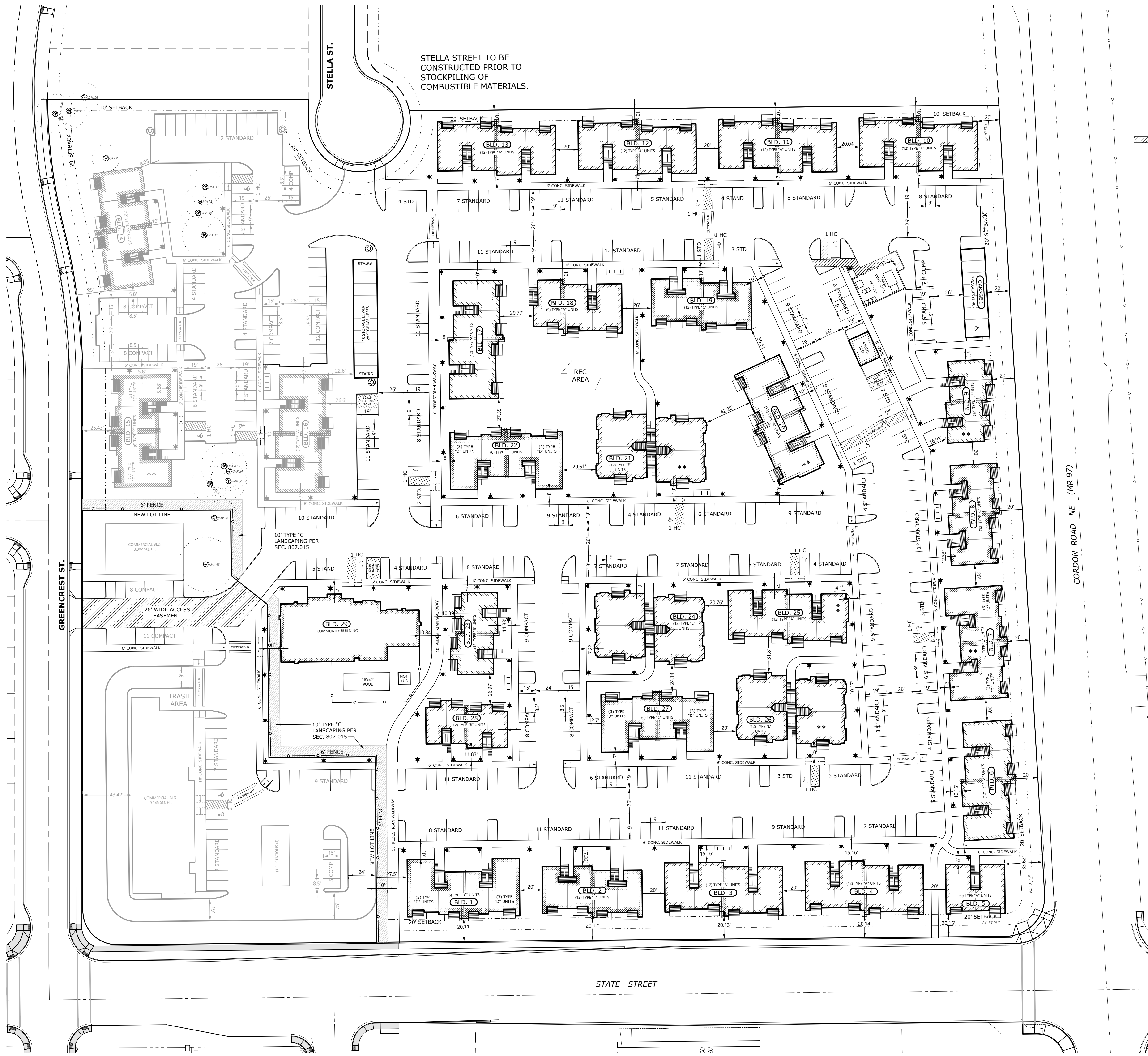
JORDAN RAMIS PC



Edward H. Trompke
Admitted in Oregon

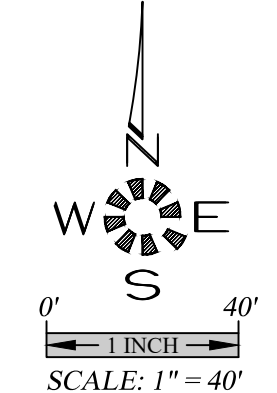
cc: East Park, LLC
Multitech Engineering

Enclosure



★★ THE INDICATED LOWER FLOOR UNITS IN BUILDINGS 7, 9, 20, 21, 25, & 26 ARE TO BE TYPE 'A' UNITS IN ACCORDANCE WITH THE 2014 OSSC SEC. 1107.6.2.1.1 (NOTED ON FLOOR PLANS). ALL OTHER LOWER FLOOR UNITS TO BE TYPE 'B' UNITS IN ACCORDANCE WITH THE 2014 OSSC SEC. 1107.6.2.1.2

- POLE LIGHT MAXIMUM 14' TALL
- POST LIGHT MAXIMUM 5' TALL
- WALL PACK MOUNTED ON BUILDING
- LOCATION OF ELECTRICAL SEPARATION WALL
- MAXIMUM 1:12 SLOPE ON SIDEWALK END RAMP
- 6 BICYCLE SPACES.



- RM2 MULTI FAMILY:**
- 36 TOTAL APARTMENT UNITS**
 - 24 TYPE "A" 2-BD, 3-BA (952 S.F.) UNITS**
 - 6 TYPE "C" 1-BD, 1-BA (728 S.F.) UNITS**
 - 6 TYPE "D" 3-BD, 2-BA (1204 S.F.) UNITS**
- CR MULTI FAMILY:**
- 291 TOTAL APARTMENT UNITS**
 - 135 TYPE "A" 2-Bd, 3-Ba (952 S.F.) UNITS**
 - 36 TYPE "B" STUDIO (549 S.F.) UNITS**
 - 60 TYPE "C" 1-Bd, 1-Ba (728 S.F.) UNITS**
 - 24 TYPE "D" 3-Bd, 2-Ba (1204 S.F.) UNITS**
 - 36 TYPE "E" 2-BD, 2-BA (1162 S.F.) UNITS**

- RM2 MULTI FAMILY:**
- 120 TOAL PARKING STALLS**
 - 52 STANDARD STALLS**
 - 63 COMPACT STALLS**
 - 5 HADICAP STALLS**
 - 6 BICYCLE SPACES (1 RACK)**

- CR MULTI FAMLY:**
- 411 TOTAL PARKING STALLS**
 - 355 STANDARD STALLS**
 - 38 COMPACT STALLS**
 - 11 HANDICAP STALLS***
 - 7 GARAGES (1 HANDICAP)**
 - 30 BICYCLE SPACES (5 RACKS)**

- 3 LOADING ZONES**
- 9 STORAGE UNITS**
- 1 COMMUNITY BUILDING**
- 1 TRASH COMPACTOR / RECYCLE**
- 1 SWIMMING POOL (42'x16')**
- 1 U.S. MAIL BOX AREA**

(* 1-MARKED "WHEELCHAIR USE ONLY")

- ADA HANDICAP ACCESSIBILITY NOTES:**
- ALL ON-SITE WALKWAYS, PEDESTRIAN CONNECTIONS TO THE PUBLIC SIDEWALK AND ROUTES TO BUILDING ENTRANCES ARE ACCESSIBLE WITH RUNNING SLOPES LESS THAN 5% AND CROSS SLOPE LESS THAN 2% MAX. LANDINGS AT BOTTOM OF STAIRS AND EXT. FACE OF ENTRANCE DOORS SHALL HAVE A SLOPE IN THE DIRECTION OF TRAVEL NOT TO EXCEED 2%.
 - HANDICAP PARKING STALLS AND ACCESS AISLES ARE TO HAVE SLOPES IN ANY DIRECTION OF LESS THAN 2% MAX. GRAPHIC MARKINGS & SIGNAGE FOR HANDICAP AND VAN ACCESSIBLE STALLS WILL BE PER OSSC 2010 CHPTR. 11 AND ORS. REQUIREMENTS.
 - HANDICAP ACCESSIBLE CURB RAMPS SHALL HAVE A RUNNING SLOPE NOT TO EXCEED 1:12 MAX. AND A CROSS SLOPE NOT TO EXCEED 1%.
 - THE COMMUNITY BUILDING & ON-SITE LAUNDRY FACILITIES WILL BE FULLY HANDICAP ACCESSIBLE IN ACCORDANCE WITH ANSI A117.1 AND CHAPTER 11 OF THE 2010 OSSC.
 - 2% OF THE LIVING UNITS OR (3) UNITS WILL BE TYPE 'A' HANDICAP ACCESSIBLE. THESE INCLUDE A 1, 2 AND 3 BEDROOM UNIT AS INDICATED ON THIS SITE PLAN. THE BALANCE OF THE GROUND FLOOR LIVING UNITS WILL BE TYPE 'B' ADAPTABLE UNITS IN ACCORDANCE WITH ANSI A117.1.

SITE PLAN OPTION #3

EAST PARK APARTMENTS

NO CHANGES, MODIFICATIONS OR REPRODUCTIONS TO BE MADE TO THESE DRAWINGS WITHOUT WRITTEN AUTHORIZATION FROM THE DESIGN ENGINEER.
DIMENSIONS & NOTES TAKE PRECEDENCE OVER GRAPHICAL REPRESENTATION.

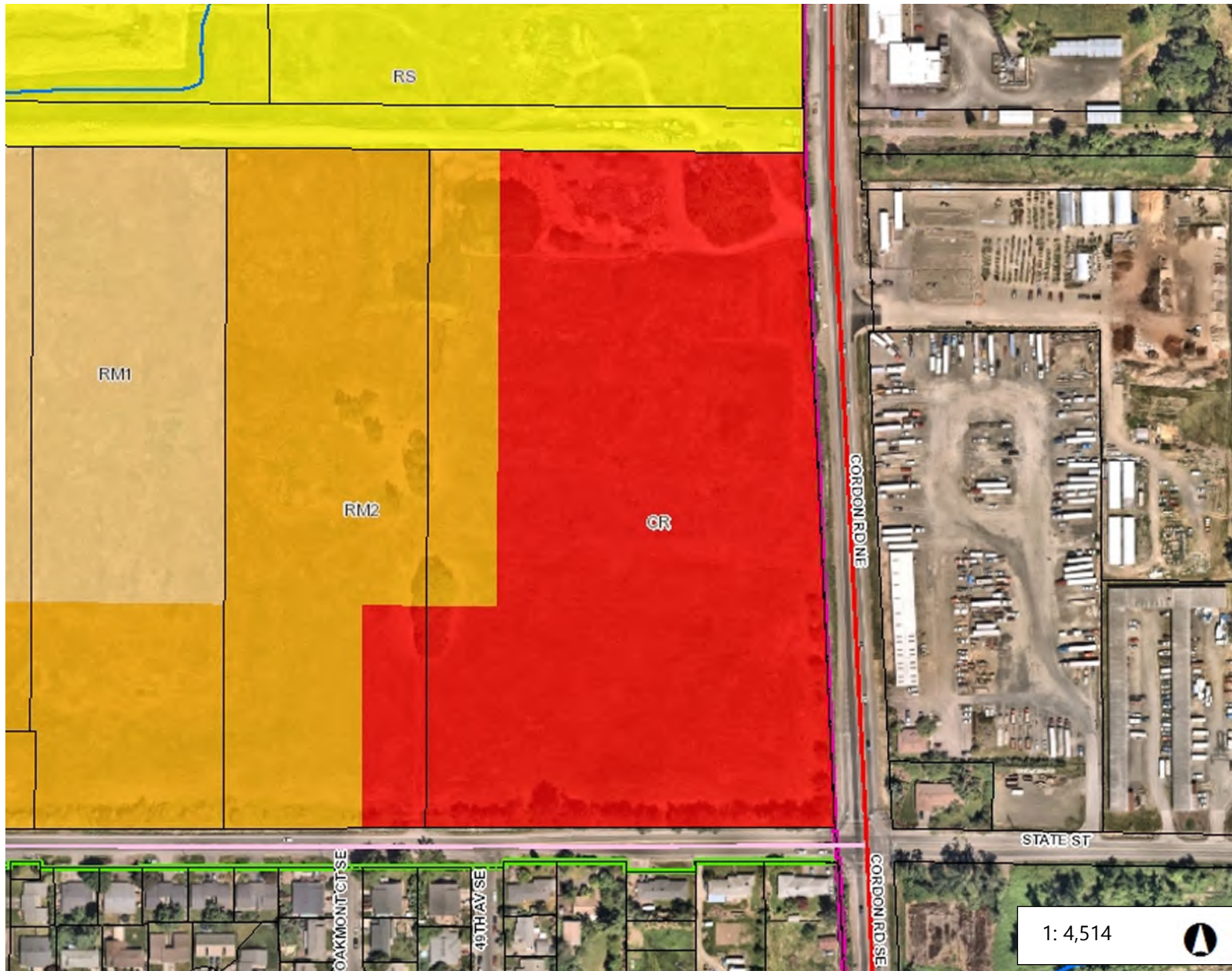
Design: M.D.G. T.N.S.
Drawn: J.J.G.
Checked: J.J.G.
Date: JULY 2021
Scale: AS SHOWN



EXPIRES: 06-30-2023

JOB # 6789

SDR3



Legend

- Centerline (Labels)
- Historic Buildings
- ▣ Historic Districts
- ▣ Annexations (delayed)
- ▣ Taxlots
- Creeks
 - 50 - 200
 - 200 - 640
 - 640 - 6400
 - GT 6400
- Hydrology
- Street Class
 - Future Minor Arterial
 - Future Collector
 - Major Arterial
 - Minor Arterial
 - Parkway
 - Collector
 - Highway/Freeway
- Overlay Zones
 - ▣ Overlay Zones
 - ▣ Compact Development Overlay Zone
 - ▣ Mixed-Use Overlay Zone
- Edgewater/Wallace Road Overlay
- Zoning Designation
 - EFU - Exclusive Farm Use
 - RA - Residential Agriculture
 - RS - Single-Family Residential

Notes

Enter notes here...

0.14 0 0.07 0.14 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere
City of Salem, Oregon

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION



255

270

CORDOVA RD NE (AB 922)

COUGAR CT SE

OAKMONT CT SE

49TH AV SE

STATE ST

SITE PLAN

EAST PARK APARTMENTS

MULTI TECH

FOR THE INDICATED LOWER FLOOR UNITS IN BUILDINGS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

- POLE LIGHT MAXIMUM 12' TALL
- WALL PACK MOUNTED ON BUILDING
- LOCATION OF ELECTRICAL SEPARATION WALL
- MAXIMUM 1/2% SLOPE ON SIDEWALK END RAMP
- BICYCLE SPACES

MULTI FAMILY:

- 36 TOTAL APARTMENT UNITS
- 24 TYPE "A" 2-BD, 3-BA (952 S.F.) UNITS
- 6 TYPE "C" 1-BD, 1-BA (728 S.F.) UNITS
- 6 TYPE "D" 3-BD, 2-BA (1204 S.F.) UNITS

COMMERCIAL RETAIL:

- 291 TOTAL APARTMENT UNITS
- 135 TYPE "A" 2-BD, 3-BA (952 S.F.) UNITS
- 36 TYPE "B" STUDIO (549 S.F.) UNITS
- 60 TYPE "C" 1-BD, 1-BA (728 S.F.) UNITS
- 24 TYPE "D" 3-BD, 2-BA (1204 S.F.) UNITS
- 36 TYPE "E" 2-BD, 2-BA (1102 S.F.) UNITS

MULTI FAMILY:

- 80 TOTAL PARKING STALLS
- 38 STANDARD STALLS
- 39 COMPACT STALLS
- 3 HANDICAP STALLS
- 6 BICYCLE SPACES (3 RACKS)

COMMERCIAL RETAIL:

- 447 TOTAL PARKING STALLS
- 378 STANDARD STALLS
- 51 COMPACT STALLS
- 11 HANDICAP STALLS
- 7 GARAGES (1 HANDICAP)
- 30 BICYCLE SPACES (5 RACKS)

- 3 LOADING ZONES
- 9 STORAGE UNITS
- 1 COMMUNITY BUILDING
- 1 TRASH COMPACTOR / RECYCLE
- 1 SWIMMING POOL (42' x 16')
- 1 U.S. MAIL BOX AREA

(* 1-MARKED "WHEELCHAIR USE ONLY")

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TO: MAYOR AND CITY COUNCIL

THROUGH: LINDA NORRIS, CITY MANAGER

FROM: VICKIE HARDIN WOODS, DIRECTOR
COMMUNITY DEVELOPMENT DEPARTMENTSUBJECT: PETITIONER-INITIATED ANNEXATION OF TERRITORY LOCATED NORTH
OF STATE STREET, WEST OF CORDON ROAD, SOUTH OF AUBURN
ROAD NE AREA (4900 BLK. STATE STREET) (ANNEXATION CASE NO. C-
689)**ISSUE**

The petitioner-initiated annexation of approximately 121 acres of contiguous territory (Territory) (Attachment A) with concurrent Comprehensive Plan change from the Salem Area Comprehensive Plan Map designation from "Industrial" to "Single Family Residential", "Multi-Family Residential" and "Commercial"; and to change the zoning from Marion County "Industrial Park" (IP), "Urban Transition" (UT), and "Urban Development" (UD) to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR) and withdrawal from Marion County Fire District No. 1 and East Salem Service District.

RECOMMENDATION

Staff recommends that the City Council:

1. Find that Petitioners submitted a valid triple majority consent petition for annexation of the Territory.
2. Determine that Annexation Case No. C-689 satisfies the criteria of Salem Revised Code (SRC) 165.130(c) and adopt Order No. 10-C-689, which is attached as Attachment J.
3. Refer the proposed annexation to the November 2, 2010 election ballot, and, if approved by the voters:
 - A. Change the Salem Area Comprehensive Plan (SACP) Map designation of a 118-acre portion of the Territory from "Industrial" to "Single Family Residential", "Multi-Family Residential" and "Commercial"; and
 - B. Rezone a 118-acre portion of the Territory from a Marion County "Industrial Park" (IP), "Urban Transition" (UT), and "Urban Development" (UD) zones to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1"

(RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR) zones, subject to the following condition:

Condition 1: For the 118-acre portion of the Territory subject to the SACP designation and Zone change: At the time of development review for any proposed use on the subject property, the proposed development's average daily trips shall be calculated pursuant to the then-current Institute of Transportation Engineers (ITE) Trip Generation manual. Traffic impacts from future development on the subject property shall be limited to a maximum of 14,157 average daily trips generated by the proposed use or uses. This condition shall be recorded against the subject property as a restrictive covenant in deed records of Marion County, Oregon;

- C Apply the City of Salem "Industrial Park" (IP) zone and retain the SACP Map designation of "Industrial" for a 3.25 acre portion of the Territory (Marion County Assessor Map #072W29C Tax lot 00199) and;
- D. Withdraw the Territory from the Marion County Fire District No. 1 and East Salem Service District.

BACKGROUND

This is a petitioner-initiated annexation of land located North of State Street, West of Cordon Road, South of Auburn Road NE Area (4900 Block State Street) for which the petitioner has filed a valid annexation petition (Attachment C) and findings to address applicable criteria (Attachment 3 of Attachment E). Annexation requests submitted after May 16, 2000, are subject to voter approval under Section 61 of the Salem City Charter. The Territory is approximately 121 acres in size. A 118-acre portion of the Territory, which consists of two separate tracts of land (made up of seven separate parcels), is owned by The PictSweet Company, a Tennessee corporation, and associated entities. This 118-acre portion is the site of the former PictSweet mushroom growing operation. A 3.25-acre portion of the Territory, formerly a railroad right-of-way, is owned by Mike Souza and Doug Cummins and bisects the 118-acre portion.

Annexation Case No. C-689 has been scheduled for a public hearing before the Salem City Council. The date of that hearing is April 26, 2010. Notice of the public hearing was duly mailed to those entitled to notice at least ten (10) days before the hearing in accordance with SRC 165.130(b).

FACTS AND FINDINGS

1. The Petitioner has met the annexation, petition, application, information submission, fee, waiver and all other requirements for petitioner-initiated annexations including, but not limited to, those found in ORS Chapter 222, SRC Chapter 165, SRC 165.070, SRC 165.080 and SRC 165.090.

According to Section 61 of the Salem City Charter, annexations made pursuant to applications after May 16, 2000, are subject to voter approval (SRC 165.050). While

ORS 222.120 does not require a City to submit a proposal for annexation of territory to the electors of the City for their approval or rejection, Section 61 of the Salem City Charter requires a vote in this case.

The petition meets the requirements of a triple majority annexation pursuant to ORS 222.170(1). A "triple majority annexation" occurs when: (1) more than half of the owners of land in the territory to be annexed (2) owns more than half of the land in the territory proposed to be annexed that (3) represents more than half of the assessed value of the territory proposed to be annexed. Pursuant to ORS 222.170(1), an election in the Territory is not required.

The property owners filed the application for annexation and Comprehensive Plan Change/Zone Change for approximately 118 acres, known as "Farmington Village" and "Farmington Estates". The total annexation territory will be reviewed under the triple majority annexation process, and is approximately 121 acres, which includes 3.25 acres that is not owned by the petitioners and is not a part of the Comprehensive Plan Change/Zone Change application. The table below summarizes the ownership, acreage, and assessed value of the annexation territory.

Property Owners	Acres	Assessed Value	Owners
Petitioners (PictSweet and associated entities)	117.43 acres	\$11,456,130	7
Souza and Cummins	3.25	\$177,690	2

The triple majority requirements of ORS 222.170(1) are satisfied because the owners of the petitioned property represent the majority of the owners of the land to be annexed; and own 97.3% of the land to be annexed which is 97.36% of the assessed value of the Territory.

The 3.25-acre portion of the Territory (Marion County Assessor Map #072W29C Tax Lot 00199) is currently designated "Industrial" in the Salem Area Comprehensive Plan (SACP). This area is approximately 80 feet wide and 1,770 feet long, and was previously a railroad right-of-way. This land was not included in the Comprehensive Plan Change/Zone Change, but is included in the proposed annexation. The owners of the 3.25-acre portion, Mike Souza and Doug Cummins, have requested that the land retain an industrial type zone and therefore they did not submit a request for a Comprehensive Plan Change/Zone Change.

These owners have also stated that they:

...have reviewed the multiple zones being requested upon annexation by Pictsweet, and want to make sure it known by the City that the 'Souza' property should not be bifurcated with multiple zones as is proposed by Pictsweet. We understand on an annexation of this type the normal standard is that the city zone that most closely matches the existing county zone is the default zoning applied after annexation, and is only changed upon the request of the property owner. The property currently has an industrial class zone, and a city zone that allows similar type uses is what the entire 'Souza' property should be zoned upon annexation. Given the

property can be put to, and those all seem to require the existing industrial type zone.

Pursuant to SRC 165.100(a), an equivalent industrial zone designation in SRC Table 165-1 may be applied, or the City Council may propose a new Comprehensive Plan designation and zone designation other than the equivalent city designation in Table 165-1. It is recommended that the SACP designation of "Industrial" be retained and the equivalent Salem zone of IP (Industrial Park) be assigned to the 3.25-acre parcel.

2. The area proposed for annexation is contiguous to the city limits at the northern property line, and is located inside the Urban Growth Boundary (UGB).
3. The Salem Area Comprehensive Plan (SACP) Map designates the Territory as "Industrial." This designation is implemented in the City through the "Industrial Park" IP, "Industrial General" (IG), and "Intensive Industrial" (II) zones.

The Territory is currently zoned UT-5, IP, and UD in Marion County. In the past, the 118-acre property was used as a mushroom growing operation. The mushroom farm ceased operations in 2001, and the buildings on the site have since been demolished. The residential areas have developed to the north, west, and south of the subject property and a mixture of public, commercial, and residential along the east side of Cordon Road. As the surrounding development occurred, the nature of the neighborhood changed.

The petitioner requests a Comprehensive Plan Map change from "Industrial" to "Single Family Residential", "Multi-Family Residential", and "Commercial" and to change the Marion County zoning of IP, UT-5, and UD to City of Salem RS, RM1, RM2, and CR. This concurrent zone change would create conformance between the proposed use of the property, the city zoning, and the Salem Area Comprehensive Plan designations.

Continued industrial use for the 118-acre property is no longer appropriate, and the petitioner's proposed residential and commercial zoning will provide uses compatible with the surrounding residential areas.

The petitioner has the burden to prove that all applicable criteria have been met to approve the proposed Comprehensive Plan Map change and zone change. In this case, the Planning Commission found that the petitioner met the burden of proof, and recommended approval to the City Council. Approval of this request would result in a mixture of residential and commercial uses and thereby provide a diversity of housing types, while providing the opportunity for commercial uses to be integrated into a residential neighborhood and ensure transportation connectivity.

The zoning and land use for the surrounding area includes:

- North: (across Auburn) Salem RS, Marion County UD, and UT-5; Church, and Single-Family dwellings
- West: Marion County UD and RM; Manufactured Dwelling Park and Single-Family dwellings
- East: (across Cordon Rd) Marion County AR, P and I; Fire Station, Youth

Baseball/Softball complex, businesses, Single-Family dwellings
South: (across State St) Marion County UD, RM, RL, and SA; Single-Family dwellings

4. Under SRC 165.100, territory annexed into the City is automatically given the Salem Area Comprehensive Plan and zoning designations that are equivalent to the applicable county zoning designations, unless the petitioner or City Council proposes a new Comprehensive Plan/zone designation.

The property owners of the 3.25-acre property have not proposed a new Comprehensive Plan or zone designation, and unless the City Council proposes different designations pursuant to SRC 165.100(a)(2), the City equivalent SACP designation of "Industrial" and zone "Industrial Park" will be applied to the 3.25-acre property.

The petitioner for the 118-acre portion of the territory requests a Comprehensive Plan and zoning change to "Single Family Residential", "Multi-Family Residential" and "Commercial" and Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR), respectively.

Pursuant to SRC 165.100(b), the Planning Commission held a public hearing to review the proposed designation on March 16, 2010. At that public hearing, the Planning Commission recommended that the City Council, in light of the conceptual plan (Attachment B), adopt the proposed designations (Attachment D). The findings in support of the Planning Commission's recommendation to the City Council are included in the March 16, 2010 staff report (Attachment E).

5. Public and Private Facilities and Services Comments

- A. Finance Department. The Finance Department submitted comments regarding property tax limits, rates and other information related to the financial impacts of annexation (Attachment F).
- B. Fire Department. The Salem Fire Department response time to this location is approximately four minutes and 20 seconds depending on road conditions, traffic, and similar variables. Primary fire protection and EMS service would be provided from Fire Station No. 10 located at 3611 State Street. Assistance from Marion County Fire District No. 1 Station 1, located directly across Cordon Road from the property, would also be available under the terms of the mutual aid agreements between the two agencies.

Secondary service would be provided from Fire Station No. 3 located at 1884 Lansing Avenue NE. (Attachment G).

- C. Police Department. The Salem Police Department has reviewed the proposal and has no objections.
- D. Public Works Department. The Preliminary Declaration for the Urban Growth Area Development (UGA) permit No. 09-7 has been issued for the subject

property (Attachment 6 of Attachment E). Site-specific infrastructure requirements will be addressed in the Site Plan Review and subdivision processes. As a condition of the SACP and Zone change, Public Works recommends a condition of approval to limit the development to a maximum of 14,157 Average Daily Trips (ADT) generated by the proposed uses in order to comply with the state Transportation Planning Rule. Additional comments regarding these services are provided in Attachment H.

- E. Salem-Keizer School District. The Salem-Keizer School District estimates that the proposed annexation would add 254 (min.) to 409 (max.) additional students, assuming the property redevelops at densities allowed in the requested zones. Additional comments provided by the School District are found in Attachment 9 of Attachment E.
- F. Marion County Public Works Department. The Marion County Public Works Department reviewed the proposal and submitted a letter dated March 4, 2010 which highlights comments about transportation and stormwater issues (Attachment 10 of Attachment E). They have requested continued coordination with both the City and the applicant throughout the development process.

6. Neighborhood Association and Citizen Comments

The City notified the East Lancaster Neighborhood Association (ELNA) of the proposed annexation. On March 8, 2010, ELNA submitted comments about the Comprehensive Plan Change/Zone Change application. In summary, their comments addressed stormwater/drainage issues, maintain open creek, ensure access management for Cordon Road, additional buffers between single-family residential and commercial uses, support the multifamily residential mixed with lower-densities residential that creates more open spaces, and questioned the location of the proposed park and the commercial development (Attachment 5 of Attachment E).

At the time of development, the specifics of the land division, land use patterns, transportation, and all infrastructure will be addressed.

Staff has not received any written citizen comments regarding the annexation.

7. Fiscal Impact of Annexation

The potential impact of the annexation, based upon an assumed single-family residential density of average of 5 dwelling units per acre average multiple family residential density of 11 dwelling units per acre, and 22 employees per acre for the proposed commercial area, on the City of Salem's General Fund (Year 2007 dollars) is dependent upon the value and extent of the property's ultimate development, the year in which the cost and revenue is measured, and the level of City services available at that time.

ECONorthwest's "Fiscal Impact Analysis Relating to City Growth and Annexations" dated January 18, 2001, provides the model for determining the impact on Salem's General Fund. This model utilizes the fiscal year 2007-08 adopted budget to estimate

the fiscal impacts of the proposed annexation. The fiscal impact model created by ECONorthwest estimated the proposed annexation would create an annual surplus of \$185,766 to the City's General Fund given the current level of service for park, library and fire facilities. If the level of service is increased by additional capital investment in these facilities, thus causing a corresponding increase in their operation and maintenance costs, the annual effect on the general fund would be to increase the surplus to \$165,630 by 2020. Attachment I contains a detailed summary of the estimated fiscal impact of annexation.

8. Salem Revised Code (SRC) 165.130(c) requires the Council to determine whether or not the proposed annexation meets the following criteria:

- (1) The proposed land use designations are consistent with the Salem Area Comprehensive Plan and applicable Statewide Planning Goals;
- (2) The annexation will result in a boundary in which services can be provided in an orderly, efficient and timely manner;
- (3) The uses and density that will be allowed can be served through the orderly, efficient and timely extension of key urban facilities and services;
- (4) The public interest would be furthered by the referral of the annexation to the voters.

Attachment J contains findings demonstrating compliance with these criteria.

9. As demonstrated by the Facts and Findings above, and found in Attachments D, E, and J, the proposed annexation and service district withdrawal conforms to State law requirements and the criteria found in SRC 165.130(c). The annexation, Comprehensive Plan Change, and rezoning of the Territory are consistent with the public interest, and referral of the proposed annexation to the electors of the City of Salem is in the best interest of the public.

For these reasons, staff recommends that the City Council:

1. Find that Petitioners have signed a valid triple majority consent petition for annexation of the Territory.
2. Determine that Annexation Case No. C-689 satisfies the criteria of SRC 165.130(c) and adopt Order No. 10-C-689, which is attached as Attachment J.
3. Refer the proposed annexation to the November 2, 2010 election ballot and if approved by the voters:
 - A. For the 118-acre property:
 - (1) Change the Salem Area Comprehensive Plan (SACP) Map designation from "Industrial" to "Single Family Residential", "Multi-Family Residential" and "Commercial"; and

(2) Rezone the 118-acre property from Marion County "Industrial Park" (IP), "Urban Transition" (UT), and "Urban Development"(UD) zones to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR) zones, subject to:

Condition 1: At the time of development review for any proposed use on the subject property, the proposed development's average daily trips shall be calculated pursuant to the then-current Institute of Transportation Engineers (ITE) Trip Generation manual. Traffic impacts from future development on the subject property shall be limited to a maximum of 14,157 average daily trips generated by the proposed use or uses. This condition shall be recorded against the subject property as a restrictive covenant in deed records of Marion County, Oregon;

- B. Apply the City of Salem "Industrial Park" (IP) zone and retain the SACP Map designation of "Industrial" for the 3.25-acre portion of territory (Marion County Assessor Map #072W29C Tax lot 00199) and;
- C. Withdraw the Territory from the Marion County Fire District No. 1 and East Salem Service District.

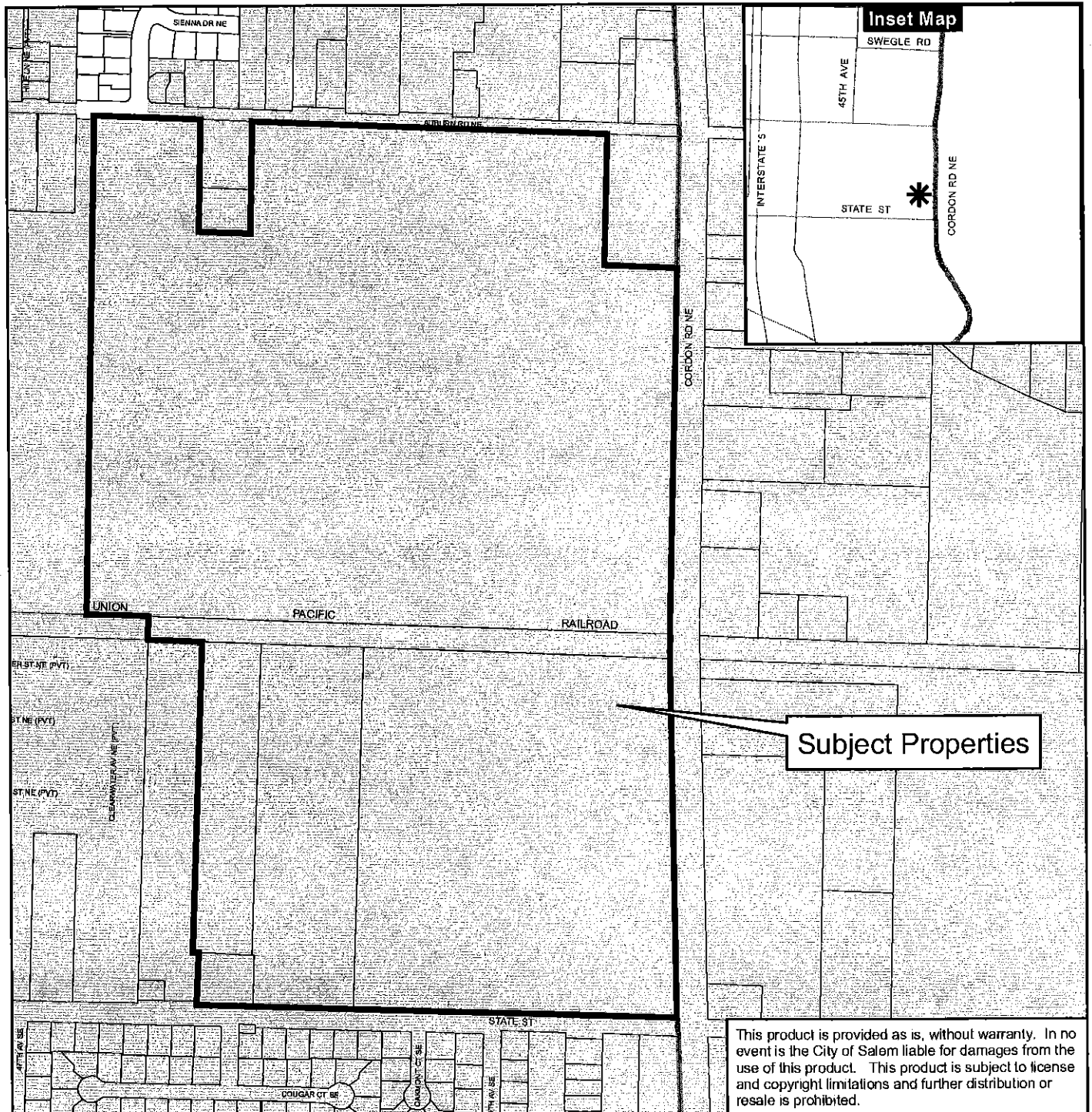


Glenn W. Gross, Urban Planning Administrator

- Attachments:
- A. Map Showing Area of Proposed Annexation
 - B. Conceptual Plan
 - C. Annexation Petition
 - D. Planning Commission Action Sheet
 - E. Planning Commission staff report
 - 1) Vicinity Map for Comprehensive Plan Change/Zone Change 10-1
 - 2) Vicinity Map for Annexation Territory (includes area previously used as railroad right-of-way)
 - 3) Applicant's submittal
 - 4) Notice of Public Hearing
 - 5) Comments submitted by ELNA
 - 6) Preliminary Declaration for the UGA Permit #09-7
 - 7) Conceptual Plan (includes 2 sheets)
 - 8) Shadow Plan for the proposed CR zone area
 - 9) Salem-Keizer School District Comments
 - 10) Marion County Public Works Department comments
 - 11) Salem Public Works Department comments
 - F. Finance Division Comments
 - G. Fire Department Comments
 - H. Public Works Department Comments
 - I. General Revenue Impacts
 - J. Order No. 10-C-689 Adopting the Final Decision and Findings of Compliance

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Vicinity Map 4900 Block of State St



Subject Properties

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Legend

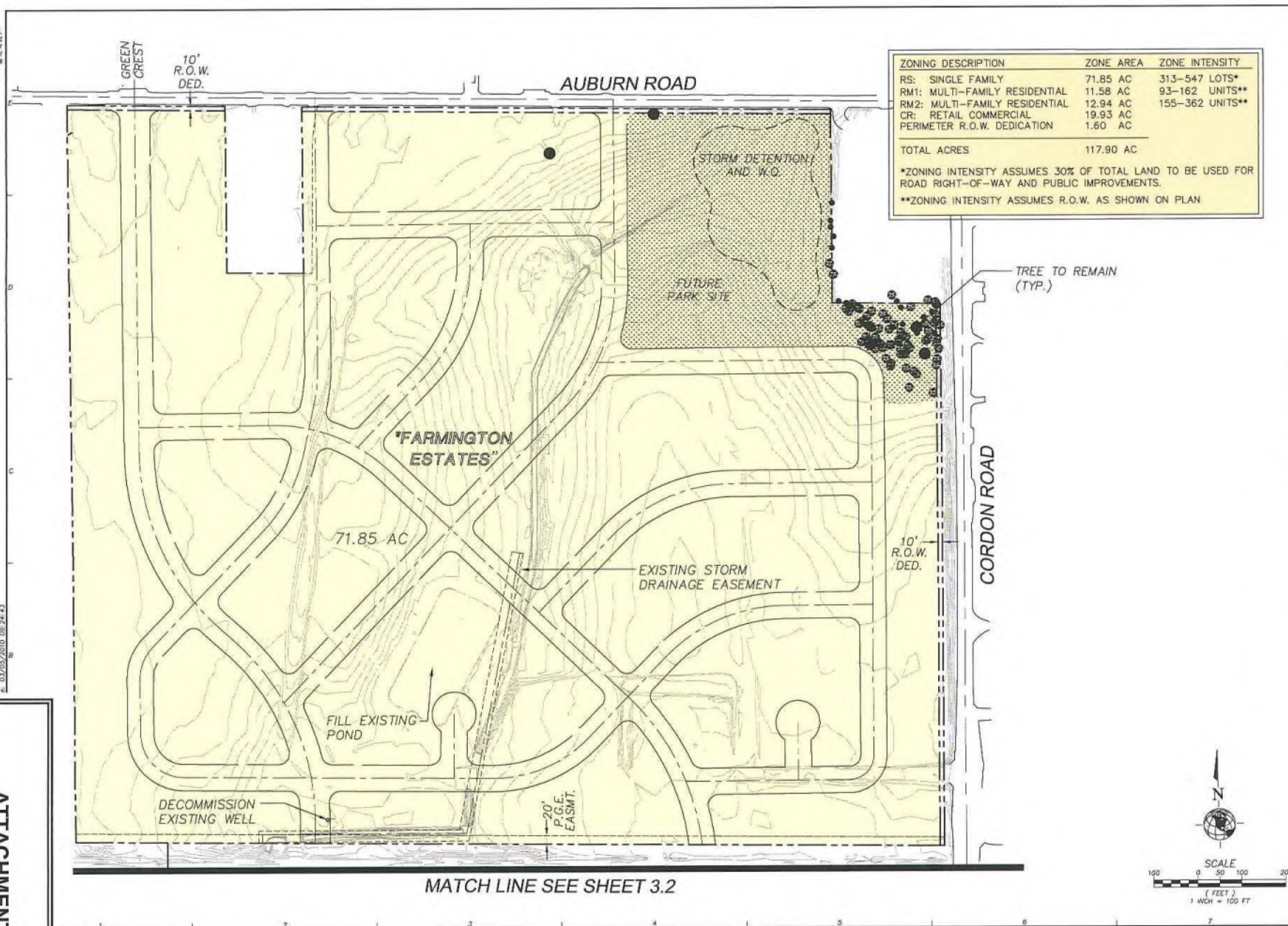
- Outside Salem City Limits
- Urban Growth Boundary
- Taxlots
- Historic District
- Schools
- Parks

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ATTACHMENT B



ZONING DESCRIPTION	ZONE AREA	ZONE INTENSITY
RS: SINGLE FAMILY	71.85 AC	313-547 LOTS*
RM1: MULTI-FAMILY RESIDENTIAL	11.58 AC	93-162 UNITS**
RM2: MULTI-FAMILY RESIDENTIAL	12.94 AC	155-362 UNITS**
CR: RETAIL COMMERCIAL	19.93 AC	
PERIMETER R.O.W. DEDICATION	1.60 AC	

TOTAL ACRES	117.90 AC
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*ZONING INTENSITY ASSUMES 30% OF TOTAL LAND TO BE USED FOR ROAD RIGHT-OF-WAY AND PUBLIC IMPROVEMENTS.

**ZONING INTENSITY ASSUMES R.O.W. AS SHOWN ON PLAN

THE PICTSWEET COMPANY ET AL
ANNEXATION / ZONE CHANGE
CONCEPT SITE DEVELOPMENT PLAN

WHPacific

3755 SW Barnes Rd, Suite 300
Portland, OR 97225
503-426-0455 Fax 503-526-0775

SALEM	PROJECT NO.	DRAWING FILE NAME:	OREGON
SCALE: 1"=100'	33973	033973-land-SP01	

[illegible]

SHEET
3.1

MATCH LINE SEE SHEET 3.1

EXISTING STORM
DRAINAGE EASEMENT

RT-IN /
RT-OUT

- TREE TO REMAIN
(TYP.)

CR
19.93 AC

10' -
R.O.W.
DED.

EXISTING UTILITY-
EASEMENT

18'
R.O.W.
DED.

CORDON ROAD

STATE STREET

PROPOSED
TRAFFIC -
SIGNAL

OAKMONT CT

49TH AVE. SE

RT-IN/RT-OUT
LEFT-IN

ZONING DESCRIPTION	ZONE AREA	ZONE INTENSITY
RS: SINGLE FAMILY	71.85 AC	313-547 LOTS*
RM1: MULTI-FAMILY RESIDENTIAL	11.58 AC	93-162 UNITS**
RM2: MULTI-FAMILY RESIDENTIAL	12.94 AC	155-362 UNITS**
CR: RETAIL COMMERCIAL	19.93 AC	
PERIMETER R.O.W. DEDICATION	1.60 AC	
TOTAL ACRES	117.90 AC	

*ZONING INTENSITY ASSUMES 30% OF TOTAL LAND TO BE USED FOR ROAD RIGHT-OF-WAY AND PUBLIC IMPROVEMENTS.

**ZONING INTENSITY ASSUMES R.O.W. AS SHOWN ON PLAN



SCALE
100 0 50 100
(FEET)
1 INCH = 100 FT

WHPacific

THE PICTSWEET COMPANY ET AL
ANNEXATION / ZONE CHANGE
CONCEPT SITE DEVELOPMENT PLAN

SALEM	PROJECT NO.	DRAWING FILE NAME:	OREGON
SCALE:	39973	033973-land-SP01	

DESIGNED BY:	TELJ	CHECKED BY:	KCA
DRAWN BY:	JUG	APPROVED BY:	TELJ
LAST EDIT:	1/5/2010	PLOT DATE:	01/5/10
DATE	BY	REVISION	TOP DRAW

SHEET
3.2

THIS PROJECT
 PREPARED BY
 DATE: 12/20/2019
 PROJECT: 033973

Office: PORTLAND / System: PDX-033973 / User: ADILLIPS / Date: 12/20/2019 16:07:37



WHPacific
 505 SW 8TH ST, SUITE 300
 PORTLAND, OR 97204
 503.588.2500 Fax 503.588.3915
 www.whpacific.com

THE PICTSWEET COMPANY ET AL
 ANNEXATION / ZONE CHANGE
SHADOW PLAN

PROJECT NO. 33973
 DRAWING FILE NAME: 033973-land-ex01
 SCALE: 1"=60'

DESIGNED BY: TEL	CHECKED BY: ACA
DRAWN BY: JLG	APPROVED BY: TEL
LAST EDT: 12/20/2019	PLOT DATE: 12/20/2019
DATE: 12/20/2019	REVISION: 12/20/2019
DATE: 12/20/2019	REVISION: 12/20/2019
DATE: 12/20/2019	REVISION: 12/20/2019
DATE: 12/20/2019	REVISION: 12/20/2019
DATE: 12/20/2019	REVISION: 12/20/2019
DATE: 12/20/2019	REVISION: 12/20/2019
DATE: 12/20/2019	REVISION: 12/20/2019
DATE: 12/20/2019	REVISION: 12/20/2019

SHEET
EX 1.0

Exhibit H



PERMIT APPLICATION CENTER/CITY HALL
555 LIBERTY STREET SE/ROOM 320
SALEM, OREGON 97301
(503) 588-6256
Website: www.cityofsalem.net

ANNEXATION PETITION AND
CONSENT AND WAIVER OF BALLOT MEASURE 37 AND BALLOT MEASURE 49 CLAIMS

TO: The Honorable Mayor and City Council of the City of Salem, Marion County, State of Oregon

Petitioner(s): See Attached is/are the legal owner(s) or contract purchaser(s)
of the following described real property (the Territory) comprising approximately 117.28 acres, and
located outside of, but contiguous to, the corporate boundaries of the City of Salem:

072W29B 200/201; 072W29C 100/101/200/300/400 [add legal description or tax lot number]

Petitioner(s) respectfully request(s) that the Territory be annexed to the City of Salem, and by my/our
signature(s) hereon, (does)(do) hereby consent to such annexation, and (does)(do) hereby request that the City
Council take such steps as are necessary to determine whether the Territory should be annexed and to submit
the annexation to the electors of the City of Salem, as required by Salem City Charter, Section 61.

In addition to any other applicable fees and costs, Petitioner(s) hereby agree(s) to pay Petitioner(s)'s pro rata
share of the cost of placing the annexation measure on the ballot, and of publishing notices and other
information related thereto, any by my/our signatures hereon consent to the imposition of an election cost lien
on the Territory to secure payment of all election costs, should I/we fail to pay such costs when due, and that
I/we fully understand that the election cost lien will be filed in the City of Salem lien docket, shall have priority
over all other liens, except liens for the payment of taxes levied by any governmental unit, shall bear interest at
the legal rate, and shall remain a lien against the Territory until the election costs are fully paid or the lien
foreclosed, as provided by law.

Petitioner(s) knowingly and willingly waive(s) any and all claims that I/we might assert against the City of Salem
arising out of, or resulting from, or are in anyway connected to, those certain statewide initiatives commonly
known as Ballot Measure 37 and Ballot Measure 49 or any successors thereto, and that might accrue as a result
of the annexation of the territory into the City of Salem, or the imposition of City of Salem land use regulations
pursuant thereto, whether the claims be past, present or future. Petitioner(s) hereby consent(s) to the imposition
of such land use regulations that are in existence at the time of annexation, and to which the territory becomes
subject as a result of the annexation into the corporate limits of the City of Salem.

Owner(s) or Contract Purchaser(s):
(Owner/Purchaser signatures)

Address:

See Attached

Turn over for chief petitioner statement and notarization of signature(s).

ATTACHMENT C

I, Carl W. Gruenewald & Chief Petitioner, upon oath or affirmation, say that I secured each signature appearing on the foregoing petition, and each name was signed freely, voluntarily, without undue influence of any nature and under no misrepresentation as to the facts, and I further affirm that, to the best of my knowledge, the individuals above named constitute more than half of the owners of land in the territory proposed to be annexed and these owners also own more than half of the land in the territory and own real property in that territory representing more than half of the assessed value of all real property in the territory.

TENNESSEE
STATE OF OREGON)
COUNTY OF Crockett) ss.

Chief Petitioner Carl W. Gruenewald &
Chief Petitioner Signature Vice President, Emmit

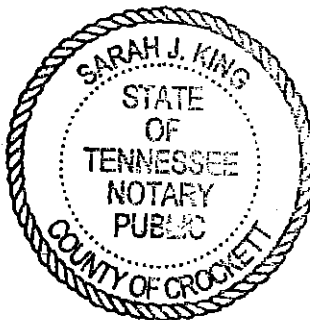
Signed and sworn to/affirmed before me on December 18, 2009 by CARL W. Gruenewald II

(Name or Names of Persons Signing)

Sarah J. King
NOTARY PUBLIC FOR OREGON (Notary Signature)
TENNESSEE

My Commission expires: 11/20/12

(NOTARY SEAL)



Petitioners:

Page 1 – Annexation Petition and Consent and Waiver of Ballot Measure 37 and Ballot Measure 49 Claims
(The Picstweet Company, et al.)

**Annexation Petition and Consent and Waiver of
Ballot Measure 37 and Ballot Measure 49 Claims**

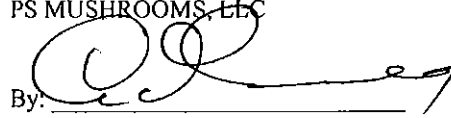
Signature Page

THE PICTSWEET COMPANY

By: 

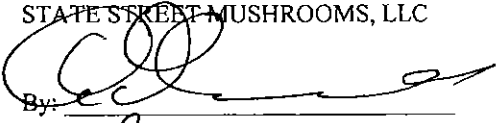
Its: Vice President Emeritus

PS MUSHROOMS, LLC

By: 

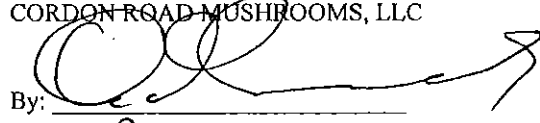
Its: President

STATE STREET MUSHROOMS, LLC

By: 

Its: President

CORDON ROAD MUSHROOMS, LLC

By: 

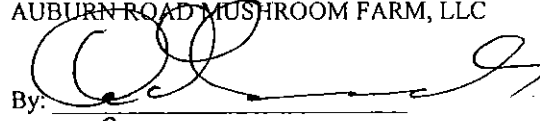
Its: President

MARION MUSHROOM FARM, LLC

By: 

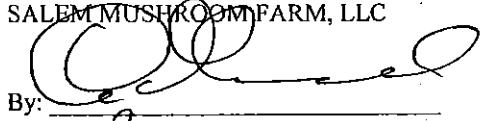
Its: President

AUBURN ROAD MUSHROOM FARM, LLC

By: 

Its: President

SALEM MUSHROOM FARM, LLC

By: 

Its: President

ISSUE: Comprehensive Plan Change/Zone Change 10-1

DATE OF DECISION: March 16, 2010

APPLICANT: Pictsweet Company; PS Mushrooms, LLC; State Street Mushrooms, LLC; Cordon Road Mushrooms, LLC; Marion Mushroom Farm, LLC; Auburn Road Mushroom Farm, LLC; Salem Mushroom Farm, LLC

PURPOSE OF REQUEST:

To change the Salem Area Comprehensive Plan Map designation from "Industrial" to "Single Family Residential", "Multi-Family Residential" and "Commercial"; and to change the zoning from Marion County "Industrial Park (IP)", "Urban Transition" (UT-5), and "Urban Development"(UD) to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR) for property located at 255 Cordon Road NE and 4900 Block of State Street NE and generally between Auburn Road and State Street and west of Cordon Road (Marion County Assessor's Map 072W29B Tax Lot Numbers 200 and 201; Marion County Assessor's Map 072W29C Tax Lot Numbers 100, 101, 200, 300, and 400).

ACTION:

The Planning Commission moved to approve the staff recommendation to change the Salem Area Comprehensive Plan Map designation from "Industrial" to "Single Family Residential", "Multi-Family Residential" and "Commercial"; and to change the zoning from Marion County "Industrial Park (IP)", "Urban Transition" (UT-5), and "Urban Development"(UD) to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR) for property located at 255 Cordon Road NE and 4900 Block of State Street NE and generally between Auburn Road and State Street and west of Cordon Road, with the following condition:

Condition 1: At the time of development review for any proposed use on the subject property, the proposed development's average daily trips shall be calculated pursuant to the then-current Institute of Transportation Engineers (ITE) Trip Generation manual. Traffic impacts from future development on the subject property shall be limited to a maximum of 14,157 average daily trips generated by the proposed use or uses. This condition shall be recorded against the subject property as a restrictive covenant.

The Planning Commission's decision is based upon the following Facts and Findings:

Salem Revised Code, Chapter 165, Section 100(b) provides the criteria for approval of Comprehensive Plan Map amendment with annexation. The applicable criteria are stated below in ***bold italic*** print. Following each criterion is a response and/or finding relative to the amendment requested.

Criterion 1: ***Whether the comprehensive plan and zone designation provides for the logical urbanization of land;***

Applicant's Statement: The Subject Property is contiguous to the City of Salem limits, and located outside the City of Salem but within the UGB. Accordingly, by definition, the Subject Property is deemed "urbanizable." Since the Subject Property is contiguous to the City of Salem, the incorporation of the Subject Property into the City of Salem provides for an orderly and efficient transition from rural to urban land use in the provision of municipal facilities and services as well as in the facilitation of orderly urbanization.

ATTACHMENT D

Specifically, the comprehensive plan and zone designations proposed by Applicants provides for the logical urbanization of Applicants' Property. The Subject Property is surrounded by residential uses, and is the only property in the nearby vicinity designated and zoned for industrial use. Further, it is currently vacant and undeveloped. As such, the proposed comprehensive plan and zone designations are a logical extension of urban development and will be consistent with surrounding uses.

Findings: Planning staff concurs with the facts presented by the applicant as stated above and finds that the applicant satisfies Criterion 1. The applicant has also addressed the Statewide Planning Goals and the SACP Goals and Policies (Attachment 3, pages 1 - 37), which provides additional background information for this review process.

A re-designation and zone change provides for the logical urbanization of the subject property because the area will be adequately served by linking streets and sewer facilities. At the time of development, the applicant shall construct improvements in compliance with the UGA Preliminary Declaration and the current development standards. A Transportation Impact Analysis (TIA) to identify the impacts on the public transportation system and construct any necessary mitigation measures identified in the TIA will be required. Based on the findings prepared by the applicant to address the impacts of the proposed development on the transportation system, it is recommended that a Trip Cap of 14,157 Average Daily Trips (ADT) be a condition of approval for the requested zone change. Public Works staff findings to support this condition are included in Attachment 9.

Criterion 2: *Whether the comprehensive plan and zone designation is compatible with development patterns in the nearby vicinity;*

Applicant's Statement: Applicants' proposed comprehensive plan changes and zone changes are compatible with development patterns in the nearby vicinity; the current comprehensive plan and zone designations are not. As noted above, Applicants' Property is primarily designated *Industrial*, but is surrounded by single family residential and multi family residential uses to the north, west and south. Further, those properties to the east of Applicants' Property are compatible with residential uses, and include Terra Gardens Nursery and the Marion County Fire District. Accordingly, it is the current *Industrial* designation that is incompatible and inconsistent with development patterns in the nearby vicinity.

Comprehensive plan changes to *Single Family Residential*, *Multi Family Residential* and *Commercial* and zone changes to RS, RM1, RM2 and CR will render Applicants' Property consistent with the surrounding area. Due to the residential development pattern in the nearby vicinity of Applicants' Property over the past several years, the Subject Property is essentially an island of *Industrial* property in the midst of residential uses. A mix of residential and commercial uses on Applicants' Property is compatible with the nearby vicinity, whereas a large industrial use is not. Accordingly, the comprehensive plan and zone designations are compatible with development patterns in the nearby vicinity.

Findings: Planning staff concurs with the facts presented by the applicant as stated above and finds that the applicant satisfies Criterion 2. The proposed "Single Family Residential" and "Multi Family Residential" and "Commercial" Comprehensive Plan Map change is compatible with the surrounding development patterns.

The proposal to provide commercial uses with a mixture of residential densities is consistent with the established uses in the vicinity and the overall character of the neighborhood. The proposed commercial center at the northwest corner of the intersection of Cordon Road and State Street will enhance and compliment the existing uses to the east. The various non-residential uses to the east of Cordon Road include the nursery, a fire station, youth baseball and softball complex, and the soccer fields. Together, the east and west sides of Cordon Road will provide a neighborhood center with a variety of uses for the customers and clients of this area.

Additionally, providing retail, services, and office uses for the new residential units within this proposed development and the existing residential uses will create a mixed-use area. The combination of these uses creates a synergy to result in a dynamic neighborhood. The large size of the subject property allows many opportunities for innovative design through a master plan approach. This type of comprehensive and coordinated planning can address issues such as: providing transition areas between different uses, promoting alternative modes of transportation (walk, bike, and bus) and avoid duplication of basic facilities, i.e. parking.

Criterion 3: *Whether the social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and*

Applicant's Statement: The conditions within the nearby vicinity of the Subject Property have changed over time, and continue to change as the surrounding properties are developed. The properties surrounding Applicants' Property are residential in nature, and therefore, the *Industrial* designation and zoning is no longer appropriate. The social, economic and demographic patterns of the nearby vicinity have altered in a manner that precludes industrial development of Applicants' Property. The Salem Regional Employment Center is a larger parcel of industrial land that is closer to I-5 access. In addition, the Salem Regional Employment Center EOA identified three parcels of vacant industrial land that were 40 acres or larger.¹ Accordingly, it is unlikely that Applicants' Property will be developed for industrial use. In addition, industrial development of Applicants' Property is inconsistent and incompatible with the surrounding uses that have developed over time. Therefore, the current comprehensive plan and zoning designations for Applicants' Property are no longer appropriate.

Findings: Staff concurs with the applicant that social, economic, or demographic patterns of the nearby vicinity have so altered the area that the current designation of Industrial is no longer appropriate. One major alteration in the vicinity is the Mill Creek Corporate Center (828 acres) which is at the southeast corner of Highway 22 and Cordon Road.. Another major development in the area is the Salem Renewable Energy and Technology Center (80 acres) located on Gaffin Road, just east of Cordon Road. The anchor tenant for the Salem Renewable Energy and Technology Center is SANYO. In November 2009, SANYO opened a 130,000 square foot facility on approximately 20 acres. SANYO manufactures silicon ingot and solar wafers.

Criterion 4: *Whether it is in the public interest that the proposed change be made.*

Applicant's Statement: For the reasons set forth above, it is within the public interest that the proposed comprehensive plan changes and zone changes be made. These reasons includes that the proposed comprehensive plan changes and zone changes will make Applicants' Property consistent with the existing surrounding uses, that the proposed comprehensive plan changes and zone changes will increase the density and type of housing available within the City of Salem, that the proposed comprehensive plan changes and zone changes will reduce the traffic impacts that would otherwise be permitted under the current IP zoning, and that it is a logical extension of the City of Salem limits.

Findings: The City of Salem construes the public interest to be that which is consistent with the adopted goals and policies of the Salem Area Comprehensive Plan, in light of its intent statements.

The applicant has addressed the Statewide Planning Goals (Attachment 3, pages 22-34) and the Salem Area Comprehensive Plan (SACP) Goals and Policies (Attachment 3, pages 6-22). The proposed change provides additional land available for multi-family housing and commercial uses within the Salem urban area. Annexation would allow further residential development at urban densities and commercial uses that would help maximize investment in public services and encourage the efficient use of developable land.


The proposed change is consistent with applicable goals and policies of the Salem Area Comprehensive Plan. Thus, it is in the public's best interest that the proposed change be made.

Case Planner: Cecilia DeSantis Urbani, Associate Planner

Planning Commission Vote:

6 YES 0 NO 0 ABSENT

TO: Salem Planning Commission

FROM: Glenn W. Gross, Urban Planning Administrator 

STAFF: Cecilia DeSantis Urbani, Associate Planner

HEARING DATE: March 16, 2010

APPLICATION: Comprehensive Plan Change/Zone Change No. 10-1

LOCATION: 255 Cordon Road NE and 4900 Block of State Street NE and generally between Auburn Road and State Street and west of Cordon Road (Marion County Assessor's Map 072W29B Tax Lot Numbers 200 and 201; Marion County Assessor's Map 072W29C Tax Lot Numbers 100 , 101, 200, 300, and 400)(Attachment 1)

SIZE: Approximately 118 acres

REQUEST: To change the Salem Area Comprehensive Plan Map designation from "Industrial" to "Single Family Residential", "Multi-Family Residential" and "Commercial"; and to change the zoning from Marion County "Industrial Park (IP)", "Urban Transition" (UT-5), and "Urban Development"(UD) to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR) for property approximately 118 acres in size .

APPLICANTS: Pictsweet Company; PS Mushrooms, LLC; State Street Mushrooms, LLC; Cordon Road Mushrooms, LLC; Marion Mushroom Farm, LLC; Auburn Road Mushroom Farm, LLC; Salem Mushroom Farm, LLC

REPRESENTATIVE: Kenneth Sherman, Jr., Sherman, Sherman, Johnnie, and Hoyt, LLP

APPROVAL CRITERIA: Salem Revised Code (SRC) 165.100(b)(1)-(4) and SRC 165.130(c)(5)(A)-(D)

RECOMMENDATION: Adopt the findings of this report, and recommend approval of Comprehensive Plan Change/Zone Change No. 10-1 to City Council, subject to the following condition:

Condition 1: **At the time of development review for any proposed use on the subject property, the proposed development's average daily trips shall be calculated pursuant to the then-current Institute of Transportation Engineers (ITE) Trip Generation manual. Traffic impacts from future development on the subject property shall be limited to a maximum of 14,157 average daily trips generated by the proposed use or uses. This condition shall be recorded against the subject property**

as a restrictive covenant in deed records of Marion County, Oregon.

APPLICATION PROCESSING

Subject Application:

Kenneth Sherman Jr., on behalf of the property owners, filed this Comprehensive Plan Change/Zone Change application for approximately 118 acres, known as "Farmington Village" and "Farmington Estates", and is also under consideration to be annexed to the City of Salem. The total annexation territory (Attachment 2) will be reviewed under the triple majority annexation process, and is approximately 121.15 acres, which includes 3.25 acres that is not owned by these applicants and is not a part of this Comprehensive Plan Change/Zone Change application. The triple majority requirements of ORS 222.170(1) are satisfied because the owners of the subject property represent over half of the number of owners of the land to be annexed, own over half of the land (acreage) to be annexed and that land is more than half of the assessed value of the land to be annexed. The applicant's findings for the annexation and the Comprehensive Plan Change/Zone Change applications are combined into one document and attached to this staff report (Attachment 3).

The 3.25-acre portion of the annexation territory is currently Salem Area Comprehensive Plan (SACP) designation of "Industrial." This area is approximately 80 feet wide and 1,770 feet long. This land was previously used as railroad right-of-way. This is not included in this land use application for the Comprehensive Plan Change/Zone Change, but part of the annexation. Since the owner, Mr. Souza, did not submit a request for a Comprehensive Plan Change/Zone Change, the available options according to SRC 165.100(a) are: 1) that SRC 165, Table 165-1 applies, or 2) the City Council proposes a new Comprehensive Plan designation or zone designation other than the equivalent city designation in Table 165-1. It is suggested that the SACP designation of "Industrial" be retained and the equivalent Salem zone of IP (Industrial Park) be assigned to the 3.25-acre parcel.

Notice must be given in accordance with Sections 114.050 through 114.070 of the Salem Revised Code (Attachment 4). An approval by the City Council shall not be construed to have granted a variance from the provisions of any city ordinance unless the approval clearly states that a variance has been granted.

Annexations where a new Comprehensive Plan and zoning map designations are proposed require a public hearing before the Planning Commission. According to SRC 165.100(b), upon holding a public hearing, the Planning Commission shall make a recommendation to adopt the proposed designation, the equivalent designation or a different designation to the City Council regarding the proposed Comprehensive Plan and zoning designations. Staff forwards the Commission's recommendation to the City Council as part of the staff report for the annexation public hearing. The public hearing before City Council regarding annexation of the subject property is tentatively scheduled for April 26, 2010. The Council has the authority in SRC 165.130(d) to "adopt, modify, or reject" the Planning Commission's recommendation.

Appeals:

The Planning Commission's decision is a recommendation to the City Council regarding the future Comprehensive Plan map designation and Salem zoning of the subject property upon annexation. The appeal process applies to the City Council's decision to refer the annexation to the ballot.

120-Day Requirement:

Amendments to an acknowledged comprehensive plan are not subject to the 120-day rule

(Oregon Revised Statutes (ORS) 227.178).

Public Notice:

1. It was required that a public hearing notice be posted on the subject property no sooner than March 2, 2010 and no later than March 6, 2010. The applicant posted the property on March 2, 2010.
2. Notice was mailed to property owners within the 250-foot notification area on February 24, 2010 (Attachment 4).
3. State law (ORS 197.610) requires the city to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 45-day notice when an applicant or the city proposes an amendment to an acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation. The city sent notice to DLCD of this proposal on January 22, 2010, thereby complying with the minimum 45-day notice requirement.

Neighborhood Association Contacts:

The subject property is located adjacent to the boundary of the East Lancaster Neighborhood Association (ELNA). The applicants have attended several ELNA monthly meetings. The applicants have also attended the meeting of the Marion County's East Salem Suburban Neighborhood Association.

On March 8, 2010, ELNA submitted comments about this application (Attachment 5). In summary, their comments addressed stormwater/drainage issues, maintain open creek, ensure access management for Cordon Road, additional buffers between single-family residential and commercial uses, support the multifamily residential mixed with lower-densities residential that creates more open spaces, and questioned the location of the proposed park and the commercial development.

At the time of development, the specifics of the land division, land use patterns, transportation, and all infrastructure will be addressed. The Salem zoning would allow a Planned Unit Development (PUD) design for this subject property, which could address the majority of the concerns raised by ELNA.

BACKGROUND INFORMATION

Summary of Requested Action

The subject property is approximately 118 acres in size and is located entirely within the Salem Urban Growth Boundary (UGB), but outside the city limits and Urban Service Area. The applicant submitted an annexation request concurrent with this Comprehensive Plan Change/Zone Change request. If the City Council refers the proposed annexation to the voters, the annexation is scheduled for inclusion on the November 2, 2010 ballot.

The pre-application conference (Pre-Application 09- 39A) concerning this proposed annexation of the subject territory was held on September 17, 2009. The applicant also submitted an Urban Growth Area (UGA) permit application (UGA Case #09-7) and the Preliminary Declaration for the Urban Growth Area Permit was issued on January 28, 2010 (Attachment 5).

In the past, the subject property was used as a mushroom growing operation. The mushroom farm ceased operations in 2001, and the buildings on the site have since been demolished. The residential areas have developed around the subject property. As the surrounding residential development occurred, the nature of the neighborhood changed. Now that the industrial use is

no longer on the subject property it seems that it is an appropriate time for the use of this site to transition to a zone/use that is more compatible with the surroundings.

The subject property is zoned UT-5, IP, and UD in Marion County and designated "Industrial" on the Salem Area Comprehensive Plan Map. The applicant requests a Comprehensive Plan Map change from "Industrial" to "Single Family Residential", "Multi-Family Residential", and "Commercial". The requested change is concurrent with the applicant's request to change the Marion County zoning of IP, UT-5, and UD to City of Salem RS, RM1, RM2, and CR. This concurrent zone change would create conformance between the proposed use of the property, the city zoning, and the Salem Area Comprehensive Plan designations.

The applicant has the burden to prove that all necessary criteria, in SRC Chapter 165, have been met to approve the proposed Comprehensive Plan Map change and zone change. In this case, staff finds that the applicant meets the burden of proof. Approval of this request would result in a mixture of residential and commercial uses and thereby provide the required diversity of housing types, while providing the opportunity for commercial uses to be integrated into a residential neighborhood and ensure transportation connectivity.

Public Comments

At the time of writing this report, no testimony from individual citizens has been received.

City and Agency Comments

Planning Staff formally solicited comments from applicable city departments and area agencies. As of the date of this staff report, the following departments and agencies submitted comments:

- (1) City of Salem Public Works – A copy of the Public Works comments is attached to this report (Attachment 6). The Preliminary Declaration for the Urban Growth Area Development (UGA) permit No. 09-7 has been issued for the subject property (Attachment 5). Site-specific infrastructure requirements will be addressed in the Site Plan Review process, as outlined in SRC Chapter 163. Public Works recommends a condition of approval to limit the development to a maximum of 14,157 Average Daily Trips (ADT) generated by the proposed uses.
- (2) City of Salem Building and Safety – Reviewed the proposal and has no comments.
- (3) City of Salem Fire Department -- .Reviewed the proposal and has no concerns.
- (4) Salem-Keizer Transit District – Reviewed the proposal and requested continued notification as the plans for this area develop. Currently this area has only limited public transit.
- (5) Salem-Keizer School District – Reviewed the proposal and prepared comments regarding the proposed land use activity (Attachment 7).
- (6) Marion County Public Works Department – Reviewed the proposal and submitted a letter dated March 4, 2010 which highlights comments about transportation and stormwater issues (Attachment 8). They have requested continued coordination with both the City and the applicant throughout the development process.
- (7) Santiam Water Control District – Reviewed the proposal and has no comments.

Salem Area Comprehensive Plan Designation

The Salem Area Comprehensive Plan identifies the site as "Industrial". Surrounding Area is:

North: (Across Auburn Road) "Developing Residential and "Single Family"
West: "Multiple Family"
East: (Across Cordon Road) "Industrial", "Public", "Rural Residential"
South: (Across State Street) "Multiple Family" and "Developing Residential"

Applicable Detail Plans

Detail plans are prepared as a policy guide to the comprehensive plan and specifically are plans for a particular geographic area of the city, or for the provision or performance of some particular service or function. There are no applicable neighborhood plans for the subject property.

Salem Transportation System Plan (STSP): The STSP uses a Street Classification System to determine the function classification of each street within the city's street system. The subject property lies adjacent to Auburn Road NE, State Street, and Cordon Road NE. Auburn Road NE is designated as a collector street; State Street is designated as a major arterial street; and Cordon Road NE is designated as a parkway street in the Salem Transportation System Plan (TSP). Cordon Road NE will remain within Marion County jurisdiction upon annexation and the County Public Works Department will be responsible for the access management and future improvement requirements. Greencrest Street NE is identified in the Salem TSP as a collector and is intended to connect between Auburn Road NE and State Street within the subject property. The applicant's Conceptual Plan shows connectivity at 600-foot intervals as required in SRC 63.225(p). Likely north/south connectivity would be located at Greencrest Street NE and "49th Street Extension" (approximately 875 feet). The County and City will continue to coordinate on all transportation issues, specifically with the review of the TIA.

For additional information regarding access, street improvements, and access control, see the attached comments provided by the Public Works Department.

The State Transportation Planning Rule (TPR) specifies a connection between lots, streets, and pedestrian facilities. The applicant/developer is required to provide pedestrian/bicycle access to abutting public streets. Pedestrian access must be conveniently located and must provide a reasonably direct route to public streets served by mass transit. The applicant's findings address statewide Planning Goal 12 (Transportation) and conclude that the proposed development will minimize transportation impacts from what could be generated under the current County zoning. Staff concurs with these findings and suggests that a condition of approval to limit the ADT of the future development be included in the Commission's recommendation to City Council.

Zoning & Uses

Subject Property: Marion County UT-5 , IP, and UD

Surrounding Area:

North: (across Auburn) Salem RS, Marion County UD, and UT-5 ;Church, and Single-Family dwellings
West: Marion County UD and RM ; Manufactured Dwelling Park and Single-Family dwellings
East: (across Cordon Rd) Marion County AR , P and I; Fire Station, Youth Baseball/Softball complex, businesses, Single-Family dwellings
South: (across State St) Marion County UD, RM, RL, and SA; Single-Family dwellings

Existing Site Conditions

The subject property consists of approximately 118 acres and is currently vacant. At the time of development, the Salem development standards and regulations shall be met by the developer.

SRC Chapter 68, Trees. SRC Chapter 68 prohibits the removal of trees and vegetation within riparian corridors and the removal of Oregon White Oaks. A tree conservation plan indicating the location of all trees on the property, in addition to trees proposed for removal and preservation shall be submitted in conjunction with any land division application. SRC Chapter 68 requires the preservation of 25 percent of the trees on the property. When less than 25 percent of the trees on a property are proposed for preservation, only those trees reasonably necessary to accommodate the development proposal shall be designated for removal.

The applicant has submitted an inventory of the existing trees. A copy of this inventory is on file in the Planning Division. A preliminary field inspection by city staff was completed with the following observations. There are approximately 30 Oregon White Oaks in a grove on approximately 0.6 acre, which is south of the old railroad right-of-way and in the northeast corner of the old industrial section. Midway on Auburn Road, there are five (5) Oregon White Oaks. South of the Salem Bible Missionary Church is a wooded lot which contains a number of Oregon White Oaks mixed with Douglas Firs and other trees. At the time of development, a detailed review will be conducted and the requirements of SRC Chapter 68 shall be met.

Wetlands and Waterways. Based upon a review of the data in the City RegGIS, the subject property contains wetlands or waterways and hydric soil. It is the applicant's responsibility to determine if there are, in fact, any regulated wetlands or waterways on the property that may require state and federal permits. The Department of State Lands (DSL) can be contacted and the applicant submit a request for an off-site wetland determination. The Conceptual Plan has been revised by the applicant to remove the notation "existing storm ditch to be piped." The applicant will be responsible for compliance with all applicable regulations at the time of development.

Conceptual Plan

The applicant provided a Conceptual Plan for the property (Attachment 7). Because of the size of the subject property (118 acres) and the desire to have the design drawn at a scale so that the details were legible, the applicant shows the northern portion (along Auburn Road) on one sheet and the southern portion (along State Street) of the subject property on a separate sheet. A revision to the Conceptual Plan for the northern portion of the subject property has been submitted (Attachment 8). This revision removed the notation "existing storm ditch to be piped." The applicant will be responsible for compliance to all applicable regulations at the time of development.

The conceptual plan illustrates general locations for a proposed mixture of uses including single-family and multi-family residential, park, and commercial uses. The following is a summary of the possible range of uses allowed by the Conceptual Plan.

<u>Zoning Description</u>	<u>Zone Area</u>	<u>Zone Intensity</u>
RS – Single Family	71.85 acres	313-547 lots
RM1 – Multi-Family Residential	11.58 acres	93-162 dwelling units (d.u.)
RM2 – Multi-Family Residential	12.94 acres	155-362 d.u.
CR – Commercial Retail	19.93 acres	
Perimeter ROW Dedication	1.60 acres	
Totals	117.9 acres	561 – 1071 d.u. or lots

The zone intensity, listed above, assumed 30 percent of the total land to be used for road right-of-way and public improvements. Based on the acreage and zone intensity, the proposed residential development will have a density range of six (6) to 12 dwelling units per gross acre.

This application also includes a "Shadow Plan" for the proposed commercial area (Attachment 8). This Shadow Plan is diagrammatic only and is intended to illustrate a potential layout, massing, and density of uses within the proposed CR zone. This drawing is not a part of the official Conceptual Plan, per the SRC Chapter 165 requirements.

Applicant Submittal Information

ANALYSIS AND FINDINGS FOR COMPREHENSIVE PLAN and ZONE CHANGES WITH ANNEXATION

The applicant's findings for the annexation and the Comprehensive Plan Change/Zone Change applications are combined into one document and attached to this staff report (Attachment 3). Additional information, maps, previous studies and analysis have been submitted by the applicant and are in the Planning Division case file. Excerpts from the applicant's responses to the applicable criteria are provided in the following analysis.

Salem Revised Code, Chapters 165.100(b) and 165.130(c)(5) provide the criteria for the approval of Comprehensive Plan/Zone Changes with annexation application. The only difference between these two code sections is the reference to the decision-making group, either the Planning Commission or the City Council. The applicable criteria are stated below in ***bold italic*** print. Following each criterion is the applicant's statement/finding for both SRC 165.100 and 165.130 and staff findings relative to the changes requested.

Criterion 1: Whether the comprehensive plan and zone designation provides for the logical urbanization of land;

Applicant's Statement:

The Subject Property is contiguous to the City of Salem limits, and located outside the City of Salem but within the UGB. Accordingly, by definition, the Subject Property is deemed "urbanizable." Since the Subject Property is contiguous to the City of Salem, the incorporation of the Subject Property into the City of Salem provides for an orderly and efficient transition from rural to urban land use in the provision of municipal facilities and services as well as in the facilitation of orderly urbanization.

Specifically, the comprehensive plan and zone designations proposed by Applicants provides for the logical urbanization of Applicants' Property. The Subject Property is surrounded by residential uses, and is the only property in the nearby vicinity designated and zoned for industrial use. Further, it is currently vacant and undeveloped. As such, the proposed comprehensive plan and zone designations are a logical extension of urban development and will be consistent with surrounding uses.

Findings: Planning staff concurs with the facts presented by the applicant as stated above and finds that the applicant satisfies Criterion 1. The applicant has also addressed the Statewide Planning Goals and the SACP Goals and Policies (Attachment 3, pages 1 - 37), which provides additional background information for this review process.

A re-designation and zone change provides for the logical urbanization of the subject property because the area will be adequately served by linking streets and sewer facilities. At the time of development, the applicant shall construct improvements in compliance with the UGA

Preliminary Declaration and the current development standards. A Transportation Impact Analysis (TIA) to identify the impacts on the public transportation system and construct any necessary mitigation measures identified in the TIA will be required. Based on the findings prepared by the applicant to address the impacts of the proposed development on the transportation system, it is recommended that a Trip Cap of 14,157 Average Daily Trips (ADT) be a condition of approval for the requested zone change. Public Works staff findings to support this condition are included in Attachment 9.

Criterion 2: *Whether the comprehensive plan and zone designation is compatible with development patterns in the nearby vicinity;*

Applicant's Statement:

Applicants' proposed comprehensive plan changes and zone changes are compatible with development patterns in the nearby vicinity; the current comprehensive plan and zone designations are not. As noted above, Applicants' Property is primarily designated *Industrial*, but is surrounded by single family residential and multi family residential uses to the north, west and south. Further, those properties to the east of Applicants' Property are compatible with residential uses, and include Terra Gardens Nursery and the Marion County Fire District. Accordingly, it is the current *Industrial* designation that is incompatible and inconsistent with development patterns in the nearby vicinity.

Comprehensive plan changes to *Single Family Residential*, *Multi Family Residential* and *Commercial* and zone changes to RS, RM1, RM2 and CR will render Applicants' Property consistent with the surrounding area. Due to the residential development pattern in the nearby vicinity of Applicants' Property over the past several years, the Subject Property is essentially an island of *Industrial* property in the midst of residential uses. A mix of residential and commercial uses on Applicants' Property is compatible with the nearby vicinity, whereas a large industrial use is not. Accordingly, the comprehensive plan and zone designations are compatible with development patterns in the nearby vicinity.

Findings: Planning staff concurs with the facts presented by the applicant as stated above and finds that the applicant satisfies Criterion 2. The proposed "Single Family Residential" and "Multi Family Residential" and "Commercial" Comprehensive Plan Map change is compatible with the surrounding development patterns.

The proposal to provide commercial uses with a mixture of residential densities is consistent with the established uses in the vicinity and the overall character of the neighborhood. The proposed commercial center at the northwest corner of the intersection of Cordon Road and State Street will enhance and compliment the existing uses to the east. The various non-residential uses to the east of Cordon Road include the nursery, a fire station, youth baseball and softball complex, and the soccer fields. Together, the east and west sides of Cordon Road will provide a neighborhood center with a variety of uses for the customers and clients of this area.

Additionally, providing retail, services, and office uses for the new residential units within this proposed development and the existing residential uses will create a mixed-use area. The combination of these uses creates a synergy to result in a dynamic neighborhood. The large size of the subject property allows many opportunities for innovative design through a master plan approach. This type of comprehensive and coordinated planning can address issues such as: providing transition areas between different uses, promoting alternative modes of transportation (walk, bike, and bus) and avoid duplication of basic facilities, i.e. parking.

Criterion 3: *Whether the social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and*

Applicant's Statement:

The conditions within the nearby vicinity of the Subject Property have changed over time, and continue to change as the surrounding properties are developed. The properties surrounding Applicants' Property are residential in nature, and therefore, the *Industrial* designation and zoning is no longer appropriate. The social, economic and demographic patterns of the nearby vicinity have altered in a manner that precludes industrial development of Applicants' Property. The Salem Regional Employment Center is a larger parcel of industrial land that is closer to I-5 access. In addition, the Salem Regional Employment Center EOA identified three parcels of vacant industrial land that were 40 acres or larger.¹ Accordingly, it is unlikely that Applicants' Property will be developed for industrial use. In addition, industrial development of Applicants' Property is inconsistent and incompatible with the surrounding uses that have developed over time. Therefore, the current comprehensive plan and zoning designations for Applicants' Property are no longer appropriate.

Findings: Staff concurs with the applicant that social, economic, or demographic patterns of the nearby vicinity have so altered the area that the current designation of Industrial is no longer appropriate. One major alteration in the vicinity is the Mill Creek Corporate Center (828 acres) which is at the southeast corner of Highway 22 and Cordon Road.. Another major development in the area is the Salem Renewable Energy and Technology Center (80 acres) located on Gaffin Road, just east of Cordon Road. The anchor tenant for the Salem Renewable Energy and Technology Center is SANYO. In November 2009, SANYO opened a 130,000 square foot facility on approximately 20 acres. SANYO manufactures silicon ingot and solar wafers.

Criterion 4: *Whether it is in the public interest that the proposed change be made.*

Applicant's Statement:

For the reasons set forth above, it is within the public interest that the proposed comprehensive plan changes and zone changes be made. These reasons includes that the proposed comprehensive plan changes and zone changes will make Applicants' Property consistent with the existing surrounding uses, that the proposed comprehensive plan changes and zone changes will increase the density and type of housing available within the City of Salem, that the proposed comprehensive plan changes and zone changes will reduce the traffic impacts that would otherwise be permitted under the current IP zoning, and that it is a logical extension of the City of Salem limits.

Findings: The City of Salem construes the public interest to be that which is consistent with the adopted goals and policies of the Salem Area Comprehensive Plan, in light of its intent statements.

The applicant has addressed the Statewide Planning Goals (Attachment 3, pages 22-34) and the Salem Area Comprehensive Plan (SACP) Goals and Policies (Attachment 3, pages 6-22). The proposed change provides additional land available for multi-family housing and commercial uses within the Salem urban area. Annexation would allow further residential development at urban densities and commercial uses that would help maximize investment in public services and encourage the efficient use of developable land.

RECOMMENDATION

Staff recommends that the Planning Commission adopt the findings of this report and make the following recommendation to the City Council for the subject property located at 255 Cordon

Road NE and 4900 Block of State Street NE, and generally between Auburn Road and State Street and west of Cordon Road (Marion County Assessor's Map 072W29B Tax Lot Numbers 200 and 201; Marion County Assessor's Map 072W29C Tax Lot Numbers 100 , 101, 200, 300, and 400):

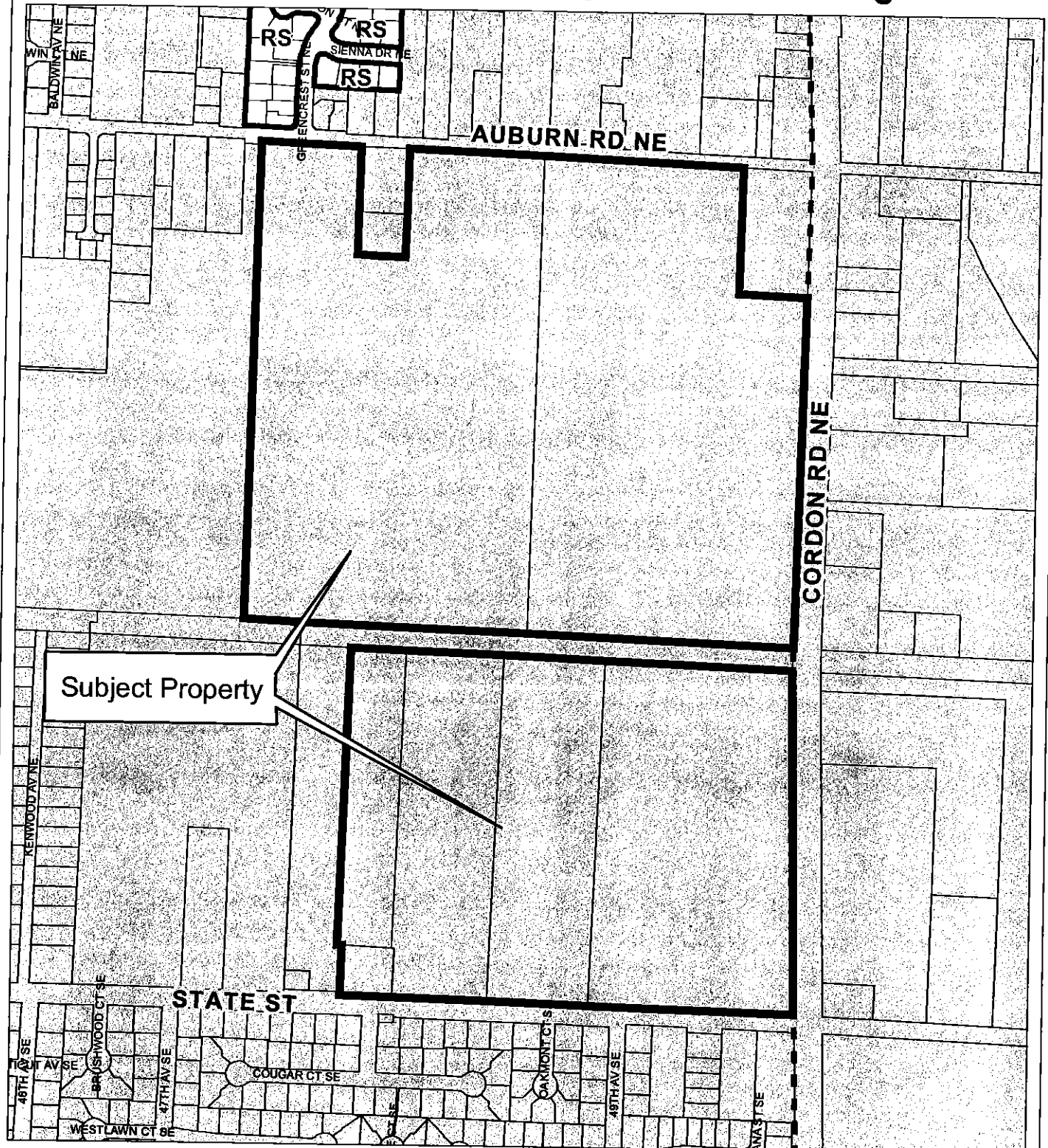
- A. That the Salem Area Comprehensive Plan (SACP) Map designation change from "Industrial" to "Single Family Residential", "Multi-Family Residential" and "Commercial" be GRANTED.
- B. That the zoning change from Marion County "Industrial Park (IP), "Urban Transition" (UT-5), and "Urban Development"(UD) to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR) be GRANTED, subject to the following condition:

Condition 1: At the time of development review for any proposed use on the subject property, the proposed development's average daily trips shall be calculated pursuant to the then-current Institute of Transportation Engineers (ITE) Trip Generation manual. Traffic impacts from future development on the subject property shall be limited to a maximum of 14,157 average daily trips generated by the proposed use or uses. This condition shall be recorded against the subject property as a restrictive covenant.

- Attachments:
- 1) Vicinity Map for Comprehensive Plan Change/Zone Change 10-1
 - 2) Vicinity Map for Annexation Territory (includes area previously used as railroad right-of-way)
 - 3) Applicant's submittal
 - 4) Notice of Public Hearing
 - 5) Comments submitted by ELNA
 - 6) Preliminary Declaration for the UGA Permit
 - 7) Conceptual Plan (includes 2 sheets)
 - 8) Shadow Plan for the proposed CR zone area
 - 9) School District Comments
 - 10) Marion County Public Works Department comments
 - 11) Salem Public Works Department comments

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Comprehensive Plan Change / Zone Change 10-1



Legend

- Base Zoning
- Urban Growth Boundary
- Outside Salem City Limits
- Taxlots
- Parks
- Schools

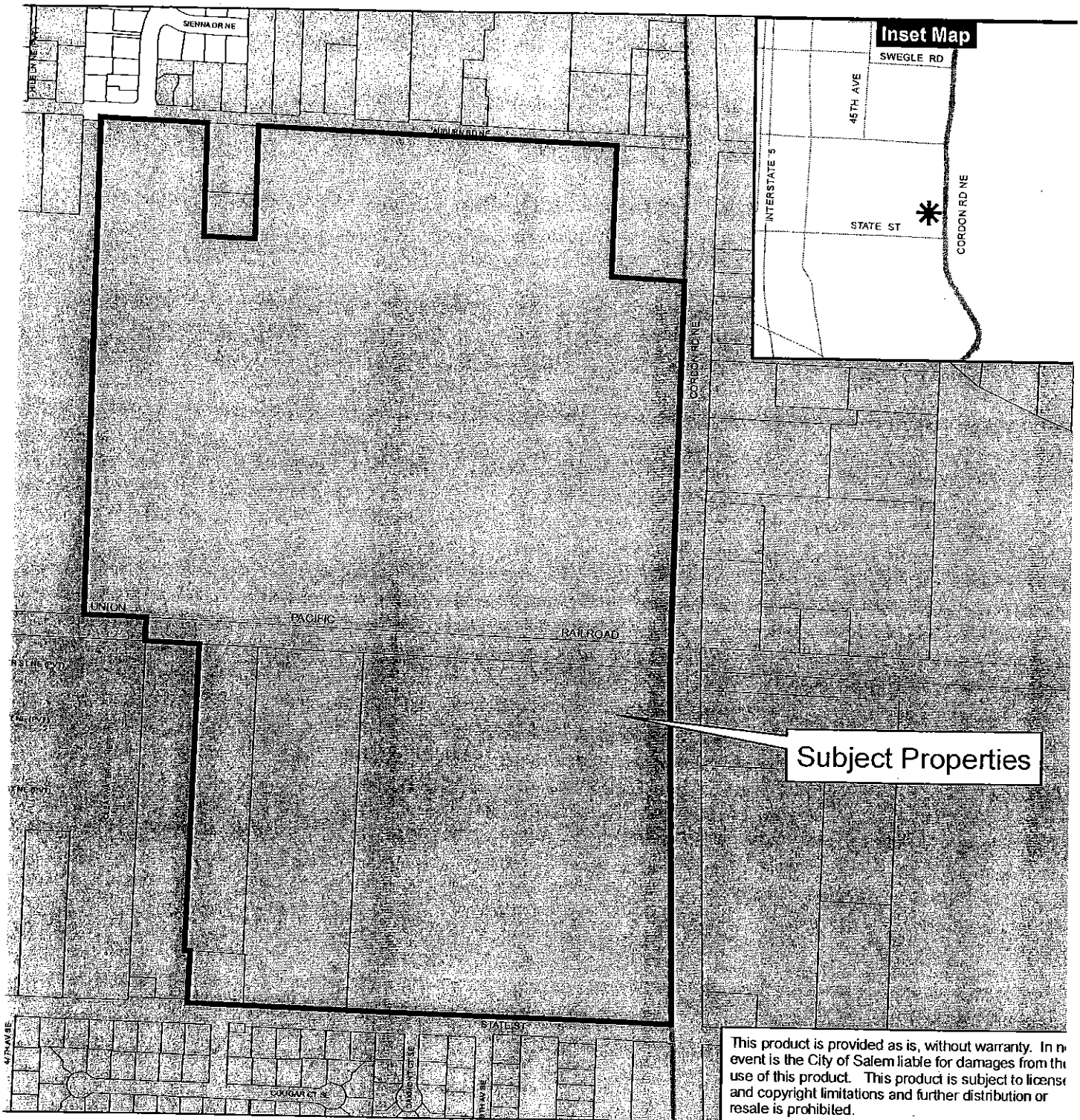
This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

0 50 100 200 Feet



Vicinity Map

4900 Block of State St



**Owner-Initiated Voter-Approved Annexation
With Comprehensive Plan Changes and Zone Changes**

I. Nature of the Application

The Pictsweet Company, PS Mushrooms, LLC, State Street Mushrooms, LLC, Cordon Road Mushrooms, LLC, Marion Mushroom Farm, LLC, Auburn Road Mushroom Farm, LLC and Salem Mushroom Farm, LLC ("Applicants")¹ seek an owner-initiated voter-approved annexation of approximately 121.15 acres and comprehensive plan changes and zone changes for approximately 117.90 acres of real property located immediately west of Cordon Road between Auburn Road to the north and State Street to the south. Specifically, Applicants seek to annex the following real property into the City of Salem: Tax Lots 200 and 201 located on map 7-2W-29B and Tax Lots 100, 101, 199, 200, 300 and 400 located on map 7-2W-29C ("Subject Property"). Applicants are not the owners of Tax Lot 199,² but seek annexation of Tax Lot 199 through triple majority annexation pursuant to Oregon Revised Statutes ("ORS") 222.170(1). The properties that are owned by Applicants and are covered by this application are collectively referred to as "Applicants' Property." Documentation of ownership of Applicants' Property is attached hereto as Exhibit A and incorporated herein by this reference. The Subject Property is currently located within the Urban Growth Boundary ("UGB") but outside the City of Salem.

II. Background and Proposal

Applicants seek annexation of the Subject Property, together with comprehensive plan changes and zone changes for Applicants' Property.³ Applicants' Property is currently designated

¹ Applicants are also hereinafter referred to collectively as "The Pictsweet Company, et al."

² The real property more specifically described as 7-2W-29C Tax Lot 199 is a 3.25 acre parcel that was formerly the Union Pacific Railroad right-of-way, and is currently owned by Michael J. Souza and Douglas A. Cummins. Mr. Souza and Mr. Cummins have not joined Applicants in seeking to annex the Subject Property.

³ Applicants seek to annex the entire 121.15 acres of the Subject Property through triple majority annexation in accordance with ORS 222.170(1). Pursuant to SRC 165.100(a), the petitioner or City Council have standing to request or propose a new comprehensive plan designation or zone designation for property that is annexed into the City of Salem. Due to the fact that Applicants do not own the 3.25 acre parcel more specifically described as 7-2W-

Industrial in the Salem Area Comprehensive Plan ("SACP"). Applicants' Property is zoned Industrial Park ("IP"), Urban Transition ("UT") and Urban Development ("UD"). Applicants' proposal seeks to develop Applicants' Property in a manner that will be consistent with the existing surrounding uses and overall character of the area, including the development of single family residences, multi family residences and community and neighborhood shopping.

Accordingly, Applicants' proposal seeks to annex the Subject Property into the City of Salem, amend the SACP designation for Applicants' Property to *Single Family Residential, Multi Family Residential* and *Commercial*, and change the zoning applicable to Applicants' Property to Single Family Residential ("RS"), Multiple Family Residential 1 ("RM1"), Multiple Family Residential 2 ("RM2") and Retail Commercial ("CR"). A conceptual site plan is attached hereto as Exhibit B and incorporated herein by this reference. Careful review of the Subject Property as well as the zoning and uses of the surrounding properties demonstrates that Applicants' proposal is consistent with established uses in the vicinity of the Subject Property as well as the overall character of the area.

Historically, Applicants' Property has been used as a mushroom growing operation. The mushroom farm ceased operations in 2001, and the buildings on the site have since been demolished. Over time, residential areas have developed around the Subject Property. As such, the nature of the area has changed, and Applicants' Property is no longer conducive to industrial use.

The Subject Property totals approximately 121.15 acres, and is located just outside the City of Salem limits but inside the UGB in the northeast Salem area. In fact, the Subject Property is bordered by the UGB on the east. Located west of Cordon Road, the Subject

29C Tax Lot 199 and the owners of Tax Lot 199 have not joined in this petition for annexation, Applicants only have standing to seek comprehensive plan changes and zone changes for the 117.90 acres that Applicants' own.

Property is bordered by Auburn Road to the north, Cordon Road to the east, State Street to the south and single family residences as well as mobile home parks to the west.

The properties surrounding the Subject Property have SACP designations and are zoned⁴ as follows: north of the Subject Property across Auburn Road is designated *Developing Residential* and *Single Family Residential* in the SACP and zoned UT and UD; south of the Subject Property across State Street is designated *Multi Family Residential* in the SACP and zoned UD, Multiple Family ("RM") and Limited Multiple Family ("RL"); east of the Subject Property across Cordon Road is not designated in the SACP as it is located outside of the UGB and is zoned Industrial and Public; west of the Subject Property is designated *Multi Family Residential* in the SACP and zoned RM. A copy of the Marion County Zoning Map indicating the zoning of the Subject Property and surrounding properties is attached hereto as Exhibit C and incorporated herein by this reference.

A visual representation of the SACP designations and actual surrounding uses within the immediate vicinity of the Subject Property provides a striking illustration of the character of the area. With the exception of the property located east of the Subject Property across Cordon Road and outside of the UGB, the SACP designations and actual uses of the surrounding properties are mainly residential in nature. Single family residences, mobile home parks and single family residences on larger acreage all surround the Subject Property. In fact, even the property located east of the Subject Property is consistent and not in conflict with residential use and community and neighborhood shopping. Uses east of the Subject Property across Cordon Road include the Terra Gardens Nursery, Marion County Fire District and Holland Youth Fields. An aerial photograph of the Subject Property, which is attached hereto as Exhibit D and

⁴ With the exception of one area to the north of the Subject Property that is within the City of Salem limits and zoned RS, all of the surrounding properties are located outside of the City of Salem limits and the zones referenced are the Marion County zones.

incorporated herein by this reference, illustrates that the nature of the area as developed is no longer conducive to industrial use. Retention of the current SACP designations and zoning for Applicants' Property would allow for intense industrial uses in the midst of residential neighborhoods.

The Subject Property is located in an area that is predominantly residential and/or designated for future residential use. Applicants' proposal is consistent with the character of the area, as it seeks to develop Applicants' Property in a way that will compliment the existing residential uses while bringing community and neighborhood shopping, as well as employment opportunities, to the surrounding neighborhoods. Further, Applicants' proposal seeks to prepare Applicants' entire acreage for development, thereby resulting in a cohesive rather than piecemeal development of Applicants' Property.

III. Annexation with Comprehensive Plan Change and Zone Change Criteria

A. Applicants satisfy the requirements of a triple majority annexation pursuant to ORS 222.170(1).

Applicants seek to annex approximately 121.15 acres of real property into the City of Salem that is contiguous to the City of Salem limits at its northwest corner and located within the UGB. As noted above, Applicants do not own 3.25 acres of the Subject Property sought to be annexed. Therefore, Applicants seek to annex the entire 121.15 acres of the Subject Property through triple majority annexation.

Pursuant to ORS 222.170(1), a proposed annexation meets the requirements of a triple majority annexation when (1) more than half of the owners of land in the territory to be annexed (2) own more than half of the land in the territory proposed to be annexed and (3) that land represents more than half of the assessed value of the territory proposed to be annexed. Triple majority annexation in accordance with ORS 222.170(1) does not require voter approval;

however, pursuant to SRC 165.050(a) all annexations must be submitted to the voters of the City of Salem.

In the present application, Applicants include seven of the eight owners of the Subject Property, well over half of the owners of the land in the territory to be annexed. Further, Applicants own 117.90 acres of the 121.15 acres sought to be annexed, or 97.3% of the land. Finally, the land owned by Applicants represents significantly more than half of the assessed value of the territory proposed to be annexed. Pursuant to the Marion County Assessor's Property Records,⁵ the assessed value of Applicants' 117.90 acres totals \$5,344,290.00 while the value of Tax Lot 199 is assessed at \$144,430.00.

Applicants therefore represent over half of the owners of the land to be annexed, own over half of the land to be annexed and that land is more than half of the assessed value of the land to be annexed. Accordingly, Applicants satisfy the triple majority requirements of ORS 222.170(1) and seek annexation of the total 121.15 acres of the Subject Property even though Applicants do not own Tax Lot 199.

B. Applicants' proposed annexation with comprehensive plan changes and zone changes satisfies the requisite criteria of SRC 165.130(c).

A proposed annexation with a comprehensive plan change and zone change must satisfy the requisite criteria of SRC 165.130(c). Specifically, with respect to the proposed annexation, the City Council must determine that the proposed annexation, comprehensive plan changes and zone changes are consistent with the SACP and Statewide Planning Goals, will result in a boundary in which services can be provided in an orderly, efficient and timely manner, that the uses and density allowed can be served through the orderly, efficient and timely extension of key

⁵ See <http://apps.co.marion.or.us/PropertyRecords>

urban facilities, and that the public interest is furthered by the referral of the annexation to the voters.⁶

With respect to the comprehensive plan changes and zone changes, the City Council must determine that the comprehensive plan and zone designations provide for the logical urbanization of land, are compatible with development patterns in the nearby vicinity, the social, economic or demographic patterns of the nearby vicinity have so altered that current designations are no longer appropriate and that it is in the public interest that the proposed change be made.⁷

Applicants' proposed annexation, comprehensive plan changes and zone changes satisfy all of the requisite criteria, each of which will be discussed in detail below. Accordingly, the City Council should refer the proposed annexation to the voters for the November 2, 2010 general election.

1. **The proposed land use designations are consistent with the SACP and applicable Statewide Planning Goals in accordance with SRC 165.130(c)(1).**

Pursuant to SRC 165.100, territory annexed into the City is automatically given the City comprehensive plan designation and zoning designation that is the equivalent to the applicable county zoning designation unless the petitioner or City Council proposes a new comprehensive plan designation or zoning designation or the designations are inconsistent with the SACP. SRC 165.100(a)(1) specifically authorizes the petitioner to request a new comprehensive plan designation or zone designation in the petition for annexation. In the present application, Applicants seek to amend the comprehensive plan designation for Applicants' Property to *Single Family Residential, Multi Family Residential and Commercial*, and change the zoning to RS, RM1, RM2 and CR. A copy of the proposed legal descriptions for the proposed zone designations is attached hereto as Exhibit E and incorporated herein by this reference.

⁶ SRC 165.130(c)(1) – (4).

⁷ SRC 165.130(c)(5).

Applicants' proposed comprehensive plan changes and zone changes are consistent with the SACP and applicable Statewide Planning Goals.

- a. **Applicants' proposed comprehensive plan changes and zone changes are consistent with the SACP as required by SRC 165.130(c)(1).**

Applicants' proposed comprehensive plan changes and zone changes are consistent with the goals, policies and intent statements of the SACP. The SACP goals, policies and intent statements applicable to the proposed annexation are as follows:

1. SACP II(A)(3)(a). "The Single Family and Multi-Family Residential categories of use encompass all types of housing, for example, single family detached, single family attached, manufactured homes, garden apartments, and row houses... The predominant use of land within the residential designations are for single family and multifamily dwelling units."

Applicants' conceptual site plan includes a combination of single family and multi family residential uses. The northern portion of Applicants' Property will include 71.85 acres of single family residences, which will include an approximate 6.62 acre storm water detention and park area. The southern portion of Applicants' Property includes 24.49 acres of multi family residential uses. Specifically, Applicants' conceptual site plan identifies 11.58 acres of the southern portion of Applicants' Property to be zoned RM1 and 12.94 acres of the southern portion of Applicants' Property to be zoned RM2.

The RS, RM1 and RM2 zones are consistent with the SACP designations of *Single Family Residential* and *Multi Family Residential*. Permitted uses within the RS zone include single family dwellings, duplexes, playgrounds and parks.⁸ The RM1 zone also allows single family dwellings as a permitted use, but includes uses with higher dwelling unit densities, such as condominiums and apartment houses. The minimum residential density in the RM1 zone

⁸ See SRC 146.020.

is eight dwellings per acre, and the maximum residential density is fourteen dwellings per acre.⁹

The RM2 zone authorizes higher dwelling unit densities than the RM1 zone: the minimum residential density is twelve dwellings per acre; the maximum residential density is twenty-eight dwellings per acre.¹⁰

Accordingly, the proposed comprehensive plan designations and conceptual site plan encompasses a variety of housing with varying dwelling densities, including single family detached, single family attached and apartments. These uses are consistent with the residential uses surrounding the Subject Property. As such, Applicant's proposed annexation with comprehensive plan changes and zone changes is consistent with SACP II(A)(3)(a).

2. SACP II(A)(3)(a)(4). "Conversion of Developing Residential or Urbanizable Areas to Urban Development. Full urban services are not immediately available to most urbanizable lands. Generally these lands lie outside the city limits and the county service districts. Therefore, they must be annexed to the City to receive those services unless other arrangements are approved by the City and County... Some of the reasons for converting urbanizable land to urban land are to (1) provide for the orderly and economic extension of public facilities and services, (2) provide adequate land area for a variety of housing types and locations, and (3) maintain an adequate supply of service or serviceable undeveloped land to meet the market demand for a variety of uses."

The Subject Property is currently vacant, and is located within the UGB but outside of the City of Salem. As such, the Subject Property must be annexed to the City of Salem to receive most urban services.

A portion of Applicants' Property is currently serviced by the Suburban East Salem Water District; however, the Suburban East Salem Water District does not have the infrastructure or capacity to serve the proposed development. Accordingly, Applicants will be required to construct a public water line, adequate in both size and alignment, to Applicants'

⁹ See SRC 148.160; SRC 148.220.

¹⁰ SRC 148.370.

Property to provide sufficient fire flow. Applicants will also be required to extend a sewer main and provide adequate storm water retention on Applicant's Property.

Despite the need to provide additional infrastructure or capacity for urban services, the proposed annexation and land use changes for Applicants' Property will provide for the orderly and economic extension of public facilities and services as the Subject Property is contiguous to the City of Salem and is located within the UGB. Additionally, as noted above, Applicants' proposed development provides for a variety of housing types and locations, including single family detached, single family attached and apartments.

Finally, Applicants' proposed annexation with comprehensive plan and zone changes assists the City of Salem in maintaining an adequate supply of serviceable land to meet the market demand for a variety of uses. For example, as discussed more fully below, there is currently a deficit of vacant commercial land.¹¹ The conversion of Applicants' Property from urbanizable land to land that is available for urban development will provide an additional 19.93 acres of *Commercial* land within the UGB, thereby increasing the adequate supply of *Commercial* lands available for development.

Urban services are available to Applicants' Property, the proposed development includes a variety of housing types and the conversion of Applicants' Property will assist in maintaining an adequate supply of serviceable land to meet market demands. Accordingly, the proposed development is consistent with SACP II(A)(3)(a)(4).

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¹¹ See Pages 25 and 26.

3. SACP II(A)(3)(c). "Community and Neighborhood Shopping and Service Facilities offer a variety of goods and services. Neighborhood scale facilities include convenience goods for neighborhood residents while community scale facilities may include shopping goods for a market area consisting of several neighborhoods."

Applicants' conceptual site plan includes 19.93 acres zoned for commercial retail use. Over the past several years, residential neighborhoods have developed around the Subject Property. Applicants seek to provide community and neighborhood shopping within the development of Applicants' Property for the surrounding market area consisting of several neighborhoods. Access to commercial community scale facilities such as shopping, employment and entertainment opportunities is one of the factors used to determine the location and density of residential uses.¹² Convenient access to commercial services also encourages the use of alternative transportation modes, such as walking or biking. Applicants' proposed CR zoning is consistent with SACP II(A)(3)(c) as it seeks to provide community and neighborhood shopping for a market area consisting of several existing neighborhoods.

4. SACP IV(A)(6). "Annexation Coordination. An opportunity shall be provided for the affected county to comment on proposals for annexation of property to the City of Salem."

Marion County was notified of the proposed annexation, participated in the pre-application conference on September 17, 2009 and Urban Growth Area Development Permit hearing on November 17, 2009, provided written comments regarding the proposed annexation with comprehensive plan changes and zone changes, and will continue to have the opportunity to comment on the proposed annexation during the public hearings held by the Planning Commission and City Council regarding this application. Therefore, the proposed annexation will satisfy with the county coordination requirement contained in SACP IV(A)(6).

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¹² SACP IV(E)(1).

5. SACP IV(B)(7). "Optimal Use of the Land. Structures and their siting in all residential, commercial, and industrial developments shall optimize the use of land. The cumulative effect of all new residential development in the Salem urban area should average 6.5 dwelling units per gross acre of residential development..."

As noted above, Applicants' conceptual site plan designates 71.85 acres for single family residences and 24.49 acres for multi family residential uses. Specifically, 11.58 acres designated for multi family residential use is designated as RM1 and 12.94 acres is designated RM2. The remaining 19.93 acres of the Subject Property is designated CR. The minimum residential density requirement in the RM1 zone is 8 dwellings per acre; the maximum residential density is 14 dwellings per acre.¹³ In the RM2 zone, the minimum residential density is 12 dwellings per acre while the maximum residential density is 28 dwellings per acre.¹⁴ Based on these ranges, Applicants' proposed residential development consisting of 96.34 acres will include approximately 1,029 residential units to 1,305 residential units. Based on these calculations, Applicants' proposed residential development will have a range of 10.7 dwelling units per gross acre to 13.5 dwelling units per gross acre. As such, Applicants' proposed residential development is consistent with the policy objective of SACP IV(B)(7).

6. SACP IV(B)(13). "Designated Open Space. Land use regulations shall encourage public spaces, both natural and manmade for either active or passive enjoyment, including natural areas, open plazas, pedestrian malls, and play areas."

Applicants' conceptual site plan includes approximately 6.62 acres of storm water detention and park area adjacent to the single family residences.¹⁵ The City of Salem Comprehensive Park System Master Plan (April 1999) ("1999 Master Plan") identifies park

¹³ SRC 148.220.

¹⁴ SRC 148.370.

¹⁵ The City of Salem's Park Superintendant has indicated that there will need to be a 5.25 acre neighborhood park to serve the proposed development.

deficiencies in the vicinity of Applicants' Property.¹⁶ As such, Applicants' proposed 6.62 acre storm water detention and park area is consistent with the 1999 Master Plan in that it will provide a neighborhood park in an area where public parks are lacking.

The proposed park will provide open spaces for outdoor recreation, whether in the form of active or passive enjoyment or play areas, that do not currently exist on the Subject Property. Pursuant to the 1999 Master Plan, a "Neighborhood Park" is typically five to 10 acres, and the preferred surrounding land uses are the RS and RM zones. The mission statement of a "Neighborhood Park" is as follows:

"[S]erves as the recreational focus of the neighborhood, offers a balance of active and passive recreation activities to its residents. Emphasizes unscheduled and unorganized recreation for local residents. Safe and convenient access is provided for pedestrians and bicyclists."¹⁷

More specifically, the 1999 Master Plan at Table I-2, Park and Recreation Facilities, identifies certain basic requirements for neighborhood parks, including picnic facilities, a play ground, a play field, multi-use trails and a basketball multi-use court.

Applicants' proposed neighborhood park is consistent with the 1999 Master Plan in that it will be surrounded by RS and RM zones, falls within the five to 10 acre range of facility size and will provide active and passive recreation activities for the surrounding neighborhoods. The proposed neighborhood park will also be able to include all of the basic requirements for neighborhood parks, including picnic facilities, a playground and play field.

Not only will the proposed 6.62 acre neighborhood park satisfy the need for open spaces, it will also meet the need for storm water detention during the wet periods and the park's location is designed to preserve the existing white oak trees in the northeast portion of the

¹⁶ City of Salem Comprehensive Park System Master Plan, Table II-10(G57) (April 1999).
¹⁷ 1999 Master Plan, Table I-1.

Subject Property. Therefore, Applicants' proposed annexation with comprehensive plan changes and zone changes is consistent with SACP IV(B)(13), which encourages the designation of open spaces.

7. SACP IV(C)(1). "Annexation. Marion and Polk Counties should encourage the orderly annexation to the City of Salem of the land within the Salem urban area."

The Subject Property is contiguous to property located within the City of Salem limits, and is within the UGB. The Subject Property is therefore within the "Salem urban area" and the orderly annexation of the Subject Property should be encouraged. As such, Applicants' proposed annexation with comprehensive plan changes and zone changes is consistent with SACP IV(C)(1).

8. SACP IV(C)(3). "UGB is Urbanizable. Urbanizable areas within the urban growth boundary shall be considered as available for annexation and urban development."

"Urbanizable Land" is defined as "...those lands within the urban growth boundary and which are identified and (a) determined to be necessary and suitable for future urban areas; (b) can be served by urban services and facilities; and (c) are needed for the expansion of an urban area."¹⁸ The Subject Property is contiguous to the City of Salem limits, and is located within the UGB. Vacant residential land calculations assume that with residential lands being developed at an average rate of 6.5 dwelling units per acre,¹⁹ nearly 90% of the UGB's 5,393 acres of vacant residential land will be consumed by 2027.²⁰ Similarly, there is an anticipated deficit of 66 acres of vacant commercial land for the 20-year planning period.²¹ The

¹⁸ SACP II(F)(5).

¹⁹ SACP IV(B)(7).

²⁰ Salem-Keizer Transportation Study Area, "2013 Regional Transportation Systems Plan," Appendix A-Skats Population and Employment Forecasts (2007). For a more complete discussion regarding the vacant residential land inventory, see page 27 below.

²¹ Boise Cascade Site Economic Opportunities Analysis, Page 16 (September 2008), See pages 25 and 26 below for a more complete discussion regarding the vacant commercial land inventory.

potential shortage of vacant residential lands and vacant commercial lands coupled with the fact that Applicants' Property is contiguous with the City of Salem and located within the UGB indicates that Applicants' Property is located in an area that is needed for the expansion of an urban area. Further, all needed facilities to support urban development are or can be made available under the City of Salem's existing public facilities plans and urban growth management program.²² As such, the Subject Property is considered available for annexation and needed for the expansion of the urban area. The proposed annexation with comprehensive plan changes and zone changes is consistent with SACP IV(C)(3).

9. SACP IV(D)(1). "Development Guided by Growth Management. Unless the City of Salem finds that existing water and sewer facilities have adequate capacity to accommodate new growth, the conversion of urbanizable land within the Salem urban area to urban uses shall be guided by a growth management program which provides for the orderly and economically efficient extension of public facilities and services, while taking into consideration the need for an adequate supply of land to meet future development requirements. The growth management program shall encourage the development of vacant lands that have urban services before the extension of services beyond presently served areas."

SRC Chapter 66 establishes a comprehensive growth management program for the City of Salem. Pursuant to SRC 66.020(x), "Urban Growth Area" is defined as "...that territory lying between the Urban Service Area and the Urban Growth Boundary." The Subject Property is located outside of the Urban Service Area but within the UGB. Therefore, the Subject Property is located within the Urban Growth Area. When Applicants' Property is developed, the owner of the property will have to comply with SRC Chapter 66 by obtaining a UGA permit.²³ Accordingly, the conversion of Applicants' Property to urban uses will be guided

²² See page 33 below.

²³ Applicants have applied for a UGA permit, and a UGA permit hearing was held at the City of Salem on November 17, 2009.

by the City of Salem's growth management program, thereby rendering the proposed annexation with comprehensive plan changes and zone changes consistent with SACP IV(D)(1).

10. SACP IV(D)(3). "Programming Development. Criteria for programming of development shall be as follows: a. The financial capability of the City of Salem to provide certain facilities and services as authorized through the budgetary process. b. The technical requirements of public facility master plans. c. The need for sufficient amounts of buildable land to maintain an adequate supply in the marketplace. d. The willingness of the development community to assume the burden of funding the cost of providing certain facilities. The City of Salem shall provide levels of services to city residents consistent with community needs as determined by the City Council, within the financial capability of the City, and subject to relevant legal constraints on revenues and their applications."

The growth management program imposes an equitable share of public facility costs on new development by requiring provisions for required facilities by the developer and/or system development charges in connection with the provision of required facilities by the City of Salem. Further, there is a need for vacant residential and commercial lands to maintain an adequate supply for the projected 20-year demand.²⁴ In this respect, the above criteria are factored into the proposed annexation with comprehensive plan changes and zone changes. It is therefore consistent with SACP IV(D)(3).

11. SACP IV(D)(7). "Development Requiring Water and Sewer. Within the Salem urban area, residential subdivisions, mobile home parks, multi-family residential, commercial and industrial development shall be permitted only within the County service districts or within the City of Salem where public sewer and water services are available and other urban facilities are scheduled pursuant to an adopted growth management program..."

A growth management program, SRC Chapter 66, has been adopted by the City of Salem. As noted above, the Subject Property is within the Urban Growth Area and subject to the growth management program. Both water and sewer services are available for Applicants'

²⁴ See pages 25, 26 and 27 for a complete discussion of the need for vacant residential and commercial lands within the 20-year planning period.

Property. A statement demonstrating availability of water service is attached hereto as Exhibit F and incorporated herein by this reference. A statement demonstrating availability of sanitary service is attached hereto as Exhibit G and incorporated herein by this reference. As such, pursuant to the growth management program, City of Salem services can be provided to the Subject Property in the future. The proposed annexation with comprehensive plan changes and zone changes is consistent with SACP IV(D)(7).

12. SACP IV(E)(8). "Protection of Residential Areas. Residential areas shall be protected from more intensive land use activity in abutting zones."

Under the current *Industrial* comprehensive plan designation and IP zoning, outright permitted uses including heavy construction, manufacturing, motor freight transportation and warehousing and recycling depots could be located adjacent to the existing residential areas to the north, west and south of Applicants' Property.²⁵ Industrial uses include some of the most intensive land use activities, and such uses could currently be located adjacent to single family residences without the necessity of any type of land use action. As the character of the surrounding area has changed significantly over the past several years, the *Industrial* designation now conflicts with the existing, surrounding residential uses. As such, the proposed annexation with comprehensive plan changes and zone changes is consistent with SACP IV(E)(8), as it renders permitted uses of Applicants' Property consistent with the existing uses and lessens the impacts on the nearby residential areas.

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²⁵ See SRC 158.020.

13. SACP IV(G)(4). "Community Shopping and Service Facilities. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development which discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets."

The area of Applicants' Property proposed to be designated *Commercial* in the comprehensive plan and zoned CR is bordered by State Street and Cordon Road NE. State Street is designated as a major arterial street in the Salem Transportation System Plan ("TSP"), and Cordon Road NE is designated as a parkway street. Cordon Road NE will remain within Marion County upon annexation of the Subject Property. The proposed community and neighborhood shopping will therefore be located adjacent to major arterials.

Further, the siting and development of Applicants' Property will discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets in accordance with SACP IV(G)(4). Access to the community and neighborhood shopping will be from State Street and Cordon Road NE. As such, only residents living on Applicants' Property are likely to utilize residential streets to access the community and neighborhood shopping. The proposed annexation with comprehensive plan changes and zone changes is therefore consistent with SACP IV(G)(4).

14. SACP IV(G)(5). "Neighborhood and Community Shopping and Service Facilities. Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods."

The area surrounding the Subject Property is not committed to strip development. In fact, there is no community and neighborhood shopping in the surrounding areas. The proposed community and neighborhood shopping is consistent with SACP IV(G)(5) as it will be

clustered on the southeast corner of Applicants' Property and will serve existing and future residential neighborhoods.

The proposed community and neighborhood shopping will offer a wide variety of goods and services for a market area of several neighborhoods. Although specific future tenants have not been identified, it is anticipated that the proposed community and neighborhood shopping will be anchored by a grocery store, with small variety stores such as a drugstore, hair salon, etc., or possibly a bank, as principal tenants. Applicants anticipate that the grocery store will be approximately 50,000 square feet to 80,000 square feet. The intent is to provide community and neighborhood shopping that will provide for the sale of convenience goods, such as food, drugs and sundries, and personal services to meet the daily needs of the existing and future residential neighborhoods. A Conceptual Shadow Plan is attached as Exhibit H and incorporated herein by this reference.

Applicants do not propose a regional shopping center for Applicants' Property, and will agree to a condition prohibiting "big box" retailers (those having more than 100,000 square feet of floor space). Applicants desire to develop community and neighborhood shopping, and therefore, will agree to a condition limiting the total square footage of any one store to 100,000 square feet. The proposed development of community and neighborhood shopping on Applicants' Property is therefore consistent with SACP IV(G)(5).

15. SACP IV(G)(6). "Commercial Office Uses. Commercial Office uses shall have convenient access to collector and arterial streets."

It is anticipated that one or more commercial office uses may be located on the southeast portion of Applicants' Property within the proposed CR zone. This area of Applicants' Property is located adjacent to State Street, a designated major arterial street in the TSP.

Accordingly, the commercial office uses located on Applicants' Property will have convenient access to collector and arterial streets in accordance with SACP IV(G)(6).

16. SACP IV(I)(1). "Redesignation of the land to or from industrial may be allowed providing: a. It serves the community's interests and does not impact the long-term continuity of the industrial inventory; and b. Is preferably a boundary adjustment which results from expansion of an existing, adjacent use; and c. There is a demonstrated need to expand the industrial or non-industrial use inventory..."

Redesignation of Applicants' Property from *Industrial* to *Single Family*

Residential, Multi Family Residential and *Commercial* serves the community's interests, does not impact the long-term continuity of the industrial inventory, would be a boundary adjustment that results from the expansion of the existing adjacent residential use, and there is a demonstrated need to expand the non-industrial use in the area of the Subject Property. As noted above, the area surrounding the Subject Property has changed significantly over the past several years, thereby rendering industrial uses incompatible with neighboring residential uses. Residential uses currently exist to the north, west and south of the Subject Property. It serves the community's interests to remove Applicants' Property from the *Industrial* designation and industrial zoning as redesignation will significantly lessen the adverse impacts on existing residential uses as required by SACP IV(E)(8).

Redesignation of Applicants' Property will not impact the long-term continuity of the industrial inventory. In fact, the Salem Regional Employment Center Economic Opportunities Analysis (October 2004) did not even include Applicants' Property in the industrial land inventory. Rather, it included a portion of Applicants' Property in the vacant commercial land inventory:

"The Pictsweet site is a 120-acre parcel north of State Street NE, south of Auburn Road NE, and west of Cordon Road NE, and is outside the City of Salem but within the UGB. Marion County has

zoned the property for industrial use, but adjacent residential uses and the site's distance from I-5 make industrial development of the site impractical... The property owner has indicated it intends to proceed with it [sic] re-zone for a mixture of uses including residential, schools and commercial. Because services are available to this property and development could occur without annexation, the commercial portion of this property was included in the vacant commercial land inventory."²⁶

In addition to the impracticability of industrial uses on Applicants' Property, additional properties within the UGB have been identified for industrial development. Specifically, the Mill Creek Salem Regional Employment Center added approximately 507 acres of land to the City of Salem's industrial and commercial lands inventory.²⁷ The City of Salem Buildable Land Inventory Report and Documentation (June 2008) indicates that there are 1,440.68 available acres of vacant industrial land within the UGB. This includes the Salem Regional Employment Center land, which is currently vacant with the exception of one 66-acre lot being used by the Corrections Department for warehousing and storage and the recent announcement that a 52.6 acre distribution center is anticipated to be construction by mid-2010.²⁸ The addition of a 52.6 acre distribution center on the Salem Regional Employment Center land will only absorb about 10% of the developable acreage at the site. New industrial development has been slow in coming to this and other industrial properties in Salem.

An Economic Opportunities Analysis was also conducted for the Boise Cascade Site in September, 2008. Consistent with the Salem Regional Employment EOA, the Boise Cascade Site EOA concluded that there is a surplus of industrial lands in the City of Salem. Specifically, the Boise Cascade Site EOA identified 1,052 acres of vacant industrial inventory, with only an estimated 20-year demand for 445 acres for industrial uses:

²⁶ *Salem Regional Employment Center Economic Opportunities Analysis* (October 2004), Footnote 10.
²⁷ *Id.*, at Page 1.

²⁸ City of Salem Buildable Land Inventory Report and Documentation (June 2008), Page 7; *Statesman Journal*, "Distribution center to be built at Mill Creek site," December 2, 2009.

"Using the RTSP [Regional Transportation Systems Plan], projections for employment growth and employees per acre, there is a 20-year demand for 445 acres for industrial uses... Of this amount, an estimated 10 percent, or 45 acres, will be accommodated through redevelopment. Assuming approximately 96 acres of industrial land will convert to commercial uses during the next 20 years, there is a net inventory of 957 acres of vacant industrial land and a surplus of 556 acres of vacant industrial land within the Salem UGB after the required 20-year supply is factored out..."²⁹

If Applicants' Property's comprehensive plan designation is changed from *Industrial* to *Single Family Residential*, *Multifamily Residential* and *Commercial*, approximately 102.46 acres of land will be removed from the industrial land inventory. Therefore, even after Applicants' Property is removed from the industrial land inventory, a 453 acre surplus of vacant industrial land will remain within the UGB after the required 20-year supply is factored out. As such, the redesignation of Applicants' Property will not impact the industrial land inventory.

Pursuant to the Metro 2002-2022 Urban Growth Report, industrial firms are more likely to cluster in centers or campuses rather than isolated or smaller sites.³⁰ In addition, the Salem Regional Employment Center is located within one mile of I-5, which is a desirable and prominent position within the local and regional economy.³¹ In contrast, the Subject Property is much smaller than the Salem Regional Employment Center and is located further away from I-5. More over, there is no convenient I-5 access to and from Applicants' Property for industrial traffic. As access to Cordon Road will be severely limited, all industrial traffic to and from the property would have to use Auburn Road and State Street, which are predominantly residential streets in this vicinity. The impracticability of developing Applicants' Property for industrial use

²⁹ Boise Cascade Site EOA (September 2008), Page 16.

³⁰ *Id.*, citing Metro 2002-2022 Urban Growth Report: An Employment Land Need Analysis, Page 23.

³¹ *Id.*, Page 2.

together with the addition of the 507-acre Mill Creek industrial site assures that the redesignation of Applicants' Property does not impact the long-term continuity of the industrial inventory.

The redesignation would be a boundary adjustment resulting from the expansion of an existing use. The northern portions of Applicants' Property are contiguous to the City of Salem and the entirety of Applicants' Property is located within the UGB. The predominant existing uses in the surrounding area are residential in nature. Accordingly, the redesignation simply expands and compliments this existing residential use, while removing the potential for an incompatible industrial use. The adjacent residential uses and lack of proximity to I-5 render industrial development of Applicants' Property impractical. Therefore, the proposed redesignation is consistent with SACP IV(I)(1).

Applicants' proposed annexation with comprehensive plan changes and zone changes is consistent with the SACP as required by SRC 165.100(c)(1). Accordingly, the proposed annexation with comprehensive plan changes and zone changes should be referred to the voters of the City of Salem.

b. Applicants' proposed comprehensive plan changes and zone changes are consistent with Statewide Planning Goals as required by SRC 165.130(c)(1).

Applicants' proposed comprehensive plan changes and zone changes are consistent with the applicable Statewide Planning Goals. The Statewide Planning Goals applicable to the proposed annexation are as follows:

1. Statewide Planning Goal 1. "To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."

Statewide Planning Goal 1 requires citizen involvement in the planning process, including effective two-way communication with citizens and an opportunity for citizens to be involved in all phases of the planning process. Applicants have attended regular neighborhood

association meetings for both the East Lancaster Neighborhood Association (City of Salem) and East Salem Suburban Neighborhood Association (Marion County). Applicants introduced the proposed annexation with comprehensive plan changes and zone changes to each neighborhood association, and encouraged comments and questions from those residents in attendance as well as the residents of the City of Salem and Marion County in general.

In addition, citizens will have the opportunity to attend, participate and/or submit evidence into the record during the public hearings regarding this matter. On November 17, 2009, a UGA Development Permit hearing was held at the City of Salem. Prior to the November 17, 2009 hearing, notice was mailed to all owners within 250 feet of the Subject Property and signs were physically posted on the Subject Property to advise of the hearing. All citizens had the opportunity to attend and participate in the UGA Development Permit hearing. In addition, before the proposed annexation is referred to the voters, citizens will have the opportunity to attend, participate and/or submit evidence into the record during the required Planning Commission Public Hearing and City Council Public Hearing.

Applicants have provided opportunity for citizen involvement throughout this planning process, and citizens will be afforded continuing opportunities to participate in the planning process at all phases of the planning process. Accordingly, the proposed annexation with comprehensive plan changes and zone changes is consistent with Statewide Planning Goal 1.

2. Statewide Planning Goal 2. "To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."

The SACP has been appropriately acknowledged by the State of Oregon Land Conservation and Development Commission ("LCDC"). Applicants' proposed annexation with

comprehensive plan changes and zone changes complies with all adopted plans. Therefore, the proposed annexation with comprehensive plan change and zone change is consistent with Statewide Planning Goal 2.

3. Statewide Planning Goal 3. "To preserve and maintain agricultural lands."

Applicants' proposed annexation does not affect the agricultural land inventory.

Although Applicants' Property was previously used as a mushroom farm, the Subject Property is designated *Industrial* and is located within the UGB. The uses on Applicants' Property will not impact the agricultural lands further east of the property. Statewide Planning Goal 3 is therefore not applicable.

4. Statewide Planning Goal 4. "To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture."

The Subject Property contains no forested lands, and there are no forested lands within the nearby vicinity of the Subject Property. Statewide Planning Goal 4 is therefore not applicable.

5. Statewide Planning Goal 5. "To protect natural resources and conserve scenic and historic areas and open spaces."

There are no known endangered species, cultural resources or significant wildlife habitats on the Subject Property. The Subject Property does contain some limited designated wetlands, which are identified on Exhibit I attached hereto and incorporated herein by this reference. As noted on Exhibit I, the designated wetlands on Applicants' Property will either be preserved and incorporated into the proposed stormwater detention and park area or mitigated.

In addition, there are several Oregon White Oak trees on the Subject Property. Exhibit J also includes a tree inventory detailing the existing trees on Applicants' Property. Applicants' conceptual site plan indicates the large white oak trees that will be preserved. Therefore, Applicants' proposed annexation with comprehensive plan changes and zone changes is consistent with Statewide Planning Goal 5.

6. Statewide Planning Goal 6. "To maintain and improve the quality of the air, water and land resources of the state."

Currently designated *Industrial* and zoned accordingly, an industrial use could be placed on the Subject Property without any type of land use proceeding or approval. By their nature, industrial uses create more impacts to the quality of air, water and land resources than those uses and designations proposed by Applicant, such as single family residential, multi family residential and community and neighborhood shopping. As such, Applicants' proposed annexation with comprehensive plan changes and zone changes is likely to improve the affects on air and water quality. As noted above, there are limited designated wetlands on the Subject Property. However, there are no running watercourses³² and no fish habitat identified within the vicinity, and the Subject Property is not located within a floodplain. Statewide Planning Goal 6 is therefore satisfied.

7. Statewide Planning Goal 7. "To protect people and property from natural hazards."

The Subject Property does not contain any threat of natural hazards. The Subject Property is flat, and has not been identified as being subject to flooding, landslides or other geologic hazards. Statewide Planning Goal 7 is therefore not applicable.

³² There is an existing manmade storm ditch on Applicants' Property. This existing storm ditch is not a tributary of the Little Pudding River; it is simply a drainage ditch.

8. Statewide Planning 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."

Recreational uses are included and incorporated into Applicants' conceptual site plan as noted on Exhibit B. Applicants' proposed uses include the incorporation of an approximate 6.62 acre storm water detention and park area adjacent to the proposed single family residences. The proposed park will provide open spaces for outdoor recreation that do not currently exist on Applicants' Property. As such, Applicants' proposed annexation with comprehensive plan changes and zone changes complies with Statewide Planning Goal 8.

9. Statewide Planning Goal 9. "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens."

The Subject Property is currently vacant, and does not produce any benefit to the local economy. The proposed residential uses, as well as the proposed community and neighborhood shopping, provide opportunities for a variety of economic functions and benefits. Further, due to the surrounding residential uses, the likelihood of Applicants' Property being developed with industrial uses is minimal, at best. Therefore, the proposed annexation with comprehensive plan changes and zone changes will provide a variety of economic activities and employment opportunities for the neighboring residential areas.

In addition, the City of Salem Buildable Land Inventory Report and Documentation (June 2008) indicates that there are 1,440.68 available acres of vacant industrial land within the UGB. This includes the large Salem Regional Employment Center land, which is currently vacant with the exception of one 66-acre lot being used by the Corrections Department for warehousing and storage.³³ A recently announced warehouse distribution center will occupy an additional 52.6

³³ City of Salem Buildable Land Inventory Report and Documentation (June 2008), Page 7.

acres within the Center.³⁴ As noted above, the Salem Regional Employment Center is more desirable for industrial use due to its larger size and close proximity to I-5. The Boise Cascade Site EOA also concluded that there is a surplus of vacant industrial land within the 20-year planning period. The current availability of industrial land within the UGB provides ample opportunities for industrial economic activities.

While there is a surplus of vacant industrial land within the UGB, there is a deficit of vacant commercial land:

"RTSP projections were used to forecast commercial employment growth. For the purpose of analysis, public administration, education and social services were excluded. Based on this forecast, there is a 20-year demand of 467 acres for commercial use. After factoring the 15 percent share of demand that will be accommodated through redevelopment, a net demand of 397 acres remains. However, only 331 acres of vacant commercial land are currently available. This results in a shortfall of 66 acres..."³⁵

Redesignation of 19.93 acres of Applicants' Property to *Commercial* will reduce the deficit of vacant commercial lands that currently exists based on the projected 20-year demand as well as provide employment and economic opportunities in the Services and Retail Trade groups, which are the groups anticipated to have the highest numeric job growth within the UGB.³⁶

The proposed annexation therefore complies with Statewide Planning Goal 9.

10. Statewide Planning Goal 10. "To provide for the housing needs of citizens of the state."

Applicants' proposed annexation will increase the City of Salem's inventory of buildable lands for residential uses. "Buildable lands" refers to "lands in urban and urbanizable areas that

³⁴ City of Salem Buildable Land Inventory Report and Documentation (June 2008), Page 7; *Statesman Journal*, "Distribution center to be built at Mill Creek site," December 2, 2009.

³⁵ Boise Cascade Site EOA (September 2008), Page 16.

³⁶ "...the highest numerical job growth within the Salem UGB is anticipated in the Services, Retail Trade and Government industry groups, each of which is projected to add between 6,200 and 9,900 new jobs between 2000 and 2030." *Id.*, Page 8.

are suitable, available and necessary for residential use."³⁷ The Subject Property is "urbanizable" as it is located within the UGB. Applicants' Property is suitable, as it is adjacent to existing residential uses, and available, due to the fact that it is now vacant. Further, Applicants' Property is not suitable for industrial development as currently designated.

Providing for the housing needs of citizens of the state includes not only the land available for residential uses, but also the type of housing needed to meet the housing needs of citizens. The amount of available buildable lands is determined by making an inventory of all lands "suitable, available and necessary for residential use."³⁸ "Buildable land" means residentially designated vacant land that is not severely constrained by natural hazards, subject to natural resource protection measures, publicly owned, has a slope of 25 percent or greater, within the 100-year floodplain or cannot be provided with public facilities.³⁹

The City of Salem has an adopted housing inventory developed as part of periodic review dated October 25, 2001, which was approved by DLCD on November 23, 2001. According to the housing inventory, 5,393 acres of vacant residential land existed at the time. If the amount of available buildable lands within the UGB is greater or equal to the Project Land Consumption, the amount and types of land to accommodate needed housing for all incomes is adequate. The Projected Land Consumption is determined by calculating the number of projected dwelling units and dividing that number by the assumed population density. It is therefore necessary to calculate the projected population. According to the Salem-Keizer Transportation Study Area ("SKATS"), the UGB's population was 203,200 in 2000, and is projected to be 258,300 in 2020

³⁷ Statewide Planning Goal 10.

³⁸ OAR 660-008-0005(2).

³⁹ *Id.*

and 275,209 in 2027. Therefore, the UGB population is projected to grow by 55,100 people in 2020 and by an additional 16,909 people in 2027.⁴⁰

Approximately 66 percent of UGB residents live in single family dwellings and 33 percent of residents live in multifamily dwellings. The average household size is approximately 2.7 residents in a single family dwelling and 1.77 residents in a multifamily dwelling unit. Accordingly, assuming these trends continue, the UGB will need to add an additional 13,605 single family dwelling units and 10,377 multifamily dwelling units by 2020. By 2027, the UGB will need to add a total of 17,780 single family dwelling units and 13,561 multifamily dwelling units, a total of 31,341 new dwelling units.⁴¹

As noted above, SACP IV(B)(7) assumes that the City of Salem will develop at a rate of 6.5 dwelling units per acre. At this rate, the UGB's population will consume an additional 3,690 acres by 2020 and an additional 1,132 acres by 2027. As such, the total land consumption by 2027 will be 4,822 acres. Currently, there are only 5,393 acres of vacant residential land. Therefore, by 2027, UGB residents are projected to consume nearly 90 percent of the UGB's residential land supply.

Applicants' proposal to redesignate 96.34 acres of land to residential uses will help ensure that the City of Salem remains compliant with Goal 10. An increased buildable lands inventory for residential uses is a positive factor in providing for housing variety and availability. Applicants' proposed annexation with comprehensive plan and zone changes provides for a variety of types of housing, including single family detached, single family attached and apartments. This will facilitate the existence of available housing at various price ranges and rent levels. In addition, Applicants' Property is adjacent to existing residential uses, and is

⁴⁰ Salem-Kcizer Transportation Study Area, "2031 Regional Transportation Systems Plan," Appendix A – SKATS Population and Employment Forecasts (2007).

⁴¹ *Id.*

therefore an appropriate location for the proposed housing. The proposed annexation therefore complies with Statewide Planning Goal 10.

11. Statewide Planning Goal 11. "To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."

The City of Salem has adopted Stormwater, Wastewater and Water Master Plans as Detailed Plans to the SACP. These Detailed Plans outline the public facilities and services needed to serve land within the UGB. The City of Salem utilizes an Urban Growth Management Program to ensure necessary public facilities and services are available to serve new development. The Subject Property is located within the UGB, but falls outside of the Urban Service Area. As such, a UGA Development Permit is required, and Applicants' Property and the conversion of Applicants' Property to urban uses will be guided by the City of Salem's growth management program, thereby rendering the proposed annexation with comprehensive plan changes and zone changes consistent with Statewide Planning Goal 11.

12. Statewide Planning Goal 12. "To provide and encourage a safe, convenient and economic transportation system."

Applicants' proposed annexation with comprehensive plan and zone changes is consistent with Statewide Planning Goal 12, and will not significantly affect an existing or planned transportation facility. Rather, Applicants' proposed annexation with comprehensive plan and zone changes will do the exact opposite: the proposed development will generate fewer AM and PM peak hour trips than it is estimated the site would generate under its existing IP zoning.

Under the current zoning, a reasonable industrial scenario would include a 1,300,000 square foot industrial park, which would be expected to generate 1,092 total AM peak trips and 1,118 total PM peak trips. These total trip numbers include accounting for any trips internal to the site, such as supportive uses similar to a restaurant or dry cleaner.

In contrast, a reasonable development scenario for Applicants' proposed development, as presented in the traffic study, includes 382 single family dwelling units, 87 condominium / townhouse units, 215 apartment units, a 200,000 square-foot shopping center and an approximate 3 acre park.⁴² After taking into account internal trip reductions and pass-by trips (those trips made by vehicles already on the nearby roadways that are stopping on their way to another destination), the proposed development would generate about 604 AM peak trips and 1,075 PM peak trips. As such, Applicants' proposed development decreases the impact on transportation facilities.

The City of Salem TSP has been acknowledged by DLCD, and any transportation elements must therefore comply with Statewide Planning Goal 12. Due to the fact that Applicants' proposed development will actually minimize transportation impacts from what could be generated under the current zoning and the fact that the proposed development will have to comply with the Salem TSP, Applicants' proposed annexation complies with Statewide Planning Goal 12.

13. Statewide Planning Goal 13. "To conserve energy."

Applicants' conceptual site plan includes single family residential, multi family residential and commercial uses, all of which are located on approximately 117.90 acres. The placement of residential and commercial uses on Applicants' Property will conserve energy, as the residential areas on Applicants' Property as well as in the surrounding residential areas will be able to access community and neighborhood shopping within the neighborhood. Further, the proximity of the commercial services to the residential areas will allow residents to use alternative transportation methods, such as walking or biking. Industrial uses historically utilize

⁴² Applicants' proposed development includes an approximate 6.62 acre park. The increase in park acreage is not likely to significantly impact the total trip numbers that are presented in the traffic study, as an increase in park acreage will likely reduce the number of single family dwelling units.

large volumes of energy. Accordingly, redesignating Applicants' Property will promote Statewide Planning Goal 13.

14. Statewide Planning Goal 14. "To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

Statewide Planning Goal 14 requires an orderly and efficient transition from rural to urban land use. As previously noted, the Subject Property is contiguous to the City of Salem limits, and located outside the City of Salem but within the UGB. Accordingly, by definition, the Subject Property is deemed "urbanizable." Since the Subject Property is contiguous to the City of Salem, and public services are available to the property, the incorporation of the Subject Property into the City of Salem provides for an orderly and efficient transition from rural to urban land use in the provision of municipal facilities and services as well as in the facilitation of orderly urbanization. This is due to the fact that the SACP and Zoning Code have been acknowledged as being in compliance with Statewide Planning Goal 14, and will be made applicable to the Subject Property upon annexation. These implementation measures are designed to provide order and efficiency in the provision of facilities and services, and facilitate orderly urbanization by uniformly integrating the Subject Property into the City of Salem's municipal facilities and services system. This type of integration of the Subject Property prevents the implementation of an isolated, discontinuous and fragmented system of services. Accordingly, Applicants' proposed annexation complies with Statewide Planning Goal 14.

15. Statewide Planning Goal 15. "To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway."

The Subject Property is not within the Willamette River Greenway. Accordingly, Statewide Planning Goal 15 is not applicable.

16. Statewide Planning Goal 16. "To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and
To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries."

There are no estuaries on the Subject Property, nor is the Subject Property adjacent to an estuary. Therefore, Statewide Planning Goal 16 is not applicable.

17. Statewide Planning Goal 17. "To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and
To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands."

The Subject Property is not adjacent to estuaries, coastal lakes or the ocean. As such, Statewide Planning Goal 17 is not applicable.

18. Statewide Planning Goal 18. "To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and
To reduce the hazard to human life and property from natural or man-induced actions associated with these areas."

The Subject Property does not include and is not adjacent to any beaches or dunes. Accordingly, Statewide Planning Goal 18 is not applicable.

19. Statewide Planning Goal 19. "To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations."

Statewide Planning Goal 19 is not applicable to Applicants' proposed annexation with comprehensive plan changes and zone changes as the Subject Property is not adjacent to and does not affect any ocean resources.

Applicants' proposed annexation with comprehensive plan and zone changes is consistent with the applicable Statewide Planning Goals as required by SRC 165.100(c)(1). Accordingly the proposed annexation with comprehensive plan and zone changes should be referred to the voters of the City of Salem.

2. **Applicants' proposed annexation will result in a boundary in which services can be provided in an orderly, efficient, and timely manner in accordance with SRC 165.130(c)(2).**

The Subject Property abuts the currently City limits along northwest corner of the property. Upon annexation, approximately 121.15 additional acres will be added to the current City limits, thus expanding the City limits boundary to the south approximately 3,010 feet and to the east 1,700 feet.

All critical and essential services can be provided to this site. This will occur primarily though the extension of public facilities from points of origin to the west and south as well as on site provisions. In addition, some services, such as water and sanitary sewer, will require upgrading service lines to increase capacity. This will require upsizing mainlines in accordance with the City's system wide master plans.

Off-site public facility improvements will coincide with the eventual development of Applicants' Property. The exact location, size and configuration will be determined through the land development process. Due to the size of the development, construction work will likely occur in a series of phases.

As part of the initial phase, off-site public facilities will need to be extended to Applicants' Property to serve the future development. On-site improvements such as roadway, parks and pedestrian linkages will occur as each phase of development is constructed. This work will occur in an orderly and efficient manner based on the requirements of the SRC. The

timeframe for each of the improvements will be dependent upon a number of factors such the economy, demand for housing and commercial space and other economic conditions. Separate statements demonstrating the availability of school service, park service, storm service and street service are attached hereto as Exhibit K and incorporated herein by this reference. Statements demonstrating the availability of water and sanitary service are attached as Exhibit F and Exhibit G respectively. Applicants' proposed annexation will result in a boundary in which services can be provided in an orderly, efficient and timely manner as required by SRC 165.130(c)(2).

3. **In accordance with SRC 165.130(c)(3), the uses and density that will be allowed under Applicants' proposed annexation with comprehensive plan and zone changes can be served through the orderly, efficient and timely extension of key urban facilities and services.**

Uses for the property include a mixture of single family residential, multi family residential and retail commercial uses. Densities in the RS zone will not exceed 8 dwelling unit per gross acre. Similarly, densities in the multifamily districts will not exceed 14 dwelling units per gross acre in the RM1 zone or 28 dwelling units per gross acre in the RM2 zone.

As mentioned above, off-site public facility improvements will coincide with the eventual development of Applicants' Property. The exact location, size and configuration will be determined through the land development process. Due to the size of the development, construction work will likely occur in a series of phases.

As part of the initial phase, off-site public facilities will need to be extended to Applicants' Property to serve the future development. On-site improvements such as roadway, parks and pedestrian linkages will occur as each phase of development is constructed. This work will occur in an orderly and efficient manner based on the requirements of the SRC. With the

extension of services, the uses proposed on the property can be served through the orderly, efficient and timely manner as required by SRC 165.130(c)(3).

4. The public interest will be furthered by the referral of the proposed annexation to the voters as required by SRC 165.130(c)(4).

Applicants' proposed annexation with comprehensive plan and zone changes will benefit the public as it will result in the redesignation and development of Applicants' Property in a manner that is consistent with existing uses, and is therefore, a logical development of the Applicants' Property. The Subject Property is contiguous to the City of Salem limits, is located within the UGB, and all necessary services are or will be available at the time of development. Accordingly, the public interest will be furthered as the Subject Property is a logical extension of the City of Salem limits.

Further, the proposed annexation with comprehensive plan and zone changes benefits the public as it will increase the range of density, allowing for additional housing units within the City of Salem and allowing for increased options for a design layout on Applicants' Property. As currently designated and zoned, the uses that could be developed on Applicants' Property would be incompatible with the surrounding residential uses. Applicants' Property should therefore be developed with residential and complimentary community and neighborhood services for the surrounding neighborhoods rather than with industrial uses.

Developing Applicants' Property with a mixture of single family residential and multi family residential housing also benefits the public as the increased density accommodates the increasing population of the City of Salem and is consistent with the existing uses to the north, west and south. The multi family residential aspects of the proposed development provide an excellent transition from not only the other various types of housing, but also from the proposed

community and neighborhood shopping. Applicants' Property will provide housing opportunities for moderate income families that are close to schools, churches, shopping and employment.

The proposed annexation with comprehensive plan and zone changes also benefits the public in that it decreases the traffic impacts that could occur under the current designation and zoning. As noted above, Applicants' proposed development will actually reduce the number of peak AM and PM trips that would be generated if Applicants' Property was developed with an industrial use. A reduction of traffic impacts benefits the surrounding neighborhoods. In addition, industrial traffic will not pass through nearby residential areas to access Applicants' Property.

For the reasons stated above, and the reasons stated throughout this application, the public interest will be furthered by the referral of the proposed annexation to the voters as required by SRC 165.130(c)(4). Accordingly, the City Council should refer this annexation with comprehensive plan changes and zone changes to the voters.

5. Applicants' proposed annexation with comprehensive plan and zone changes satisfies the criteria of SRC 165.100(b) and 165.130(c)(5).

In addition to the above criteria, a proposed annexation that seeks a change in the comprehensive plan designation or zoning designation that is different from the equivalent zoning designation in Table 165-1, must satisfy four additional criteria: 1. The proposed comprehensive plan and zone designations provide for the logical urbanization of land; 2. The comprehensive plan and zone designations are compatible with development patterns in the nearby vicinity; 3. Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and 4. It is in the public interest

that the proposed change be made.⁴³ Applicants' proposed annexation with comprehensive plan changes and zone changes satisfies each of these criterion.

- a. **In accordance with SRC 165.130(c)(5)(A), the comprehensive plan and zone designations provide for the logical urbanization of land.**

The Subject Property is contiguous to the City of Salem limits, and located outside the City of Salem but within the UGB. Accordingly, by definition, the Subject Property is deemed "urbanizable." Since the Subject Property is contiguous to the City of Salem, the incorporation of the Subject Property into the City of Salem provides for an orderly and efficient transition from rural to urban land use in the provision of municipal facilities and services as well as in the facilitation of orderly urbanization.

Specifically, the comprehensive plan and zone designations proposed by Applicants provides for the logical urbanization of Applicants' Property. The Subject Property is surrounded by residential uses, and is the only property in the nearby vicinity designated and zoned for industrial use. Further, it is currently vacant and undeveloped. As such, the proposed comprehensive plan and zone designations are a logical extension of urban development and will be consistent with surrounding uses.

- b. **Applicants' proposed comprehensive plan and zone changes are compatible with development patterns in the nearby vicinity as required by SRC 165.130(c)(5)(B).**

Applicants' proposed comprehensive plan changes and zone changes are compatible with development patterns in the nearby vicinity; the current comprehensive plan and zone designations are not. As noted above, Applicants' Property is primarily designated

⁴³ SRC 165.100(b); SRC 165.130(c)(5)(A) – (D). SRC 165.100(b) and 165.130(c) detail the criteria that the Planning Commission and City Council, respectively, must review when making a recommendation or determination regarding the proposed comprehensive plan changes and zone changes. The criteria contained in SRC 165.100(b) and 165.130(c) are identical. This application references the criteria contained in SRC 165.130(c). However, the findings contained in this application apply to both the Planning Commission and City Council criteria for review of the proposed comprehensive plan changes and zone changes to Applicants' Property.

Industrial, but is surrounded by single family residential and multi family residential uses to the north, west and south. Further, those properties to the east of Applicants' Property are compatible with residential uses, and include Terra Gardens Nursery and the Marion County Fire District. Accordingly, it is the current *Industrial* designation that is incompatible and inconsistent with development patterns in the nearby vicinity.

Comprehensive plan changes to *Single Family Residential*, *Multi Family Residential* and *Commercial* and zone changes to RS, RM1, RM2 and CR will render Applicants' Property consistent with the surrounding area. Due to the residential development pattern in the nearby vicinity of Applicants' Property over the past several years, the Subject Property is essentially an island of *Industrial* property in the midst of residential uses. A mix of residential and commercial uses on Applicants' Property is compatible with the nearby vicinity, whereas a large industrial use is not. Accordingly, the comprehensive plan and zone designations are compatible with development patterns in the nearby vicinity.

c. The social, economic, or demographic patterns of the nearby vicinity have so altered that the current comprehensive plan and zone designations are not appropriate.

The conditions within the nearby vicinity of the Subject Property have changed over time, and continue to change as the surrounding properties are developed. The properties surrounding Applicants' Property are residential in nature, and therefore, the *Industrial* designation and zoning is no longer appropriate. The social, economic and demographic patterns of the nearby vicinity have altered in a manner that precludes industrial development of Applicants' Property. The Salem Regional Employment Center is a larger parcel of industrial land that is closer to I-5 access. In addition, the Salem Regional Employment Center EOA

identified three parcels of vacant industrial land that were 40 acres or larger.⁴⁴ Accordingly, it is unlikely that Applicants' Property will be developed for industrial use. In addition, industrial development of Applicants' Property is inconsistent and incompatible with the surrounding uses that have developed over time. Therefore, the current comprehensive plan and zoning designations for Applicants' Property are no longer appropriate.

- d. **It is in the public interest that the proposed comprehensive plan changes and zone changes be made as required by SRC 165.130(c)(5)(D).**

For the reasons set forth above, it is within the public interest that the proposed comprehensive plan changes and zone changes be made. These reasons includes that the proposed comprehensive plan changes and zone changes will make Applicants' Property consistent with the existing surrounding uses, that the proposed comprehensive plan changes and zone changes will increase the density and type of housing available within the City of Salem, that the proposed comprehensive plan changes and zone changes will reduce the traffic impacts that would otherwise be permitted under the current IP zoning, and that it is a logical extension of the City of Salem limits.

IV. Conclusion

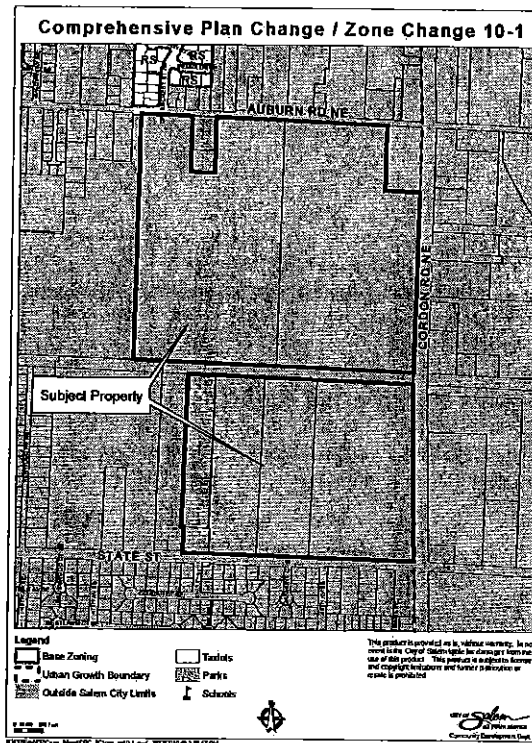
For the reasons stated above, Applicants have satisfied the requisite criteria to justify annexation of the Subject Property, a redesignation of the SACP designation for Applicants' Property from *Industrial* to *Single Family Residential*, *Multi Family Residential* and *Commercial*, and a redesignation of the zoning from IP, UT and UD to RS, RM1, RM2 and CR. Accordingly, Applicants' proposed annexation with comprehensive plan changes and zone changes should be referred to the voters in the City of Salem for the November 2, 2010 General Election.

⁴⁴ Salem Regional Employment Center EOA, Page 13.

NOTICE

PUBLIC HEARING AFFECTING THIS AREA

Si necesita ayuda para comprender esta informacion, por favor llame 503-588-6173



TIME OF HEARING: 5:30 p.m.
HEARD BY: Salem Planning Commission
DATE OF HEARING: March 16, 2010

LOCATION OF HEARING: City Council Chambers
Civic Center/Room 240
555 Liberty Street SE
Salem, OR 97301

CASE NO.

COMPREHENSIVE PLAN CHANGE/ZONE CHANGE 10-1

ADDRESS:

255 Cordon Road NE and 4900 Block of State Street NE

PROPERTY OWNERS:

Pictsweet Company; PS Mushrooms, LLC; State Street Mushrooms, LLC; Cordon Road Mushrooms, LLC; Marion Mushroom Farm, LLC; Auburn Road Mushroom Farm, LLC; Salem Mushroom Farm, LLC

FILER:

Ken Sherman Jr.

PROPOSAL

REQUEST:

To change the Salem Area Comprehensive Plan Map designation from "Industrial" to "Single Family Residential", "Multi-Family Residential" and "Commercial"; and to change the zoning from Marion County "Industrial Park (IP)", "Urban Transition" (UT), and "Urban Development" (UD) to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR) for property approximately 120 acres in size and generally located at 255 Cordon Road NE and 4900 Block of State Street NE (Marion County Assessor's Map and Tax Lot Numbers 072W29B / 200; 072W29C / 100 / 200 / 300 / 400 and 072W29C 00199)

NOTICE MAILING DATE:

February 24, 2010

CONTINUED ON THE REVERSE SIDE

ATTACHMENT 4

CRITERIA

The testimony and evidence for the public hearing need to be directed toward the following criteria (SRC 165.100(b)):

- (1) Whether the comprehensive plan and zone designation provide for the logical urbanization of land.
- (2) Whether the comprehensive plan and zone designation is compatible with development patterns in the nearby vicinity.
- (3) Whether the social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and
- (4) Whether it is in the public interest that the proposed change be made.

TESTIMONY

Any person wishing to speak either for or against the proposed request may do so in person or by representative at the public hearing. Written comments may also be submitted at the public hearing. Include case number with the written comments. Prior to the public hearing, written comments may be filed with the Salem Planning Division, 555 Liberty Street SE, Room 305, Salem, Oregon 97301.

The hearing will be conducted with the staff presentation first, followed by the proponent's case, neighborhood organizations, testimony of persons in favor, opposing testimony, and rebuttal. The applicant has the burden of proof to show that the approval criteria can be satisfied by the facts. Opponents may rebut the applicant's testimony by showing alternative facts or by showing that the evidence submitted does not satisfy the approval criteria. Any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body will then continue the public hearing or leave the record open for additional written evidence or testimony.

Failure to raise an issue in person or by letter prior to the close of the public hearing with sufficient specificity to provide the Planning Commission and the parties an opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals (LUBA) on this issue. A similar failure to raise constitutional issues relating to proposed conditions of approval precludes an action for damages in circuit court.

**DOCUMENTATION
& STAFF REPORT**

Copies of the application, all documents and evidence submitted by the applicant are available for inspection at no cost and copies will be available at a reasonable cost.

A copy of the staff report will be available for inspection at no cost on March 9, 2010.

ACCESS

The Americans with Disabilities Act (ADA) accommodations will be provided on request.

FOR ADDITIONAL INFORMATION CONTACT**STAFF:**

cdur
Cecilia DeSantis Urbani, Associate Planner, City of Salem Planning Division, 555 Liberty Street SE, Room 305, Salem, Oregon 97301. Telephone: (503) 588-6173, Ext. 7508, E-mail: curbani@cityofsalem.net.

NEIGHBORHOOD:

Susann Kaltwasser, East Lancaster Neighborhood Association Chairperson. Telephone: 503-363-3998.

PLEASE PROMPTLY FORWARD A COPY OF THIS NOTICE TO ANY OTHER OWNER, TENANT OR LESSEE.

The City of Salem values all persons without regard to race, color, religion, national origin, sex, age, marital status, domestic partnership, disability, familial status, sexual orientation, gender identity and source of income.



Individuals needing special accommodations such as sign or other language interpreters to participate in the meeting, must request such services at least two working days (48 hours) in advance by calling the Community Development Department at 503-588-6173 (Text Telephone: 503-588-6353). Equipment for the hearing impaired is available upon request.

RECEIVED

MAR 08 2010



East Lancaster Neighborhood Association
555 Liberty St SE, Salem, Oregon 97302

COMMUNITY DEVELOPMENT

To: Cecelia Urbani
From: Susann Kaltwasser, chairperson
East Lancaster Neighborhood Association
RE: Comprehensive Plan Change /Zone Change No 10-1 (Pictsweet)

The board of the East Lancaster Neighborhood Association discussed the application for annexation and zone change for 255 Cordon Road (Zone change 10-1) at the March 4' 2010 meeting.

After reviewing the application the board members make the following comments:

- 1) The ELNA board takes no position at this time in favor or opposed to the application for annexation/zone change;
- 2) The applicant refers to an 'existing storm ditch to be piped' on their proposed site plan. ELNA recognizes that this is in fact not a 'drainage ditch' but rather a tributary of the Little Pudding River system. We would oppose any effort to pipe or close this creek. Historically this area has experienced extensive flooding and the City has learned by previous events that it is not possible to gage accurately the flow capacity needed to contain the occasional abundance of water. Miscalculation in areas where the creek was piped has resulted in expensive remediation and property damage. Thus, it is in the best interest of the entire community both upstream and at this location to keep the creek open and protected from encroachment by development. The applicant may argue that these issues will be addressed at the subdivision development stage, but the Neighborhood Association wants to be sure that the record is clear on this important matter if this proposal moves forward.
- 3) Access from Cordon Road should be limited. The proposal for right turn in and right turn out only is not strongly supported by the Association for two reasons. First, it would be difficult to adequately mark the entrance for drivers going north, so that they did not mistakenly slow down to turn in to the entrance from Cordon Road thus impeding traffic flow as well as creating a hazard to other drivers. Second, without knowing how the additional improvements to Cordon Road and the possible addition of turn lanes at State Street it may be difficult to place an exit that does not impede aggress.
- 4) Part of the site plan places single-family residential development directly adjacent to commercial development. We feel that there needs to be greater buffers.

ATTACHMENT 5

- 5) The concentration of 23 acres of multifamily development adjacent to each other is poor planning and leads to problems. ELNA has such poor development patterns already within our boundaries and have found that such concentrations of people leads to higher crime rates, traffic problems and social ills. Even well designed multifamily developments, eventually prove undesirable at these concentrations. We would support lower densities mixed with the higher densities in a different pattern that creates more open spaces.
- 6) The location of the park suits the developer because it is on land not suitable for development, but it is not placed in a location that best serves the public.
- 7) ELNA is concerned about the location of the proposed access and the increased traffic on the fire station.

There was discussion about what type of commercial development might eventually be sustainable at the proposed location. Some members felt that the commercial zone is out of place and that the only thing that makes it fit the Comprehensive plan criteria is the proposal for multifamily zone that is adjacent. In other words, one is contingent on the others and the applicant gives very weak rationale independent of this zone change for the commercial area. ELNA feels that the applicant should be required to show why the zone change is rational independent of the other zone changes. Why is commercial more logical in this area than industrial? The surrounding uses in the south, north and east are not consistent with commercial development. Some felt that the commercial development at this location sets a pattern of development that cannot be sustained. That is to say creates 'an island of commercial' development in the middle of nowhere. Others felt that it sets the stage for future commercial development that is not consistent with the overall Transportation Plan to keep Cordon Road as a bypass route.

Thank you for considering these comments.

Cc:

Community Services

UGA DEVELOPMENT REVIEW COMMITTEE

PLANNING DIVISION
555 LIBERTY ST. SE/ROOM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



ISSUE: Preliminary Declaration for Urban Growth Area Development Permit
No. 09-7

DATE OF DECISION: January 28, 2010

APPLICANT: The Pictsweet Company; PS Mushrooms, LLC (The Pictsweet Company); State Street Mushrooms, LLC (The Pictsweet Company); Cordon Road Mushrooms, LLC (The Pictsweet Company); Marion Mushroom Farm, LLC (The Pictsweet Company); Auburn Road Mushroom Farm, LLC (The Pictsweet Company); and Salem Mushroom Farm, LLC (The Pictsweet Company)

PURPOSE OF REQUEST:

To assure that major public facilities such as sewers, water and streets are provided to the proposed site in accordance with the Salem Urban Growth Management Program in order to develop the subject property that lies outside the Urban Services Area (USA) in an area without required facilities, and to determine conditions established in the Urban Growth Area (UGA) Development Permit. The request is to determine the public facilities required by the Urban Growth Management Program to develop property approximately 120 acres in size and generally located south of Auburn Road NE, north of State Street and west of Cordon Road NE (255 Cordon Road NE, 4900 State Street, and in the 4700 and 4800 Block of Auburn Road NE) (Exhibit 1) and currently Marion County zoning "IP" (Industrial park), "UT-10" (Urban Transition), and "UD" (Urban Development) and the Salem Area Comprehensive Plan designation is "Industrial".

The applicants have submitted a request to annex the subject property and a change to the Comprehensive Plan designation and zone district. The applicants have requested Comprehensive Plan designations of "Single Family Residential", "Multi-Family Residential" and "Commercial" and Salem zoning of Single Family Residential (RS), Multiple Family Residential 1 and 2 (RM1 and RM2), and Retail Commercial (CR).

ACTION:

The following is a Preliminary Declaration of the facility improvements required to obtain an Urban Growth Area (UGA) Development Permit for the subject property. The Preliminary Declaration is subject to the terms of Salem Revised Code (SRC) Chapter 66, the Salem Transportation System Plan (STSP), the City of Salem Stormwater Management Master Plan, City of Salem Water System Master Plan, Salem Wastewater Management Master Plan, Public Works Design Standards, Comprehensive Parks System Master Plan, and conditioned on the provision of the public facilities as listed below.

This Preliminary Declaration for a UGA permit addresses only those facility requirements necessary to link the development to adequate facilities and boundary

requirements abutting the property (SRC 66.140). All internal facility improvement requirements will be addressed at the time of development of the property. Salem Revised Code (SRC) Chapter 66 "Urban Growth Management" sets forth the City's authority for imposing linking and boundary facility improvement requirements.

The Facts and Findings of the Department of Public Works are attached as Exhibit 2. The applicant has the responsibility to provide the following facilities pursuant to the requirements of the UGA Development Permit and according to SRC Chapter 66:

Street Requirements:

1. Convey land for dedication along the entire frontage on the development side of abutting streets to equal the following half-width rights-of-way: (a) Auburn Road NE, 30 feet; (b) State Street, 48 feet.
2. Along the entire frontage of abutting streets within the Urban Growth Boundary, construct three-quarter street improvements as defined in SRC 63.030(pp)(9) to equal the following minimum pavement widths: (a) Auburn Road NE, 23-foot-wide Collector B improvement on the development side with a 12-foot pavement widening on the opposite side; and (b) State Street, 34-foot-wide Major Arterial improvement on the development side with a 12-foot pavement widening on the opposite side.
3. Enter into a development agreement, improvement agreement, or other similar agreement, with Marion County for street improvements to, and/or right-of-way dedication for, Cordon Road NE that are roughly proportional to the impacts of the anticipated development, and acceptable to both Marion County and the developer.
4. Within the subject property, construct the extension of Greencrest Street NE as a Collector improvement within a 60-foot-wide right-of-way as specified in the *Salem Transportation System Plan*.
5. If required at the time of development, provide a Transportation Impact Analysis (TIA) to identify the impacts of this proposed development on the public transportation system in the area and construct any necessary mitigation measures identified in that report.

Storm Drainage requirements:

6. Construct stormwater facilities adequate to limit runoff from the proposed development to quantities not exceeding the pre-developed runoff conditions as specified in the Stormwater Management Design Standards.

Water Requirements:

7. Provide linking water mains consistent with the *Water System Master Plan* adequate to convey fire flows to serve the proposed development as specified in the Water Distribution Design Standards.

Sanitary Sewer Requirements:

8. Construct one or more sewer mains from the subject property to the East Salem Interceptor and to the existing sewer main in 49th Avenue NE and State Street consistent with the *Wastewater System Master Plan* and Sewer Design Standards.
9. Construct a minimum 12-inch sewer main from the existing 15-inch sewer main in 49th Avenue NE to the intersection of State Street and Cougar Court NE.

Date of Preliminary Declaration: January 28, 2010

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, not later than February 12, 2010, by 5:00 p.m. The appeal must state where the decision failed to conform to the provisions of the Urban Growth Management Ordinance (SRC Chapter 66). The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem City Council will review the appeal at a public hearing. After the hearing, the City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

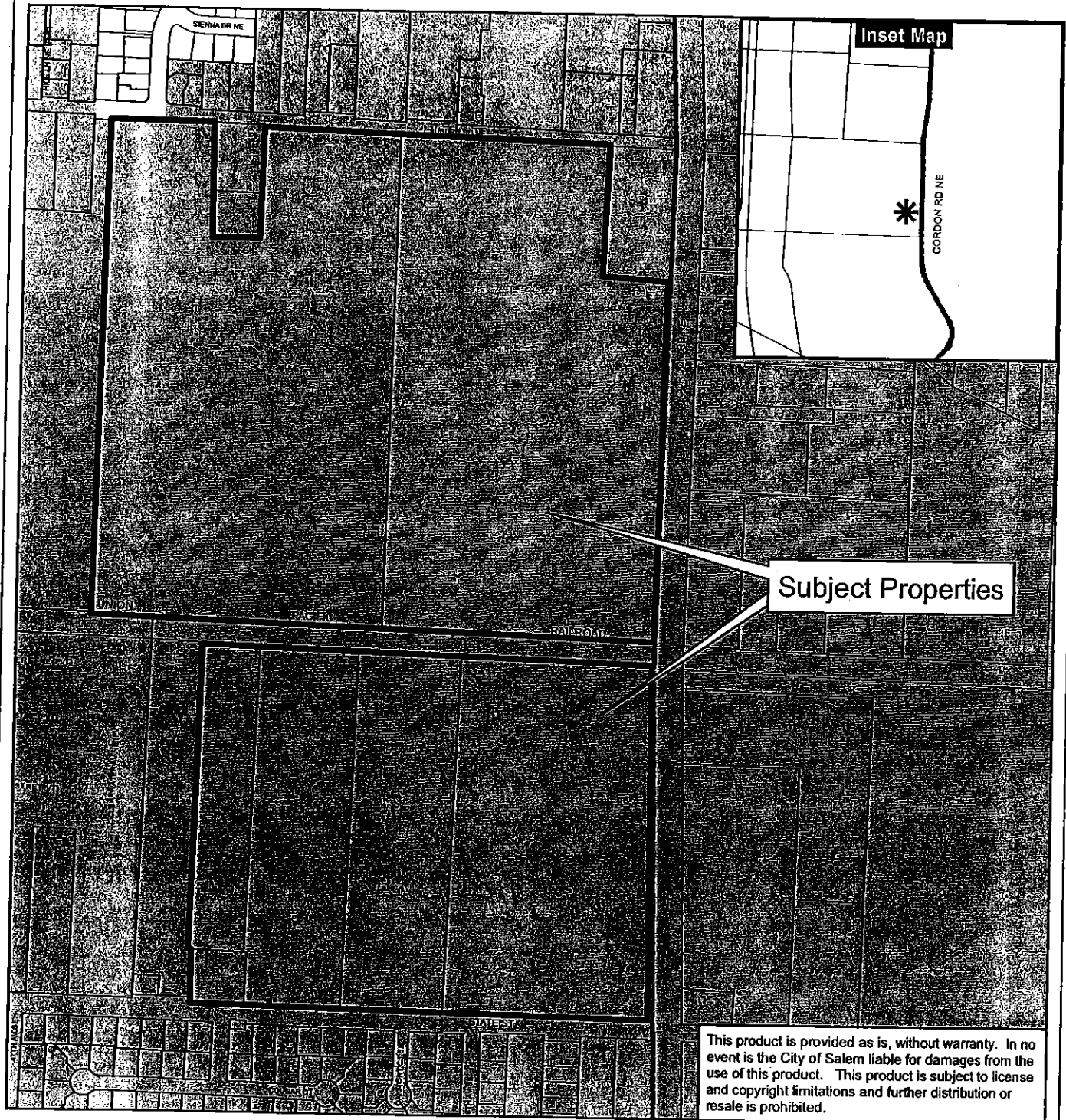
This Preliminary Declaration will expire on January 28, 2012

Attachments: Exhibit 1. Vicinity Map
Exhibit 2. Facts and Findings of the Department of Public Works

Prepared by Cecilia DeSantis Urbani, Associate Planner

G:\CD\PLANNING\STFRPRTS\2009\UGA\UGA 09-7.cdu.doc

Vicinity Map 4900 Block of State St



Legend

- Outside Salem City Limits
- Urban Growth Boundary
- Taxlots
- Historic District
- Schools
- Parks

0 100 200 400 Feet



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PUBLIC

JAN 27 2010

CITY OF *Salem*
AT YOUR SERVICE
WORKS

COMMUNITY DEVELOPMENT

MEMO

TO: Cecilia DeSantis Urbani, Associate Planner
Department of Community Development

FROM: Glenn Davis, P.E., Chief Development Services Engineer *GD*
Public Works Department

DATE: January 27, 2010

SUBJECT: **THIRD REVISED PUBLIC WORKS RECOMMENDATIONS**
UGA NO. 09-7 (09-119040)
255 CORDON ROAD NE AND 4900 BLOCK OF STATE STREET
MIXED USE DEVELOPMENT FOR PICTSWEET

PROPOSAL:

To determine the public facilities required by the Urban Growth Management Program to develop property that lies outside the Urban Services Area (USA). The proposal is to discuss a mixed use development for seven individual properties that are approximately 118 acres in the proposed Salem RS, RM1, RM2, and CR zones located at 255 Cordon Road NE, 4900 State Street, and in the 4700 and 4800 block of Auburn Road NE.

RECOMMENDED CONDITIONS:

1. Convey land for dedication along the entire frontage on the development side of abutting streets to equal the following half-width rights-of-way: (a) Auburn Road NE, 30 feet; (b) State Street, 48 feet.
2. Along the entire frontage of abutting streets within the Urban Growth Boundary, construct three-quarter street improvements as defined in SRC 63.030(pp)(9) to equal the following minimum pavement widths: (a) Auburn Road NE, 23-foot-wide Collector B improvement on the development side with a 12-foot pavement widening on the opposite side; and (b) State Street, 34-foot-wide Major Arterial improvement on the development side with a 12-foot pavement widening on the opposite side.
3. Enter into a development agreement, improvement agreement, or other similar agreement, with Marion County for street improvements to, and/or right-of-way dedication for, Cordon Road NE that are roughly proportional to the impacts of the anticipated development, and acceptable to both Marion County and the developer.

EXHIBIT 2

4. Within the subject property, construct the extension of Greencrest Street NE as a Collector improvement within a 60-foot-wide right-of-way as specified in the *Salem Transportation System Plan*.
5. If required at the time of development, provide a Transportation Impact Analysis (TIA) to identify the impacts of this proposed development on the public transportation system in the area, and construct any necessary mitigation measures identified in that report.
6. Construct stormwater facilities adequate to limit runoff from the proposed development to quantities not exceeding the pre-developed runoff conditions as specified in the Stormwater Management Design Standards.
7. Provide linking water mains consistent with the *Water System Master Plan* adequate to convey fire flows to serve the proposed development as specified in the Water Distribution Design Standards.
8. Construct one or more sewer mains from the subject property to the East Salem Interceptor and to the existing sewer main in 49th Avenue NE and State Street consistent with the *Wastewater System Master Plan* and Sewer Design Standards.
9. Construct a minimum 12-inch sewer main from the existing 15-inch sewer main in 49th Avenue NE to the intersection of State Street and Cougar Court NE.

FACTS AND FINDINGS:

Streets

1. **Linking Streets** – The subject property abuts Cordon Road NE, which is an adequate linking street. An adequate linking street is defined as: (1) The nearest point on a street that has a minimum 34-foot improvement within a 60-foot-wide right-of-way; or (2) a street that has a minimum 30-foot-wide improvement within a 60-foot-wide right-of-way (SRC 66.100(b)).
2. **Boundary Streets** – All streets abutting the property boundaries shall be designed to the greater of the standards of SRC 63.225 and SRC 63.235, and the standards of linking streets in SRC 66.100 (SRC 66.100(c)). This street shall be constructed as described below:
 - a. Cordon Road NE
 - i. **Existing Conditions** – This street has a varying 40- to 68-foot improvement within a 100-foot-wide right-of-way. There is

approximately 50 feet of right-of-way adjacent to the subject property and 50 feet of right-of-way opposite.

- ii. Standard – This street is designated as a Parkway street in the Salem TSP. The standard for this street classification is an 80-foot-wide improvement within a 120-foot-wide right-of-way.
- iii. Improvements and Right-of-Way – Cordon Road NE abuts the east line of the subject property, and lies outside of Salem's corporate limits and the Salem/Keizer Urban Growth Boundary. Consequently, this portion of Cordon Road NE is exclusively within the jurisdiction of Marion County. Because the subject property abuts Cordon Road NE, and development of the subject property will impact Cordon Road NE, to adequately provide access and transportation to the subject property, improvements to Cordon Road NE will be necessitated. Because developer intends to develop the property to urban densities, developer will enter into an agreement with Marion County to improve Cordon Road NE based on the impacts of development of the subject property. The standards for such streets should be to the standards of SRC 63.225 and SRC 63.235 or City of Salem linking street standards, whichever is greater.

The applicant must demonstrate that all boundary streets, including Cordon Road NE, will be improved as specified in SRC 66.100(c). The UGA permit can be issued for boundary streets other than Cordon Road NE based on the provisions of SRC 66.080(a). Regarding the conditions requiring street improvements to Cordon Road NE, the UGA permit shall not be issued until the developer and Marion County have entered into the development agreement, improvement agreement, or other similar agreement described in this condition.

b. Auburn Road NE

- i. Existing Conditions – This street has an approximate 28-foot improvement within a 60-foot-wide right-of-way along the two sections adjacent to the street.
- ii. Standard – This street is designated as a Collector B street in the Salem TSP. The standard for this street classification is a 40-foot-wide improvement within a 60-foot-wide right-of-way.
- iii. Right-of-Way Dedication – The applicant shall convey land for dedication sufficient to equal a half-width right-of-way of 30 feet on the development side (SRC 63.237).

- iv. Improvements – The applicant shall construct a 23-foot half-width improvement on the development side and a 12-foot-wide turnpike improvement on the opposite side of the centerline, along the full frontage of the subject property (SRC 66.100(c); SRC 63.225; SRC 63.235). These improvements shall include streetlights and sidewalks (SRC 63.225(a); PWDS Streets 2.21).
 - v. Access Control/Collectors – A minimum of 200 feet on center is required between (Collector or Arterial) street intersections and driveways (PWDS Development Bulletin No. 34).
- c. State Street
- i. Existing Conditions – This street has a varying 30- to 50-foot improvement within a 70-foot-wide right-of-way. There is 33 feet of right-of-way adjacent to the subject property and 37 feet of right-of-way opposite.
 - ii. Standard – This street is designated as a Major Arterial street in the Salem TSP. The standard for this street classification is a 68-foot-wide improvement within a 96-foot-wide right-of-way.
 - iii. Right-of-Way Dedication – The applicant shall convey land for dedication sufficient to equal a half-width right-of-way of 48 feet on the development side (SRC 63.237).
 - iv. Improvements – The applicant shall construct a 34-foot half-width improvement on the development side and a 12-foot-wide turnpike improvement on the opposite side of the centerline, along the full frontage of the subject property (SRC 66.100(c); SRC 63.225; SRC 63.235). These improvements shall include streetlights and sidewalks (SRC 63.225(a); PWDS Streets 2.21).
 - v. Access Control/Arterials – Spacing between access points (driveways and streets) shall be a minimum of 370 feet on center. Uses permitted direct access are limited to those generating 100 or more trips per day, and parks (PWDS Development Bulletin No. 34).
3. Right-of-Way Acquisition – Right-of-way required for boundary and linking street improvements is the obligation of the applicant. If the applicant is unable to obtain the required right-of-way after good faith attempts, they shall prepare the legal descriptions thereof and transmit them to the City Attorney, who shall proceed to acquire them through exercise of the City's power of eminent domain as though the public improvements were to be funded by the City. All costs

MEMO

incurred as a part of this procedure shall be paid by the applicant (SRC 66.090). All rights-of-way, easements, and titles to property acquired by the developer shall be deeded or dedicated, free of all liens and encumbrances, to the City prior to commencement of any construction of required facilities (SRC 66.090).

Traffic

1. Transportation Impact Analysis (TIA) – The City Traffic Engineer will determine the need for a TIA based on the development proposed for the site. If a TIA is not required, the City Traffic Engineer will issue a waiver. If a TIA is required, review and approval of the TIA will be based on conformance with City Standards and construction plans for the development will not be reviewed without an approved TIA or a waiver. If a TIA is required, the applicant shall construct any necessary mitigation measures identified in that report (OAR 660-012-0000 et seq.; PWDS Bulletin No. 19).

Storm Drainage

1. Existing Conditions
 - a. A branch of the West Middle Fork of the Little Pudding River flows through the subject property.
2. Linking Storm Facilities – The applicant shall be required to design and construct a storm drainage system at the time of development. The applicant shall provide an analysis that includes capacity calculations, detention requirements, and evaluation of the connection to the approved point of disposal (SRC 63.195). The applicant shall link the on-site system to existing facilities that are defined as adequate under SRC 66.020(a).
3. The subject property is located in a Stormwater Management Area as specified in an agreement between Salem, Keizer, and Marion County. Runoff from the proposed development is limited to quantities not exceeding the pre-developed runoff conditions.

Water

1. Existing Conditions
 - a. The subject property is located in the GO water service level.
 - b. An 8-inch GO water line is located in Auburn Road NE.
2. Linking Water Facilities – The proposed development shall be linked to adequate facilities by the construction of water distribution lines, reservoirs, and pumping stations that connect to such existing water service facilities (SRC 66.120). The

three following alignments illustrate conceptual options that may be considered for adequate water service for the proposed development consistent with the *Salem Water System Master Plan* and Water Distribution Design Standards; however, funding limitations may affect the final approved configuration:

- a. A 42-inch main from Santiam Hwy 22 to Center Street NE along Cordon Road NE; and 12-inch mains looping from Cordon Road NE along State Street and Auburn Road NE within the subject property; or
 - b. A 24-inch main from Lancaster Drive NE to 45th Street NE along Weathers Avenue NE; a 24-inch main along 45th Street NE from Weathers Avenue NE to Center Street; a 36-inch main along Center Street NE from 45th Avenue NE to Cordon Road NE; a 42-inch main along Cordon Road NE from Center Street NE to State Street; and 12-inch mains looping from Cordon Road NE along State Street and Auburn Road NE within the subject property; or
 - c. Twelve-inch mains along Center Street NE and State Street from Interstate 5 to Cordon Road NE; a 42-inch main along Cordon Road NE from Center Street NE to State Street; and a 12-inch main within the subject property.
3. As a condition of water service, all developments shall be required to provide public water mains of sufficient size for fire protection to adjacent parcels. This shall include the extension of water mains in easements or rights-of-way across the property to adjoining properties, and across the street frontage of the property to adjoining properties when the main is located in the street right-of-way (SRC 66.140(c); PWDS Water 2.00).
 4. Public water lines crossing adjacent lots or parcels shall require a minimum 10-foot-wide public easement to provide access for maintenance or repair and for protection of the system (SRC 63.165).
 5. Water meters shall be placed along the right-of-way adjacent to the subject properties (City of Salem Policy and Procedure WA 2-7).

Sanitary Sewer

1. Existing Sewer
 - a. An 8-inch public sewer line is located in Auburn Road NE.
 - b. A 12-inch public sewer line is located in State Street.
2. Linking Sewer Facilities – The proposed development shall be linked to adequate facilities by the construction of sewer lines and pumping stations, which are

necessary to connect to such existing sewer facilities (SRC 66.110). The nearest existing sewer mains that appear adequate to serve the proposed development are the East Salem Interceptor and the 15-inch main near the intersection of 49th Avenue NE and State Street. The East Salem Interceptor is located in Snoopy Lane NE at Auburn Road NE approximately 2,500 feet west of the subject property, and in Elma Avenue NE at State Street approximately 3,300 west of the subject property.

The applicant shall be required to construct one or more sewer mains from the subject property to the East Salem Interceptor and to the existing sewer main in 49th Avenue NE and State Street consistent with the Wastewater System Master Plan and Sewer Design Standards. A minimum 12-inch main is required in State Street between 49th Avenue NE and Cougar Court NE.

3. As a condition of sewer service, all developments will be required to provide public sewers to adjacent upstream parcels. This shall include the extension of sewer mains in easements or rights-of-way across the property to adjoining properties, and across the street frontage of the property to adjoining properties when the main is located in the street right-of-way. This shall include trunk sewers that are oversized to provide capacity for upstream development (PWDS Sewer 2.00).
4. Any public sanitary sewer crossing adjacent lots or parcels shall require a minimum 10-foot-wide easement to provide access for maintenance or repair and for protection of the system (SRC 63.165).

Natural Hazards

1. Erosion Control – A National Pollutant Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality is required for all construction activities that disturb one acre or more. Proof of a valid permit must be submitted at the time of plans submission. Plans will not be accepted for review without a valid NPDES permit or written certification by the applicant that a permit is not required for this project. City permits will not be issued without a valid NPDES erosion control plan approval letter (SRC 75.050).

General Comments

1. All development activity will require building and/or construction permits in accordance with the SRC, the PWDS, and *Standard Construction Specifications*. Permits will not be issued by the City of Salem Permit Application Center until all construction plans have been approved by the Public Works Department.
2. Building over pipelines or within utility easements is prohibited (SRC 63.165; Policy and Procedure GM 1-24).

3. All utilities and roadway facilities shall be designed and constructed to meet the requirements of the City of Salem PWDS and *Standard Construction Specifications*.
4. All utility easements required for extension of sanitary sewer, water, or storm drainage systems to or through the subject property or adjacent properties shall be the obligation of the applicant (SRC 63.165).
5. The applicant shall be required to obtain an excavation cut and fill permit prior to conducting any clearing and grubbing operations on parcels within the city limits if such parcels contain an easement of any kind for City public utilities (SRC 65.040).
6. Construction of public infrastructure that is needed to provide minimum flows for the proposed development is not eligible for reimbursement from systems development charges. Eligibility for reimbursement of qualified public improvements is specified in SRC 66.195.

Prepared by: Robin Bunse, Engineering Technician
cc: File

MATCH LINE SEE SHEET 3.1

EXISTING STORM
DRAINAGE EASEMENT

RM1
11.58

RM2
9.21 AC

"FARMINGTON
VILLAGE"

RM2
3.73 AC

STATE STREET

CORDON ROAD

PROPOSED
TRAFFIC
SIGNAL

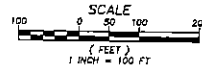
OAKMONT CT

49TH AVE. SE

RT-IN/RT-OUT
LEFT-IN

ZONING DESCRIPTION	ZONE AREA	ZONE INTENSITY
RS: SINGLE FAMILY	71.85 AC	313-547 LOTS*
RM1: MULTI-FAMILY RESIDENTIAL	11.58 AC	93-162 UNITS**
RM2: MULTI-FAMILY RESIDENTIAL	12.94 AC	155-362 UNITS**
CR: RETAIL COMMERCIAL	19.93 AC	
PERIMETER R.O.W. DEDICATION	1.60 AC	
TOTAL ACRES	117.90 AC	

*ZONING INTENSITY ASSUMES 30% OF TOTAL LAND TO BE USED FOR ROAD RIGHT-OF-WAY AND PUBLIC IMPROVEMENTS.
 **ZONING INTENSITY ASSUMES R.O.W. AS SHOWN ON PLAN



ATTACHMENT 7

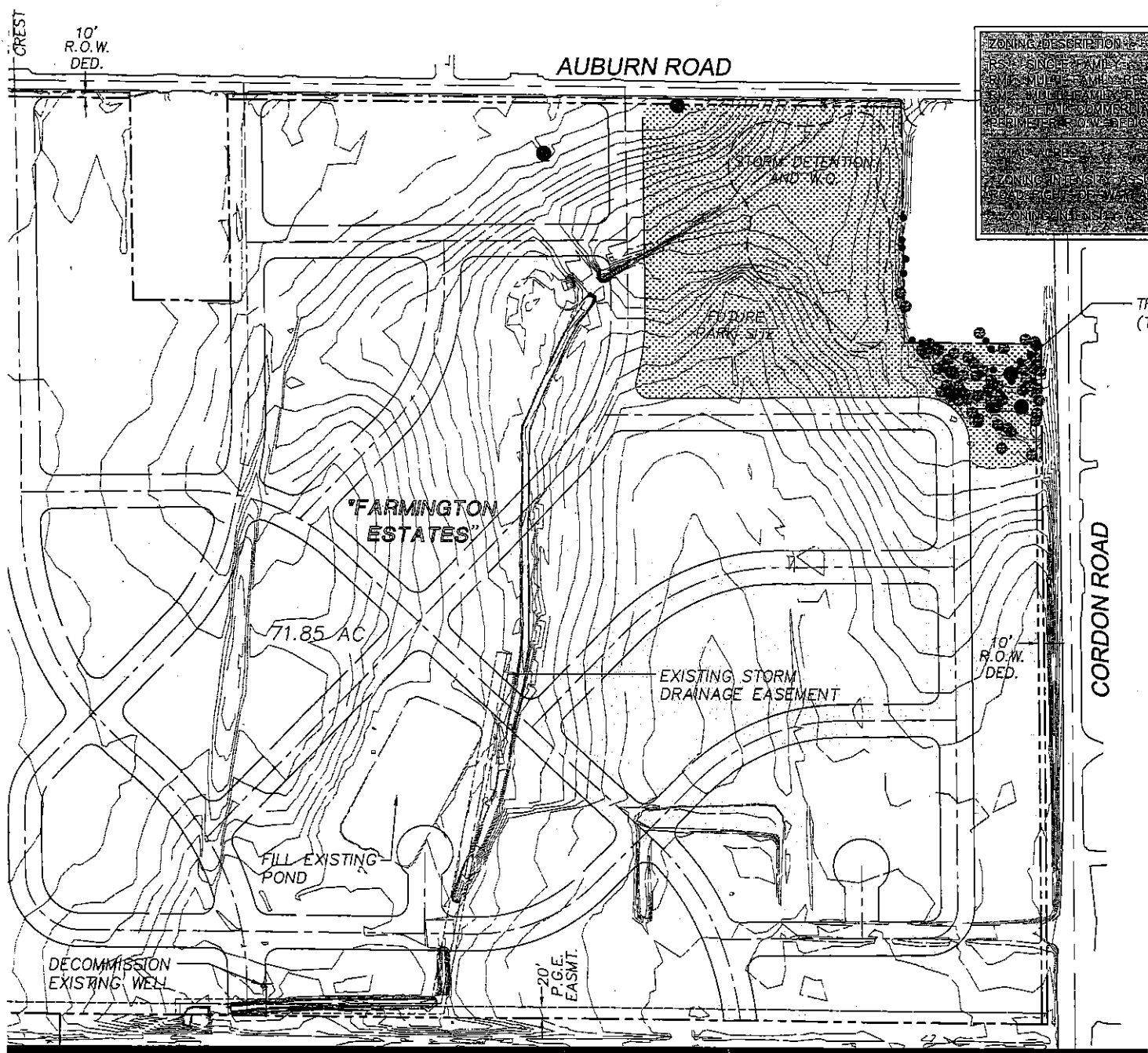
WHPacific
 8700 SW Sunset Blvd, Suite 300
 97005-3405 Portland, OR
 Tel: 503.526.0175
 Fax: 503.526.0176
 www.whpacific.com

THE PICTSWEET COMPANY ET AL
 ANNEXATION / ZONE CHANGE
CONCEPT SITE DEVELOPMENT PLAN

SHEET
 SCALE: 1"=100'
 PROJECT NO: 33973
 DRAWING FILE NAME: 033973-land-Sp01

DESIGNED BY: TEJ	CHECKED BY: TEJ	DATE: 01/15/10
DRAWN BY: JAM	APPROVED BY: TEJ	DATE: 01/15/10
DATE: 01/15/10	REVISION: 01/15/10	

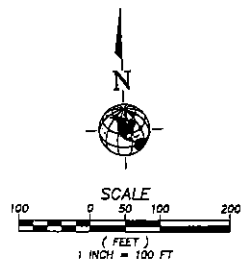
SHEET
3.2



ZONING DESCRIPTION	ZONE AREA	ZONE INTENSITY
RS - SINGLE FAMILY RESIDENTIAL	71.85 AC	313-547-6073
RM - MULTIFAMILY RESIDENTIAL	71.85 AC	932-662-2116
RM - MULTIFAMILY RESIDENTIAL	71.85 AC	159-135-1116
RM - MULTIFAMILY RESIDENTIAL	71.85 AC	159-135-1116
RM - MULTIFAMILY RESIDENTIAL	71.85 AC	159-135-1116
RM - MULTIFAMILY RESIDENTIAL	71.85 AC	159-135-1116
RM - MULTIFAMILY RESIDENTIAL	71.85 AC	159-135-1116
RM - MULTIFAMILY RESIDENTIAL	71.85 AC	159-135-1116
RM - MULTIFAMILY RESIDENTIAL	71.85 AC	159-135-1116
RM - MULTIFAMILY RESIDENTIAL	71.85 AC	159-135-1116

ATTACHMENT 8

RECEIVED
MAR 08 2010
COMMUNITY DEVELOPMENT



MATCH LINE SEE SHEET 3.2

4745 SW Barnes Rd, Suite 300
Portland, OR 97220 503.539.0776
www.whpacific.com

THE PICTSWEET COMPANY ET AL
ANNEXATION / ZONE CHANGE
CONCEPT SITE DEVELOPMENT PLAN

DESIGNED BY: ACA
DRAWN BY: TEJ
LAST DATE: 3/5/2010
DATE: 3/5/2010

CHECKED BY: TEJ
APPROVED BY: TEJ
PLOT DATE: 03/05/10
REVISION: 01/04/10

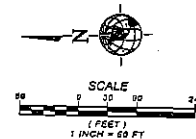
SALE: SCALE: 1"=100'

PROJECT NO: 33973

DRAWING FILE NAME: 033973-1and-SP01

OREGON

SHEET
3.1



THE PICTSWEET COMPANY ET AL
ANNEXATION / ZONE CHANGE
SHADOW PLAN

WHPacific¹

3715 SW Harney Rd., Suite 350
Portland, OR 97225
503-626-0455 Fax 503-536-0775

DRAWING FILE NAME:
033973-land-ex01

PROJECT NO. 33973

1"=60'

SALEM
SCALE:[illegible]

SHEET
EX 1.0



DAVID FRIDENMAKER, Manager
Facilities and Planning Department
Planning and Property Services
3630 State Street, Bldg. C • Salem, Oregon 97301
503-399-3290 • Mobile: 503-932-4727 • FAX: 503-375-7847
E-mail: fridenmaker, david@salkeiz.k12.or.us

Sandy Husk, Superintendent

March 4, 2010

Cecilia DeSantis Urbani
Planning Division, City of Salem
555 Liberty Street SE, Room 305
Salem OR 97301

RECEIVED

MAR 04 2010

FAX No. 503-588-6005

COMMUNITY DEVELOPMENT

RE: Land Use Activity
Salem Comp. Plan/Zone Change No. 10-1, 255 Cordon Rd. NE & 4900 block of State St.
NE

SUMMARY OF COMMENTS

1. Please refer also to comments submitted for the Annexation Case and UGA 09-7.
2. The property lies within the Auburn Elementary School attendance area. The elementary school is located at 4612 Auburn Rd. NE. The elementary school does not have sufficient capacity to serve the subject property.
3. Auburn Rd. NE connects Lancaster Dr. NE to Cordon Rd. NE with the elementary school located between those two major roads. Traffic generated by development of the subject property can be expected to travel along Auburn Rd. NE through the school zone passing the elementary school. Traffic (vehicular, pedestrian and bicycle) impacts along Auburn Rd. NE affecting the school and school zone area should be studied and adverse conditions mitigated to ensure efficient operation of these transportation system elements. Connectivity of the pedestrian and bicycle transportation system elements does not exist currently along Auburn Rd. NE between Lancaster Dr. NE to Cordon Rd. NE which could affect the ability for this development to achieve connectivity to the public elementary school serving the property.
4. Houck Middle School is located at 1155 Connecticut St. SE. The middle school has sufficient capacity to serve the subject property.
5. North Salem High School is located at 65 14th St. NE. The high school does not have sufficient capacity to serve the subject property.

Below is data and the District's comments regarding the proposed land use activity identified above. If you have questions, please call at (503) 399-3290.

ELEMENTARY SCHOOL INFORMATION (GRADES K TO 5)

1. School Name: Auburn Elementary School
2. Estimated change in student enrollment due to proposed development: 138 (min.) to 199 (max.)
3. Current school capacity: 666
4. Estimate of school enrollment including new development: 804 (min.) to 884 (max.)
5. Ratio of estimated school enrollment to total capacity including new development: 121 (min.) to 133 (max.).%
6. Walk Zone Review: Within walk zone of Elementary School.
7. Estimate of additional students due to previous 2009 land use applications: 15

8. Estimate of additional students due to previous 2010 land use applications: 0
9. Estimated cumulative impact of 2009-2010 land use actions on school capacity: 123 to 138% of capacity.

MIDDLE SCHOOL INFORMATION (GRADES 6 TO 8)

1. School Name: Houck Middle School
2. Estimated change in student enrollment due to proposed development: 53 (min.) to 96 (max.)
3. Current school capacity: 1,117
4. Estimate of school enrollment including new development: 1,018 (min.) to 1,062 (max.)
5. Ratio of estimated school enrollment to total capacity including new development: 91 (min.) to 95 (max.)%
6. Walk Zone Review: Within walk zone of Middle School.
7. Estimate of additional students due to previous 2009 land use applications: 17
8. Estimate of additional students due to previous 2010 land use applications: 0
9. Estimated cumulative impact of 2009-10 land use actions on school capacity: 93 to 97% of capacity.

HIGH SCHOOL INFORMATION (GRADES 9 TO 12)

1. School Name: North Salem High School
2. Estimated change in student enrollment due to proposed development: 63 (min.) to 114 (max.)
3. Current school capacity: 1,848
4. Estimate of school enrollment including new development: 1,968 (min.) to 2,019 (max.)
5. Ratio of estimated school enrollment to total capacity including new development: 106 (min.) to 109 (max.)%
6. Walk Zone Review: Eligible for transportation to High School.
7. Estimate of additional students due to previous 2009 land use applications: 17
8. Estimate of additional students due to previous 2010 land use applications: 0
9. Estimated cumulative impact of 2009-2010 land use actions on school capacity: 107 to 110% of capacity.

ESTIMATE SUMMARY (GRADES K TO 12):

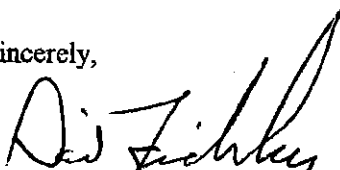
1. Total estimated change in student enrollment: 254 (min.) to 409 (max.)
2. Total estimated student enrollment over capacity: 182 (min.) to 334 (max.)
3. Estimated short-term cost to District for new facilities, beyond current facility capacity, due to change in student enrollment: \$ 1,041,200 (min.) to \$1,911,700 (max.)
4. Total estimated additional income to District for new facilities due to change in student enrollment: \$ 0

Developer should provide paved walk route(s) to allow pedestrian access and bicycle access to school(s) from all residences within the new development and should provide all improvements required by the City of Salem where new transportation routes are established or existing transportation routes change, such as school flashers, crosswalks, and signage. As per ORS 195.115, when the walk zone review indicates "eligible for transportation due to hazard" the District requests that the City initiate a planning process with the District to identify the barriers and hazards to children walking or bicycling to and from school, determine if the hazards can be eliminated by physical or policy changes and include the hazard elimination in the City's planning and budgeting process.

ASSUMPTIONS:

1. When land use request is granted, 561 (min.) to 1,071 (max.) new residence(s) will be built.
2. Estimates are computed using the Student Rate per Dwelling Method described in the District's Facility Study for years 2001-2020.
3. If current capacity exists at the schools currently serving the parcel then an estimate of zero cost, or no significant impact, is made.
4. If current capacity does not exist at the schools currently serving the parcel then an estimate of cost for one-time capital improvements is made.
5. Income from the proposed land use for capital improvement is assumed to be zero since capital improvement funds come from voter approved bond measures that can be an unpredictable and irregular source of income.
6. Income from a State School Facilities grant may be available depending on state funding. The grant amount ranges from 0% to 8% of the construction cost. Since the funding is unpredictable, it has not been included as income. The current 2007-08 facility grant funding is estimated at \$46,244.
7. General Fund Budget Amount for the 2007-08 school year is \$8,186 per student (ADM). The State School Fund Revenue for 2007-08 is estimated to be \$7,409 per student (ADM). ADM is "Average daily membership" as defined in ORS 327.006 (3).

Sincerely,



David Fridenmaker, Manager
Planning and Property Services

- c: Luis Caraballo, Director of Facilities
Kelly Carlisle, Director of Secondary Education
Melissa Cole, Director of Secondary Education
Ron Speck, Director of Elementary Education
Steve Larson, Director of Elementary Education
Mike Bednarek, Special Projects Coordinator
Gene Bloom, Risk Management Dept.
Michael Shields, Transportation Dept.



Marion County

OREGON

PUBLIC WORKS

**BOARD OF
COMMISSIONERS**
Sam Brentano
Janet Carlson
Patti Milne

March 4, 2010

DIRECTOR
Willis G. Worcester, P.E.

Cecilia Urbani, Associate Planner
Planning Division, City of Salem
555 Liberty Street SE
Salem OR 97301-3053

ADMINISTRATION

**BUILDING
INSPECTION**

DOG CONTROL

RE: Comprehensive Plan Change/Zone Change No. 10-1
255 Cordon Road NE, 4900 State Street and 4700 & 4800 Block of
Auburn Road

**EMERGENCY
MANAGEMENT**

ENGINEERING

Dear Cecilia:

**ENVIRONMENTAL
SERVICES**

We have received the notice for the Comprehensive Plan Change/Zone Change request for the subject properties. We understand that this process is necessary to determine the appropriate zoning at the time the property is annexed. The applicant is proposing to change the use of the property from industrial to a mixture of residential and commercial.

OPERATIONS

PARKS

PLANNING

SURVEY

Even though the property will be under City of Salem jurisdiction upon annexation, the development of the property will have a significant impact on County facilities in the area. Therefore, we request continued coordination with both the City and the applicant throughout the process. We have the following comments for the proposed comprehensive plan change/zone change:

1. The applicant states that the proposed zoning change will actually reduce the potential number of trips attributed to the property, so a traffic impact analysis (TIA) was not required at this time. However, the actual development of the property has the potential to significantly increase the traffic attributed to this property, especially since the property has been vacant for several years. Therefore, the County requests that a TIA be provided for County review and approval (including scoping) prior to the approval of any development on the property, and before any building permits are issued by the City of Salem.
2. The applicant shall be required to dedicate right-of-way along the Cordon Road NE frontage to meet Marion County and City of Salem standards. Cordon Road is designated an Arterial in the Marion County

To Cecilia Urbani, Associate Planner, Planning Division, City of Salem
From Karen Odenthal, Transportation Planner
RE: Comprehensive Plan Change/Zone Change No. 10-1255 Cordon Road NE, 4900
State Street and 4700 & 4800 Block of Auburn Road
March 4, 2010

Page 2

Transportation System Plan and a Parkway Street in the Salem Transportation System Plan. The standard for this street is up to a 132-foot wide right-of-way. Additional right-of-way may be required to accommodate needed improvements.

3. Cordon Road in this location is under the jurisdiction of Marion County and will remain so upon annexation of the property. Therefore, boundary street improvements on Cordon Road shall be constructed to Marion County standards. This is anticipated to include a four-lane section with center median, turn lanes where appropriate, bike lanes, and a separated multi-use path.
4. It is expected that State Street and Auburn Road NE adjacent to the properties will be annexed and will become the jurisdiction of the City of Salem.
5. A direct connection between Auburn Road NE and State Street in the vicinity of Greencrest Street should be required to provide adequate street circulation off of Cordon Road.
6. The City of Salem requires linking street improvements. Many roads in the area are under Marion County jurisdiction. If the linking street improvements affect County facilities, they shall be to City and County standards. All appropriate engineering reviews and permits will be required for all improvements on County facilities.
7. Specific improvements needed to mitigate anticipated traffic impacts will be identified and required at the time of development. These improvements could be substantial.
8. Since many of these improvements will be on County facilities, an appropriate means for ensuring that necessary improvements will be constructed with the development of the property is needed. The applicant and the County have entered into a Memorandum of Understanding (MOU) to provide for the construction of transportation and storm drainage improvements related to the development of the property. A copy of the MOU is included.
9. Currently, the downstream facilities do not have adequate capacity for conveying the existing stormwater runoff generated by the contributing catchment area. In particular, the culverts under Auburn Road appear to be undersized and cause flooding over the roadway. Subsequently, prior to any development on the subject properties, the applicant shall provide a stormwater management plan that addresses the following:

To Cecilia Urbani, Associate Planner, Planning Division, City of Salem
From Karen Odenthal, Transportation Planner
RE: Comprehensive Plan Change/Zone Change No. 10-1255 Cordon Road NE, 4900
State Street and 4700 & 4800 Block of Auburn Road
March 4, 2010

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- a. The plan shall demonstrate that there is adequate downstream conveyance, under full flow conditions, for runoff generated by a 25-year storm event. The culverts on Auburn Road may need to be replaced or augmented.
- b. The stormwater management plan shall include a model that evaluates the backwater or tail water effects within the channel system, starting at least 0.5 mile downstream of the Auburn Road culverts or the property's point of discharge.
- c. The plan shall maintain existing and adjacent drainage historically serving the adjacent properties.

Ideally, a combination of local and regional detention facilities will be provided on-site that will detain both on-site stormwater and water historically entering the site from adjacent properties, which will result in no net increase in runoff rate and a reduction of flow from the site that will be below the capacity of the Auburn Road culverts.

10. An open channel, vegetated conveyance system constructed within a minimum 26-ft wide Drainage Easement is required. This easement is to have, at a minimum, a 10-ft wide maintenance strip and a 16-ft channel width and will be required prior to any impervious development on the properties.

If you have any questions, you can reach me at 503-588-5036 or by e-mail at kodenthal@co.marion.or.us. Thank you for the opportunity to comment on this case.

Sincerely,

Karen G. Odenthal

Karen Odenthal, Transportation Planner
Marion County Public Works

KO:nv

Enclosure

- c: John Rasmussen, Marion County LDEP
Bob Pankratz, Marion County Capital Projects
Les Sasaki, Marion County Planning

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**TO PROVIDE FOR THE CONSTRUCTION OF
TRANSPORTATION AND STORM DRAINAGE IMPROVEMENTS
RELATED TO THE DEVELOPMENT OF
FARMINGTON ESTATES AND FARMINGTON VILLAGE**

This MEMORANDUM OF UNDERSTANDING is made and entered into by and among:

THE PICTSWEET COMPANY, a Delaware corporation, ("Pictsweet");

PS MUSHROOMS, LLC, a Delaware limited liability company ("PS");

STATE STREET MUSHROOMS, LLC, a Delaware limited liability company, ("State");

CORDON ROAD MUSHROOMS, LLC, a Delaware limited liability company, ("Cordon");

MARION MUSHROOM FARM, LLC, a Delaware limited liability company, ("Marion");

AUBURN ROAD MUSHROOM FARM, LLC, a Delaware limited liability company, ("Auburn");

SALEM MUSHROOM FARM, LLC, a Delaware limited liability company, ("Salem");
and

MARION COUNTY, OREGON, a political subdivision of the State of Oregon ("Marion County").

(Pictsweet, PS, State, Cordon, Marion, Auburn and Salem are sometimes collectively referred to hereinbelow as "Owners").

RECITALS:

The Owners are the owners of seven parcels of real property totaling approximately 117.90 acres, which parcels are generally located west of Cordon Road, N.E. between State Street and Auburn Road, N.E. in Marion County, Oregon. The Owners' properties are more particularly identified as Tax Lots 200 and 201 on map 7-2W-29B and Tax Lots 100, 101, 200, 300 and 400 on map 7-2W-29C. These parcels, (together with Tax Lot 199 (map 7-2W-29C), which Tax Lot is owned by a third party), are illustrated on the map attached hereto as *Exhibit A* and by this reference incorporated herein. The Owners' parcels are hereinafter referred to as the "Properties". The Properties are more particularly described as set forth in *Exhibit B*, attached hereto and by this reference incorporated herein.

Owners have filed an application with the City of Salem, Oregon to annex the Properties, together with Tax Lot 199, to the City of Salem, and to amend the comprehensive plan designations and zoning classifications applicable to the Properties from "Industrial" and "Industrial Park", "Urban Transition" and "Urban Development" to "Single Family Residential", "Multiple Family Residential" and "Commercial" and corresponding zoning classifications of the City of Salem. Owners' application ("the Application") is currently pending before the City of Salem.

In conjunction with the Application, Owners have applied to the City of Salem for an Urban Growth Area Development Preliminary Declaration ("UGA Declaration"). A UGA Declaration is required under section 66.050 of the Salem Revised Code because the Properties are located inside the Urban Service Area ("USA") in an area without required facilities. A UGA Declaration and the ensuing UGA Permit will require Owners or their successor or successors in interest to provide linking and boundary facilities to the Properties in conjunction with the development thereof.

Marion County, acting through its Public Works Department, has expressed concerns regarding the need for road improvements and access management on Cordon Road and at other locations that are impacted by the development (which are outside the urban growth boundary and/or city limits and under County jurisdiction), and regarding the need for improvements to storm water drainage facilities (which facilities are subject to County jurisdiction.) These road improvements and access management and storm water drainage facility improvements are hereinafter collectively referred to as the "County Infrastructure Improvements".

The City of Salem has acknowledged that the County Infrastructure Improvements are infrastructure facilities that Owners or their successor or successors who develop the Properties should be required to provide or contribute to providing on an equitable basis under the provisions of the UGA Declaration. However, the City of Salem has expressed concern that because Cordon Road lies outside the city limits and the urban growth boundary, the city may lack jurisdiction to compel the making of the County Infrastructure Improvements.

Owners acknowledge that in conjunction with the development of the Properties, they or a successor or successors who develop the Properties will be required to make or contribute on an equitable basis to making the County Infrastructure Improvements; and Owners, for themselves and for their respective successors in interest are willing to commit to making or to contributing on an equitable basis to the making of the County Infrastructure Improvements at the time the Properties are developed, provided that the Properties are annexed to the City of Salem and the comprehensive plan and zone changes described hereinabove are approved.

The Owners and Marion County now wish to enter into this Memorandum of Understanding for the purpose of outlining their respective commitments to one another concerning the making of the County Infrastructure Improvements in conjunction with the development of the Properties following their annexation to the City of Salem and the approval of the comprehensive plan and zoning changes described hereinabove.

NOW, THEREFORE, in consideration of their mutual covenants contained herein, the Owners and Marion County hereby covenant and agree with one another as follows:

1. Identification of County Infrastructure Improvements. Owners and Marion County acknowledge and agree that the County Infrastructure Improvements will need to be made or contributed to on an equitable basis by the Owners or their successors in interest in conjunction with the development of the Properties. The list set forth in this section 1 represents the type and magnitude of the County Infrastructure Improvements that are anticipated to be required as a result of the development of the Properties to address the combined effects of traffic impacts, transportation planning requirements, design standards, drainage needs and issues, access policies and safety concerns. The Owners and Marion County acknowledge and agree that the County Infrastructure Improvements listed herein are in addition to other linking and boundary requirements that will be imposed on the developers of the Properties under the terms of the UGA Declaration, and that the requirement for completing such other linking and boundary requirements will be enforced by the City of Salem under the UGA Declaration and the ensuing UGA Permit. Owners and Marion County further acknowledge and agree that the list of County Infrastructure Improvements set forth herein is not intended to represent and does not constitute a specific improvement agreement. Owners and Marion County acknowledge that development of the Properties will occur over an extended period of time; that the exact timing of the development and the completion of the County Infrastructure Improvements is currently unknown; and that changing conditions or development patterns may also occur that dictate modifications to the County Infrastructure Improvements set forth hereinbelow. Owners acknowledge and agree that the understandings set forth herein regarding the completion of the County Infrastructure Improvements shall run with the Properties and shall be binding upon the Owners' successors in interest. Owners and their successors in interest and Marion County will work together in a cooperative fashion to develop and fine tune the exact list of County Infrastructure Improvements to be made or contributed to on an equitable basis by the developers of the Properties pursuant to this Memorandum, and to develop specific agreements regarding the timing for the making of the County Infrastructure Improvements in conjunction with other linking and boundary requirements that will be required. All appropriate engineering reviews, standards and permits will be required for all County Infrastructure Improvements, and Marion County will participate in the scoping of the various studies and shall review and approve those studies and analyses that contribute to the determination of the County Infrastructure Improvements. The County Infrastructure Improvements that the Owners and Marion County have identified as of the date of this Memorandum of Understanding are as follows:

A. Street Improvements.

- a) The dedication of right-of-way along Cordon Road N.E. that fronts on the Properties to Marion County standards. Additional right-of-way may be required to accommodate needed improvements.
- b) The improvement of that portion of Cordon Road, N.E. that fronts on the Properties and Tax Lot 199 to Marion County and regional facility standards.

- c) The widening of Cordon Road to a four-lane section with center median from Center Street to State Street. Owners and Marion County acknowledge that the widening of Cordon Road between Center Street and State Street is already on the Illustrative List of needed projects in the SKATS 2031 Regional Transportation System Plan ("RTSP"); that on January 26, 2010, an amendment to the RTSP moving the Cordon Road widening project from the Illustrative List to the Included List will be considered and possibly adopted; and that the widening of this section of Cordon Road may occur prior to the development of the Properties.
- d) If Marion County permits the development of a limited access from the Properties directly to Cordon Road, N.E., in order to address safety and vehicle conflict issues, the improvements to Cordon Road, N.E. will include the design and installation of special channelized entry and exit medians along a portion of the frontage.
- e) The addition of a new east-bound left turn lane and a new east-bound right turn lane at the State Street/Cordon Road N.E. intersection, with related signal improvements.
- f) The signalization and addition of turn lanes on Auburn Road at the Auburn Road/Cordon Road intersection.
- g) The contribution of a proportional share toward improvements at other intersections where traffic impacts from the development of the Properties contribute to the need for improvements. Likely locations include the intersections of Lancaster Drive with Center Street, Auburn Road and State Street. An alternative may be to construct commensurate in-lieu improvements.
- B. **Storm Water Drainage Facility Improvements.** Owners and Marion County acknowledge that the downstream storm water drainage facilities (in particular, the culverts under Auburn Road) may not have adequate capacity for conveying existing storm water runoff generated by the contributing catchment area. Accordingly:
 - a) Prior to any development of the Properties, the Owners or other developer shall provide a storm water management plan (the "Plan") that shall demonstrate that there is adequate downstream conveyance, under full flow conditions, for runoff generated by a 50-year storm event. The Plan shall include a model that evaluates the backwater or tail water effects within the channel system, starting at least 0.5 mile downstream of the Auburn Road culverts or the Properties' point of discharge. The Plan shall maintain existing and adjacent drainage historically serving the adjacent properties.
 - b) If the Plan demonstrates that the downstream storm water drainage facilities

described above do not have adequate capacity for conveying existing storm water runoff generated by the contributing catchment area, then in conjunction with the development of the Properties, the Owners or their successor or successors in interest shall replace or contribute on an equitable basis to the replacement of the Auburn Road Culverts with culverts that have adequate capacity to convey existing storm water runoff generated by the contributing catchment area.

2. **Support of Annexation and Redevelopment Proposal.** In consideration of Owners' commitment to the completion of the County Infrastructure Improvements in conjunction with the development of the Properties, Marion County agrees to support the issuance of the UGA Declaration and Permit, the annexation of the Properties and the approval of the comprehensive plan and zone changes described hereinabove. Marion County further agrees that it will not appeal the UGA Declaration or Permit issued by the city of Salem.

3. **Miscellaneous Provisions.**

- A. **Effective Date.** This Memorandum of Understanding shall become effective upon the date of the last signature hereon.
- B. **Compliance With Applicable Law.** Owners and Marion County shall each comply with all federal, state and local laws, regulations, rules and resolutions applicable to the provisions of this Memorandum of Understanding.
- C. **Severability.** Owners and Marion County agree that if any term or provision of this Memorandum of Understanding is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Memorandum of Understanding did not contain the particular term or provision held to be invalid.
- D. **Modification.** This Memorandum of Understanding may not be altered, modified, supplemented or amended in any manner whatsoever except by mutual agreement of Owners and Marion County in writing. Any such alteration, modification, supplementation or amendment, if made, shall be effective only in the specific instance and for the specific purpose given, and shall be valid and binding only if signed by Owners and an authorized representative of Marion County.
- E. **Waiver.** No provision of this Memorandum of Understanding may be waived except in writing by the party waiving compliance. No waiver of any provision of this Memorandum of Understanding shall constitute waiver of any other provision, whether similar or not, nor shall any one waiver constitute a continuing waiver. Failure to enforce any provision of this Memorandum of Understanding shall not operate as a waiver of such provision or of any other provision.


- F. **Execution in Counterparts.** This Memorandum of Understanding may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same Memorandum of Understanding.
- G. **Entire Understanding.** This Memorandum of Understanding sets forth the entire understanding between Owners and Marion County as of the effective date hereof; however, Owners and Marion County contemplate that they shall from time to time supplement, modify and elaborate upon the understandings set forth herein.

IN WITNESS WHEREOF, Owners and Marion County have caused this Memorandum of Understanding to be executed on their behalf.

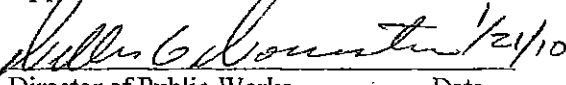
OWNERS

MARION COUNTY, OREGON

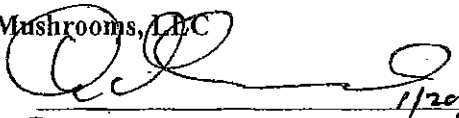
The Pictsweet Company

By: 
Date: 1/20/10
Its: Vice President Emeritus

Approval Recommended:


Date: 1/21/10
Director of Public Works

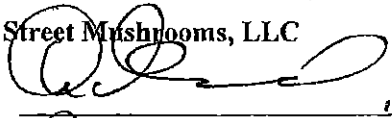
PS Mushrooms, LLC

By: 
Date: 1/20/10
Its: President

Approved as to form:


Date: 1/21/10
Legal Counsel

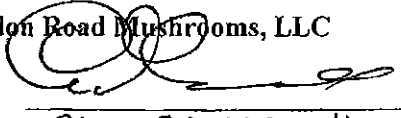
State Street Mushrooms, LLC

By: 
Date: 1/20/10
Its: President

Chief Administrative Officer


Date: 01/21/10
John N. Lattimer

Cordon Road Mushrooms, LLC

By: 
Date: 1/20/10
Its: President

Marion County Mushrooms, LLC

By: [Signature] 1/20/10
Date
Its: President

Auburn Road Mushroom Farm, LLC

By: [Signature] 1/20/10
Date
Its: President

Salem Mushroom Farm, LLC

By: [Signature] 1/20/10
Date
Its: President

STATE OF OREGON)
) ss.:
County of Marion)

The foregoing instrument was acknowledged before me this 21 day of January, 2010 by John Lattimer, who stated that he is the Chief Administrative Officer of Marion County, Oregon, and that he executed the foregoing instrument on behalf of Marion County, Oregon as its voluntary act and deed.



[Signature]
Notary Public for Oregon

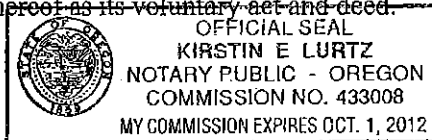
My commission expires: 10/1/12

STATE OF OREGON)

)ss.:

County of Marion)

The foregoing instrument was acknowledged before me this 21 day of January, 2010 by Scott A. Norris who stated that he is the Assistant Legal Counsel of Marion County, Oregon, and that he executed the foregoing instrument to indicate his approval of the form thereof as its voluntary act and deed.



Kirstin E. Lurtz
Notary Public for Oregon

My commission expires: 10/1/12

STATE OF OREGON)

)ss.:

County of Marion)

The foregoing instrument was acknowledged before me this 21 day of January, 2010 by William G. Worcester, PE, who stated that he is the Director, Department of Public Works, Marion County, Oregon, and that he executed the foregoing instrument to indicate his recommendation for approval of the foregoing instrument, as his voluntary act and deed.



Orthele Hudnall
Notary Public for Oregon

My commission expires: 10/8/12

STATE OF TENNESSEE)

)ss.:

County of Crockett)

The foregoing instrument was acknowledged before me this 20th day of January, 2010 by Carl Gruenewald, who stated that he is Vice President Emeritus of The Pictsweet Company, a Delaware corporation, and that he executed the foregoing instrument as the voluntary act and deed of said corporation.



Sarah J. King
Notary Public for Tennessee

My commission expires: 11/20/12

STATE OF TENNESSEE

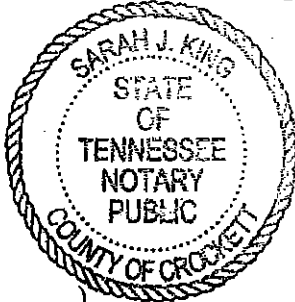
)

)ss.:

County of Crockett

)

The foregoing instrument was acknowledged before me this 20th day of January 2010 by Carl Gruenewald, who stated that he is President of PS Mushrooms, LLC, a Delaware limited liability company, and that he executed the foregoing instrument as the voluntary act and deed of said corporation.



Sarah J. King
Notary Public for Tennessee
My commission expires: 11/20/12

STATE OF TENNESSEE

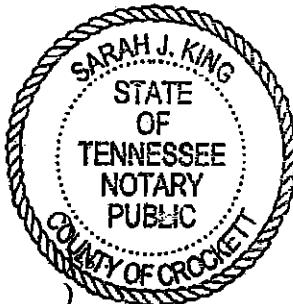
)

)ss.:

County of Crockett

)

The foregoing instrument was acknowledged before me this 20th day of January 2010 by Carl Gruenewald, who stated that he is President of State Street Mushrooms, LLC, a Delaware limited liability company, and that he executed the foregoing instrument as the voluntary act and deed of said corporation.



Sarah J. King
Notary Public for Tennessee
My commission expires: 11/20/12

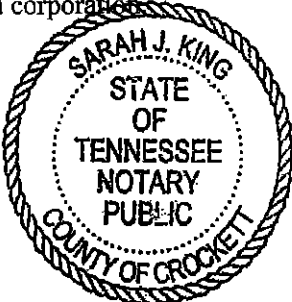
STATE OF TENNESSEE

)

County of Crockett

)

The foregoing instrument was acknowledged before me this 20th day of January 2010 by Carl Gruenewald, who stated that he is President of Cordon Road Mushrooms, LLC, a Delaware limited liability company, and that he executed the foregoing instrument as the voluntary act and deed of said corporation.



Sarah J. King
Notary Public for Tennessee
My commission expires: 11/20/12

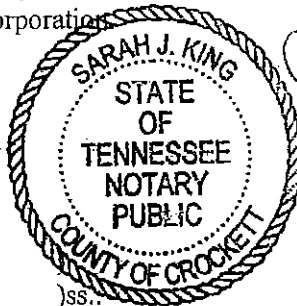
/

STATE OF TENNESSEE

)
)ss.:
)

County of Crockett

The foregoing instrument was acknowledged before me this 20th day of January 2010 by Carl Gruenewald, who stated that he is President of Marion County Mushrooms, LLC, a Delaware limited liability company, and that he executed the foregoing instrument as the voluntary act and deed of said corporation.



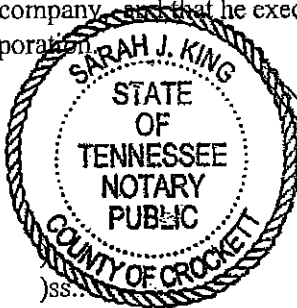
Sarah J. King
Notary Public for Tennessee
My commission expires: 11/20/12

STATE OF TENNESSEE

)ss.:
)

County of Crockett

The foregoing instrument was acknowledged before me this 20th day of January 2010 by Carl Gruenewald, who stated that he is President of Auburn Road Mushroom Farm, LLC, a Delaware limited liability company, and that he executed the foregoing instrument as the voluntary act and deed of said corporation.



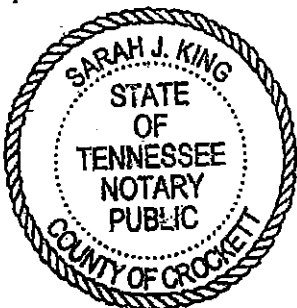
Sarah J. King
Notary Public for Tennessee
My commission expires: 11/20/12

STATE OF TENNESSEE

)ss.:
)

County of Crockett

The foregoing instrument was acknowledged before me this 20th day of January 2010 by Carl Gruenewald, who stated that he is President of Salem Mushroom Farm, LLC, a Delaware limited liability company, and that he executed the foregoing instrument as the voluntary act and deed of said corporation.



Sarah J. King
Notary Public for Tennessee
My commission expires: 11/20/12

/

303
0.92 AC

300
6.78 AC

924 00 21 3

924 00 21 0

199
2.25 AC

200
2.77 AC

101
12.17 AC

100
11.72 AC

CORDON ROAD

EXHIBIT B

PARCEL I:

Beginning in the center of the County Road at a point which is 0.72 chains North 1°20' West and 1193.36 feet South 89°34' West from the most Northerly Northwest corner of the J. C. Caplinger Donation Land Claim No. 75, in Township 7 South, Range 2 West of the Willamette Meridian in Marion County, Oregon; thence South 89°34' West along the center of said County Road, a distance of 339.96 feet; thence North 0°11' West 204.50 feet; thence South 89°49' West 8.63 feet; thence North 0°08' West 1051.24 feet to the South line of the Southern Pacific Railroad right of way; thence South 89°51' East along the South line of the said Railroad right of way 348.76 feet; thence South 0°08' East 1252.36 feet to the place of beginning. EXCEPT that part conveyed to Marion County, Oregon, by deed dated October 7, 1957, recorded October 10, 1957, in Volume 504, page 742, Deed Records, in Marion County, Oregon.

PARCEL II:

Beginning at a point 27.57 chains South 89°30' East from the Southwest corner of the Donation Land Claim of Zachariah Pollard and wife, in Township 7 South, Range 2 West of the Willamette Meridian, in Marion County, Oregon; thence running South 89°30' East 15.43 chains; thence South 0°30' East 26.30 chains to the South line of the Samuel Parker Donation Land Claim; thence North 89°30' West 15.43 chains; thence North 0°30' West 26.30 chains to the place of beginning, situated in Marion County, Oregon. SAVE AND EXCEPT that portion thereof lying within the right of way of the Southern Pacific Company along the Southerly boundary. ALSO SAVE AND EXCEPT: Beginning in the center of the County Road at a point which is 2179.62 feet South 89°30' East from the Southwest corner of the Zachariah Pollard Donation Land Claim in Township 7 South, Range 2 West of the Willamette Meridian in Marion County, Oregon; thence South 89°30' East along the center of said road, a distance of 175.00 feet; thence South 0°40' East parallel with the West line of Parcel No. 1 of a tract of land conveyed to West Foods and recorded in Volume 522, page 143, Deed Records for said County and State, a distance of 400.00 feet; thence North 89°30' West parallel with the center of said road, 175.00 feet; thence North 0°40' West a distance of 400.00 feet to the place of beginning.

PARCEL III:

Beginning at a point 21.27 chains North and 79.80 chains East of the most Southerly Southeast corner of the Donation Land Claim of Samuel Parker and wife, in Township 7 South, Range 2 West of the Willamette Meridian in Marion County, Oregon; thence East on the South line of Samuel Parker's Claim 15.30 chains; thence North 0°30' West 26.20 chains to the North line of M. L. Savage's Donation Land Claim; thence North 89°30' West along the North line of said M. L. Savage's Claim 15.30 chains; thence South 0°30' East 26.20 chains to the place of beginning, and situated in Township 7 South, Range 2 West of the Willamette Meridian in Marion County, Oregon. SAVE AND EXCEPT that portion conveyed to the Southern Pacific Railroad Company.

ALSO SAVE AND EXCEPT: Beginning at a point South 92 links, South 89° 30' East 53.94 chains and South 0°30' East 30 links, from the Southwest corner of the Zachariah Pollard Donation Land Claim; thence South 0°30' East 6.70 chains to an iron rod; thence South 89°30' East 4.10 chains to an iron rod; thence North 0°30' West 6.70 chains to the South boundary of the County Road; thence North 89°30' West along the South boundary of said County Road; 4.10 chains to the point of beginning, all in Township 7 South Range 2 West of the Willamette Meridian in Marion County, Oregon. ALSO SAVE AND EXCEPT that portion conveyed to Marion County, Oregon, by deed dated March 29, 1961, recorded March 31, 1961, in Volume 543, page 378, Deed Records for Marion County.

PARCEL IV:

Beginning at an iron pipe .72 chains North 1°20' West 1723.32 feet South 89°34' West and North 0°11' West 205.33 feet from the most Northerly Northwest corner of the J. C. Caplinger Donation Land Claim in Township 7 South, Range 2 West of the Willamette Meridian in Marion County, Oregon, and running thence South 89°49' West 1.63 feet; thence North 0° 08' West 1051.24 feet to the South line of the Southern Pacific Co. Railroad right of way; thence South 89°51' East along said right of way 200.00 feet to an iron pipe; thence South 0°08' East 1051.24 feet to an iron pipe; thence South 89°49' West 181.37 feet to the place of beginning.

PARCEL V:

Beginning at a point in the center of the County Road leading from Gear to Salem, which is 10.681 chains West of a point which is 12.56 chains West and 60 links North from the most Northerly Northwest corner of the J. C. Caplinger Donation Land Claim No. 75 in Township 7 South, Range 2 West of the Willamette Meridian in Marion County, Oregon; and running thence West along the center line of said County Road; 190 feet; thence North 200 feet; thence East 190 feet; thence South 200 feet to the point of beginning. SAVE AND EXCEPT that portion conveyed to Marion County, a political subdivision of the State of Oregon, by instrument recorded September 26, 1957, in Volume 504, page 419, Deed Records for Marion County, Oregon.

PARCEL VI:

Beginning at a point which is 0.30 chains North and 1.666 chains West from the most Northerly Northwest corner of the J. C. Caplinger Donation Land Claim, in Township 7 South, Range 2 West of the Willamette Meridian in Marion County, Oregon, said point is also described as being at the intersection of the West line of a County Road (which road is described in Volume 133, page 149, Deed Records for Marion County, Oregon), and the center line of Salem to Geer Road; and running thence West 10.907 chains along the center line of said Salem to Geer Road to the Southeast corner of the R. E. West property described in deed recorded in Volume 102, page 501, Deed Records for Marion County, Oregon; thence North along the East line of said R. E. West property 20.34 chains to the South boundary of the Southern Pacific Railroad Right of Way; thence East along said right of way 10.907 chains to the West line of the County Road; thence South along the West line of said County Road 20.302 chains to the place of beginning. EXCEPT that part conveyed to Marion County, Oregon, by deed dated October 7, 1957, recorded October 10, 1957, in Volume 504, page 741, and by deed dated July 14, 1960, recorded December 28, 1960, in Volume 540, page 545, Deed Records of Marion County, Oregon.

PARCEL VII:

Beginning at a point which is 12.50 chains West and 61 links North of the most Northerly Northwest corner of J. C. Caplinger's Donation Land Claim in Township 7 South, Range 2 West of the Willamette Meridian, in Marion County; and running thence North 20.03 chains to the R. Savage's line; thence West 5.53 chains; thence South 20.05 chains to the center of the County Road leading to Salem; thence East to the place of beginning. EXCEPT that part lying in Southern Pacific Railroad right of way, and that part conveyed to Marion County, Oregon, by deed dated October 7, 1957, recorded October 10, 1957, in Volume 504, page 744, Deed Records for Marion County, Oregon.

RECEIVED

PUBLIC

MAR 09 2010

CITY OF *Salem*
AT YOUR SERVICE

COMMUNITY DEVELOPMENT

MEMO

WORKS

TO: Cecilia Urbani, Associate Planner
Department of Community Development

FROM: Glenn J. Davis, P.E., Chief Development Services Engineer *GD*
Public Works Department

DATE: March 9, 2010

SUBJECT: **TENTATIVE PUBLIC WORKS RECOMMENDATIONS**
CPC/ZC NO. 10-1 (09-121899)
255 CORDON ROAD NE AND 4900 BLOCK OF STATE STREET
COMPREHENSIVE PLAN CHANGE/ZONE CHANGE

PROPOSAL

To change the Salem Area Comprehensive Plan Map designation from "Industrial" to "Single Family Residential" and "Commercial"; and to change the zoning from Marion County "Industrial Park (IP), "Urban Transition" (UT), and "Urban Development" (UD) to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR) for property approximately 120 acres in size and generally located at 255 Cordon Road NE and 4900 block of State Street NE.

RECOMMENDED CONDITIONS

At the time of development review for any proposed use on the subject property, the proposed development's average daily trips shall be calculated pursuant to the then-current Institute of Transportation Engineers (ITE) Trip Generation manual. Traffic impacts from future development on the subject property shall be limited to a maximum of 14,157 average daily trips generated by the proposed use or uses. This condition shall be recorded against the subject property as a restrictive covenant in deed records of Marion County, Oregon.

FACTS

Public Infrastructure Plan – The *Water System Master Plan*, *Wastewater Management Master Plan*, and *Stormwater Master Plan* provide for facilities adequate to serve the proposed zone.

Urban Growth Area Development (UGA) Permit – A Preliminary Declaration for UGA permit 09-7 has been issued for the subject property.

Cecilia Urbani, Associate Planner

March 9, 2010

Page 2

MEMO

Transportation Planning Rule – The applicant submitted a Traffic Impact Analysis (TIA) in consideration of the requirements of the Transportation Planning Rule (OAR 660-012-0060). The TIA is required to demonstrate that the proposed CPC/ZC will not have a significant effect on the transportation system as defined by OAR 660-012-0060. The Assistant City Traffic Engineer concurs with the TIA findings and recommends a condition to limit the development on the 120 acre site to 14,157 vehicles per day.

Site-specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 163.

Prepared by: Robin Bunse, Engineering Technician
cc: File

Finance Division

Administrative Services Department



To: Cecilia DeSantis Urbani, Associate Planner
From: Douglas Gabbard, Financial Analyst
Date: March 25, 2010
Subject: Annexation C-689

The amount of property tax levied each year against a parcel of real estate is the product of that parcel's assessed value and its total tax rate. While annexation does not affect assessed value, annexation can have a significant impact on a parcel's total tax rate.

The table(s) below show the expected impact of annexation on the total tax rate of each parcel in the subject case.

TAX RATE IMPACT OF ANNEXATION			
Annexation case	C-689		
Property ID	R23932		
Description	Before Annexation	After Annexation	Change
Tax code area	92400210	92401003	
Government			
City of Salem	\$ -	\$ 5.8315	
Other governments	5.8224	4.7104	
Total government	5.8224	10.5419	81%
Bonds			
City of Salem	-	0.9730	
Other bonds	2.6091	2.1735	
Total bonds	2.6091	3.1465	21%
Schools	5.4436	5.1572	-5%
Local options	0.1600	-	
Total tax rate	\$ 14.0351	\$ 18.8456	34%
Total tax levy = total tax rate x (assessed value / 1,000).			
Tax rates presented here assume no compression.			
Source: county assessor			

TAX RATE IMPACT OF ANNEXATION

Annexation case C-689
 Property ID All other parcels

Description	Before Annexation	After Annexation	Change
Tax code area	92400213	92401003	
Government			
City of Salem	\$ -	\$ 5.8315	
Other governments	5.8224	4.7104	
Total government	5.8224	10.5419	81%
Bonds			
City of Salem	-	0.9730	
Other bonds	2.6091	2.1735	
Total bonds	2.6091	3.1465	21%
Schools	5.4436	5.1572	-5%
Local options	0.1600	-	
Total tax rate	<u>\$ 14.0351</u>	<u>\$ 18.8456</u>	34%

Total tax levy = total tax rate x (assessed value / 1,000).

Tax rates presented here assume no compression.

Source: county assessor

MEMORANDUM



To: Cecilia DeSantis Urbani

From: Joe Parrott, Deputy Fire Chief

Date: April 7, 2010

Subject: Annexation C-689 State St and Cordon

The Salem Fire Department response time to this location is approximately four minutes 20 seconds depending on road conditions, traffic, and similar variables. Primary fire protection and EMS service would be provided from Fire Station No. 10 located at 3611 State St. Assistance from Marion County Fire District No. 1 Station 1 located directly across Cordon Rd from the property would also be available under the terms of the mutual aid agreements between the two agencies.

Secondary service would be provided from Fire Station No. 3 located at 1884 Lansing Ave NE.

ATTACHMENT G

RECEIVED

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APR 21 2010




WORKS

COMMUNITY DEVELOPMENT

MEMO

TO: Cecilia DeSantis Urbani, Principal Planner
Department of Community Development

FROM: Glenn Davis, P.E., Chief Development Services Engineer
Public Works Department 

DATE: April 21, 2010

SUBJECT: INFRASTRUCTURE AVAILABILITY
C-689 PETITION-INITIATED ANNEXATION (09-121899)
255 CORDON ROAD NE AND 4900 BLOCK OF STATE STREET

REQUEST:

Discuss availability of public works infrastructure (streets, sanitary sewer, storm drainage, and water) for a petition-initiated annexation on approximately 120 acres and generally located at 255 Cordon Road NE and 4900 block of State Street.

PUBLIC WORKS INFRASTRUCTURE:

No public improvements are required for annexation. The following information explains the condition of existing public infrastructure in the vicinity of the subject property.

Urban Growth Area Development Permit

Urban Growth Area Development (UGA) Preliminary Declaration 09-7 was issued January 28, 2010, establishing requirements for development of the subject property related to streets, stormwater, water, and sanitary sewer infrastructure.

Streets

1. Auburn Road NE is designated as a Collector street in the Salem TSP. The standard for this street classification is a 34- to 40-foot-wide improvement within a 60-foot-wide right-of-way.
2. State Street is designated as a Major Arterial street in the Salem TSP. The standard for this street classification is a 68-foot-wide improvement within a 96-foot-wide right-of-way.

ATTACHMENT H

3. Cordon Road NE is designated as a Parkway in the Salem TSP and will remain within Marion County jurisdiction upon annexation. The standard for this street classification is an 80-foot-wide improvement within a 120-foot-wide right-of-way.
4. Greencrest Street NE is identified in the Salem TSP as a Collector street and is intended to connect between Auburn Road NE and State Street within the subject property.

Storm

Existing Conditions: A branch of the West Middle Fork of the Little Pudding River flows through the subject property.

Water

Existing Conditions: The nearest available water mains of adequate capacity to serve the proposed development are located in approximately Gaffin Road NE to the south and Lancaster Drive NE to the west.

Sewer

Existing Conditions: There is an 8-inch sewer line in Auburn Road NE that terminates at the midpoint of the subject property. There is an 8-inch sewer line in State Street that terminates at the intersection of Cordon Road NE.

Prepared by: Robin Bunse, Engineering Technician
cc: File

Annexation C-689

General Fund (Current Year Dollars)

	Citywide Total	Annexation Area	Percent Increase
EXPENDITURES			
Mayor and Council	179,380	1,007	0.6%
Municipal Court	1,058,980	8,890	0.8%
City Manager's Office	1,385,280	8,059	0.6%
Personnel	1,121,670	5,844	0.5%
Finance	2,845,550	15,850	0.6%
Legal	1,597,570	9,576	0.6%
General Services	8,892,560	29,329	0.3%
Community Development	6,968,480	14,208	0.2%
Community Services	9,786,980	64,323	0.7%
Library	4,519,290	13,473	0.3%
Police	30,660,970	300,748	1.0%
Fire	22,035,470	66,365	0.3%
Data Management	6,567,510	16,818	0.3%
Non-Departmental	3,009,900	9,698	0.3%
Capital Outlays	0	5,562	0.0%
Contingencies	2,325,510	19,298	0.8%
Qwest Reserves	0	0	0.0%
TOTAL EXPENDITURES	102,955,100	589,048	0.6%
REVENUES			
Beginning Balance	11,449,080	0	na
Property Taxes	46,954,810	524,254	1.1%
Franchise Fees	13,756,730	95,987	0.7%
Fees for Services	1,829,640	1,612	0.1%
Other Fees	1,740,550	7,806	0.4%
Licenses and Permits	554,670	382	0.1%
Rent	897,430	1,221	0.1%
Internal Charges	15,328,450	76,132	0.5%
State Shared Revenues	3,791,250	25,140	0.7%
Other Agencies	1,881,140	4	0.0%
State and Federal Grants	401,690	3,221	0.8%
Fines and Penalties	4,018,890	15,569	0.4%
Interest and Other Revenues	2,929,280	23,486	0.8%
Interfund Transfer	0	0	0.0%
TOTAL REVENUES	105,533,610	774,813	0.7%
Surplus/(Deficit)		185,766	

Source: City of Salem Annexation Model

**Annexation C-689 Enhanced
General Fund (Current Year Dollars)**

	Citywide Total	Annexation Area	Percent Increase
EXPENDITURES			
Mayor and Council	179,380	1,048	0.6%
Municipal Court	1,058,980	8,890	0.8%
City Manager's Office	1,385,280	8,504	0.6%
Personnel	1,121,670	6,196	0.6%
Finance	2,845,550	16,761	0.6%
Legal	1,597,570	9,911	0.6%
General Services	8,892,560	30,697	0.3%
Community Development	6,968,480	14,208	0.2%
Community Services	9,786,980	75,797	0.8%
Library	4,519,290	13,473	0.3%
Police	30,660,970	300,748	1.0%
Fire	22,035,470	78,432	0.4%
Data Management	6,567,510	17,835	0.3%
Non-Departmental	3,009,900	10,305	0.3%
Capital Outlays	0	5,844	0.0%
Contingencies	2,325,510	20,277	0.9%
Qwest Reserves	0	0	0.0%
TOTAL EXPENDITURES	102,955,100	618,925	0.6%
REVENUES			
Beginning Balance	11,449,080	0	na
Property Taxes	46,954,810	524,254	1.1%
Franchise Fees	13,756,730	95,987	0.7%
Fees for Services	1,829,640	1,612	0.1%
Other Fees	1,740,550	7,913	0.5%
Licenses and Permits	554,670	382	0.1%
Rent	897,430	1,221	0.1%
Internal Charges	15,328,450	84,767	0.6%
State Shared Revenues	3,791,250	25,140	0.7%
Other Agencies	1,881,140	4	0.0%
State and Federal Grants	401,690	3,221	0.8%
Fines and Penalties	4,018,890	15,569	0.4%
Interest and Other Revenues	2,929,280	23,486	0.8%
Interfund Transfer	0	0	0.0%
TOTAL REVENUES	105,533,610	783,555	0.7%
Surplus/(Deficit)		164,630	

Source: City of Salem Annexation Model

**BEFORE THE CITY COUNCIL
OF THE CITY OF SALEM, OREGON**

IN THE MATTER OF THE)	
PETITIONER-INITIATED)	ORDER NO. 10-C-689
ANNEXATION OF)	
TERRITORY LOCATED NORTH OF)	FINAL ORDER ADOPTING THE
STATE STREET, WEST OF CORDON)	FINAL DECISION AND FINDINGS OF
ROAD, SOUTH OF AUBURN ROAD NE)	COMPLIANCE WITH SRC CHAPTER 165
AREA (4900 BLK. STATE STREET))	IN ANNEXATION CASE NO. C-689

Whereas, on April 26, 2010, after due notice was given, the City Council of the City of Salem held a public hearing to take testimony and evidence on annexation proposal C-689 (the Annexation Proposal), as required by SRC 165.130(a); and

Whereas, after receiving evidence and hearing testimony, and upon consideration of the Staff Report and Recommendation, and being fully advised, the City Council hereby finds that the Annexation Proposal complies with SRC 165.130(c); and

Whereas, the City Council has determined that the Petitioner has met the annexation petition, application, information submission, fee, waiver and all other requirements for petitioner-initiated annexations including, but not limited to, those found in ORS Chapter 222, SRC Chapter 165, SRC 165.070, SRC 165.080 and SRC 165.090; and

Whereas, the City Council has determined that a triple majority consent petition for annexation of the Territory (Exhibit 1) has been signed and the triple majority requirements of ORS 222.170(1) are satisfied because more than half of the owners of land in the Territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory have consented in writing to the annexation of their land in the territory; and

Whereas, the City Council hereby finds that the public interest would be furthered by the referral of the annexation to the voters of the city pursuant to Section 61 of the Salem City Charter; and

Whereas, following the recommendation of the Planning Commission pursuant to SRC 165.100(b), the City Council has determined that the Comprehensive Plan designation and Zoning of the 118-acre property will be changed to "Single Family Residential", "Multi-Family Residential" and "Commercial" and Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR), respectively; and

Whereas, for the 3.25-acre property (Marion County Assessor Map #072W29C Tax lot 00199), the City of Salem "Industrial Park" (IP) zone district is consistent with and equivalent to the current "Industrial" Comprehensive Plan Map designation; and

ATTACHMENT J

Whereas, the City Council hereby finds that withdrawal of the Territory from Marion County Fire District #1 and East Salem Service District is in the best interest of the city; and

Whereas, this FINAL ORDER constitutes the final land use decision in the Annexation Proposal and any appeal hereof must be filed with the Oregon Land Use Board of Appeals within 21 days of the date that notice of this decision is mailed to persons with standing to appeal, as provided in SRC 165.130(e).

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF SALEM, OREGON:

Section 1: Proposed Annexation C-689, of the Territory more particularly described in the attached Exhibit 2, which is incorporated herein by this reference, satisfies the criteria set forth in SRC 165.130(c) and is hereby approved based on the findings stated in the attached Exhibit 3, which is incorporated herein by reference.

Section 2: If the proposed annexation is approved by City Council, the 118-acre property within the Territory shall, pursuant to SRC 165.100, be designated "Single Family Residential", "Multi-Family Residential" and "Commercial" on the City of Salem Comprehensive Plan Map and be zoned Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR); and, for the 3.25-acre property within the Territory (Marion County Assessor Map #072W29C Tax lot 00199), the City of Salem "Industrial Park" zone is applied to the property;

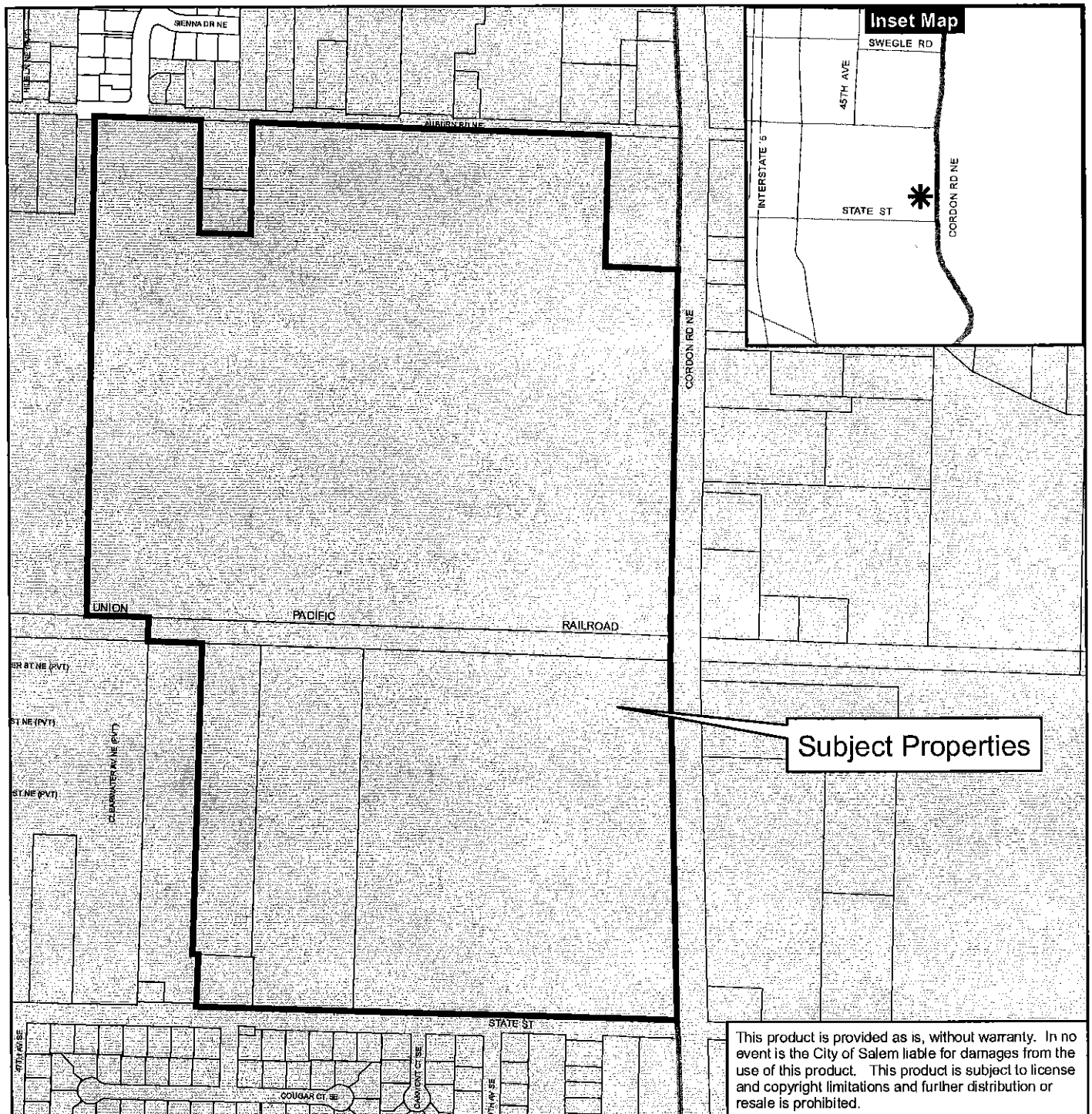
Section 3: If the Proposed Annexation is approved by the voters, the Territory shall be withdrawn from Marion County Fire District #1 and East Salem Service District.

Section 4: A measure shall be prepared for Council approval to submit the proposed annexation of the Territory to the voters of the City of Salem for the November 2, 2010 election.

DATED this _____ day of _____, 2010.

ATTEST: Kathy Hall, City Recorder
City of Salem

Vicinity Map 4900 Block of State St



Legend

- | | |
|---------------------------|-------------------|
| Outside Salem City Limits | Historic District |
| Urban Growth Boundary | Schools |
| Taxlots | Parks |

0 100 200 400 Feet



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EXHIBIT 1

**North of State Street, West of Cordon Road, South of Auburn Road NE Area
(4900 Block State Street)**

Beginning at a point on the South Line of County Road No. 739 (commonly known as Auburn Road NE), said point being the northwest corner of that tract of land described in that instrument recorded in Reel 3097, Page 467, Marion County Records, said point being 1,819.62 feet East of the southwest corner of the Zachariah Pollard Donation Land Claim No. 42 in Section 29, Township 7 South, Range 2 West of the Willamette Meridian, Marion County, Oregon, said point also being on the now existing City Limits Line; and running thence:

South 89° 54' 00" East 180.00 feet along the South Line of said Auburn Road NE and the now existing City Limits Line to an angle point in said now existing City Limits Line;
thence North 00° 04' 57" East 69.88' along said now existing City Limits Line to the beginning point of a 20.00-foot radius curve to the left (the chord of which bears South 44° 25' 01" East 28.04 feet) 31.07 feet to a point on the North Right-of-way Line of said Auburn Road NE;
thence South 89° 54' 00" East 104.76 feet to an angle point in said North Line;
thence South 00° 02' 25" East 10.00 feet to a point on the North Line of said Auburn Road NE, being 20.00 feet from the Center Line of said Auburn Road NE if measured perpendicular thereto;
thence South 89° 54' 00" East 365.65 feet along the North Line of said Auburn Road NE to an angle point;
thence North 01° 08' 23" West 14.00 feet to an angle point;
thence South 89° 54' 00" East 181.04 feet to an angle point in said North Line;
thence South 00° 59' 40" East 14.00 feet to an angle point;
thence South 89° 54' 00" East 181.33 feet to an angle point in the North Line of said Auburn Road NE;
thence North 01° 26' 45" East 10.00 feet;
thence South 89° 54' 00" East 181.33 feet to an angle point;
thence South 01° 26' 45" West 10.00 feet to an angle point in said North Line;
thence South 89° 54' 00" East 771.50 feet to a point on the West Line of Market Road No. 97 (commonly known as Cordon Road NE); said point also being on the Urban Growth Boundary Line;
thence South 00° 25' 52" East 40.25 feet along the West Line of said Cordon Road NE and said Urban Growth Boundary Line to a point on the South Line of said Auburn Road NE;
thence North 89° 54' 00" West 245.54 feet along the South Line of said Auburn Road NE to the point of intersection of the West Line of that tract of land described in that instrument recorded in Reel 751, Page 234, Marion County Records;
thence South 00° 53' 53" East 442.20 feet to the southwest corner thereof;
thence South 89° 53' 36" East 245.30 feet along the South Line of said tract to a point on the West Line of said Cordon Road NE and the Urban Growth Boundary Line;
thence South 00° 51' 36" East 1,279.12 feet along the West Line of said Cordon Road NE and said Urban Growth Boundary Line to an angle point;
thence South 03° 18' 50" East 1,316.86 feet to a point on the South Line of Market Road No. 22 (commonly known as State Street);

Approved: GERRY PAPPE
April 2, 2010
Annexation No.: C-689

DOR No.:

DOR Date:

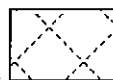
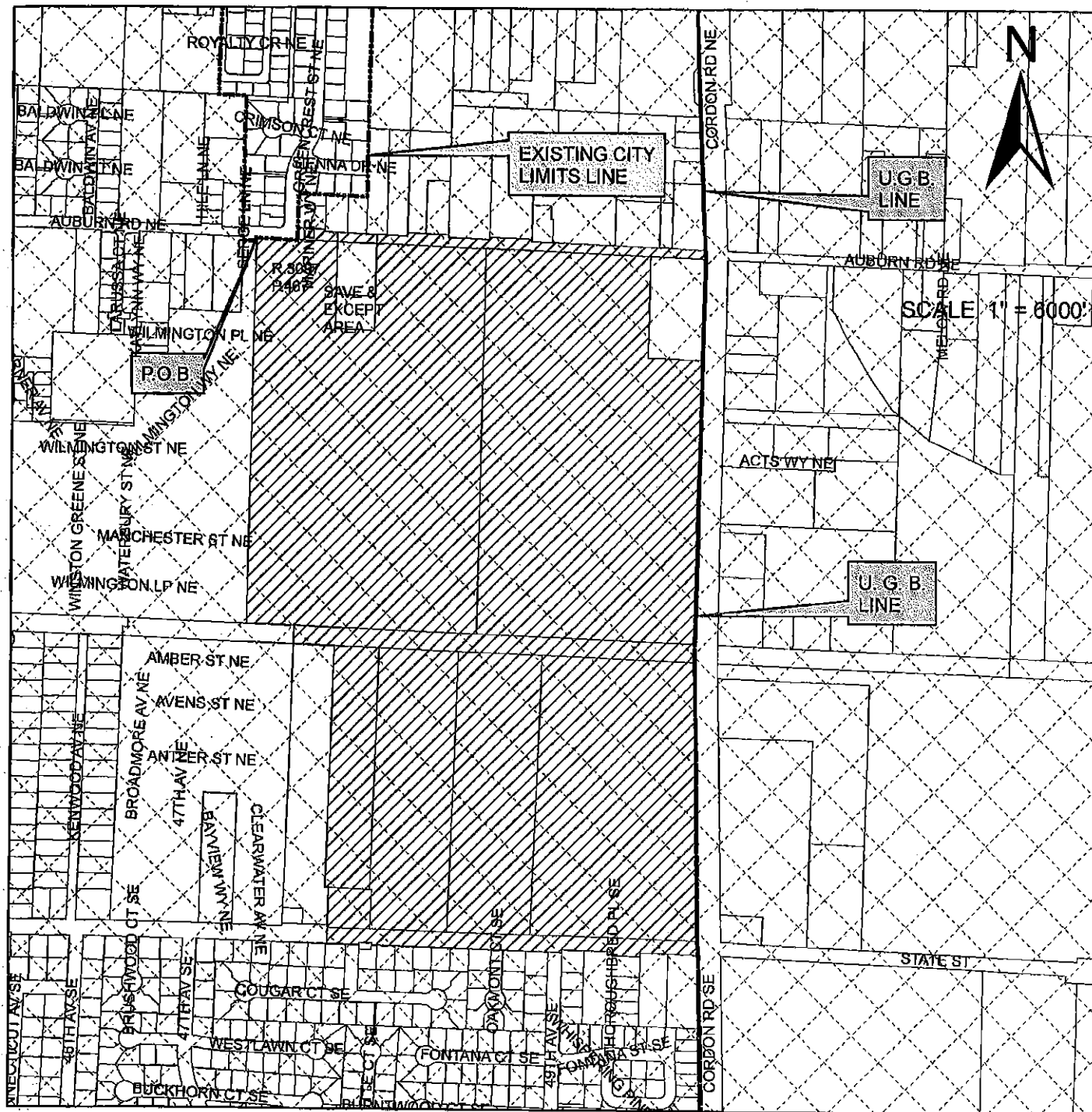
thence North 89° 27' 11" West 22.31 feet to an angle point;
 thence North 00° 53' 57" West 3.00 feet to an angle point in the South Line of said State Street;
 thence North 89° 27' 11" West 235.81 feet along the South Line of said State Street to an angle point;
 thence South 00° 52' 03" East 18.00 feet to an angle point in said South Line;
 thence North 89° 27' 11" West 124.91 feet to an angle point in said South Line;
 thence North 00° 52' 03" West 18.00 feet to an angle point in said South Line of State Street;
 thence South 89° 27' 11" West 220.02 feet along the South Line of said State Street to an angle point;
 thence South 01° 13' 29" East 10.00 feet to an angle point in the South Line of said State Street;
 thence South 89° 27' 11" West 835.71 feet along the South Line of said State Street to an angle point;
 thence North 00° 47' 00" West 10.00 feet to an angle point in said South Line of said State Street;
 thence South 89° 27' 11" West 55.00 feet to an angle point in said South Line of said State Street;
 thence South 00° 47' 00" East 10.00 feet to an angle point in said South Line of said State Street;
 thence South 89° 27' 11" West 145.34 feet along the South Line of said State Street to the point of intersection of the southerly extension of the West Line of that tract of land described in that instrument recorded in Reel 3097, Page 469, Marion County Records;
 thence North 00° 14' 38" West 246.87 feet along the said southerly extension of the West Line and the West Line of said Reel 3097, Page 469, to the northwest corner thereof, said point being on the South Line of that tract of land described in that instrument recorded in Reel 3097, Page 466, Marion County Records;
 thence North 89° 57' 41" West 18.82 feet along the said South Line of Reel 3097, Page 466, to the southwest corner thereof;
 thence North 00° 14' 59" West 1,051.41 feet along the West Line of said tract to a point on the now abandoned Geer Branch of the Union Pacific Railroad right-of-way; said point also being on the South Line of that tract of land described in that instrument recorded in Reel 2847, Page 17, Marion County Records;
 thence South 89° 59' 11" West 182.52 feet along the South Line of said Reel 2847, Page 17, to the southwest corner thereof;
 thence North 01° 06' 42" West 80.33 feet along the West Line of said Reel 2847, Page 17, to the northwest corner thereof; said point also being on the South Line of that tract of land described in that instrument recorded in Reel 3097, Page 467, Marion County Records;
 thence South 89° 59' 11" West 210.28 feet along the South Line of said Reel 3097, Page 467, to the southwest corner thereof;
 thence North 01° 06' 42" West 1,683.60 feet along the West Line of said Reel 3097, Page 467, to the Point of Beginning.

SAVE AND EXCEPT Partition Plat No. 1990-022, as recorded in Reel 767, Page 471, Marion County Records, Parcels 1 and 2.

Approved: GERRY PAPPE
 April 2, 2010
 Annexation No.: C-689

DOR No.:

DOR Date:



Property in
County

PROPERTY PROPOSED
TO BE ANNEXED
INTO CITY



EXHIBIT MAP

**CITY OF SALEM, OREGON
PUBLIC WORKS DEPARTMENT**

NORTH OF STATE STREET, WEST OF CORDON ROAD
SOUTH OF AUBURN ROAD NE AREA
(4900 BLK STATE ST.)

CONTAINING 125.01 ACRES

ADJACENT TO WARD 6

CASE NO. C-689

TRACT NO.

**EXHIBIT 3, ORDER NO. 10-C-689, FINDINGS:
COMPLIANCE OF ANNEXATION C-689
WITH SRC CHAPTER 165 AND 165.130(c)**

1. **The proposed petitioner-initiated annexation of that certain Territory more specifically described in Exhibit 2, Council Order in Annexation Case No. C-689 (Territory) conforms to the following criteria found in SRC 165.130(c):**

Criterion 1: The proposed land use designations are consistent with the Salem Area Comprehensive Plan and applicable Statewide Planning Goals.

Under Salem Revised Code (SRC) 165.100, territory annexed to the City is automatically given the Salem Area Comprehensive Plan and zoning designations that are equivalent to the applicable County zoning designations, as set forth in Table 165-1, unless the petitioner or City Council proposes a new Comprehensive Plan/zone designation under SRC 165.100(a)(1) or (2).

SRC 165.100(a)(1) allows the petitioner to request a new Comprehensive Plan designation and zoning designation other than the equivalent city designation in Table 165-1 in the petition for annexation. The Petitioner requested a Comprehensive Plan Change and Zoning Change to "Single Family Residential", "Multi-Family Residential" and "Commercial"; and Salem "Single Family Residential (RS)", "Multiple Family Residential 1 (RM1)", "Multiple Family Residential 2" (RM2) and "Commercial Retail" (CR), respectively.

Pursuant to SRC 165.100(b), the Planning Commission held a public hearing to review the proposed designations on March 16, 2010. The Planning Commission recommended, in light of the conceptual plan, that the City Council adopt the proposed designations based on the applicant meeting the Comprehensive Plan Change/Zone Change criteria of SRC 165.100(b)(1) through (4). The proposed designations are adopted by the City Council. These land use designations are consistent with the SACP and applicable statewide planning goals as demonstrated by the following findings.

A. **Statewide Planning Goals** -- Statewide Planning Goals applicable to the proposed annexation are:

- (1) **GOAL 10. Housing.** Goal 10 requires provisions for housing to meet the needs of residents. The proposed annexation will increase the city's inventory of buildable lands for multi-family and single family residential uses. The increased inventory of land is a positive factor in providing for housing variety and availability. The location is in close proximity to existing residential development and proposed mixed uses and is appropriate for such housing. The proposed annexation is consistent with Goal 10.
- (2) **GOAL 11. Public Facilities and Services.** Goal 11 requires a plan or program for orderly and efficient arrangements of public facilities. The city adopted a Public Facilities Plan (the Plan) consistent with Goal 11. The city applies the Plan to development of property within the city to achieve a timely, orderly and efficient arrangement of public facilities and services in a manner that supports both existing and planned growth. The Plan is implemented by the city's adopted master plans, Capital Improvement Plan (CIP), and the Urban Growth Management Process set forth in SRC Chapter 66.

The Territory is not within the Salem Urban Service Area (USA) and requires the issuance of an Urban Growth Area (UGA) Development Permit pursuant to the Urban Growth Management Program under SRC Chapter 66 for new development to occur. The petitioner has submitted a UGA application and the Preliminary Declaration for the Urban Growth Area Development (UGA) Permit No. 09-7 has been issued. The issuance of a UGA permit ensures that Goal 11 is satisfied because development within the Territory may not occur in advance of the construction of required water, wastewater, transportation, and parks facilities. These services will be provided, either by the developer at the developer's expense or by the City at public expense (under the City's adopted master plans, the CIP, etc.) under the UGA permit approval process that ensures that public facilities will be provided in an orderly and efficient manner. The proposed annexation is consistent with Goal 11.

- (3) **GOAL 12. Transportation.** Goal 12 requires a jurisdiction to adopt a Transportation System Plan (TSP) that provides a safe, convenient and economic transportation system. The City has adopted a transportation plan acknowledged by the Oregon Department of Land Conservation and Development (DLCD) to further this goal. The TSP is applied to the transportation elements of new development under SRC Chapter 66 and other provisions of the Salem Area Comprehensive Plan and Zoning Code and to the transportation elements of the city's adopted master plans, the CIP, etc. as set forth in the discussion of Goal 11 above to provide safe and convenient pedestrian, bicycle, and vehicular circulation that is consistent with the TSP and the requirements of the State Transportation Planning Rule. As described in the finding for Goal 11 compliance above, and as described in the discussion of Criterion 3 below, the Territory will comply with Goal 12 when any new development occurs, and will be served by facilities compliant with Goal 12 to the extent that transportation-related improvements occur under the city's adopted master plans, the CIP, SRC Chapter 66 and the Zoning Code. The Planning Commission has recommended that the Zone Change approval be subject to a condition of approval which limits the proposed mixed use development to a maximum of 14,157 Average Daily trips (ADT) to ensure compliance with the Transportation Planning Rule (TPR). The proposed annexation is consistent with Goal 12.
- (4) **GOAL 14. Urbanization.** Goal 14 mandates provisions for an orderly and efficient transition from rural to urban land use. The Territory is within the Salem-Keizer Urban Growth Boundary (UGB), which, by definition, makes this territory "urbanizable." The incorporation of contiguous areas, including the Territory, into the overall composition of the city provides order and efficiency in the provision of municipal facilities and services as well as in the facilitation of orderly urbanization. This is because the Salem Area Comprehensive Plan (SACP), Zoning Code and other applicable implementation measures have been acknowledged as being in compliance with Goal 14 and these measures will be made applicable to the Territory upon annexation. The applicable implementation measures are designed to provide order and efficiency in the provision of facilities and services, and to facilitate orderly urbanization by uniformly integrating the Territory into the City's municipal facilities and services system. This integration would provide for a uniform rather than an isolated, discontinuous, and fragmented system of services provided to areas not within the Salem city limits. The application of the city's Goal 14 acknowledged Salem Area Comprehensive Plan, Master Plans, and implementation ordinances to the Territory furthers the conversion of urbanizable land to urban uses consistent with Goal 14 for the reasons cited above. The proposed annexation is consistent with Goal 14.

In summary, the proposed annexation is consistent with the applicable Statewide Goals.

B. Salem Area Comprehensive Plan (SACP) -- The SACP goals, policies and intent statements applicable to the proposed annexation are:

- (1) **SACP Chapter II (Definitions and Intent Statements), Section A (Land Use Map), Subsection 3 (Plan Map Designations), Part a (Residential), Subpart 2 "Multi-Family Residential," (SACP pages 4-6):** The "Multi-Family Residential" designation is characterized by a mixture of housing types.

The future use of these areas is primarily residential in nature. The City's RM1 and RM2 (Multiple Family Residential) zones implement this Plan map designation by providing additional land used primarily for residential uses. The Territory zoning will be changed from Marion County "Industrial Park" (IP), "Urban Transition" (UT), and "Urban Development" (UD) to City of Salem "Single Family Residential" (RS), "Multiple Family Residential 1" (RM1), "Multiple Family Residential 2" (RM2), and "Commercial Retail" (CR). The proposed annexation is consistent with the above SACP provision.

- (2) **SACP Chapter II (Definitions and Intent Statements), Section A (Land Use Map), Subsection 3 (Plan Map Designations), Part a (Residential), Subpart 4 (Conversion of Developing Residential or Urbanizable Areas to Urban Development) (SACP page 4):** Urbanizable lands located outside the city limits must be annexed to the city to receive urban services. Some of the reasons for converting urbanizable land to urban land include: (1) providing for the orderly and economic extension of public facilities and services; (2) providing adequate land area for a variety of housing types and locations; and (3) maintaining an adequate supply of serviced or serviceable undeveloped land to meet the market demand for a variety of uses.

Annexation of the Territory allows for the future extension of public facilities and services consistent with the Salem Urban Growth Management Program through the master planning, CIP and SRC Chapter 66 (UGA) processes. Publicly funded capital improvements will depend on funding availability. Most new development in newly annexed areas requires developer responsibility for extending public facilities as part of a common city infrastructure under an orderly plan for their extension. In addition, annexation of the Territory with RS (Single Family Residential), RM1 and RM2 (Multiple Family Residential) zoning will provide the city with additional land area that expands the availability of a variety of housing types and locations within the city. The proposed annexation is consistent with the above SACP provision.

- (3) **SACP Chapter IV (Salem Urban Area Goals and Policies), Section A (Coordination Policies), Subsection 6 (Annexation Coordination) (SACP page 23):** The city must provide an opportunity for the affected county to comment on proposals for annexation of territory to the City of Salem.

Marion County was notified of the annexation and provided an opportunity to comment on the annexation. The county indicated no objections to the proposed annexation and submitted comments about the city-county coordination for future improvements. Therefore, the intent of the policy is met. The proposed annexation is consistent with the above SACP provision.

- (4) **SACP Chapter IV (Salem Urban Area Goals and Policies), Section C (Urban Growth), Subsection 1 (Annexation) (SACP page 26):** Marion and

Polk Counties should encourage the orderly annexation to the City of Salem of land within the Salem Urban Area.

The Territory is contiguous to the city limits. Annexation of the Territory allows for the orderly annexation of urbanizable land to the City of Salem. The proposed annexation is consistent with this policy.

- (5) **SACP Chapter IV (Salem Urban Area Goals and Policies), Section C (Urban Growth), Subsection 3 (UGB is Urbanizable) (SACP page 26):** Territory is considered available for annexation and development to the extent that it is urbanizable and located within the UGB.

The Territory is considered urbanizable because it is located within the UGB, and all needed facilities to support urban development are or can be made available under the city's existing public facilities plans and urban growth management program. Therefore, the Territory is considered available for annexation. The proposed annexation is consistent with the above SACP provision.

- (6) **SACP Chapter IV (Salem Urban Area Goals and Policies), Section D (Growth Management), Subsection 1 (Development Guided by Growth Management) (SACP page 27):** The conversion of urbanizable land shall be guided by the Growth Management Program (SRC Chapter 66).

SRC Chapter 66 establishes a comprehensive growth management program for the City of Salem. The Territory would lie within the Salem Urban Growth Area, as defined by SRC Chapter 66. The Preliminary Declaration for the Urban Growth Area Development (UGA) permit No. 09-7 has been issued for the subject property. Therefore, conversion of the Territory to urban uses will be guided by the City's growth management program. The proposed annexation is consistent with the above SACP provision.

- (7) **SACP Chapter IV (Salem Urban Area Goals and Policies), Section D (Growth Management), Subsection 3 (Programming Development) (SACP pages 27-28):** The City shall provide levels of services to city residents consistent with community needs as determined by the City Council, within the financial capability of the city, and subject to relevant legal constraints on revenues and their applications. Considerations for the programming of development are: (a) The financial capability of the city to provide certain facilities and services as authorized through the budgetary process; (b) The technical requirements of public facility master plans; (c) The need for sufficient amounts of buildable land to maintain an adequate supply in the marketplace; and (d) The willingness of the development community to assume the burden of funding the cost of providing certain facilities.

These criteria are factored into the proposed annexation because the Growth Management Program imposes an equitable share of public facility costs on new development by requiring provisions for required facilities by the developer and/or system development charges in connection with the provision of required facilities by the City. Therefore, this policy is satisfied. The proposed annexation is consistent with the above SACP provision.

- (8) **SACP Chapter IV (Salem Urban Area Goals and Policies), Section D (Growth Management), Subsection 7 (Development Requiring Water and Sewer) (SACP page 28):** Development will only be allowed within the city limits where public sewer and water services are available and other urban

facilities are scheduled pursuant to an adopted Growth Management Program.

The City of Salem adopted a Growth Management Program (SRC Chapter 66) that applies to the development of the Territory in the future. City services can be provided to the Territory in the future pursuant to the city's Growth Management Program. The Preliminary Declaration for the Urban Growth Area Development (UGA) permit No. 09-7 has been issued for the subject property. The proposed annexation is consistent with the above SACP provision.

In summary, the proposed annexation is consistent with the applicable provisions of the SACP.

Criterion 2: The annexation will result in a boundary in which services can be provided in an orderly, efficient and timely manner;

The annexation of unincorporated territory contiguous to the city limits will result in urban services being provided in a more orderly, efficient and timely manner. Unincorporated territory adjacent to the city limits prevents the orderly expansion of city services because gaps are created in the city's infrastructure, and services within those gaps must be provided by the county, or by the city pursuant to intergovernmental or other agreements. This results in inefficiencies due to discontinuous and fragmented methods of providing infrastructure and inefficiencies, as well as additional delays for any development proposal. The boundary resulting from the proposed annexation will provide a more compact and efficient urban form for providing urban services, because the services will be integrated into the existing city infrastructure that exists adjacent to the property, and potential jurisdictional conflicts will not exist. The proposed annexation complies with this criterion.

Criterion 3: The uses and density that will be allowed can be served through the orderly, efficient and timely extension of key urban facilities and services;

Comments provided by the various city departments indicate that the Territory in the proposed annexation may be served through the orderly, efficient and timely extension of key urban facilities and services as outlined in the city's adopted master plans, CIP and public works and parks design and construction standards. No improvements to urban facilities and services are needed at this time to serve the Territory.

If new development is proposed for the Territory, additional urban facilities and services will be required and will be provided in accordance with the city's adopted master plans, CIP and Urban Growth Management process as set forth in SRC Chapter 66. The territory proposed for annexation lies outside of the Urban Service Area. Pursuant to the City's adopted growth management program found in SRC Chapter 66, future development of the Territory must first obtain an Urban Growth Area (UGA) Permit to provide adequate public facilities, including water, sewer, stormwater, transportation, and park services, that may be necessitated by the proposed new development. If such facilities are not provided at public expense under the city's adopted master plans, the CIP, etc., they will be provided at the developer's expense at the time of development. The Preliminary Declaration for the Urban Growth Area Development (UGA) permit No. 09-7 has been issued for the subject property. The proposed annexation complies with this criterion.

Criterion 4: The public interest would be furthered by the referral of the annexation to the voters.

The Petitioner has met the annexation petition, application, information submission, fee, waiver and all other requirements for petitioner-initiated annexations including, but not limited

to, those found in ORS Chapter 222, SRC Chapter 165, SRC 165.070, SRC 165.080 and SRC 165.090. A valid triple majority consent petition for annexation of the Territory has been signed. Annexations applied for after May 16, 2000 require approval of the voters of the city under Section 61 of the Salem City Charter and SRC 165.050. Therefore, the city is required to refer this proposed annexation to the voters. The proposed annexation of the Territory conforms to the Salem Area Comprehensive Plan. Services can be provided consistent with the city's adopted master plans and Public Works design and construction standards. The annexation of unincorporated territory contiguous to the city limits will result in urban services being provided in a more orderly, efficient and timely manner. For these reasons, the public interest would be furthered by the referral of the proposed annexation of the Territory to the voters.

2. The proposed withdrawal of the Territory more specifically described in Exhibit 2 conforms to the following criteria found in SRC 165.140:

When withdrawal from a special service district is not automatic, the City Council shall decide on withdrawal from those special service districts. These withdrawals shall be made according to applicable state statutes governing the specific withdrawal.

Upon approval by the voters, the city will withdraw the Territory from Marion County Fire District #1 and East Salem Service District and replace those services with service from the City of Salem. The criterion for a decision to withdraw the Territory from such a district is whether such withdrawal "is for the best interest of the city," ORS 222.524. No Salem Area Comprehensive Plan provision or any implementing ordinances apply to the withdrawal decision, and none is amended in the process of making the decision. In addition, the decision to withdraw territory and serve the territory with city-supplied urban services rather than district-supplied services would not produce significant impacts on present or future land uses. Consequently, the withdrawal decision is not the kind of decision that requires application of land use laws. The statutory "best interest of the city" criterion, therefore, is the sole basis for a withdrawal decision.

Based upon the record in this case and after due consideration of such evidence, testimony and objections, if any, the City Council finds it is for the best interest of the city to withdraw the Territory from Marion County Fire District #1 and East Salem Service District, and to provide the Territory with city services because the public good of the City and the citizens residing in the annexed Territory would best be served if the citizens residing in the Territory receive City services without the problems attendant with coordination that would result from the Territory being subject to the jurisdiction of overlapping urban service providers. It is for the best interest of the city for the citizens who may reside in the newly annexed Territory to not pay both City taxes and an additional assessment to Marion County Fire District #1 and East Salem Service District to receive services that may readily be supplied by the City with such additional taxation. It is for the best interest of the city not to leave the Territory in Marion County Fire District #1 because that would lead to a fragmented approach to delivery of public services, unequal tax bases and resistance to cooperation. Withdrawal of the Territory is for the best interest of the City because it would promote efficiency, economy and sound management in the provision of urban services for newly annexed Territory. The Territory should be withdrawn from Marion County Fire District #1 and East Salem Service District .



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Salem Economic Opportunities Analysis 2015 to 2035

Prepared for:

City of Salem

December 2014

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ECONorthwest specializes in economics, planning, and finance. Established in 1974, ECONorthwest has over three decades of experience helping clients make sound decisions based on rigorous economic, planning and financial analysis.

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1 Introduction

This report is part of the Salem Economic Opportunities Analysis. The full study is contained in three documents:

- **Housing Needs Analysis and Economic Opportunities Analysis: Summary** briefly presents the key findings and conclusions of the residential and employment land studies.
- **Salem Economic Opportunities Analysis 2015 to 2035** presents the full results of the economic opportunities analysis (EOA) for the City of Salem and is intended to comply with statewide planning policies.
- **Salem Employment Land Implementation Strategy** presents recommendations for revisions to policies in Salem's Comprehensive Plan Commercial, Industrial, Economic Development, and Mixed-Use Elements and implementation measures to meet Salem's identified employment land needs.

This document presents an EOA for the City of Salem consistent with the requirements of statewide planning Goal 9, the Goal 9 administrative rules (OAR 660 Division 9) and the court decisions that have interpreted them. Goal 9 describes the EOA as "an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends" and states that "a principal determinant in planning for major industrial and commercial developments should be the comparative advantage of the region within which the developments would be located."

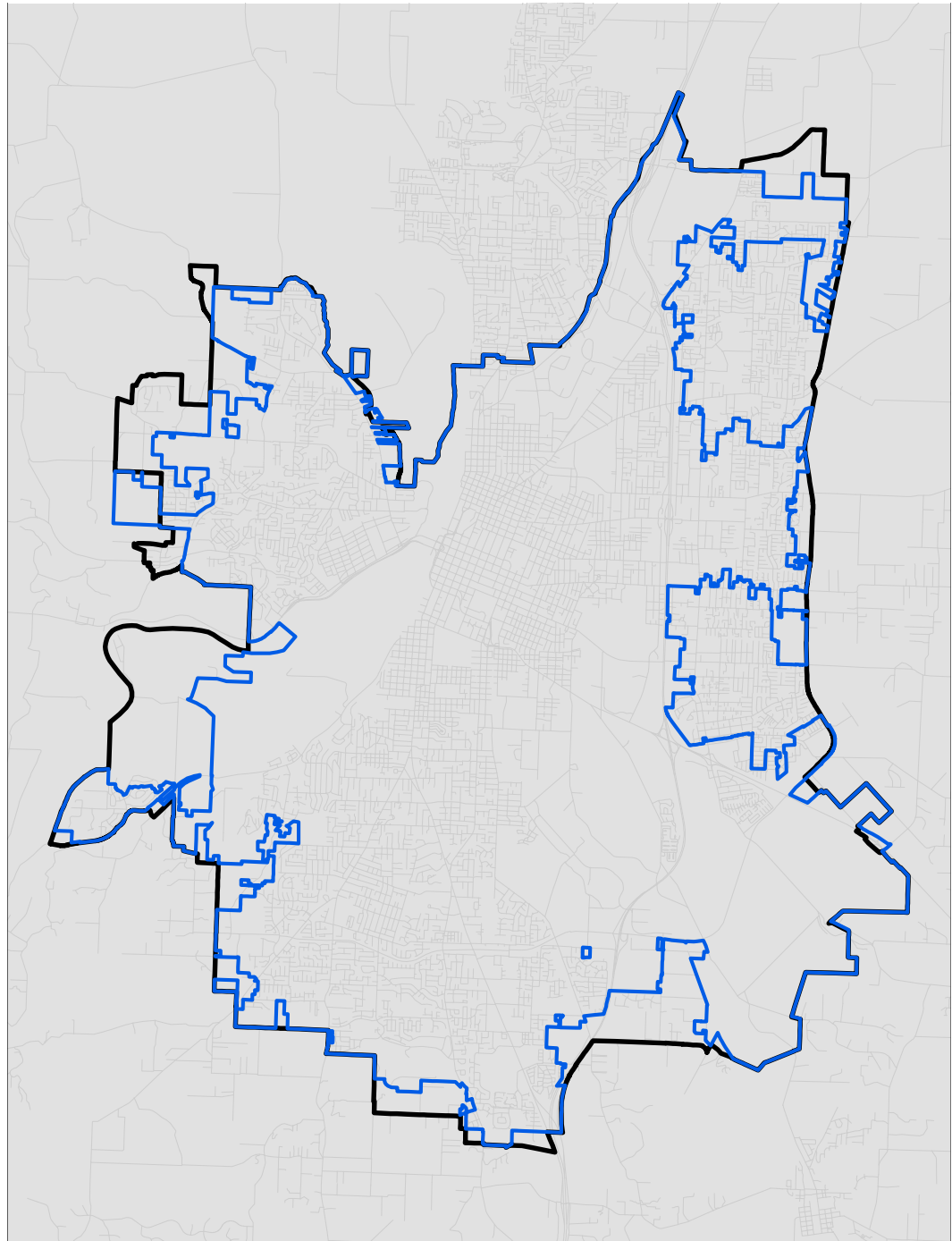
Goal 9 requires cities to state objectives for economic development (OAR 660-009-0020(1)(a)) and to identify the characteristics of sites needed to accommodate industrial and other employment uses to implement the economic development objectives (OAR 660-009-0025(1)) over the 20-year planning period. This approach could be characterized as a *site-based* approach that projects land need based on the forecast for employment growth, the City's economic development objectives and the specific needs of target industries.

This report provides Salem with a factual basis to support future planning efforts related to employment and options for addressing unmet employment needs in Salem. It builds from the *Salem-Keizer Economic Opportunities Analysis* prepared by ECONorthwest for the Salem-Keizer region. This study updates information from the Regional analysis and provides specific analysis that is required for a single jurisdiction to comply with state policies.

Map 1 shows the study area for the EOA, which includes all land within the Salem portion of the Salem-Keizer Urban Growth Boundary (UGB). This includes

land within the Salem city limits, as well as land outside the city limits but within the UGB in Marion and Polk counties.

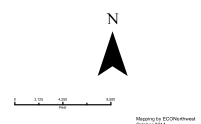
Map 1. Salem Housing Needs Analysis and Economic Opportunities Analysis Study Area, 2014



**and Economic Opportunities
Assessment**

Legend

- City Limits
- UGB
- Roads



Source: ECONorthwest analysis of City of Salem GIS data

FRAMEWORK FOR REGIONAL ECONOMIC OPPORTUNITIES ANALYSIS

The content of this report is designed to meet the requirements of Oregon Statewide Planning Goal 9 and the administrative rule that implements Goal 9 (OAR 660-009). The analysis in this report is designed to conform to the requirements for an Economic Opportunities Analysis in OAR 660-009 as amended.

1. *Economic Opportunities Analysis (OAR 660-009-0015)*. The Economic Opportunities Analysis (EOA) requires communities to identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends; identify the number of sites by type reasonably expected to be needed to accommodate projected employment growth based on the site characteristics typical of expected uses; include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use; and estimate the types and amounts of industrial and other employment uses likely to occur in the planning area. Local governments are also encouraged to assess community economic development potential through a visioning or some other public input based process in conjunction with state agencies.
2. *Industrial and commercial development policies (OAR 660-009-0020)*. Cities with a population over 2,500 are required to develop commercial and industrial development policies based on the EOA. Local comprehensive plans must state the overall objectives for economic development in the planning area and identify categories or particular types of industrial and other employment uses desired by the community. Local comprehensive plans must also include policies that commit the city or county to designate an adequate number of employment sites of suitable sizes, types and locations. The plan must also include policies to provide necessary public facilities and transportation facilities for the planning area. Finally, cities within a Metropolitan Planning Organization (which includes Salem) must adopt policies that identify a competitive short-term supply of land for desired industrial and other employment uses as an economic development objective.
3. *Designation of lands for industrial and commercial uses (OAR 660-009-0025)*. Cities and counties must adopt measures to implement policies adopted pursuant to OAR 660-009-0020. Appropriate implementation measures include amendments to plan and zone map designations, land use regulations, public facility plans, and transportation system plans. More specifically, plans must identify the approximate number, acreage and characteristics of sites needed to accommodate industrial and other

employment uses to implement plan policies, and must designate serviceable land suitable to meet identified site needs.

Plans for cities and counties within a Metropolitan Planning Organization or cities and counties that adopt policies relating to the short-term supply of land must designate suitable land to respond to economic development opportunities as they arise.

ORGANIZATION OF THE REPORT

This report is organized as follows:

- **Chapter 2, Commercial and Industrial Buildable lands inventory** presents a summary of the inventory of commercial and industrial employment lands.
- **Chapter 3, Factors Affecting Future Economic Growth Salem** summarizes historic economic trends that affect current and future economic conditions in Salem, as well as Salem's competitive advantages for economic development.
- **Chapter 4, Employment Growth and Target Industries in Salem** presents a forecast for employment growth in Salem and describes the City's target industries.
- **Chapter 5, Land Demand and Site Needs** compares the supply of and demand for commercial and industrial land, as well as the site needs of target industries.
- **Chapter 6, Conclusions** presents the key conclusions and recommendations from the EOA.

This report also includes three appendices:

- **Appendix A, Commercial and Industrial Buildable Lands Inventory**
- **Appendix B, Economic Trends and Factors Affecting Future Economic Growth in Salem**
- **Appendix C, Salem Employment Forecast**

2 Commercial and Industrial Buildable Lands Inventory

This chapter provides a summary of the buildable lands inventory for the Salem portion of the Salem-Keizer Urban Growth Boundary (UGB). Appendix A presents the full buildable lands inventory, including the methodology for developing the inventory and the full results of the inventory.

DEFINITIONS

For the purposes of this study, the following definitions were used:

- **Developed Land** – properties with improvements that are considered committed to existing uses for the 20-year planning period.
- **Vacant Land** - properties with no current development and available for future employment development. The inventory included all land designated for employment uses and as a result is more comprehensive (e.g., includes more land) than would be inventoried using the standard definitions of vacant land in OAR 660-009-0005(14).
- **Partially Vacant Land** – properties that are partially vacant (e.g., partially developed) in the baseline inventory with an employment use and by the criteria developed for this study could support additional development.
- **Excluded** – properties where the existing land use excludes or essentially precludes any future development. Examples include publicly-owned lands; designated open spaces; GIS parcels representing water bodies; power lines, electrical substations, water towers or reservoirs, etc.; airport expansion areas. Publicly-owned lands were evaluated and many (not all) were excluded because they are not intended to convert to employment use during the planning period.
- **Constrained land** – land that is not available for development based upon one or more factors such as, environmental protections, or lands committed for public use. Constrained land was deducted from the buildable land inventory in order to determine the amount of unconstrained “buildable acres” available for development over the planning horizon. Appendix A describes the constraints identified and excluded in the BLI.

EMPLOYMENT BUILDABLE LAND INVENTORY RESULTS

Table 1 shows employment land in Salem by classification (development status). The results show that Salem has 6,868 acres in employment plan designations (including mixed-use designations that allow commercial development). By classification, about 68% of the land is classified as developed, 5% partially vacant, and 27% vacant. About 50% of employment land is in industrial designations (IND and IC); 31% in commercial designations (CB and COM), 13% in the employment center designation (EC) and 6% in mixed-use designations (MU and ROM). Note that these figures include all acres.

Table 1. Employment Land by Classification, Salem UGB, 2014

Development Status	Plan Designation							Total
	MU	ROM	IND	IC	CB	COM	EC	
Developed	3	75	1864	540	134	1673	328	4,617
Partially Vacant	46		156	19		69	66	356
Vacant	241	97	641	174	1	223	518	1,895
Total	290	172	2661	733	136	1964	912	6,868
Percent of Total	4%	3%	39%	11%	2%	29%	13%	100%

Source: ECONorthwest analysis of City of Salem GIS data

Note: MU=mixed use; ROM=river oriented mixed use; IND=Industrial; IC=Industrial-Commercial; CB=Commercial Business District; COM=Commercial; EC=Employment Center.

Note: MU is in the Fairview Mixed Use Area, where development is guided by the Fairview Training Center Redevelopment Master Plan.

Table 2 shows suitable acres (e.g., acres in taxlots after constraints are deducted) for vacant and partially vacant land by plan designation. The results show that Salem has about 1,945 suitable employment acres (including areas in mixed-use plan designations). Of this about 87% is in tax lots classified as vacant, and 13% in tax lots classified as partially vacant. About 43% of the buildable employment land (837 acres) is in industrial plan designations (IND and IC) and 14% (264 acres) in commercial plan designations (CB and COM). Twenty-nine percent (556 acres) is in the Employment Center plan designation with the remaining acreage in mixed-use designations (MU and ROM).

Table 2. Suitable acres in vacant and partially vacant tax lots by plan designation, Salem UGB, 2014

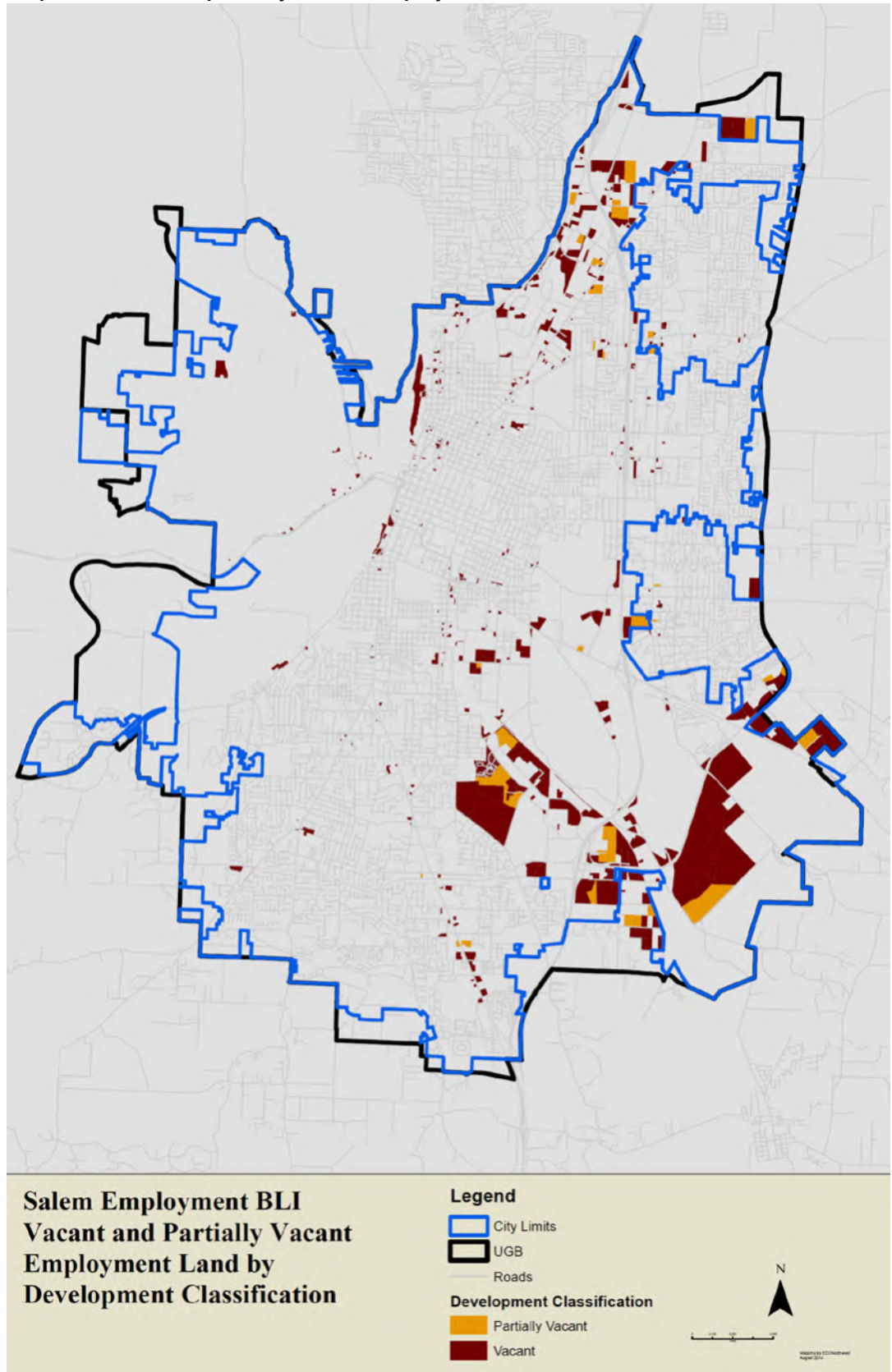
Development Status	Plan Designation							Percent of	
	MU	ROM	CB	COM	EC	IC	IND	Total	Total
Partially Vacant	45			45	61	17	94	261	13%
Vacant	229	15	1	218	494	154	573	1,684	87%
Total	274	15	1	263	556	170	667	1,945	100%
Percent of Total	14%	1%	0%	14%	29%	9%	34%	100%	

Source: ECONorthwest analysis of City of Salem GIS data

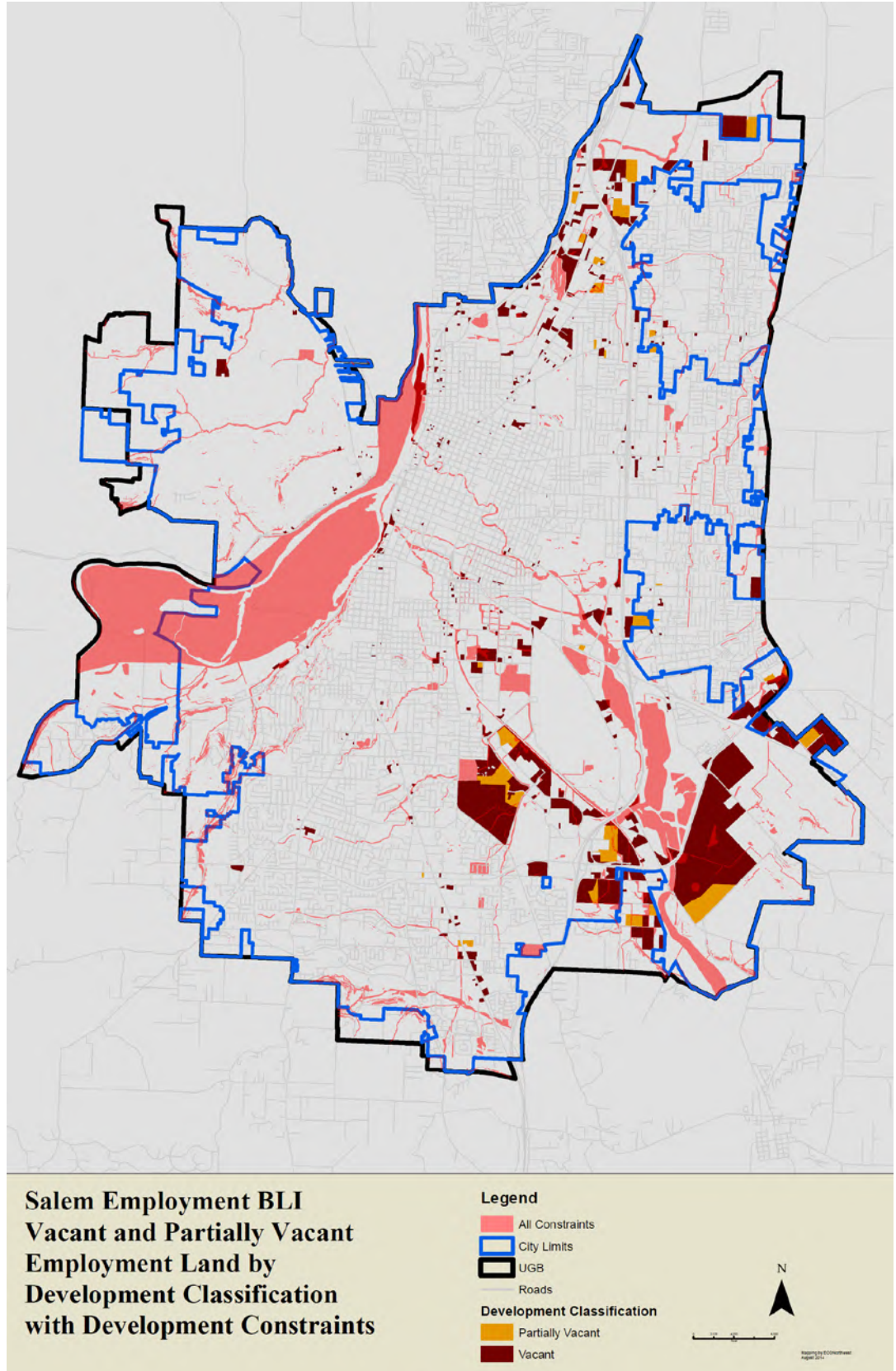
Note: The 274 vacant acres in MU is covered by Fairview Training Center Redevelopment Master Plan shows capacity for office, retail, and commercial industrial development. The Master Plan determines the amount of employment development in this Mixed Use area.

Map 1 and Map 2 show vacant and partially vacant land in Salem.

Map 2: Vacant and partially vacant employment land



Map 3: Vacant and partially vacant employment land and development constraints



3 Factors Affecting Future Economic Growth in Salem

IMPLICATIONS OF NATIONAL, STATE AND REGIONAL TRENDS ON ECONOMIC DEVELOPMENT WITHIN SALEM

This section presents the implications of national, state, and regional economic trends on economic growth in Salem.

Table 3. Implications of national, state, and regional economic and demographic trends on economic growth in Salem

National, State, and Regional Economic Trends	Implications for economic growth in Salem
<p>Moderate growth rates and recovery from the national recession</p> <p>According to the National Bureau of Economic Research, "The Great Recession" ended in 2009, but sluggish growth continued to affect businesses and workers alike for several years after.</p> <p>Unemployment at the national level has gradually declined since the height of the recession. Unemployment rates in Oregon and Marion County are typically higher than those of the nation as a whole.</p> <p>The federal government's economic forecast predicts a moderate pace of economic growth, with gradual increases in employment and real GDP (roughly 3% through the end of 2016). Economic growth in Oregon typically lags behind national growth.</p>	<p>Economic growth in Salem – in measures such as employment growth, unemployment rates, and wage growth - will be markedly improved from previous years (i.e. since 2007).</p> <p>The rate of employment growth in Salem will depend, in part, on the rate of employment growth in Oregon and the nation. Salem's comparative advantages, especially the city's location, access to transportation, and supply of development-ready employment land, make Salem attractive to companies who want to grow, expand, or locate in the Willamette Valley.</p>
<p>Growth of service-oriented sectors</p> <p>Increased worker productivity and the international outsourcing of routine tasks led to declines in employment in the major goods-producing industries. Projections from the Bureau of Labor Statistics indicate that U.S. employment growth will continue to be strongest in healthcare and social assistance, professional and business services, and other service industries. Construction employment will grow with the economy, but manufacturing employment will decline. These trends are also expected to affect the composition of Oregon's economy.</p>	<p>The changes in employment in Salem have followed similar trends as changes in national and state employment. The sectors with the greatest change in share of employment since 1980 were Services, and Health Care and Social Assistance.</p> <p>The Oregon Employment Department forecasts that the sectors likely to have the most employment growth in Marion, Polk, and Yamhill Counties over the 2012 to 2022 period are: Health Care, Local and State Government, Retail Trade, Professional and Business Services, and Accommodation and Food Services. These sectors represent employment opportunities for Salem.</p>

National, State, and Regional Economic Trends	Implications for economic growth in Salem
<p>Lack of diversity in Oregon's economy</p> <p>Oregon's economy has diversified since the 1960's, but Oregon continues to rank low in economic diversity among states.</p> <p>These rankings suggest that Oregon is still heavily dependent on a limited number of industries. Relatively low economic diversity increases the risk of economic volatility as measured by changes in output or employment.</p>	<p>Data from the Oregon Employment Department shows that employment in Salem is currently concentrated in a few sectors: Government (primarily state government), Health Care and Social Assistance, Accommodations and Food Services, and Retail Trade.</p> <p>Employment in the Government and Health Care sectors tends to be stable and pays above Salem's average wage of \$42,000. Employment in Accommodations and Food Services and Retail Trade pays below Salem's average wage and employment may be volatile.</p> <p>Salem's employment in traded-sectors is in both manufacturing and some services. Salem's manufacturing employment is concentrated in food processing, Computer and Electronic Products, Fabricated Metal Products, and other manufacturing. Traded-sector services in Salem are primarily in Professional Services and Administrative Support Services (e.g., call centers).</p> <p>Opportunities for growth of traded-sector employment include manufacturing of: technology (e.g., renewables or avionics), equipment, specialty metals, specialty food processing, and chemical manufacturing.</p>
<p>Importance of small businesses in Oregon's economy</p> <p>Small business, with 100 or fewer employees, account for 41% of private-sector employment in Oregon. Workers of small businesses typically have had lower wages than the state average.</p>	<p>The average size for a private business in Salem is 10.7 employees per business, compared to the State average of 11 employees per private business.</p> <p>Businesses with 100 or fewer employees account for roughly 71% of private employment in Salem (businesses with 9 or fewer employees account for 20% of private employment).</p> <p>Growth of small businesses presents opportunities for economic growth in Salem.</p>

National, State, and Regional Economic Trends	Implications for economic growth in Salem
<p>Availability of trained and skilled labor</p> <p>Businesses in Oregon are generally able to fill jobs, either from available workers living within the State or by attracting skilled workers from outside of the State.</p> <p>Availability of labor depends, in part, on population growth and in-migration. Oregon added more than 980,000 new residents and about 475,000 new jobs between 1990 and 2008. The population-employment ratio for the State was about 1.6 residents per job over the 18-year period.</p> <p>Availability of labor also depends on workers' willingness to commute. Workers in Oregon typically have a commute that is 30 minutes or shorter.</p> <p>Availability of skilled workers depends, in part, on education attainment. About 30% of Oregon's workers have a Bachelor's degree or higher.</p>	<p>Employment in the Salem MSA grew at about 1.3% annually over the 1990 to 2013 period, while population grew at about 1.7% over the same period.</p> <p>About 67% of workers at businesses located in Salem lived in Marion or Polk County, and 42% lived within Salem city limits. Firms in Salem attracted workers from all over the Willamette Valley.</p> <p>Salem's residents were less likely to have a Bachelor's degree or higher (27%) than the State average (30%).</p>
<p>Aging of the population</p> <p>The number of people age 65 and older will more than double between 2010 and 2050, while the number of people under age 65 will grow by only 20%. The economic effects of this demographic change include a slowing of the growth of the labor force, an increase in the demand for healthcare services, and an increase in the percent of the federal budget dedicated to Social Security and Medicare.</p> <p>People are retiring later than previous generations and continuing to work past 65 years old. This trend is seen both at the national and State levels. Even given this trend, the need for workers to replace retiring baby boomers will outpace job growth. Management occupations and teachers will have the greatest need for replacement workers because these occupations have older-than-average workforces.</p>	<p>The changes in the Salem's age structure are similar to those of the State, with the most growth observed in people 45 years and older. Salem's population is generally younger than the State's, with a larger share of its population below the age of 45.</p> <p>The State projects that the share of the population over the age of 60 in the Salem MSA (Marion and Polk Counties combined) will increase by 150% between 2015 and 2035.</p> <p>Firms in Salem will need to replace workers as they retire. Demand for replacement workers is likely to outpace job growth in Salem, consistent with State trends.</p>
<p>Increases in energy prices</p> <p>Energy prices are forecast to return to relatively high levels, such as those seen in the 2006 to 2008 period, possibly increasing further over the planning period.</p>	<p>Increases in energy prices are likely to affect the mode of commuting before affecting workers' willingness to commute. For example, commuters may choose to purchase a more energy efficient car, use the train, bus, or carpool.</p> <p>Very large increases in energy prices may affect workers' willingness to commute, especially workers living the furthest from Salem or workers with lower paying jobs.</p>

National, State, and Regional Economic Trends	Implications for economic growth in Salem
<p>Comparatively low wages</p> <p>The income of a region affects the workforce and the types of businesses attracted to the region. Average income affects workers and businesses in different ways. Workers may be attracted to a region with higher average wage or high wage jobs. Businesses, however, may prefer to locate in regions with lower wages, where the cost of doing business may be lower.</p> <p>Since the early 1980's, Oregon's per capita personal income has been consistently lower than the U.S. average. In 2012, Oregon's per capita wage was 90% of the national average.</p>	<p>Per capita income in Marion and Polk counties were lower than the State and national averages.</p> <p>Income in Oregon has historically been below national averages, and income in Marion and Polk counties has been below state averages. There are four basic reasons that income has been lower in Oregon and Marion and Polk counties than in the U.S.: (1) wages for similar jobs are lower; (2) the occupational mix of employment is weighted towards lower paying occupations; (3) a higher proportion of the population has transfer payments (e.g. social security payments for retirees), which are typically lower than earnings; and (4) lower labor force participation among working age residents (in part due to the presence of a large number of college students). To a certain degree, these factors are all true for both Oregon and Marion and Polk counties, and result in lower income.</p> <p>In addition, wages in Marion and Polk County and Oregon tend to be more volatile than the national average. The major reason for this volatility is that the relative lack of diversity in the State and County economy. Wages in Oregon and Marion and Polk County are impacted more than the national average by downturns in either the national economy or in industries in Oregon and Marion and Polk counties that are dependent on natural resources (e.g., timber and wood processing or R.V. manufacturing).</p> <p>The lower wages in Salem may be attractive to firms that typically pay lower wages, such as call centers or firms that outsource professional services such as accounting or technical support.</p>
<p>Education as a determinant of wages</p> <p>The majority of the fastest growing occupations will require an academic degree, and on average they will yield higher incomes than occupations that do not require an academic degree. The fastest growing of occupations requiring an academic degree will be: computer software application engineers, elementary school teachers, and accountants and auditors. Occupations that do not require an academic degree (e.g., retail sales person, food preparation workers, and home care aides) will grow, accounting for about half of all jobs by 2018. These occupations typically have lower pay than occupations requiring an academic degree.</p>	<p>Salem's residents were less likely to have a Bachelor's degree or higher than the State average (27% versus 30%).</p> <p>Wages in Salem are relatively low compared to Oregon as a whole, and this is largely a result of the composition of the regional economy, rather than the availability of workers with an academic degree. Increasing the relatively low wages in the region is dependent on changing the composition of the regional economy, through growing or attracting businesses with higher paying occupations.</p>

National, State, and Regional Economic Trends	Implications for economic growth in Salem
<p>Importance of high quality natural resources</p> <p>The relationship between natural resources and local economies has changed as the economy has shifted away from resource extraction. Increases in the population and in households' incomes, plus changes in tastes and preferences, have dramatically increased demands for outdoor recreation, scenic vistas, clean water, and other resource-related amenities. Such amenities contribute to a region's quality of life and play an important role in attracting both households and firms.</p>	<p>The region's high quality natural resources present economic growth opportunities for Salem, ranging from food and beverage production to amenities that attract visitors and contribute to the region's high quality of life.</p>

SALEM'S COMPETITIVE ADVANTAGES

Economic development opportunities in Salem will be affected by local conditions as well as the national and state economic conditions addressed above. Economic conditions in Salem relative to these conditions in other portions of the Willamette Valley form Salem's competitive advantage for economic development. Salem's competitive advantages have implications for the types of firms most likely to locate and expand in the Area.

There is little that metropolitan area jurisdictions can do to influence national and state conditions that affect economic development, though they can influence local factors that affect economic development. Salem's primary competitive advantages are: location, access to transportation, presence of the State government, quality of life, market buying power, and access to highly educated and skilled labor from within the region and the Willamette Valley. These factors make Salem attractive to residents and businesses that want a high quality of life where they live and work.

The local factors that form Salem's competitive advantage are summarized below.

- **Location.** Salem is located in Marion and Polk counties on Interstate 5 (I-5), less than an hour south of Portland. Salem is one of Oregon's largest cities, and it is located in one of Oregon's most populous metropolitan areas, which has more than 380,000 people in the metropolitan area or roughly 10% of the state's population. Salem is Oregon's state capital. Salem is regarded as the southern edge of the Portland metropolitan area, with relatively easy access to businesses in the southern part of the Portland region. Businesses in Salem have access to natural resources from surrounding rural areas, such as agricultural products, lumber, and other resources.
- **Transportation.** Businesses and residents in Salem have access to a variety of transportation modes and systems, but the most important is I-5. Other transportation systems are available: automotive (Highways 22 and 213, among others, and local roads); rail (freight service from Union Pacific and passenger service with Amtrak); air freight (McNary Field and the Portland International Airport); and transit (Cherriots). Businesses in Salem have relatively easy access to the Port of Portland's freight facilities.

Firms needing passenger air transportation, such as regional corporate headquarters or professional service firms, have relatively easy access to Portland International Airport, which is about an hour's drive from Salem.

Businesses that depend on easy access to I-5, air transportation, or rail or

port transportation may be attracted to Salem. In addition, the short distance from some industrial areas, especially those near McNary Field, to I-5 may encourage some types of firms, such as warehousing and distribution, to locate in Salem.

- **Oregon State government.** Salem is the capital of Oregon, with about 17,200 State government employees located in Salem.¹ State government offers a range of employment opportunities, from jobs requiring highly skilled and educated employees to jobs requiring little formal education. The average pay for State employees is slightly above the average pay for all employees in Salem. Growth in State government provides opportunities for expansion of employment in Salem.
- **Existing employment base.** Salem had nearly 6,500 employers with a total of more than 90,000 workers in 2012. Salem's largest employment sectors are Government (nearly 27,700 jobs), Health Care (11,400 jobs), Retail Trade (10,500 jobs), Accommodation and Food Service (7,300 jobs), and Manufacturing (5,500 jobs). Salem is the regional employment center, with about 60% of employment in Marion and Polk Counties in Salem.² The existing businesses and other employers in Salem create opportunities for expansion of existing businesses and growth of new related businesses.
- **Labor market.** The availability of labor is critical for economic development. Availability of labor depends not only on the number of workers available, but the quality, skills, wages, and experience of available workers as well.

Businesses in Salem have access to highly educated skilled workers, nearby college students, and unskilled workers. Commuting is common in Salem. About a third of Marion and Polk County's workers commute from outside Salem. The commuting patterns show that businesses in Salem are able to attract skilled and unskilled workers living within Salem and from the Willamette Valley and Portland Metropolitan Region.

- **Urban infrastructure and buildable lands.** Salem has 1,945 acres of unconstrained vacant and partially vacant buildable commercial and industrial land. Of this, approximately 525 acres are in the Mill Creek Corporate Center and the Salem Renewable Energy and Technology Center, with approximately 176 of those acres (about 136 acres at the Mill

¹ Oregon Employment Department, Quarterly Census of Employment and Wages, excludes home health care employees that are not located in Salem.

² Oregon Employment Department, Quarterly Census of Employment and Wages

Creek Corporate Center and 40 acres at Salem Renewable Energy and Technology Center) having Industrial Site Certification through the Oregon Business Development Department, or Business Oregon. These sites are serviced and ready to be developed.

Salem's supply of vacant buildable industrial land is unique within the Willamette Valley. A recent study about industrial land in the Portland metropolitan region found that there are only nine sites larger than 25 acres in the Portland region that are available for development in 180 days or less. Of these, one is 50 to 99 acres and one is larger than 100 acres. In addition, the Portland region has 25 sites that could be made available for development in seven to 30 months, most of which are smaller than 50 acres.³ Within this context, Salem's supply of vacant buildable industrial land is a significant asset to the City for economic development potential.

- **Economic development partnerships.** Salem's partners in economic development include SEDCOR, Business Oregon, Marion and Polk Counties, Mid Willamette Valley Council of Governments, Chemeketa Center for Business and Industry, Job Growers, Greater Portland Inc., and others. Salem is able to work with these and other regional partners to provide infrastructure and services needed to retain and attract businesses to Salem.
- **Public policy.** Public policy can impact the amount and type of economic growth in a community. The City can impact economic growth through its policies about the provision of land and redevelopment. Success at attracting or retaining firms may depend on availability of attractive sites for development and public support for redevelopment. In addition, businesses may choose to locate in Salem (rather than in a different part of the Willamette Valley) based on: development charges (i.e., systems development charges), availability of public infrastructure (i.e., transportation or sanitary sewer), and attitudes towards businesses.
- **Quality of life.** Salem's high quality of life and urban amenities are a competitive advantage for attracting businesses to the city. The Metropolitan's quality of life attributes include: cultural amenities, shopping opportunities, and access to outdoor recreation. Salem's high quality of life is likely to attract businesses and entrepreneurs that want to locate in a high-amenity area.

³ "Regional Industrial Site Readiness Project," August 2012

4 Employment Growth and Target Industries in Salem

Goal 9 requires cities to prepare an estimate of the amount of commercial and industrial land that will be needed over a 20-year planning period. The estimate of employment land need and site characteristics for Salem is based on expected employment growth and the types of firms that are likely to locate in Salem over the 20-year period. This section presents an employment forecast and analysis of target industries that build from recent trends.

EMPLOYMENT FORECAST

Demand for commercial and industrial land will be driven by the expansion and relocation of existing businesses and new businesses locating in Salem. The level of this business expansion activity can be measured by employment growth in Salem. This section presents a projection of future employment levels in Salem for the purpose of estimating demand for commercial and industrial land.

The projection of employment has three major steps:

1. **Establish base employment for the projection.** We start with the estimate of covered employment in Salem's portion of the Salem-Keizer UGB presented in Table 4. Covered employment does not include all workers, so we adjust covered employment to reflect total employment in Salem.
2. **Project total employment.** The projection of total employment considers forecasts and factors that may affect employment growth in Salem over the 20-year planning period.
3. **Allocate employment.** This step involves allocating employment to different land-use types.

The employment projections in this section build off of Salem's existing employment base, assuming future growth similar to the Marion and Polk Counties' past employment growth rates. The employment forecast does not take into account a major change in employment that could result from the location (or relocation) of one or more large employers in the community during the planning period. Such a major change in the community's employment would essentially be over and above the growth anticipated by the city's employment forecast and the implied land needs (for employment, but also for housing, parks, and other uses). Major economic events, such as the successful recruitment of a very large employer, are very difficult to include in a study of this nature. The implications, however, are relatively predictable: more demand for land (of all types) and public services.

Employment Base for Projection

The forecast of employment growth in Salem starts with a base of employment growth on which to build the forecast. Table 4 shows ECO's estimate of total employment in the Salem UGB in 2010. To develop the figures, ECO started with estimated covered employment in the Salem UGB from confidential QCEW (Quarterly Census of Employment and Wages) data provided by the Oregon Employment Department. Based on this information, Salem had about 92,039 covered employees in 2012.

Covered employment, however, does not include all workers in an economy. Most notably, covered employment does not include sole proprietors. Analysis of data shows that *covered* employment reported by the Oregon Employment Department for the Salem MSA is only about 77% of *total* employment reported by the U.S. Department of Commerce. We made this comparison by sector for the Salem MSA and used the resulting ratios to determine the number of non-covered employees. This allowed us to determine the total employment in Salem. Table 4 shows Salem had an estimated 119,865 *total* employees within its UGB in 2012.

Table 4. Estimated total employment in the Salem portion of the Salem-Keizer UGB by sector, 2012

Sector	Covered Employment	Estimated Total Employment	
		Total Employment	Covered % of Total
Agriculture, Forestry, Fishing & Hunting	1,292	1,688	77%
Construction	3,084	4,519	68%
Manufacturing	5,497	5,659	97%
Wholesale Trade	1,487	1,942	77%
Retail Trade	10,534	13,370	79%
Transportation & Warehousing & Utilities	1,615	2,109	77%
Information	722	1,122	64%
Finance & Insurance	3,385	6,086	56%
Real Estate & Rental & Leasing	1,194	4,845	25%
Professional, Scientific, and Technical Services	3,239	5,687	57%
Management of Companies and Enterprises	778	1,016	77%
Admin. & Support & Waste Mgt. & Remediation Srv.	4,410	6,446	68%
Private Educational Services	1,924	3,829	50%
Health Care & Social Assistance	13,380	17,045	78%
Arts, Entertainment, & Recreation	763	1,817	42%
Accommodation & Food Services	7,345	8,047	91%
Other Services (except Public Administration)	3,661	6,365	58%
Government	27,729	28,273	98%
Total	92,039	119,865	77%

Source: 2012 covered employment from confidential Quarterly Census of Employment and Wage (QCEW) data provided by the Oregon Employment Department.

Note: Covered employment as a percent of total employment calculated by ECONorthwest using data for the Salem MSA employment from the U.S. Department of Commerce, Bureau of Economic Analysis (total), and the Oregon Employment Department (covered).

Employment Projection

The employment forecast covers the 2015 to 2035 period, requiring an estimate of total employment for Salem in 2015.

Salem does not have an existing employment forecast, and there is no required method for employment forecasting. OAR 660-024-0040(9) sets out some optional “safe harbors” that allow a city to determine employment land need.

Salem is relying on the safe harbor at OAR 660-024-0040(9)(a)(B), which allows Salem to assume that the current number of jobs in the Salem urban area will grow during the 20-year planning period at a rate equal to “the population growth rate for the urban area in the adopted 20-year coordinated population forecast.”

On October 7, 2009, Marion County adopted a new coordinated population forecast for the urban areas of the county, which included a forecast for the Salem-Keizer UGB.⁴ Table B-11 in Appendix B shows that the Salem portion of the Salem-Keizer UGB will grow from 210,035 people in 2015 to 269,274 people in 2035, adding 59,239 people, at an average annual growth rate of 1.25% for the 2015 to 2035 period, based on the adopted coordinated forecast.

Table 5 shows employment growth in Salem between 2015 and 2035, for employment excluding retail and retail services (as documented in Appendix C). The forecast is based on the assumption that Salem will grow at an average annual growth rate of 1.25%.⁵ Salem will have 120,119 employees within the UGB by 2035, an increase of 26,425 employees (28%) between 2015 and 2035.

Table 5. Industrial and non-retail commercial employment growth in Salem's portion of the Salem-Keizer UGB, 2015–2035

Year	Total Employment
2015	93,694
2035	120,119
Change 2015 to 2035	
Employees	26,425
Percent	28%
AAGR	1.2%

Source: ECONorthwest

The forecast excludes employment in Retail and Retail Services, as described in Appendix C.

⁴ The population forecast is described in the Portland State University's Population Research Center report "Population forecasts for Marion County, its Cities and Unincorporated Areas 2010-2030."

⁵ The forecast assumes that Salem's employment base in 2012 will grow at the same rate between 2012 and 2015 as the employment forecast for 2015 to 2035, 1.25% average annual growth rate.

Allocate Employment to Different Land Use Types

The next step in forecasting employment is to allocate future employment to broad categories of land use. Firms wanting to expand or locate in Salem will look for a variety of site characteristics, depending on the industry and specific circumstances. We grouped employment into four broad categories of land-use based on North American Industrial Classification System (NAICS): industrial, commercial, retail, and government.

Table 6 shows the expected share of employment by land use type in 2015 and the forecast of employment growth by land use type in 2035 in Salem's portion of the Salem-Keizer UGB.

The forecast shows growth in all categories of employment, with the most growth in industrial employment. This assumption is based on the City's economic development policies that support the growth of traded-sector businesses. The City's economic development policies target growth of industrial traded-sector businesses such as technology manufacturing, food and beverage manufacturing, equipment manufacturing, as well as other types of manufacturing. The resulting increase in the share of industrial employment reflects the expectation that the City's policy direction will lead to growth in the share of industrial jobs. This type of employment growth is consistent with the City's broad economic development goal of increasing household prosperity because industrial jobs typically have higher-than-average wages.

Table 6. Forecast of employment growth by land use type, Salem's portion of the Salem-Keizer UGB, 2015–2035

Land Use Type	2015		2035		Change 2015 to 2035
	Employment	% of Total	Employment	% of Total	
Industrial	16,521	18%	24,024	20%	7,503
Office and Commercial Services	47,826	51%	60,060	50%	12,234
Government	29,347	31%	36,036	30%	6,689
Total	93,694		120,119		26,425

Source: ECONorthwest

Note: Green shading denotes an assumption about the future change in the share of employment (as a percent of total) by land use type.

The remainder of this document does not address land needed for government employment.

Need for government land in Salem is driven, primarily, by growth in local government employment and by state government employment. Discussions with the administrative staff at the Salem-Keizer Public Schools indicate that the District is in the process of updating their Facilities Plan. According to the exiting facilities plan, the District has no immediate plans to build new schools in Salem over the 20-year period. In addition, the City has no plans for substantial expansion of City offices onto land not currently owned by the City, nor does Marion County. Discussions with staff at the Department of Administrative Services with the State of Oregon suggest that the State expects to build new office space over the 20-year period. However, State development on land that is

currently privately owned in commercial or industrial designations will be approximately offset by sales of currently-State owned land.

As a result of these discussions, the remainder of this document does not address additional land need for government employment.

TARGET INDUSTRIES

An analysis of growth industries in Salem should address two main questions: (1) Which industries are most likely to be attracted to Salem? and (2) Which industries best meet Salem's economic objectives?

Salem's Vision for Economic Development⁶

The City's broad economic development goal is to attract and retain jobs to increase the economic prosperity for Salem residents and businesses. The City's approach to accomplishing this goal is to:

- Implement an economic development strategic plan that focuses on the role of the City and other partners to create jobs and encourage economic growth.
- Attract higher density employment to downtown.
- Attract companies to the Mill Creek Corporate Center and Salem Renewable Energy and Technology Center by marketing both sites.

The City's strategies for accomplish this goal are:

- **Stay and Grow in Salem.** This strategy protects Salem's existing economic base by helping to expand and grow existing businesses and by diversifying the traded-sector businesses in Salem to support existing companies. This strategy will require Salem (and regional partners) to invest in transportation and other infrastructure improvements, ensure that Salem has the right mix of land for development, provide incentives and a range of financial resources for economic development, and to support and invest in economic development partners.
- **Rely on Strengths of Regional Partnerships.** The City will continue to emphasize regional partnerships to provide a full range of economic development services through means such as: use of federal funds to seed infrastructure improvements and leverage State of Oregon resources and

⁶ The information in this section is summarized from the memorandum "Citywide Economic Development Strategy Development" dated December 7, 2012 from John Wales (Director of Urban Development) to the City Council.

incentives for jobs and other investments. The City will continue to work with local partners to retain and recruit businesses, provide utilities, prepare the workforce, and develop property. In addition, the City will collaborate with its partners on the availability of land and infrastructure development to support job creation.

- **Grow Small Businesses.** The City will support growth of small businesses through programs such as the Fairview Loan Program or by helping businesses make connections to other partners or State agencies with resources. In addition, the City will continue to diversify Salem's economy and increase local prosperity through growth of businesses in new and existing clusters and by focusing on growth of businesses in key target industries.
- **Attract New Businesses.** Available development-ready and other buildable land at the Mill Creek Corporate Center and Salem Renewable Energy and Technology Center will attract businesses considering locating in Salem or the Willamette Valley.

Industrial Target Industries

The characteristics of Salem will affect the types of businesses most likely to locate in Salem. Salem's attributes that may attract firms are: the City's proximity to I-5, proximity to the Portland region, availability of buildable land with services, access to an educated workforce, availability of skilled and semi-skilled labor, development policies and relatively low permitting costs, high quality of life, and proximity to indoor and outdoor recreational opportunities.

Historically, Growth of manufacturing in Salem has been largely driven by growth in food and beverage processing industries and, to a lesser extent, other industries that Salem has advantages in, such as metals manufacturing. Salem's vision for economic development is growth and diversification of its core manufacturing base. Salem's target industries build from the city's manufacturing base, focusing on diversifying the employment base with jobs that have higher-than-average wages.

The selection of target industries is based on Salem's economic development goals and strategies, economic conditions in Salem and Marion and Polk Counties, and the City's competitive advantages. A wider range of target industries was

considered and narrowed down the list of target industries as a result of research about the viability of target industry development in Salem.⁷

Salem's economic development policy is to assist existing companies to grow and expand within Salem, providing assistance where the City can. The industries with existing concentrations of employment in either traded-sector or higher-than-average wages are:

- **Food and beverage manufacturers.** Food and beverage manufacturing is Salem's largest existing manufacturing industry. In 2012, 45% of Salem's manufacturing employment (about 2,500 jobs) was in food and beverage manufacturers.
- **Medical services.** In 2012, about 12% of Salem's jobs were in Health Care (11,400 jobs). While Salem Hospital is the largest employer in medical services, Salem has more than 600 other private providers of medical services. Employment in medical services will grow with population growth to the extent that Salem continues to offer medical services not available in surrounding areas. The OED forecasts that Health Care will add 4,500 new jobs between 2012-2022 in Marion, Polk, and Yamhill counties.
- **Government services.** About 30% of Salem's employment in 2012 was in Government (27,700 jobs), with more than 60% of government jobs in State Government. The OED forecasts that State Government will add 1,200 new jobs between 2012-2022 in Marion, Polk, and Yamhill Counties. Most (or all) of these jobs will locate in Salem.

Salem has identified the following target industries for growth of Salem's economy. These industries are traded-sector, and the majority has average income above the average pay for employment in Salem.⁸ Growing and attracting businesses in these industries will strengthen Salem's manufacturing businesses, increasing the share of employment in manufacturing industries. Most of these

⁷ This research includes:

Marion, Polk, & Yamhill Counties Regional Economic Profile and Strategic Assessment, by E.D. Hovee and Company, March 2007

Industrial Ecology, by the Sustainable Cities Initiative at the University of Oregon, Fall 2010

Salem Target Industries, by the Community Planning Workshop at the Community Service Center in the University of Oregon, June 2011

Salem Area Economic Development: Contextual Study on Current Approaches, by the City of Salem's Urban Development Department, May 14, 2012

Feasibility Analysis for a Micro-Enterprise Food Manufacturing Accelerator in Salem, by Claggett Wolfe Associates, May 2, 2013

⁸ The Oregon Employment Department, Quarterly Census of Employment and Wages reports that Salem's average wage in 2012 was \$42,098.

industries have incomes above Salem's average, with national averages for employment in these sectors ranging from \$46,000 to \$57,000.⁹

- **Technology manufacturing.** Businesses in this target industry include manufacturers of renewable energy equipment, avionics, and medical devices. Salem is attractive to these types of technology manufacturers because of the City's: supply of development-ready buildable land; transportation access via I-5, rail, or the airports; existing businesses in these and related industries; and the access to a large pool of skilled and experienced workers.
- **Equipment manufacturing.** The types of equipment manufacturing who might be attracted to Salem include manufacturing of equipment for: recycling machinery, construction machinery, farm equipment, semiconductor machinery, and other machinery used by businesses in Salem and the broader Willamette Valley. Salem's access to transportation, development-ready land base, and access to skilled and educated workers make the City attractive to equipment manufacturing businesses.
- **Specialty metal manufacturing.** The existing base of metal manufacturers and related business in Salem and the broader Willamette Valley make Salem attractive to specialty metal manufacturers. The types of specialty metal manufacturing who might locate in Salem include ornamental metal manufacturers, prefabricated metal structures, structural metal, bolt and washer manufacturing, and other specialty metal manufacturing.
- **Specialty food and beverage manufacturing.** Salem's existing concentration of food and beverage manufacturing, pool of skilled workers with experience in food and beverage manufacturing, proximity and access to agricultural products, and transportation access make Salem attractive to businesses who want to grow or locate in the Willamette Valley. In addition, Salem's inventory of buildable industrial land provides opportunities for growth of small to large-scale food and beverage manufacturers.
- **Chemical manufacturing.** The types of chemical manufacturing firms that Salem wants to grow or attract are those related to existing industries that need manufacturing of chemicals for coatings, glass, films, plastics, concrete, and other manufacturing processes in the region. Salem's existing manufacturing base, who are potential customers, combine with Salem's primary competitive advantages of land available for development, access to transportation, and Salem's location make Salem attractive to these types of chemical manufacturing businesses.

⁹ Based on 2012 data from the U.S. Bureau of Labor Statistics.

5 Land Demand and Site Needs

OAR 660-009-0015(2) requires the EOA to “identify the number of sites by type reasonably expected to be needed to accommodate the expected [20-year] employment growth based on the site characteristics typical of expected uses.” The Goal 9 rule does not specify how jurisdictions conduct and organize this analysis.

The rule, OAR 660-009-0015(2), does state that “[i]ndustrial or other employment uses with compatible site characteristics may be grouped together into common site categories.” The rule suggests, but does not require, that the City “examine existing firms in the planning area to identify the types of sites that may be needed.” For example, site types can be described by: (1) plan designation (e.g., heavy or light industrial), (2) general size categories that are defined locally (e.g., small, medium, or large sites), or (3) industry or use (e.g., manufacturing sites or distribution sites). For purposes of the EOA, Salem groups its future employment uses into categories based on their need for land with a particular plan designation (i.e., industrial or commercial) and by their need for sites of a particular size.

This section provides an estimate of employment land needs based on information about the amount of employment growth that will require new land, employment densities, and land need by site size. This section provides a *demand-based* approach to estimating employment land needs. It projects employment land need using the forecast of employment growth and recent employment densities (e.g., the number of employees per acre) to estimate future commercial and industrial land demand.

This chapter includes two sections: land sufficiency and site needs for target industries.

LAND SUFFICIENCY

This section presents a comparison of the land demand, based on employment growth in Table 6, and the supply of vacant and partially vacant land in Table 2. It presents information about commercial and industrial land sufficiency, as well as Salem's short-term supply of land.

Industrial and Commercial Land Demand and Sufficiency

Appendix C presents the forecast for employment growth in Salem for Industrial, Commercial Office, and Retail and Services. Appendix C concludes that demand for employment land over the 2015 to 2035 period will be:

- **Industrial** land demand over 2015-2035 is for 441 gross acres.
- **Office and Commercial Service** land demand over 2015-2035 is for 400 gross acres.
- **Retail and Retail Services** land demand over 2015-2035 is for 273 gross acres.

Table C-9 in Appendix C allocates this land demand to groupings of plan designation in Salem, based on the location of existing employment in Salem. For example, 16% of existing industrial employment (e.g., manufacturing, construction, or warehouse and distribution) is located in commercial plan designations. Table C-9 assumes that 16% of new industrial land demand will be in commercial plan designations. Table C-9 shows the following demand for land by plan designation:

- **Industrial designations.** Demand in these designations over the 2015-2035 period will be for 486 gross acres. The majority (369 acres) will be for industrial uses, with 56 acres for office employment and 61 acres for retail employment.
- **Commercial designations.** Demand in these designations over the 2015-2035 period will be for 569 gross acres. The majority will be for office employment (319 acres) or retail employment (178 acres), with 72 acres for industrial.
- **Residential designations.** Demand in residential designations for employment uses will be 59 gross acres. About 25 of these acres will be for office uses (e.g., medical offices in residential designations) and 34 acres will be for retail uses (e.g., retail nodes in neighborhoods).

Table 7 compares Salem's supply of buildable employment land to demand for employment land:

- **Suitable Buildable Land.** Salem has 1,393 gross acres of industrial land and 298 gross acres of commercial land.

- Industrial land includes vacant land shown in Table 2 for EC (556 acres), IND (667 acres), and IC (170 acres)
- Commercial land includes the vacant land shown in Table 2 for COM (263 acres) and in CB (1 acre). It also includes 13 acres in ROM and 21 acres in MU, based on approved plans and master plans.¹⁰
- **Land Demand.** Salem has demand for 486 acres of land in industrial plan designations and 569 acres of land in commercial plan designations.¹¹
- **Land Sufficiency.** Salem has a deficit of 271 acres of commercial land.
 - Salem has a deficit of 271 acres of **commercial land**. About 60% of Salem's commercial land demand is for office and related uses and 40% is for retail. It is reasonable to assume that about 40% of Salem's deficit of commercial land is for retail uses (about 100 acres).

The City can address the commercial land deficit in a variety of ways, including: designating or zoning land for retail uses in or near neighborhoods, redeveloping existing commercial areas, allowing or encouraging higher density office or mixed-use development in downtown or other employment areas, or redesignating some lands to commercial designations. Filling this deficit will require additional analysis and policy development by staff and decision makers.

- Salem has 907 acres of more **industrial land** than it will need to accommodate expected employment growth over the 2015 to 2035 period. The employment forecast (presented in Appendix C)

¹⁰ Table 2 shows that Salem has 263 acres of vacant or partially land in the COM designation and 1 acre of land in the CB designation.

Salem has 15 acres of land in the ROM designation. About three acres in ROM is the south block of the former Boise Cascade site, where a mixed-use development has been approved. The amount of commercial space approved in the development (nearly 15,000 square feet of commercial space) is about equal to one acre of commercial land. The mixed-use development has been approved to include 115 housing units. (As of the date of this report, the developer had applied to construct an additional 70 dwelling units as part of a proposed future phase of the mixed-use development.) As a result, we count 13 acres of land in the ROM as available for commercial development. In addition, Salem has vacant land in MU, in the Fairview MU area. The Fairview Training Center Redevelopment Master Plan shows capacity for office, retail, and commercial industrial development. Assuming development densities the same as density assumptions in Table C-8, about 21 acre of land in Fairview will be used for employment uses. This land is included in the estimate of suitable buildable land for commercial development.

¹¹ The methodology used to determine land demand is described in detail in Appendix C.

assumes that Salem’s employment will grow at the same rate as population and that the majority of Salem’s employment growth will be in commercial or state government employment (consistent with the existing distribution of employment).

Salem’s economic development strategy, however, envisions that Salem will grow or attract more traded-sector employees than have historically located in Salem. The majority of these employees would be in manufacturing and would require industrial land.

A subsequent section in this chapter describes the characteristics of industrial land in Salem, focusing on Salem’s “high value” industrial land, such as land in the Mill Creek Corporate Center. This land is where many traded-sector businesses may choose to locate. If Salem is very successful in achieving its economic development goals of attracting traded-sector employment, then much of Salem’s “high value” industrial land could be developed over the planning period.

Table 7. Comparison of Suitable Buildable Land with Demand for Land, Salem’s portion of the Salem-Keizer UGB, 2015–2035

Land Type	Suitable Buildable Land (Gross Acres)	Demand (Gross Acres)	Surplus (Deficit) (Gross Acres)
Industrial	1,393	486	907
Commercial	298	569	(271)

Source: ECONorthwest

Redevelopment potential

Salem is encouraging redevelopment of underutilized employment areas in a number of ways. Salem has seven urban renewal areas (URA), each of which has an urban renewal plan to facilitate redevelopment, including identifying financial tools to facilitate redevelopment. The majority of land in the urban renewal areas has existing development, with the exception of the Mill Creek Corporate Center. As a result, most new development in these areas will be redevelopment of underutilized areas.

- **Fairview URA.** This urban renewal area is about 390 acres. The urban renewal plan encourages expansion of industrial uses in the URA, including development of an industrial park.
- **McGilchrist URA.** This urban renewal area is about 400 acres. The urban renewal plan encourages a broad mixture of employment uses, focusing on industrial uses.

- **Mill Creek Industrial Park URA.** This urban renewal area is about 490 acres. The urban renewal plan is intended to facilitate implementation of the Salem Regional Employment Center Master Plan and Development Strategy. The type of employment expected in Mill Creek is predominantly industrial, with some office uses allowed.
- **North Gateway URA.** This urban renewal area is about 926 acres. The urban renewal plan encourages a mix of residential, commercial, and industrial development throughout the area.
- **Riverfront-Downtown URA.** This urban renewal area is about 290 acres. The urban renewal plan encourages mixed-use development, with a mixture of multifamily housing, retail, and office.
- **South Waterfront URA.** This urban renewal area is about 410 acres. The urban renewal plan encourages mixed-use development, with a mixture of multifamily housing, retail, and office.
- **West Salem URA.** This urban renewal area is about 450 acres. The urban renewal plan expects a continued mix of residential, commercial, and industrial development throughout the area.

Outside of the urban renewal areas, Salem can expect modest redevelopment of industrial areas. The most likely types of redevelopment are reuse of existing buildings. Salem staff has seen increasing interest in reuse of existing industrial buildings, both for industrial uses and for commercial or other uses. Salem's limited supply of suitable vacant industrial buildings limit opportunities for re-use.

Salem's deficit of commercial land makes redevelopment of underutilized land or commercial buildings with relatively low improvement value more likely. The factors that affect redevelopability are many, but the economics are pretty straightforward. Redevelopment occurs when achievable rents exceed the current return on investment of the land and improvements. The reality, of course, is much more complicated.

In our many conversations with commercial realtors and developers for this and other studies, the conclusion has been consistent: it is very difficult to develop reliable models of redevelopment potential. The factors are complicated and are location and time specific. Moreover, public policy can play a significant role in facilitating redevelopment.

One indicator of redevelopment potential is the improvement to land value ratio of developed areas. Table A-5 in Appendix A shows improvement to land ratios for developed commercial land in Salem. It shows that:

- 8% of Salem's developed commercial sites (142 acres of land) have an improvement to land value ratio of less than 0.25, suggesting that these sites have high redevelopment potential.

- 5% of Salem's developed land has an improvement to land ratio of between 0.25 and 0.5 (93 acres).
- 12% of Salem's land has a ratio of between 0.5 and 1.0 (221 acres).

Higher improvement to land value ratios suggest decreasing probability of redevelopment potential. If we assume that land with an improvement to land value ratio of less than 0.5 has the greatest probability of redevelopment, then about 235 acres of commercial land in Salem has a relatively high chance of redevelopment. If the increase in employment density on these lands was between 20 and 35 additional employees per acre, then these areas would have additional capacity for 4,700 to 8,200 employees.

Estimating the actual amount of redevelopment potential on these lands is challenging. Salem does not have historical information about redevelopment to support specific assumptions. It is highly improbable that all of the 235 acres will redevelop over the 20-year planning period. Given Salem's large supply of industrial land and pressure on the City to convert industrial land to commercial uses, it is likely that less than half of this land will be redeveloped over the next 20 years.

As a rough estimate, we think that it is reasonable to assume that about between about 50 to 100 acres (roughly 20% to 40%) will redevelop over the planning period, accommodating between 1,000 to 3,500 new employees. This redevelopment would help address the deficit of commercial land shown in Table 7. Land located in urban renewal areas is more likely to redevelop than land outside of urban renewal areas because of the infrastructure improvements and redevelopment tools available in the urban renewal districts.

Short-term land supply

This section evaluates the short-term supply of land in Salem. It begins with an overview of the policy context that requires this analysis, and then it evaluates the short-term land supply.

Policy context

The Goal 9 Administrative Rule (OAR 660-009) includes provisions that require certain cities to ensure an adequate short-term supply of industrial and other employment lands. OAR 660-009-005(10) defines short term supply as follows:

"...means suitable land that is ready for construction within one year of an application for a building permit or request for service extension. Engineering feasibility is sufficient to qualify land for the short-term supply of land. Funding availability is not required. "Competitive Short-term Supply" means the short-term supply of land provides a range of site sizes and locations to accommodate

the market needs of a variety of industrial and other employment uses.”

The Goal 9 rule also requires cities in a Metropolitan Planning Organization (MPO, which includes Salem, Keizer, and Turner) to make a commitment to provide a competitive short-term supply of land and establishes targets for the short-term supply of land. Specifically, OAR 660-009-0020(1)(b) states:

“Cities and counties within a Metropolitan Planning Organization must adopt a policy stating that a competitive short-term supply of land as a community economic development objective for the industrial and other employment uses selected through the economic opportunities analysis pursuant to OAR 660-009-0015.”

The rule goes on to clarify short-term land supply targets for cities in an MPO (OAR 660-009-0025):

(3) Short-Term Supply of Land. Plans for cities and counties within a Metropolitan Planning Organization or cities and counties that adopt policies relating to the short-term supply of land must designate suitable land to respond to economic development opportunities as they arise. Cities and counties may maintain the short-term supply of land according to the strategies adopted pursuant to OAR 660-009-0020(2).

(a) Except as provided for in subsections (b) and (c), cities and counties subject to this section must provide at least 25% of the total land supply within the urban growth boundary designated for industrial and other employment uses as short-term supply.

(b) Affected cities and counties that are unable to achieve the target in subsection (a) above may set an alternative target based on their economic opportunities analysis.

(c) A planning area with 10 percent or more of the total land supply enrolled in Oregon's industrial site certification program pursuant to ORS 284.565 satisfies the requirements of this section.

In summary, the rule requires Salem to assess the short-term supply of land based on the criteria that land can be ready for construction within one year. The determination is based on “engineering feasibility.”

Analysis of short-term supply of land

Table 2 shows that there are about 1,945 acres of vacant and partially vacant, unconstrained commercial and industrial land in Salem. According to Goal 9, cities must provide at least 25 percent of the total land supply within the urban

growth boundary designated for industrial and other employment uses as short-term supply (OAR 660-009-0025(3)(a)).

Salem has about 176 acres of land on State Certified sites, in the Mill Creek Corporate Center and the Salem Renewable Energy and Technology Center.¹² In addition, the following vacant or partially vacant land could be serviced within a year: about 160 additional acres in the Mill Creek Corporate Center, about 80 acres at the Salem Municipal Airport, and about 95 acres in the Fairview Urban Renewal Area. In total, about 510 or about 26% of Salem's vacant and partially vacant employment land is either ready for development or could be serviced within one year. Based on this information, Salem meets the Goal 9 requirements for short-term supply of land.

SITE NEEDS FOR TARGET INDUSTRIES

Chapter 4 describes potential growth industries (described in this chapter as economic opportunities) for Salem, based on the city's economic advantages. These target industries focus on manufacturing, including technology, equipment, metal, food and beverage, and chemical manufacturing. This section focuses on the site needs for these target industries, as well as established industries, such as medical services. It also considers land needs from the broad range of commercial and industrial businesses, from small retail or service businesses to large-scale manufacturers.

Typical site needs of large employers

Businesses considering locating in Oregon and in Salem will consider many factors before selecting a location (e.g., access to markets, availability of skilled workers, and availability of suitable land).

One of the key factors that businesses consider when making decisions about where to locate is the availability of vacant, large, and flat parcels of land. Table 8 shows examples of traded-sector firms that considered locating in Oregon and Southern Washington since 1997. Table 8 shows that firms looking for office or flex space required sites from 30 acres up to more than 100 acres. Warehouse and distribution firms looked for sites between about 50 and 200 acres. Manufacturing firms required sites from 25 acres to 250 acres in size.

¹² According to Oregon Prospector, the State's official economic development web site, there are three areas in Salem with the State's Industrial Site Certification: Mill Creek Corporate Center (136 acres) and the Salem Renewable Energy and Technology Center 5700 Block Gaffin Road (40 acres).

These firms worked with Business Oregon to find suitable sites in Oregon. Some of the firms chose to locate in Oregon and some chose to locate elsewhere. One of the key factors that influenced decisions to locate elsewhere was availability of large parcels of land with infrastructure services (e.g., transportation access, wastewater, etc.).

Table 8. Examples of firms that considered locating in Oregon and Southern Washington between 1997 and 2010

Type of business	General Location Considered	Site size (acres)	Building Size (square feet)	Located in Oregon ?
Office or Flex space				
Private technology firm	Northern Oregon I-5	100+	1 msf	
Facebook Data Center	Prineville	118	147,000 sf	Yes
Siltronics	Portland Harbor	35		
Nautilus	Vancouver	35	489,000	Yes
Google Data Center	The Dalles	30		Yes
Warehouse and Distribution				
Lowes	Lebanon	204	1.3 to 2.2 msf	Yes
NOAH-PepsiCo	Albany	204	2.5 msf	No
Wal-Mart	Hermiston	200	1.3 msf	Yes
Target	Albany	175	1.3 msf	Yes
Fed Ex	Troutdale	78	500,000 sf	Yes
Dollar-Tree	Ridgefield, Wa	75	800,000 sf	
Home Depot	Salem	50 to 100	400,000+	Yes
Manufacturing				
Apricus	Northern Oregon	250	Very large	No
Navitas	Oregon	150 to 200		No
Pacific Ethanol	Boardman	137		Yes
SolarWorld	Hillsboro	75	1 msf	Yes
Schott Solar	I-5 corridor	50+	up to 800,000 sf	No
Genentech	Hillsboro	50	500,000 sf	Yes
Amy's Kitchen	White City	50		Yes
Sanyo Solar	Salem	25	150,000 sf	Yes
Spectrawatt	Hillsboro	25	225,000 sf	No

Source: Business Oregon

Table 9 shows examples of manufacturers of clean energy technologies, such as solar panel manufacturers, that announced plans to build new manufacturing plants in 2009 or 2010. More than one-third of these firms considered locating in Oregon. The site size requirements of these firms ranged from 50 to nearly 500 acres, with an average site size of around 100 acres. These firms are within one of the potential growth industries identified in Chapter 4, renewable energy manufacturing.

Table 9. Examples of clean energy technologies that announced plans to build new manufacturing plants in 2009 or 2010

Company	Site Size (Acres)	Location	Industry
Tokuyama*	494	Malaysia	Solar
Vestas*	300	Colorado	Wind
US REG - A Power	150	Nevada	Wind
REC*	150	Singapore	Solar
Tindall	144	Kansas	Wind
Green2V	124	New Mexico	Solar
LG Chem Ltd.	120	Michigan	Batteries
Autoport/ AC Propulsion	102	Delaware	Electric Vehicles
Energy Composites Corps	94	Wisconsin	Wind
Tesla	90	California	Electric Cars
Mitsubishi Heavy Industries*	90	Arkansas	Wind
Schott Solar*	80	New Mexico	Solar
Enerdel	75	Indiana	Batteries
Energy Composites Corporation	54	Wisconsin	Wind
Proterra*	50	South Carolina	Electric Buses
Confluence	50	Tennessee	Solar

Source: Business Oregon

*Note: These firms considered locating in Oregon.

Table 10 shows the characteristics required to make a site competitive for businesses considering locating or expanding in Oregon, based on information from Business Oregon. Sites for most manufacturing uses are generally between 10 acres to 50 acres. Some large industrial uses, such as businesses in the renewable and clean energy sector, require sites of 100 acres. Regional distribution centers require sites of 200 acres. Industrial users need sites that are relatively flat, generally with a slope of 5% or less.

Table 10. Site characteristics of common business types in Oregon

Industry Sector	Site size* (Acres)	Site topography (Slope)	Site Access Max distance in miles to interstate or major arterial	Utilities (Min. line size in inches) Water / Sanitary Sewer
Regionally to Nationally Scaled Clean-Tech Manufacturer	50	0-5%	10	10 / 10
Globally Scaled Clean Technology Campus	100	0-5%	10	10 / 10
Heavy Industrial/ Manufacturing	25	0-5%	10	8 / 8
General Manufacturing	10	0-5%	20	8 / 8
Food Processing	20	0-5%	30	10 / 10
High-tech Manufacturing or Campus Industrial	25	0-7%	15	10 / 10
Regional (multistate) Distribution Center	200	0-5%	5 Only Interstate highway or equivalent	4 / 4
Warehouse/ Distribution	25	0-5%	5 Only Interstate highway or equivalent	4 / 4

Source: Business Oregon

*Note: Site size is the competitive acreage that would meet the site selection requirements of the majority of industries in this sector

Some industrial and large-scale commercial businesses may prefer to locate in an industrial or business park. Business parks are developments with multiple buildings, designed to accommodate a range of uses, from heavy industry to light industry to office uses. Most industrial parks, a subset of business parks, have large-scale manufacturing, distribution, and other industrial uses, with relatively little office space.

Table 11 shows examples of business park sites in the Portland Metro area. Business parks in the Portland area generally range in size from 25 acres to 75 or 100 acres in size. Some of the business parks are primarily industrial (e.g., Beaverton Creek, Columbia Commerce Park, or Southshore Corporate Park), some are primarily commercial (e.g., Creekside Corporate Park or Nimbus Corporate Center), and some are office and flex space (e.g., Cornell Oaks Corporate Center)

Table 11. Examples of business park sites, Portland Metro area

Business Park	Site Acres	Building Square Feet
AmberGlen Business Center	72	572,685
AmberGlen East and West	44	536,000
Beaverton Creek	56	512,852
Columbia Commerce Park	31	562,888
Cornell Oaks Corporate Center	107	684,000
Creekside Corporate Park	50	615,113
Kruse Woods Corporate Center	76	1,652,105
Lincoln Center	22	728,770
Nimbus Corporate Park	47	688,632
Oregon Business Park 1	36	782,294
Oregon Business Park 3	35	501,029
PacTrust Business Center	40	570,539
Pacific Business Park (South)	26	340,864
Pacific Corporate Center	56	601,542
Parkside Business Center	52	687,829
Southshore Corporate Park	312	1,630,000
Tualatin Business Center I and II	33	383,305
Wilsonville Business Center	30	710,000
Woodside Corporate Park	37	579,845

Source: Metro UGR, Appendix 5 Multi-tenant (business park)/Large lot analysis

In addition, the Portland Metro area has the following types of major employment sites, on sites ranging from 25 acres to more than 500 acres:¹³

- **General industrial.** The Portland region has 21 general industrial major employment sites, ranging in size from 25 acres to 164 acres and averaging 53 acres. Firms on these sites range from beverage manufacturers to construction product manufacturers to specialty manufacturing enterprises.
- **Warehouse and distribution.** The Portland region has 15 warehouse and distribution major employment sites, ranging in size from 25 acres to 452 acres and averaging 74 acres. Firms on these sites range from wholesalers to general warehouse and distribution to company-specific distributors.
- **Flex.** The Portland region has 14 flex major employment sites, ranging in size from 25 acres to 522 acres and averaging 112 acres. Firms on these sites include small and large semiconductor manufacturing and other high tech manufacturing.

¹³ These examples are documented in the Portland Metro 2009-2030 Urban Growth Report, Appendix 4

Site needs

The Goal 9 Administrative Rule (OAR 660-009) requires that jurisdictions describe the characteristics of opportunity sites (OAR 660-009-0025(1)). The Administrative Rule defines site characteristics as follows in OAR 660-009-0005(11):

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

Table 12 presents the site characteristics needed for the operation of major traded-sector industries, as well as for clusters of commercial and mixed-use development. Table 12 groups potential growth industries by site category (e.g., large industrial and flex). Any of the potential growth industries, however, may occur at a variety of sizes. For example, food processing companies could range from large food processors to small processors of specialty food products and could use sites from five acres to over 25 acres. Warehouse and distribution firms could range from large, regional distributors to distributors of local products. The opportunity sites in each potential growth industry will vary by size of the firms and the firm's activities.

Table 13 presents site infrastructure requirements necessary for the operations of potential growth industries. There are some common service requirements, regardless of the type of industry. For example, nearly all firms need access to roads, telecommunications, water and wastewater, and electricity. Some potential growth industries have specific service requirements for their operations. For example, food processors generally need access to large amounts of water and wastewater capacity or data centers need access to a large amount of electricity and redundant electricity sources.

Table 12. Summary of site characteristics for potential growth industries and clusters of commercial development

Site Category	Example Industries (Target Industries in bold)	Typical Site Size (acres)	Topology	Parcel configuration	Land Use Buffers	Visibility
Large Industrial and Flex	Technology Manufacturing Renewable Energy Warehouse and distribution	50 to 250	0% to 5% slope	Preference for single parcels or parcels with two owners	Compatible with industrial or agricultural uses	No
Medium Industrial and Flex	Food Processing Technology Manufacturing Equipment Manufacturing Chemical Manufacturing Metals Manufacturing Renewable Energy Warehouse and distribution	10 to 75	0% to 5% slope	Preference for single parcels or parcels with two owners	Compatible with industrial or agricultural uses	No
Small Industrial	Small Scale or specialty firms Food Processing Technology Manufacturing Equipment Manufacturing Chemical Manufacturing Metals Manufacturing Renewable Energy Warehouse and distribution	Less than 10	Less than 10% slope	Preference for single parcels or parcels with two owners	Compatible with some commercial, industrial, or agricultural uses	No
Large Commercial /Office	State Government Mixed use Regional and community retail Big box retail Information Technology and Backoffice	10 to 50	Less than 10% slope	Preference for single parcels or parcels with two owners	Compatible with commercial and mixed uses	Yes
Medium Commercial /Office	Information Technology and Backoffice Large medical offices Mixed use Neighborhood retail Other services	5 to 20	Less than 15% slope	Preference for single parcels or parcels with three owners	Compatible with commercial and mixed uses	Yes
Small Commercial /Office	Small medical offices Retail and services	Less than 2	Less than 15% slope	Preference for single parcels or parcels with three owners	Compatible with commercial, mixed uses, and residential	Yes

Source: ECONorthwest research, City of Salem analysis, and Business Oregon Industrial Development Competitiveness Matrix

Table 13. Summary of site infrastructure needs for potential growth industries and clusters of commercial development

Site Category	Transportation	Rail	Transit, Ped, Bike	Water and Sewer Meter Size (inches)	Gas (annual therms)	Electrical Demand (annual KWhr)	Telecom
Large Industrial and Flex	Direct access to an arterial; less than 10 miles from I-5	Preferred	Preferred	4 to 10 High Pressure Preferred	10,000 – 80,000	10,000 – 100,000 + Secondary system dependency may be required	High speed Internet and phones
Medium Industrial and Flex	Direct access to an arterial; less than 10 miles from I-5	Preferred	Preferred	3 to 6 High Pressure Preferred	10,000 – 80,000	10,000 – 100,000 + Secondary system dependency may be required	High speed Internet and phones
Small Industrial	Access to a major collector	Not required	Preferred	0.75 to 2	10,000 – 30,000	10,000 to 30,000	High speed Internet and phones
Large Commercial	Direct access to an arterial or major collector	Not required	Preferred	2 to 4	Standard commercial usage	10,000 – 100,000 + Secondary system dependency may be required	High speed Internet and phones Possible requirement for large amount of telecom. access
Medium Commercial	Direct access to an arterial or major collector	Not required	Preferred	1 to 3	Standard commercial usage	Standard commercial usage	High speed Internet and phones
Small Commercial	Access to a major collector	Not required	Preferred	1.5 or smaller	Standard commercial usage	Standard commercial usage	High speed Internet and phones

Source: ECONorthwest research, City of Salem analysis, and Business Oregon Industrial Development Competitiveness Matrix

High value industrial land

High value industrial land has unique characteristics, making it highly desirable for manufacturing and other traded-sector employment. High value industrial land has the following characteristics: it is designated for industrial uses, is in flat parcels, is most frequently in large parcels at least 10 acres in size, is located within an industrial district, has direct access to a state highway or I-5, and is serviced or has plans to be serviced with water and wastewater infrastructure.

Table 14 presents a list of high-value industrial sites in Salem, including their key characteristics and why it is important to preserve these sites for industrial uses.

Table 14. High value industrial land, Salem portion of the UGB, 2014

Site Name	Key Characteristics	Why it is Important to Preserve for Industrial Uses
Mill Creek Corporate Center	<p>It has about 488 acres of relatively flat vacant land available for development. About 136 acres is serviced and development ready.</p> <p>The City expects the majority of land in the Mill Creek Corporate Center to be development-ready over the planning period, as upgrades to public infrastructure is completed.</p> <p>The Mill Creek Corporate Center is within two miles of I-5 and adjacent to Highway 22. That gives Mill Creek Corporate Center excellent transportation access.</p> <p>It is owned by the State of Oregon, who is interested in seeing development happen at the Mill Creek Corporate Center.</p>	<p>The Mill Creek Corporate Center accounts for about one-third of vacant suitable industrial land in Salem.</p> <p>The City of Salem and the State of Oregon have invested millions in infrastructure and wetland mitigation, with the expectation that the area will develop for traded-sector uses.</p>
Salem Renewable Energy and Technology Center	<p>It has about 48 total acres, 40 acres of which are certified development ready. It is adjacent to Highway 22 and near I-5, and the property is zoned Industrial Business Campus for manufacturing uses. It is owned by the City of Salem.</p>	<p>A broad range of sites are available adjacent to Panasonic and a Portland General Electric substation, with easy access to critical transportation routes.</p>
North Gateway Urban Renewal Area and north Salem	<p>It has about 140 acres of relatively flat vacant or partially vacant land. There are a variety of zones and uses throughout the area. The area includes a significant transportation route to Portland and a long-term concentration of industrial and manufacturing businesses.</p>	<p>The area has transportation access and a significant cluster of manufacturing and industrial uses.</p>
McGilchrist Urban Renewal Area	<p>It has about 40 acres of relatively flat vacant land. There is a long-term concentration of industrial and manufacturing uses.</p>	<p>The area has planned future URA investments, transportation, and concentration of industrial businesses.</p>

Site Name	Key Characteristics	Why it is Important to Preserve for Industrial Uses
Fairview Urban Renewal Area	It has 390 acres of mixed industrial properties, with a range of vacant lots available. It also has quick access to Highway 22 and the Salem Municipal Airport.	Millions of dollars have been invested in public infrastructure and wetland mitigation. There is a significant concentration of a broad range of industrial businesses.
West Salem Urban Renewal Area	It includes a variety of lot sizes, zones, and uses. It has access to Highway 22 and Wallace Road. There is a concentration of long-term industrial employers.	There is a concentration of long-term industrial employers and accessibility.
North Downtown Area	It includes a variety of lot sizes, zones, and uses. It has access to downtown Salem. There is a concentration of long-term industrial employers.	There is a concentration of long-term industrial employers.
Salem Municipal Airport	It has 80 acres of unconstrained vacant or partially vacant land There is a cargo, business, and personal airplane node. It has quick transportation access to I5 and Highway 22. There is a concentration of industrial employers.	There is a cargo, business, and personal airplane node. It generates hundreds of millions in economic benefits for the region. Federal, State, and City investments in infrastructure support a range of transportation options in the area and support area businesses.

While it is important to preserve industrial areas in Salem, not all existing industrial land is best suited for industrial development and must be preserved. The City should consider allowing industrial properties to convert to commercial uses if they have some or all of the following characteristics:

- Fringe location: Located outside of industrial areas or isolated from other industrial uses
- Incompatible land uses: Largely surrounded by incompatible uses such as housing
- Adjacent conversions: Located adjacent to properties that have converted to commercial uses
- Poor transportation access: Does not have access to an arterial street, collector street, or highway
- No rail access: Not located near the railroad or does not have the potential to access the railroad

Characteristics of Needed Sites for Manufacturing

Salem's target industries are all manufacturing, including technology, equipment, metal, food and beverage, and chemical manufacturing. This section presents the needed characteristics for manufacturing sites.

Friends of Yamhill County v. City of Newberg, 62 Or LUBA 5 (2010), established a two-prong test for establishing relevant "site characteristics" as follows: (1) that

the attribute be "typical of the industrial or employment use," and (2) that it have "some meaningful connection with the operation of the industrial or employment use." The first of those prongs, that the attributes be "typical," appears expressly in OAR 660-009-0015(2), which refers to "site characteristics typical of expected uses." In upholding LUBA's two prong test, the Court of Appeals agreed, "[t]hat 'necessary' site characteristics are those attributes that are reasonably necessary to the successful operation of particular industrial or employment uses, in the sense that they bear some important relationship to that operation." *Friends of Yamhill County v. City of Newberg*, 240 Or App 738, 747 (2011).

The following summarizes the site characteristics for manufacturing and provides an overview of the two-prong test established for site characteristics under *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010), *aff'd* 240 Or App 738 (2011).

1. **Site size.** Sites for manufacturing firms range in size from 10 to 25 acres. Some manufacturing firms may prefer to locate in a manufacturing or flex business park, which range in size from about 25 acres or several hundred acres.

- Attribute is "typical of the industrial or employment use" - OAR 660-009-0005(11) specifically cites "a minimum acreage" as a site characteristic. Business Oregon finds that competitively-sized general manufacturing firms have sites 10 acres in size. Competitive sites for heavy manufacturing, high-tech manufacturing, or campus industrial manufacturing require 25-acre sites.

Some businesses will prefer to locate in manufacturing to flex business parks. Business parks are typically at least 25 acres in size to allow for development of multiple buildings and associated parking. In the Portland area, these parks generally range in size from about 25 acres to 50 acres, with a few examples of parks around 75, 100, or 300 acres.

Major employment sites with general industrial uses in the Portland Metro area range in size from 25 to 160 acres and average about 50 acres in size. Businesses parks will need to be at least 25 to 50 acres and possibly as large as 75 to 100 acres.

- Attribute has "some meaningful connection with the operation of the industrial or employment use" – Site size is important to general industrial users. The site needs to be large enough to accommodate the needed built space, as well as to accommodate storage space or space for future expansion. In addition, the site needs to be large enough to accommodate not only the general

industrial uses, but also parking, on-site circulation, connections to public transportation, rail connections, and other access to the transportation network.

2. **Land ownership.** Sites with two or fewer owners are necessary to reduce the cost and uncertainty of land assembly.

- Attribute is "typical of the industrial or employment use" - OAR 660-009-0005(11) specifically cites the "site configuration" as a site characteristic. Developing an industrial building on a site with more than two owners requires negotiating land assembly and purchase from multiple owners. Land assembly is difficult and often costly for a number of reasons. People own land for a variety of reasons, such as the desire to develop the land, keep the land undeveloped, or sell the land for a profit. Getting landowners to sell land can be difficult, especially if the ownership is legally disputed, as is the case with some inheritances. If a landowner is a willing seller, they may have an unrealistic expectation of their land's value, in the context of comparable land values. In addition, one parcel of land may have multiple owners, compounding the issues described above.

Developers attempting land assembly often have difficulty assembling a site at a cost that makes development economically viable. When assembling land, developers often find that owners of key sites are not willing sellers, have unrealistic expectations of the value of their land, or cannot get agreement among multiple owners to sell the land. As a result, developers of industrial buildings typically choose to develop sites with one or two owners.

- Attribute has "some meaningful connection with the operation of the industrial or employment use" – The cost of land assembly, in financial terms and in terms of extra time needed for site assembly, can make developing an industrial site with multiple land owners financially infeasible.

3. **Automotive access.** Manufacturing buildings generally are located on arterial or major collector streets. Traffic from the industrial development should not be routed through residential neighborhoods. The ideal site would have direct access to an arterial or state highway.

- Attribute is "typical of the industrial or employment use" - OAR 660-009-0005(11) specifically cites the "proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes" as a site characteristic. Business Oregon

finds that manufacturing and industrial firms need to be located relatively close to an interstate highway or principle arterial road, generally within 20 miles or less.

- Attribute has "some meaningful connection with the operation of the industrial or employment use" – This site characteristic helps to minimize the amount of traffic on local streets, minimize freight traffic in residential neighborhoods, improve mobility, minimize adverse effects on urban land use and travel patterns, and provide for efficient long distance travel, which are all necessary for effective industrial operations.

4. **Topography.** Manufacturing sites should be relatively flat, with slopes of not more than 7%.

- Attribute is "typical of the industrial or employment use" - OAR 660-009-0005(11) specifically cites "site configuration including shape and topography" as a site characteristic. Business Oregon finds that competitive sites generally have a slope of 5% or less, except high tech manufacturing and campus industrial, which have a slope of 7% or less.
- Attribute has "some meaningful connection with the operation of the industrial or employment use" – Industrial buildings require level floorplates to reduce costs and offer maximum flexibility, as well as level areas to provide for freight access and pedestrian walkways that meet ADA standards. The real estate development literature describes the increases in development costs and other difficulties associated with industrial development on a sloped site.

5. **Access to services.** City services should be directly accessible to the site, including sanitary sewer, and municipal water.

- Attribute is "typical of the industrial or employment use" - OAR 660-009-0005(11) specifically cites the "specific types or levels of public facilities, services or energy infrastructure" as a site characteristic. Business Oregon finds that competitive sites must have access to urban services, including water, wastewater, natural gas, electricity, and major telecommunications facilities.
- Attribute has "some meaningful connection with the operation of the industrial or employment use" – Industrial buildings require access to municipal water, municipal sanitary sewer, and electricity/gas. Developing a site with direct access to municipal

services is substantially more cost-effective than extending municipal services to an unserved site.¹⁴

6. **Surrounding land uses.** Industrial buildings are directly compatible with other industrial uses, commercial uses, and agricultural uses.
- Attribute is "typical of the industrial or employment use" - OAR 660-009-0025(6) strongly encourages cities to manage encroachment and intrusion of incompatible uses with employment uses. Industrial uses are generally compatible with other industrial uses, commercial uses, and some public uses. Industrial uses may be compatible with agricultural uses, provided that the industrial use does not encroach on the agricultural uses.
 - Attribute has "some meaningful connection with the operation of the industrial or employment use" - Industrial uses are able to operate efficiently where they are not in conflicts with adjacent land uses that could disrupt industrial business activity. Noise or odor conflicts may make some industrial uses incompatible with nearby residential uses.

¹⁴ Miles, Mike E., Haney, Richard L., Bernes, Gayle, "Real Estate Development: Principles and Process," The Urban Land Institute, 1997.

Assessment of the Capacity of Salem's Employment Land Capacity to Provide Needed Sites for Target Industries

Salem's target industries are all manufacturing. Manufacturers typically need relatively flat sites between 10 and 25 acres that are within 10 miles of an interstate highway and have urban services.

Table 14 shows key sites that provide opportunities for employment growth in Salem in "high value employment" areas. These sites have sufficient land in large enough parcels to meet the requirements for Salem's target industries. While some of these areas are development-ready, some require additional infrastructure investment to be ready for development.

- **The Mill Creek Corporate Center** has about 488 acres of relatively flat buildable, suitable industrial land. Parcels range in size from 2 acres up to over 100 acres. The Mill Creek Corporate Center is owned by the State of Oregon.

The Mill Creek Corporate Center is less than two miles from I-5 via Kuebler Boulevard. Water and wastewater infrastructure are available to portions of Mill Creek. About 136 acres of land in Mill Creek is certified development ready. The City expects to continue to construct infrastructure for the other 352 acres as businesses locate to the area over the next several years.

The Mill Creek Corporate Center is zoned Employment Center (EC), which allows for a mix of commercial and light industrial including warehousing, light manufacturing, and business parks. The Mill Creek Corporate Center provides opportunities for development by all types businesses in the target industries, especially for manufacturers or other businesses that need sites 25 acres and larger.

- **Salem Renewable Energy and Technology Center** has about 40 acres of relatively flat buildable, suitable industrial land. The site has been subdivided into a mix of 2- to 5-acre parcels and 10- to 15-acre parcels. It is owned by the City of Salem.

The Salem Renewable Energy and Technology Center is development-ready and located off of Highway 22, near I-5. The property is zoned Industrial Business Campus (IBC), which allows a mix of light industrial, employment, and office uses.

The center provides opportunities for development of businesses in the target industries, especially technology manufacturing or other manufacturing.

- **North Gateway Urban Renewal Area and north Salem.** The North Gateway URA has 143 acres of relatively flat buildable, suitable industrial land. The area includes a variety of zones and uses, with a significant cluster of existing manufacturing and other industrial uses. The primary advantage of this area is the transportation access that provides a significant connection that is comparatively close to the Portland region.
- **McGilchrist Urban Renewal Area.** The McGilchrist URA has 39 acres of relatively flat buildable, suitable industrial land. The area has an existing concentration of manufacturing and other industrial uses. The City has long-term plans for future infrastructure investments that will make this area attractive to manufacturing and other traded-sector industrial uses.
- **Fairview Urban Renewal Area and north Salem.** The Fairview URA has 95 acres of relatively flat buildable, suitable industrial land. The area includes a mix of industrial properties with a range of vacant lot sizes, with an existing concentration of industrial businesses. The City has made significant investments in public infrastructure and wetland mitigation. Fairview has easy access to Highway 22 and the Salem Municipal Airport, making it attractive to industrial firms that need access to automotive or air transportation.
- **West Salem Urban Renewal Area and north Salem.** The West Salem URA has 5 acres of relatively flat buildable, suitable industrial land. The area includes a variety of zones and lot sizes. West Salem has a concentration of industrial businesses that have been located in West Salem for a long time. West Salem has easy access to Highway 22, making it attractive to industrial firms that need access to a state highway.
- **North Downtown Area.** This area is of high value because of existing development, rather than potential for new development. The area includes a variety of zones and lot sizes. The area has a concentration of industrial businesses that have been located in the area for a long time.
- **Salem Municipal Airport.** The Salem Municipal Airport has 80 acres of relatively flat buildable, suitable industrial land. The airport provides opportunities for cargo transportation and personal airplanes. It has easy access to I-5 and Highway 22, and there is a concentration of existing industrial businesses.

Our assessment is that Salem has sufficient land with the characteristics necessary to accommodate growth in the target industries over the 2015 to 2035 period. Salem should also consider long-range planning for other employment land to refresh the pipeline of high value opportunity sites once the existing high value sites are developed.

Salem may need to begin to plan for servicing areas outside of the City's service area and the UGB during the planning period. These sites may include areas along Kuebler Boulevard. Making necessary transportation, water, wastewater, and stormwater infrastructure improvements to serve these areas will take a substantial amount of time and money.

6 Conclusions and Recommendations

The key finding of the EOA is that:

- **Salem has a deficit of commercial land** of 271 gross acres for the 2015 to 2035 period. About 60% of this deficit is for office and commercial services (about 170 acres) and about 40% is for retail and retail services (about 100 acres).
- **Salem has enough industrial land to accommodate industrial employment growth over the 2015 to 2035 period.** Salem's industrial land base is about 900 gross acres larger than the forecast of employment growth shows that Salem will need for the 2015 to 2035 period.

The deficit of commercial land is an ongoing problem that was documented in the Salem-Keizer Regional EOA (2011). The dearth of commercial land has been resulting in requests to convert industrial land to plan designations that allow commercial uses, such as the IBC or IC zones. In the context of this issue and the conditions in Salem, we offer the following recommendations.

- **Identify and preserve key employment lands for traded-sector uses.** Salem's employment land base is unique within the Willamette Valley. Salem has nearly 1,400 acres of vacant or partially vacant industrial land, with nearly 900 acres in "high value" areas. Our observation in working with most mid-sized cities in the Willamette Valley is that no other city in Western Oregon has an employment land base similar to Salem's industrial land inventory. The shortage of large and mid-sized development-ready industrial sites in the Portland region is well-documented.¹⁵

Salem has multiple mid-sized and large sites that are certified by the State's Industrial Site Certification or that the City expects to invest in infrastructure to service high value sites over the course of the next five to 10 years. In addition, Salem has smaller and mid-sized employment sites in urban renewal areas, with plans to address infrastructure deficiencies. Preserving these key sites provides opportunities for future development of traded-sector businesses, which generally provide jobs with higher-than-average wages.

Salem has made substantial financial investments in many of the

¹⁵ *Industrial Site Readiness Project*, August 2012, Group Mackenzie.

industrial areas, such as urban renewal areas or in the Mill Creek Corporate Center. Preserving these areas for traded-sector uses, especially industrial uses, will ensure that the public investments in infrastructure in these areas are used to support growth of jobs, many of which will be at or above average wages.

ECO recommends the City develop policies to protect these areas from converting to commercial uses, especially retail uses. The “Employment Land Implementation Plan” memorandum offers recommendations about policies to preserve industrial land.

- **Provide a variety of types of sites for employment.** Not all traded-sector employment is industrial or will locate in industrial areas. Traded-sector businesses are businesses that produce goods or services that are exported out of the community, bringing money into the community. Some examples of traded-sector businesses in office settings include software development, professional and technical services that provide services outside of the community, or finance and insurance businesses that provide services outside of the community.

These types of traded-sector employment may locate in a variety of locations and building types, such as in tall office buildings in downtown, in a campus environment, or in a suburban-style office park. By implication, Salem will need to provide a variety of opportunities for employment growth in industrial areas, in commercial areas, and in mixed-use areas like downtown. Salem has sufficient land in industrial areas and Salem’s downtown allows for a range of dense employment opportunities. Salem lacks enough opportunities for commercial office development to meet demand for growth.

- **Identify areas for conversion from industrial uses to commercial uses.** Some of Salem’s industrial land has characteristics that make it less attractive to industrial users, such as being surrounded by commercial uses or areas located far from I-5. ECO recommends that the City identify industrial areas that are “ripe” for conversion to commercial uses and allow conversion of these areas, preferably for commercial office uses (rather than retail uses).
- **Identify nodes for neighborhood retail development.** Some residential areas within Salem lack retail development, such as in West Salem or in developing areas of south or southeast Salem. We recommend that the City identify sites of about two to five acres in these areas for development of retail to serve the surrounding neighborhood(s).
- **Encourage redevelopment of existing industrial and commercial areas.** The City may be able reasonably meet between 50 to 100 acres of the

commercial land deficit through redevelopment. The City has policies to facilitate redevelopment of employment areas, such as designating areas as urban renewal areas.

The City can also encourage redevelopment by limiting land available for development. This approach is most effective at encouraging retail and retail service redevelopment. Redevelopment generally occurs because the achievable rents on a specific site exceed the costs of development, making development financially feasible. In addition, a business may want to locate in a specific district or location.

Salem can encourage redevelopment of older, underutilized retail areas or in downtown by limiting the supply of land available for retail development. Given the deficit of commercial land, limiting land available for retail development is a reasonable way to encourage redevelopment of land for retail uses.

- **Monitor and report on conversions of industrial land to commercial uses.** While it may be desirable to selectively convert some industrial land to commercial uses, the City should monitor and report on conversion of land to commercial uses. Monitoring can help the City understand where there is commercial land pressure, allowing the City to better respond to the market. Monitoring also allows the City to track the amount of industrial land converted to commercial uses, as a means to ensure a long-term supply of industrial land.
- **Plan for long-term growth.** While Salem has enough industrial land to accommodate growth and meet economic development objectives, existing industrial land will eventually develop. Once the City's supply of industrial land is developed, the City will need to identify other areas for industrial development and plan for the infrastructure investments necessary to make land development-ready. Planning for infrastructure and capital improvements takes time. In addition, expanding the City's urban growth boundary generally takes two years or longer.

Appendix A. Commercial and Industrial Buildable Land Inventory

In 2011, the Mid-Willamette Valley Council of Governments (MWVCOG) completed an inventory of buildable employment lands located within the Salem Keizer Urban Growth Boundary (UGB) as part of the regional Economic Opportunities Analysis. The COG inventory estimated how much employment land was suitable for development. The inventory also addresses requirements for buildable land inventories found in statewide planning goals 9 (Economy) and 14 (Urbanization).

ECO updated the 2011 inventory using 2014 data for this report. The approach generally follows the methods used by the MVWCOG in the 2011 inventory. This chapter provides an overview of the buildable land inventory methodology and results.

OVERVIEW OF THE METHODOLOGY

The buildable land inventory for the Economic Opportunities Assessment was completed through two (2) general phases of analysis. Phase One included an analysis of whether or not land was considered to be vacant or developed. Phase Two included an analysis of constrained land that was deducted from the inventory of buildable land.

For the purposes of this study, the following definitions were used:

Developed Land – properties with improvements that are considered committed to existing uses for the 20-year planning period.

Vacant Land - properties with no current development and available for future employment development. The inventory included all land designated for employment uses and as a result is more comprehensive (e.g., includes more land) than would be inventoried using the standard definitions of vacant land in OAR 660-009-0005(14).¹⁶

¹⁶ OAR 660-009-0005(14) "Vacant Land" means a lot or parcel:

- (a) Equal to or larger than one half-acre not currently containing permanent buildings or improvements; or
- (b) Equal to or larger than five acres where less than one half-acre is occupied by permanent buildings or improvements.

Partially Vacant Land – properties that are partially vacant (e.g., partially developed) in the baseline inventory with a residential use and by the criteria developed for this study could support additional development.

Excluded – properties where the existing land use excludes or essentially precludes any future development. Examples include publicly owned lands; designated open spaces; GIS parcels representing water bodies; power lines, electrical substations, water towers or reservoirs, etc.; airport expansion areas. Publicly owned lands were evaluated and many (not all) were excluded because they are not intended to convert to employment use during the planning period.

Constrained land includes land that is not available for development based upon one or more factors such as environmental protections or lands committed for public use. Constrained land was deducted from the buildable land inventory in order to determine the amount of unconstrained “buildable acres” available for development over the planning horizon. The following constraints were identified and excluded from the buildable land inventory:

- Publicly-owned lands, not intended for residential use,
- Designated open spaces,
- Utilities (e.g. power lines, electric substations, water towers, reservoirs, wastewater facility and treatment plant),
- Floodways,
- Wetlands,
- Water bodies and water features,
- Riparian corridors (defined as 25 feet on either side of open mapped waterways), and
- Slopes greater than 25 percent.

The inventory was completed primarily using Geographic Information Systems (GIS) mapping technology. The output of this analysis is a database of land inventory information, which is summarized in both tabular and map format. Although data for the inventory was gathered and evaluated at the parcel level, the inventory does not present a parcel-level analysis of lot availability and suitability. The results of the inventory have been aggregated by comprehensive plan designations, consistent with state planning requirements. As such, the inventory is considered to be accurate in the aggregate only and not at the parcel-level.

The Employment Land Inventory includes a review of the following residential comprehensive plan designations:

- Commercial (COM)
- Commercial Business District (CB)
- Employment Center (EC)
- Industrial (IND)
- Industrial-Commercial (IC)
- Mixed Use (MU)
- River-Oriented Mixed Use (ROM)

Note that the Mixed-Use and River-Oriented Mixed Use also have residential development capacity. Map A-1 shows lands in employment plan designations in the Salem UGB.

Map A-1: Employment Plan Designations, Salem UGB, 2014

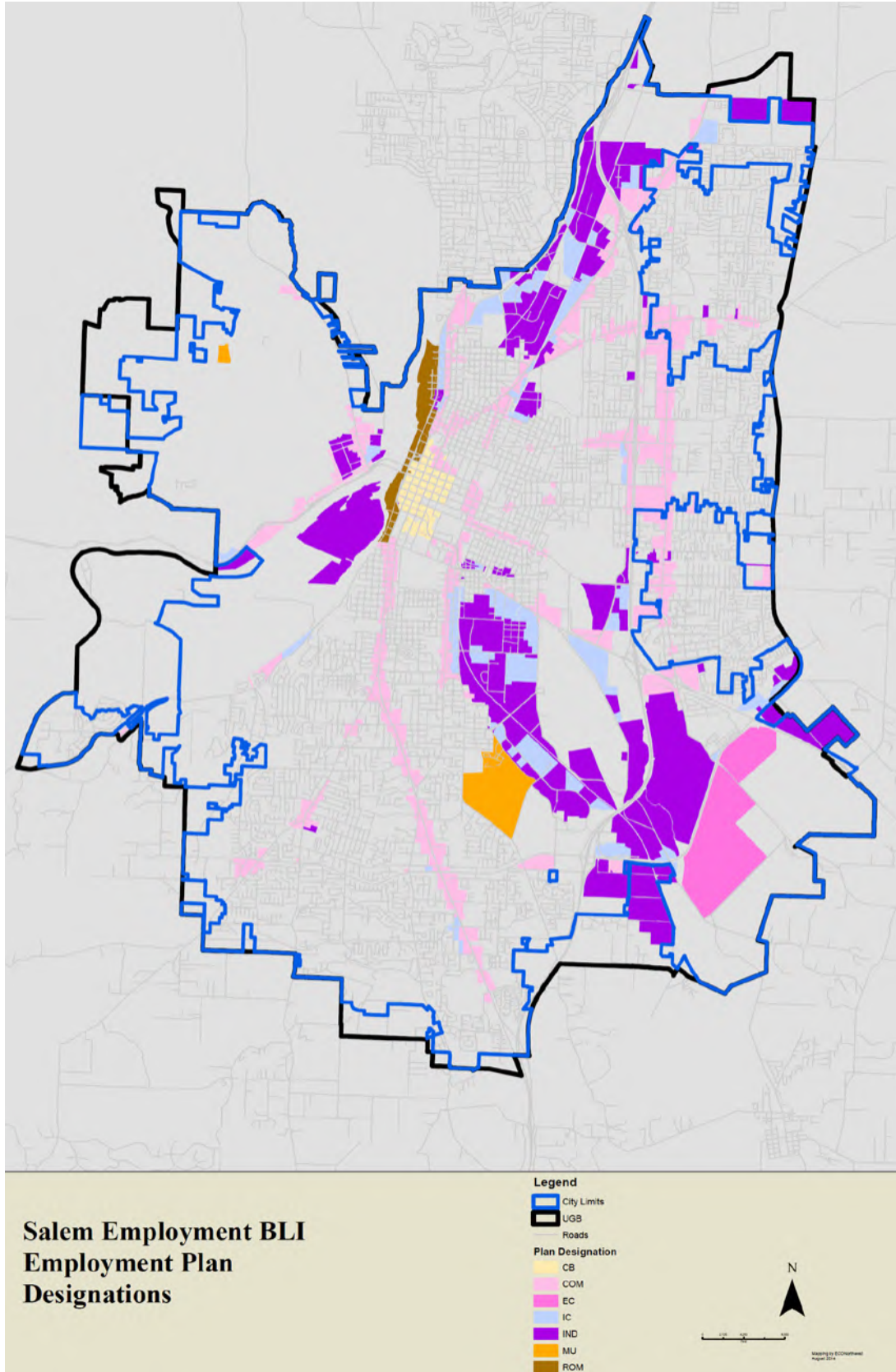


Table A-1 shows employment land in Salem by classification (development status). The results show that Salem has 17,659 acres in employment plan designations (including mixed-use designations that allow residential development). By classification, about 68% of the land is classified as developed, 5% partially vacant, and 27% vacant. About 50% of employment land is in industrial designations (IND and IC); 31% in commercial designations (CB and COM), 13% in the employment center designation (EC) and 6% in mixed-use designations (MU and ROM). Note that these figures include all acres.

Table A-1: Employment Land by Classification, Salem UGB, 2014

Development Status	Plan Designation							Total
	MU	ROM	IND	IC	CB	COM	EC	
Developed	3	75	1864	540	134	1673	328	4,617
Partially Vacant	46		156	19		69	66	356
Vacant	241	97	641	174	1	223	518	1,895
Total	290	124	2661	733	136	1,964	912	6,820
Percent of Total	4%	2%	39%	11%	2%	29%	13%	100%

Source: ECONorthwest analysis of City of Salem GIS data

Note: MU=mixed use; ROM=river oriented mixed use; IND=Industrial; IC=Industrial-Commercial; CB=Commercial Business District; COM=Commercial; EC=Employment Center.

Note: MU is in the Fairview Mixed Use Area, where development is guided by the Fairview Training Center Redevelopment Master Plan.

Table A-2 shows land in all employment plan designations by development and constraint status. Salem has 6,868 acres in 5,762 tax lots in employment plan designations. About 61% of total employment land (4,206 acres) is developed, 10% (717 acres) is constrained, and 28% (1,945 acres) are suitable for development.

Table A-2: Employment Land by Plan Designation and Development Status

Plan Designation	Tax Lots	Total Acres	Developed	Constrained	Suitable
			Acres	Acres	Acres
CB - Commercial Business	511	136	131	3	1
COM Commercial	3,141	1,964	1,659	42	263
EC - Employment Center	14	912	315	42	556
IC - Industrial-Commercial	549	733	470	93	170
IND - Industrial	1,087	2,661	1,566	428	667
MU - Mixed Use	193	290	3	13	274
ROM - River Oriented Mixed Use	267	172	62	95	15
Total	5,762	6,868	4,206	717	1,945
Percent of Total		100%	61%	10%	28%

Source: ECONorthwest analysis of City of Salem GIS data

Note: The 274 vacant acres in MU is covered by Fairview Training Center Redevelopment Master Plan shows capacity for office, retail, and commercial industrial development. The Master Plan determines the amount of employment development in this Mixed Use area.

Table A-3 shows suitable acres (e.g., acres in taxlots after constraints are deducted) for vacant and partially vacant land by plan designation. The results show that Salem has about 1,945 suitable employment acres (including areas in mixed-use plan designations). Of this, about 87% is in tax lots classified as vacant, and 13%

in tax lots classified as partially vacant. About 43% of the buildable employment land (837 acres) is in industrial plan designations (IND and IC) and 14% (264 acres) in commercial plan designations (CB and COM). Twenty-nine percent (556 acres) is in the Employment Center plan designation with the remaining acreage in mixed-use designations (MU and ROM).

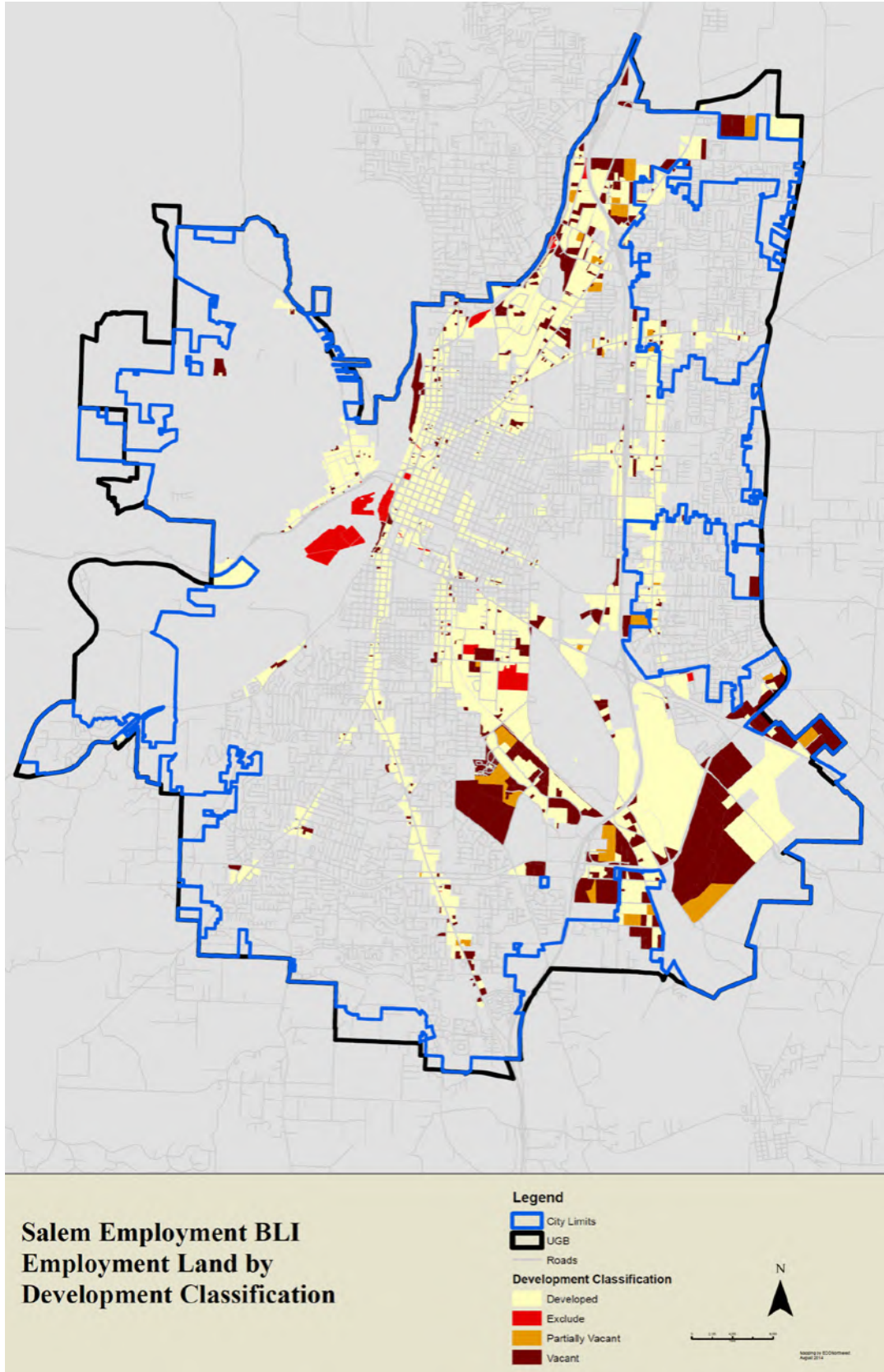
Table A-3: Suitable acres in vacant and partially vacant tax lots by plan designation, Salem UGB, 2014

Development Status	Plan Designation							Percent of	
	MU	ROM	CB	COM	EC	IC	IND	Total	Total
Partially Vacant	45			45	61	17	94	261	13%
Vacant	229	15	1	218	494	154	573	1,684	87%
Total	274	15	1	263	556	170	667	1,945	100%
Percent of Total	14%	1%	0%	14%	29%	9%	34%	100%	

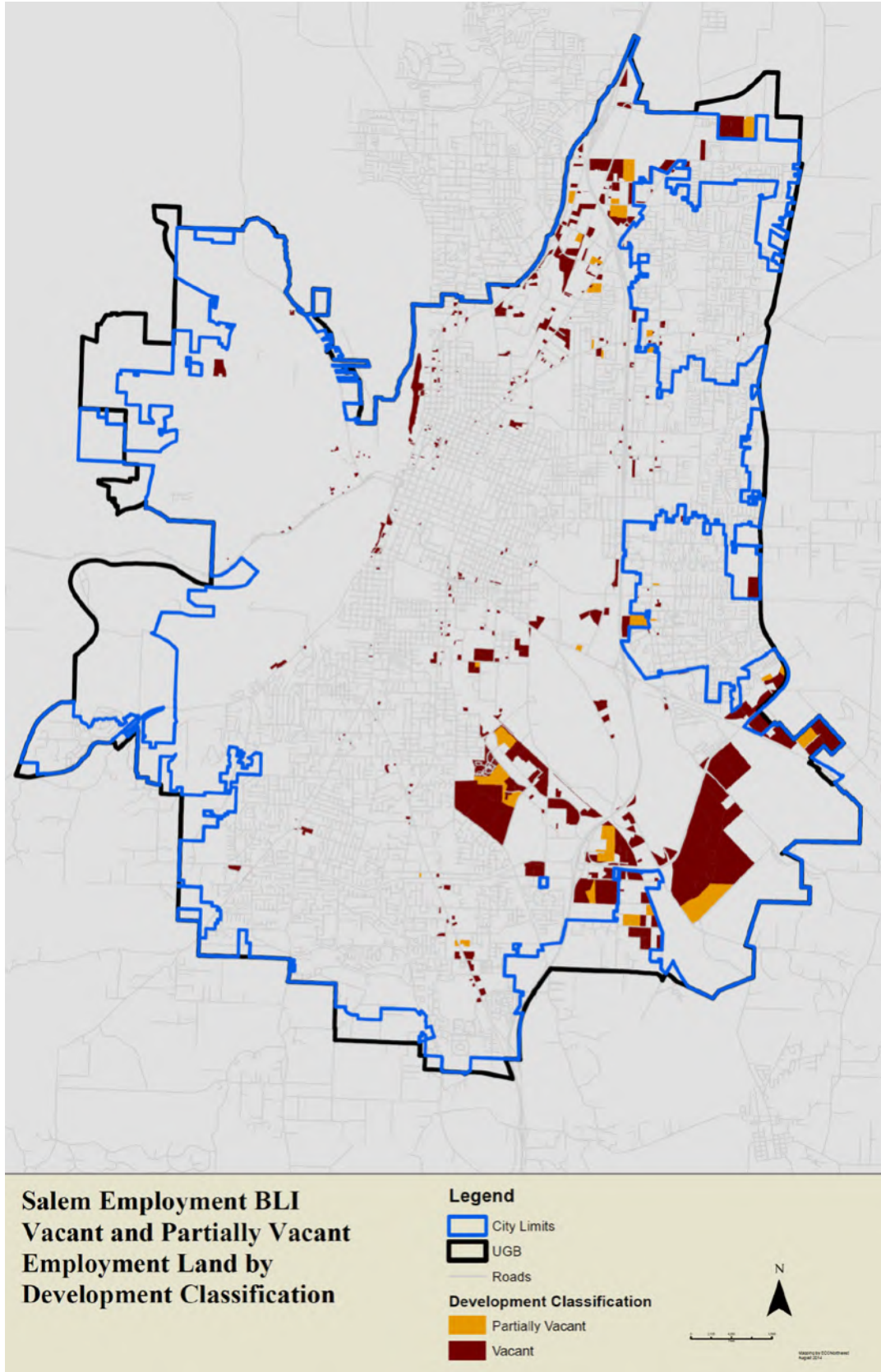
Source: ECONorthwest analysis of City of Salem GIS data

Note: The 274 vacant acres in MU is covered by Fairview Training Center Redevelopment Master Plan shows capacity for office, retail, and commercial industrial development. The Master Plan determines the amount of employment development in this Mixed Use area.

Map A-2: Employment land by development status



Map A-3: Vacant and partially vacant employment land



Map A-4: Vacant and partially vacant employment land and development constraints

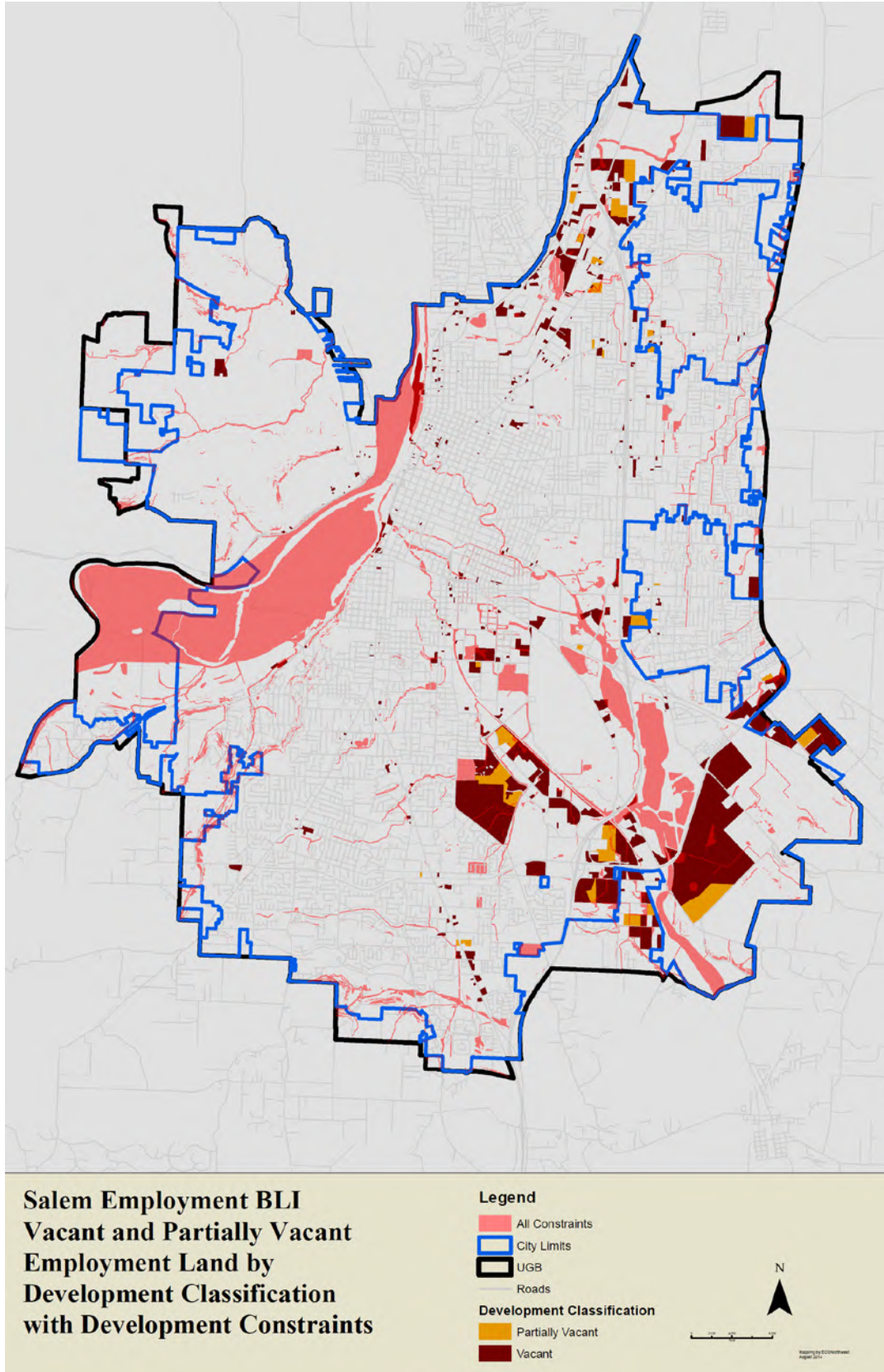


Table A-4 shows the size of lots by plan designations for suitable employment land. Salem has 720 lots that are smaller than 2 acres (with 258 suitable acres of land). Salem has 107 lots between 2 and 10 acres (504 suitable acres of land), 18 lots between 10 and 20 acres in size (247 acres of land), and 24 lots 20 acres and larger (958 acres of land).

Table A-4: Lot size by plan designation, suitable acres, Salem UGB, 2014

Plan Designation	Suitable Acres in Tax Lot								Total	
		>=0.25	>=0.50	>=1.00	>=2.00	>=5.00	>=10.00	>=20.00		
	<0.25	and <0.50	and <1.00	and <2.00	and <5.00	and <10.00	and <20.00	and <50.00		
Acres										
CB	1	1	0	0	0	0	0	0	0	1
COM	13	23	34	27	66	43	57	0	0	263
EC	0	0	0	0	0	9	16	136	395	556
IC	5	6	11	22	43	42	41	25	0	195
IND	15	9	26	30	112	172	114	193	0	671
MU	12	2	8	6	6	11	19	102	108	274
ROM	1	2	0	4	0	0	0	0	0	7
Total	47	44	79	88	227	277	247	456	503	1967
Tax Lots										
CB	8	2	0	0	0	0	0	0	0	10
COM	117	62	47	20	20	6	4	0	0	276
EC	0	0	0	0	0	1	1	4	4	10
IC	48	17	15	16	15	6	3	1	0	121
IND	81	25	36	22	32	23	9	7	0	235
MU	147	5	12	4	2	2	1	4	2	179
ROM	27	7	0	2	0	0	0	0	0	36
Total	428	118	110	64	69	38	18	16	6	867

Source: ECONorthwest analysis of City of Salem GIS data

REDEVELOPMENT POTENTIAL

Redevelopment potential addresses land that is classified as developed that may redevelop during the planning period. While many methods exist to identify redevelopment potential, a common indicator is improvement to land value ratio. Different studies have used different improvement to land value ratio thresholds to identify redevelopment potential.

One of the key issues in preparing an accurate inventory of employment lands in Salem is how to identify and inventory underutilized or redevelopable lands. For the purpose of this study, ECO does not make a distinction between underutilized and redevelopable sites. The inventory consistently uses the term “redevelopable” since it is consistent with the terminology of the statewide land use program.¹⁷ For the purpose of this study, however, the definition of

¹⁷ In this instance, the terminology is a little confusing. OAR 660-009-0005(1) defines redevelopment as follows: "Developed Land" means non-vacant land that is likely to be

“redevelopable” land is considered synonymous with “underutilized” properties.

In the context of the Salem commercial and industrial buildable lands inventory, redevelopment potential addresses land that was initially classified as developed that may redevelop during the planning period. While many methods exist to identify redevelopment potential, a common indicator is improvement to land value ratio. A threshold used in some studies is an improvement to land value ratio of 1:1. Not all, or even a majority of parcels that meet this criterion for redevelopment potential will be assumed to redevelop during the planning period.

The factors that affect redevelopability are many, but the economics are pretty straightforward. Redevelopment occurs when achievable rents exceed the current return on investment of the land and improvements. The reality, of course, is much more complicated. One way to think about the market for land is “highest and best use,” which is a function of:

1. Achievable Pricing – Given the product type and location, what lease rates or sales prices are achievable?
2. Entitlements – What do local regulations allow to be built?
3. Development Cost – What is the cost to build the range of product types allowed (entitled) at that location?
4. Financing – What is the cost of capital, as well as the desired returns necessary to induce development of that form?

In our many conversations with commercial realtors and developers for this and other studies, the conclusion has been consistent: it is very difficult to develop reliable models of redevelopment potential. The factors are complicated and are location and time specific. Moreover, public policy can play a significant role in facilitating redevelopment.

In previous studies, ECO has explored supply side approaches using GIS datasets. The problem with supply side approaches is that the base data available to conduct empirical analyses is quite coarse, and as a result, the analyses are limited and the results have varying levels of inaccuracy. The improvement to land value approach has some problems; for example, it does not make distinctions for land intensive employment uses that require minimal built

redeveloped during the planning period. For the purpose of clarity, we use the term developed to mean land committed to existing productive employment uses and redevelopable as lands that have potential for redevelopment during the planning period.

structure investments. Despite this limitation, it has utility in identifying districts that may be worth focusing resources on.

More robust approaches can consider employment densities, floor area ratios, and other factors. Often, however, the quality of the data is a limiting factor and the cost of generating new or cleaning existing data sets is prohibitive. For this study, we attempted to use employment density combined with improvement to land value ratios. Our assessment was that the results were unreliable and unsuitable as a valid indicator of redevelopment potential.

Thus, this study uses a demand-based approach to estimating how much land will be redeveloped over the 20-year planning period. ECO typically approaches the issue from the demand side by making deductions from total employment growth to account for new employment that will not need any new land.

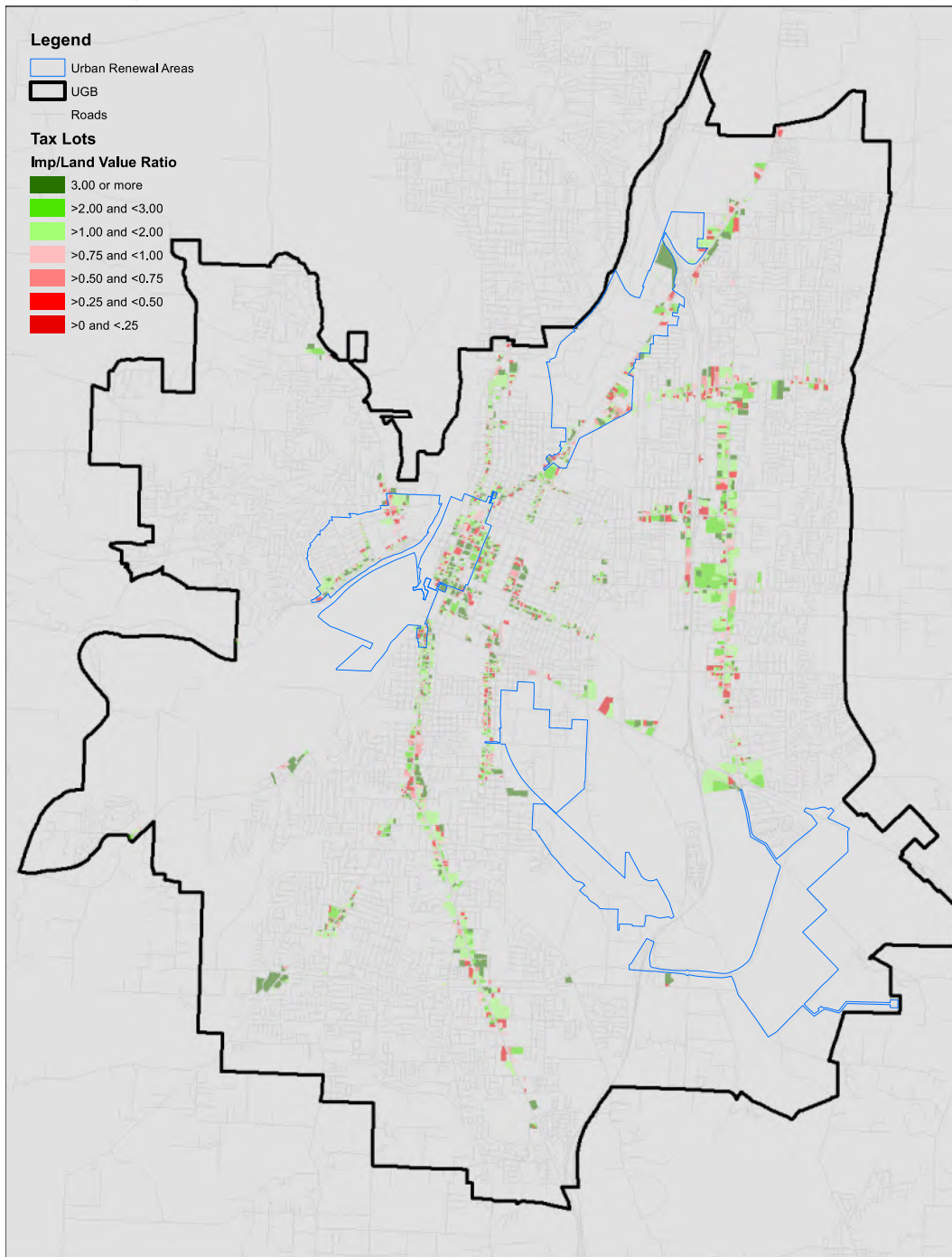
Table A-5 shows improvement to land ratios for developed commercial land in Salem. About 8% of Salem's developed commercial sites (142 acres of land) have an improvement to land value ratio of less than 0.25, suggesting that these sites have high redevelopment potential. Another 5% of Salem's developed land has an improvement to land ratio of between 0.25 and 0.5 (93 acres), and 12% of Salem's land has a ratio of between 0.5 and 1.0 (221 acres). Higher improvement to land value ratios suggest decreasing probability of redevelopment potential.

Table A-5: Improvement to land value ratio, commercial land classified as "developed," Salem UGB, 2012

Plan Designation	Improvement to Land Value Ratio							No Data	Total
	>0.00 - <0.25	>=0.25 - 0.50	>=0.50 - <0.75	>=0.75 - <1.00	and <2.00	>=2.00 - <3.00	>=3.00		
Acres									
Commercial Business District	11	10	3	9	22	23	41	14	134
Commercial	130	83	102	107	551	292	312	95	1,673
Total	142	93	105	116	573	315	353	109	1,807
Percent of Acres	8%	5%	6%	6%	32%	17%	20%	6%	100%
Tax Lots									
Commercial Business District	51	16	10	16	66	45	98	199	501
Commercial	308	187	175	259	853	364	428	291	2,865
Total	359	203	185	275	919	409	526	490	3,366
Percent of Tax Lots	11%	6%	5%	8%	27%	12%	16%	15%	100%

Source: ECONorthwest analysis of City of Salem GIS data

Map A-5: Improvement to land value ratios, developed lands in commercial plan designations, Salem UGB, 2012



Source: ECONorthwest analysis of City of Salem GIS data

Appendix B. Economic Trends and Factors Affecting Future Economic Growth in Salem

Salem exists as part of the larger economy of the Willamette Valley and is strongly influenced by regional economic conditions. For many factors, such as labor, Salem does not differ significantly from the broader region. For other factors, such as income, it does. Thus, Salem benefits from being a part of the larger regional economy and plays a specific role in the regional economy.

This chapter summarizes national, state, county, and local trends and other factors affecting economic growth in Salem. Each heading in this chapter represents a key trend or economic factor that will affect Salem's economy and economic development potential.

NATIONAL, STATE, AND REGIONAL TRENDS

Short-term Trends

The focus of the economic opportunities analysis is long-term economic opportunities and need for land to accommodate employment growth. The EOA generally focuses on long-term economic cycles (Goal 9 requires a 20-year forecast). The recent recession, however, is severe enough that it may continue to affect Oregon's economy over the next five years, possibly longer. This section briefly summarizes big-picture, short-term economic trends.

The U.S. economy continues to recover from the deepest recession since World War II. The recession was brought about by instability of financial and housing markets and has impacted Oregon in a variety of ways, most notably with the labor market showing high unemployment and the housing market's oversupply of homes. While the national economy may begin to recover from the recession in 2010, the recovery may be a "jobless" recovery, where job growth is sluggish, even as production of goods and services begin to increase and the housing market begins to show signs of recovery. Oregon has seen gradual employment increases since the beginning of 2010.¹⁸

According to the Oregon Employment Department, Oregon's employment peaked in the first quarter of 2008 (at more than 1.74 million jobs) and hit its lowest point in the first quarter of 2010 (at about 1.59 million jobs), losing 146,000

¹⁸ Office of Economic Analysis. Oregon Economic and Revenue Forecast, September 2012, Vol. XXXII, No. 3., Page 6-7. <http://www.oregon.gov/DAS/OEA/docs/economic/forecast0912.pdf>

jobs over the two-year period. Between early 2010 and December 2012, Oregon added about 52,000 jobs.

According to the Oregon Office of Economic Analysis (OEA), job growth since mid-2011 has been slow but continuous, at about 1.2% per year, which is less than half of the average growth rate during an expansion year. The OEA predicts continued slow growth.

Nationally, housing demand decreased precipitously during 2008 and continued to decline through 2009. This decrease is the result of a number of factors, including the sub-prime lending crisis, difficulties with the financial industry and resulting tightening of credit availability, the impact of decreases in home value for existing homeowners, and the impact of job losses.

The national housing market appears to be stabilizing, with housing starts beginning to increase. While housing prices are increasing in some markets, they are holding stable or continuing to decrease in some housing markets. The OEA expects that Oregon's housing market should recover more easily than other states that had greater increases in housing prices during the recent housing boom.¹⁹

The Oregon Index of Leading Indicators grew in late 2011 through early 2012 but declined sharply in June 2012. The overall decline was driven by large decreases in a few indicators, particularly those related to global economic slowdown in the manufacturing sector. In general, recent trends in the index suggest near-term economic growth.²⁰

Governments across the globe attempted to stabilize the economy through economic stimulus. In the U.S., government stimulation that has directly impacted Oregon includes government subsidies for the housing market and the return of federal timber payments to Oregon's counties. But the federal timber payments were phased out over a four-year period, which ended in 2011. The withdrawal of these forms of stimulus may have adverse impacts on economic activity.²¹

¹⁹ Office of Economic Analysis. Oregon Economic and Revenue Forecast, March 2010, Vol. XXX, No. 1, Page 6-7. <http://www.oregon.gov/DAS/OEA/docs/economic/forecast0310.pdf>. Page 11.

²⁰ Office of Economic Analysis. Oregon Economic and Revenue Forecast, September 2012, Vol. XXXII, No. 3., Page 6-7. <http://www.oregon.gov/DAS/OEA/docs/economic/forecast0912.pdf>, page 46.

²¹ Ibid., 50.

Oregon's economic health is dependent on the export market. Oregon's exports in the first half of 2012 decreased by 5.1% relative to 2011 levels.²² The countries that Oregon has the most exports to are China, Canada, Malaysia, Japan, and Taiwan. These economies were all affected by the global recession. Exports to China and Malaysia, which accounted for 30% of Oregon's exports in 2011, are down 28% in the first half of 2012. The manufacturing slowdown in China and the euro zone recession have negatively impacted Oregon exports. As foreign economies recover from the recession, their increased purchasing power will aid U.S. producers looking to export, including export firms in Oregon.

Long-term National Trends

Economic development in Salem over the next 20 years will occur in the context of long-run national trends. The most important of these trends include:

- **Economic growth will continue at a moderate pace.** Analysis from the Congressional Budget Office (CBO) predicts that, following a slow recovery from the recession, the economy will grow at a solid pace in 2014 and for the next few years. Annual growth rates (in real GDP) are projected to be roughly 3% through 2017.

Unemployment rates have also improved with the recovery, and CBO expects continued decline, but CBO estimates that it will remain above 6.0% until late 2016.

Beyond 2017, CBO projects that economic growth will decline to a pace below the average seen over the past several decades. This expectation reflects long-term trends—in particular, slower growth in the labor force due to the aging of the population.

- **The aging of the baby boom generation, accompanied by increases in life expectancy.** The number of people age 65 and older will more than double by 2050, while the number of working age people under age 65 will grow only 19%. The economic effects of this demographic change include a slowing of the growth of the labor force, an increase in the demand for healthcare services, and an increase in the percent of the federal budget dedicated to Social Security and Medicare.²³

Baby boomers are expecting to work longer than previous generations. An increasing proportion of people in their early to mid-50s expect to work full-time after age 65. In 2004, about 40% of these workers expect

²² Ibid., 19-22.

²³ The Board of Trustees, Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, 2011, *The 2011 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*, May 13, 2011.

to work full-time after age 65, compared with about 30% in 1992.²⁴ This trend can be seen in Oregon, where the share of workers 65 years and older grew from 2.9% of the workforce in 2000 to 4.1% of the workforce in 2010, an increase of 41%. Over the same ten-year period, workers 45 to 64 years increased by 15%.²⁵

- **Need for replacement workers.** The need for workers to replace retiring baby boomers will outpace job growth. According to the Bureau of Labor Statistics, net replacement needs will be 33.7 million job openings over the 2010-2020 period, compared with growth in employment of 21.1 million jobs. The occupations with the greatest need for replacement workers includes: retail sales, food service, registered nurses, office workers and teachers.²⁶
- **The importance of education as a determinant of wages and household income.** According to the Bureau of Labor Statistics, a majority of the fastest growing occupations will require an academic degree, and on average, they will yield higher incomes than occupations that do not require an academic degree. The fastest growing occupations requiring an academic degree will be: health care service, computer programing, management and business services, college teachers, and architectural and engineering services. Occupations that do not require an academic degree (e.g., retail sales person, food preparation workers, and home care aides) will grow, accounting for more than two-thirds of all new jobs by 2020. These occupations typically have lower pay than occupations requiring an academic degree.²⁷

The national median income in 2013 was about \$43,004. Workers without a high school diploma earned \$18,460 less than the median income, and workers with a high school diploma earned \$9,152 less than median income. Workers with some college earned slightly less than median, and workers with a bachelor's degree earned \$14,612 more than median. Workers in Oregon experience the same patterns as the nation, but pay is generally lower in Oregon than the national average.²⁸

²⁴ "The Health and Retirement Study," 2007, National Institute of Aging, National Institutes of Health, U.S. Department of Health and Human Services.

²⁵ Analysis of 2000 Decennial Census data and 2010 U.S. Census American Community Survey, 1-Year Estimates for the table Sex by Age by Employment Status for the Population 16 Years and Over

²⁶ "Occupational Employment Projections to 2010-2020," Bureau of Labor Statistics, February 2012.

²⁷ "Occupational Employment Projections to 2010-2020," Bureau of Labor Statistics, February 2012.

²⁸ Bureau of Labor Statistics, Employment Projections, March 2014.
http://www.bls.gov/emp/ep_chart_001.htm

- **Need for diversity in the skills of workers.** While workers with academic degree or “high” skills are forecast to continue to be in demand (e.g., managers, lawyers, engineers, or health care practitioners), businesses will need other skilled workers. These workers, termed “middle-skill,” are in occupations such as sales, administrative support, construction, maintenance, or transportation. Middle-skill workers may have a high school diploma or may have completed an Associate’s degree but are less likely to have a Bachelor’s degree. Middle-skill workers have specialized skills and need more training than a high school diploma.

The Oregon Department of Employment projects that about 28% of job openings in Oregon between 2010 and 2020 will be in middle-skill occupations.²⁹

- **Increases in labor productivity.** Productivity, as measured by output per hour, increased over the 1995 to 2005 period. The largest increases in productivity occurred over the 1995 to 2000 period, led by industries that produced, sold, or intensively used information technology products. Productivity increased over the 2000 to 2005 period but at a slower rate than during the later half of the 1990’s. The sectors that experienced the largest productivity increases over the 2000 to 2005 period were: Information, Manufacturing, Retail Trade, and Wholesale Trade. Productivity in mining decreased over the five-year period.³⁰
- **Continued shift of employment from manufacturing and resource-intensive industries to the service-oriented sectors of the economy.** Increased worker productivity and the international outsourcing of routine tasks lead to declines in employment in the major goods-producing industries. Projections from the Bureau of Labor Statistics indicate that U.S. employment growth will continue to be strongest in healthcare and social assistance, professional and business services, and other service industries. Construction employment will also grow but manufacturing employment will decline.³¹
- **The importance of high-quality natural resources.** The relationship between natural resources and local economies has changed as the economy has shifted away from resource extraction. High-quality natural resources continue to be important in some states, especially in the Western U.S. Increases in the population and in households’

²⁹ “A careful Analysis of Oregon’s middle-Skill Jobs,” July 2012 Oregon Employment Department.

³⁰ Corey Holman, Bobbie Joyeaux, and Christopher Kask, “Labor Productivity trends since 2000, by sector and industry,” Bureau of Labor Statistics *Monthly Labor Review*, February 2008.

³¹ “Occupational Employment Projections to 2010-2020,” Bureau of Labor Statistics, February 2012.

incomes, plus changes in tastes and preferences, have dramatically increased demands for outdoor recreation, scenic vistas, clean water, and other resource-related amenities. Such amenities contribute to a region's quality of life and play an important role in attracting both households and firms.³²

- **Continued increase in demand for energy.** Energy prices are forecast to remain at relatively high levels, with continued, gradual increased prices over the planning period. While energy use per capita is expected to decrease to 2040, total energy consumption will increase with rising population. Energy consumption is expected to grow primarily from industrial and (to a lesser extent) commercial users, and remain relatively flat by residential users. Energy consumption for transportation is expected to decrease, as federal standards for energy efficiency in vehicles increases.

Energy consumption by type of fuel is expected to change over the planning period. By 2040, the U.S. will consume a little less oil and more natural gas and renewables. Despite increases in energy efficiency and decreases in demand for energy by some industries, demand for energy is expected to increase over the 2013 to 2040 period because of increases in population and economic activity.³³

- **Impact of rising energy prices on commuting patterns.** Energy prices may continue to be high (relative to historic energy prices) or continue to rise over the planning period.³⁴ The increases in energy prices may impact willingness to commute long distances.
- **Possible effect of rising transportation and fuel prices on globalization.** Increases in globalization are related to the cost of transportation: When transportation is less expensive, companies move production to areas with lower labor costs. Oregon has benefited from this trend, with domestic outsourcing of call centers and other back office functions. In other cases, businesses in Oregon (and the nation) have "off-shored" employment to other countries, most frequently manufacturing jobs.

³² For a more thorough discussion of relevant research, see, for example, Power, T.M. and R.N. Barrett. 2001. *Post-Cowboy Economics: Pay and Prosperity in the New American West*. Island Press, and Kim, K.-K., D.W. Marcouiller, and S.C. Deller. 2005. "Natural Amenities and Rural Development: Understanding Spatial and Distributional Attributes." *Growth and Change* 36 (2): 273-297.

³³ Energy Information Administration, 2013, *Annual Energy Outlook 2013 with Projections to 2040 Early Release Overview*, U.S. Department of Energy, December 2012.

³⁴ Energy Information Administration, 2014, *Annual Energy Outlook 2014 with Projections to 2040 Early Release Overview*, U.S. Department of Energy, April 2014.

Increases in either transportation or labor costs may impact globalization. When the wage gap between two areas is larger than the additional costs of transporting goods, companies are likely to shift operations to an area with lower labor costs. Conversely, when transportation costs increase, companies may have incentive to relocate to be closer to suppliers or consumers.

This effect occurs incrementally over time, and it is difficult to measure the impact in the short-term. If fuel prices and transportation costs decrease over the planning period, businesses may not make the decision to relocate (based on transportation costs) because the benefits of being closer to suppliers and markets may not exceed the costs of relocation.

- **Growing opportunities for “green” businesses.** Businesses are increasingly concerned with “green” business opportunities and practices. These business practices include “the design, commercialization, and use of processes and products that are feasible and economical while reducing the generation of pollution at the source and minimizing the risk to human health and the environment.”³⁵

Defining what constitutes a green job or business is difficult because most industries can have jobs or business practices that are comparatively environmentally beneficial. A 2009 study by the Pew Charitable Trust defines the clean energy economy as an economy that “generates jobs, businesses and investments while expanding clean energy production, increasing energy efficiency, reducing greenhouse gas emissions, waste and pollution, and conserving water and other natural resources.”³⁶

- **Potential impacts of global climate change.** There is a consensus among the scientific community that global climate change is occurring and will have important ecological, social, and economic consequences over the next decades and beyond.³⁷ Extensive research shows that Oregon and

³⁵ Urban Green Partnership at urbangreenpartnership.org

³⁶ “The Clean Energy Economy: Repowering Jobs, Businesses and Investments Across America.” The Pew Charitable Trusts. June 2009. Pages 8-11.
http://www.pewcenteronthestates.org/uploadedFiles/Clean_Economy_Report_Web.pdf

³⁷ Karl, T.R., J.M. Melillo, and T.C. Peterson, eds. 2009. *Global Climate Change Impacts in the United States*. U.S. Global Change Research Program. June. Retrieved June 16, 2009, from www.globalchange.gov/usimpacts; and Pachauri, R.K. and A. Reisinger, eds. 2007. *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II, and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*.

other western states already have experienced noticeable changes in climate and predicts that more change will occur in the future.³⁸

In the Pacific Northwest, climate change is likely to (1) increase average annual temperatures, (2) increase the number and duration of heat waves, (3) increase the amount of precipitation falling as rain during the year, (4) increase the intensity of rainfall events, and 5) increase sea level. These changes are also likely to reduce winter snowpack and shift the timing of spring runoff earlier in the year.³⁹

These anticipated changes point toward some of the ways that climate change is likely to impact ecological systems and the goods and services they provide. There is considerable uncertainty about how long it would take for some of the impacts to materialize and the magnitude of the associated economic consequences. Assuming climate change proceeds as today's models predict, however, some of the potential economic impacts of climate change in the Pacific Northwest will likely include:⁴⁰

- *Potential impact on agriculture and forestry.* Climate change may impact Oregon's agriculture through changes in: growing season, temperature ranges, and water availability.⁴¹ Climate change may

³⁸ Doppelt, B., R. Hamilton, C. Deacon Williams, et al. 2009. *Preparing for Climate Change in the Upper Willamette River Basin of Western Oregon*. Climate Leadership Initiative, Institute for a Sustainable Environment, University of Oregon. March. Retrieved June 16, 2009, from http://climlead.uoregon.edu/pdfs/willamette_report3.11FINAL.pdf and Doppelt, B., R. Hamilton, C. Deacon Williams, et al. 2009. *Preparing for Climate Change in the Rogue River Basin of Southwest Oregon*. Climate Leadership Initiative, Institute for a Sustainable Environment, University of Oregon. March. Retrieved June 16, 2009 from http://climlead.uoregon.edu/pdfs/ROGUE%20WS_FINAL.pdf

³⁹ Mote, P., E. Salathe, V. Duliere, and E. Jump. 2008. *Scenarios of Future Climate for the Pacific Northwest*. Climate Impacts Group, University of Washington. March. Retrieved June 16, 2009, from <http://cses.washington.edu/db/pdf/moteetal2008scenarios628.pdf>; Littell, J.S., M. McGuire Elsner, L.C. Whitely Binder, and A.K. Snover (eds). 2009. "The Washington Climate Change Impacts Assessment: Evaluating Washington's Future in a Changing Climate - Executive Summary." In *The Washington Climate Change Impacts Assessment: Evaluating Washington's Future in a Changing Climate*, Climate Impacts Group, University of Washington. Retrieved June 16, 2009, from www.cses.washington.edu/db/pdf/wacciaexecsummary638.pdf; Madsen, T. and E. Figdor. 2007. *When it Rains, it Pours: Global Warming and the Rising Frequency of Extreme Precipitation in the United States*. Environment America Research & Policy Center and Frontier Group.; and Mote, P.W. 2006. "Climate-driven variability and trends in mountain snowpack in western North America." *Journal of Climate* 19(23): 6209-6220.

⁴⁰ The issue of global climate change is complex and there is a substantial amount of uncertainty about climate change. This discussion is not intended to describe all potential impacts of climate change but to present a few ways that climate change may impact the economy of cities in Oregon and the Pacific Northwest.

⁴¹ "The Economic Impacts of Climate Change in Oregon: A preliminary Assessment," Climate Leadership Initiative, Institute for Sustainable Environment, University of Oregon, October 2005.

impact Oregon's forestry through increases in wildfires, decreases in the rate of tree growth, changes in mix of tree species, and increases in disease and pests that damage trees.⁴²

- *Potential impact on tourism and recreation.* Impacts on tourism and recreation may range from: (1) decreases in snow-based recreation if snow-pack in the Cascades decreases, (2) negative impacts to tourism along the Oregon Coast as a result of damage and beach erosion from rising sea levels,⁴³ (3) negative impacts on the availability of water and summer river recreation (e.g., river rafting or sports fishing) as a result of lower summer river flows, and (4) negative impacts on the availability of water for domestic and business uses.

Short-term national trends will also affect economic growth in the region, but these trends are difficult to predict. At times, these trends may run counter to the long-term trends described above. A recent example is the downturn in economic activity in 2008 and 2009 following declines in the housing market and the mortgage banking crisis. The result of the economic downturn has been a decrease in employment related to the housing market, such as construction and real estate. Employment in these industries will recover as the housing market recovers and will continue to play a significant role in the national, state, and local economy over the long run. This report takes a long-run perspective on economic conditions (as the Goal 9 requirements intend) and does not attempt to predict the impacts of short-run national business cycles on employment or economic activity.

State, Regional, and Local Trends

State, regional, and local trends will also affect economic development in Salem over the next 20 years. The most important of these trends includes: continued in-migration from other states, distribution of population and employment across the state, and change in the types of industries in Oregon.

- **Continued in-migration from other states.** Oregon will continue to experience in-migration from other states, especially California and Washington. According to a U.S. Census study, Oregon had net interstate in-migration (more people moved *to* Oregon than moved *from*

⁴² "Economic Impacts of Climate Change on Forest Resources in Oregon: A Preliminary Analysis," Climate Leadership Initiative, Institute for Sustainable Environment, University of Oregon, May 2007.

⁴³ "The Economic Impacts of Climate Change in Oregon: A preliminary Assessment," Climate Leadership Initiative, Institute for Sustainable Environment, University of Oregon, October 2005.

Oregon) during the period 1990-2010. Oregon had an annual average of 26,290 more in-migrants than out-migrants during the period 1990-2000, while the annual average dropped to 9,800 during the period 2000-2010. Between 2010 and 2013, the annual average was 15,612 a year.⁴⁴

- **Concentration of population and employment in the Willamette Valley.** Nearly 70% of Oregon's population lives in the Willamette Valley. About 10% of Oregon's population lives in Southern Oregon, 9% lives in Central Oregon, and 6% live in coastal counties. The Oregon Office of Economic Analysis (OEA) forecasts that population will continue to be concentrated in the Willamette Valley through 2040, increasing slightly to 71% of Oregon's population.

Employment growth generally follows the same trend as population growth. Employment growth varies between regions even more, however, as employment reacts more quickly to changing economic conditions. Total employment increased in each of the state's regions over the period 1970-2006 but over 70% of Oregon's employment was located in the Willamette Valley.

- **Change in the type of the industries in Oregon.** As Oregon has transitioned away from natural resource-based industries, the composition of Oregon's employment has shifted from natural resource based manufacturing and other industries to service industries. The share of Oregon's total employment in Service industries increased from its 1970s average of 19% to 45% in 2011, while employment in Manufacturing declined from an average of 18% in the 1970s to an average of 10% in 2011.
- **Shift in manufacturing from natural resource-based to high-tech and other manufacturing industries.** Since 1970, Oregon started to transition away from reliance on traditional resource-extraction industries. A significant indicator of this transition is the shift within Oregon's manufacturing sector, with a decline in the level of employment in the Lumber & Wood Products industry and concurrent growth of employment in other manufacturing industries, such as high-technology manufacturing (Industrial Machinery, Electronic Equipment, and Instruments), Transportation Equipment manufacturing, and Printing and Publishing.⁴⁵

⁴⁴ Portland State University Population Research Center, Population Report, Components of Population Change for 1990-2000, 2000-2010, and 2010-2013. <http://pdx.edu/prc/annual-oregon-population-report>

⁴⁵ Although Oregon's economy has diversified since the 1970's, natural resource-based manufacturing accounts for more than nearly 40% of employment in manufacturing in Oregon in 2010, with the most employment in Wood Product and Food manufacturing.

- **Continued importance of manufacturing to Oregon's economy.** Oregon's exports totaled \$19.4 billion in 2008, nearly doubling since 2000. Oregon's largest export industries were computer and electronic products and agricultural products, which accounted for nearly 60% of Oregon's exports. Manufacturing employment is concentrated in five counties in the Willamette Valley or Portland area: Washington, Multnomah, Lane, Clackamas, and Marion Counties.⁴⁶
- **Small businesses continue to account for a large share of employment in Oregon.** While small firms played a large part in Oregon's expansion between 2003 and 2007, they also suffered disproportionately in the recession and its aftermath (64% of the net jobs lost between 2008 and 2010 were from small businesses).

In 2011, small businesses (those with 100 or fewer employees) accounted for 96% of all businesses and 41% of all private-sector employment in Oregon. Said differently, most businesses in Oregon are small (in fact, 77% of all businesses have fewer than 10 employees), but the largest share of Oregon's workers work for large businesses.

The average annualized payroll per employee at small businesses was \$33,404 in 2011, which is considerably less than that at large businesses (\$47,661) and the statewide average for all businesses (\$41,802).⁴⁷
- **The changing composition of employment has not affected all regions of Oregon evenly.** Growth in high-tech and Services employment has been concentrated in urban areas of the Willamette Valley and Southern Oregon, particularly in Washington, Benton, and Josephine Counties. The brunt of the decline in Lumber & Wood Products employment was felt in rural Oregon, where these jobs represented a larger share of total employment and an even larger share of high-paying jobs than in urban areas.

⁴⁶ Business Oregon, "Economic Data Packet"

⁴⁷ U.S. Census Bureau, 2011 Statistics of U.S. Businesses, Annual Data, Enterprise Employment Size, U.S. and States

Availability of Labor

The availability of trained workers in Salem will impact development of Salem's economy over the planning period. Key trends that will affect the workforce in Salem over the next 20 years include its growing population, aging population, and commuting trends.

Growing Population

Population growth in Oregon tends to follow economic cycles. Historically, Oregon's economy is more cyclical than the nation's, growing faster than the national economy during expansions, and contracting more rapidly than the nation during recessions. Oregon grew more rapidly than the U.S. in the 1990s (which was generally an expansionary period) but lagged behind the U.S. in the 1980s. Oregon's slow growth in the 1980s was primarily due to the nationwide recession early in the decade. As the nation's economic growth slowed during 2007, Oregon's population growth began to slow.

Oregon's population grew from 2.8 million people in 1990 to 3.9 million people in 2012, an increase of over 1,000,000 people at an average annual rate of 1.43%. Oregon's growth rate slowed to 1.06% annual growth between 2000 and 2012.

Table B-1 shows that Salem's population grew faster than the State's between 1990 and 2013, expanding by 1.7% annually and adding over 50,000 people. Salem's population also grew faster than Marion County as a whole, which grew by 1.5% annually and added 94,397 residents over the 22-year period, but slower than Polk County, which grew at 1.9% annually and added 27,524 residents.

Table B-1. Population in the U.S., Oregon, Marion County, Polk County, Salem 1990-2013

Area	Population			Change 1990 to 2013		
	1990	2000	2013	Number	Percent	AAGR
U.S.	248,709,873	281,421,906	316,364,000	67,654,127	27%	1.1%
Oregon	2,842,321	3,421,399	3,919,020	1,076,699	38%	1.4%
Marion County	228,483	284,834	322,880	94,397	41%	1.5%
Polk County	49,541	62,380	77,065	27,524	56%	1.9%
Salem	106,786	136,924	157,770	50,984	48%	1.7%

Source: Portland State University, Population Research Center

Note: AAGR is average annual growth rate.

Migration is the largest component of population growth in Oregon. Between 1990 and 2010, in-migration accounted for 68% of Oregon's population growth. Over the same period, in-migration accounted for 77% of population growth in the Salem MSA, adding more than 66,000 residents over the 20-year period.

Aging Population

The number of people age 65 and older in the U.S. is expected to double by 2050, while the number of people under age 65 will only grow by 12%. The economic effects of this demographic change include a slowing of the growth of the labor force, need for workers to replace retirees, aging of the workforce for seniors that continue working after age 65, an increase in the demand for healthcare services, and an increase in the percent of the federal budget dedicated to Social Security and Medicare.⁴⁸

The average age of Salem residents is increasing. Table B-2 shows the change in age distribution between 2000 and 2010. All age groups gained population. The age group that experienced the largest growth—in population as well as percentage change—were those between the ages of 45 and 64, gaining 34% or 9,597 people over the 10-year period. This trend is consistent with statewide trends.

Table B-2. Population by age, Salem, 2000 and 2010

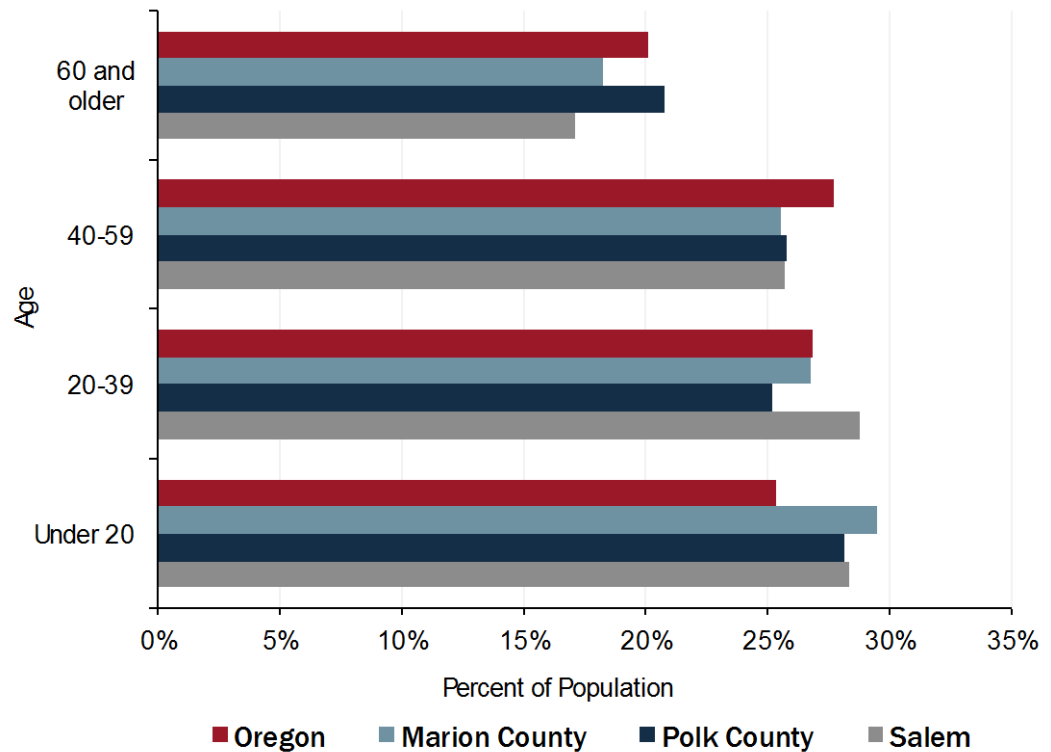
Age Group	2000		2010		Change 2000-2010		
	Number	Percent	Number	Percent	Number	Percent	Share
Under 5	10,190	7%	11,407	7%	1,217	12%	0%
5-17	24,629	18%	27,529	18%	2,900	12%	0%
18-24	15,646	11%	16,615	11%	969	6%	-1%
25-44	41,198	30%	42,779	28%	1,581	4%	-2%
45-64	28,222	21%	37,819	24%	9,597	34%	4%
65 and over	17,039	12%	18,488	12%	1,449	9%	0%
Total	136,924	100%	154,637	100%	17,713	13%	0%

Source: U.S. Census 2000 Table P12, U.S. Census 2010 Table P12

⁴⁸ The Board of Trustees, Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, 2008, *The 2008 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*, April 10, 2008. *The Budget and Economic Outlook: Fiscal Years 2007 to 2016*, January; and Congressional Budget Office, 2005, *The Long-Term Budget Outlook*, December.

Figure B- 1 shows the age structure for Oregon, Marion County, Polk County, and Salem in 2010. Salem has a larger share of residents between the ages of 20 and 39 than Marion County, Polk County and the State. Salem also has a comparatively smaller share of residents aged 60 years and older.

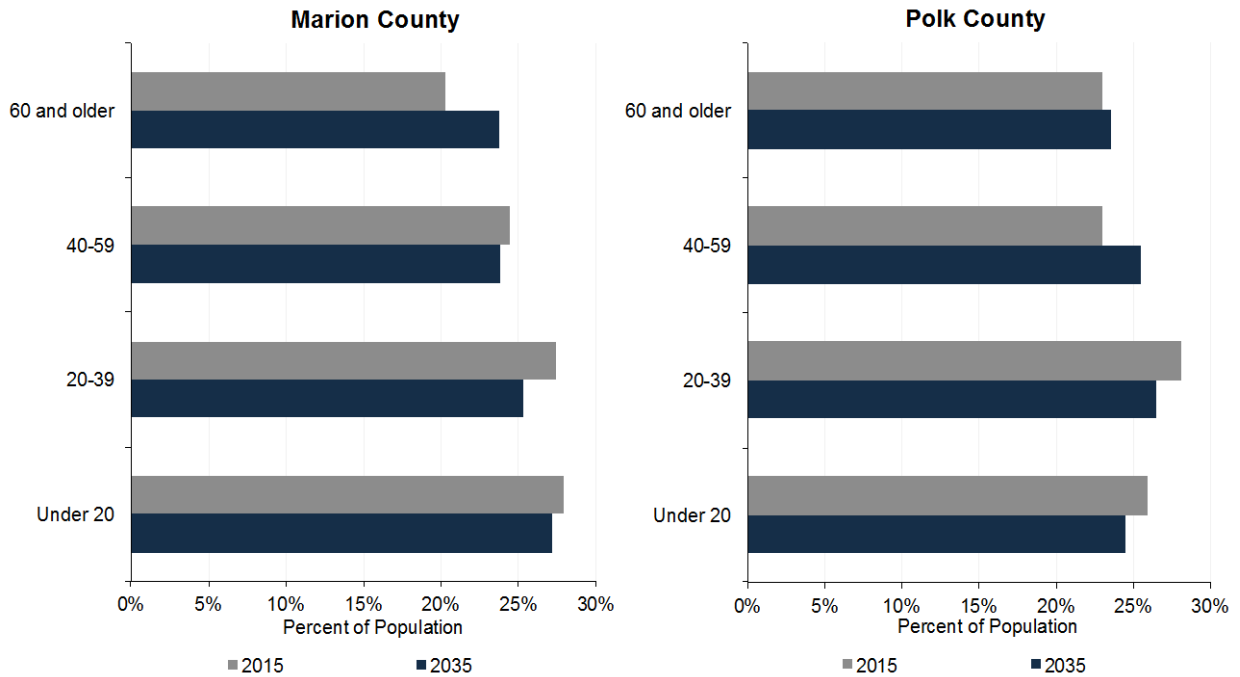
Figure B- 1. Population distribution by age, Oregon, Marion County, Polk County, and Salem, 2010



Source: U.S. Census 2010, Profile of General Population and Housing Characteristics

Figure B-2 shows the Oregon Office of Economic Analysis' (OEA) projection of the age structure in Marion and Polk counties in 2015 and 2035. The OEA projects the share of the population over the age of 60 in Marion County will grow from 20% in 2015 to 24% in 2035, while Polk County will similarly experience an increase in the 40-59 age group (23% in 2015 to 25% in 2035).

Figure B-2. Current and projected population by age, Marion County and Polk County, 2015 and 2035



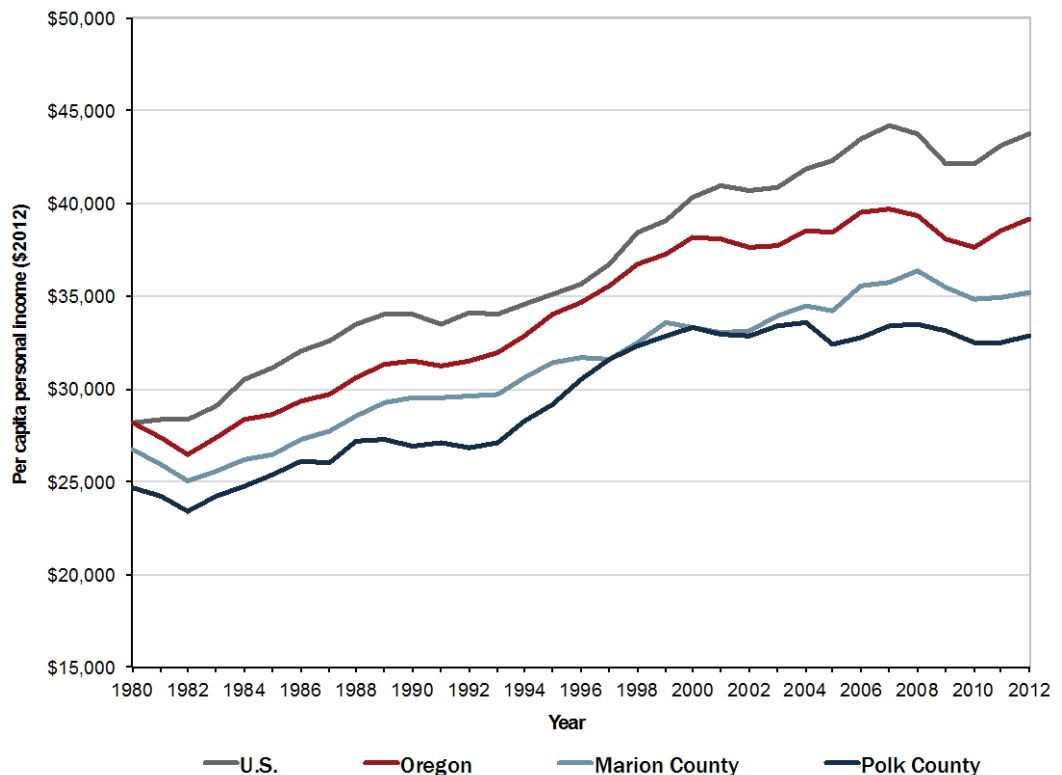
Source: Oregon Office of Economic Analysis.
http://www.oregon.gov/DAS/OEA/docs/demographic/pop_by_ageandsex.xls

Income

Figure B-3 shows the change in per capita personal income for the U.S., Oregon, Marion County, and Polk County between 1980 and 2012 (in constant 2012 dollars). Per capita income grew most years during the 31-year period, with the exception of a decrease during the 2007-2009 recession. Since 1980, Oregon's per capita personal income was consistently lower than the U.S. average. In 1980, Oregon's per capita person income was 100% of the national average. By 2012, Oregon's per capita income was 90% of the national average.

Marion and Polk counties' per capita incomes have consistently been lower than State and national averages. In 1980, Marion County's per capita income was 95% of the national average, decreasing to 80% by 2012. In 1980, Polk County's per capita income was 88% of the national average, decreasing to 75% by 2012.

Figure B-3. Per capita personal income in the U.S., Oregon, and Marion and Polk County, 1980-2012, (2012 dollars)



Source: Regional Economic Information System, Bureau of Economic Analysis, U.S. Department of Commerce, Table CA1-3. <http://www.bea.gov/iTable/iTable.cfm?ReqID=70&step=1>.

Table B-3 shows three measures of income in 2012 for Oregon, Marion County, Polk County and Salem: per capita income, median household income, and median family income. Salem's incomes are lower than the State averages.

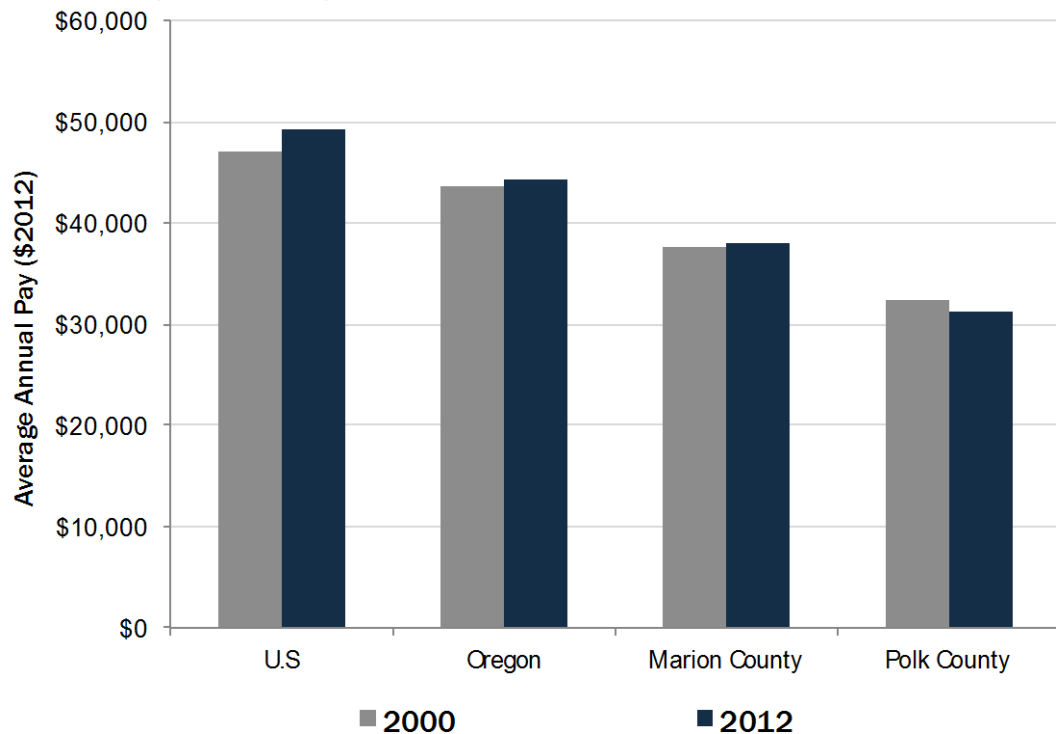
Table B-3. Per Capita Income, Median Household Income, Median Family Income, Oregon, Marion County, Polk County, and Salem, 2012

	Per Capita Income	Median Household Income	Median Family Income
Oregon	\$26,011	\$49,161	\$59,476
Marion County	\$20,992	\$45,422	\$53,938
Polk County	\$22,502	\$46,827	\$55,794
Salem	\$21,459	\$46,479	\$55,007

Source: 2012 American Community Survey, DP03

Figure B-4 shows average annual pay per employee in the U.S., Oregon, Marion County, and Polk County between 2000 and 2012. The national average wage grew more than State or County averages. The average U.S. wage increased by 5% (more than \$2,000), compared to the State increase of 1% (\$530), Marion County's increase of 2% (nearly \$569), and Polk County's *decrease* of -4% (declining by over \$1,000). Wages in Marion County decreased by roughly 2% over the 12-year period relative to the U.S. Marion County's average pay stayed relatively constant (roughly 86%), relative to the state average.

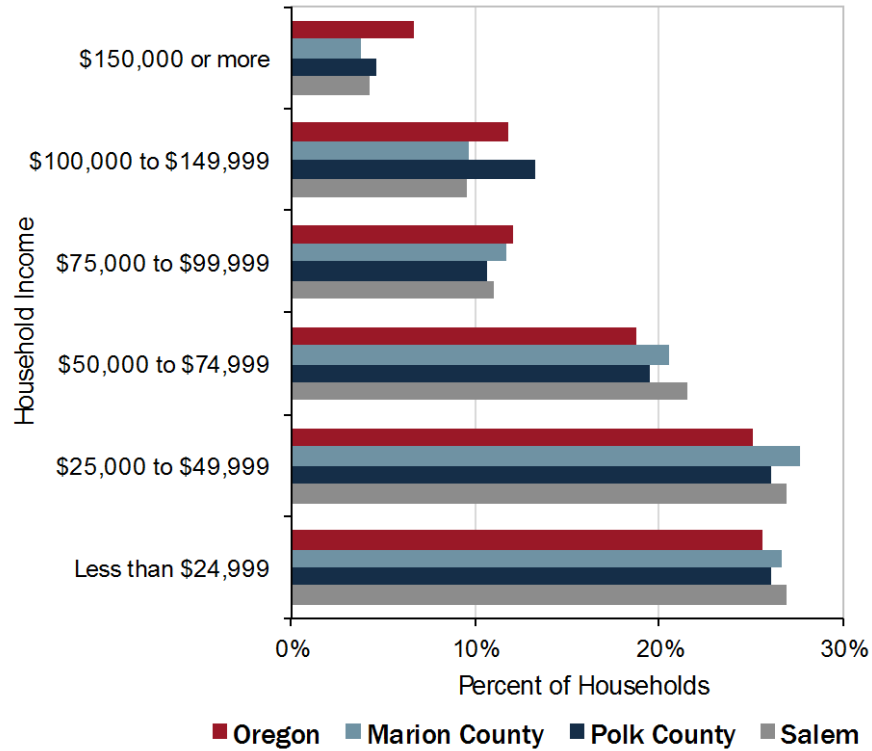
Figure B-4. Average Annual Pay, U.S., Oregon, Marion County, and Polk County, 2000-2012 (2012 Dollars)



Source: Oregon Employment Department, <http://www.qualityinfo.org/olmisj/CEP>, and U.S. Bureau of Labor Statistics, <http://www.bls.gov/cew/>

Figure B-5 shows the distribution of household income in Oregon, Marion County, Polk County and Salem in 2012. About 54% of Salem's households had income of less than \$50,000, compared with 51% of State households.

Figure B-5. Household Income, Oregon, Marion County, Polk County, and Salem, 2012

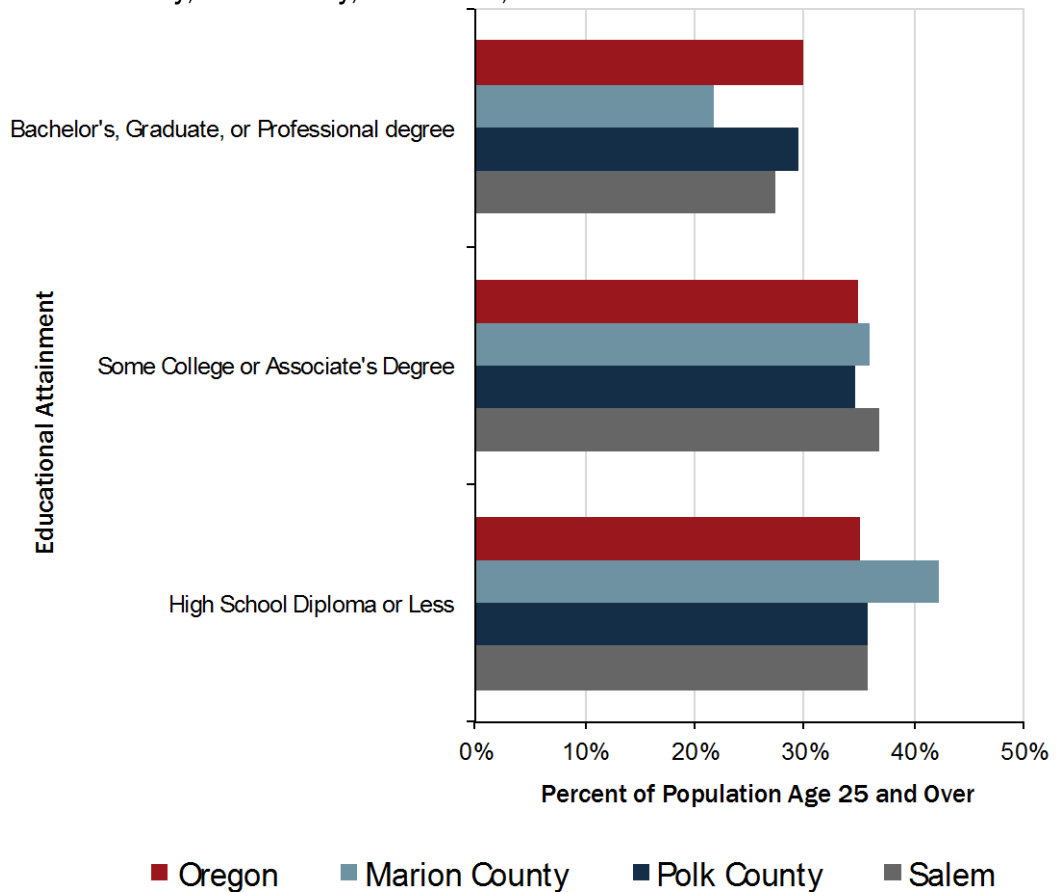


Source: American Community Survey, 2012; Table B19001

Educational Attainment

The availability of trained, educated workers affects the quality of labor in a community. Educational attainment is an important labor force factor because firms need to be able to find educated workers. Figure B-6 shows the share of population by education level completed in Oregon, Marion County, Polk County, and Salem in 2012. In 2012, Salem had a slightly higher share of residents above the age of 25 with some college or an associate degree (37%) than Oregon residents (35%), and a slightly lower share of residents with a bachelor's degree or higher (27%) than state residents (30%). Marion County had a higher share of residents with a high school diploma or less (15%) than the state as a whole (10%), and a lower share with a bachelor's degree or higher (22% versus 30%).

Figure B-6. Educational attainment for the population 25 years and over, Oregon, Marion County, Polk County, and Salem, 2012



Source: 2012 American Community Survey, B15003

Workforce Participation and Unemployment

The current labor force participation rate is an important consideration in the availability of labor. The labor force in any market consists of the adult population (16 and over) who are working or actively seeking work. The labor force includes both the employed and unemployed. Children, retirees, students, and people who are not actively seeking work are not considered part of the labor force. According to the 2012 American Community Survey, Salem has over 78,000 people in its labor force (Table B-4). Sixty-five percent of Salem's working age population is in the labor force, compared to 62% of the state's population.

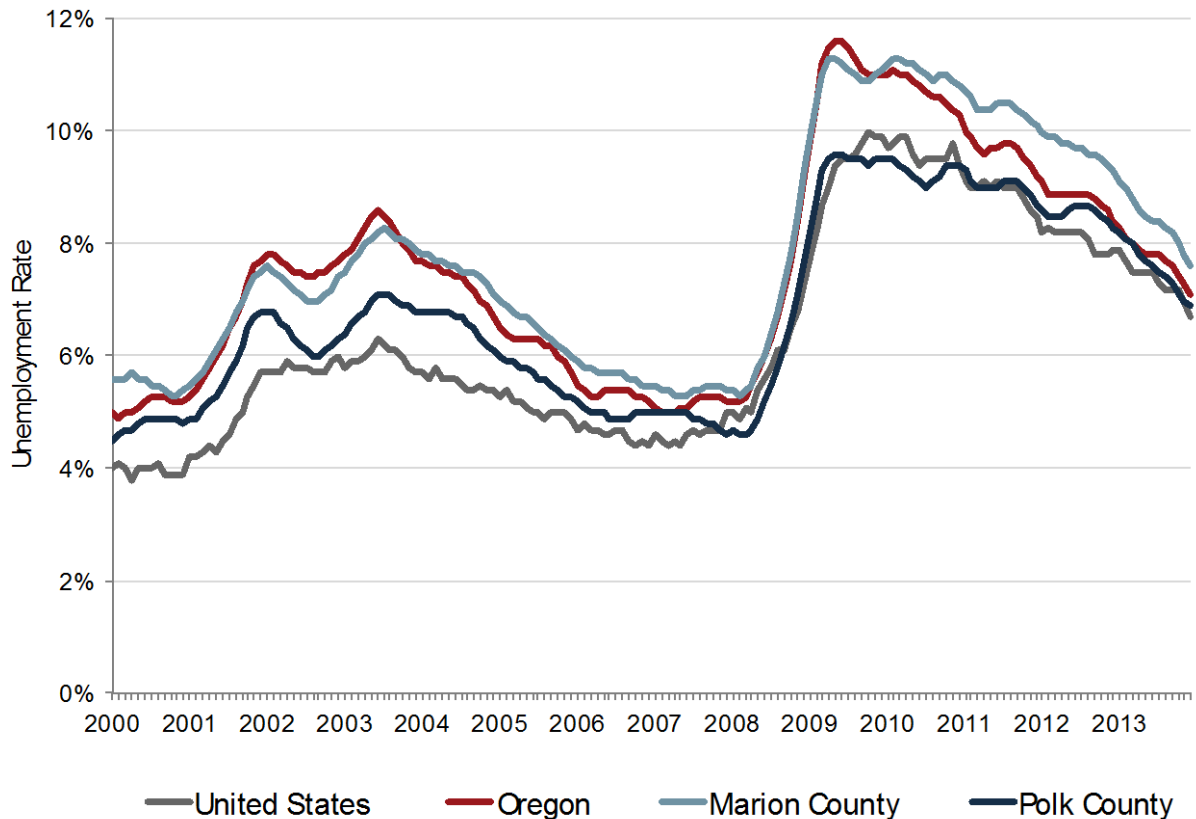
Table B-4. Labor force status for population 16 years and older, Oregon, Marion County, Polk County, and Salem, 2012

Labor Force Status	Oregon	Marion County	Polk County	Salem
In workforce	62%	64%	59%	65%

Source: 2012 American Community Survey, B23001

The unemployment rate is one indicator of the relative number of workers who are actively seeking employment. Figure B-7 shows the unemployment rate for the U.S., Oregon, Marion County, and Polk County between 2000 and 2013. Over this period, unemployment rates in Oregon and Marion County tracked one another closely, and were always higher than the rate observed for the nation as a whole. Polk County's unemployment rate was generally lower than those of Marion County and the State, but slightly higher than the national rate.

Figure B-7. Unemployment Rate, U.S., Oregon, Marion County, and Polk County, 2000-2013

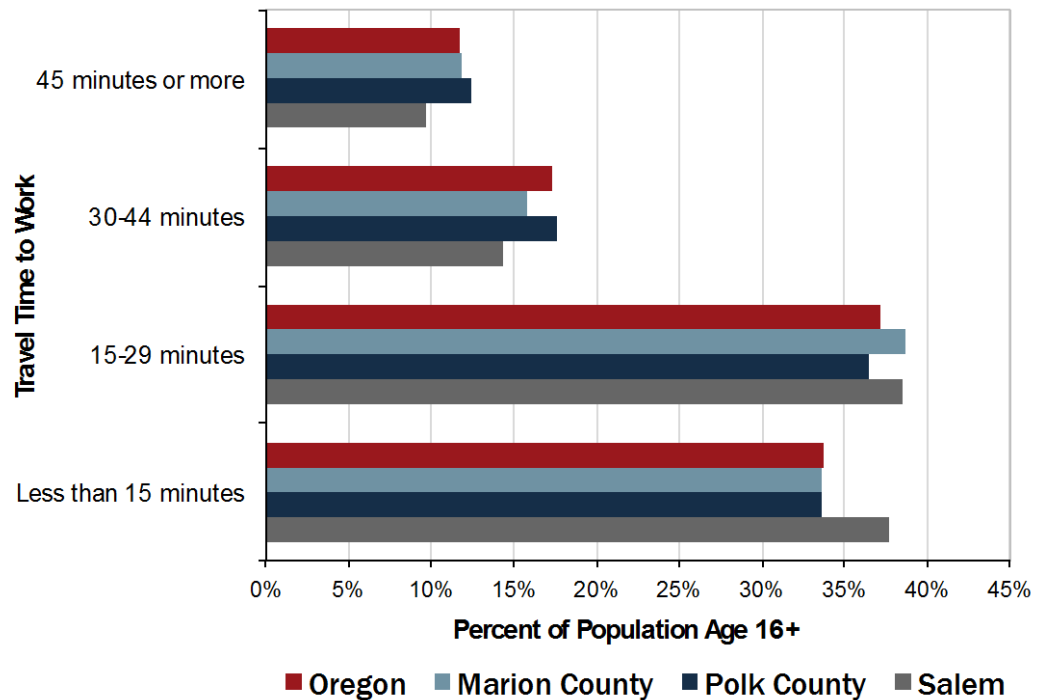


Source: Bureau of Labor Statistics, via Oregon Labor Market Information System: <http://www.qualityinfo.org/olmisj/labforce>

Commuting Patterns

Commuting plays an important role in Salem's economy because employers in Salem are able to access workers from people living in Salem, as well as the broader Willamette Valley. Figure B-8 shows a comparison of the commute time to work for residents 16 years and older for Oregon, Marion County, Polk County, and Salem in 2012. Seventy-six percent of Salem residents have a commute of less than 30 minutes compared to 72% of Marion County residents, 72% of Polk County residents and 71% of Oregon residents.

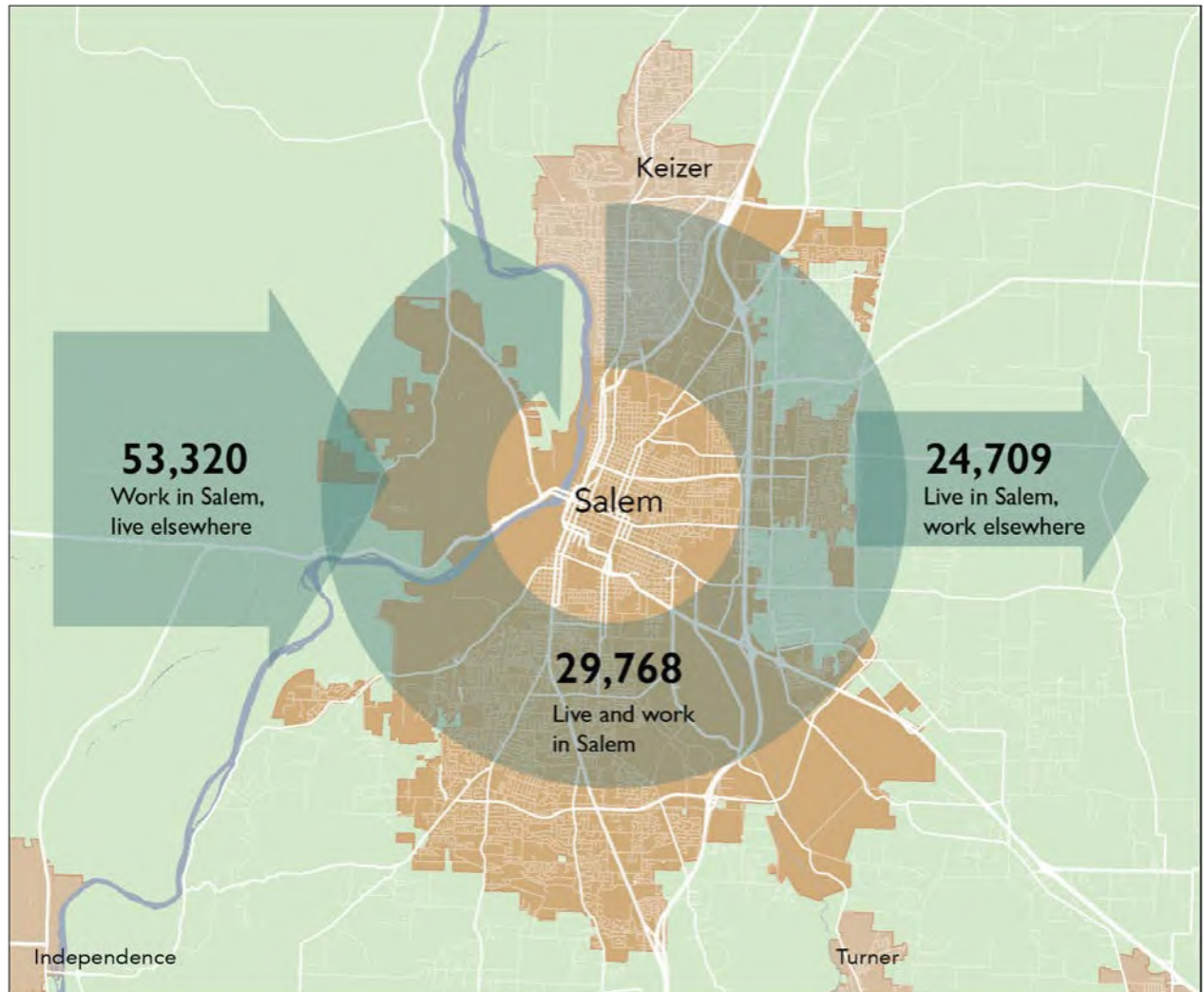
Figure B-8. Commuting time to work for residents 16 years and older, Oregon, Polk and Marion Counties, Salem, 2012



Source: 2012 American Community Survey, B08303

Figure B-9 shows the inflow and outflow patterns of workers and residents of Salem in 2012. Nearly two-thirds of the people who work in Salem commute into the City. This in-commuting pattern is consistent with other cities in the Willamette Valley. Net inflow into Salem is approximately 28,611 people; that is, many more people commute to Salem for work from outside than leave to work outside of the city.

Figure B-9. Inflow and outflow of labor in Salem, 2012



Source: U.S. Census Bureau: LED on the Map,
<http://lehdmap3.did.census.gov/themap3/>

Table B-5 shows where employees of firms located in Salem lived in 2011. Fifty-five percent of Salem's workers lived in Marion County, and 42% lived in Salem. Roughly 33% of Salem's workers lived outside of Marion and Polk counties.

Table B-5. Places where workers in Salem lived, 2011

Location	Number	Percent
Counties		
Marion County	45,755	55%
Polk County	10,015	12%
Linn County	3,670	4%
Multnomah County	3,507	4%
Washington County	3,304	4%
Clackamas County	3,010	4%
Lane County	2,900	3%
Yamhill County	2,002	2%
Benton County	1,450	2%
All other counties	7,475	9%
Cities		
Salem	35,177	42%
Keizer	6,488	8%
Portland	2,714	3%
Albany	1,726	2%
Dallas	1,367	2%
All other cities	35,616	43%
Total	83,088	100%

Source: U.S. Census Bureau: LED on the Map,
<http://lehdm3.did.census.gov/themap3/>

Table B-6 shows the places where residents of Salem were employed in 2011. Sixty-six percent of Salem's 54,477 working residents worked in Marion County, 6% worked in Polk County, and 58% worked within Salem city limits.

Table B-6. Places that residents of Salem were employed, 2011

Location	Number	Percent
Counties		
Marion County	36,125	66%
Multnomah County	3,632	7%
Polk County	3,386	6%
Washington County	3,286	6%
Clackamas County	1,926	4%
Linn County	1,255	2%
Yamhill County	975	2%
Lane County	941	2%
All other counties	2,951	5%
Cities		
Salem	31,670	58%
Portland	3,179	6%
Keizer	1,491	3%
Woodburn	826	2%
Tigard	773	1%
All other cities	16,538	30%
Total	54,477	100%

Source: U.S. Census Bureau: LED on the Map,
<http://lehdm3.did.census.gov/themap3/>

These commuting patterns show that Salem firms have access to workforce living throughout the region. Even though commutes in Salem are generally shorter than the State average, these commuting patterns create demand for automotive and other forms of transportation, both within Salem and on roads throughout the region.

Increasing energy prices may impact commuting patterns within Salem. The impact is most likely to be greatest for workers living in the smaller cities around the Salem area because the commute to Salem is longer from these outlying cities and areas. Willingness to commute by most workers living and working within Salem is likely to have relatively little impact from fuel prices, unless prices increase dramatically.

Changes in Employment

The economy of the nation changed substantially between 1980 and 2014. These changes affected the composition of Oregon's economy, including Salem. At the national level, the most striking change was the shift from manufacturing employment to services. The most important shift in Oregon (including Salem) during this period has been the shift from a timber-based economy to a more diverse economy, with the greatest employment in services.

Employment Trends in Salem

Over the past few decades, employment in the U.S. has shifted from manufacturing and resource-intensive industries to service-oriented sectors of the economy. Increased worker productivity and the international outsourcing of routine tasks have led to declines in employment in the major goods-producing industries.

In the 1970s, Oregon started to transition away from reliance on traditional resource-extraction industries. An important indicator of this transition is the shift within Oregon's manufacturing sector, with a decline in the level of employment in the Lumber & Wood Products industry⁴⁹ and concurrent growth of employment in high-technology manufacturing industries (Industrial Machinery, Electronic Equipment, and Instruments).⁵⁰

As Oregon has transitioned away from natural resource-based industries, the composition of Oregon's employment has shifted from natural resource based manufacturing and other industries to service industries. The share of Oregon's total employment in Service industries increased from its 1970s average of 19% to 30% in 2000, while employment in Manufacturing declined from an average of 18% of total employment in the 1970s to an average of 12% in 2000.

The long-term employment trends in the Salem MSA are similar to those observed for national and state employment. Table B-7 and Table B-8 present data from the Oregon Employment Department that show changes in covered employment for the Salem MSA between 1980 and 2013.⁵¹ The changes in sectors and industries are shown in two tables: (1) between 1980 and 2000 and (2) between 2001 and 2013. The analysis is divided in this way because of changes in

⁴⁹ Lumber and Wood Products manufacturing is in Standard Industrial Classification (SIC) 24

⁵⁰ SIC 35, 36, 38

⁵¹ Covered employment refers to jobs covered by unemployment insurance, which includes most wage and salary jobs but does not include sole proprietors, seasonal farm workers, and other classes of employees.

industry and sector classification that made it difficult to compare information about employment collected after 2001 with information collected prior to 2000.

Employment data in this section is summarized by *sector*, each of which includes several individual *industries*. For example, the Retail Trade sector includes General Merchandise Stores, Motor Vehicle and Parts Dealers, Food and Beverage Stores, and other retail industries.

Table B-7 shows changes in covered employment by sector in the Salem MSA between 1980 and 2000. Covered employment in the Marion and Polk Counties grew from 88,113 to 143,540, an increase of 63% or 55,427 jobs. Every sector added jobs during this period, except for the 'nonclassifiable/all others' category. The private sectors with the greatest change in employment were Services, Retail Trade, and Agriculture, Forestry & Fishing, adding a total of 35,537 jobs or about 65% of all new jobs. Manufacturing grew by 3,483 jobs during the 20-year period.

Table B-7. Covered employment by Industry, Salem MSA, 1980-2000

Sector	1980	1990	2000	Change 1980 to 2000			
				Difference	Percent	AAGR	Share
Agriculture, Forestry & Fishing	3,985	7,520	9,992	6,007	151%	4.7%	2%
Mining	59	73	276	217	368%	8.0%	0%
Construction	4,247	4,714	7,469	3,222	76%	2.9%	0%
Manufacturing	14,315	16,000	17,798	3,483	24%	1.1%	-4%
Trans., Comm., & Utilities	2,718	2,896	4,448	1,730	64%	2.5%	0%
Wholesale Trade	3,189	4,086	4,403	1,214	38%	1.6%	-1%
Retail Trade	15,993	19,730	24,906	8,913	56%	2.2%	-1%
Finance, Insurance & Real Estate	4,693	5,029	5,882	1,189	25%	1.1%	-1%
Services	12,949	21,681	33,566	20,617	159%	4.9%	9%
Nonclassifiable/ all others	91	99	61	-30	-33%	-2.0%	0%
Government	25,874	30,026	34,739	8,865	34%	1.5%	-5%
Total	88,113	111,854	143,540	55,427	63%	2.5%	

Source: Oregon Employment Department, Oregon Labor Market Information System, Covered Employment & Wages, <http://www.qualityinfo.org/olmisj/CEP>. Summary by industry and percentages calculated by ECONorthwest

Table B-8 shows the change in covered employment by sector for the Salem MSA between 2001 and 2013. Employment increased by 9,478 jobs, or 7%, during this period. The private sectors with the largest increases in numbers of employees were Health and Social Assistance, Accommodations and Food Services, Natural Resources and Mining, and Retail. The Manufacturing sector, meanwhile, lost 3,330 jobs during this period.

Table B-8. Covered employment by Industry, Salem MSA, 2001-2013

Sector	2001	2013	Change 2001 to 2013			
			Difference	Percent	AAGR	Share
Natural Resources and Mining	10,534	11,609	1,075	9%	0.8%	0%
Construction	6,759	6,711	-48	-1%	-0.1%	0%
Manufacturing	15,014	11,684	-3,330	-29%	-2.1%	-3%
Wholesale	3,354	3,488	134	4%	0.3%	0%
Retail	15,646	16,724	1,078	6%	0.6%	0%
Transportation & Warehousing	3,172	3,774	602	16%	1.5%	0%
Information	1,929	1,025	-904	-88%	-5.1%	-1%
Finance & Insurance	3,579	4,161	582	14%	1.3%	0%
Real Estate Rental & Leasing	2,434	1,906	-528	-28%	-2.0%	0%
Professional, Scientific & Tech. Srv.	3,569	4,125	556	13%	1.2%	0%
Management of Companies	660	1,367	707	52%	6.3%	0%
Admin. Support & Cleaning Srv.	5,628	6,355	727	11%	1.0%	0%
Education	1,819	2,345	526	22%	2.1%	0%
Health & Social Assistance	14,692	19,608	4,916	25%	2.4%	3%
Arts, Entertainment & Recreation	1,473	1,465	-8	-1%	0.0%	0%
Accommodations & Food Services	9,836	11,528	1,692	15%	1.3%	1%
Other Services	5,289	5,741	452	8%	0.7%	0%
Private Non-Classified	39	40	1	3%	0.2%	0%
Government	37,264	38,512	1,248	3%	0.3%	-1%
Total	142,690	152,168	9,478	7%	0.5%	

Source: Oregon Employment Department, Oregon Labor Market Information System, Covered Employment & Wages, <http://www.qualityinfo.org/olmisj/CEP>. Summary by industry and percentages calculated by ECONorthwest

Employment in Salem

Table B-9 shows a summary of confidential employment data for the Salem portion of the Salem-Keizer UGB in 2012. Salem had 92,036 jobs at 6,496 establishments in 2010, with an average firm size of 14 employees. The sectors with the greatest employees were: Government (30%), Health Care and Social Assistance (15%), Retail (11%), Accommodation and Food Service (8%), and Manufacturing (6%). These sectors accounted for 64,485 or 70% of Salem's jobs.

Table B-9. Covered employment in the Salem portion of the Salem-Keizer UGB, 2012

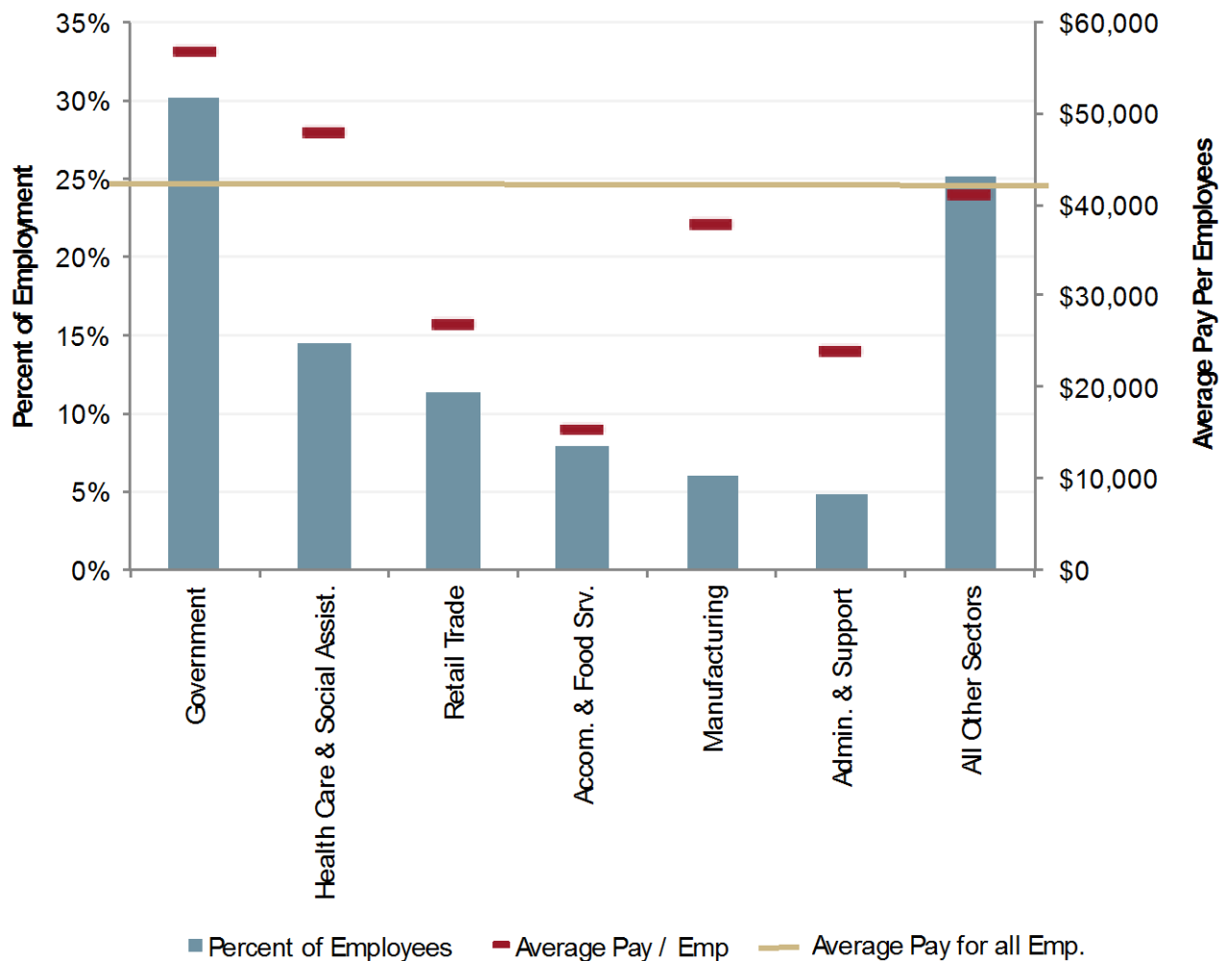
Sector / Industry	Establishments	Employees		Payroll	
		Number	% of Total Emp.	Total	Average Pay per Employee
Agriculture, Forestry, Fishing & Hunting	64	1,292	1%	\$28,363,721	\$21,953
Construction	540	3,084	3%	\$145,502,003	\$47,180
Manufacturing	226	5,497	6%	\$208,364,216	\$37,905
Food Manufacturing	36	2,474	3%	\$79,217,646	\$32,020
Computer and Electronic Product Manufacturing	12	609	1%	\$32,008,475	\$52,559
Fabricated Metal Product Manufacturing	29	474	1%	\$21,778,735	\$45,947
Printing and Related Support Activities	19	266	0%	\$9,763,167	\$36,704
Chemical Manufacturing	11	221	0%	\$10,448,103	\$47,276
Machinery Manufacturing	12	218	0%	\$10,292,983	\$47,216
Furniture and Related Product Manufacturing	19	209	0%	\$7,030,256	\$33,638
Other Manufacturing	88	1,026	1%	\$37,824,851	\$36,866
Wholesale Trade	233	1,487	2%	\$74,369,834	\$50,013
Retail Trade	691	10,534	11%	\$281,867,428	\$26,758
Transportation & Warehousing & Utilities	122	1,615	2%	\$67,341,743	\$41,698
Information	63	722	1%	\$34,531,767	\$47,828
Finance & Insurance	351	3,385	4%	\$170,976,847	\$50,510
Real Estate & Rental & Leasing	319	1,194	1%	\$40,749,388	\$34,128
Professional, Scientific, and Technical Services	632	3,239	4%	\$171,625,104	\$52,987
Management of Companies and Enterprises	45	778	1%	\$44,891,666	\$57,701
Admin. & Support & Waste Mgt. & Remediation Srv.	283	4,410	5%	\$105,815,314	\$23,994
Private Educational Services	67	1,924	2%	\$71,742,570	\$37,288
Health Care & Social Assistance	761	13,380	15%	\$641,612,688	\$47,953
Health Care	606	11,398	12%	\$595,898,428	\$52,281
Social Assistance	155	1,982	2%	\$45,714,260	\$23,065
Arts, Entertainment, & Recreation	62	763	1%	\$12,581,878	\$16,490
Accommodation & Food Services	500	7,345	8%	\$113,647,350	\$15,473
Food Services and Drinking Places	470	6,923	8%	\$106,302,178	\$15,355
Accommodation	30	422	0%	\$7,345,172	\$17,406
Other Services (except Public Administration)	1,070	3,661	4%	\$91,193,022	\$24,909
Government	467	27,729	30%	\$1,569,460,064	\$56,600
Federal Government	24	822	1%	\$51,314,997	\$62,427
State Government	249	17,193	19%	\$1,066,858,833	\$62,052
Local Government	194	9,714	11%	\$451,286,234	\$46,457
Total	6,496	92,039	100%	\$3,874,636,603	\$ 42,098

Source: Oregon Employment Department Quarterly Census of Employment and Wages (QCEW). Summary by industry and percentages calculated by ECONorthwest

Figure B-10 shows the percent of all employment and average pay per employee for sectors with 5% or more of employment in Salem in 2012. Figure B-10 shows average pay for all employees (\$42,000) as a light brown line across the graph and average pay for individual sectors as short red lines. Figure B-10 shows:

- The sectors with more than 5% of employment and *above* average pay are: Government (\$56,600 average pay per employee) and Health Care and Social Assistance (\$48,000).
- The sectors with more than 5% of employment and below average pay are: Retail Trade (\$26,800), Accommodations and Food Services (\$15,500), Manufacturing (\$37,900), and Administrative and Support and Waste Management (\$24,000).

Figure B-10. Percent of employment and average pay per employee for selected sectors, Salem, 2012



Source: Oregon Employment Department Quarterly Census of Employment and Wages (QCEW)

Regional business clusters

One way to assess the types of businesses that are likely to have future growth in an area is to examine relative concentration and employment growth of existing businesses. This method of analysis can help determine relationships and linkages within industries, also called industrial clusters. Sectors that are highly concentrated (meaning there are more than the “average” number of businesses in a sector in a given area) and have had high employment growth are likely to be successful industrial cluster. Sectors with either high concentration of businesses or high employment group may be part of an emerging cluster, with potential for future growth.

The March 2007 report “Marion, Polk, & Yamhill Counties Regional Economic Profile and Strategic Assessment” (E.D. Hovee and Company) provided an extensive analysis and discussion of business clusters with growth potential in the three-county region. The business clusters identified in this report were:

- **Agriculture, Food & Beverage Products.** This cluster includes two separate agriculture clusters: food process & agriculture and nursery products. Agricultural products are an important part of the economy in Marion and Polk counties, providing opportunities for production of export products, such as wine or organic foods. State initiatives, such as the Oregon Innovation Council, provide firms in these businesses with opportunities to collaborate with similar businesses.
- **Traded-Sector Services.** This cluster includes creative services and professional services. Examples of these services include: social, economic, or educational research; testing laboratories; specialized legal services; drafting services; and other professional, scientific, and technical services.
- **Metals, Machinery, and Equipment.** This cluster consists of firms producing primary and fabricated metals. Opportunities in this cluster include: producing fabricated metals for specialty markets, manufacturing machinery, and refining metals.
- **Forest Products.** Production of forest products, wood, and paper continue to a significant employment cluster in Oregon. Oregon is the dominant producer of softwood plywood, softwood veneer, engineered wood products, and lumber. Emerging forest products include generation of renewable electric energy and producing transportation bio-fuels from woody biomass.
- **Specialty Materials Manufacturing.** This potential cluster includes industrial activities such as materials, fabrics, aggregate materials, and petro-chemical products. The Marion, Polk, and Yamhill County region has a concentration in the production of construction materials, such as sand and gravel, asphalt, or plastic and concrete pipes. Other

opportunities in this cluster include production of non-durable consumer products, such as fertilizer, paint, synthetic dyes and pigments, or laminated plastics.

Outlook for Growth in Salem

Table B-10 shows the population forecast developed by the Office of Economic Analysis for Oregon and Marion and Polk Counties for 2015 through 2050. Polk County is forecast to grow at a faster rate than Marion County, and both counties are predicted to grow at a faster rate than the statewide average during this period. The forecast shows that Marion County's population will grow by about 167,000 people over the 35-year period (a 50% increase), while Polk County's population will grow by 55,673 people over the same period (representing a 69% increase). Over the same period, Oregon is forecast to grow by roughly 1.6 million people, a 40% increase.

Table B-10. State population forecast, Oregon, Marion and Polk Counties, 2015 to 2050

Year	Oregon	Marion County	Polk County
2015	4,001,600	331,643	80,204
2020	4,252,100	355,189	88,081
2025	4,516,200	381,089	96,731
2030	4,768,000	406,612	105,274
2035	4,995,200	430,652	113,348
2040	5,203,000	453,557	121,044
2045	5,398,800	476,060	128,496
2050	5,588,500	498,624	135,877
Change 2015 to 2050			
Amount	1,586,900	166,981	55,673
% Change	40%	50%	69%
AAGR	1.0%	1.2%	1.5%

Source: Office of Economic Analysis,
<http://www.oregon.gov/DAS/OEA/demographic.shtml>

On October 7, 2009, Marion County adopted a new coordinated population forecast for the urban areas of the county. That forecast includes an adopted projection of population growth in the Salem-Keizer UGB for 2010 to 2030, but does not allocate population within the UGB to the cities of Salem and Keizer.

Keizer adopted a population forecast for 2010 and 2032 on May 7, 2012.⁵² **Error! Reference source not found.** shows that Keizer's adopted population forecast shows Keizer (including the Keizer portion of the Salem-Keizer UGB) growing to 48,089 people by 2032. Between 2010 and 2032, Keizer's forecast shows the city growing at an average annual growth rate of 1.26%.

⁵² Keizer ordinance number 2012-656.

Salem's housing needs analysis requires a forecast for the 2015 to 2035 period and are documented in this because the employment forecast (in Appendix C) assumes that employment will grow at the same rate as population. The steps to develop the forecast of population were:

1. Extrapolate the population growth of the Salem portion of the UGB from 2010 to 2015 at the adopted growth rate for the full UGB, 1.25% average annual growth. The result shows that the Salem portion of the UGB will have 210,035 people by 2015.
2. Extrapolate the Salem-Keizer UGB forecast from 2030 to 2035 based on the adopted average annual growth rate for the 2010 to 2030 period of 1.25%. The result shows that the Salem-Keizer UGB will have 319,203 people by 2035.
3. Extrapolate the population for the Keizer portion of the UGB from 2032 to 2035 using Keizer's adopted average annual growth rate of 1.26%. The result shows that the Keizer portion of the UGB will have 49,930 people by 2035.
4. Extrapolate the population for the Salem portion of the UGB from 2015 to 2035 the adopted growth rate for the full UGB, 1.25% average annual growth. The result shows that the Salem portion of the UGB will have 269,274 people by 2035.

When added together, the Salem and Keizer populations in 2035 equal the Salem-Keizer UGB population of 319,203 people in 2035.

Table B-11. Population forecast, Salem-Keizer UGB, 2010 to 2035

Year	Keizer	Salem	Salem-Keizer UGB
2010	36,478	197,386	233,864
2015		210,035	
2030	46,900	253,080	299,980
2032	48,089	-	
2035	49,930	269,274	319,203
Average Annual Growth Rates			
2010-2030	1.26%	1.25%	1.25%
2015-2035			
AAGR		1.25%	0.00%
People		59,239	-

Source: 2010 population is based on: "Population forecasts for Marion County, its Cities and Unincorporated Areas 2010-2030" Prepared by the Population Research Center, College of Urban and Prepared by the Population Research Center, College of Urban and Affairs, Portland State University.

2030 population for the Salem-Keizer UGB is based on the report: "Population forecasts for Marion County, its Cities and Unincorporated Areas 2010-2030"

2030 population for the cities of Keizer and Salem is based on Marion County work on allocating the UGB population to Salem and Keizer, shown in Exhibit B, Table 24 of Marion County's "Background Information for the 2030 Population Forecast." See the webpage: <http://www.co.marion.or.us/NR/rdonlyres/4A4325AB-F86C-4910-A891-D1FC6CF33FEF/23513/exhibitbbackgroundinventoryskugb.pdf>

The 2032 population forecast for Keizer is based on Keizer's adopted population forecast, documented in Ordinance number 2012-656, adopted by Keizer on May 7, 2012

Table B-12 shows the Oregon Employment Department's forecast for employment growth by industry for Region 3 (Marion, Polk, and Yamhill County) over the 2012 to 2022 period. The sectors that will lead employment growth in the region for the 10-year period are Educational and health services (adding 5,800 jobs), Trade, Transportation and Utilities (adding 2,900 jobs), Professional and Business Services (adding 2,900 jobs) and Local Government (adding 2,400 jobs). Together, these sectors are expected to add 14,000 new jobs or 42% of employment growth in the Region.

Table B-12. Regional Employment Projections by Industry & Occupation 2012-2022

Industry Sector	2012	2022	Change 2012-2022		
			Number	Percent	AAGR
Natural resources and mining	14,700	16,800	2,100	14%	1.3%
Mining and logging	1,300	1,500	200	15%	1.4%
Construction	7,300	9,500	2,200	30%	2.7%
Manufacturing	17,500	19,800	2,300	13%	1.2%
Durable goods	8,600	9,800	1,200	14%	1.3%
Wood product manufacturing	1,700	2,000	300	18%	1.6%
Nondurable goods	8,900	10,000	1,100	12%	1.2%
Food manufacturing	5,300	5,800	500	9%	0.9%
Trade, transportation, and utilities	27,800	30,700	2,900	10%	1.0%
Wholesale trade	4,000	4,400	400	10%	1.0%
Retail trade	19,500	21,500	2,000	10%	1.0%
Transportation, warehousing, and utilities	4,300	4,800	500	12%	1.1%
Information	1,200	1,200	0	0%	0.0%
Financial activities	8,100	9,200	1,100	14%	1.3%
Professional and business services	13,000	15,900	2,900	22%	2.0%
Administrative and support services	6,300	8,000	1,700	27%	2.4%
Educational and health services	28,400	34,200	5,800	20%	1.9%
Health care and social assistance	23,000	28,100	5,100	22%	2.0%
Health care	19,700	24,200	4,500	23%	2.1%
Leisure and hospitality	15,300	17,400	2,100	14%	1.3%
Accommodation and food services	13,600	15,500	1,900	14%	1.3%
Accommodation	1,700	1,200	-500	-29%	-3.4%
Other services	6,100	6,700	600	10%	0.9%
Federal government	1,900	1,800	-100	-5%	-0.5%
State government	20,800	22,000	1,200	6%	0.6%
Local government	21,100	23,500	2,400	11%	1.1%
Total payroll employment	183,200	216,400	33,200	18%	1.7%

Source: Oregon Employment Department. Employment Projections by Industry 2012-2022.

<http://www.qualityinfo.org/pubs/projections/r5.pdf>. Projections summarized by ECONorthwest.

FACTORS AFFECTING FUTURE ECONOMIC GROWTH IN SALEM

Each economic region has different combinations of productive factors: land (and natural resources), labor (including technological expertise), and capital (investments in infrastructure, technology, and public services). While all areas have these factors to some degree, the mix and condition of these factors vary. The mix and condition of productive factors may allow firms in a region to produce goods and services more at a lower cost, or to generate more revenue, than firms in other regions.

By affecting the cost of production and marketing, comparative advantages affect the pattern of economic development in a region relative to other regions. Goal 9 and OAR 660-009-0015(4) recognizes this by requiring plans to include an analysis of the relative supply and cost of factors of production.⁵³ An analysis of competitive advantage depends on the geographic areas being compared. In general, economic conditions in Salem will be largely shaped by national and Pacific Northwest regional economic conditions affecting Oregon and the Willamette Valley.

The previous section presents trends and forecasts of conditions in Oregon and Salem to help establish the context for economic development in Salem. Local economic factors will help determine the amount and type of development in Salem relative to other communities in the Willamette Valley and Oregon. This section focuses on the competitive advantages of Salem for attracting businesses relative to the Willamette Valley and Oregon.

Location

Salem is the third largest city in Oregon with a population of approximately 157,770 people in 2013. Interstate 5 runs through the eastern portions of Salem. Highway 99E breaks off of I-5 in northeastern Salem and parallels I-5 north through Canby. Highway 22 runs east-west through Salem, and Highway 213 runs northeast out of Salem. The majority of the city is located east of the Willamette River, though a portion of Salem is located west of the river. Salem's location will impact the area's future economic development:

- As Oregon's state capital, Salem is home to many departmental offices that attract employees and visitors from across the region and the subsequent economic activity they create.

⁵³ OAR 660-009-0015(4) requires assessment of the "community economic development potential." This assessment must consider economic advantages and disadvantages—or what Goal 9 broadly considers "comparative advantages."

- Salem has easy access to the State's highway system and other transportation opportunities. In addition to the multiple freeways running by and through the city, residents and businesses can access other modes of transportation in Salem, including Cherriots (Salem-Keizer Transit) Greyhound bus service, and Amtrak passenger rail service. Salem's airport, McNary Field does not provide commercial passenger service, but the City is making improvements to the airport to attract commercial air service. Salem is less than 60 miles from Portland International Airport.
- Salem is located at the central portion of the Willamette Valley, about an hour from Portland. It is the largest metropolitan area on I-5 between Portland and Sacramento.
- Residents of Salem have easy access to shopping, cultural activities, indoor and outdoor recreational activities, and other amenities in Salem and rural Marion and Polk counties. The easy access contributes to the area's overall quality of life.
- Residents of Salem have several nearby opportunities for post-secondary education: Willamette University, Western Oregon University, Corban University, and Chemeketa Community College, among others.
- Businesses in Salem have access to natural resources, such as wood products or agricultural products, from resource lands in western Oregon.
- Salem's location, access to I-5, urban amenities, the presence of the State Capital, and access to natural resources are primary comparative advantages for economic development in the city.

Availability of Transportation Facilities

Businesses and residents in Salem have access to a variety of modes of transportation: automotive (Interstate 5, multiple State highways and local roads); rail (Union Pacific and Amtrak); and transit (Salem Area Transit District).

All firms are heavily dependent upon surface transportation for efficient movement of goods, customers, and workers. Access to an adequate highway and arterial roadway network is needed for all industries. Close proximity to a highway or arterial roadway is critical for firms that generate a large volume of truck or auto trips as well as firms that rely on visibility from passing traffic to help generate business. This need for proximity explains much of the highway strip development prevalent in urban areas today.

Oregon's primary transportation corridor is Interstate 5, and proximity to it is an important comparative advantage for the city. Salem has excellent automotive access for commuting and freight movement. Salem is located along Interstate 5, the primary north-south transportation corridor on the West Coast, linking Salem to domestic markets in the United States and international markets via West Coast ports.

In addition to access to I-5, Salem is situated along Highway 22, connecting Salem with the Oregon Coast and Central Oregon cities of Bend and Redmond.

Other transportation systems in Salem are:

Rail. Rail access can be very important to certain types of heavy industries. Union Pacific rail lines serve Salem, providing freight service. Amtrak passenger service is also available, connecting Salem to cities all across the west coast. The train station is located immediately southeast of downtown Salem near Willamette University. Union Pacific Railroad provides freight service to metropolitan area businesses.

Transit. The Salem Area Transit District (Cherriots) provides transit services within the urban growth boundary of Salem and Keizer. Cherriots serves Salem with multiple weekday-operating bus lines, both within Salem and connecting Salem to Keizer and other outlying communities such as Wilsonville and Grand Ronde. In addition, there is a private bus service to Tualatin, as well as Valley Van Pool services run by the State with service to and from Portland and Corvallis

Air. Proximity to air transportation is important for some firms engaged in manufacturing, finance, or business services. McNary Field in Salem provides freight service for metropolitan area residents and businesses. The airport is served by four cargo airlines, Ameriflight, Empire Airlines, FedEx, and UPS. In

addition, the Portland International Airport is about one hour's drive from Salem, providing wider access to passenger and freight air service.

Transportation access is a comparative advantage that primarily affects the overall type of employment and its growth in Salem.

Public Facilities and Services

Provision of public facilities and services can impact a firm's decision regarding location within a region, but ECO's past research has shown that businesses make locational decisions primarily based on factors that are similar within a region. These factors are: the availability and cost of labor, transportation, raw materials, and capital. The availability and cost of these production factors are usually similar within a region.

Once a business has chosen to locate within a region, they consider the factors that local governments can most directly affect: tax rates, the cost and quality of public services, and regulatory policies. Economists generally agree that these factors do affect economic development, but the effects on economic development are modest. Thus, most of the strategies available to local governments have only a modest affect on the level and type of economic development in the community.

Water

The City of Salem's source of potable water is the North Santiam River. The current transmission capacity of the water system is 66 million gallons per day, with a water treatment plant capacity of 84 million gallons per day. The average water demand is 27 million gallons per day, with a summer peak demand for about 47 million gallons per day. The City expects to have sufficient water to service a population of about 230,000.

In the summer of 2014, the City completed development of the Mill Creek Reservoir, a \$5.74 million investment. The reservoir will serve land in and around the Mill Creek Corporate Center, servicing a portion of southeastern Salem (southwest of Deer Park Drive SE, behind Corban University). In addition to providing water service to the Mill Creek Corporate Center, the new reservoir will eventually serve industrial land in southeastern Salem, which is currently outside of the City's urban services area.

The reservoir has a 2.2 million gallon capacity and will be connected with the Mill Creek S-1 pressure zone, in part, to create redundancies in the water system. This reservoir provides water service that is essential to making larger portions of the Mill Creek Corporate Center development ready.

Wastewater

The City of Salem provides wastewater service for Salem, Keizer, and Turner. Salem has two wastewater treatment plants: Willow Lake and River Road. The existing wastewater treatment plants treat an average of about 34.6 million gallons of waste per day. The amount of waste treated daily varies substantially, with infiltration in the rainy season increasing effluent substantially. The existing treatment plants have a capacity to treat about 205 million gallons per day. The Salem Wastewater Management Master Plan was last amended in 2005 and identifies about \$571 million of maintenance and upgrade projects that will be necessary to service a population of about 270,000.

Land Supply

Salem has about 1,945 acres of vacant and partially vacant commercial and industrial land. Nearly 1,400 acres of Salem's vacant land is designated for industrial uses, and 298 acres is designated for commercial uses. More than 700 acres of Salem's industrial land is in plan designations that allow some types of office employment, such as the Employment Center or Industrial Commercial designations.

About 488 acres of Salem's vacant land is at Mill Creek, where 136 acres of land is certified by the State as development ready. In addition, the Salem Renewable Energy and Technology Center has 40 acres of land certified development ready.

Businesses locating or growing in Salem require land with a wide range of site characteristics. OAR 660-009 describes site characteristics as including (but not limited to): "a minimum acreage or site configuration including shape and topography, visibility, specific types or levels of public facilities, services or energy infrastructure, or proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes." Each business has preferences for site characteristics that are unique to the business.

Businesses' locational decisions are an indicator of whether Salem's land base meets the needs of businesses that want to expand or locate within the Willamette Valley in general and in Salem in particular. Many businesses have grown, expanded, and located in Salem over the past decade.

Salem's supply of employment land, especially industrially-designated employment land, make the city an attractive location for businesses considering expanding or locating in the Salem region. Salem's supply of industrial land, including relatively large parcels of development-ready industrial land, is unique within the Willamette Valley. Other cities in Western Oregon, from Portland to Eugene, lack such a large supply of industrial land, either with or without services.

Appendix C. Salem Employment Forecast

This appendix presents the methodology and forecast of demand for retail land and commercial and industrial land.

RETAIL LAND DEMAND

Locally derived demand for retail commercial land is driven by local and regional population growth and consumer spending. From an analytical standpoint, land demand is derived from demand for built space. In short, land demand is not directly a function of growth in population and consumer spending; land demand is a byproduct of demand for built space.

This section presents an analysis of demand for retail land, based on growth in consumer spending (which is, in part influenced by the growth of households and population) in Salem and the surrounding region.⁵⁴ The analysis assumes that as the number of households in the region grows, new consumer spending increases the demand for retail commercial land. The steps to forecasting this demand are:

1. **Household growth.** Local and regional household growth will drive retail demand. This section estimates household growth for Salem and for the broader region (Marion, Polk, and Yamhill Counties) from which households are likely to shop in Salem.
2. **Household expenditures.** A key assumption necessary to estimate demand for retail land to serve new households is estimating the current and future total retail spending of households. This section estimates retail spending for households who shop in Salem.
3. **Demand for retail space.** Retail space demand can be estimated based on a ratio of retail sales per square foot of retail space. This section estimates the square feet of retail built space that will be required to serve projected consumer expenditures.
4. **Retail land demand.** Converting the number of square feet of retail space to land demand (in acres) requires making assumptions about land needed for the retail building and supporting infrastructure, primarily for

⁵⁴ We include the surrounding region because Salem is the regional service center for Marion, Polk, and Yamhill Counties.

parking. This section estimates the amount of land that will be required to accommodate expected retail growth.

The remainder of this section follows this outline to estimate demand for retail space within Salem.

Household growth

Growth in population and households will drive retail growth. Growth forecasts generally forecast population growth, which can be easily converted into household growth through an assumption about average household size.

- **Salem.** The Salem Housing Needs Analysis shows growth of 23,355 new households between 2015 and 2035.⁵⁵
- **Marion, Polk, and Yamhill Counties.** Salem is a regional retail center and attracts retail customers from outside of the city. The Oregon Office of Economic Analysis forecasts that these three counties will grow by a combined 170,746 people over the 2015 to 2035 period.⁵⁶⁵⁷ This new population will result in approximately 63,710 new households.⁵⁸

Household expenditures

Claritas—a private database vendor— provides household expenditures by category for the Salem Oregon Metropolitan Statistical Area (MSA), which includes all of Marion and Polk counties. Households in the Salem MSA spent an average of \$49,183 per household in 2014, exclusive of housing. Based on the categorization of expenditures, ECONorthwest estimated that about \$38,221 of this total was spent on the retail goods shown in Table C-1. Table C-1 shows average household expenditures for retail goods in the Salem MSA in 2014 on a per-household basis.

⁵⁵ This forecast is based on Marion County's adopted population forecast, which is documented in: "Population forecasts for Marion County, its Cities and Unincorporated Areas 2010-2030" Prepared by the Population Research Center, College of Urban and prepared by the Population Research Center, College of Urban and Affairs, Portland State University. It uses the 2010 Decennial Census' average household size of 2.55 persons per household in Salem.

⁵⁶ The Office of Economic Analysis' 2013 *Long-term Oregon State's County Population Forecast, 2010-2050* forecasts population growth by county and is available from:
http://www.oregon.gov/DAS/OEA/docs/demographic/County_forecast_March_2013.xls

⁵⁷ Between 2015 and 2035, the Office of Economic Analysis' forecast shows Marion County growing by 99,010 people, Polk County growing by 33,144 people, and Yamhill County growing by 38,592 people.

⁵⁸ This estimate is based on the 2010 Decennial Census' average household size of 2.7 persons per household in Marion County, 2.6 persons per household in Polk County, and 2.7 persons per household in Yamhill County.

**Table C-1. Average household expenditures
for retail goods and services,
Salem MSA, 2014**

	2014 Expenditures per Household
Food	\$6,240
Food service	\$2,934
Clothing and accessories	\$3,235
Shoes	\$567
Home furnishings	\$1,319
Home appliances/music	\$2,138
Building Materials/Garden	\$1,225
Automotive	\$10,641
Hobby/special interest	\$1,797
Gifts/Specialty	\$535
Liquor	\$1,015
Drugs	\$2,571
Other Retail	\$2,065
Personal Service	\$1,938
Total Expenditures	\$38,221

Source: Claritas

A key assumption in this analysis is estimating the current and future total retail spending. Estimating total retail spending for households within Salem and the three-county region is relatively simple. It is just a matter of multiplying the number of households in 2014 by the average household expenditure by category (shown in Table C-2).

Table C-2 shows total retail spending in 2015 and 2035 for all households in Salem and a portion of households in the larger three-county region. Table C-2 shows spending in 2014 dollars and does not assume that the share of spending by category will change over the 20-year period. Salem, however, also serves as a retail center for residents in the surrounding region.

ECONorthwest assumed the following capture rates for retail housing spending:

- **Households within Salem: 60%.** This capture rate is based on the assumption that the majority of retail spending for households within Salem will occur in Salem. Some spending, however, will occur outside

the metropolitan area, such as in Portland or purchases from catalogues or on-line merchants.⁵⁹

- **Households in Marion, Polk, and Yamhill Counties but outside of the metropolitan area: 25%.** This estimate assumes that households in the three-county region (excluding households in Salem) travel into Salem to shop for items available in Salem but not in other parts of the three-county region.

Table C-2. Total household expenditures for retail goods and services, households in Salem and a portion of households in Marion, Polk, and Yamhill Counties, 2015 and 2035

	Total Retail Spending (2014 Dollars)		Change in Retail Spending 2015-2035 (2014 Dollars)	
	2015	2035	Amount	Percent
Food	\$433,304,290	\$583,712,012	\$150,407,722	35%
Food service	\$203,728,754	\$274,446,674	\$70,717,919	35%
Clothing and accessories	\$224,600,538	\$302,563,430	\$77,962,891	35%
Shoes	\$39,385,501	\$53,056,917	\$13,671,417	35%
Home furnishings	\$91,553,841	\$123,333,828	\$31,779,987	35%
Home appliances/music	\$148,454,026	\$199,985,092	\$51,531,066	35%
Building Materials/Garden	\$85,050,971	\$114,573,695	\$29,522,724	35%
Automotive	\$738,883,953	\$995,363,879	\$256,479,926	35%
Hobby/special interest	\$124,774,202	\$168,085,574	\$43,311,372	35%
Gifts/Specialty	\$37,164,383	\$50,064,810	\$12,900,427	35%
Liquor	\$70,478,048	\$94,942,247	\$24,464,199	35%
Drugs	\$178,515,975	\$240,482,084	\$61,966,109	35%
Other Retail	\$143,405,207	\$193,183,737	\$49,778,530	35%
Personal Service	\$134,550,445	\$181,255,328	\$46,704,883	35%
Total Expenditures	\$2,653,850,136	\$3,575,049,307	\$921,199,171	35%

Source: Claritas

⁵⁹ The assumptions about capture rate in Salem account for the growing popularity of retail spending on the Internet. According to a Census Bureau report (Quarterly Retail E-Commerce Sales, 2nd Quarter 2014), the share of retail spending via e-commerce increased from about 4% in 2010 to 6.4% in the second quarter of 2014. This increase mirrors long-term increases in spending via e-commerce since the early 2000's. It is reasonable to assume that the share of retail expenditures from e-commerce will continue to increase over the 20-year planning period.

Demand for retail space

ECONorthwest used a ratio of retail sales per square foot of retail space to determine the amount of retail space needed to serve projected consumer expenditures. This ratio shows how many dollars of spending are required to support one square foot of retail. For example, a retail shoe store requires nearly \$200 in sales per square foot. If a set of households spends \$2 million per year on shoes, that spending directly supports 10,000 SF of retail space (\$2 million divided by \$200) assuming zero retail vacancy.⁶⁰

A normal retail vacancy rate in West Coast suburban markets is typically between 5% and 20%.⁶¹ It is unrealistic to assume retail demand space will perfectly match the correct level supported by spending, as supply of retail space typically outweighs the demand of that space. This analysis assumed that vacancy was about 6.5%, based on the five-year average vacancy in Salem according to Co-Star. In other words, some vacant retail areas will be filled before new retail space is built.

Table C-3 shows spending-supported retail demand. ECO projects retail space demand to grow from about 9.3 million square feet to 12.5 million square feet between 2015 and 2035, an increase of about three million square feet.

Table C-3. Spending-supported retail demand, Salem, 2015-2035

Retail Category	Retail Spending (millions)		Sales per SF	Spending-Supported Retail Demand (SF)	
	2015	2035		2015	2035
Food	\$433.3	\$583.7	\$412.21	982,847	1,324,011
Food service	\$203.7	\$274.4	\$314.12	606,413	816,910
Clothing and accessories	\$224.6	\$302.6	\$232.68	902,534	1,215,819
Shoes	\$39.4	\$53.1	\$192.73	191,073	257,397
Home furnishings	\$91.6	\$123.3	\$209.28	409,035	551,018
Home appliances/music	\$148.5	\$200.0	\$302.20	459,313	618,749
Building Materials/Garden	\$85.1	\$114.6	\$388.65	204,613	275,637
Automotive	\$738.9	\$995.4	\$232.92	2,966,068	3,995,643
Hobby/special interest	\$124.8	\$168.1	\$219.85	530,652	714,851
Gifts/Specialty	\$37.2	\$50.1	\$170.42	203,900	274,678
Liquor	\$70.5	\$94.9	\$396.27	166,293	224,016
Drugs	\$178.5	\$240.5	\$429.07	389,010	524,042
Other Retail	\$143.4	\$193.2	\$247.53	541,687	729,717
Personal Service	\$134.6	\$181.3	\$176.87	711,283	958,182
Total	\$2,653.9	\$3,575.0		9,264,721	12,480,673

Source: Urban Land Institute, *Dollars and Cents of Shopping Centers*: 2008. Page 19.

Calculations by ECONorthwest

Note: Shaded cells are based on assumptions from *Dollars and Cents of Shopping Centers* 2008.

Note: SF is square feet.

⁶⁰ Urban Land Institute, *Dollars and Cents of Shopping Centers*: 2008. Page 17.

⁶¹ Based on research from CB Richard Ellis about suburban markets in the Puget Sound in Washington and Central Valley in California.

Retail land demand

Converting the number of square feet of retail space to land demand (in acres) requires making assumptions about land needed for the retail building and supporting infrastructure, primarily for parking. In general, the square feet required for retail development encompass 25% to 40% of the total land need to support the development, or a floor area ratio (FAR) of 0.25 to 0.40. For example, a FAR of 0.3 means that for every acre of usable space, 0.3 acres are allowed for built retail space. The remaining 0.7 acres are required for uses necessary for the retail firm to function, generally parking—but also landscaping, open space, and other uses.

Empirical analysis of existing retail development in Salem shows a broad range in FAR, from a low of 0.02 to 1.0, with an average FAR of 0.2. ECO assumed a FAR of 0.30, based on the assumption that retail development will become denser over the 20-year planning period. This assumption is within the industry standard of 0.25 to 0.40 FAR for an area like Salem.

Table C-4 shows retail space demand (in square feet) and the land need (in net acres) to accommodate that demand. Consumer spending will support an increase of four million square feet of retail space. At an FAR of 0.3, this translates into new land demand of 246 net acres between 2015 and 2035. **Based on a 10% net-to-gross ratio, this translates into new land demand of 273 gross acres.**⁶²

⁶² As land gets divided and developed, some of the land goes for right-of-way and other public uses. One way to estimate the amount of land needed for employment including public right-of-way is to convert from *net* to *gross* acres based on assumptions about the amount of land needed for right-of-way.

OAR 660-024-0010(6) uses the following definition of net buildable acre. “Net Buildable Acre” consists of 43,560 square feet of residentially designated buildable land after excluding future rights-of-way for streets and roads. While the administrative rule does not include a definition of a gross buildable acre, using the definition above, a gross buildable acre will include areas used for rights-of-way for streets and roads. Areas used for rights-of-way are considered unbuildable.

The amount of land used for rights-of-way varies based on use. This analysis uses a net-to-gross factor of 10% for retail use, which assumes that some rights-of-way area in place in areas where retail development will occur on general employment land. This net-to-gross ratio is lower than the 15% to 20% ratio we have seen in other Oregon cities because some vacant retail land is located in developed areas, which already have rights-of-way.

Table C-4. Retail space demand and retail land need, Salem, 2015-2035

Retail Category	Spending-Supported Retail Demand (SF)		Retail FAR	Commercial Retail Land Need (Net Acres)	
	2015	2035		2015	2035
Food	982,847	1,324,011	0.3	75	101
Food service	606,413	816,910	0.3	46	63
Clothing and accessories	902,534	1,215,819	0.3	69	93
Shoes	191,073	257,397	0.3	15	20
Home furnishings	409,035	551,018	0.3	31	42
Home appliances/music	459,313	618,749	0.3	35	47
Building Materials/Garden	204,613	275,637	0.3	16	21
Automotive	2,966,068	3,995,643	0.3	227	306
Hobby/special interest	530,652	714,851	0.3	41	55
Gifts/Specialty	203,900	274,678	0.3	16	21
Liquor	166,293	224,016	0.3	13	17
Drugs	389,010	524,042	0.3	30	40
Other Retail	541,687	729,717	0.3	41	56
Personal Service	711,283	958,182	0.3	54	73
Total	9,264,721	12,480,673		709	955
Increase 2012 and 2032	3,215,952			246	

Source: ECONorthwest

Note: Shaded cells are show assumptions about retail density.

Note: SF is square feet.

EMPLOYMENT FORECAST FOR INDUSTRIAL AND COMMERCIAL LAND

Demand for industrial and non-retail commercial land will be driven by the expansion and relocation of existing businesses and new businesses locating in Salem. This employment land demand is driven by local growth independent of broader economic opportunities, including growth of target industries.

The employment projections in this section build off of Salem's existing employment base, assuming future growth similar to the Marion and Polk counties' past employment growth rates. The employment forecast does not take into account a major change in employment that could result from the location (or relocation) of one or more large employers in the community during the planning period. Such a major change in the community's employment would essentially be over and above the growth anticipated by the City's employment forecast and the implied land needs (for employment, but also for housing, parks, and other uses). Major economic events, such as the successful recruitment of a very large employer, are very difficult to include in a study of this nature. The implications, however, are relatively predictable: more demand for land (of all types) and public services.

Projecting demand for industrial and non-retail commercial land has four major steps:

1. **Establish base employment for the projection.** We start with the estimate of covered employment in Salem's portion of the Salem-Keizer UGB presented in Table 10. Covered employment does not include all workers, so we adjust covered employment to reflect total employment in Salem.
2. **Project total employment.** The projection of total employment considers forecasts and factors that may affect employment growth in Salem over the 20-year planning period.
3. **Allocate employment.** This step involves allocating employment to different land-use types.
4. **Estimate land demand.** This step estimates general employment land demand based on employment growth and assumptions about future employment densities.

The remainder of this section follows this outline to estimate demand for Salem.

Employment base for projection

The purpose of the employment projection presented in this appendix is to model future employment land need for general employment growth. The forecast of employment growth in Salem starts with a base of employment growth on which to build the forecast. Table C-5 shows ECO's estimate of total employment in the Salem UGB in 2012. To develop the figures, ECO started with estimated covered employment in the Salem UGB from confidential QCEW (Quarterly Census of Employment and Wages) data provided by the Oregon Employment Department. Based on this information, Salem had about 92,039 covered employees in 2012.

Covered employment, however, does not include all workers in an economy. Most notably, covered employment does not include sole proprietors. Analysis of data shows that *covered* employment reported by the Oregon Employment Department for the Salem MSA is only about 77% of *total* employment reported by the U.S. Department of Commerce. We made this comparison by sector for the Salem MSA and used the resulting ratios to determine the number of non-covered employees. This allowed us to determine the total employment in Salem. Table C-5 shows Salem had an estimated 119,865 *total* employees within its UGB in 2012.

Table C-5. Estimated total employment in the Salem portion of the Salem-Keizer UGB by sector, 2012

Sector	Covered Employment	Estimated Total Employment	
		Total Employment	Covered % of Total
Agriculture, Forestry, Fishing & Hunting	1,292	1,688	77%
Construction	3,084	4,519	68%
Manufacturing	5,497	5,659	97%
Wholesale Trade	1,487	1,942	77%
Retail Trade	10,534	13,370	79%
Transportation & Warehousing & Utilities	1,615	2,109	77%
Information	722	1,122	64%
Finance & Insurance	3,385	6,086	56%
Real Estate & Rental & Leasing	1,194	4,845	25%
Professional, Scientific, and Technical Services	3,239	5,687	57%
Management of Companies and Enterprises	778	1,016	77%
Admin. & Support & Waste Mgt. & Remediation Srv.	4,410	6,446	68%
Private Educational Services	1,924	3,829	50%
Health Care & Social Assistance	13,380	17,045	78%
Arts, Entertainment, & Recreation	763	1,817	42%
Accommodation & Food Services	7,345	8,047	91%
Other Services (except Public Administration)	3,661	6,365	58%
Government	27,729	28,273	98%
Total	92,039	119,865	77%

Source: 2012 covered employment from confidential Quarterly Census of Employment and Wage (QCEW) data provided by the Oregon Employment Department.

Note: Covered employment as a percent of total employment calculated by ECONorthwest using data for the Salem MSA employment from the U.S. Department of Commerce, Bureau of Economic Analysis (total), and the Oregon Employment Department (covered).

Employment projection

The employment forecast covers the 2015 to 2035 period, requiring an estimate of total employment for Salem in 2015.

Salem does not have an existing employment forecast, and there is no required method for employment forecasting. OAR 660-024-0040(9) sets out some optional “safe harbors” that allow a city to determine employment land need.

Salem is relying on the safe harbor at OAR 660-024-0040(9)(a)(B), which allows Salem to assume that the current number of jobs in the Salem urban area will grow during the 20-year planning period at a rate equal to “the population growth rate for the urban area in the adopted 20-year coordinated population forecast.”

On October 7, 2009, Marion County adopted a new coordinated population forecast for the urban areas of the county, which included a forecast for the Salem-Keizer UGB.⁶³ The adopted population forecast growth rate for the Salem-Keizer UGB is 1.25% average annual growth through 2030. The Housing Needs Analysis report shows that Salem is assuming a 1.25% average annual growth rate for the Salem portion of the UGB for the 2015 to 2035 period, based on the adopted coordinated forecast.

Table C-6 shows employment growth in Salem between 2015 and 2035, based on the assumption that Salem will grow at an average annual growth rate of 1.25%.⁶⁴ Salem will have 120,119 employees within the UGB by 2035, an increase of 26,425 employees (28%) between 2015 and 2035.

⁶³ The population forecast is described in the Portland State University’s Population Research Center report “Population forecasts for Marion County, its Cities and Unincorporated Areas 2010-2030.”

⁶⁴ The forecast in Table C-6 excludes employment Retail, Arts and Entertainment, Accommodations and Food Services, and Other Services. This employment is forecast in Table C-4. The forecast assumes that Salem’s employment base in 2012 will grow at the same rate between 2012 and 2015 as the employment forecast for 2015 to 2035, 1.25% average annual growth rate.

Table C-6. Employment growth in Salem's portion of the Salem-Keizer UGB, 2015–2035

Year	Total Employment
2015	93,694
2035	120,119
Change 2015 to 2035	
Employees	26,425
Percent	28%
AAGR	1.2%

Source: ECONorthwest

Allocate employment to different land use types

The next step in forecasting employment is to allocate future employment to broad categories of land use. Firms wanting to expand or locate in Salem will look for a variety of site characteristics, depending on the industry and specific circumstances. We grouped employment into four broad categories of land-use based on North American Industrial Classification System (NAICS): industrial, commercial, retail, and government.

Table C-7 shows the expected share of employment by land use type in 2015 and the forecast of employment growth by land use type in 2035 in Salem's portion of the Salem-Keizer UGB.

The forecast shows growth in all categories of employment, with the most growth in industrial employment. This assumption is based on the City's economic development policies that support the growth of traded-sector businesses. The City's economic development policies target growth of industrial traded-sector businesses such as technology manufacturing, food and beverage manufacturing, equipment manufacturing, as well as other types of manufacturing. The resulting increase in share of industrial employment reflects the expectation that the City's policy direction will lead to growth in the city's share of industrial jobs. This type of employment growth is consistent with the City's broad economic development goal of increasing household prosperity because industrial jobs typically have higher-than-average wages.

Table C-7. Forecast of employment growth by land use type, Salem's portion of the Salem-Keizer UGB, 2015–2035

Land Use Type	2015		2035		Change 2015 to 2035
	Employment	% of Total	Employment	% of Total	
Industrial	16,521	18%	24,024	20%	7,503
Office and Commercial Services	47,826	51%	60,060	50%	12,234
Government	29,347	31%	36,036	30%	6,689
Total	93,694		120,119		26,425

Source: ECONorthwest

Note: Green shading denotes an assumption about the future change in the share of employment (as a percent of total) by land use type.

Need for government land in Salem is driven, primarily, by growth in local government employment and by state government employment. Discussions with the administrative staff at the Salem-Keizer Public Schools indicate that the District is in the process of updating their Facilities Plan. According to the exiting facilities plan, the District has no immediate plans to build new schools in Salem over the 20-year period. In addition, the City has no plans for substantial expansion of City offices onto land not currently owned by the City, nor does Marion County. Discussions with staff at the Department of Administrative Services with the State of Oregon suggest that the State expects to build new office space over the 20-year period. However, State development on land that is currently privately owned in commercial or industrial designations will be approximately off-set by sales of currently-State owned land.

Estimate of commercial and industrial land demand

The next step in estimating general employment land demand for the 20-year period is to estimate the employment land need based on employment density. Table C-8 shows a preliminary estimate of employment land need by land use type based on assumed employment densities.

Table C-8 shows that Salem will need about 715 net acres and about 841 gross acres of land for employment uses between 2015 and 2035.

Table C-8. Estimate of general employment land demand, Salem, 2015–2035

Land Use Type	New Emp. on Vacant Land	EPA (Net Acres)	Land Demand (Net Acres)	Land Demand (Gross Acres)
Industrial	7,503	20	375	441
Office and Commercial Services	12,234	36	340	400
Total	19,737		715	841

Source: ECONorthwest

Note: Gross acres calculated using a net-to-gross factor of 15% for general industrial and 20% for general office. For example, general industrial gross acres was calculated using the following formula: $216 / (1 - .15) = 254$.

Note: EPA is employees per acre

Table C-8 uses the following assumptions to convert employment into land need:

- **Employment densities are based on reasonable rules of thumb.**
Employees per acre (EPA) is a measure of employment density, based on the ratio of the number of employees per acre of employment land that is developed for employment uses. Table C-8 assumes that industrial density will be 20 EPA, which is higher than the density on the region's

industrial land, which averages between 12 and 15 EPA.⁶⁵ Table C-8 assumes that future industrial development will be somewhat denser than existing development.⁶⁶ Table C-8 uses an office density based on the average commercial development density in Salem.⁶⁷

- **Employment sites will require additional land for right-of-way and other public uses.** The EPA assumptions are employees per *net* acre (e.g., acres that are in tax lots). As land is divided and developed, some of the land goes for right-of-way and other public uses. One way to estimate the amount of land needed for employment including public right-of-way is to convert from *net* to *gross* acres based on assumptions about the amount of land needed for right-of-way.⁶⁸ A net to gross conversion is expressed as a percentage of gross acres that are in public right-of-way.

The amount of land used for rights-of-way varies based on use. This analysis uses a net-to-gross factor of 15% for employment land.

INDUSTRIAL, COMMERCIAL, AND RETAIL LAND DEMAND BY ZONING DISTRICT

One of the key employment land management issues that the EOA is intended to provide information about is the location of employment by type of employment and comprehensive plan designation in Salem. Over the last years, Salem has had a number of requests to rezone (or redesignate) employment land from industrial uses to commercial uses. The City's analysis of employment uses in industrial areas suggests that a substantial amount of employment locating in industrial zones, especially the Industrial Commercial zone, is commercial employment.

⁶⁵ This analysis is documented in the draft SKATS *Regional Transportation System Plan, 2035*.

⁶⁶ The industrial EPA is consistent with the rule-of-thumb density assumption for light industrial development presented in the DLCD draft guidebook for Goal 9, "Cheaper, Easier, Faster, More Relevant."

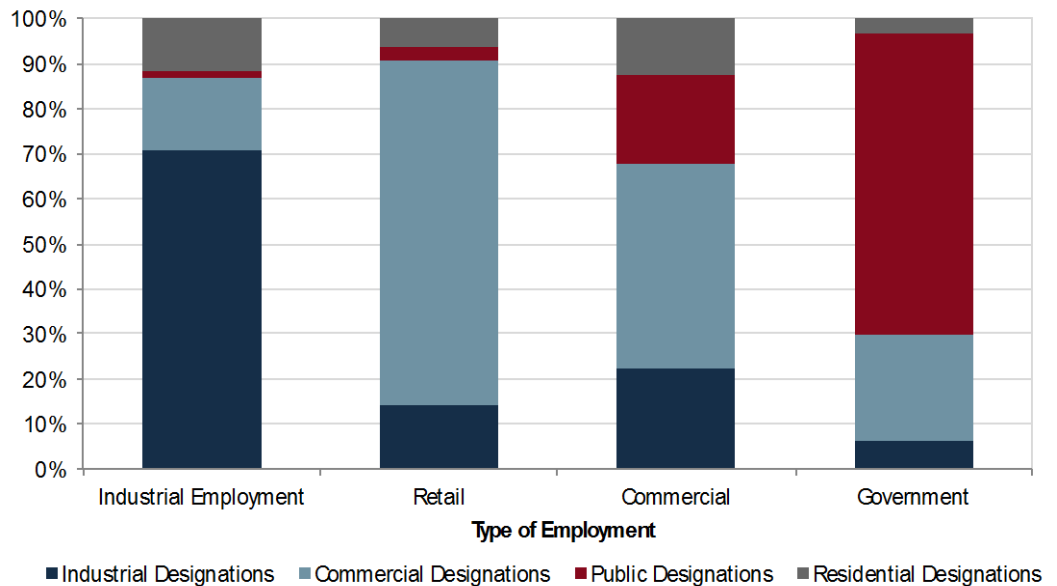
⁶⁷ The estimated average commercial development density (36 EPA) is based on ECONorthwest's analysis of development of commercial employers in the Salem-Keizer metropolitan area in the Regional EOA. This analysis is consistent with the analysis of commercial densities documented in the draft SKATS *Regional Transportation System Plan, 2035*. The RTSP analysis shows a range of densities from 27 EPA in retail areas to 73 EPA in Salem's central business area.

⁶⁸ OAR 660-024-0010(6) uses the following definition of net buildable acre. "Net Buildable Acre" consists of 43,560 square feet of residentially designated buildable land after excluding future rights-of-way for streets and roads. While the administrative rule does not include a definition of a gross buildable acre, using the definition above, a gross buildable acre will include areas used for rights-of-way for streets and roads. Areas used for rights-of-way are considered unbuildable.

Figure C- 1 shows covered employment in Salem by comprehensive plan designation in Salem in 2012. Figure C- 1 shows a mixing of employment types among plan designations.

- **Industrial Employment**, including employment such as manufacturing, construction, wholesale, or warehouse and distribution. About 70% of industrial employment is located on industrial plan designations, with the majority of remaining industrial employment located in commercial or residential designations.
- **Retail Employment**, which includes employment such as retail, arts and entertainment, or accommodations and food services. More than three-quarters of retail employment is located in commercial designations. Nearly 15% of retail employment is located on industrial designations, and the remainder is located in residential or public designations.
- **Commercial Employment**, which includes employment such as health care, finance and insurance, real estate, professional and technical services, or administrative support. About 45% of commercial employment is located in commercial designations, with about 20% located in industrial or public designations, and the remaining in residential designations.
- **Government Employment**, which includes employment at publicly-owned entities. Two-thirds of government employment is located in public designations, with nearly one-quarter of government employment located in commercial designations.

Figure C- 1. Covered employment by type of employment and comprehensive plan designation, Salem, 2012



Source: ECONorthwest, using Salem Comprehensive Plan Designations and 2012 Quarterly Census of Employment and Wages data from the Oregon Employment Department

Notes: Industrial includes: General Industrial , Industrial Commercial, Industrial Business Campus, Industrial Park, Employment Center, FMU, Exclusive Farm Use

Commercial includes: Retail Commercial, Commercial Office, Central Business, General Commercial, Neighborhood Commercial, Neighborhood Center Mixed-Use

Public includes: Public and Private Health Services, Capitol Mall Area, Public Service, Public and Private Educational Facilities, Public Amusement, Public and Private Cemeteries

Residential includes: Single Family Residential, Developing Residential, Residential Agriculture, Duplex Residential, Multiple Family Residential 1, Multiple Family Residential 2, High Rise Multiple Family Residential

Figure C- 1 shows that a substantial amount of retail and commercial employment is located in industrial plan designations. About 45% of the employment in industrial plan designations is employment that can be categorized as industrial (such as manufacturing, construction, wholesale, or warehouse and distribution).

Table C-9 builds from the estimate of land demand in Table C-8 and resulting from retail space in Table C-4. Table C-9 allocates employment land demand to comprehensive plan designations, based on the ratios shown in Figure C- 1. For example, Table C-9 assumes that 16% of new industrial land demand (and employment) will locate in commercial plan designations, consistent with the ratios shown in Figure C- 1.⁶⁹

⁶⁹ Table C-9 allocates some land demand to designations differently than the existing distribution of employment, based on reasonable assumptions about the future location of employment by plan designation. Demand for industrial employment in industrial designations includes demand that might have located in residential designations (52 acres) and demand that might have located in public designations (5 acres). Demand for employment in commercial

Table C-9 shows demand for 486 gross acres of land in industrial designations, 569 gross acres in commercial designations, and 59 acres for employment in residential designations.

Table C-9. Employment land demand by comprehensive plan designations, Salem's portion of the Salem-Keizer UGB, 2015–2035

Employment Type	Land Demand (Gross Acres)	Broad Comprehensive Plan Categories			Total
		Industrial Designations	Commercial Designations	Residential Designations	
Industrial	441	369	72		441
Office and Commercial Services	400	56	319	25	400
Retail and Retail Services	273	61	178	34	273
Total	1,115	486	569	59	1,114

Source: ECONorthwest

Note: Demand for industrial employment in industrial designations includes demand that might have located in residential designations (52 acres) and demand that might have located in public designations (5 acres). Demand for employment in commercial designations includes land in public designations for office and commercial services (12 acres) and for retail and retail services (54 acres).

designations includes land in public designations for office and commercial services (12 acres) and for retail and retail services (54 acres).



EAST LANCASTER NEIGHBORHOOD ASSOCIATION (ELNA)

February 9, 2022

To: Aaron Panko
From: Susann Kaltwasser, East Lancaster Neighborhood Association
RE: 4900 BLOCK OF STATE STREET - 97301

On February 3, 2022 the Board of the East Lancaster Neighborhood Association heard a presentation from Joseph Schaefer and Mark Grenz regarding the application for a CONDITIONAL USE / CLASS 3 SITE PLAN REVIEW / CLASS 2 ADJUSTMENT / CLASS 2 DRIVEWAY APPROACH PERMIT / CLASS 1 DESIGN REVIEW CASE NO. CU-SPR-ADJ-DAP-DR21-05 at the 4900 BLOCK OF STATE STREET.

The members were able to ask questions and see the drawings of the proposal. Following this presentation we had a discussion about our concerns.

By unanimous vote the Board decided that we support the staff recommendation to deny the application. We support the need for further explanation as to how this development meets city and state requirements.

In addition the members are concerned about the access way to the apartment complex via the proposed easement. They felt that the fact that the access does not have defined curbs and sidewalks, and is not separated from the adjacent commercial areas will create confusion and could create problems for both vehicles and pedestrians. We do not see what they called, 'safe islands' or pathways for children especially who might be walking to catch a bus or to go to one of the businesses. They do not want to see children on bikes or foot having to be dodging traffic as this is the only access to the main street.

Another concern is that the entrance is not directly across from the street on the west side of Greencrest. The mis-aligned of the access points create more points of conflict that could invite accidents. We see no good reason not to adjust the commercial area to a single continuous structure and to make the entrance more like an actual street with curbs and sidewalks. Access to the commercial area somewhere along that street-like entrance could be through a clearly marked separate driveway. This would be more logical and create the needed separation from residential and commercial areas.

While it is not included in this application the Board expressed several concerns about the idea of a gas station being included in this commercial area. We will be asking more questions at the appropriate time about that proposal.



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T (503) 598-7070
F (503) 598-7373

February 9, 2022

Via E-mail Only

Aaron Panko
apanko@cityofsalem.net

Re: East Park Apartments - CONDITIONAL USE / CLASS 3 SITE PLAN REVIEW / CLASS 2 ADJUSTMENT / CLASS 2 DRIVEWAY APPROACH PERMIT / CLASS 1 DESIGN REVIEW
 CASE NO. CU-SPR-ADJ-DAP-DR21-05 4900 BLOCK OF STATE STREET – 97301 AMANDA
 NO. 21-117429-ZO, 21-117432-RP, 21-117433-ZO, 21-117435-ZO & 21-121189-DR

Dear Aaron:

Thank you for assisting us with the hearing on January 26th. This letter, and the attachments, are the applicant's submittal of the additional evidence requested by the hearings officer. Please include these in the record and confirm receipt.

The first attachment is the zoning code for the CR zone. Second is the engineer's cross section of the proposed pedestrian and bike path on Cordon. Note that the property line is set back sixty feet from the right-of-way centerline, and approximately thirty feet from the vehicle travel lanes, which provides a generous buffer for the apartments. Third is LUBA's decision in the case of *Legacy Development v. City of the Dalles*, together with the cases cited by LUBA in that decision.

The hearings officer also requested more information on the nearest commercial uses, which are located to the west, on State Street. The retail uses on State Street begin approximately 5000 feet west of the southwest corner of the proposed apartments (a mile is 5280 feet). The first business on the south side of State St. is "The Yard," a food cart pod, and a "United Market" convenience store is across the street on the north side. These are followed by, on the south side of the street, a used car dealer, an HVAC contractor, an auto parts store, and a large drug store at the corner of Lancaster Road. Moving west from the United Market on the north side of State St. are a veterinary clinic, a produce store, a lawnmower shop, an auto mechanic, a used car dealership, and then a vacant retail store at the corner of Lancaster Road. These properties are not annexed into the City of Salem, and the same is true of other retail properties on Lancaster Road both north and south of State Street.

As next step, we will submit the applicant's final argument by February 16, 2022, and then look forward to the hearings officer's decision. In the interim, please send us any materials submitted for the record by the City or other parties.

Aaron Panko
February 9, 2022
Page 2

Your courtesies are appreciated, and please let us know if there is anything else we can provide.

Sincerely,

JORDAN RAMIS PC



Edward H. Trompke
Admitted in Oregon

cc: East Park, LLC
Multitech Engineering

Enclosures

CHAPTER 522. CR—RETAIL COMMERCIAL

Sec. 522.001. Purpose.

The purpose of the Commercial Retail (CR) Zone is to implement the commercial designation of the Salem Area Comprehensive Plan through the identification of allowed uses and the establishment of development standards. The CR zone generally allows a wide array of retail sales and office uses.

(Prior Code, § 522.001)

Sec. 522.005. Uses.

- (a) Except as otherwise provided in this section, the permitted (P), special (S), conditional (C), and prohibited (N) uses in the CR zone are set forth in Table 522-1.

TABLE 522-1. USES		
Use	Status	Limitations & Qualifications
Household Living		
Single family	P	Residential home, as defined under ORS 197.660, within an existing single family dwelling allowed as a continued use pursuant to SRC 522.005(b).
	S	Secondary dwellings and guest rooms, subject to SRC 700.070.
	N	All other single family.
Two family	N	
Three family	S	Subject to SRC 700.081.
Four family	S	Subject to SRC 700.081.
Multiple family	C	
Group Living		
Room and board	P	Room and board serving 5 or fewer persons.
	C	Room and board serving 6 to 75 persons.
	N	All other room and board.
Residential care	P	
Nursing care	P	
Lodging		
Short-term commercial lodging	P	
Long-term commercial lodging	C	

Nonprofit shelters	P	Nonprofit shelters serving 5 or fewer persons.
	C	Nonprofit shelters serving 6 to 75 persons.
	P	Nonprofit shelters serving victims of domestic violence for 10 or fewer persons.
	N	All other nonprofit shelters.
Retail Sales and Service		
Eating and drinking establishments	P	
Retail sales	N	Used merchandise stores, where sales and storage of merchandise and equipment is not conducted entirely within a building.
	P	All other retail sales.
Personal services	P	
Postal services and retail financial services	P	
Business and Professional Services		
Office	P	
Audio/visual media production	P	
Laboratory research and testing	P	
Motor Vehicle, Trailer, and Manufactured Dwelling Sales and Service		
Motor vehicle and manufactured dwelling and trailer sales	C	
Motor vehicle services	P	Gasoline service stations.
	C	All other motor vehicle services.
Commercial parking	P	
Park-and-ride facilities	P	
Taxicabs and car services	P	
Heavy vehicle and trailer sales	C	Truck rental and leasing.
	N	All other heavy vehicle and trailer sales.
Heavy vehicle and trailer service and storage	P	Truck stops.
	C	The following heavy vehicle and trailer service and storage activities: <ul style="list-style-type: none"> ■ Heavy vehicle and equipment operation instruction. ■ Tire retreading and tire repair shops.

	N	All other heavy vehicle and trailer service and storage.
Recreation, Entertainment, and Cultural Services and Facilities		
Commercial entertainment—indoor	C	Nightclubs, located within 200 feet of a residential zone.
	P	All other commercial entertainment—indoor.
Commercial entertainment—outdoor	C	Privately owned camps, campgrounds, and recreational vehicle parks.
	N	The following commercial entertainment—outdoor activities: ■ Amusement parks. ■ Drive-in movie theaters.
	P	All other commercial entertainment—outdoor.
Major event entertainment	C	
Recreational and cultural community services	P	
Parks and open space	P	
Nonprofit membership assembly	P	
Religious assembly	P	
Health Services		
Medical centers/hospitals	N	
Outpatient medical services and laboratories	P	
Education Services		
Day care	P	
Basic education	P	
Post-secondary and adult education	P	
Civic Services		
Governmental services	P	
Social services	P	
Governmental maintenance services and construction	N	
Public Safety		
Emergency services	P	
Detention facilities	N	
Military Installations	P	

Funeral and Related Services		
Cemeteries	N	
Funeral and cremation services	P	
Construction Contracting, Repair, Maintenance, and Industrial Services		
General repair services	P	
Building and grounds services and construction contracting	P	The following buildings and grounds services and construction contracting activities: ■ Landscape, lawn, and garden services. ■ Tree and shrub services.
	C	Carpet and upholstery cleaning establishments.
	N	All other building and grounds services and construction contracting.
Cleaning plants	N	
Industrial services	P	
Wholesale Sales, Storage, and Distribution		
General wholesaling	N	
Heavy wholesaling	N	
Warehousing and distribution	C	Distribution centers for online, mail order, and catalog sales.
	N	All other warehousing and distribution.
Self-service storage	N	
Manufacturing		
General manufacturing	P	General manufacturing, provided the manufacturing does not exceed 10,000 square feet of total floor area per development site and retail sales of the products manufactured is provided on-site.
	C	The following general manufacturing activities, when exceeding 10,000 square feet of total floor area per development site: ■ Industrial and institutional food service contractors. ■ Costume jewelry and precious metals metalsmithing. ■ Sundries and notions. ■ Signs.
	N	All other general manufacturing.

Heavy manufacturing	N	
Printing	P	
Transportation Facilities		
Aviation facilities	N	
Passenger ground transportation facilities	P	Transit stop shelters.
	C	The following passenger ground transportation facilities: <ul style="list-style-type: none"> ■ Local and suburban passenger transportation. ■ Intercity and rural highway passenger transportation within 2,000 feet from the center point of an I-5 interchange and having direct access on to a major arterial.
	N	All other passenger ground transportation facilities.
Marine facilities	N	
Utilities		
Basic utilities	C	Reservoirs; water storage facilities.
	P	All other basic utilities.
Wireless communication facilities	Allowed	Wireless communication facilities are allowed, subject to SRC chapter 703.
Drinking water treatment facilities	C	
Power generation facilities	C	
Data center facilities	N	
Fuel dealers	N	
Waste-related facilities	C	The following waste-related facilities are allowed conditionally: <ul style="list-style-type: none"> ■ Recycling depots. ■ Solid waste transfer stations.
	N	All other waste-related facilities.
Mining and Natural Resource Extraction		
Petroleum and natural gas production	N	
Surface mining	N	
Farming, Forestry, and Animal Services		
Agriculture	N	Marijuana production.
	P	All other agriculture.
Forestry	P	

Agriculture and forestry services	P	
Keeping of livestock and other animals	N	
Animal services	N	New wildlife rehabilitation facility.
	P	All other animal services.
Other Uses		
Temporary uses	P	The following temporary uses: ■ Temporary motor vehicle and recreational vehicle sales, subject to SRC 701.035.
Home occupations	S	Home occupations, subject to SRC 700.020.
Accessory dwelling units	S	Accessory dwelling units, subject to SRC 700.007.

(b) Continued uses. Existing single family and two family uses , other than manufactured dwellings, within the CR zone constructed prior to February 1, 1983, but which would otherwise be made nonconforming by this chapter, are hereby deemed continued uses.

- (1) Building or structures housing a continued use may be structurally altered or enlarged, or rebuilt following damage or destruction, provided such alteration, enlargement, or rebuilding complies with the standards set forth in SRC 522.010(e).
- (2) Cease of occupancy of a building or structure for a continued use shall not preclude future use of the building or structure for a residential use; provided, however, conversion of the building or structure to a nonresidential use shall thereafter prevent conversion back to a residential use.

(Prior Code, § 522.005; Ord. No. 31-13; Ord. No. 11-14; Ord. No. 22-15, § 11, 11-23-2015; Ord. No. 7-16, § 12, 6-27-2016; Ord. No. 10-17, § 13, 7-10-2017; Ord. No. 1-20 , § 2(Exh. B), 2-24-2020)

Sec. 522.010. Development standards.

Development within the CR zone must comply with the development standards set forth in this section.

(a) *Lot standards.* Lots within the CR zone shall conform to the standards set forth in Table 522-2.

TABLE 522-2. LOT STANDARDS		
Requirement	Standard	Limitations & Qualifications
Lot Area		
All uses	None	
Lot Width		
All uses	None	
Lot Depth		
All uses	None	
Street Frontage		
Single family	Min. 40 ft.	

	Min. 30 ft.	Applicable to lots fronting on the turnaround of a cul-de-sac street or the outside curve of a curved street having a radius of 200 feet or less and a direction change of 60 degrees or more. In no case shall the lot width be less than 40 ft. at the front building setback line.
All other uses	Min. 16 ft.	

(b) *Setbacks.* Setbacks within the CR zone shall be provided as set forth in Tables 522-3 and 522-4.

TABLE 522-3. SETBACKS		
Requirement	Standard	Limitations & Qualifications
Abutting Street		
Buildings		
All uses	Min. 5 ft.	
Accessory Structures		
Accessory to single family, three family, four family, and multiple family	None	Applicable to accessory structures not more than 4 ft. in height.
	Min. 5 ft.	Applicable to accessory structures greater than 4 ft. in height.
Accessory to all other uses	Min. 5 ft.	Not applicable to transit stop shelters.
Vehicle Use Areas		
All uses	Per SRC chapter 806	
Interior Front		
Buildings		
Single family, three family, and four family	None	
Multiple family	Min. 10 ft.	Required landscaping shall meet the Type C standard set forth in SRC chapter 807.
All other uses	Zone-to-zone setback (Table 522-4)	
Accessory Structures		
Accessory to single family, three family, and four family	Min. 5 ft.	
Accessory to multiple family	Min. 10 ft.	Required landscaping shall meet the Type C standard set forth in SRC chapter 807.

Accessory to all other uses	Zone-to-zone setback (Table 522-4)	
Vehicle Use Areas		
Multiple family	Min. 10 ft.	Required landscaping shall meet the Type C standard set forth in SRC chapter 807.
All other uses	Zone-to-zone setback (Table 522-4)	
Interior Side		
Buildings		
Single family	None	
Three family and four family	Min. 5 ft.	
Multiple family	Min. 10 ft.	Required landscaping shall meet the Type C standard set forth in SRC chapter 807.
All other uses	Zone-to-zone setback (Table 522-4)	
Accessory Structures		
Accessory to single family, three family, and four family	None	Applicable to accessory structures having at least 1 wall which is an integral part of a fence.
	Min. 5 ft.	Applicable to all other accessory structures.
Accessory to multiple family	Min. 10 ft.	Required landscaping shall meet the Type C standard set forth in SRC chapter 807.
Accessory to all other uses	Zone-to-zone setback (Table 522-4)	
Vehicle Use Areas		
Multiple family	Min. 10 ft.	Required landscaping shall meet the Type C standard set forth in SRC chapter 807.
All other uses	Zone-to-zone setback (Table 522-4)	
Interior Rear		
Buildings		

Single family	None	
Three family and four family	Min. 5 ft.	
Multiple family	Min. 10 ft.	Required landscaping shall meet the Type C standard set forth in SRC chapter 807.
All other uses	Zone-to-zone setback (Table 522-4)	
Accessory Structures		
Accessory to single family, three family, and four family	None	Applicable to accessory structures not more than 9 ft. in height.
	Min. 1 ft. for each 1 ft. of height over 9 ft.	Applicable to accessory structures greater than 9 ft. in height.
	Min. 1 ft.	Applicable to accessory structures adjacent to an alley, unless a greater setback is required based on the height of the accessory structure.
Accessory to multiple family	Min. 10 ft.	Required landscaping shall meet the Type C standard set forth in SRC chapter 807.
Accessory to all other uses	Zone-to-zone setback (Table 522-4)	
Vehicle Use Areas		
Multiple family	Min. 10 ft.	Required landscaping shall meet the Type C standard set forth in SRC chapter 807.
All other uses	Zone-to-zone setback (Table 522-4)	

TABLE 522-4. ZONE-TO-ZONE SETBACKS			
Abutting Zone	Type of Improvement	Setback ⁽¹⁾	Landscaping & Screening
EFU	Buildings and accessory structures	None	N/A
	Vehicle use areas	Min. 5 ft.	Type A
Residential Zone	Buildings and accessory structures	Min. 15 ft.	Type C
	Vehicle use areas		
Mixed-Use Zone	Buildings and accessory structures	None	N/A

	Vehicle use areas	Min. 5 ft.	Type A
Commercial Zone	Buildings and accessory structures	None	N/A
	Vehicle use areas	Min. 5 ft.	Type A
Public Zone	Buildings and accessory structures	None	N/A
	Vehicle use areas	Min. 5 ft.	Type A
Industrial and Employment Zone: EC, IC, IBC, and IP	Buildings and accessory structures	Min. 5 ft.	Type A
	Vehicle use areas		
Industrial and Employment Zone: IG and II	Buildings and accessory structures	Min. 10 ft.	Type C
	Vehicle use areas		
Limitations and qualifications: (1) Zone-to-Zone setbacks are not required abutting an alley.			

- (c) *Lot coverage; height.* Buildings and accessory structures within the CR zone shall conform to the lot coverage and height standards set forth in Table 522-5.

TABLE 522-5. LOT COVERAGE; HEIGHT		
Requirement	Standard	Limitations & Qualifications
Lot Coverage		
Buildings and Accessory Structures		
All uses	No Max.	
Rear Yard Coverage		
Buildings		
All uses	N/A	
Accessory Structures		
Accessory to all uses	No Max.	
Height		
Buildings		
All uses	Max. 50 ft.	
Accessory Structures		
Accessory to single family, three family, four family, and multiple family	Max. 15 ft.	
Accessory to all other uses	Max. 50 ft.	

- (d) *Landscaping.*

- (1) *Setbacks.* Required setbacks shall be landscaped. Landscaping shall conform to the standards set forth in SRC chapter 807.
- (2) *Vehicle use areas.* Vehicle use areas shall be landscaped as provided under SRC chapters 806 and 807.

-
- (3) *Development site.* A minimum of 15 percent of the development site shall be landscaped. Landscaping shall meet the Type A standard set forth in SRC chapter 807. Other required landscaping under the UDC, such as landscaping required for setbacks or vehicle use areas, may count towards meeting this requirement.
- (e) *Development standards for continued uses.*
- (1) *Buildings.* Buildings housing a continued use may be structurally altered or enlarged, or rebuilt following damage or destruction, provided such alteration, enlargement, or rebuilding conforms to development standards of the Single Family Residential (RS) Zone set forth in SRC chapter 511 and to all other applicable provisions of the UDC, except for lot size and dimension standards in SRC chapter 511.
- (2) *Accessory structures.* Existing accessory structures to a continued use may be structurally altered or enlarged, or rebuilt following damage or destruction, and new accessory structures to a continued use may be constructed, provided such alteration, enlargement, rebuilding, or new accessory structure construction conforms to the development standards of the Single Family Residential (RS) Zone set forth in SRC chapter 511, except the lot size and dimensions standards, and to all other applicable provisions of the UDC.
- (3) *Option to rebuild in same location.* Notwithstanding SRC 522.010(e)(1) and (2), any building or accessory structure rebuilt following damage or destruction may either be located on the same location on the lot as the original building or structure, or in compliance with the setbacks of the Single Family Residential (RS) Zone set forth in SRC 511.010(b).

(Prior Code, § 522.010; Ord. No. 31-13; Ord. No. 7-16, § 3, 6-27-2016; Ord. No. 1-20 , § 2(Exh. B), 2-24-2020)

Sec. 522.015. Design review.

Design review under SRC chapter 225 is required for development within the CR as follows:

- (a) Multiple family development shall be subject to design review according to the multiple family design review standards set forth in SRC chapter 702.
- (b) Residential care with five or more self-contained dwelling units shall be subject to design review according to the multiple family design review standards set forth in SRC chapter 702.

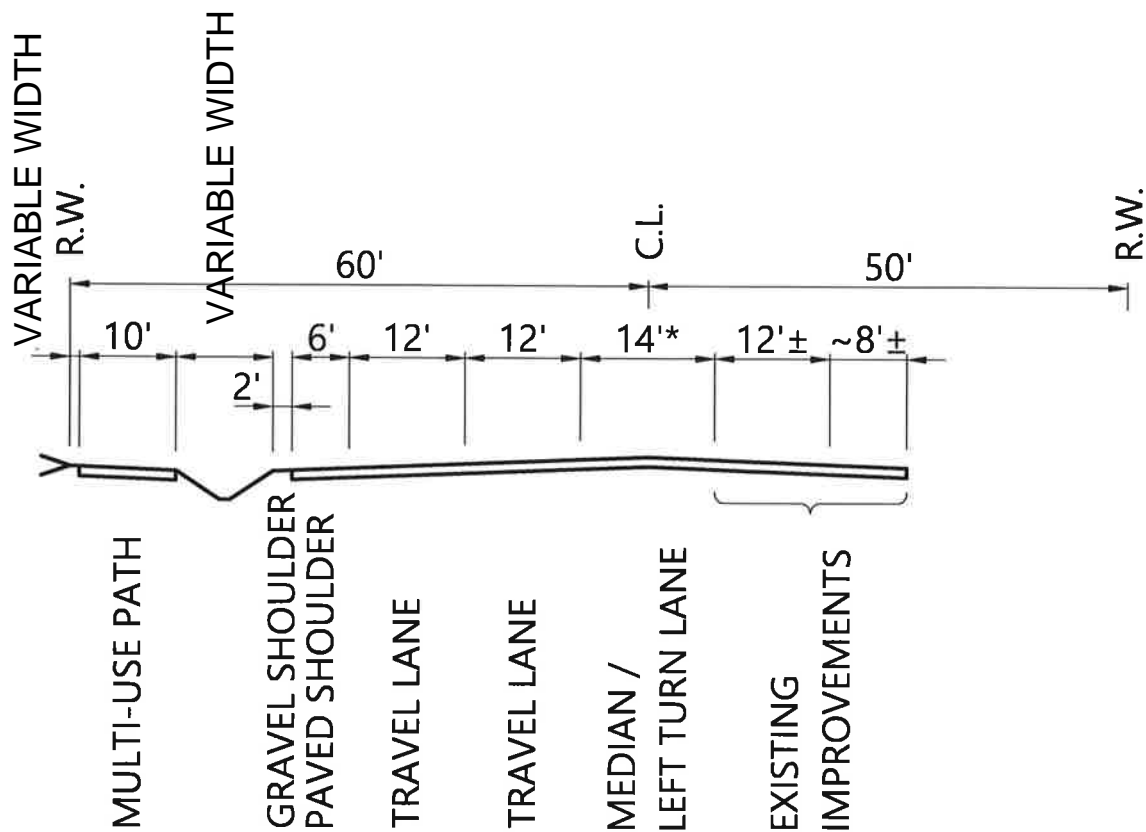
(Prior Code, § 522.015; Ord. No. 31-13; Ord. No. 1-20 , § 2(Exh. B), 2-24-2020)

Sec. 522.020. Other provisions.

In addition to the standards set forth in this chapter, development within the CR zone must comply with all other applicable development standards of the UDC, including, but not limited to, the following chapters:

- (a) Trees and Shrubs: SRC chapter 86.
- (b) Wireless Communications Facilities: SRC chapter 703.
- (c) General Development Standards: SRC chapter 800.
- (d) Public Improvements: SRC chapter 802.
- (e) Streets and Right-of-Way Improvements: SRC chapter 803.
- (f) Driveway Approaches: SRC chapter 804.
- (g) Vision Clearance: SRC chapter 805.

-
- (h) Off-Street Parking, Loading and Driveways: SRC chapter 806.
 - (i) Landscaping and Screening: SRC chapter 807.
 - (j) Preservation of Trees and Vegetation: SRC chapter 808.
 - (k) Wetlands: SRC chapter 809.
 - (l) Landslide Hazards: SRC chapter 810.
 - (m) Sign Code: SRC chapter 900.
- (Prior Code, § 522.020; Ord. No. 31-13)



CORDON ROAD TYPICAL CROSS SECTION

* NOTE:

IN LOCATIONS WHERE THERE IS NOT AN EXISTING 14 FT. CENTER MEDIAN, DEVELOPER WILL BE REQUIRED TO BUILD FULL 14 FT. CENTER MEDIAN.

~ NOTE:

DEVELOPER WILL BE REQUIRED TO BUILD FULL 8 FT. PAVED SHOULDER WHERE NEEDED AS RESULT OF NEW CONSTRUCTION AND/OR MEDIAN ADJUSTMENTS.

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

LEGACY DEVELOPMENT GROUP, INC.,
Petitioner,

vs.

CITY OF THE DALLES,
Respondent,

and

DENISE LYNNE DIETRICH-BOKUM,
ROBERT CLAYTON BOKUM,
GARY GINGRICH, TERRI JO JESTER GINGRICH,
DAMON ROLLA HULIT, and
ROBERTA KAY WYMORE-HULIT,
Intervenors-Respondents.

LUBA No. 2020-099

FINAL OPINION
AND ORDER

Appeal from City of The Dalles.

James D. Howsley filed the petition for review and reply brief and argued on behalf of petitioner. Also on the brief was Jordan Ramis PC.

No appearance by City of The Dalles.

Steve C. Morasch filed the response brief and argued on behalf of intervenors-respondents. Also on the brief was Landerholm, P.S.

RYAN, Board Member; RUDD, Board Chair; ZAMUDIO, Board Member, participated in the decision.

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REVERSED

02/24/2021

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

NATURE OF THE DECISION

Petitioner appeals a decision by the city council denying its application for a subdivision.

FACTS

The subject property is 6.92 acres and is zoned High Density Residential (RH). Petitioner applied to subdivide the property into 72 lots to include 83 dwelling units and a community park. The Dalles Municipal Code (TDMC) 10.5.020.060 allows up to 25 units per gross acre on land zoned RH and, accordingly, the maximum potential density on the subject property is 173 dwelling units.¹

The adjacent properties to the southwest, west, northwest, north, and northeast are also zoned RH. Adjacent properties to the east, southeast and south are zoned Low Density Residential. The property is bordered by Richmond Street to the east, East 10th Street to the north, and East 12th Street to the south. Petitioner's application proposed to construct half-street improvements on all of the streets bordering the subject property. The streets within one-half mile surrounding the property generally lack curbs, gutters, and sidewalks until they intersect with Thompson Street, a public street located over one-half mile to the west of the subject property. Thompson Street is a fully improved street with

¹ TDMC 10.5.020.060 also appears to include a minimum density requirement.

1 curbs, gutters, and sidewalks. U.S. Highway 197, an Oregon Department of
2 Transportation (ODOT) facility, is located approximately one-half mile to the
3 east of the subject property and is accessed from Fremont Street.²

4 Petitioner submitted its subdivision application in July 2019, and the city
5 mailed petitioner a letter notifying petitioner that the city deemed the application
6 complete on January 23, 2020. The planning department approved the application
7 on March 9, 2020. That approval included a condition that required petitioner to
8 submit a traffic impact study (TIS) prior to final plat approval.³ On March 19,
9 2020, intervenors-respondents (intervenors) appealed the planning department's
10 decision to the planning commission. On April 29, 2020, while that appeal was
11 pending, petitioner submitted a draft TIS prepared by its traffic consultant, DKS
12 Associates. The city's traffic consultant, Kittelson & Associates, Inc., reviewed

² The decision refers to the intersection of Highway 197 and Fremont Street as the US 197/Fremont Street/Columbia View Drive intersection because the street on the east side of Highway 197, directly across the highway from Fremont Street, is named Columbia View Drive.

The intersection of Highway 197/Fremont Street/Columbia View Drive currently carries 662 trips during the p.m. peak hour, 91 of which from the eastbound approach of Fremont Street. Record 356.

³ The condition provided:

“A Traffic Impact Study will be required to be completed and submitted for the proposed subdivision, with methodology in accordance with standard[] engineering practices. The study will be required to be reviewed and approved by the City Engineer.” Record 949.

1 the TIS on behalf of the city and concluded that the TIS was adequate to assess
2 the traffic impacts from the proposal. Petitioner and the city's planning staff met
3 to review the TIS and planning staff subsequently prepared a memorandum of
4 the meeting which concluded that the TIS adequately addressed the impacts from
5 the subdivision on the Highway 197/Fremont Street/Columbia View Drive
6 intersection. Record 667-68.

7 On July 16, 2020, the planning commission denied the appeal and upheld
8 the planning department's decision, and intervenors appealed that decision to the
9 city council. On September 14, 2020, the city council held a hearing and, at the
10 conclusion, voted to deny the subdivision application. We discuss in more detail
11 the bases for the city council's denial in our resolution of the first assignment of
12 error. This appeal followed.

13 **FIRST ASSIGNMENT OF ERROR**

14 The city council denied the application because it concluded that the
15 application failed to comply with four provisions of the TDMC which we set out
16 and discuss in detail below. In its first assignment of error, petitioner alleges that
17 the four TDMC provisions which the city council determined were not satisfied
18 are not "clear and objective" and therefore ORS 197.307(4) prohibits the city
19 from applying them to its application. As a result, petitioner argues, the city
20 council's decision to deny the application was "[o]utside the scope of authority
21 of the decision maker." ORS 197.828(2)(c)(A). Petitioner also argues that the
22 decision violates ORS 197.831 because the city has not satisfied its obligation

1 under that statute to “demonstrate that the approval standards * * * are capable
2 of being imposed only in a clear and objective manner.” We begin with a
3 discussion of ORS 197.307(4), ORS 197.831, and related statutes.

4 **A. The Needed Housing Statutes**

5 The statutes that are set out at ORS 197.295 to ORS 197.314 are commonly
6 referred to as the Needed Housing Statutes. With their initial enactment forty
7 years ago this year, in 1981,⁴ those statutes incorporated into law the “St. Helens
8 Policy,” which was adopted as a policy by the Land Conservation and
9 Development Commission (LCDC) in 1979. *See Robert Randall Company v.*
10 *City of Wilsonville*, 15 Or LUBA 26 (1986) (so explaining).⁵

11 ORS 197.307(1) provides, “The availability of affordable, decent, safe and
12 sanitary housing opportunities for persons of lower, middle and fixed income,
13 including housing for farmworkers, is a matter of statewide concern.” ORS
14 197.307(4) provides:

15 “Except as provided in subsection (6) of this section, a local
16 government *may adopt and apply only clear and objective*
17 *standards, conditions* and procedures regulating the development of
18 housing, including needed housing. The standards, conditions and

⁴ Or Laws 1981, ch 884, §§ 5-6.

⁵ *See also* Testimony, Senate Environment and Land Use Committee, SB 419, June 10, 1981, Ex A (statement of F. Van Natta). The initial purpose behind the St. Helens Policy was to end local government attempts to exclude certain housing types that met lower, moderate or “least cost” housing needs. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 148 (1998).

1 procedures:

2 “(a) May include, but are not limited to, one or more provisions
3 regulating the density or height of a development.

4 “(b) May not have the effect, either in themselves or cumulatively,
5 of discouraging needed housing through unreasonable cost or
6 delay.”⁶ (Emphasis added).

7 In *Rogue Valley Assoc. of Realtors v. City of Ashland*, we explained that
8 approval standards are not clear and objective if they impose “subjective, value-
9 laden analyses that are designed to balance or mitigate impacts of the
10 development on (1) the property to be developed or (2) the adjoining properties
11 or community.” 35 Or LUBA 139, 158 (1998), *aff’d*, 158 Or App 1, 970 P2d 685,
12 *rev den*, 328 Or 594 (1999). We also noted that ORS 197.307(4) requires the
13 standards and conditions that apply to needed housing to be *both* “clear” *and*
14 “objective.” *Id.* at 155-56 (“Dictionary definitions of ‘clear’ and ‘objective’
15 suggest that the kinds of standards frequently found in land use regulations lack
16 the certainty of application required to qualify as ‘clear’ or ‘objective.’”); *Id.* at
17 156 n 23 (quoting the dictionary definitions of “clear” and “objective”).⁷

⁶ ORS 197.307(6) allows a local government to adopt an alternative approval process for applications for needed housing if the alternative approval process authorizes a density that is greater than the density authorized under the “clear and objective standards” described in ORS 197.307(4). There is no dispute that the city has not adopted such an alternative approval process.

⁷ We note again here, as we noted in *Rogue Valley*, that the two words have different meanings. The dictionary includes the following definition for “clear”:

1 Petitioner also argues that the city’s decision violates the standard in ORS
2 197.831, which places the burden on the local government to demonstrate, in an
3 appeal before LUBA, that standards and conditions imposed on “needed
4 housing” “are capable of being imposed only in a clear and objective manner.”
5 By its terms, ORS 197.831 applies to decisions that “impos[e] the provisions of
6 the ordinance[]” on “needed housing.”⁸

7 In the response brief, intervenors opine that the record lacks evidence
8 supporting a conclusion that the development is “needed housing,” as defined in
9 ORS 197.303, but concede that that distinction does not matter for purposes of
10 ORS 197.307(4), which requires that local governments apply only clear and
11 objective standards to applications for all housing, not just “needed housing.”

“**3 a** : easily understood : without obscurity or ambiguity * * * : thoroughly understood or comprehended * * * : easy to perceive or determine with certainty * * * : sharply distinguished : readily recognized : UNMISTAKABLE[.]” *Webster’s Third New Int’l Dictionary* 419 (unabridged ed 2002).

The definition for “objective” includes the following:

“**1 * * * b * * *** (2) : existing independent of mind : relating to an object as it is in itself or as distinguished from consciousness or the subject (3) : belonging to nature or the sensible world : publicly or intersubjectively observable or verifiable esp. by scientific methods : independent of what is personal or private in our apprehension and feelings : of such nature that rational minds agree in holding it real or true or valid[.]” *Id.* at 1556.

⁸ In *Home Builders Assoc. v. City of Eugene*, we discussed the genesis of the enactment of ORS 197.831. 41 Or LUBA 370, 377-83 (2002).

1 Response Brief 3 n 1. At oral argument, intervenors argued for the first time that
2 ORS 197.831 does not apply to the challenged decision because the city did not
3 find, and the record does not demonstrate, that the development is for “needed
4 housing.” *See* ORS 197.303(1) (defining “needed housing”).⁹ After intervenors
5 raised the issue at oral argument, petitioner then submitted a Motion to Take
6 Official Notice of the city’s 2017 Housing and Residential Land Needs
7 Assessment, which petitioner describes in its motion as “part of periodic review
8 of the [city’s] comprehensive plan.” Motion to Take Official Notice 3.

9 We agree with intervenors’ assessment in the response brief that whether
10 the housing development at issue in this appeal would provide “needed housing,”
11 as that term is defined in ORS 197.303(1), is immaterial to our conclusions,
12 explained below, that the city’s decision violates ORS 197.307(4). That violation
13 provides a sufficient basis for reversal of the city’s decision, independently from
14 ORS 197.831. Therefore, we do not express any opinion on whether the
15 application of ORS 197.831 is limited to appeals concerning applications for
16 needed housing. Petitioner’s Motion to Take Official Notice is denied as moot.

⁹ LUBA does not consider issues raised for the first time at oral argument. OAR 661-010-0040(1). However, we are independently responsible for correctly construing statutes, regardless of the parties’ arguments. *See* ORS 197.805 (providing the legislative directive that LUBA “decisions be made consistently with sound principles governing judicial review”); *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722 (1997) (“In construing a statute, this court is responsible for identifying the correct interpretation, whether or not asserted by the parties.”).

1 **B. TMDM 10.10.060(A)(3)(a) and TMDM 10.10.060(A)(5)(a)**

2 TMDM chapter 10.10 “provides general information regarding
3 improvements required with residential, commercial, public and quasi-public,
4 and industrial development. It is intended to clarify timing, extent, and standards
5 for improvements required in conjunction with development.” TMDM 10.10.10.

6 TMDM 10.10.060 sets out “Street Requirements” for development, and
7 TMDM 10.10.060(A)(1) requires a TIS for development of 16 or more dwelling
8 units, any development proposal that is likely to generate more than 400 average
9 daily motor trips, and any development proposal that is “within 500 feet of an
10 intersection that is already at or below level of service ‘D’.” As noted, petitioner
11 submitted a draft TIS while intervenors’ appeal to the planning commission was
12 pending. TMDM 10.10.060(A)(3), one of the provisions on which the city council
13 relied to deny the application, provides:

14 “The TIS shall be conducted in accordance with the following:

15 “a. A proposal establishing the scope of the traffic study shall be
16 submitted for review to the Director. The study requirements
17 shall reflect the magnitude of the project in accordance with
18 accepted traffic engineering practices. Projects should assess
19 all nearby key intersections.

20 “b. Once the scope of the traffic study has been approved, the
21 applicant shall present the results with an overall site
22 development proposal. The study shall be sealed and signed
23 by a licensed professional engineer specializing in traffic.”¹⁰

¹⁰ TMDM 10.10.060(A)(4) provides:

1 TDMC 10.10.060(A)(5)(a) provides:

2 “The City may deny, approve, or approve a proposal with conditions
3 necessary to meet operational and safety standards; provide the
4 necessary right-of-way for improvements; and to require
5 construction of improvements to ensure consistency with the future
6 planned transportation system.”

7 The city council adopted findings addressing TDMC 10.10.060(A)(3)(a) and
8 TDMC 10.10.060(A)(5)(a) together and denied the application based on its
9 conclusion that petitioner’s TIS did not satisfy TDMC 10.10.060(A)(3)(a). The
10 city council found, in relevant part:

11 “[Petitioner’s] TIS failed to provide a full analysis of an additional
12 nearby intersection, US 197/Fremont Street/Columbia View Drive,
13 and only providing a ‘queueing’ analysis for this intersection. Upon
14 hearing testimony, as well as the City’s [Transportation System Plan
15 (TSP)], the Council determined that the US 197/Fremont

“Approval Criteria.

- “a. Location of new arterial streets shall conform to the Transportation System Plan, and traffic signals should generally not be spaced closer than 1,500 feet for reasonable traffic progression.
- “b. The TIS demonstrates that adequate transportation facilities exist to serve the proposed development or identifies mitigation measures that resolve identified traffic safety problems in a manner that is satisfactory to the City and, when state highway facilities are affected, to ODOT.
- “c. For affected non-highway facilities, the TIS establishes that level-of-service standards adopted by the City have been met.”

1 Street/Columbia View Drive intersection is also a ‘key intersection’
2 and should have been studied further.” Record 15.

3 In its first subassignment of error, petitioner argues that the city may not
4 apply TDMC 10.10.060(A)(3)(a) to its application for housing because the
5 provision is not “clear and objective,” as required by ORS 197.307(4). In its
6 second subassignment of error, petitioner argues that the city may not apply
7 TDMC 10.10.060(A)(5)(a) to its application for housing because it is also not
8 clear and objective. Because the city’s findings address those two TDMC
9 provisions together, we address petitioner’s challenges together here.

10 Petitioner points to the requirements in TDMC 10.10.060(A)(3)(a) that the
11 TIS “should assess all nearby key intersections” and “reflect the magnitude of the
12 project in accordance with accepted traffic engineering practices” and argues that
13 those provisions are neither clear nor objective. We agree.

14 The phrase “magnitude of the project” is not clear because that
15 determination cannot be made by reference to objective metrics set out in the
16 TDMC, such as a requirement that the TIS area include all intersections for which
17 the project would generate a specified number of additional vehicles per peak
18 hour. Similarly, the phrase “nearby key intersections” is not clear because there
19 are no objective measurements in the TDMC, such as a specified distance from
20 the subject property or a specified type of transportation facility, which make
21 clear the meaning of “nearby” or “key.” Those phrases are also not “objective”
22 because they require a subjective analysis in order to determine the meaning of

1 “magnitude,” “key,” and “nearby,” as well as the applicable “accepted traffic
2 engineering practices.”

3 The city’s finding that the Highway 197/Fremont Street/Columbia View
4 Drive intersection should have been studied relies on the ODOT Critical Crash
5 Rate and Level of Service (LOS) standards that are apparently set out in the city’s
6 adopted TSP.¹¹ Intervenors respond that the “ODOT Development Review
7 Guidelines” and the “ODOT Critical Crash Rate” supply a “clear and objective”
8 standard for the scope of a TIS. In the alternative, intervenors respond that the
9 ORS 197.307(4) requirement for clear and objective standards only applies to
10 standards that have been “adopted” by the local government.

¹¹ The city’s findings explain that the Highway 197/Fremont Street/Columbia View Drive intersection exceeds the ODOT Critical Crash Rate:

“For purposes of measuring operational and safety standards for an intersection, the City uses LOS ratings and ‘Critical Crash Ratings’ to identify study intersections that warrant further investigation and may represent opportunities to reduce crash frequency and severity. The LOS is a rating system (A through F) based on average delay at an intersection; with A-C representing traffic flows without significant delay during peak hours, D and E are progressively worse, and F representing excessive delay with demand exceeding capacity, essentially a ‘fail’. The City requires a minimum of LOS D for all signalized and unsignalized intersections. The Critical Crash Rate establishes a threshold for comparison among intersections with similar numbers of approaches and similar traffic control. As documented in the TSP, the intersection of US 197/Fremont Street/Columbia View Drive is one of two intersections in the City’s existing roadway system that exceeds the Critical Crash Rate.” Record 15.

1 We disagree with both premises. ORS 197.307(4) allows the city to
2 “adopt” *and* “apply” only clear and objective standards, and we have no reason
3 to believe that the legislature intended only standards “adopted” by the city to be
4 subject to the statute. Further, and more importantly, nothing in TDMC
5 10.10.060(A)(3)(a) references or identifies ODOT standards as the “accepted
6 traffic engineering practices.” Thus, it is immaterial to our analysis under ORS
7 197.307(4) whether the referenced ODOT standards are clear and objective
8 because the applicable approval standard, TDMC 10.10.060(A)(3)(a), does not
9 clearly incorporate those ODOT standards. TDMC 10.10.060(A)(3)(a) is not
10 clear and objective and, thus, the city erred in applying it to petitioner’s
11 application for housing.

12 Petitioner also argues that the city may not apply TDMC
13 10.10.060(A)(5)(a) to its application. Petitioner argues that the phrases
14 “necessary to meet operational and safety standards” and “ensure consistency
15 with the future planned transportation system” are not objective standards
16 because they require “subjective, value-laden analyses” to determine what
17 exactly is “necessary” and what is “consisten[t].” We agree. Terms such as
18 “necessary” and “consisten[t]” are designed to balance or mitigate impacts from
19 development and, therefore, are not “objective.” *Rogue Valley*, 35 Or LUBA at
20 158. TDMC 10.10.060(A)(5)(a) is not clear and objective and, thus, the city erred
21 in applying it to deny petitioner’s application for housing.

22 The first and second subassignments of error are sustained.

1 **C. TDMC 10.10.060(A)(5)(b)**

2 TDMC 10.10.060(A)(5)(b) provides:

3 “Construction of off-site improvements may be required to mitigate
4 impacts resulting from development that relate to capacity
5 deficiencies and public safety; and/or to upgrade or construct public
6 facilities to City standards.”

7 The city council’s findings regarding this provision are largely dependent on its
8 findings regarding TDMC 10.10.060(A)(3)(a) and provide:

9 “As mentioned in Finding #1, [petitioner’s] TIS failed to provide a
10 full analysis of the US 197/Fremont Street/Columbia View Drive
11 intersection; therefore, there is not sufficient information in the
12 record to determine the effect of the proposed development on the
13 LOS and the Critical Crash Rate at the intersection. Without
14 undertaking a full analysis of the US 197/Fremont Street/Columbia
15 View Drive intersection, [petitioner’s] TIS does not demonstrate if
16 the City’s LOS standards will be met, or what impact the
17 development may have on the Critical Crash Rate of the
18 intersection. As a result, the City Council cannot determine whether
19 the intersection can safely accommodate the additional traffic from
20 the proposed development or whether and to what extent additional
21 mitigation measures may be triggered.” Record 16.

22 In its third subassignment of error, petitioner argues that the city may not apply
23 TDMC 10.10.060(A)(5)(b) to its application because the phrase “may be required
24 to mitigate impacts resulting from development that relate to capacity
25 deficiencies and public safety” is both ambiguous and subjective. Petitioner
26 argues that the phrases “capacity deficiencies” and “public safety” are general
27 concepts, not defined in the TDMC, and that subjective analyses are required to
28 determine whether and how to apply them. Again, we agree. *Rogue Valley*, 35 Or
29 LUBA at 159-60 (holding that a standard requiring an applicant to “mitigate any

1 potential negative impact caused by the development” is not “clear and
2 objective”); *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or
3 LUBA 37, 50 (2014); *see also Home Builders Assoc. v. City of Eugene*, 41 Or
4 LUBA 370, 398-400, 399 n 23 (2002) (holding that a standard requiring that “on-
5 site vehicular and pedestrian circulation shall be designed to minimize
6 vehicular/pedestrian conflicts at driveway crossings within parking lots and at
7 vehicle ingress/egress points” is not “clear and objective”).

8 The third subassignment of error is sustained.

9 **D. TDMC 10.10.040(E)**

10 TDMC 10.10.040 sets out “Pedestrian Requirements” for new
11 development and provides, as relevant here:

12 “E. Off-Site Improvements. To ensure improved access between
13 a development site and an existing developed facility such as
14 a commercial center, school, park, or trail system, the
15 approving authority may require off-site pedestrian facility
16 improvements concurrent with development.”

17 The city council found:

18 “Since the application for this development was first submitted,
19 there has been continued testimony from the neighborhood that
20 pedestrian travel along surrounding streets are unsafe with no
21 sidewalks, narrow shoulders, steep drainage ditches, speeding cars
22 and farm equipment during harvest season. Staff had provided in
23 past findings that the proposed development is approximately 2,800’
24 from the existing sidewalk system on Thompson Street. The
25 Appellants argued that a sidewalk or the widening of the street along
26 E. 10th and 12th Streets from the development to Thompson Street
27 could help solve pedestrian safety issues, but a full understanding of
28 the needs would need to be studied further. The City Council found

1 this evidence and testimony to be persuasive and determined the
2 need for additional pedestrian improvements (i.e. sidewalks)
3 between the development site and nearby areas with existing
4 developed pedestrian improvements. Because [petitioner] does not
5 propose improvements to connect the site to existing developed
6 sidewalks, the application does not comply with this criterion.”
7 Record 16.

8 In its fourth subassignment of error, petitioner argues that the city may not apply
9 TDMC 10.10.040(E) to its application because the provision is not clear and
10 objective.

11 Intervenor's first response that “TDMC 10.10.040(E) is required by the state
12 Transportation Planning Rule” at OAR 660-012-0045(3). Response Brief 21.
13 According to intervenors, TDMC 10.10.040(E) “implements this state imposed
14 requirement.” *Id.*

15 OAR 660-012-0045(3) applies to new development and explains that the
16 purpose of the rule is, in relevant part,

17 “to ensure that new development provides on-site streets and
18 accessways that provide reasonably direct routes for pedestrian and
19 bicycle travel in areas where pedestrian and bicycle travel is likely
20 if connections are provided, and which avoids wherever possible
21 levels of automobile traffic which might interfere with or discourage
22 pedestrian or bicycle travel.”

23 The rule then proceeds to identify the types of local land use regulations required
24 for new development. OAR 660-012-0045(3)(b) requires local governments to
25 adopt land use regulations for new development that provide for “[o]n-site
26 facilities * * * which accommodate safe and convenient pedestrian and bicycle
27 access from within new subdivisions, multi-family developments, planned

1 developments, shopping centers, and commercial districts to adjacent residential
2 areas and transit stops, and to neighborhood activity centers within one-half mile
3 of the development.”

4 TDMC 10.10.040(E) allows the city to require “*off-site* pedestrian facility
5 improvements” and, accordingly, is not the city’s implementation of OAR 660-
6 012-0045(3)(b), which requires local governments to provide for *on-site*
7 *facilities*. We reject intervenors’ argument.¹²

8 Petitioner argues that the phrase “off-site pedestrian facility
9 improvements” is ambiguous because it could mean sidewalks, intersection
10 crosswalks, trails, or all of those. Petitioner argues that determining the meaning
11 of this phrase requires subjective value judgments. Relatedly, petitioner points
12 out that the city’s findings focus significant attention on safety concerns raised
13 by opponents of the application, but the provision itself does not use the word
14 “safety” at all. Accordingly, petitioner argues, the city council’s interpretation of
15 the provision to address safety issues evidences a subjective analysis. We agree.

16 The fourth subassignment of error is sustained.

¹² Petitioner responds that LCDC’s rules must be consistent with state statute and, accordingly, we understand petitioner to argue, any LCDC rule that the city applies to an application for housing must also be clear and objective or the city may not apply it. Although we tend to agree with petitioner, because we reject intervenors’ argument that TDMC 10.10.040(E) implements OAR 660-012-0045(3), we need not address petitioner’s argument that a local government may apply only clear and objective administrative rules to an application for housing.

1 **E. TDMC 10.10.040(B)**

2 TDMC 10.10.040(B) provides:

3 “Connectivity. Safe and convenient pedestrian facilities that strive
4 to minimize travel distance to the greatest extent practicable shall be
5 provided in conjunction with new development within and between
6 new subdivisions, planned developments, commercial
7 developments, industrial areas, residential areas, and neighborhood
8 activity centers such as schools and parks, as follows:

9 “1. For the purposes of this Chapter, ‘safe and convenient’ means
10 pedestrian facilities that are reasonably free from hazards
11 which would interfere with or discourage pedestrian travel for
12 short trips, that provide a direct route of travel between
13 destinations, and that meet the travel needs of pedestrians
14 considering destination and length of trip.”

15 The city council found:

16 “[Petitioner’s] proposal failed to address which improvements
17 would be needed to provide a safe pedestrian pathway between the
18 proposed development and activity centers such as bus stops,
19 schools and commercial areas. In addition, [petitioner] did not
20 suggest any solutions or provide any detailed study or analysis of
21 the acknowledged pedestrian safety issues. As a result, the
22 application does not demonstrate compliance with this criterion.”
23 Record 16.

24 In its fifth subassignment of error, petitioner argues that TDMC 10.10.040(B) is
25 not clear and objective. We agree. It is hard to imagine a local government
26 standard that uses the phrases “strive to minimize,” “to the greatest extent
27 practicable,” “reasonably free from,” or “interfere with or discourage” that does
28 not require a subjective, value-laden analysis to determine whether the standard
29 is met. The definition of “safe and convenient” does not save TDMC

1 10.10.040(B) from that fatal flaw, since it is itself an unclear and subjective
2 standard.

3 The fifth subassignment of error is sustained.

4 The first assignment of error is sustained.

5 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

6 In its second assignment of error, petitioner argues that the city council
7 committed a procedural error that prejudiced its substantial rights when it denied
8 the application based on the insufficiency of the TIS after deeming the application
9 complete. In its third assignment of error, petitioner argues that the city council's
10 decision to deny its application violated the Fifth Amendment to the United States
11 Constitution. Because we sustain petitioner's first assignment of error and reverse
12 the city's decision, we need not and do not decide whether the city committed a
13 procedural error or violated petitioner's constitutional rights. We do not reach the
14 second and third assignments of error.

15 **DISPOSITION**

16 We have sustained petitioner's challenges to all of the city council's bases
17 for denial of the application. Petitioner asks LUBA to reverse the city's decision
18 and order the city to approve the application. Petition for Review 32.

19 ORS 197.835(10)(a) provides, in part:

20 "The board shall reverse a local government decision and order the
21 local government to grant approval of an application for
22 development denied by the local government if the board finds:

1 “(A) Based on the evidence in the record, that the local government
2 decision is outside the range of discretion allowed the local
3 government under its comprehensive plan and implementing
4 ordinances[.]”

5 The city council denied petitioner’s application on bases that are barred by ORS
6 197.307(4) because the application is for approval of “housing” and the standards
7 that the city council found were not met are not “clear and objective.” The city
8 council’s decision was therefore “outside the range of discretion allowed the local
9 government under its comprehensive plan and implementing ordinances.”
10 *Parkview Terrace*, 70 Or LUBA at 57.

11 In *Parkview Terrace*, we reversed a city council decision denying site plan
12 approval and a variance for a needed housing development. We concluded that
13 all 10 of the reasons that the city council gave for denying the petitioner’s
14 applications were “outside the range of discretion allowed the local government
15 under its comprehensive plan and implementing ordinances.” *Id.* at 57-58.
16 Accordingly, we reversed the city council’s decision and ordered the city to
17 approve the petitioner’s applications. We instructed that the city council’s
18 decision to approve the applications could include conditions of approval
19 imposed by the urban area planning commission to which the petitioner had
20 agreed. *Id.* at 58 (citing *Stewart v. City of Salem*, 58 Or LUBA 605, 622, *aff’d*,
21 231 Or App 356, 219 P3d 46 (2009), *rev den*, 348 Or 415 (2010)). Accordingly,
22 here, the city council’s decision to approve the application may include
23 conditions of approval imposed by the planning department to which petitioner
24 has agreed.

1 The city council's decision is reversed, and the city is ordered to approve
2 petitioner's application.

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS Oct 6 4 34 PM '86
OF THE STATE OF OREGON

THE ROBERT RANDALL COMPANY,)
an Oregon corporation,)
Petitioner,)
vs.)
THE CITY OF WILSONVILLE,)
OREGON,)
Respondent.)

LUBA No. 86-016

FINAL OPINION
AND ORDER

Kenneth H. Fox, Portland, filed the Petition for Review and argued on behalf of petitioners. With him on the brief were O'Donnell, Ramis, Elliott and Crew.

Michael E. Kohlhoff, Wilsonville, filed a response brief and argued on behalf of respondent.

Michael A. Holstun, Salem, filed a state agency brief on behalf of the Department of Land Conservation and Development.

BAGG, Referee; DuBAY, Chief Referee; participated in the decision.

KRESSEL, Referee, Concurring.

REMANDED 10/06/86

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

1 Opinion by Baggett.

2 NATURE OF THE DECISION

3 Petitioner appeals denial of its request for a zone change
4 to permit construction of a mobile home park in the City of
5 Wilsonville. Petitioner asks us to reverse the decision.

6 FACTS

7 Petitioner applied for a zone change from RA-1 (Residential
8 Agricultural) to PDR (Planned Development Residential) for a 21
9 acre parcel.¹ Petitioner's request was heard and approved by
10 the Wilsonville Planning Commission in December 1985. The
11 approval was submitted to the city council for final action.
12 However, the council found that the application did not comply
13 with the city's comprehensive plan and denied the requested
14 change. This appeal followed.

15 FIRST ASSIGNMENT OF ERROR

16 "The Wilsonville City Council misconstrued its own
17 Comprehensive Plan and zoning ordinance by denying
18 that a mobile home park is an outright permitted use
19 in an area designated for medium density residential
20 development on the Comprehensive Plan. LCDC has
already ruled that the applicable standard governs
how, but not whether such a development is to be
approved." (Emphasis in original.)

21 The city based its denial on Objective 4.3.3 of the
22 comprehensive plan. Under the objective, the city must:

23 "Encourage the development of diverse housing types,
24 but maintain a balance in the types and location of
25 housing available, both currently and during future
26 development. Such housing types shall include, but
not be limited to, apartments, single family detached,
commonwall single family, manufactured homes, mobile
homes, and condominiums in various structural forms."
City of Wilsonville Comprehensive Plan, Objective 4.3.3.

1 Citing this plan objective, the council stated that
2 "Wilsonville is out of balance in the number of mobile homes
3 placed within the city limits." Record at 23. The city
4 council concluded that it was justified in denying the
5 development.

6 Petitioner argues the city's design violates the
7 comprehensive plan. Petitioner states that under the
8 comprehensive plan, the subject property is a Medium Density
9 Residential (MDR) area, and adds that the following
10 comprehensive plan provision requires the city to approve the
11 application:

12 "The city will provide for development of mobile home
13 parks and subdivisions by establishing them as
14 outright permitted uses in urban medium density
15 residential areas. Where economically feasible and
16 where adequate compatible provisions can be made
existing mobile home parks shall be protected and
allowed to continue." City of Wilsonville
Comprehensive Plan, Policy 4.4.2.

17 Petitioner also argues that acknowledgement of the city's
18 plan by the Land Conservation and Development Commission was
19 predicated, in part, on LCDC's understanding that mobile home
20 development proposals in MDR areas on the plan would be treated
21 as permitted uses by the city. According to petitioner, the
22 plan, as acknowledged, requires an upzone to PDR upon
23 application for any property within a medium density
24 residential area over 2 acres. See Record at 519.

25 Intervenor Department of Land Conservation and Development
26 seconds petitioner's complaints and states that during the

1 acknowledgement process, the city represented to LCDC that it
2 was the intent of the plan to allow mobile homes outright in
3 medium density areas.² See "Summary Analysis of Findings
4 Related to LCDC Acknowledgement Review Report" submitted by the
5 Wilsonville Planning Commission on March 24, 1982, page 15.
6 The department insists that the plan is clear and unambiguous
7 in its grant of permitted use status to mobile homes in the MDR
8 areas.³

9 The city defends by stating it is entitled to determine
10 when development authorized by the plan is to be allowed. The
11 city argues it found too many mobile homes now exist in the
12 area sought to be developed. Under the city's plan calling for
13 a balance of housing types, the city claims it is entitled to
14 deny the development so as to maintain a balance between mobile
15 homes and other housing types.

16 We find the city was entitled to consider this application
17 against its comprehensive plan objective calling for a balance
18 of housing types. The city's plan is divided into goals,
19 objectives, and policies. The plan provides that

20 "[W]hen any ambiguity or conflict appears to exist,
21 Goals shall take precedence over Objectives, Policies,
22 Text and Map; Objectives shall take precedence over
Policies, Text and Map; Policies shall take precedence
over Text and Map."

23 In this case, the plan policy that mobile homes be treated
24 as permitted uses in urban medium density residential areas is
25 a clear statement appearing to require approval of this
26 application. The policy is stated in mandatory terms.

1 Objective 4.3.3, however, also requires the city to "maintain a
2 balance in the types and location of housing available...."
3 Maintaining a balance of housing types is also obligatory. The
4 plan objective, then, is placed in conflict with the plan
5 policy by the application for a mobile home park. Satisfaction
6 of one provision will violate the other. Where provisions are in
7 conflict, the plan itself provides a method to resolve the
8 conflict - the objective controls over the policy.

9 We conclude the city was justified in applying Objective
10 4.3.3 to this application.

11 The first assignment of error is denied.

12 SECOND ASSIGNMENT OF ERROR

13 "The Wilsonville City Council went beyond its
14 authority under its own zoning ordinance by applying
15 Comprehensive Plan objective 4.4.3 [sic] to
Petitioner's application."

16 Aware that the city rests its decision on a plan objective,
17 petitioner next argues the city code does not require a zone
18 change to satisfy a comprehensive plan "Objective." Petitioner
19 asserts the rezoning criterion provides that a proposed
20 development must be "consistent with all applicable policies in
21 the comprehensive plan." (Emphasis added) Wilsonville City
22 Code, Section 4.187. Record at 271.

23 The code does not state clearly that either plan
24 "objectives" or "policies" must be satisfied. Rather, the
25 zoning code appears to require compliance with the
26 comprehensive plan, generally. We decline to find the city in

1 error simply because it considered objectives as well as
2 policies.

3 The second assignment of error is denied.

4 THIRD ASSIGNMENT OF ERROR

5 "The Wilsonville City Council misconstrued LCDC's area
6 of special concern designation."

7 In making its decision, the city council found that the
8 subject property was entitled to protection as an "area of
9 special concern." The council also found that design criteria
10 in the comprehensive plan protects the environment in areas of
11 special concern. Petitioner argues the area of special concern
12 criteria are not applicable to this application for the same
13 reasons that its application should be considered an outright
14 permitted use.

15 We understand the city plan to designate particular
16 geographical areas as "areas of special concern." The areas
17 are given a number designation, and within each particular
18 geographical area, certain plan provisions must be applied.

19 The city's order states

20 "The Comprehensive Plan further, emphasizes protection
21 and enhancement of the pleasant, comfortable living
22 environment presently enjoyed by local residents. It
23 specifically designates this area as an Area of
24 Special Concern and sets forth design criteria to
protect the existing suburban low-density development
in this area. Therefore, in interpreting compliance
and balance, it is necessary for the Council to
consider both subjective and objective factors."
Record 23.

25 The city's order does not identify within which area of
26 special concern petitioner's property lies. We are therefore

1 unable to determine the particular criteria applicable, or
2 potentially applicable, to petitioner's application. Indeed,
3 it is not clear that the city applied any area of special
4 concern criteria to this application. It is also not clear
5 that the area of special concern criteria may be used to deny
6 an application.

7 Without further guidance on which of the several areas of
8 special concern is applicable to this development and upon what
9 criteria the city measures this application, we are unable to
10 sustain the city's use of this particular portion of its plan.

11 The first assignment of error is sustained.

12 FOURTH ASSIGNMENT OF ERROR

13 "The Wilsonville City Council has violated the
14 applicable laws by amending its Comprehensive Plan
without following statutory procedures."

15 Petitioner argues the City of Wilsonville failed to comply
16 with the procedural requirements for amending comprehensive
17 plans found in ORS 197.610-650. Petitioner claims the
18 statutory notice requirements were not adhered to. Petitioner
19 also states the following:

20 "The first time its new interpretation of the
21 Comprehensive Plan was made public was upon acceptance
22 of the findings which denied Petitioner's
23 application. This is in violation of the procedures
established for plan amendments and should not be
permitted." Petition for Review at 18.

24 We understand petitioner to argue that the city has
25 effectively amended its comprehensive plan by interpreting away
26 (or effectively writing out) a comprehensive plan policy

1 requiring mobile homes be treated as permitted uses in urban
2 medium density zones. According to petitioner's theory, the
3 alleged "amendment" was not preceded by appropriate notice;
4 and, therefore, the city is in violation of procedural
5 requirements governing amendments to the comprehensive plan.

6 We reject this challenge. The city has not amended its
7 plan. It has denied a zone change request. The alleged
8 misinterpretation of the plan is not a plan amendment.

9 FIFTH ASSIGNMENT OF ERROR

10 "The Wilsonville City Council has interpreted its Plan
11 in a manner that violates the state's 'St. Helens'
policy as codified at ORS 197.295 et seq."

12 Petitioner claims the city 's denial of the mobile home
13 development on property designated Urban Medium Density
14 Residential is a violation of the LCDC acknowledgement and a
15 violation of state policy codified at ORS 197.295 - ORS
16 197.312. The quoted statutes require local governments to
17 provide affordable, decent, safe and sanitary housing for
18 persons of lower, middle and fixed income. When a need has
19 been shown for such housing within an urban growth boundary,
20 such needed housing must be permitted under ORS 197.307(3).
21 The local government approval process must be under "clear and
22 objective" standards. ORS 197.307(5). These statutes are
23 commonly known as the state's "St. Helen's" policy.

24 The Department of Land Conservation and Development joins
25 in this assignment of error and also asserts that the city's
26 interpretation of its plan "results in a failure to provide

1 needed housing in a zone or zones with sufficient buildable
2 lands to satisfy housing needs...."⁴ The Department states
3 that the city's action is not based on clear and objective
4 standards, in violation of ORS 197.307(5); and, indeed, the
5 city's action discourages provision of needed housing.

6 The City of Wilsonville argues that nothing in the record
7 shows the city does not have a sufficient inventory of lands to
8 meet housing needs.

9 The statute requires that a need must be shown before the
10 local government is obliged to provide for certain kinds of
11 housing. We are cited to nothing in the record showing a need
12 for additional mobile home subdivisions or similar housing for
13 low, middle or fixed income. Without showing need,
14 petitioner's challenge under ORS 197.295 et seq must fail.

15 The fifth assignment of error is denied.

16 SIXTH ASSIGNMENT OF ERROR

17 "The Wilsonville City Council's findings do not
18 support the Council's conclusion and are not supported
by substantial evidence in the record."

19 SEVENTH ASSIGNMENT OF ERROR

20 "The Wilsonville City Council failed to define the
21 standard which must be met to obtain approval of a
22 zone change application for a mobile home park
development."

23 In these two assignments of error, petitioner argues that
24 the city may not use its "balance" objective because the city
25 did not define the objective. According to petitioner, the
26 city council did not inform petitioner of how the standard

1 could be met, and petitioner was left in the position of trying
2 to second guess the council as to what evidence it must present
3 in order to show compliance with the balance criterion.

4 Further, petitioner argues that the city's findings do not show
5 that too many mobile homes now exist in the city or that the
6 proposed development would upset any balance which does exist
7 between mobile homes and other housing types.

8 The city does not fully explain what it means by a "balance
9 of housing types." The city's order states that its
10 comprehensive plan "seeks a diversity and balance in housing
11 types with a starting point of 24 percent mobile homes."
12 Record at 23. We are cited to nothing in the plan that
13 discloses what "balance" means. The plan cites a housing
14 "report" showing that mobile homes "are distributed at about 25
15 percent per housing type as of May 19, 1979." City of
16 Wilsonville Comprehensive Plan, Objective 4.3.2. However,
17 there is no plan provision establishing 24 percent or (25
18 percent) as a desirable "balance" of mobile homes to other
19 housing types.

20 In addition, we do not understand the city's order to state
21 that a ratio of 24 percent mobile homes to other kinds of
22 housing is an appropriate balance under the city's plan. The
23 findings only state that the plan seeks diversity and balance
24 in housing types "with a starting point of 24 percent mobile
25 homes." (Emphasis supplied.)

26 We therefore agree with petitioner. The comprehensive plan

1 is quite vague on the matter of what is an appropriate
2 "balance" of housing types. Similarly, the city's order does
3 not articulate what constitutes a proper balance. The city has
4 not even given a range of ratios or balances between housing
5 types that it would consider acceptable under its plan. In
6 order to effectively use this criterion, the city must explain
7 what it means by an appropriate or proper balance of housing
8 types. Commonwealth Properties v. Washington County, 35 Or App
9 387, 582 P2d 1384 (1978).⁵

10 The sixth and seventh assignments of error are sustained.

11 EIGHTH ASSIGNMENT OF ERROR

12 "The Wilsonville City Council's decision is outside
13 the range of discretion allowed under its
14 Comprehensive Plan and zoning code, in violation of
ORS 197.840."

15 Petitioner here urges us to order approval of the
16 application. ORS 197.835(9) requires us to approve a
17 development where petitioner shows the local government "is
18 outside the range of discretion allowed the local government
19 under its comprehensive plan and implementing ordinances."
20 Petitioner claims that the city's decision clearly flies in the
21 face of the provisions of its plan. Petitioner also claims
22 that we should assess attorney fees against the city under this
23 same statute.

24 In order to agree with petitioner's request, we must find
25 that the city was obliged to rezone petitioner's property for
26 the reasons claimed in the first assignment of error. We do

1 not accept this view. We find the city was entitled to apply
2 plan Objective 4.3.3. The fact that it may have done so
3 improperly, however, does not mean that petitioner must be
4 given approval for the rezone. We therefore deny this
5 assignment of error.

6 This assignment of error is denied.

7 This matter is remanded to the City of Wilsonville for a
8 complete explanation and application of its balance criteria.
9 Also, the city should explain any application of the "area of
10 special concern" in the plan provisions.

1 Kressel, Concurring.

2 I differ with the majority's reasoning (but not the result)
3 in the first assignment of error. The majority believes that
4 Plan Policy 4.4.2 is "mandatory". By that I assume they mean
5 the policy would entitle petitioner to the requested rezoning,
6 but for the conflicting plan objective. This analysis gives
7 more weight to the plan policy than is warranted by its text.

8 Policy 4.4.2 declares that

9 "The city will provide for development of mobile home
10 parks and subdivisions by establishing them as
11 outright permitted uses in urban medium density
12 residential areas. Where economically feasible and
where adequate compatible provisions can be made
existing mobile home parks shall be protected and
allowed to continue."

13 Insofar as pertinent in this case, the text says nothing more
14 than that the city will allow certain uses in the medium
15 density areas of the plan. Neither this policy nor any other
16 regulation cited by petitioner dicatates when the city will
17 take this action. More to the point in this case, the plan
18 leaves completely unanswered the question of whether land shown
19 on the plan map as "medium density residential," but currently
20 zoned for less intensive use (e.g., Residential-Agricultural)
21 must automatically be "upzoned" to accommodate a proposed
22 mobile home park. That is precisely the question raised in
23 this case.

24 Petitioner argues that the requested upzoning is dictated
25 by policy 4.4.2 but the text of the policy does not go that
26 far. The policy does not say when the zone must be brought

1 into conformance with the plan. There is no statutory or other
2 rule barring the city from maintaining property in a zoning
3 district less intensive than shown on the plan. See Porthman v.
4 Klamath County, 25 Or App 613, 618-19, 550 P2d 1236 (1976). As
5 a result, I believe the city could deny the rezoning
6 application, supporting the denial by citation to other
7 segments of the plan designed to have legal effect (i.e.,
8 objectives and policies).

9 My objection to the majority's stance is that it paves the
10 way for a practice I believe can erode much of a city's plan.
11 That practice, which petitioner has some reason to believe is
12 at work in this case, is the use of highly general plan
13 "objectives" to override or eviscerate more specific, mandatory
14 portions of a plan whenever the specific mandate proves to be
15 unpopular. If the text of Policy 4.4.2 clearly supported
16 petitioner's claim to an automatic rezoning for a mobile home
17 park (as the majority seems to believe), the city should not be
18 permitted to negate that text by invoking a "conflict" with the
19 hierarchically superior, but far more general, plan objective.
20 In land planning law as in other areas of the law, specific
21 provisions should govern over general ones. This principle is
22 incautiously overlooked by the majority opinion.

FOOTNOTES

1

The PDR zone allows mobile home parks as permitted uses.

2

Medium density is 5 to 12 units per acre.

3

We are aware of no authority requiring us to interpret the city's plan in the light of a DLCD acknowledgement report. The "Summary Analysis of and Findings Related to LCDC Acknowledgement Review Report" relied upon by the department in support of its interpretation of the city plan is a planning commission document, not a statement of the governing body.

4

The Department does not cite us to any city housing inventory which might show whether the city's action affects its ability to provide needed housing.

5

The city has not explained why it chose this particular geographical area when discussing its housing type balance. On remand, the city's choice of area of study should be explained.

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

ROGUE VALLEY ASSOCIATION)	
OF REALTORS,)	
)	
Petitioner,)	
)	LUBA No. 97-260
vs.)	
)	FINAL OPINION
CITY OF ASHLAND,)	AND ORDER
)	
Respondent.)	

Appeal from City of Ashland.

David J. Hunnicutt, Tigard, filed the petition for review and argued on behalf of petitioner.

Paul Nolte, City Attorney, Ashland, filed the response brief and argued on behalf of respondent.

GUSTAFSON, Board Chair; HANNA, Board Member, participated in the decision.

REMANDED 09/24/98

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner challenges a legislative post-acknowledgment
4 decision that amends the city's acknowledged land use
5 regulations.

6 **FACTS**

7 The city's acknowledged land use regulations include a
8 chapter titled "Physical and Environmental Constraints." City
9 of Ashland Land Use Ordinance (ALUO) Chapter 18.62. ALUO
10 18.62 includes definitions for "Floodplain Corridor Lands,"
11 "Riparian Preserve Lands," "Erosive and Slope Failure Lands,"
12 "Wildfire Lands" and "Severe Constraint Lands." Development
13 in any of these defined areas requires a "physical constraints
14 review permit." ALUO 18.62.060 requires that the city adopt
15 maps showing each of these defined lands. ALUO 18.62.040.E
16 imposes criteria for approval of physical constraints review
17 permits. In addition, "for all land use actions which could
18 result in development in" any of these defined lands, specific
19 development standards must be met.¹

20 The decision challenged in this appeal (the Hillside
21 Development Ordinance, or HDO) amends ALUO 18.62 in a number
22 of ways. For purposes of this appeal, the more significant

¹ALUO 18.62 imposes different development standards for each of the defined types of land. ALUO 18.62.070 (Floodplain Corridor Lands); 18.62.075 (Riparian Preserve Lands); 18.62.080 (Erosive and Slope Failure Lands); 18.62.090 (Wildfire Lands); 18.62.100 (Severe Constraint Lands). These standards apply in addition to any requirements imposed by the underlying zone.

1 changes are as follows:

2 1. Buildable area. The former definition of
3 "buildable area" excludes lands with a slope of
4 greater than 40%. The revised definition of
5 "buildable area" excludes lands with a greater
6 than 35% slope.²

7 2. Hillside Lands. Erosive and Slope Failure
8 Lands are renamed "Hillside Lands," and the
9 definition of such lands is expanded.³

10 3. New and more stringent development standards
11 for Hillside Lands are adopted in place of the
12 existing development standards for Erosive and
13 Slope Failure Lands.⁴

14 **MOTION TO STRIKE**

15 Petitioner moves to strike a letter attached to
16 respondent's brief. The letter is not included in the local
17 government record in this appeal and is not subject to

²As a result of this change, lands with between 35% to 40% slopes, which were considered buildable before the change, are no longer considered buildable.

³Hillside Lands include: (1) lands that are "highly visible from other portions of the city" and (2) lands with a slope exceeding 25%. The existing definition of Erosive and Slope Failure Lands only includes lands with a slope of 40% or greater. With the challenged amendment, properties with a slope of between 25% and 40%, which were formerly excluded from the definition of "Erosive and Slope Failure Lands," are now included within the definition of "Hillside Lands."

⁴The development standards imposed on Hillside Lands under the challenged decision are discussed in more detail below.

1 official notice. The motion to strike is granted.

2 **FIRST ASSIGNMENT OF ERROR**

3 Petitioner contends the HDO violates certain provisions
4 in ORS 197.295 through 197.312, which impose statutory
5 obligations and limitations regarding "needed housing." A
6 threshold issue under this assignment of error is whether the
7 housing that the parties appear to agree will or may be
8 affected by the regulations adopted by the challenged decision
9 constitutes "needed housing." We turn to that question first.

10 **A. Needed Housing Defined**

11 As relevant in this appeal, ORS 197.303(1) provides:

12 "As used in ORS 197.307, until the beginning of the
13 first periodic review of a local government's
14 acknowledged comprehensive plan, 'needed housing'
15 means housing types determined to meet the need
16 shown for housing within an urban growth boundary at
17 particular price ranges and rent levels. On and
18 after the beginning of the first periodic review of
19 a local government's acknowledged comprehensive
20 plan, 'needed housing' also means:

21 "(a) Housing that includes, but is not limited to,
22 attached and detached single-family housing and
23 multiple family housing for both owner and
24 renter occupancy;

25 "(b) Government assisted housing;

26 "(c) Mobile home or manufactured dwelling parks
27 * * *; and

28 "(d) Manufactured homes on individual lots planned
29 and zoned for single-family residential use
30 * * *." (Emphases added.)

31 Under ORS 197.303(1), the first inquiry is whether a local
32 government has identified a need "for housing within an urban
33 growth boundary at particular price ranges and rent levels."

1 If a local government does so, any housing types the local
2 government determines to be necessary to meet the identified
3 need is considered "needed housing."⁵

4 **B. The Ashland Comprehensive Plan**

5 The Ashland Comprehensive Plan (ACP) includes a "Housing
6 Element." ACP Chapter VI. The ACP uses census information to
7 identify household income ranges. ACP VI-3, Table VI-3. The
8 plan assumes "25% of the monthly gross income would be applied
9 towards rent" and that "28% of the monthly gross income would
10 be used to make [mortgage] payments." ACP VI-4. The city then
11 identifies the following housing categories as needed to
12 satisfy the identified demand for housing: (1) "Subsidized or
13 Shared Housing;" (2) "Rental;" (3) "Moderate Cost Purchase;"
14 and (4) "High Cost Purchase". Immediately after identifying
15 these four categories of housing,⁶ the comprehensive plan
16 identifies the following "housing types" as "housing types
17 [that] have a place in Ashland:"

18 "a) Multi-family, multi-unit apartments

19 "* * * * *

20 "b) Townhouses

21 "* * * * *

⁵ORS 197.303(1)(a)-(d) limits the discretion certain local governments have to exclude certain housing types as "needed housing." For purposes of this appeal, cities like Ashland with populations of 2,500 or more must include detached single-family housing and the other specified housing types as "needed housing."

⁶The ACP refers to these four categories of housing as "types of housing." We will refer to them as categories of housing to avoid confusion with the statutory term "housing types."

1 "c) Mobile or manufactured homes
2 " * * * * *
3 "d) Attached single-family homes
4 " * * * * *
5 "e) Detached single-family homes[.] ACP VI-6
6 through VI-9.⁷

7 Finally, the comprehensive plan includes a table that
8 identifies the total number of housing units needed within
9 each of the four housing categories identified above. The
10 identified needed number of housing units within each housing
11 category is then allocated among four "land categories."⁸
12 Each of the four land categories accommodates one or more of
13 the four housing categories.⁹ The identified needed number of
14 housing units within each land category is then used to
15 determine the number of acres of land needed within each land

⁷Under ORS 197.303 there is no "needed housing" until a local government determines a need for housing "at particular price ranges and rent levels." The above-described ACP language is as close as the city comes to specifying particular price ranges and rent levels in the comprehensive plan itself. We do not know whether the plan language described in the text is derived from more specific background information concerning housing price ranges and rent levels. No issue is raised by any party regarding whether the city has determined a need for housing "at particular price ranges and rent levels." Therefore, for purposes of this opinion, we assume the plan language described in the text identifies the housing types that are needed to meet the city's future need for housing "at particular price ranges and rent levels."

⁸Those land categories are MFR (Multi-family); SR (Suburban Residential); SFR (Single-family Residential) and LDR (Low density Residential). The MFR and SFR categories are composed of more than one zoning district; the SR and LDR categories are composed of a single zoning district.

⁹The entire need for "subsidized" housing will be met on "MFR" lands. "Rental" housing needs will be met as follows: 40% on "MFR" lands, 30% on "SR" lands and 30% on "SFR" lands. Twenty percent of "moderate cost" housing need will be met on "SR" lands, and 80% will be met on "SFR" lands. Fifty percent of the "high cost" housing needs will be met on "SFR" lands, and 50% will be met on "LDR" lands.

1 category. ACP VI-10, Figure VI-2. These calculations are
2 summarized below:

3 MFR 750 housing units (54 acres) (Subsidized and
4 Rental).

5 SR 660 housing units (83 acres) (Rental and
6 Moderate Cost).

7 SFR 1,550 housing units (388 acres) (Rental,
8 Moderate Cost and High Cost).

9 LDR 190 housing units (127 acres) (High Cost). ACP
10 VI-10, Figure VI-2.

11 In summary, the ACP identifies multi-family, multi-unit
12 apartments, townhouses, mobile or manufactured homes, attached
13 single-family homes and detached single-family homes as
14 "needed housing" types. The above-noted acres of MFR, SR, SFR
15 and LDR lands are required under the ACP to supply the needed
16 number of housing units.

17 **C. The City's General Defenses**

18 The city's first general defense is that the statutory,
19 Goal 10 (Housing) and OAR chapter 660, division 8, "needed
20 housing" restrictions are inapplicable to "luxury residential
21 hillside lots." Respondent's Brief 6. This defense is not
22 available to the city for at least two reasons. First, the
23 ACP identifies "a need * * * for housing within [the] urban
24 growth boundary at particular price ranges and rent levels,"
25 as required by ORS 197.303(1) and 197.307(3)(a). High-cost
26 housing is included in the housing needs identified in the
27 ACP. Therefore, even if the city is correct that high-cost or
28 luxury housing could be excluded from its identified needed

1 housing, the city has not done so in the ACP. Second, even if
2 the ACP did exclude luxury housing from its needed housing, it
3 does not appear that only luxury housing development will be
4 affected by the HDO.

5 In addition, while we need not reach the question in this
6 appeal, we question whether high-cost or luxury housing could
7 be excluded as a needed housing type. The needed housing
8 statutes were first adopted in 1981. Or Laws 1981, chapter
9 884, sections 5 and 6 (SB 419). SB 419 essentially codified
10 LCDC's then-existing St. Helens Housing Policy. Testimony,
11 Senate Environment and Land Use Committee, SB 419, June 10,
12 1981, Ex A (Testimony of F. Van Atta). The initial purpose
13 behind that policy appears to have been to foreclose local
14 government attempts to exclude certain housing types that
15 traditionally satisfied lower, moderate or "least cost"
16 housing needs.¹⁰ However, OAR chapter 660, division 8, which
17 was adopted in part to "implement ORS 197.303 through
18 197.307," appears to take an all-inclusive approach to "needed
19 housing." OAR 660-008-0010 provides, in part, that "[t]he mix
20 and density of needed housing is determined in the housing
21 needs projection." OAR 660-008-0005(5) provides, in part:

22 "'Housing Needs Projection' refers to a local
23 determination, justified in the plan, of the mix of
24 housing types and densities that will be:

¹⁰This purpose is reflected in ORS 197.307(1), which states "[t]he availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for seasonal and year-round farmworkers, is a matter of statewide concern."

1 "(a) Commensurate with the financial capabilities of
2 present and future area residents of all income
3 levels during the planning period[.] * * *"
4 (Emphasis added.)

5 In view of these rule provisions, we question whether high-
6 cost or luxury housing could be excluded from "needed
7 housing."¹¹

8 The city's second general defense is that "buildable
9 lands" for "needed housing" need not include lands with slopes
10 over 25%.¹² Since one of petitioner's main objections to the
11 HDO is that it defines properties with slopes of between 35%
12 and 40% as unbuildable, when such properties were formerly
13 considered buildable, the city argues petitioner's "needed
14 housing" arguments should be rejected for that reason alone.

15 We do not agree. Petitioner's arguments are not limited
16 to the increased regulation of lands with steep slopes. More
17 importantly, the ACP specifically includes steeply sloped
18 lands (up to 40% slopes) within its buildable lands inventory
19 for single-family residential housing.¹³ Under the OAR 660-

¹¹A second potential obstacle to treating an identified need for high-cost housing as something other than "needed housing" is the approach taken in the ORS 197.303(1), Goal 10 and OAR 660-008-0005(11) definitions of "needed housing." Those definitions all define "needed housing" in terms of housing "types" and specifically require that certain housing types (including owner-occupied, detached, single-family housing) be considered "needed housing." The current ACP assumes all "high cost" housing will be owner-occupied, detached, single-family housing.

¹²LCDC's administrative rules implementing Goal 10 and ORS 197.303 through 197.307 appear at OAR chapter 660, division 8. OAR 660-008-0005 includes a definition of "buildable land" and provides, in part, that "[l]and with slopes of 25% or greater unless otherwise provided for at the time of acknowledgment * * * is generally considered unbuildable for purposes of density calculations."

¹³ACP XII-2 provides that "land which was over 40% average slope was not included in the buildable lands inventory." The parties cite nothing in

1 008-0005(2) definition of "buildable land," the city could map
2 and distinguish between residentially zoned land that exceeds
3 25% slopes and land with lesser slopes, and rely exclusively
4 on the latter to provide buildable land for needed housing.
5 However, the ACP Buildable Lands Inventory (BLI) does not do
6 so. The city has included lands with slopes exceeding 25% in
7 the lands included in the BLI that are required for needed
8 housing; the fact that it was not required to do so is
9 irrelevant.¹⁴

10 **D. Subassignments of Error**

11 Petitioner alleges three subassignments of error, which
12 we address separately below.

13 **1. The Requirement for Sufficient Buildable Land**
14 **for Needed Housing**

15 ORS 197.307(3) (a) provides:

16 "When a need has been shown for housing within an
17 urban growth boundary at particular price ranges and
18 rent levels, needed housing * * * shall be permitted
19 in one or more zoning districts or in zones
20 described by some comprehensive plans as overlay

the ACP which indicates the city attempted to exclude lands with 25% to 40% slopes from the inventory of buildable lands that the city relies upon to supply land for needed housing. To the contrary, it is clear that the buildable lands that the city will rely upon to provide needed housing do include lands with such slopes and the disputed decision imposes regulations affecting lots and parcels with such slopes.

¹⁴It may be that the city could amend the ACP to distinguish between two categories of residentially zoned lands: (1) those with slopes of 25% percent or greater and (2) those with slopes of less than 25%. In that event, the city would be in a position to designate a sufficient number of residentially zoned acres with less than 25% slopes to satisfy identified "needed housing" requirements. If the city were to adopt such an approach, any additional residentially zoned acres (i.e. residentially zoned acres beyond the number of acres required for "needed housing") with slopes of 25% or greater would not be subject to statutory or OAR chapter 660, division 8, restrictions on planning for and regulation of "needed housing." Of course, any inclusion of excess residentially zoned acres would have to be justified under Goal 14 (Urbanization).

1 zones with sufficient buildable land to satisfy that
2 need."

3 As explained above, the ACP identifies the number of housing
4 units needed within each of the four land categories and the
5 resulting number of acres within each land category that are
6 needed to supply the required number of housing units. ACP
7 Table XII-3 states that there are 342 acres of buildable SFR
8 lands within the current city limits, or 46 acres less than
9 the 388 acres of SFR land needed. However, Table XII-3 shows
10 there are 160 additional acres of buildable, vacant SFR lands
11 available outside the current city limits but inside the
12 city's urban growth boundary. Table XII-3 shows this results
13 in a surplus of 114 SFR zoned acres.¹⁵

14 The challenged decision recognizes that the HDO will
15 reduce the amount of buildable land available for needed
16 housing within city limits. However, based on a memorandum
17 prepared by the city planning staff in response to concerns
18 about the impact of the HDO on the BLI, the city found that
19 the impact would not exceed a loss of 33 housing units.¹⁶ The
20 challenged decision points out there are many more acres of

¹⁵Table XII-3 also shows there is a surplus of 129 acres of LDR lands already within city limits. Although there is a shortage of SR and MFR lands currently within city limits, if all buildable lands outside the city limits but inside the UGB are considered, there is a surplus of 6 acres and 8 acres of SR lands and MFR lands, respectively.

¹⁶The planning staff's methodology and conclusions are set out at Record 39. The planning staff estimated that the HDO would result in the following losses in development potential: 5 units on SFR lands, 26 units on LDR lands and 2 units on Woodland Resource zoned lands.

1 residentially zoned land within the UGB than are needed to
2 satisfy the 5-year supply required by ACP Policy XII-1.¹⁷

3 Petitioner advances several arguments why it believes the
4 city cannot rely on the projected loss of only 33 housing
5 units in concluding that the BLI remains adequate following
6 adoption of the challenged decision. Petitioner first argues
7 there is no "de minimis" exception to the requirement of ORS
8 197.307(3)(a) for a sufficient amount of appropriately zoned
9 buildable land to meet housing needs. The city responds, and
10 we agree, that it did not rely on a "de minimis" exception.

11 Petitioner next argues the city's analysis, which led to
12 the conclusion that, at most, the residential development
13 potential would be reduced by 33 units, was improperly limited
14 to an analysis of vacant lands. Petitioner contends the
15 analysis of the HDO's impact on buildable lands must include
16 underdeveloped lands that may have their development potential
17 reduced by the challenged ordinance.

18 The city responds that the ACP only includes vacant lands
19 in the BLI, and it was therefore appropriate to limit the
20 analysis to impacts on vacant parcels. The ACP explains the
21 methodology used to determine the amount of buildable land:

22 "The final totals shown on Table XII-2 are the
23 City's best estimates of the lands which are vacant

¹⁷ACP Policy XII-1 states: "The City shall strive to maintain at least a 5-year supply of land for any particular need in the City limits. * * *" (Emphasis added.)

1 and available for building sites in the City
2 limits." (Emphasis added.)¹⁸ ACP XII-4.

3 In view of the above plan language, we reject
4 petitioner's assertion that the city's analysis is flawed
5 because it did not consider the impact of the challenged
6 decision on underdeveloped land. The city apparently does not
7 include underdeveloped lands in its BLI.

8 Petitioner next argues the city's analysis is flawed
9 because it is not supported by substantial evidence. If we
10 understand petitioner correctly, it contends the planning
11 staff memorandum that the city council relied on in adopting
12 the HDO does not constitute substantial evidence because there
13 is an inadequate explanation for how determinations were made
14 and how certain calculations were made.

15 We have previously held that planning staff testimony can
16 constitute substantial evidence. Scott v. City of Portland,
17 17 Or LUBA 197, 202 (1988); Grover's Beaver Electric Plumbing
18 v. Klamath Falls, 12 Or LUBA 61, 64 (1984); Meyer v. City of
19 Portland, 7 Or LUBA 184, 197 (1983), aff'd 67 Or App 274
20 (1984). Petitioner does not explain why the explanation of
21 the determinations and calculations in the staff memorandum
22 are inadequate or what additional information would be
23 required to adequately explain how those calculations were
24 made. We conclude a reasonable decision maker would have

¹⁸The figures in Table XII-2 are also used in Table XII-3. As noted above in the text, it is Table XII-3 that establishes that there is a surplus of buildable land zoned for SFR housing, if all buildable lands within the UGB are considered.

1 relied on the evidence in the planning staff memorandum to
2 reach the conclusions the city council reached. Younger v.
3 City of Portland, 305 Or 346, 358-60, 752 P2d 262 (1988).

4 Finally, petitioner argues the city's findings do not
5 establish that the 160 acres of SFR lands located outside the
6 city limits but inside the UGB are "suitable or sufficient to
7 allow the development of single family residential housing at
8 the density levels needed to satisfy the loss of single family
9 residential housing resulting from the adoption of the HDO."
10 Petition for Review 7.

11 The city concedes the challenged decision could result in
12 a reduced development potential of 33 residential units within
13 the city limits; five of those lost units will be on SFR-zoned
14 lands. The city did not consider the loss of development
15 potential on SFR lands or other lands outside city limits but
16 inside the UGB. The 160 acres of SFR lands inside the UGB but
17 currently outside city limits will be relied on to supply a
18 sufficient number of housing units to offset (1) the five-unit
19 impact of the HDO on SFR lands inside city limits and (2) the
20 existing 46-acre shortage of SFR lands. It seems unlikely
21 that the 160 acres of SFR-zoned land located outside city
22 limits but inside the UGB are so unsuitable for residential
23 development that the HDO will render those lands unable to
24 provide a sufficient number of residential units to meet these
25 needs, even if the HDO makes some of those 160 acres
26 unbuildable. Nevertheless, the challenged decision fails to

1 address that question, and we are in no position to perform
2 that analysis.

3 This subassignment of error is sustained, in part. On
4 remand the city must demonstrate that the 160 acres of
5 unincorporated SFR lands outside city limits but inside the
6 urban growth boundary can be developed under the HDO with a
7 sufficient number of units (1) to offset the loss of 5 units
8 on SFR zoned lands within the city limits under the HDO and
9 (2) to address the existing 46-acre shortage of SFR lands
10 within city limits.

11 **2. The General Requirement for Clear and Objective**
12 **Standards for Needed Housing**

13 ORS 197.307(4) provides that while local governments must
14 identify and plan for "needed housing," they retain the
15 authority to:

16 "(a) Set approval standards under which a particular
17 housing type is permitted outright;

18 "(b) Impose special conditions upon approval of a
19 specific development proposal; or

20 "(c) Establish approval procedures."

21 However, the rights preserved by ORS 197.307(4) are
22 conditioned by ORS 197.307(6):

23 "Any approval standards, special conditions and the
24 procedures for approval adopted by a local
25 government shall be clear and objective and shall
26 not have the effect, either in themselves or
27 cumulatively, of discouraging needed housing through
28 unreasonable cost or delay."¹⁹

¹⁹A substantively identical requirement for clear and objective
"standards, special conditions and procedures" appears at OAR 660-008-0015.

1 If the purpose of the requirement for "clear and
2 objective" standards is to ensure certainty in the decision-
3 making process, the requirement is a problematic way to
4 achieve that purpose.²⁰

5 LCDC's first administrative rule adopted to implement
6 Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural
7 Resources) required that certain programs adopted to limit
8 uses which conflicted with inventoried Goal 5 resources
9 contain "clear and objective" standards. OAR 660-016-0010(3).
10 The Court of Appeals concluded a local code criterion that
11 prohibited conflicting uses if they would have "any adverse
12 impact" was sufficiently clear and objective under OAR 660-
13 016-0010(3). 1000 Friends of Oregon v. LCDC (Hood River
14 County), 91 Or App 138, 144, 754 P2d 22 (1988). The court's
15 decision in Hood River County appears to be based on the
16 absolute prohibition on "adverse effects" and does not
17 expressly recognize or discuss the possible uncertainty that
18 could be presented in determining whether an identified effect
19 is "adverse" and therefore prohibited.

20 A somewhat different analytical approach to considering
21 whether land use criteria are "clear and objective," was noted

²⁰It may be obvious that numerical or absolute standards are clear and objective. For example, requirements that a building be set back 20 feet from a lot line or be no higher than 40 feet tall may be both clear and objective. However, even height limitations are not always entirely clear, because one must determine the point on the ground where height measurements begin. Because the ground elevation around a building and roof designs can vary significantly, zoning codes frequently include very complicated formulas for determining the reference points from which building heights are measured. See Wood v. City of Lake Oswego, 26 Or LUBA 121 (1993).

1 and followed in Callison v. LCDC, 145 Or App 277, 284 n 8, 929
2 P2d 1061 (1996). In that case the court concluded that clear
3 and objective standards are not rendered otherwise simply
4 because the local code also provides an optional, alternative
5 set of approval standards that are not clear and objective.²¹

6 However, even if particular numerical or absolute
7 standards are clear and objective, once one departs from the
8 relatively small and shallow safe harbor of numerical and
9 absolute standards, few tasks are less clear or more
10 subjective than attempting to determine whether a particular
11 land use approval criterion is clear and objective.²² LCDC
12 largely abandoned the requirement for clear and objective
13 standards that is included in OAR 660-016-0010(3) when the new
14 Goal 5 rule was adopted in 1996. OAR chapter 660, division
15 23. With this understanding of the difficulty presented in
16 determining whether land use standards are "clear and
17 objective," we turn to ORS 197.307(6).

18 An examination of the wording and context of ORS
19 197.307(6) is the first step in determining what is meant by
20 clear and objective standards, special conditions and

²¹In 1997 revisions to ORS 197.307, the legislature expressly authorized the technique of providing an approval process with clear and objective approval standards, and an optional approval process with standards that are not clear and objective, when regulating "needed housing" or "housing development" based on "appearance or aesthetics." ORS 197.307(3)(d).

²²Absent a statutory or rule requirement that land use standards be clear and objective, land use standards can be, and frequently are, unclear, subjective and highly discretionary. See e.g. Oswego Properties, Inc. v. City of Lake Oswego, 108 Or App 113, 814 P2d 539 (1991); Lee v. City of Portland, 57 Or App 798, 802, 646 P2d 662 (1982); Opus Development Corp. v. City of Eugene, 28 Or LUBA 670, 685-86 (1995).

1 procedures. PGE v. Bureau of Labor and Industries, 317 Or
2 606, 610-11, 859 P2d 1143 (1993). In addition to being clear
3 and objective, the standards, special conditions and
4 procedures regulated by ORS 197.307(6) and OAR 660-008-0015
5 must "not have the effect, either of themselves or
6 cumulatively, of discouraging needed housing through
7 unreasonable cost or delay." The legislative concern that
8 apparently forms the basis of the statutory and rule
9 prohibition is that standards, special conditions and
10 procedures that are not clear and objective may be applied in
11 a way that will discourage needed housing through unreasonable
12 cost or delay. Dictionary definitions of "clear" and
13 "objective" suggest that the kinds of standards frequently
14 found in land use regulations lack the certainty of
15 application required to qualify as "clear" or "objective."²³

16 Neither the language nor the context of ORS 197.307(6)
17 and OAR 660-008-0015 offers much assistance in the task of

²³Webster's Third New International Dictionary includes the following definition for "clear":

"[e]asily understood: without obscurity or ambiguity: thoroughly understood or comprehended: easy to perceive or determine with certainty: sharply distinguished: readily recognized: unmistakable * * *" Webster's Third New Int'l Dictionary, 419 (unabridged ed 1981).

The definition for "objective" includes the following:

"[e]xisting independent of mind: relating to an object as it is in itself or as distinguished from consciousness or the subject: belonging to nature or the sensible world: publicly or intersubjectively observable or verifiable esp. by scientific methods: independent of what is personal or private in our apprehension and feelings: of such a nature that rational minds agree in holding it real or true or valid * * * [.]" Webster's Third New Int'l Dictionary, 1556 (unabridged ed 1981).

1 determining whether a particular land use standard, condition
2 or procedure is clear and objective. We therefore turn to
3 legislative history.

4 The legislative history confirms that the central concern
5 of the legislature in adopting ORS 197.303 and 197.307 was
6 that local governments should not be able to use their land
7 use regulations to exclude certain housing types, particularly
8 manufactured housing, which the legislature believed was
9 needed to satisfy low and moderate-income housing demand. The
10 legislative history also confirms that the current statute and
11 administrative rule were derived (in many instances word-for-
12 word) from the Land Conservation and Development Commission's
13 St. Helens Housing Policy. A copy of the St. Helens policy is
14 included in the legislative record of Oregon Laws 1981,
15 chapter 884, sections 5 and 6 (SB 419). House Committee on
16 Environment and Energy, SB 419, April 24, 1981, Ex E (Land
17 Conservation and Development Housing Policy) (hereafter cited
18 as "St. Helens Housing Policy").

19 The discussion on pages one through three of the St.
20 Helens Housing Policy is difficult to follow.²⁴ However the
21 discussion makes it reasonably clear that under the St. Helens
22 Housing Policy "needed housing" may be subjected to numerical
23 requirements ("one and one-half parking spaces per unit") or

²⁴This discussion attempts to clarify the Oregon Supreme Court's attempt in Anderson v. Peden, 284 Or 313, 316, 587 P2d 59 (1978), to articulate three different meanings that may be conveyed by the term "conditional use."

1 very clear requirements such as "access to a paved public
2 street." St. Helens Housing Policy 2 (Discussion of Approval
3 Standards). The policy goes on to explain that special
4 conditions may also be imposed, provided they are not used "as
5 a device to exclude a need housing type, delay construction,
6 or to push the cost of a proposal beyond the financial
7 capabilities of the households for whom it was intended."
8 Finally, the policy explains:

9 "A third type of conditional use is where approval
10 is discretionary and dependent upon vague criteria
11 such as 'no adverse impact on the neighborhood,' or
12 'compatible with surrounding development.' Such
13 criteria are inappropriate as a means for providing
14 for a needed housing type. Discretionary criteria
15 would be permissible only upon assurance that there
16 is adequate buildable land to accommodate the need
17 for a particular housing type in other zones in
18 which discretionary criteria do not apply." St.
19 Helens Housing Policy 3 (Discussion of Discretionary
20 Criteria) (emphases added).

21 The above quoted discussion gives two explicit examples
22 of standards that are not clear and objective. An attachment
23 to the St. Helens Housing Policy provides additional examples
24 of clear and objective approval standards²⁵ and conditions²⁶ as
25 well as examples of discretionary criteria that are

²⁵Each of the examples of clear and objective standards is either numerical ("landscaping exceeds 15% of lot area") or unambiguous (e.g. "the park is located on either a collector or arterial street paved to city standards.")

²⁶The examples of clear and objective special conditions, while somewhat less objective than the examples of clear and objective approval standards, are also reasonably unambiguous ("screen unsightly development such as trash [receptacles], mechanical apparatus, storage areas, or windowless walls," "require staggering of units to avoid a 'barrack-like' effect").

1 inconsistent with the St. Helens Housing Policy.²⁷ An
2 unmistakable picture emerges from the St. Helens Housing
3 Policy discussion and the examples given therein. "Needed
4 housing" is not to be subjected to standards, conditions or
5 procedures that involve subjective, value-laden analyses that
6 are designed to balance or mitigate impacts of the development
7 on (1) the property to be developed or (2) the adjoining
8 properties or community. Such standards, conditions or
9 procedures are not clear and objective and could have the
10 effect "of discouraging needed housing through unreasonable
11 cost or delay."

12 Petitioner argues that a number of provisions included in
13 the HDO are not clear and objective. We address each of the
14 challenged provisions separately below:

²⁷Examples of discretionary criteria that are not to be applied to "needed housing" are as follows:

"-be in harmony with the surrounding neighborhood;

"-preserve and stabilize the value of adjacent properties;

"-encourage the most appropriate use of the land;

"-have a minimal adverse impact on the livability, value and appropriate development of abutting properties and the surrounding area compared with the impact of development that is permitted outright;

"-preserve assets of particular interest to the community;

"-not be detrimental or injurious to property and improvement in the neighborhood or to the general welfare of the community;

"-will not unduly impair traffic flow or safety in the neighborhood." St. Helens Housing Policy 4 (Examples of Standards and Conditions).

1 **a. ALUO 18.62.040 (H) (m)**

2 ALUO 18.62.040 (H) (m) simply requires submission of a plan
3 that shows certain specified natural features on the property,
4 as well as "natural features" on "adjacent properties" that
5 are "potentially impacted by the proposed development."

6 ALUO 18.62.040 (H) (m) is a requirement for a plan or
7 information to be submitted with the application rather than
8 an approval criterion. Whether ALUO 18.62.040 (H) (m) is one of
9 the city's "procedures for approval," within the meaning of
10 ORS 197.307(6), is a closer question. For purposes of this
11 opinion, we will assume that it is.

12 While we tend to agree with petitioner that the city has
13 not clearly and objectively described the nature of the plan
14 and information that must be submitted, we do not believe that
15 failure is fatal. Under ORS 227.178(2), when the city reviews
16 an application for a permit, the city is required to "notify
17 the applicant of exactly what information is missing within 30
18 days of receipt of the application," in the event an applicant
19 fails to provide information the city believes is needed under
20 ALUO 18.62.040 (H) (m). We believe the ORS 227.178(2)
21 requirement that the city's notice specify "exactly what
22 information is missing" is itself a clear and objective
23 requirement. The city's "procedure" for requiring application
24 information, when viewed in context with ORS 227.178(2), is

1 sufficiently clear and objective to comply with ORS
2 197.307(6).²⁸

3 **b. ALUO 18.62.040(J)**

4 ALUO 18.62.040(J) authorizes the city "to amend [the
5 applicant's] plans to include any of the following conditions
6 if it is deemed necessary to mitigate any potential negative
7 impact caused by the development:

8 "1. Require the retention of trees, rocks, ponds,
9 wetlands, springs, water courses and other
10 natural features.

11 "2. Require plan revision or modification to
12 mitigate possible negative or irreversible
13 effect upon the topography or natural features
14 that the proposed development may cause.

15 "3. Require a performance guarantee as a condition
16 of approval.

17 "4. Require special evaluation by a recognized
18 professional. * * * A fee for these services
19 shall be charged to the applicant in addition
20 to the application fee."

21 The fundamental flaw in ALUO 18.62.040(J) is that it
22 gives the city authority to impose potentially significant and
23 costly changes in an application to construct "needed
24 housing," and thereby discourage construction of such housing.
25 The only limit on the city's authority to require such changes
26 is highly discretionary and subjective, i.e., that the changes

²⁸For the same reason, we reject petitioner's challenge to ALUO 18.62.080(D)(2) (which requires information about whether inventoried existing trees are suitable for conservation) and 18.62.100(D) (which requires a detailed engineering geologic study for development of Severe Constraints Lands).

1 be "deemed necessary to mitigate any potential negative impact
2 caused by the development."

3 We recognize that the conditions the city might actually
4 impose under ALUO 18.62.040(J)(1) and (2) could turn out to be
5 clear and objective. Similarly the conditions the city might
6 actually impose under ALUO 18.62.040(J)(3) and (4) need not
7 necessarily discourage housing through "unreasonable cost or
8 delay." Nevertheless, under ORS 197.307(6) and OAR 660-008-
9 0015, "any * * * procedures for approval adopted by a local
10 government shall be clear and objective * * *." ALUO
11 18.62.040(J) is not a "clear and objective" procedure, within
12 the meaning of ORS 197.307(6) and OAR 660-008-0015.

13 **c. ALUO 18.62.080(B)(4)(c)**

14 ALUO 18.62.080(B)(4)(c) governs hillside grading and
15 requires a planting plan to revegetate cut slope terraces:

16 "The vegetation used for these areas shall be native
17 or species similar in resource value which will
18 survive, help reduce the visual impact or the cut
19 slope, and assist in providing long term slope
20 stabilization."

21 We believe ALUO 18.62.080(B)(4)(c) is a clear and
22 objective standard within the meaning of ORS 197.307(6) and
23 OAR 660-008-0015. ALUO 18.62.080(B)(4)(c) requires the use of
24 "native vegetation." That is a sufficiently clear and
25 objective "standard" under ORS 197.307(6) and OAR 660-008-
26 0015. The city's extension to the applicant of the option to
27 use "similar species" under the specified conditions does not

1 render the clear and objective requirement for native
2 vegetation otherwise.²⁹ Callison, 145 Or App at 284 n 8.

3 **d. ALUO 18.62.080 (B) (8)**

4 ALUO 18.62.080 (B) (8) governs site grading of hillside
5 lands and requires that such grading "shall consider the
6 sensitive nature of these areas," "[retain] exiting grades to
7 the greatest extent possible [and] avoid an artificial
8 appearance by creating smooth flowing contours of varying
9 gradients." In addition, terraces "should be designed with
10 small incremental steps," and "[p]ads for tennis courts,
11 swimming pools and large lawns are discouraged."

12 The standards imposed by ALUO 18.62.080 (B) (8) are not
13 "clear and objective" within the meaning of ORS 197.307(6) and
14 OAR 660-008-0015.

15 **e. ALUO 18.62.080 (D) (3)**

16 ALUO 18.62.080 (D) (3) requires that trees of a particular
17 diameter be "incorporated into the project design whenever
18 possible." Development must preserve "the maximum number of
19 existing trees * * *." "Building envelopes [must] be located
20 and sized to preserve the maximum number of trees * * *."

21 In particular cases, ALUO 18.62.080 (D) (3) may be a
22 difficult or onerous standard. While it is not as clear or

²⁹Petitioner also challenges ALUO 18.62.080 (B) (5) (d), which requires use of native vegetation to revegetate fill slopes. However, ALUO 18.62.080 (B) (5) (d) also provides the applicant the option to use non-native vegetation, provided it is similar in resource value and will survive and stabilize the surface. For the same reason we find ALUO 18.62.080 (B) (4) (c) to be clear and objective, we find ALUO 18.62.080 (B) (5) (d) is clear and objective.

1 objective as a numerical setback or an absolute prohibition on
2 cutting trees, it requires that trees must not be cut, unless
3 it is not possible to build without doing so. If trees must
4 be cut to build, no more trees may be cut than must be cut to
5 build. While a "save if possible" standard may not be
6 sufficiently clear and objective in all contexts, we conclude
7 ALUO 18.62.080(D)(3) is a sufficiently clear and objective
8 standard to comply with ORS 197.307(6) and OAR 660-008-0015.³⁰

9 **f. ALUO 18.62.080(D)(4)(e)**

10 ALUO 18.62.080(D)(4)(e) authorizes the city to require
11 compensation for any losses that may result if there is
12 encroachment into a tree protection area, after a development
13 proposal has been approved and construction has begun or been
14 completed. ALUO 18.62.080(D)(4)(e) is therefore an after-the-
15 fact enforcement provision to be used if tree protection areas
16 required by an approved permit for residential development are
17 violated. For that reason, ALUO 18.62.080(D)(4)(e) could not
18 violate ORS 197.307(6) and OAR 660-008-0015, which only limit
19 "standards, special conditions and procedures" for "approval"
20 of needed housing.

21 **g. ALUO 18.62.080(D)(5)**

22 ALUO 18.62.080(D)(5) provides, in part,

³⁰We caution, however, that the city's application of ALUO 18.62.080(D)(3) in the future to impose "special conditions" requiring changes in an application to preserve trees could nevertheless run afoul of the prohibition in ORS 197.307(6) and OAR 660-008-0015 against discouraging needed housing through "unreasonable cost or delay." We only conclude here that ALUO 18.62.080(D)(3) passes the statutory and rule requirement that the approval standard itself be clear and objective.

1 "Development shall be designed to preserve the
2 maximum number of trees on a site, when balanced
3 with other provisions of this chapter * * *."

4 The balancing that is required by ALUO 18.62.080(D)(5) is
5 not a clear and objective criterion.

6 **h. ALUO 18.62.080(D)(6)(a)**

7 ALUO 18.62.080(D)(6)(a) requires that "replacement trees
8 shall be of similar resource value as the trees removed." We
9 agree with petitioner that ALUO 18.62.080(D)(6)(a) is not a
10 clear and objective standard.

11 **i. ALUO 18.62.080(D)(6)(c)**

12 ALUO 18.62.080(D)(6)(c) grants the city the discretion to
13 require a revegetation plan in lieu of replacement trees. We
14 agree with petitioner that ALUO 18.62.080(D)(6)(c) does not
15 include clear and objective standards for when the
16 revegetation plan may be required or what it must include.

17 **j. ALUO 18.62.080(E)(2)(b)**

18 ALUO 18.62.080(E)(2)(b) imposes the following requirement
19 on building design: "Cut buildings into hillsides to reduce
20 visual bulk." A diagram is included with ALUO
21 18.62.080(E)(2)(b). That diagram makes it clear that ALUO
22 18.62.080(E)(2)(b) requires that where cutting or filling is
23 necessary to develop a level building pad, the level building
24 pad is to be achieved by cutting rather than (1) filling or
25 (2) a combination of cutting and filling. Viewed in context
26 with the diagram, ALUO 18.62.080(E)(2)(b) is clear and
27 objective.

1 **k. ALUO 18.62.080 (E) (2) (g)**

2 ALUO 18.62.080(E)(2)(g) recommends "that color selection
3 for new structures be coordinated with the predominate colors
4 of the surrounding landscape * * *." We are uncertain whether
5 ALUO 18.62.080(E)(2)(g) is simply a suggestion, that
6 applicants are free to ignore, or a standard that must be
7 satisfied. If ALUO 18.62.080(E)(2)(g) is merely a suggestion,
8 it need not comply with ORS 197.307(6) and OAR 660-008-0015.
9 If ALUO 18.62.080(E)(2)(g) is an approval standard, it
10 violates ORS 197.307(6) and OAR 660-008-0015 because it is not
11 clear and objective. If the city determines on remand that
12 ALUO 18.62.080(E)(2)(g) is a standard, it must amend ALUO
13 18.62.080(E)(2)(g) to make it clear and objective.

14 **1. ALUO 18.62.080 (A) (4)**

15 ALUO 18.62.080(A)(4) requires a detailed geotechnical
16 study for all applications on hillside lands. Petitioner
17 argues this requirement "could cost the landowner thousands of
18 dollars and delay projects for an inordinate amount of time."
19 Petition for Review 15. We agree. However the possibility
20 that ALUO 18.62.080(A)(4) "could" result in cost or delay does
21 not mean that it will, or that such cost or delay would be
22 "unreasonable." We therefore reject petitioner's contention

1 that ALUO 18.62.080(A)(4) must be invalidated on the basis
2 that it may result in delay or an increase in cost.³¹

3 It is not clear whether petitioner also argues ALUO
4 18.62.080(A)(4) violates the statutory and rule requirement
5 for clear and objective standards and procedures for approval.
6 If so, we conclude that ALUO 18.62.080(A)(4) is a requirement
7 for information rather than a standard. Assuming ALUO
8 18.62.080(A)(4) is one of the city's "procedures for
9 approval," the city is obligated to quickly and clearly
10 identify any failure on the applicant's part to include all
11 required information in the initial submittal and thereafter
12 to allow the applicant an opportunity to make the application
13 complete. ORS 227.178(2). In view of ORS 227.178(2), even if
14 the ORS 197.307(6) and OAR 660-008-0015 requirement for clear
15 and objective procedures for approval applies, ALUO
16 18.62.080(A)(4) does not violate the statute or rule.

17 **m. ALUO 18.62.080(B)(5)(a)**

18 ALUO 18.62.080(B)(5)(a) requires that "fill slope angles
19 shall be determined in relationship to the types of materials
20 of which they are composed." The city may intend to refer to
21 standard tables that establish acceptable fill slope angles
22 based on material type. However, ALUO 18.62.080(B)(5)(a) does

³¹For the same reason we reject petitioner's challenge to ALUO 18.62.080(B)(7)(b), which requires a performance bond or other financial guarantee to guarantee completion of required erosion control measures.

1 not identify such a table or any other standard that the city
2 proposes to use to determine acceptable fill slope.

3 ALUO 18.62.080(B)(5)(a) does not satisfy the ORS
4 197.307(6) and OAR 660-008-0015 requirement for clear and
5 objective standards and procedures.

6 This subassignment of error is sustained, in part.³²

7 **3. The Requirement for Clear and Objective**
8 **Standards When Regulating Appearance or**
9 **Aesthetics**

10 ORS 197.307 was amended in 1997 to add a further
11 refinement of the "clear and objective" requirement in ORS
12 197.307(6). ORS 197.307(3) repeats the requirement of ORS
13 197.307(6) that "approval standards or special conditions" be
14 "clear and objective" and adds the requirement that such
15 "standards or conditions shall not be attached in a manner
16 that will deny the application or reduce the proposed housing
17 density." The restrictions imposed on local governments under
18 ORS 197.307(3) apply both to "needed housing" and to permits
19 for "residential development" generally.

20 We have already concluded that certain ALUO provisions
21 identified by petitioner are not "clear and objective" and,
22 for that reason, violate ORS 197.307(6). Those provisions

³²Summarizing our review of the plan sections challenged by petitioner under these subassignments of error, we conclude ALUO 18.62.040(J); 18.62.080(B)(8); 18.62.080(D)(5); 18.62.080(D)(6)(a); 18.62.080(D)(6)(c) and 18.62.080(B)(5)(a) are not clear and objective standards or procedures, as required by ORS 197.307(6) and OAR 660-008-0015. ALUO 18.62.080(E)(2)(g) is not clear and objective, but we remand to the city to determine in the first instance whether it is an approval standard or merely a suggestion.

1 therefore also may violate the ORS 197.307(3) requirement for
2 clear and objective standards or special conditions
3 "regulating appearance or aesthetics."

4 On remand the city potentially could correct the conflict
5 between those ALUO provisions and ORS 197.307(6) by making
6 them inapplicable to "needed housing." However, if those ALUO
7 provisions remain applicable to "residential development" and
8 constitute regulations of "appearance or aesthetics," they
9 would continue to violate ORS 197.307(3).

10 We do not reach the question of whether the regulations
11 petitioner believes constitute "appearance or aesthetics"
12 regulations actually constitute regulations of "appearance or
13 aesthetics." However, petitioner appears to contend that if a
14 standard or special condition applied to housing has any
15 effect on appearance or aesthetics or in any way is intended
16 to affect appearance or aesthetics, it necessarily is the kind
17 of standard or special condition regulated by ORS 197.307(3).
18 We reject that contention.

19 ORS 197.307(3) only regulates standards or special
20 conditions applied to needed housing or residential
21 development generally, if the standards or special conditions
22 regulate only for appearance or aesthetic purposes. In other
23 words, if there are other planning purposes for such
24 residential regulations, the fact that the regulations may
25 also regulate for appearance or aesthetic purposes does not
26 make ORS 197.307(3) applicable. On remand, the city will have

1 an opportunity to explain whether its HDO provisions regulate
2 for purposes other than appearance or aesthetics.

3 This subassignment of error is sustained.

4 **4. Petitioner's Remaining Arguments.**

5 Petitioner argues that the revised standards adopted in
6 ALUO 18.62.080 are "unnecessary" and that the city failed to
7 demonstrate that "existing protections are inadequate."
8 Petition for Review 15.

9 Petitioner cites no authority for the proposition that
10 the city must establish that its existing regulations are
11 inadequate or that new hillside regulations are necessary
12 before it may amend its land use regulations to include
13 revised hillside regulations. We are aware of no such
14 authority or requirement and reject the argument.

15 This subassignment of error is denied.

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

17 **SECOND ASSIGNMENT OF ERROR**

18 ORS 92.040(2) provides:

19 "After September 9, 1995, when a local government
20 makes a decision on a land use application for a
21 subdivision inside an urban growth boundary, only
22 those local government laws implemented under an
23 acknowledged comprehensive plan that are in effect
24 at the time of application shall govern subsequent
25 construction on the property unless the applicant
26 elects otherwise." (Emphasis added.)

27 Petitioner alleges the city may apply the HDO to
28 construction of previously approved subdivisions, in violation
29 of ORS 92.040(2).

1 ORS 92.040(2) limits a city's authority to apply new land
2 use regulations to construction of subdivisions that were
3 approved after September 9, 1995. ORS 92.040 would prohibit
4 application of the HDO to "construction" of a subdivision that
5 was approved (1) after September 9, 1995, and (2) before the
6 HDO was adopted. The city contends there is no reason to
7 believe the city intends to apply the HDO contrary to ORS
8 92.040(2), and we agree.

9 Petitioner also argues that applying the HDO to
10 construction of previously approved subdivisions would violate
11 ORS 227.178(3). ORS 227.178(3) provides:

12 "If the application [for a permit, limited land use
13 decision or zone change] was complete when first
14 submitted * * * and the city has a comprehensive
15 plan and land use regulations acknowledged under ORS
16 197.251, approval or denial of the application shall
17 be based upon the standards and criteria that were
18 applicable at the time the application was first
19 submitted."

20 ORS 227.178(3) applies to decisions on applications for
21 subdivision approval.³³ As the city correctly notes, ORS
22 227.178(3) does not apply to construction or development
23 standards that may be adopted after an application for
24 subdivision approval is granted.

25 The second assignment of error is denied.

³³The definitions of "permit" and "limited land use decision" expressly include subdivisions. ORS 197.015(12) (limited land use decision); 227.160(2) (permit); 227.215(1) (development).

1 **THIRD ASSIGNMENT OF ERROR**

2 Petitioner argues the HDO violates Goals 5 and 10 and
3 LCDC administrative rules that implement those Goals.

4 **A. Goal 5**

5 Petitioner's Goal 5 argument is based on an alleged
6 failure to comply with LCDC's new Goal 5 administrative rule.
7 OAR chapter 660, division 23. That rule is potentially
8 applicable to post-acknowledgment plan amendments. OAR 660-
9 023-0000. OAR 660-023-0010(5) defines "post-acknowledgment
10 plan amendments" (PAPAs) as including amendments to
11 acknowledged "land use regulations." However, OAR 660-023-
12 0250(3) specifically provides that "[l]ocal governments are
13 not required to apply Goal 5 in consideration of a PAPA unless
14 the PAPA affects a Goal 5 resource." OAR 660-023-0250(3) goes
15 on to state that "a PAPA would affect a Goal 5 resource only
16 if:

17 "(a) The PAPA creates or amends a resource list or a
18 portion of an acknowledged plan or land use
19 regulation adopted in order to protect a
20 significant Goal 5 resource or to address
21 specific requirements of Goal 5;

22 "(b) The PAPA allows new uses that could be
23 conflicting uses with a particular significant
24 Goal 5 resource site on an acknowledged
25 resource list; or

26 "(c) The PAPA amends an acknowledged UGB and factual
27 information is submitted demonstrating that a
28 resource site, or the impact areas of such a
29 site, is included in the amended UGB area."

30 Although neither petitioner nor respondent address OAR
31 660-023-0250(3)(a), (b) or (c), it does not appear that the

1 HDO qualifies under any of those subsections. The HDO amends
2 existing land use regulations, but does not create or amend "a
3 resource list or a portion of an acknowledged plan or land use
4 regulation adopted in order to protect a significant Goal 5
5 resource or to address specific requirements of Goal 5." Nor
6 does the HDO allow any new uses or amend the UGB.

7 Petitioner has not established that Goal 5 applies to the
8 HDO. This subassignment of error is denied.

9 **B. Goal 10**

10 The only two Goal 10-related provisions petitioner
11 contends the HDO violates are OAR 660-008-010 and 660-008-015.
12 Those provisions are in all material respects identical to the
13 needed housing statutory requirements for sufficient buildable
14 lands to satisfy needed housing requirements and for "clear
15 and objective" standards and procedures. ORS 197.307(3)(a)
16 and 197.307(6). We have already concluded that the HDO either
17 violates or has not been shown to comply with those statutory
18 provisions. If petitioner is correct that Goal 10 applies
19 directly to the HDO, the HDO violates these Goal 10 rule
20 provisions, as well.

21 The ALUO is a "land use regulation," as that term is
22 defined by ORS 197.015(11). The HDO amends the ALUO. LUBA is
23 required to "reverse or remand an amendment to a land use
24 regulation" that is not consistent with one or more statewide
25 planning goals, if:

26 "The comprehensive plan does not contain specific
27 policies or other provisions which provide the basis

1 for the regulation, and the regulation is not in
2 compliance with the statewide planning goals."
3 (Emphasis added). ORS 197.835(7)(b) (emphasis
4 added).

5 In other words, where the comprehensive plan includes specific
6 policies or other provisions that provide the basis for the
7 regulation, the statewide planning goals do not apply.

8 We explained in Melton v. City of Cottage Grove, 28 Or
9 LUBA 1, 6 (1994), that comprehensive plan provisions that
10 generally urged planning for tourist-commercial activities
11 were not specific policies that could provide a basis for a
12 particular interstate-oriented major retail facility.
13 Similarly, in Ramsey v. City of Portland, 23 Or LUBA 291, 299,
14 aff'd, 115 Or App 20, 836 P2d 772 (1992), we concluded a
15 general provision urging conservation of natural resources did
16 not amount to a specific plan policy that could provide the
17 basis for a newly adopted procedure for case-by-case
18 evaluation of development applications. However, in our
19 recent decision in Cuddeback v. City of Eugene, 32 Or LUBA
20 418, 422-23 (1997), we explain that the requirement in ORS
21 197.835(7)(b) for "specific policies or other provisions which
22 provide the basis for the regulation" does not require that
23 the comprehensive plan policy or provision specify exactly how
24 the plan is to be implemented.

25 The challenged decision includes 10 pages of findings
26 that identify numerous plan policies, goals and other
27 provisions. Record 33-43. The city specifically finds in its
28 decision that these plan policies and other provisions

1 constitute the kind of "specific policies" required by ORS
2 197.735(7)(b), making the statewide planning goals
3 inapplicable to the challenged decision. Record 33.

4 The policies cited by the city are somewhat more specific
5 than the policies the cities attempted to rely upon in Melton
6 and Ramsey to contend that statewide planning goals did not
7 apply directly to the decisions challenged in those appeals.³⁴
8 Petitioner does not assign error to the city's finding that
9 the cited plan policies and other provisions satisfy the
10 requirement under ORS 197.735(7)(b) for "specific policies or
11 other provisions which provide the basis for the regulation."
12 At oral argument, petitioner contended the cited policies were
13 not sufficiently specific, but did not explain why it believed
14 the cited policies and other provisions lack the requisite
15 specificity under ORS 197.735(7)(b).

16 In view of the city's unchallenged finding that the cited
17 plan policies and other provisions make the statewide planning

³⁴The following examples are representative of the plan policies and other provisions the city cites in its decision:

"Areas of steep slope on highly erosive granitic soils are very sensitive to development activities. The best control to erosion is to limit development in areas that are sensitive." Record 34.

"[D]evelopment [must] be accommodated to natural topography, drainage, and soils and make maximum use of existing vegetation to minimize erosion." Record 35.

"Require site-preparation procedures and construction practices which minimize erosion and sedimentation." Id.

"Restrict any new partitioning or subdivision of land on slopes greater than 40%." Record 36.

1 goals inapplicable to the HDO, we reject petitioner's
2 contention that the HDO violates Goal 10 and the Goal 10
3 administrative rule.³⁵

4 **FOURTH ASSIGNMENT OF ERROR**

5 In its final assignment of error, petitioner argues the
6 HDO is inconsistent with a number of comprehensive plan
7 provisions and for that reason must be reversed or remanded
8 under ORS 197.835(7)(a).

9 **A. ACP Chapter XII**

10 As explained under the first assignment of error, the BLI
11 includes "buildable lands presently available in the City
12 limits." ACP XII-2. Table XII-3 shows there is a sufficient
13 number of acres of land to meet identified land needs in each
14 of the identified land categories. Petitioner contends the
15 HDO will reduce development potential on SFR lands, making
16 buildable lands shown on Table XII-3 inadequate to meet
17 projected needs for single-family housing units.

18 We have already sustained petitioner's subassignment of
19 error D(1) under the first assignment of error. On remand,
20 the city will have to demonstrate that the 160 acres of SFR
21 lands outside city limits but inside the UGB (which will also
22 be subject to the HDO) are capable of supplying a sufficient
23 number of housing units to (1) offset the impact of the HDO on

³⁵Our conclusion here that the cited plan policies are sufficient to make the statewide planning goals inapplicable provides an additional basis for rejecting petitioner's allegations that the city should have applied Goal 5 when it adopted the HDO.

1 SFR lands currently within the city and (2) address the
2 current shortage of 46 acres of SFR lands already within the
3 city. If the city is unable to do so, we agree with
4 petitioner that the BLI will have to be amended to add a
5 sufficient number of acres of SFR lands to meet those needs.

6 This subassignment of error is sustained.³⁶

7 **B. ACP Chapter XII, Policies 2 and 3**

8 Petitioner makes arguments that the HDO, by making
9 certain lands within the city limits unbuildable, will violate
10 ACP Chapter XII, Policies 2 and 3. Petitioner's arguments are
11 based on a strained and incorrect understanding of what those
12 policies mean and how they would have to be applied following
13 adoption of the HDO. We reject petitioner's arguments
14 concerning these policies without discussion.

15 This subassignment of error is denied.

16 The fourth assignment of error is sustained, in part.

17 The city's decision is remanded.

³⁶The city once more attempts to rely on OAR 660-008-0005 for the proposition that its BLI is not required to include slopes in excess of 25% to meet identified housing needs. Again, this confuses what the city may do with what it in fact has done in the ACP. The BLI includes lands with greater than 25% slopes to meet identified housing needs. The HDO renders some of those lands included on the BLI unbuildable. The city may not avoid addressing that impact of the HDO by claiming it need not have included the affected acres in the BLI in the first place. The bottom line is that in adopting the HDO the city must ensure that it continues to have a sufficient number of acres of buildable land in its BLI to meet identified land needs.

In addition we are uncertain of the legal significance of the city's argument that Policy 1 at ACP XII-6, which states the city will strive to maintain a 5-year supply of land for any particular need in the city limits," is met. The relationship between that policy and Tables XII-1, XII-2 and X-II-3, which address land needs and vacant buildable lands for a longer planning period and consider lands outside city limits, is not clear.

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 HOME BUILDERS ASSOCIATION OF
5 LANE COUNTY and EUGENE
6 CHAMBER OF COMMERCE,
7 *Petitioners,*

8
9 and

10
11 REST-HAVEN MEMORIAL PARK
12 and CHARLES WIPER III,
13 *Intervenors-Petitioner,*

14
15 vs.

16
17 CITY OF EUGENE,
18 *Respondent,*

19
20 and

21
22 KEVIN MATTHEWS, ROBERT ZAKO,
23 JOHN KLINE and DAVID G. HINKLEY,
24 *Intervenors-Respondent.*

25
26 LUBA Nos. 2001-059 and 2001-063

27
28 FINAL OPINION
29 AND ORDER

30
31 Appeal from City of Eugene.

32
33 Bill Kloos, Eugene, filed a petition for review and argued on behalf of petitioner
34 Home Builders Association of Lane County and intervenors-petitioner.

35
36 Allen L. Johnson, Portland, filed a petition for review and argued on behalf of
37 petitioner Eugene Chamber of Commerce. With him on the brief was Johnson and Sherton,
38 PC.

39
40 Emily N. Jerome, Eugene, filed the response brief and argued on behalf of
41 respondent. With her on the brief was Harrang, Long, Gary, Rudnick, PC.

42
43 Donna M. Matthews, Eugene, represented intervenor-respondent Kevin Matthews.
44 David Hinkley, John Kline, and Robert Zako, Eugene, represented themselves.

1
2 BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member,
3 participated in the decision.

4
5 REMANDED

02/28/2002

6
7 You are entitled to judicial review of this Order. Judicial review is governed by the
8 provisions of ORS 197.850.
9

NATURE OF THE DECISION

Petitioners appeal the city's adoption of a comprehensive update to Eugene Code (EC) chapter 9, the city's zoning and land division ordinance.

FACTS

In 1982, the Land Conservation and Development Commission (LCDC) acknowledged EC chapter 9 and the Eugene-Springfield Metro Area Comprehensive Plan (Metro Plan). Although it has been amended a number of times since 1982, EC chapter 9 has never had a comprehensive review and update. In 1994, the city initiated such a comprehensive review. The city conducted its review for over seven years, by means of a number of different proceedings, generating a 17,180-page record. The city's review, and the revised 428-page EC chapter 9, are both known as the Land Use Code Update (LUCU).¹

The LUCU recodifies, with minor or no editorial changes, some preexisting provisions of EC chapter 9. It also extensively reorganizes the existing code, deletes a number of existing provisions, and adopts a number of new or amended provisions. As codified, the LUCU contains 10 large sections. LUCU 9.0000 contains general provisions, code enforcement provisions, and definitions. LUCU 9.1000 contains general provisions regarding zoning and nonconforming uses. LUCU 9.2000, 9.3000 and 9.4000 contain regulations for the city's base zones, special area zones, and overlay zones, respectively. The

¹By agreement of the parties, petitioner Home Builders Association of Lane County included the codified version of the LUCU as an appendix (Volume II) to its petition for review. Petitioner represents that Volume II is identical to Record pages 3 to 428, containing the uncoded version of the LUCU, with the exception that certain scriveners' errors have been corrected, and a table of contents added. We follow the parties in citing to code provisions according to the codified version in Volume II, rather than to the uncoded version in the record.

Further, we follow the city in referring to the updated version of EC chapter 9 adopted in this decision as "LUCU," while referring to the unamended version of EC chapter 9 as "EC," in order to more easily distinguish the two versions. The city also points out that the current codification scheme contains five digits ("9.####") while the unamended version contained four digits ("9.###"). Thus, we will refer to the current and former code, respectively, in the following format: "LUCU 9.####" and "EC 9.###."

1 9.2000s contain a new base zone, the Park, Recreation and Open Space zone. The 9.4000s
2 contain new overlay zones. In the 9.5000s, the LUCU sets out standards for specific types of
3 development, such as bed-and-breakfast facilities and multi-family housing. In the 9.6000s,
4 the LUCU sets out nondiscretionary general development standards, intended for
5 applications for building permits for developments that do not require land use approval.
6 LUCU 9.7000 describes the different procedures applicable to different types of applications
7 and proceedings. LUCU 9.8000 sets out application requirements and development criteria
8 for discretionary land use applications. Some of the criteria in LUCU 9.8000 require
9 compliance with the criteria in LUCU 9.6000. Finally, LUCU 9.9000 contains selected
10 policies from the city's adopted refinement plans, incorporated into the city's code to comply
11 with ORS 197.195, which requires such incorporation if those policies are to be applied to
12 limited land use decisions.

13 The city initially adopted the LUCU on February 26, 2001. Petitioners separately
14 appealed that decision to LUBA. LUBA consolidated the appeals on March 27, 2001. The
15 city then withdrew its decision for reconsideration pursuant to ORS 197.830(13). On May
16 29, 2001, the city readopted the decision, unchanged except for the effective date. Petitioners
17 refiled their notices of intent to appeal, and LUBA resumed its proceedings on these
18 consolidated appeals.

19 **OFFICIAL NOTICE**

20 Petitioner Home Builders Association of Lane County (Home Builders) requests that
21 the Board take official notice of several documents related to LCDC's acknowledgment of
22 the Metro Plan in 1982. The documents are provided in an appendix (Volume III) to Home
23 Builders' petition for review. No party objects to this request, and it is allowed.

24 Petitioner Eugene Chamber of Commerce (Chamber) requests that the Board take
25 official notice of the entire Metro Plan, including the refinement plans and other documents
26 and maps that have been added to or made a part of the Metro Plan since 1982. However,

1 Chamber states that it has been unable to secure from the city an authoritative and complete
2 list of all the documents that comprise the Metro Plan. Therefore, Chamber requests that
3 LUBA decline to take notice of any part of the Metro Plan cited by the city unless it
4 determines that “a complete set of such documents” is “made available for review by
5 Petitioners at least three weeks prior to oral argument.” Chamber Petition for Review 12.

6 The city objects to Chamber’s qualifications to its request for official notice. We
7 agree that Chamber has not identified any legal basis for such a qualified request.
8 Accordingly, we will take official notice of any part of the Metro Plan that the parties bring
9 to our attention.

10 **STANDING**

11 The city disputes the standing of intervenors-petitioner, apparently on the grounds
12 that intervenors-petitioner have not demonstrated that they “appeared” before the city, as
13 required by ORS 197.830(2). Intervenors-petitioner join in the petition filed by Home
14 Builders. Footnote 1 of Home Builders’ petition states that intervenors-petitioner appeared
15 during the proceedings below and cites to the record to support that statement. Absent some
16 challenge from the city to that demonstration of standing, we conclude it is sufficient to
17 satisfy ORS 197.830(2), and therefore intervenors-petitioner have standing in these appeals.

18 **FIRST AND THIRD ASSIGNMENTS OF ERROR (HOME BUILDERS)**

19 Home Builders’ first and third assignments of error allege that the LUCU violates the
20 needed housing statutes at ORS 197.307.² We address these assignments together.³

²Chamber’s petition for review presents four assignments of error, and adopts by reference the three assignments of error in Home Builders’ petition for review. Accordingly, unless more specific reference is necessary, we use “petitioners” to refer to both petitioners.

³Some of petitioners’ arguments under these assignments of error relate to Goal 10 (Housing) and the adequacy of the city’s buildable lands inventory. We address those arguments below.

1 **I. Introduction**

2 ORS 197.303(1) defines “needed housing” for purposes of ORS 197.307 as “housing
3 types determined to meet the need shown for housing within an urban growth boundary at
4 particular price ranges and rent levels,” and includes a broad nonexclusive list of housing
5 types.⁴ In turn, ORS 197.307(3)(a) requires that “needed housing” shall be permitted in one
6 or more zoning districts or overlay zones “with sufficient buildable land to satisfy that
7 need.”⁵ ORS 197.307(4) allows local governments to set approval standards and procedures

⁴ORS 197.303(1) provides:

“As used in ORS 197.307, until the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, ‘needed housing’ means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, ‘needed housing’ also means:

- “(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- “(b) Government assisted housing;
- “(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
- “(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.”

⁵ORS 197.307(3) provides, in relevant part:

- “(a) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing, including housing for seasonal and year-round farmworkers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.
- “(b) A local government shall attach only clear and objective approval standards or special conditions regulating, in whole or in part, appearance or aesthetics to an application for development of needed housing or to a permit, as defined in ORS 215.402 or 227.160, for residential development. The standards or conditions shall not be attached in a manner that will deny the application or reduce the proposed housing density provided the proposed density is otherwise allowed in the zone.

“* * * * *

1 governing, and impose special conditions on, needed housing.⁶ However, ORS 197.307(6)
2 specifies that any such approval standards, special conditions or procedures shall be “clear
3 and objective.”⁷

4 In *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998), *aff’d*
5 158 Or App 1, 970 P2d 685, *rev den* 328 Or 594 (1999), we discussed at length the history
6 and meaning of ORS 197.303 and 197.307, specifically the requirement in ORS 197.307(6)
7 that approval standards, special conditions or procedures applied to needed housing be “clear
8 and objective.” We concluded that, under these statutes, needed housing

9 “is not to be subjected to standards, conditions or procedures that involve
10 subjective, value-laden analyses that are designed to balance or mitigate
11 impacts of the development on (1) the property to be developed or (2) the
12 adjoining properties or community.” 35 Or LUBA at 158.

“(d) In addition to an approval process based on clear and objective standards as
provided in paragraph (b) of this subsection, a local government may adopt
an alternative approval process for residential applications and permits
based on approval criteria that are not clear and objective provided the
applicant retains the option of proceeding under the clear and objective
standards or the alternative process and the approval criteria for the
alternative process comply with all applicable land use planning goals and
rules.”

⁶ORS 197.307(4) provides:

“Subsection (3) of this section shall not be construed as an infringement on a local
government’s prerogative to:

- “(a) Set approval standards under which a particular housing type is permitted outright;
- “(b) Impose special conditions upon approval of a specific development proposal; or
- “(c) Establish approval procedures.”

⁷ORS 197.307(6) provides:

“Any approval standards, special conditions and the procedures for approval adopted by a
local government shall be clear and objective and shall not have the effect, either in
themselves or cumulatively, of discouraging needed housing through unreasonable cost or
delay.”

1 We then examined a number of code provisions adopted by the city’s legislative decision,
2 and determined that many of them did not qualify as “clear and objective” under our
3 understanding of that statutory term. In doing so, we held that code provisions that simply
4 impose informational requirements—for example, requirements that the applicant submit
5 information regarding the natural features of the site, or a geologic study in certain hazard
6 zones—are not “approval standards” within the meaning of ORS 197.307(6). 35 Or LUBA
7 at 158-59. We assumed, for purposes of that opinion, that such informational requirements
8 could constitute “procedures for approval” under ORS 197.307(6). However, we held that,
9 to the extent such informational requirements are not “clear and objective,” that failure is not
10 fatal, given that ORS 227.178(2) requires that the city “notify the applicant of exactly what
11 information is missing within 30 days of receipt of the application.” Viewed in context with
12 ORS 227.178(2), we held, the city’s provisions for informational requirements were
13 sufficiently clear and objective. 35 Or LUBA at 159.

14 We further addressed an argument that several code provisions we found in violation
15 of ORS 197.307(6) also violated ORS 197.307(3)(b), a provision that was added to the
16 statute in 1997. *See* n 5. We remanded the decision to allow the city to explain whether any
17 code provisions found not to be clear and objective under ORS 197.307(6) also violate
18 ORS 197.307(3)(b). In so doing, we interpreted ORS 197.307(3)(b) as applying to standards
19 or conditions only if “the standards or special conditions regulate *only* for appearance or
20 aesthetic purposes.” 35 Or LUBA at 166 (emphasis in original).

21 The petitioner in *Rogue Valley* appealed our decision to the Court of Appeals,
22 challenging our conclusions that (1) insofar as informational requirements are subject to and
23 fall short of the requirement to be “clear and objective,” the city may supply clarity through
24 the notices that ORS 227.178(2) requires the city to provide to applicants; and (2)
25 ORS 197.307(3)(b) applies only to standards or conditions that regulate exclusively for
26 appearance or aesthetics. The court affirmed both those conclusions. In resolving the first

1 contention, the court noted that the petitioner’s challenge was a facial one to a legislative
2 enactment. To succeed in such a facial challenge, the court stated, the petitioner “must
3 demonstrate that the provisions are *categorically incapable* of being clearly and objectively
4 applied under any circumstances where they may be applicable.” 158 Or App at 4 (emphasis
5 original; citing *Benson v. City of Portland*, 119 Or App 406, 850 P2d 416, *rev den* 318 Or 24
6 (1993)).

7 In response to LUBA’s and the court’s *Rogue Valley* decisions, the 1999 legislature
8 passed HB 3410, which amended ORS 197.307(3)(b) and added new provisions, codified at
9 ORS 197.831, 215.416(8) and 227.173(2). Regarding ORS 197.307(3)(b), section 1 of HB
10 3410 added the terms “in whole or part” to the current version of the statute. That change is
11 apparently directed at LUBA’s and the court’s holding that ORS 197.307(3)(b) is applicable
12 only to standards or conditions that are *exclusively* concerned with appearance or aesthetics.

13 Sections 2 and 3 of HB 3410 amended ORS 215.416 and 227.173, which govern
14 approval or denial of a “permit,” to state that:

15 “When an ordinance establishing approval standards is required under
16 ORS 197.307 to provide only clear and objective standards, the standards
17 must be clear and objective on the face of the ordinance.”

18 That change is apparently directed at LUBA’s and the court’s holding that notice required by
19 ORS 227.178(2) can remedy a lack of clarity in an informational requirement, to the extent
20 required by ORS 197.307(6).

21 Finally, section 5 of HB 3410, codified at ORS 197.831, added the following
22 provision to the statutes governing LUBA’s review:

23 “In a proceeding before [LUBA] or on judicial review from an order of the
24 board that involves an ordinance required to contain clear and objective
25 approval standards for a permit under ORS 197.307 and 227.175, the local
26 government imposing the provisions of the ordinance shall demonstrate that
27 the approval standards are capable of being imposed only in a clear and
28 objective manner.”

1 ORS 197.831 is apparently directed at the court’s statement that, under a facial challenge to a
2 legislative land use decision, the petitioner’s burden is to demonstrate that the challenged
3 provisions are categorically incapable of being applied clearly and objectively under any
4 circumstances where they may be applicable.

5 A threshold issue in the present case is the effect of the 1999 amendments on
6 LUBA’s review of petitioners’ arguments, that certain LUCU provisions violate the
7 ORS 197.307(6) requirement that standards, conditions and procedures for approval be “clear
8 and objective.”⁸ We understand petitioners to contend that the intent and effect of
9 ORS 197.831 is to restore the burden and standard of review that existed prior to the court’s
10 *dictum* in *Rogue Valley*.⁹ That standard, according to petitioners, has always placed on the
11 *local government* the *ultimate* burden of demonstrating in a challenge to legislative adoption
12 of land use regulations that its “legislative planning and zoning ordinances comply with state
13 land use goals, rules and statutes.” Chamber’s Petition for Review 10. Further, petitioners
14 argue, that standard has never placed on the petitioner the burden of demonstrating that the
15 challenged regulations are “categorically incapable” of being applied clearly and objectively
16 “under any circumstances where they may be applicable.” 158 Or App at 4. According to
17 petitioners, that very different and difficult burden belongs and is properly confined to review
18 of regulatory takings challenges to a legislative enactment, such as that in *Benson v. City of*
19 *Portland*, the case cited in the court’s *Rogue Valley* decision.

⁸As far as we can tell, petitioners do not argue that any LUCU provision violates ORS 197.307(3)(b).

⁹Chamber argues that the court’s statement of the burden and its standard of review was *dictum*, because the ordinance provisions challenged in *Rogue Valley* prescribed local requirements for the content of applications, and were thus not “standards or procedures required to be clear and objective under ORS 197.307.” Chamber’s Petition for Review 9 n 2. As noted above, both LUBA and the court assumed, without deciding, that such informational requirements could constitute “procedures for approval” for purposes of ORS 197.307(6).

1 The city’s response brief agrees with petitioners that ORS 197.831 is directed at the
2 court’s statement of the petitioner’s burden in its *Rogue Valley* decision. Further, the city
3 argues that ORS 197.831 essentially restores the burden and standard under ORS 197.307(6)
4 that LUBA applied in its *Rogue Valley* decision. We do not understand petitioners to
5 disagree on the latter point. Petitioners quote extensively and with apparent approval from
6 our discussion of what “clear and objective” means under ORS 197.307(6), and cite our
7 *Rogue Valley* decision frequently in arguing that specific LUCU provisions are not “clear and
8 objective.” Neither petition for review argues that the burden and standard under
9 ORS 197.831 is different than the burden and standard that LUBA applied in *Rogue Valley*,
10 or attempts to articulate what the difference might be. Accordingly, our analysis will assume
11 that ORS 197.831 does not alter the burden and standard that we applied in our *Rogue Valley*
12 decision. Under that decision, the city has the ultimate burden of demonstrating that the
13 LUCU provisions challenged in the petitions for review are “clear and objective” within the
14 meaning of ORS 197.307(6). Such standards are “clear and objective” if the local
15 government demonstrates that the terms of the standards do not subject needed housing to
16 “subjective, value-laden analyses that are designed to balance or mitigate impacts” on the
17 subject property, other property or the community. 35 Or LUBA at 158.¹⁰

18 With that understanding of the applicable law, we turn to petitioners’ challenges.

19 **II. Petitioners’ Challenges**

20 ORS 197.307(3)(d) allows a local government to adopt an alternative approval
21 process for residential applications and permits based on criteria that are not clear and
22 objective, as long as the applicant has the option of proceeding instead under clear and
23 objective criteria. *See* n 5; *see also Callison v. LCDC*, 145 Or App 277, 284 n 8, 929 P2d

¹⁰However, as we cautioned in *Rogue Valley*, few tasks are *less* clear or *more* subjective than attempting to determine whether a particular land use approval criterion is clear and objective. 35 Or LUBA at 155.

1 1061 (1996) (clear and objective criteria are not rendered otherwise simply because local
2 governments provide an optional, alternative set of approval standards that are not clear and
3 objective). As the city explains, the city designed the LUCU to offer two separate sets of
4 approval criteria applicable to land use applications involving needed housing. The first
5 track (needed housing track) is intended to contain only clear and objective criteria. The
6 second is an optional, alternative track (alternative track) that includes criteria that are not
7 intended to be clear and objective.

8 Petitioners advance three general types of challenges. First, petitioners contend that
9 some of the criteria under the needed housing track contain terms or standards that are not in
10 fact clear and objective. These criteria are identified in Table 1.1 of Home Builders' petition
11 for review, which challenges over 100 LUCU provisions, organized in 31 categories.

12 Second, petitioners argue that some of the city's needed housing standards, even
13 assuming they are clear and objective, are written in a manner that effectively prohibits and
14 renders impossible the development of needed housing under clear and objective standards.
15 Petitioners offer three examples or types of such standards, and argue that these types of
16 standards violate the needed housing statutes because they essentially force the needed
17 housing developer into seeking approval under the alternative track. Petitioners submit that
18 forcing a needed housing applicant to pursue approval under the alternative track is
19 inconsistent with the intent of the needed housing statutes.

20 Third, petitioners argue that a number of LUCU provisions, even if clear and
21 objective, nonetheless violate ORS 197.307(6) because they "discourage needed housing
22 through unreasonable cost or delay." These LUCU provisions do so by either (1) reducing
23 the area of development sites that can be developed; (2) requiring additional amenities in
24 connection with development; or (3) adding additional requirements for filing complete
25 applications for development.

1 **A. Clear and Objective**

2 As noted, Table 1.1 in Home Builders’ petition for review identifies 31 categories of
3 standards that apply under one or more of six types of criteria for land use approvals under
4 the needed housing track. Petitioners contend, in 31 footnotes attached to the table, that these
5 standards are either not clear and objective, or require compliance with standards that are not
6 clear and objective.¹¹

7 The city offers a number of general and specific responses. The city’s general
8 defenses include several theories for why a number of the challenged provisions are not, in
9 fact, subject to the ORS 197.307(6) requirement that they be “clear and objective.” Finally,
10 the city addresses each of the provisions identified in Table 1.1 and argues that, to the extent
11 such provisions are required to be clear and objective, they satisfy that requirement. We first
12 address the city’s general defenses.

13 **1. General Defenses**

14 **a. Purpose and Applicability Provisions**

15 The city responds to certain challenges by arguing that the disputed code provisions
16 merely state the purpose or define the applicability of other code provisions, and that such
17 purpose or applicability provisions are not “standards” within the meaning of
18 ORS 197.307(6).¹²

¹¹Correlating Table 1.1, its footnotes, and the parties’ arguments about specific LUCU provisions is a frustrating exercise. In hindsight, we should not have accepted Home Builders’ petition for review, because the bulk of its needed housing arguments are contained in a three-page table and accompanying pages of footnotes. Further, as discussed below, the bulk of its Goal 5 arguments are contained in a table accompanied by thirteen pages of footnotes. Aside from the difficulty that format presents in understanding Home Builders’ arguments, the resulting compression allowed Home Builders to effectively circumvent the 50-page limit at OAR 661-010-0030(2)(b), without seeking the Board’s permission.

¹²For example, petitioners argue that the purpose and applicability provisions of LUCU 9.5500(1) and (2) are not clear and objective. We quote representative portions of LUCU 9.5500(1) and (2):

“(1) **Purpose of Multiple-Family Standards.** The purpose of these development standards is to:

1 We agree with the city that purpose or applicability provisions that by their terms *or*
2 *the terms of other related code provisions* do not apply as approval criteria for needed
3 housing are not “standards” within the meaning of ORS 197.307(6). ORS 197.307(6) does
4 not require that such purpose or applicability provisions must be clear and objective. We
5 agree with the city that the purpose and applicability provisions that it cites are not, by their
6 terms or the terms of other related provisions, approval standards.¹³

7 **b. Existing Code Provisions**

8 The city contends that a number of petitioners’ challenges to specific code language
9 are challenges to existing code provisions that were carried forward from the EC with little or
10 no substantive change.¹⁴ The city concedes that the *application* of any such existing code

“(a) Ensure that new multiple-family development enhances the character and livability of Eugene’s neighborhoods[.]

“* * * * *

“(2) **Applicability of Multiple-Family Standards**

“(a) Except for building alterations and building additions that increase the square footage of livable floor area by less than 50%, multiple-family standards shall apply to all multiple family developments in all zones except commercial. In cases where the standards apply, they shall be considered applicable for the portion of the development site impacted by the proposed development.

“(b) Multiple family standards shall also apply to multiple family developments in commercial zones unless the entire ground floor, with the exception of areas for lobbies, stairs, elevators and bicycle storage for residents, is in non-residential use. * * * ”

¹³The code provisions and challenges to which this defense applies are LUCU 9.5500(1) and (2) (Table 1.1, footnote 1); LUCU 9.6880 and 9.6882 (Table 1.1, footnote 3); LUCU 9.6730(1) and (2) (Table 1.1, footnote 7); LUCU 9.6750(1) (Table 1.1, footnote 8); and LUCU 9.6815(1) (Table 1.1, footnote 14).

¹⁴For example, petitioners argue that LUCU 9.6820(5) is not clear and objective. LUCU 9.6820(5) provides:

“Where needed, the planning director shall require public accessways from a cul-de-sac longer than 150 [feet], measured from the centerline of the intersecting street to the radius point of the cul-de-sac[,] to provide safe, convenient, and direct circulation for pedestrians, bicyclists, and emergency vehicles.”

1 provisions might be challenged in the context of a quasi-judicial decision on a specific
2 needed housing application under ORS 197.307(6), but the city argues that whether such
3 existing provisions are clear and objective cannot be challenged in the present appeal of the
4 city's legislative decision.

5 Presumably, the city believes that our review of carried-forward standards in the
6 present appeal would constitute an impermissible collateral attack on those standards.
7 Although the city does not cite it, the most apt authority we find for that proposition is
8 *Urquhart v. Lane Council of Governments*, 80 Or App 176, 721 P2d 870 (1986). In
9 *Urquhart*, LUBA remanded a plan amendment that applied a new land use designation to
10 certain undeveloped lands that were not included in the plan's acknowledged Goal 5 (Open
11 Spaces, Scenic and Historic Areas, and Natural Resources) inventory, without first
12 considering whether to add the lands to the plan's Goal 5 inventory. The Court of Appeals
13 held that, if there was a defect in the regional plan, it was in the acknowledged Goal 5
14 inventory, and LUBA lacked authority to remand on the basis of a defect in the inventory
15 that was not directly or indirectly attributable to the challenged plan amendment. However,
16 we believe the present case is closer to *Dept. of Transportation v. Douglas County*, 157 Or
17 App 18, 967 P2d 901 (1998). In that case, the county adopted a decision that was intended to
18 comply with all requirements of the transportation planning rule. The petitioner argued that
19 the rule required the county to amend certain plan and code provisions, and requested remand
20 on the grounds that the county had failed to amend those provisions. LUBA concluded,
21 based on the reasoning in *Urquhart*, that it had no authority to review the unamended

The city argues that LUCU 9.6820(5) was carried forward from EC 9.045(7), which provided:

“There shall be no cul-de-sac more than 400 feet long from the centerline of the intersecting street to the radius point of the cul-de-sac bulb. The planning director shall require public accessways from cul-de-sacs where necessary to provide safe, convenient, and direct circulation for pedestrians and bicyclists.”

1 provisions for compliance with the rule. The court reversed, distinguishing *Urquhart* on
2 several grounds, and holding that LUBA had authority to review the unamended provisions
3 for compliance with the rule. Central to the court's analysis was its conclusion that, unlike
4 *Urquhart*, the rule applied directly to the challenged decision, the county intended its
5 decision to comply comprehensively with the rule, and the rule itself required compliance
6 prior to the county's periodic review.

7 Here, the city concedes that ORS 197.307(6) applies directly to its decision, and that
8 the LUCU represents a comprehensive effort to conform its land use regulations with the
9 needed housing statutes.¹⁵ What is particularly determinative in the present case is that the
10 city intended its legislative enactment to implement and comply with the needed housing
11 statutes. *Compare Volny v. City of Bend*, 37 Or LUBA 493, 502, *aff'd* 168 Or App 516, 4
12 P3d 768 (2000) (legislative amendment to city's transportation element of its comprehensive
13 plan was not deficient for failure to adopt a transportation system plan required by
14 administrative rule, where the challenged amendment was not intended to and did not have
15 the effect of implementing the rule). The city does not dispute that its decision significantly
16 amends its land use regulations governing housing in an effort to bring those regulations into
17 compliance with the needed housing statutes, and that such amendments are subject to
18 scrutiny under ORS 197.307(6). In such circumstances, the city cannot carry forward
19 unamended or slightly amended portions of those regulations and expect they will be
20 immune from challenge under ORS 197.307(6). In addition, the city does not dispute that
21 application of any such carried-forward provisions in a future quasi-judicial decision may be
22 subject to challenge under ORS 197.307(6). Given that concession, we see no reason to

¹⁵While ORS 197.307 does not itself require compliance at any particular time, ORS 197.646 requires that local governments amend their plan and land use regulations to implement new or amended statutes when those new or amended statutes become applicable to the local government.

1 defer the question of whether those unamended provisions are consistent with
2 ORS 197.307(6).

3 **c. Authority to Impose Conditions**

4 The city responds to a number of petitioners' challenges by arguing that the disputed
5 provision merely authorizes the city to impose certain conditions, and does not itself
6 constitute either a "standard" or "condition" that can be challenged in the present legislative
7 proceeding.¹⁶ The city submits that if the city in fact imposes conditions that are not clear
8 and objective, such conditions may be challenged in an appeal of the quasi-judicial decision
9 imposing those conditions. However, the city argues, code provisions that merely authorize
10 the imposition of conditions are not subject to scrutiny under ORS 197.307(6) in the present
11 appeal of the city's legislative enactment.

12 We addressed a similar issue in our *Rogue Valley* decision, concluding that a
13 provision allowing the city to impose certain conditions "if it is deemed necessary to mitigate
14 any potential negative impact caused by the development," violated ORS 197.307(6). 35 Or
15 LUBA at 159. We recognized that the conditions that might actually be imposed under that
16 provision might be clear and objective. Nonetheless, we concluded that the city's authority
17 to impose conditions under that provision was "highly discretionary and subjective," and
18 therefore was not a clear and objective procedure. *Id.* at 160. In the present case, we
19 similarly reject the city's categorical argument that a provision authorizing the city to impose
20 conditions is immune from scrutiny under ORS 197.307(6). Depending on their terms, such

¹⁶For example, petitioners challenge LUCU 9.6845, as not constituting a clear and objective standard, special condition or procedure for approval:

"Where necessary to insure safety, reduce traffic hazards and promote the welfare of the general public, pedestrians, bicyclists and residents of the subject area, the planning director or public works director may require that local streets and alleys be designed to discourage their use by non-local motor vehicle traffic and encourage their use by local motor vehicle traffic, pedestrians, bicyclists, and residents of the area."

1 provisions may constitute or contain “standards” or “procedures for approval.” If so, such
2 provisions must be clear and objective.

3 We now turn to the parties’ arguments that specific LUCU provisions are not “clear
4 and objective.”

5 **2. Specific Challenges**

6 **a. LUCU 9.5500**

7 LUCU 9.8100 and 9.8445 require that, if applicable, the proposal comply with the
8 multiple-family standards at LUCU 9.5500. Petitioners argue in Table 1.1, footnote 1 that
9 LUCU 9.6420(3), cross-referenced in LUCU 9.5500(12)(b)(3), is not clear and objective.
10 LUCU 9.6420(3) pertains to interior parking area landscaping, and requires that parking lots
11 with more than a specified number of spaces include a specified square footage of
12 landscaping per space.¹⁷ In our *Rogue Valley* decision, we commented that “numerical or
13 absolute” standards are almost paradigmatically “clear and objective.” 35 Or LUBA at 154 n
14 20. We cited an example from the legislative history of ORS 197.307 referencing a similar

¹⁷LUCU 9.6420(3)(e)(1) provides:

“In addition to the landscaping standards required in subsections (c) and (d), landscaping shall be provided within the interior of surface parking areas for 50 or more motor vehicles so as to:

- “a. Improve the visual qualities of these areas.
- “b. Delineate and define circulation movements of motorists and pedestrians.
- “c. Improve air quality.
- “d. Encourage energy conservation by moderating parking area microclimates.

“Parking area landscaping shall be provided according to Table 9.6420(3)(e)(3). Interior Parking Area Landscaping.”

Table 9.6420(3)(e)(3) follows, prescribing 15 square feet of landscaping per parking space for lots with 50 to 99 spaces, and 22 square feet of landscaping per parking space for lots with 100 or more spaces.

1 numerical landscaping standard. 35 Or LUBA at 157 n 25. The city argues, and we agree,
2 that the landscaping standards in LUCU 9.6420(3)(e)(1) are clear and objective.

3 Although petitioners do not assist us on this point, the target of their criticism may be
4 language in LUCU 9.6420(3)(e)(1) that, the city contends, merely describes the purpose of
5 the landscaping standards in LUCU 9.6420(3)(e)(1), (2) and (3), *e.g.*, to improve the visual
6 qualities of the area, delineate circulation, improve air quality, and moderate parking lot
7 microclimates. The city's position on this point would be stronger if it had separated this
8 language from the undisputed standards in LUCU 9.6420(3)(e)(1), (2) and (3) and
9 denominated the language as a purpose statement, as the city did with at least some other
10 LUCU provisions. *See, e.g.*, LUCU 9.5500(1) at n 12. Notwithstanding that omission, we
11 agree with the city that, read in context, the disputed language describes the goals furthered
12 by complying with the clear and objective standards at LUCU 9.6420(3)(e)(1), (2) and (3),
13 and does not itself function as an approval standard. This subassignment is denied.

14 **b. Metro Plan Diagram**

15 LUCU 9.8325(2) and 9.8520(2) both require that proposed land uses and densities
16 within proposed development be "consistent with the land use designation(s) shown on the
17 Metro Plan Land Use Diagram, as refined in any applicable refinement plan." The Metro
18 Plan diagram is a large color-coded map that depicts plan designations in the Eugene-
19 Springfield Metropolitan Area. *See* Response Brief App 5. The Metro Plan diagram does
20 not depict individual lot or parcel lines, and it contains text noting that "[o]ne cannot
21 determine the exact designation of a particular parcel of land without consulting the
22 appropriate local jurisdiction." The text goes on to state that the "home jurisdiction will use
23 the diagram to determine a site's plan designation" by relying on refinement plans,
24 identifiable features on the diagram, the plan text, or other information that can support such
25 a determination. *Id.*

1 We understand petitioners to argue, in Table 1.1, footnote 2, that the LUCU 9.8325(2)
2 and 9.8520(2) requirements of consistency with the Metro Plan diagram designations are not
3 clear and objective, because one cannot determine from the diagram itself the designation of
4 any particular site and thus whether proposed uses and densities are consistent with that
5 designation. Further, petitioners note that while some refinement plans contain plan
6 designations for specific parcels, some do not.

7 The LUCU 9.8325(2) and 9.8520(2) consistency requirements are themselves clear
8 and objective. The city argues, and we agree, that the absence of lot or parcel depictions from
9 the Metro Plan diagram and from some refinement plans does not render LUCU 9.8325(2)
10 and 9.8520(2) unclear or subjective. The diagram text requires the “home jurisdiction” to
11 identify a site’s designation, using the diagram, any applicable refinement plan, or other
12 pertinent information. The needed housing applicant’s obligation under LUCU 9.8325(2)
13 and 9.8520(2) is to demonstrate that the proposed development is consistent with that
14 designation. That the home jurisdiction may have to consult documents other than the
15 diagram and applicable refinement plans in particular cases, in order to determine a site’s
16 designation, does not mean that the LUCU 9.8325(2) and 9.8520(2) consistency requirements
17 are not clear and objective.¹⁸ This subassignment is denied.

18 **c. Preservation of Existing Natural Resources**

19 LUCU 9.8100(3), 9.8325(4), 9.8445(3) and 9.8520(8) require preservation of existing
20 natural resources, demonstrated by compliance with five criteria (a) through (e).¹⁹
21 Petitioners argue in Table 1.1, footnote 3 that these five criteria are not clear and objective.

¹⁸Petitioners advance an identical argument respecting LUCU 9.8220(5)(a) in Table 1.1, footnote 21. For the same reasons as expressed in the text, we conclude that LUCU 9.8220(5)(a) is clear and objective.

¹⁹LUCU 9.8100(3) is representative, and provides as follows:

“The proposal will preserve existing natural resources by compliance with all of the following:

(i) Criteria (a)-(c)

Petitioners first argue that the requirements in criteria (a)-(c) for a 100-foot “perimeter” around the “area occupied” by rare plant populations and rare animal populations, and a 50-foot buffer protecting “waterways” measured from the “top of the bank,” are not clear and objective, because the quoted terms are imprecise and not defined.

The city responds that the terms “perimeter,” “area occupied,” and “top of the bank” have plain and commonly understood meanings, and the lack of a precisely defined starting point for the required buffer zones does not mean that the disputed standards are not clear and objective. The city also argues that the term “waterways” has a plain and commonly understood meaning.²⁰

-
- “a. All rare plant populations (those that are proposed for listing or are listed under State or Federal law) are preserved. The protected area shall include the area occupied by the plant population(s), plus a minimum 100 foot buffer around the perimeter of the plant population(s).
 - “b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under State or Federal law) is preserved. The protected area shall include the area occupied by the animal population(s), plus a minimum 100 foot buffer around the perimeter of the animal population(s).
 - “c. All waterways are protected. Protected areas shall include the area between the banks and a minimum 50 foot buffer on each side of the top of the bank.
 - “d. The proposal complies with EC 9.6880 to EC 9.6885 Tree Preservation and Removal Standards.
 - “e. Natural resource areas designated on the Metro Plan diagram as ‘Natural Resource’ and areas identified in any city-adopted natural resource inventory are protected. Protection shall include the area of the resource and a minimum 50 foot buffer around the perimeter of the natural resource area.”

²⁰As framed, the parties’ arguments tend to focus on whether particular *terms* in the challenged standards are clear and objective. We caution that the ultimate question under ORS 197.307(6) is whether the *standard* is clear and objective, viewed in context. That the standard may contain imprecise or ambiguous terms is a relevant and, depending on the terms and their function in the standard, perhaps sufficient, consideration in answering that ultimate question. However, the existence of imprecise or ambiguous terms in a standard does not *necessarily* resolve whether that standard violates ORS 197.307(6).

1 We noted in our *Rogue Valley* decision that even numerical standards such as
2 setbacks and height limitations may “not always be entirely clear,” because one must
3 determine where the measurement begins. 35 Or LUBA at 154 n 20. We also noted that
4 with respect to height limitations, many zoning ordinances include complicated formulas for
5 determining the reference point from which height is measured. *Id.* The present issue is
6 similar: whether a numerical standard is not “clear and objective” because the critical
7 reference point from which the required measurement must begin is stated in undefined
8 descriptive terms. We generally agree with the city that use of such terms does not
9 necessarily offend ORS 197.307(6), at least where the terms have plain and commonly
10 understood meanings, and the described referents can be located by a reasonable person with
11 reasonable effort. However, we cannot say that the standards containing the disputed terms
12 are clear and objective. It may be possible in many cases to determine the “area occupied”
13 and hence the perimeter of a rare plant population, but the city does not explain how one can
14 reasonably determine the “area occupied” by a rare animal population, which presumably is
15 mobile to some degree. Absent delineation of habitat in an inventory or map, or some similar
16 reasonable means of locating the described referents, we do not believe criteria (a) and (b)
17 are clear and objective.

18 Similarly, determining whether a feature is a “waterway,” and what is the “bank” or
19 “top of the bank,” requires considerably more assistance than the city’s ordinance provides.
20 The LUCU does not define “waterway,” “bank” or “top of the bank,” or provide any means
21 of identifying and locating those referents, which have a multiplicity of meanings, with
22 different geographic consequences. *See Willhoft v. City of Gold Beach*, ___ Or LUBA ___
23 (LUBA Nos. 2001-088/89, December 3, 2001) (describing the multiple meanings of “bank”
24 and “top of bank” and the difficulty locating them). For that reason, criterion (c) is not clear
25 and objective.

1 (ii) Criterion (d)

2 With respect to criterion (d), petitioners argue that the LUCU 9.6880-9.6883
3 standards referenced in criterion (d) contain unspecified procedures that are not clear and
4 objective. Further, petitioners argue, LUCU 9.6885(2)(b) is ambiguous, because it does not
5 clearly or objectively state what constitutes acceptable “consideration” of specified
6 preservation priorities.²¹

²¹LUCU 9.6885(2) sets forth standards for tree preservation and removal, and provides in relevant part:

“No permit for a development activity subject to this section shall be approved until the applicant submits plans or information, including a written report by a certified arborist, that demonstrates compliance with the following standards:

“(a) The following minimum percentages of the existing number of significant trees on the development site whose condition rating is 60 or higher (on a scale of 0 to 100) will be preserved:

- “1. 60% for projects on property zoned R-1.
- “2. 40% for projects on property zoned R-1.5 and R-2.
- “3. 40% for projects on property zoned R-3 and R-4. This percentage may be reduced to 20% providing the proposed project achieves at least 50% of the maximum density required for that zone.
- “4. 20% for projects on property zoned commercial, industrial, and public land.
- “5. 40% for projects on property in all other zones. * * *

“(b) *The materials submitted shall reflect that consideration has been given to preservation in accordance with the following priority:*

- “1. Significant trees located adjacent to or within waterways or wetlands designated by the city for protection, and areas having slopes greater than 25%;
- “2. Significant trees within a stand of trees; and
- “3. Individual significant trees.

“(c) That development will occur in a manner that protects at least 70% of the critical root zone of each tree retained under subsection (2)(a) above.

Petitioners do not identify what procedures in LUCU 9.6880-9.6883 they believe offend ORS 197.307(6), and we do not see that any procedure does so.

With respect to LUCU 9.6885(2)(b), the city responds that it simply requires that the application show “consideration” of certain priorities, and that such an informational requirement, to the extent it is subject to ORS 197.307(6), is clear and objective. We agree that LUCU 9.6885(2)(b) merely requires that the application reflect “consideration” of specified priorities and does not require that that consideration be adequate or acceptable. Petitioners’ argument essentially reads a discretionary requirement into the code, that the consideration be “acceptable” in some manner. That requirement is not stated in LUCU 9.6885(2)(b) or necessarily implied. This subassignment of error is denied.

(iii) Criterion (e)

With respect to criterion (e), petitioners contend that references to the Metro Plan diagram’s natural resource designations and any “city-adopted natural resource inventory” are unclear. Petitioners repeat their argument, discussed above, that the diagram does not depict property boundaries and thus cannot delineate the boundaries of natural resource areas. Finally, petitioners question whether the reference to “city-adopted natural resource inventory” includes only acknowledged Goal 5 inventories, or whether it includes other inventories, such as a 1991 Metro Natural Resources Study that the city apparently adopted but did not incorporate into its acknowledged Goal 5 inventory.

The city responds first that natural resource areas cannot be developed with housing and therefore criterion (e) simply does not implicate ORS 197.307(6). However, criterion (e) requires a buffer zone between development and a natural resource area, and presumably

“(d) If the proposal includes removal of any street tree(s), removal of those street trees has been approved, or approved with conditions according to the process at EC 6.320 Tree Removal and Replacement - Permit Decision.” (Emphasis added.)

1 applies in circumstances where development, including needed housing, is proposed adjacent
2 to a natural resource area. Therefore, criterion (e) implicates ORS 197.307(6).

3 The city next argues that natural resource areas are clearly delineated on the Metro
4 Plan diagram, for the reasons described above. We agree that there seems no reason that the
5 boundaries of designated natural resource areas cannot be located with precision using the
6 diagram, refinement plans and other documents referenced by the diagram, for purposes of
7 the 50-foot buffer required by criterion (e).

8 The city does not respond to petitioners' argument that the reference to "areas
9 identified in any city-adopted natural resource inventory" is unclear, because it may include
10 adopted inventories other than the city's acknowledged Goal 5 inventory. Petitioners
11 identify one such adopted inventory, a 1991 natural resources study. We agree with
12 petitioners that criterion (e) is ambiguous in that respect. The ambiguity may be significant,
13 because if criterion (e) references inventories that do not follow the Metro Plan diagram's
14 delineations, or do not provide their own delineations, then there may be no objective way to
15 determine their boundaries and thus the reference point for the required 50-foot buffer. This
16 subassignment of error is sustained, in part.

17 **d. Complies with All Applicable Standards**

18 LUCU 9.8100(4) requires that a conditional use proposal comply "with all applicable
19 standards," and then sets forth a nonexclusive list of standards that might apply.²² Petitioners

²²As amended by Ordinance 20235, LUCU 9.8100(4) provides:

"The proposal complies with all applicable standards, including, but not limited to:

"(a) [LUCU] 9.6706 Development in Flood Plains through [LUCU] 9.6709 Special Flood Hazard Areas - Standards.

"(b) [LUCU] 9.6710 Geological and Geotechnical Analysis.

"(c) [LUCU] 9.6730 Pedestrian Circulation On-Site.

1 argue in Table 1.1, footnote 4 that the phrase “all applicable standards” invites argument over
2 what standards are applicable, and thus is not clear and objective.

3 The city responds that the phrase “all applicable standards” does not render LUCU
4 9.8100(4) unclear or subjective, because it is the nature of the development proposal, rather
5 than LUCU 9.8100(4), that dictates whether a standard applies. For example, the city argues,
6 a needed housing proposal for multi-family housing must provide bicycle parking, while a
7 proposal for a single-family-dwelling need not. We agree that, viewed in context, the phrase
8 “all applicable standards” does not render LUCU 9.8100(4) unclear or subjective.
9 Depending on the nature of the proposal, certain standards, for example floodplain or
10 geological hazard standards, might or might not apply. The phrase “all applicable standards”
11 simply recognizes that the nature or location of certain proposals may trigger different sets of
12 standards. LUCU 9.8100(4) supplies a nonexhaustive list of possible standards. That it does
13 not list every possible standard that might apply to every possible type of proposed
14 development does not mean LUCU 9.8100(4) violates ORS 197.307(6). This subassignment
15 of error is denied.

16 **e. Compliance with LUCU 9.6705**

17 LUCU 9.8100(4)(a), 9.8220(2)(d), 9.8325(7)(c), 9.8445(4)(c) and 9.8520(3)(d) each
18 require compliance with LUCU 9.6705, which sets out the purpose of the city’s floodplain
19 development provisions. In footnote 5 to Table 1.1, petitioners argue that LUCU 9.6705 is

“(d) [LUCU] 9.6735 Public Access Required.

“(e) [LUCU] 9.6750 Special Setback Standards.

“(f) [LUCU] 9.6775 Underground Utilities.

“(g) [LUCU] 9.6780 Vision Clearance Area.

“(h) An approved adjustment to a standard pursuant to the provisions beginning at [LUCU] 9.8015 of this land use code constitutes compliance with the standard.”

1 not clear and objective. The city attaches to its brief Ordinance 20235, adopted October 10,
2 2001, which amends the predicate code provisions to remove the requirement that
3 development comply with the purpose statement at LUCU 9.6705. Response Brief Appendix
4 27-29, 31-32.

5 For the reasons expressed above, a purpose provision that is not an approval criterion
6 is not a “standard” that must comply with ORS 197.307(6). In addition, the city argues, and
7 petitioners do not dispute, that Ordinance 20235 amended the LUCU to remove any
8 requirement that needed housing comply with the purpose statement at LUCU 9.6705.
9 Accordingly, we agree with the city that petitioners’ challenge to LUCU 9.6705 is without
10 merit.

11 **f. Compliance with LUCU 9.6730**

12 LUCU 9.8100(4)(c), 9.8325(7)(e), 9.8445(4)(e) and 9.8520(3)(f) each require that
13 certain needed housing must comply with standards in LUCU 9.6730, which governs
14 pedestrian circulation. *See* n 22 (*quoting* LUCU 9.8100(4)). In Table 1.1, footnotes 7 and 31,
15 petitioners argue that LUCU 9.6730(3)(d) and (e) contain terms that are not clear and
16 objective.²³

²³LUCU 9.6730(3) provides in relevant part:

“All on-site pedestrian paths provided for the purposes of complying with this land use code shall conform with the following standards:

“* * * * *

“(d) *Where necessary for traffic circulation*, on-site pedestrian paths may be intersected by driving aisles as long as the crossing is marked with striping or constructed with a contrasting paving material to indicate a pedestrian crossing area.

“(e) On-site vehicular and pedestrian circulation shall be designed to *minimize* vehicular/pedestrian conflicts at driveway crossings within parking lots and at vehicle ingress/egress points.” (Emphasis added.)

Petitioners argue that use of the terms “where necessary” and “minimize” in LUCU 9.6730(3)(d) and (e) render those provisions unclear and subjective. The city responds that Ordinance 20235 deletes the term “minimize” from LUCU 9.6730(3)(e) and thus moots petitioners’ challenge to that provision. However, the city does not direct us to the pertinent section of Ordinance 20235. The only section of the ordinance we find affecting LUCU 9.6730 is section 27, at Response Brief App 21, but that section amends LUCU 9.6730(3)(b), not (e), and the amendment has nothing to do with the term “minimize.” Accordingly, the city has not demonstrated that petitioners’ challenge to LUCU 9.6730(3)(e) is moot.

With respect to subsection (d), the city argues that the terms “where necessary for traffic circulation” merely recognize that some applications will not propose development in which driving aisles intersect pedestrian paths, and thus subsection (d) will not apply. Read in isolation, the terms “where necessary for traffic circulation” might be understood as surplusage, as the city asserts. However, read together, LUCU 9.6730(3)(d) and (e) require that the proposed parking lots and driveways present the fewest possible conflicts between pedestrians and vehicles, and that any proposed intersections between driving aisles and pedestrian paths be “necessary for traffic circulation.” These are substantive, vague requirements that grant the city considerable discretion in approving or denying needed housing. Consequently, LUCU 9.6730(3)(d) and (e) are not clear and objective.

g. Adjustments under LUCU 9.8015

LUCU 9.8100(4)(h), 9.8220(2), 9.8325(7), 9.8445(4) and 9.8520(3) each provide that “[a]n approved adjustment to a standard pursuant to the provisions beginning at [LUCU] 9.8015 of this land use code constitutes compliance with the standard.” The adjustment process at LUCU 9.8015 to 9.8030 is similar to the variance process that allows deviation from certain standards contained elsewhere in the code. For example, LUCU 9.5500(6)(a) prescribes numerical maximum building massing standards for multi-family housing. LUCU 9.8030(8)(a) allows relief from the limits at LUCU 9.5500(6)(a) if the applicant

demonstrates, among other things, that the adjustment “[c]reate[s] a vibrant street façade with visual detail.”

Petitioners argue that the adjustment process at LUCU 9.8015 contains standards that are not clear and objective, and therefore LUCU 9.8100(4)(h), 9.8220(2), 9.8325(7), 9.8445(4) and 9.8520(3) are not clear and objective. The city responds, and we agree, that LUCU 9.8100(4)(h), 9.8220(2), 9.8325(7), 9.8445(4) and 9.8520(3) merely state that an adjustment to a standard constitutes compliance with that standard. The city may provide a needed housing applicant with a choice between meeting a clear and objective standard by complying with its terms *or* by obtaining a discretionary variance or adjustment to that standard without offending ORS 197.307(6). *See* ORS 197.307(3)(d) and *Callison*, 145 Or App at 284 n 8. This subassignment of error is denied.

h. Features Included in the Application

LUCU 9.8220(2)(k), 9.8325(12), 9.8445(4)(j) and 9.8520(10) each require that the applicant show compliance with “applicable development standards explicitly addressed in the application,” or words of similar effect. Petitioners argue, in Table 1.1, footnote 10, that this language invites argument over what standards are “explicitly addressed” in the application and what the applicable standards might be.

The city explains that, under the old code, certain standards such as landscaping standards would be addressed only at the building permit stage. According to the city, the intent of the disputed language is to allow an applicant to choose to address such standards at the initial development permit stage. If an applicant chooses to explicitly address such standards in their initial development application, the city argues, the city will review and approve those standards along with the initial development permit. The city argues, and we agree, that the disputed standards are clear and objective. This subassignment of error is denied.

1 **i. Lot Dimension and Density Requirements**

2 LUCU 9.8220(2)(a), 9.8325(7)(a), 9.8445(4)(a) and 9.8520(3)(a) each require that the
3 applicant show compliance with standards at LUCU 9.2000 through 9.3915 regarding lot or
4 parcel dimensions and density requirements. Petitioners argue that “[t]he majority of the
5 provisions contained in [LUCU] 9.2000-9.3915 do not constitute clear and objective
6 standards and, furthermore, are not relevant to needed housing.” Table 1.1, footnote 11.²⁴

7 LUCU 9.2000 through 9.3915 occupy more than 100 pages of the city’s code, and set
8 forth a large number of requirements, including lot or parcel dimensions and density
9 requirements applicable in each of the city’s many zones and subzones. The city argues that
10 it cannot respond, because petitioners have made no effort to identify which of these many
11 requirements petitioners believe are not clear and objective, much less why. We agree that,
12 absent some assistance from petitioners, we cannot perform our review function. We
13 therefore do not consider petitioners’ arguments concerning these provisions. This
14 subassignment of error is denied.

15 **j. Emergency Response Time**

16 LUCU 9.8325(7)(j) and 9.8520(7) require for approval of a planned unit development
17 or subdivision that “[n]ew dwellings shall be within a 4-minute response time for emergency
18 medical services.” LUCU 9.8220(6) imposes a similar five-minute requirement for approval
19 of a partition. Petitioners argue in Table 1.1, footnotes 12 and 13, that these response time
20 requirements are not clear and objective, because it is not clear how the response time is
21 measured, and what assumptions are made about the time of day, traffic, etc. Petitioners note
22 that during the proceedings below city staff produced maps showing the current four-minute
23 and five-minute response times in the city, and concede that such maps, if adopted into the

²⁴Home Builders does not identify, and we are not aware of, any requirement that standards applied to needed housing be “relevant to needed housing.” Any standards applied to needed housing must, of course, be clear and objective.

1 LUCU, would be clear and objective. Record 1878-80. However, petitioners argue, the city
2 did not adopt such maps, and without them it is uncertain how a needed housing applicant
3 can determine whether or not proposed development is permitted under LUCU 9.8325(7)(j)
4 and 9.8520(7).²⁵

5 The city responds that the response time requirements are numeric and quantifiable,
6 as evidenced by the maps city staff produced during the proceedings below. If the standard
7 is written so clearly that a map can be produced showing the permitted and prescribed areas,
8 the city argues, it is clear and objective.

9 The city's response does not explain how response time is calculated or how, absent
10 adoption of maps or a clear method of delineation, a needed housing applicant can
11 reasonably determine whether proposed development is permitted under LUCU 9.8325(7)(j)
12 and 9.8520(7). Presumably a number of variables could have been applied in producing the
13 maps, including the current location or service area of emergency response providers and
14 assumptions about speed, traffic, etc. Those variables, particularly the current location or
15 service area of providers, will likely change over time. It is not clear whether the city
16 envisions that city staff will calculate whether an applicant's proposal falls within the current
17 response time area, or that the applicant must perform the calculations. Under either
18 scenario, it is unclear how that calculation is made. ORS 227.173 requires that ordinance
19 provisions that apply to needed housing "must be clear and objective on the face of the
20 ordinance." The response time requirement does not meet that standard. This subassignment
21 of error is sustained.

²⁵As discussed below, the LUCU provides that if property lies outside the response time limits, it may still be developed, but only under discretionary standards. We address, below, petitioners' challenges to those LUCU provisions.

1 **k. Street Standards**

2 LUCU 9.8220(2)(b), 9.8325(6)(a) and 9.8520(3)(b) require that partitions, PUDs and
3 subdivisions comply with the street, alley and public ways standards at LUCU 9.6800
4 through 9.6870. Petitioners argue in Table 1.1, footnote 14 that a number of provisions at
5 LUCU 9.6800 through 9.6870 are not clear and objective.

6 **(i) Dedication of Public Ways**

7 LUCU 9.6805 allows the city to require dedication of public ways as a condition of
8 approval, subject to constitutional limitations, and to require that the applicant design and
9 locate any such public ways according to the LUCU 9.0020 purpose statement.²⁶ The city
10 argues that LUCU 9.6805 is not a standard, but simply authority to impose conditions, and
11 thus need not be clear and objective. We rejected that general defense, above. We agree
12 with petitioners that the second sentence of LUCU 9.6805, requiring that the applicant design
13 and locate dedicated public ways to facilitate community needs according to the LUCU
14 9.0020 purpose statement, is not clear and objective. This subassignment of error is
15 sustained.

16 **(ii) Options to Dedication**

17 LUCU 9.6815(2)(a) requires that all streets and alleys shall be public unless the
18 developer demonstrates that dedication “is not necessary” to comply with the code or the

²⁶LUCU 9.6805 provides:

“As a condition of any development, the city may require dedication of public ways for bicycle and/or pedestrian use as well as for streets and alleys, provided the city makes findings to demonstrate consistency with constitutional requirements. The public ways to be dedicated to the public by the applicant shall be of such design and location as necessary to facilitate provision for the transportation and access needs of the community and subject property according to [LUCU] 9.0020 Purpose.”

LUCU 9.0020 describes the purpose of the zoning ordinance, including “to protect and promote the health, safety, and general welfare of the public and to preserve and enhance the economic, social, and environmental qualities of the community.”

1 street connectivity requirements at LUCU 9.6815(2)(b) to (f).²⁷ The city argues, and we
2 agree, that the dedication requirement is clear and objective. That the city provides an

²⁷LUCU 9.6815(2) provides in relevant part:

- “(a) All streets and alleys shall be public unless the developer demonstrates that a public street or alley is not necessary for compliance with this land use code or the street connectivity standards of subparagraphs (b) to (f) of this subsection.
- “(b) The proposed development shall include street connections in the direction of all existing or planned streets within 1/4 mile of the development site. The proposed development shall also include street connections to any streets that abut, are adjacent to, or terminate at the development site. * * *
- “(c) The proposed development shall include streets that extend to undeveloped or partially developed land that is adjacent to the development site or that is separated from the development site by a drainage channel, transmission easement, survey gap, or similar property condition. The streets shall be in locations that will not prevent the adjoining property from developing consistent with applicable standards.
- “(d) The proposed street alignment shall minimize excavation and embankment and avoid impacts to natural resources, including water-related features.
- “(e) The requirements of subparagraphs (b) and (c) of this subsection do not apply if it is demonstrated that a connection cannot be made because of the existence of one or more of the following conditions:
 - “1. Physical conditions preclude development of the connecting street. Such conditions may include, but are not limited to, topography or likely impact to natural resource areas such as wetlands, ponds, streams, channels, rivers, lakes or upland wildlife habitat area, or a resource on the National Wetland Inventory or under protection by state or federal law.
 - “2. Buildings or other existing development on adjacent lands, including previously subdivided but vacant lots or parcels, physically preclude a connection now or in the future, considering the potential for redevelopment.
- “(f) In cases where a required street connection would result in the extension of an existing street that is not improved to city standards and the street has an inadequate driving surface, the developer shall construct a temporary barrier at the entrance to the unimproved street section with provision for bicycle, pedestrian, and emergency vehicle access. The barrier shall be removed by the city at the time the existing street is improved to city standards or to an acceptable standard adopted by the public works director. In making a determination of an inadequate driving surface, the public works director shall consider the street rating according to Eugene’s Paving Management System and the anticipated traffic volume.”

1 alternative to dedication that is not clear and objective does not offend the statute. This
2 subassignment of error is denied.

3 **(iii) Street Connectivity Standards**

4 Petitioners argue that certain terms in LUCU 9.6815(2)(b) to (f) are not clear and
5 objective. *See* n 27.

6 LUCU 9.6815(2)(c) requires street extension to adjacent undeveloped land, even if
7 that land is separated by listed property conditions, including any property condition
8 “similar” to those listed. Because the listed property conditions are specifically described, it
9 is sufficiently clear what property conditions may be “similar.”

10 LUCU 9.6815(2)(f) requires that the developer take certain actions when an existing
11 street to which a connection is required has “an inadequate driving surface.” While that
12 phrase, considered in isolation, may be unclear or allow the city impermissible discretion,
13 LUCU 9.6815(2)(f) goes on to specify that the city’s determination of “inadequate driving
14 surface” shall be based on the street rating in the city’s rating system and the anticipated
15 traffic volume. Considered as a whole, LUCU 9.6815(2)(f) is clear and objective.

16 However, we agree with petitioners that, without further specification, the following
17 provisions are impermissibly vague and discretionary: the LUCU 9.6815(2)(c) requirements
18 that proposed street alignment “will not prevent the adjoining property from developing
19 consistent with applicable standards,” the LUCU 9.6815(2)(d) requirement that the proposed
20 street alignment “shall minimize excavation and embankment” and shall “avoid impacts to
21 natural resources,” and the LUCU 9.6815(2)(e) provisions that exempt development from the
22 street extension requirement where physical conditions “preclude” the connection. This
23 subassignment of error is sustained, in part.

1 (iv) Cul-de-Sac Standards

2 Petitioners challenge several provisions in LUCU 9.6820, governing cul-de-sacs.²⁸
3 LUCU 9.6820(1)(b) specifies that an exception to the cul-de-sac requirement is warranted
4 when “topographic constraints, existing development, or natural features prevent”
5 construction of a cul-de-sac. Petitioners argue that it is not clear when, or in whose
6 judgment, circumstances will “prevent” construction of a required cul-de-sac. We agree

7 Petitioners also argue that LUCU 9.6820(2) and (5) grant the city impermissible
8 discretion in approving temporary turnarounds and requiring public accessways off a cul-de-
9 sac. The city responds that LUCU 9.6820(2) simply provides authority to impose conditions
10 but is not itself a standard, and that LUCU 9.6820(5) was carried over from a preexisting
11 code provision and is thus not subject to ORS 197.307(6). However, LUCU 9.6820(2) does
12 more than provide authority to impose conditions; the first sentence imposes an approval

²⁸LUCU 9.6820 provides in relevant part:

“(1) All streets that terminate shall be designed as a cul-de-sac bulb, except when any of the following conditions exist:

“(a) The street will be extended in the future.

“(b) Topographic constraints, existing development, or natural features prevent the construction of a bulb.

“(c) The street is less than 150 feet long.

“(2) If a street qualifies for exception under subsection (1)(a), a temporary easement shall be provided and a turnaround of suitable strength constructed in an alternative location approved by the planning director. Conditions such as signage, restrictive covenants, or maintenance agreements may be required by the planning director to ensure that the turnaround area remains in good repair and available for use as intended.

“* * * * *

“(5) Where needed, the planning director shall require public accessways from a cul-de-sac longer than 150', measured from the centerline of the intersecting street to the radius point of the cul-de-sac[,] to provide safe, convenient, and direct circulation for pedestrians, bicyclists, and emergency vehicles.”

1 standard. For reasons explained above, that LUCU 9.6820(5) is carried forward from a
2 preexisting provision does not obviate compliance with ORS 197.307(6). We agree with
3 petitioners that LUCU 9.6820(2) and (5) are not clear and objective standards. This
4 subassignment of error is sustained.

5 **(v) Street Intersections**

6 LUCU 9.6830(1)(a) requires that “[s]treets and alleys shall intersect one another at an
7 angle as near to a right angle as is *practicable* considering [the] topography of the area and
8 previous adjacent layout.” (Emphasis added.) Petitioners argue that the term “practicable”
9 renders the provision unclear and subjective.

10 The city responds that LUCU 9.6830(1)(a) imposes an absolute, clear and objective
11 requirement: streets must intersect at right angles. According to the city, that LUCU
12 9.6830(1)(a) also provides, under specified circumstances, for an alternative that achieves the
13 maximum possible adherence to that absolute does not render it unclear or subjective. We
14 agree. This subassignment of error is denied.

15 **(vi) Public Accessways**

16 Petitioners argue that portions of LUCU 9.6835 are vague and discretionary.²⁹ The
17 city makes no attempt to demonstrate that LUCU 9.6835 is clear and objective, and we
18 conclude that it is neither clear nor objective. This subassignment of error is sustained.

²⁹LUCU 9.6835 provides in relevant part:

- “(1) When necessary to provide safe, convenient and direct access for pedestrians and bicyclists to and from nearby residential areas, transit stops, neighborhood activity centers, and other commercial and industrial areas, or where required by adopted plans, the city shall require within the development the dedication to the public and improvement of accessways to connect to cul-de-sacs, or to pass through blocks, provided the city makes findings to demonstrate consistency with constitutional requirements. ‘Nearby’ means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists. * * *
- “(2) When necessary to provide connectivity, the city shall require improvements to existing unimproved public accessways on properties adjacent to the development,

1 (vii) **Special Safety Requirements**

2 LUCU 9.6845 states that the city may require that local streets be designed to
3 discourage their use by non-local traffic.³⁰ Petitioners contend that the city's discretion in
4 imposing such requirements, *i.e.*, "where necessary to insure safety" etc., renders LUCU
5 9.6845 unclear and subjective.

6 The city responds that LUCU 9.6845 is not a standard or procedure subject to ORS
7 197.307(6), but simply a potential basis for attachment of a condition of approval. We
8 disagree. LUCU 9.6845 is a "standard" subject to ORS 197.307(6) because, as applied in
9 multi-stage partitions, PUDs and subdivisions, it functions as an approval criterion. If the
10 city approves a tentative subdivision plat with a condition that the final plat must show
11 changes to conform to LUCU 9.6845, and the city denies the final plat if those changes are
12 not made, then LUCU 9.6845 is an approval criterion. Therefore, it must be clear and
13 objective. The city makes no effort to demonstrate that it is so. This subassignment of error
14 is sustained.

15 (viii) **Transit Facilities**

16 LUCU 9.6865(1) and (2) allow the city to require additional right-of-way or other
17 improvements to develop transit facilities "where a need" for such facilities "has been
18 identified." Petitioners argue that these provisions are not clear and objective. The city

provided the city makes findings to demonstrate consistency with constitutional requirements. Said improvements to unimproved public accessways shall connect to the closest public street or developed accessway. Where possible, accessways may also be employed to accommodate the uses included in [LUCU] 9.6500 Easements."

³⁰LUCU 9.6845 provides:

"Where necessary to insure safety, reduce traffic hazards and promote the welfare of the general public, pedestrians, bicyclists and residents of the subject area, the planning director or public works director may require that local streets and alleys be designed to discourage their use by non-local motor vehicle traffic and encourage their use by local motor vehicle traffic, pedestrians, bicyclists, and residents of the area."

1 makes no attempt to demonstrate that they are clear and objective and we conclude that they
2 are neither clear nor objective.

3 **I. Public Improvement Standards**

4 LUCU 9.8220(2)(c), 9.8325(7)(b), 9.8445(4)(b) and 9.8520(3)(c) respectively require
5 that applications for partitions, PUDs, site design and subdivision involving needed housing
6 comply with standards for public improvements at LUCU 9.6500 through 9.6510. In Table
7 1.1, footnote 15, petitioners contend that several provisions in LUCU 9.6500 through 9.6510
8 are not clear and objective.

9 LUCU 9.6500(2) provides that “[e]asements may be required along lot or parcel rear
10 lines or side lines, or elsewhere as necessary to provide needed facilities for present or future
11 development of the area.” Petitioners argue that LUCU 9.6500 fails to define what “needed
12 facilities” are. However, LUCU 9.6500(1) discusses easements for “wastewater sewers and
13 other public utilities.” Viewed in context, it is clear that the “needed facilities” referenced in
14 LUCU 9.6500(2) are the facilities discussed in other provisions of LUCU 9.6500.

15 LUCU 9.6505(3) states that a developer shall pave all streets and alleys on the
16 development site and that “the city manager may require the developer to pave streets and
17 alleys that are impacted by the development.” Petitioners contend that the quoted language is
18 not clear and objective, because it is unclear which streets and alleys are “impacted” by
19 development. The city does not attempt to demonstrate otherwise. We agree that the quoted
20 language is neither clear nor objective.

21 LUCU 9.6505(4) states that sidewalks shall be located, designed and constructed
22 “according to the provisions of this land use code * * * and other adopted plans and
23 policies.” LUCU 9.6505(5) includes identical language regarding bicycle paths. Petitioners
24 contend that the quoted language invites argument in identifying what are the applicable
25 standards, and thus is not clear and objective. We disagree. The quoted language simply

1 refers to other standards, and is sufficiently clear and objective to comply with
2 ORS 197.307(6).

3 Finally, LUCU 9.6510 states that the city may require the applicant to provide
4 “adequate” drainage by constructing facilities “adequate for the drainage needs of the area.”
5 Petitioners argue that LUCU 9.6510 is vague and discretionary. The city does not attempt to
6 demonstrate otherwise. We agree with petitioners that LUCU 9.6510 is neither clear nor
7 objective. This subassignment of error is sustained, in part.

8 **m. Grading on Steep Sites**

9 LUCU 9.8325(5) and 9.8520(5) provide that for PUD or subdivision applications
10 involving needed housing, “[t]here shall be no proposed grading on portions of the
11 development site that meet or exceed 20% slope.” Petitioners contend that this requirement
12 is not clear and objective, because the code does not explain what method should be used to
13 determine slope. The city responds, and we agree, that the slope of a property is an
14 objectively determinable fact, and the absence of instructions on how to determine slope does
15 not offend ORS 197.307(6).³¹ This subassignment of error is denied.

16 **n. Pedestrian, Bicycle and Transit Circulation**

17 LUCU 9.8220(5)(b), 9.8325(6)(b) and 9.8520(6)(a) provide that partitions, PUDs and
18 subdivisions shall provide for pedestrian, bicycle and transit circulation.³² In Table 1.1,

³¹For the same reason, we reject petitioners’ challenge in Table 1.1, footnote 27, to LUCU 9.8520(11), which regulates development within the South Hills Study Area on slopes that exceed 20 percent.

³²LUCU 9.8220(5)(b), 9.8325(6)(b) and 9.8520(6)(a) provide:

“[The applicant shall provide] pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. ‘Nearby’ means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.”

1 footnote 17, petitioners contend that these provisions are not clear and objective, because
2 they do not specify when pedestrian, bicycle and transit circulation is “needed,” and because
3 they require discretionary determinations such as whether uses exist within two miles that
4 can “reasonably be expected to be used” by bicyclists.

5 The city responds that pedestrian, bicycle and transit circulation are “needed”
6 depending on whether such circulation is required in the code for the type of development
7 proposed. However, LUCU 9.8220(5)(b), 9.8325(6)(b) and 9.8520(6)(a) do not say that, and
8 the city identifies no other provisions that specify when pedestrian, bicycle and transit
9 circulation are “needed” for partition, PUD and subdivision approval. We agree with
10 petitioners that these provisions are not clear and objective. This subassignment of error is
11 sustained.

12 **o. Required Public Improvements**

13 LUCU 9.8100(5) and 9.8445(5) require for conditional use or site review approval
14 that the applicant show that required public improvements are in place. If such
15 improvements are not in place, the applicant must either (1) post a performance bond, or (2)
16 file a petition for public improvements, and the petition must be accepted by the city
17 engineer.³³ Petitioners argue in Table 1.1, footnote 18, that the requirement to show that
18 public improvements are in place is not clear and objective. Further, petitioners argue that

³³LUCU 9.8100(5) and 9.8445(5) require for conditional use permit or site review approval that:

“Public improvements as required by this land use code or as a condition of tentative plan approval have been completed, or:

- “(a) A performance bond or suitable substitute as agreed upon by the city has been filed with the city finance officer in an amount sufficient to assure the completion of all required public improvements; or
- “(b) A petition for public improvements and for the assessment of the real property for the improvements has been signed by the property owner seeking the [approval], and the petition has been accepted by the city engineer.”

1 the second option is not clear and objective, because it fails to state standards under which
2 the city engineer is required to accept a petition for public improvements, and standards for
3 the assessment of the real property for the improvements.

4 Petitioners do not explain why the public improvement requirement is unclear or
5 subjective, and we do not see that it is. It simply refers to public improvements required by
6 other LUCU provisions or in a tentative plan approval. Although no party points them out to
7 us, the second option presumably is governed by standards governing city approval of
8 petitions for local improvement districts, in EC chapter 7. Petitioners do not explain why
9 such standards violate ORS 197.307(6), or argue that the first option is not clear and
10 objective. This subassignment of error is denied.

11 **p. Existing Improvements**

12 LUCU 9.8220(3) and 9.8520(4) require that applications for partitions and
13 subdivisions show that the proposal will not cause “existing improvements on proposed lots”
14 to be inconsistent with applicable LUCU standards. Petitioners contend, in Table 1.1,
15 footnote 19, that these standards invite argument over what standards are “applicable” and
16 when the proposal would cause existing improvements to be “inconsistent” with such
17 standards.

18 The evident intent of LUCU 9.8220(3) and 9.8520(4) is to prevent development from
19 rendering existing improvements nonconforming with respect to other LUCU standards. As
20 explained above, that code provisions refer generally to other applicable standards, without
21 listing those standards, does not in and of itself offend ORS 197.307(6). Whether existing
22 improvements are rendered nonconforming with other applicable standards depends on the
23 terms of those other standards, not on LUCU 9.8220(3) and 9.8520(4), which are themselves
24 clear and objective. We reject petitioners’ challenge to LUCU 9.8220(3) and 9.8520(4).

1 **q. Access Management Guidelines**

2 LUCU 9.8220(4) requires that partitions abutting collector and arterial streets comply
3 with “access management guidelines of the agency having jurisdiction over the street.”
4 Petitioners argue, in Table 1.1, footnote 20, that ORS 197.307(6) requires *standards*, not
5 *guidelines*. However, LUCU 9.8220(4) is itself a standard, one that requires compliance with
6 certain guidelines, which thereby function as mandatory approval standards, despite their
7 label. Petitioners make no argument that LUCU 9.8220(4) or the applicable guidelines are
8 not clear and objective. For that reason we reject petitioners’ challenges to LUCU 9.8220(4).

9 **r. Availability of Public Facilities and Services**

10 LUCU 9.8325(8) requires for PUD approval a showing that “[p]ublic facilities and
11 services are available to the site[.]” Petitioners argue, in Table 1.1, footnote 22, that this
12 standard is unclear because it does not define “public facilities and services,” or specify the
13 level of facilities and services sufficient to constitute being “available.”

14 Nothing in the text or context of LUCU 9.8325(8) indicates the scope of “public
15 facilities and services,” nor clarifies whether inadequate facilities and services are
16 nonetheless “available.” We agree that LUCU 9.8325(8) is not clear and objective.

17 **s. Future Land Division**

18 LUCU 9.8220(7) and 9.8520(9) require that partition and subdivision applications
19 proposing parcels or lots in excess of 13,500 square feet shall indicate that such parcels or
20 lots can be further divided without violating the code or “interfering with the orderly
21 extension of adjacent streets, bicycle paths and accessways.” LUCU 9.8220(7) and
22 9.8520(9) also provide that “[i]f the planning director deems it necessary” for future land
23 division, “any restriction of buildings” within future streets, paths or accessways “shall be
24 made a matter of record” in the plat approval. Petitioners argue, in Table 1.1, footnote 23,
25 that the above-quoted language is unclear and grants the city impermissible discretion.

1 The city responds that it will be sufficiently obvious in any given case whether or not
2 future division of an oversize lot or parcel will interfere with future streets, paths or
3 accessways. We agree. LUCU 9.8220(7) and 9.8520(9) require the application to show, by
4 the location of property lines and other details, whether an oversize lot or parcel can be
5 divided under the code. The application must also show that such future division will not
6 interfere with extension of adjacent streets and paths. Whether such interference exists or not
7 should be evident on the face of the partition or subdivision plat.

8 However, the second sentence of LUCU 9.8220(7) and 9.8520(9) grants the city
9 discretion to restrict the location of buildings on the plat and make any such restrictions a
10 “matter of record” in the plat approval. The city does not attempt to demonstrate that such
11 grant of discretion is consistent with ORS 197.307(6). That aspect of LUCU 9.8220(7) and
12 9.8520(9) is not clear and objective. This subassignment of error is sustained, in part.

13 **t. Dwellings within One-Quarter Mile of Park**

14 LUCU 9.8325(9) requires that all proposed dwellings within a PUD be within one-
15 quarter mile of a recreation area or open space. Petitioners argue, in Table 1.1, footnote 24,
16 that the “method for measuring distance” in LUCU 9.8325(9) is not clear and objective. We
17 understand petitioners to argue that it is fundamentally unclear whether the one-quarter mile
18 distance is measured by how the crow flies, or by surface streets. The potential difference,
19 we agree, is considerable. LUCU 9.8325(9) is not clear and objective.

20 **u. Stormwater Runoff**

21 LUCU 9.8325(10) requires that a PUD application demonstrate that:

22 “Stormwater runoff from the PUD will not create negative impacts on natural
23 drainage courses either on-site or downstream, including, but not limited to,
24 erosion, scouring, turbidity, or transport of sediment due to increased peak
25 flows or velocity.”

26 Petitioners argue, in Table 1.1, footnote 25, that discretionary terms such as “negative
27 impacts” in LUCU 9.8325(10) are unclear and subjective. The city responds that LUCU

1 9.8325(10) does not require discretion or the exercise of judgment; it simply requires *no*
2 negative impacts from increased peak flows or velocity. While that standard may be difficult
3 to meet, the city argues, it is clear and objective. We agree. *See 1000 Friends of Oregon v.*
4 *LCDC (Hood River Co.)*, 91 Or App 138, 143, 754 P2d 22 (1988) (prohibition on any
5 adverse impact on identified resources is clear and objective). LUCU 9.8325(10) is a
6 prohibition on negative impacts of the type listed, caused by increased peak flows or
7 velocity. Either the proposed PUD will meet that standard or it will not.³⁴ This
8 subassignment of error is denied.

9 **v. Solar Lot Standards**

10 LUCU 9.8325(11) requires that lots proposed in a PUD for single-family detached
11 dwellings shall comply with solar lot standards at LUCU 9.2790. Petitioners argue, in Table
12 1.1, footnote 26, that “whether the solar lot standards apply to the project as a whole or to a
13 particular lot depends on a range of standards that are ambiguous or allow discretionary
14 review.”

15 The city responds, and we agree, that without more assistance from petitioners we
16 cannot perform our review function. Petitioners do not identify the “range of standards” in
17 LUCU 9.2790 they believe are ambiguous and discretionary, and none are apparent to us.
18 Without some explanation, we do not see that there is any ambiguity or discretion involved in
19 applying the solar lot standards pursuant to LUCU 9.8325(11). This subassignment of error
20 is denied.

21 **w. South Hills Development**

22 LUCU 9.8325(13) prohibits development above an elevation of 900 feet within the
23 boundaries of the South Hills Study, and further requires a 300-foot setback from the

³⁴We address, below, petitioners’ argument that LUCU 9.8325(10) is so difficult to meet that it impermissibly forces needed housing applicants to opt for the alternative discretionary track.

1 “ridgeline” unless the city manager determines that “the area is not needed as a connection to
2 the city’s ridgeline trail system.” Petitioners argue, in Table 1.1, footnote 27, that LUCU
3 9.8325(13) is not clear and objective, because it is not clear how elevation is calculated, and
4 the city manager’s determination is discretionary. We disagree that either offends
5 ORS 197.307(6). The elevation of land, like its slope, is an objectively determinable fact.
6 As for “ridgeline,” the city points out that LUCU 9.8325(13) itself describes the pertinent
7 reference point as the “line indicated as being the urban growth boundary within the South
8 Hills Study plan area.” We agree with the city that because the 300-foot setback is clear and
9 objective, offering a discretionary alternative to that requirement does not violate the statute.
10 This subassignment of error is denied.

11 **x. Blair Boulevard Special Area Zone**

12 LUCU 9.3515 sets out a number of design standards for development within the Blair
13 Boulevard Historic Commercial Special Area Zone. Petitioners argue, in Table 1.1, footnote
14 28, that some of the standards within one of the LUCU’s special zones, at LUCU 9.3515, are
15 not clear and objective. Petitioners do not identify which of the numerous standards at
16 LUCU 9.3515 they believe violate ORS 197.307(6). In any case, as far as we can tell the
17 special zone is a Goal 5-designated historic area, and residential development within Goal 5-
18 designated historic areas is not subject to statutory restrictions on needed housing.
19 ORS 197.307(3)(e). We reject petitioners’ arguments under LUCU 9.3515.

20 **y. Multi-Family Housing**

21 LUCU 9.5500 sets out standards for multi-family housing. LUCU 9.5500(4)(b)
22 requires that on development sites with less than 100 feet of street frontage, at least 40
23 percent of the “site width” shall be occupied by a building placed within 10 feet of the
24 minimum front yard setback line. LUCU 9.5500(5)(a) requires that multi-family buildings
25 located within 40 feet of the front lot line shall have their “primary orientation” toward the
26 street. Petitioners argue, in Table 1.1, footnote 29, that the above-quoted terms render these

standards not clear and objective. However, both terms have plain, commonly understood meanings that are sufficiently clear and objective when read in context. This subassignment of error is denied.

z. Landscape Standards

LUCU 9.6220 requires that installed plant materials shall “meet current nursery industry standards,” and shall be maintained “in a healthy and attractive manner.” We agree with petitioners that these standards are not clear and objective. This subassignment of error is sustained.

B. Alternative Track

Petitioners’ second general type of challenge is that certain standards, even if they are clear and objective, are so difficult or impossible to comply with that at least some needed housing applicants will be forced to apply for needed housing under the alternative, discretionary track. According to petitioners, the city has essentially legislated that some areas of the city or types of needed housing can be developed only under discretionary criteria. Petitioners contend that the city must ensure that the entirety of its inventory of buildable residential lands can be developed under clear and objective standards.

1. Emergency Response Times

In section II.A.2.j, above, we sustained petitioners’ arguments that LUCU 9.8325(7)(j), 9.8520(7), and 9.8220(6) are not clear and objective. These provisions, part of the needed housing track, require for approval of a subdivision, planned unit development or partition in the South Hills area of the city that new dwellings shall be within a four or five-minute response time for emergency medical services. No similar requirement applies under the alternative, discretionary track. Petitioners argue that, even if these standards are made clear and objective, they suffer from the additional and unfixable flaw that they effectively rule out the possibility of developing needed housing in this area of town under nondiscretionary criteria.

1 The city responds that nothing in the needed housing statutes requires that all areas of
2 the city must be immediately available for development of needed housing under clear and
3 objective standards, or that clear and objective standards be immediately applicable to every
4 development proposing needed housing. According to the city, it is consistent with
5 ORS 197.307 to prohibit development in certain areas of the city that are not yet fully served
6 by urban services, such as emergency services, as long as such prohibitions are clear and
7 objective. Once emergency services are extended, the city argues, the developer may choose
8 to use the needed housing track instead of the alternative track. The city contends that
9 developers who do not choose to wait and who choose to develop notwithstanding arguably
10 inadequate emergency services must comply with discretionary criteria requiring, among
11 other things, minimization of fire risk. Providing developers that option, the city argues,
12 does not offend ORS 197.307.

13 We generally agree with the city that nothing in the needed housing statutes requires
14 that all of the city's buildable lands inventory must be developable at a given time. There
15 may be other reasons why the city cannot impose temporary restrictions that affect the timing
16 of development, to avoid overburdening public facilities and services.³⁵ However,
17 ORS 197.307 is not concerned with the timing of development, and simply does not address
18 that issue. If ORS 197.307 is not concerned with a temporary *total* prohibition on new
19 housing, then we fail to see how the statute is offended by a temporary *partial* prohibition
20 that allows development of needed housing under discretionary criteria that are designed to
21 address the public safety concern that prompts the temporary restrictions. This
22 subassignment of error is denied.

³⁵Petitioners do not argue that the city's emergency response restrictions constitute a *de facto* moratorium, or that they endanger the city's ability to meet its Goal 10 (Housing) obligations within the relevant planning period.

2. Stormwater Runoff

In section II.A.2.u, we held that LUCU 9.8325(10) imposes a clear and objective requirement that stormwater runoff from a PUD will not “create negative impacts on natural drainage courses” such as erosion, turbidity or sediment transport, “due to increased peak flows or velocity.” We agreed with the city that, while LUCU 9.8325(10) may be difficult to meet, its prohibition on negative impacts of the specified type is clear and objective. Petitioners argue that, even if LUCU 9.8325(10) is clear and objective, it nonetheless offends the needed housing statute, because it is so difficult to meet that it effectively forces needed housing applicants to opt for the alternative, discretionary track.³⁶ Petitioners submit that rain falls on all development, and all water moving across ground carries some sediment, creates some turbidity, and has some erosional component, no matter how minute, and therefore no PUD could possibly comply with LUCU 9.8325(10).

We agree with petitioners, at least in the abstract, that imposing a clear and objective standard that is impossible or virtually impossible to meet is a prohibition in the guise of a standard. ORS 197.307(3)(d) allows the city to offer a discretionary approval track, “provided the applicant retains the option of proceeding under the clear and objective standards[.]” That option is illusory if the clear and objective standards are impossible to satisfy. It may not be the case that LUCU 9.8325(10) is impossible to satisfy. However, the city provides no assistance on this point, or indeed respond to this subassignment of error at all. Accordingly, we sustain this subassignment of error.

³⁶The corresponding alternative track standard is LUCU 9.8325(9), which provides:

“Stormwater runoff from the PUD will not create *significant* negative impacts on natural drainage courses either on-site or downstream, including, but not limited to, erosion, scouring, turbidity, or transport of sediment due to increased peak flows or velocity.” (Emphasis added.)

3. Conflicting Standards

Finally, petitioners argue that the LUCU violates ORS 197.307(6) because it lacks a clear and objective mechanism for resolving conflicts among clear and objective standards. Petitioners contend that certain clear and objective standards potentially conflict with each other to the extent that, in approving or denying an individual application, the city might exercise some discretion in resolving that conflict. For example, petitioners note that PUD standards in the South Hills area of the city require that 40 percent of the development site be preserved in contiguous open space, which excludes improvements such as streets. However, petitioners argue, this potentially conflicts with other PUD standards that require streets to connect in the direction of all existing or planned streets within one-quarter mile of the site.

Petitioners concede that the city's code includes adjustment procedures that allow an applicant to seek relief from particular standards, and that an applicant might invoke such procedures if the application presented a conflict in the manner hypothesized above. However, petitioners contend that the adjustment procedures are not themselves clear and objective, and therefore cannot satisfy ORS 197.307(6). According to petitioners, only a clear and objective conflict mechanism can satisfy the statute. Petitioners offer no suggestion as to what a "clear and objective" conflict procedure might look like.

The city responds that, if any conflict between clear and objective standards such as that hypothesized ever arises, then one of two things will happen. To avoid denial for failure to meet all clear and objective standards, the applicant will either (1) modify the application so that it meets all clear and objective standards; or (2) invoke the city's discretionary adjustment procedure, to adjust one or more standards. If the applicant fails to do either, the city argues, it will deny the application for failure to meet all standards.

ORS 197.307 does not require a conflict mechanism for resolving potential conflicts between clear and objective criteria. If any two clear and objective standards conflicted on

1 their face, such that it was impossible to satisfy both, then we might well agree with
2 petitioners that such standards offend the statute. However, petitioners have not identified
3 any clear and objective standards that conflict on their face. At most, petitioners speculate
4 that an application for development of a particular site might not be able to show compliance
5 with two clear and objective standards, either because of a particular aspect of the proposal or
6 because of some feature of the site or its surroundings that makes it difficult or impossible to
7 satisfy both standards. In the former circumstance, the applicant can modify the proposal so
8 that it complies with all standards. In the latter, the problem is not conflicting standards, but
9 rather that some feature of the site makes it difficult or impossible to comply with all
10 applicable standards. The city's adjustment processes are apparently designed for just such
11 circumstances. In neither circumstance is it accurate to say that the *standards* conflict. In
12 sum, we do not see that the absence of some mechanism for resolving potential conflicts
13 between standards violates ORS 197.307. This subassignment of error is denied.

14 **III. Discourage Needed Housing Through Unreasonable Cost or Delay**

15 Finally, petitioners argue in Home Builders' third assignment of error that a number
16 of LUCU provisions, even if clear and objective, nonetheless violate ORS 197.307(6)
17 because they "discourage needed housing through unreasonable cost or delay." These LUCU
18 provisions do so by either (1) reducing the area of development sites that can be developed;
19 (2) requiring additional amenities in connection with development; or (3) imposing
20 burdensome requirements for filing complete applications for development.

21 For example, petitioners argue that, as discussed below in regard to Goals 5, 9 and 10,
22 the LUCU requires protection of "critical root zones" for trees. Petitioners argue that such
23 regulations effectively reduce the supply of buildable land, and thus increase demand and
24 price. Similarly, petitioners argue that certain LUCU provisions require new amenities, such
25 as landscaping, and a new requirement that all on-site utilities be placed underground, that
26 will increase the cost of needed housing. Petitioners also argue that new informational

1 requirements for geotechnical reports, new requirements for pre-application conferences, and
2 requirements that tentative PUD approvals undergo public hearings will increase costs and
3 cause delay in the development of needed housing.

4 ORS 197.307(6) prohibits standards, conditions or procedures for approval that,
5 either in themselves or cumulatively, discourage needed housing “through unreasonable cost
6 or delay.” The statute does not prohibit *reasonable* cost or delay. In our view, the question
7 of whether approval standards or procedures discourage needed housing through
8 *unreasonable* cost or delay cannot, in most cases, be resolved in the abstract, in a challenge
9 to a legislative decision that adopts such standards or procedures. In the absence of actual
10 application of standards or procedures in a particular case, it is difficult to see how any party
11 could demonstrate what the delay or additional cost might be, whether that delay or cost is
12 reasonable or unreasonable, and whether that delay or cost discourages needed housing,
13 either alone or in combination with other standards or procedures. Because different sets of
14 standards and procedures will apply to different applications in different areas of the city,
15 demonstrating in the abstract that standards or procedures *cumulatively* discourage needed
16 housing is rendered even more difficult. These difficulties are apparent in the present case,
17 because the petitions for review make no attempt to demonstrate why any standards or
18 procedures, alone or cumulatively, result in *unreasonable* cost or delay, much less what those
19 costs or delay might be. While petitioners argue that certain standards or procedures are
20 likely to increase cost or delay, they make no effort to demonstrate that such increased cost
21 or delay is unreasonable, alone or cumulatively. With the possible exception discussed
22 below, we believe it is highly unlikely that such a demonstration can be made or, if made,
23 reviewed in a meaningful manner, except in the context of an “as-applied” challenge.

24 One exception to the foregoing is a challenge against a standard or procedure on the
25 grounds that the standard or procedure is unreasonable as a matter of law; in other words, the
26 standard or procedure lacks a rational basis. Any cost or delay attributable to a standard or

1 procedure that lacks a rational basis is perforce “unreasonable,” whatever the actual cost or
2 delay that might be incurred in a particular case. Such a facial challenge can be meaningfully
3 addressed and resolved in an appeal of a legislative decision.

4 In the present case, the only challenges we perceive that argue, in essence, that a
5 standard or procedure lacks a rational basis are petitioners’ challenges to two procedural
6 requirements.

7 Petitioners first contend that LUCU 9.6710 requires a “geotechnical” analysis for any
8 proposed PUD, site review, or subdivision application on land with slopes equal to or greater
9 than five percent, and for any proposed development that includes construction of a public
10 street, alley, drainage system or sewer. One of three levels of analysis is required, depending
11 on the slope. The purpose of this informational requirement, according to LUCU 9.6710(1),
12 is to ensure that facilities in “areas of known or potential unstable soil conditions are located,
13 designed and constructed in a manner that provides for public health, safety, and welfare.”
14 However, petitioners argue that the results of the required geotechnical analysis are not tied
15 to any approval standard. Because the required information is not related to any approval
16 standard, we understand petitioners to argue, it is a purposeless requirement that functions
17 only to increase costs and cause delay.

18 The city’s statewide Goal 7 (Areas Subject to Natural Disasters and Hazards) findings
19 discuss the geotechnical analysis requirement at LUCU 9.6710, and suggest that
20 “development must occur in accordance with the analysis’ recommendations.” Record 496.
21 However, the city does not identify any standard that imposes that requirement, or that relies
22 on the required geotechnical analysis in any way. As far as we can tell, the geotechnical
23 analysis requirement functions only to supply the city with potentially expensive information
24 that has no bearing on any approval standard. Consequently, we agree with petitioners that
25 the requirement violates ORS 197.307(6).

1 The second procedure is at LUCU 9.7055, which makes tentative PUD approvals
2 subject to the city’s “Type III” procedures, which require a public hearing. Petitioners argue
3 that approval under clear and objective standards should not require a hearing at all, and at
4 most should be subject to administrative approval under a “Type I” procedure, which does
5 not provide for notice, opportunity for comment, hearing or local appeal. We understand
6 petitioners to contend that the only apparent purpose for requiring a hearing for tentative
7 PUD approval is to impose additional costs and delay on needed housing. The city responds
8 that subdivisions and site review approvals are “limited land use decisions” as defined at
9 ORS 197.015(12), which by statute must provide notice and opportunity for comment and
10 thus must be processed under at least “Type II” procedures, which provide for notice,
11 opportunity for comment and local appeal. Similarly, the city argues, tentative PUD
12 approval is a “permit” decision as defined at ORS 227.160(2), which must be processed
13 under procedures that provide the opportunity for a public hearing. We agree that petitioners
14 have not demonstrated that the hearing requirement for tentative PUD approval lacks a
15 rational basis.

16 The first and third assignments of error (Home Builders) are sustained, in part.

17 **SECOND ASSIGNMENT OF ERROR (HOME BUILDERS)**

18 **FOURTH ASSIGNMENT OF ERROR (CHAMBER)**

19 Petitioners contend that the city erred in adopting a number of LUCU provisions
20 regulating natural resources, including inventoried Goal 5 resources, without complying with
21 the requirements of Goal 5 and the Goal 5 administrative rule at OAR chapter 660, division
22 23.

1 The city’s adoption of the LUCU is a “post-acknowledgment plan amendment,” or
2 PAPA.³⁷ In adopting a PAPA, local governments are required to apply Goal 5 only if the
3 PAPA “affects a Goal 5 resource.” OAR 660-023-0250(3).³⁸ As defined in that rule, and as
4 relevant here, the LUCU “affects a Goal 5 resource” only if it (1) “creates or amends a
5 resource list”; (2) amends a “land use regulation adopted in order to protect a significant
6 Goal 5 resource or to address specific requirements of Goal 5”; or (3) “allows new uses that
7 could be conflicting uses with a particular significant Goal 5 resource site on an
8 acknowledged resource list.”

9 Petitioners argue that the LUCU “creates or amends a resource list” within the
10 meaning of OAR 660-023-0250(3)(a), because the city essentially adopted a program of
11 protecting *unacknowledged* and *uninventoried* Goal 5 resources, without completing the Goal
12 5 process. Further, petitioners contend that the LUCU amends regulations protecting

³⁷OAR 660-023-0010(5) defines a PAPA to include “amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation.”

³⁸OAR 660-023-0250(3) and (4) provide, in relevant part:

“(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

“(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

“(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list[.]

“* * * * *

“(4) Consideration of a PAPA regarding a specific resource site, or regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that are not affected by the PAPA, regardless of whether such inventories or provisions were acknowledged under this rule or under OAR 660, Division 16.”

1 inventoried Goal 5 resources, without addressing the requirements of Goal 5 and the Goal 5
2 rule.

3 The challenged decision takes the position that the LUCU does not “affect” any Goal
4 5 resource, and therefore the LUCU is consistent with Goal 5.³⁹ The city’s response brief
5 argues that, to the extent any LUCU amendment “affects a Goal 5 resource,” the amendment
6 is consistent with the Goal 5 inventory and the original program to protect the resource, and
7 therefore the amendment is consistent with Goal 5. The city also argues that the city can
8 regulate or protect environmental resources that are not inventoried Goal 5 resources, without
9 doing so under Goal 5, and that such regulations do not constitute creation or amendment of
10 a “resource list,” or otherwise trigger application of the Goal 5 rule.

11 **I. Creates or Amends a Resource List**

12 To address the last argument first, we agree with the city that no authority brought to
13 our attention requires that the city in all cases apply Goal 5 and the Goal 5 rule before it
14 amends its acknowledged land use regulations to protect resources that are indisputably *not*
15 part of the city’s acknowledged inventory of Goal 5 resources. *See Ramsey v. City of*
16 *Portland*, 30 Or LUBA 212, 217 (1995) (adoption of an ordinance regulating the cutting of
17 individual trees does not affect any Goal 5 site nor implicate Goal 5, even though it arguably
18 furthers the objectives of Goal 5). The city explains that it is currently in periodic review

³⁹The decision’s Goal 5 findings state, in relevant part:

“The Metro Plan has an acknowledged Goal 5 inventory. The changes to the [LUCU] do not [a]ffect the existing measures that ensure that Goal 5 resources are maintained. * * *” Record 495.

“* * * None of the changes to the [LUCU] are intended specifically to protect a Goal 5 resource and none of the changes would allow a use inconsistent with a Goal 5 resource identified for protection. Therefore, the changes to the [LUCU] are consistent with Goal 5.” Record 496.

1 and, as part of periodic review, it is updating its Goal 5 inventory.⁴⁰ The city argues that
2 adoption of the LUCU is not part of that periodic review task and is not intended to create or
3 add to the city's list or inventory of Goal 5 resources. We agree that the city is required to
4 comply with and complete the Goal 5 process only if and to the extent its decision "affects a
5 Goal 5 resource" or otherwise triggers application of the Goal 5 rule. *See Rest-Haven*
6 *Memorial Park v. City of Eugene*, 39 Or LUBA 282, 299, *aff'd* 175 Or App 419, 28 P3d
7 1229 (2001) (ordinance adopting new protections for both inventoried Goal 5 drainageways
8 and noninventoried waterways, as an "interim protection" pending completion of the city's
9 Goal 5 process, must be consistent with the Goal 5 rule). Petitioners have not established
10 that the LUCU was intended to create a Goal 5 resource list or has the effect of amending the
11 city's acknowledged Goal 5 resource list. Accordingly, we focus our analysis on petitioners'
12 arguments under OAR 660-023-0250(3) that the LUCU amends the city's acknowledged
13 programs for protecting inventoried Goal 5 resources, without complying with the rule.

14 **II. Amendment of Regulations Protecting Goal 5 Resources**

15 The parties agree that the starting point for analysis under OAR 660-023-0250(3) is to
16 identify the city's acknowledged Goal 5 inventory and the program that was adopted to
17 protect significant Goal 5 resources. The next step is to determine whether any LUCU
18 provision amends a "land use regulation adopted in order to protect a significant Goal 5
19 resource or to address specific requirements of Goal 5" or "allows new uses that could be
20 conflicting uses with a particular significant Goal 5 resource site on an acknowledged
21 resource list."⁴¹ If so, then the city must address and comply with the Goal 5 rule, in
22 adopting such provisions.

⁴⁰We understand the "resource list" referenced in OAR 660-023-0250(3) to be the same thing as the city's Goal 5 inventory.

⁴¹Petitioners assert at one point that the LUCU allows new uses that could be conflicting uses, but they do not identify what provisions do so or explain why. Accordingly, we do not address that assertion.

1 **A. Goal 5 Inventory**

2 Identifying the city’s Goal 5 inventory is not an easy task, in part because it was
3 adopted as part of a regional planning process, and in part because the inventory consists, as
4 far as we can tell, of a large collection of various “working papers” and maps. In Table 2.1,
5 accompanied by 60 footnotes, Home Builders attempts to correlate acknowledged,
6 inventoried Goal 5 resources with LUCU provisions that allegedly affect those resources.
7 Column A of Table 2.1 organizes the inventoried resources in six pertinent categories: areas
8 of significant vegetation, wildlife and wildlife habitat (VWWH); scenic areas; water areas;
9 Willamette River Greenway; sand and gravel areas, and energy sources.

10 The city argues, and petitioners do not dispute, that most of the 35 identified VWWH
11 and all of the sand and gravel sites are not within the City of Eugene or were excluded from
12 the city’s inventory of significant Goal 5 sites during the acknowledgment process. The city
13 states that only eight of the listed VWWH areas and none of the sand/gravel areas are
14 included on the city’s acknowledged Goal 5 inventory. The eight VWWH sites are Bertlesen
15 Slough, Willow Creek Wetlands, Willamette Wetlands, Delta Ponds, Skinner’s Butte Park,
16 Alton Baker Park, Hendricks Park and Amazon Park.

17 Significant scenic areas are not listed in any resource list, but instead are mapped at
18 Figure H-2, which appears in the Home Builders Appendix III, 117. Buttes, ridgelines,
19 viewpoints with public access, parklands, golf courses and cemeteries are identified as scenic
20 areas on Figure H-2. Apparently some of the VWWH sites are also scenic areas. Significant
21 water areas are mapped on a different map, found in the city’s Appendix, at 125.⁴² Water
22 areas include bodies of water, wetlands, stream corridors, floodways and aquifer recharge
23 areas. Some VWWH sites are also water sites. The Willamette River Greenway is identified
24 by maps J-1, J-2 and J-3, found in the Home Builders Appendix III, 133, 137, 139.

⁴²The significant water areas map is also labeled Figure H-2.

1 With respect to energy sources, petitioners claim that although the city addressed
2 energy sources such as solar energy under different goals than Goal 5, such resources are in
3 fact Goal 5 resources, and therefore part of the city’s Goal 5 inventory. Accordingly,
4 petitioners argue, several LUCU amendments affecting the city’s solar standards must
5 comply with the Goal 5 rule. The city does not respond specifically to this claim, although as
6 discussed below it argues generally that petitioners have in many cases failed to demonstrate
7 that challenged LUCU provisions are part of the city’s Goal 5 program. We agree that
8 petitioners have not demonstrated that “energy sources” are an inventoried Goal 5 resource,
9 and that the city’s solar standards are part of the city’s Goal 5 program.

10 **B. Program to Achieve the Goal**

11 For each of the above-described categories of inventoried sites, Column C of Table
12 2.1 lists categories of LUCU provisions that allegedly apply to those inventoried resources.
13 Petitioners contend that these provisions either increase or decrease the level of protection
14 provided by the city’s acknowledged Goal 5 program. For example, petitioners argue that for
15 many kinds of development approvals, including site review, subdivisions, PUDs and
16 conditional use permits, the LUCU requires the “preservation of significant natural features,”
17 and provides a list of such features.⁴³ According to petitioners, these increased protections

⁴³For example, LUCU 9.8090(5) requires for conditional use permit approval that:

“The proposal is designed and sited to minimize impacts to the natural environment by addressing the following:

“(a) Protection of Natural Features. The preservation of significant natural features to the greatest degree attainable or feasible, including:

- “1. Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under state or federal law), and native plant communities.
- “2. All documented habitat for all rare animal species (those that are proposed for listing or are listed under state or federal law).

1 apply to lands that include inventoried Goal 5 resources such as wildlife habitat, wetlands,
2 riparian corridors and natural areas. Therefore, petitioners argue, the city cannot adopt such
3 amendments unless it first addresses and complies with Goal 5 and the Goal 5 rule.

4 Identifying the city's program to achieve Goal 5 is even more problematic than
5 identifying its Goal 5 inventory. The city takes the position, and we do not understand
6 petitioners to dispute, that the scope of the program, *i.e.*, the portion of the comprehensive
7 plan and land use regulations that were adopted in order to protect a significant Goal 5
8 resource, are those identified in various LCDC acknowledgment orders attached to the
9 parties' briefs. These orders discuss a number of measures to protect Goal 5 resources that
10 include, as far as we can tell, the following: certain Metro Plan policies, certain plan
11 designations, certain zoning classifications, the South Hills Study, the land division code, and
12 certain specific zoning ordinance provisions addressing PUDs, cluster subdivisions, site

“3. Prominent topographic features, such as ridgelines and rock outcrops.

“4. Wetlands, intermittent and perennial stream corridors, and riparian areas.

“5. Natural resource areas designated in the Metro Plan diagram as ‘Natural Resource’ and areas identified in any city-adopted natural resource inventory.

“(b) Tree Preservation. The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible * * *:

“* * * * *

“(c) Restoration or Replacement. The proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:

“1. Planting of replacement trees within common areas; or

“2. Re-vegetation of slopes, ridgelines, and stream corridors; or

“3. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.

“* * * * *”

1 review, tree preservation, and building height limitations. We discuss, below, the parties’
2 disputes over whether specific challenged LUCU provisions are part of the city’s program to
3 achieve Goal 5.

4 The city offers a number of general and specific defenses to petitioners’ arguments.
5 We address the city’s general defenses first and then the parties’ specific arguments
6 regarding particular resources and code provisions. For the reasons explained below, we
7 agree with petitioners that some LUCU amendments amend regulations that apply to and
8 protect some inventoried Goal 5 resources. Petitioners are correct that the city cannot adopt
9 such amendments unless it addresses and complies with Goal 5 and the Goal 5 rule.

10 C. The City’s General Defenses

11 1. Increased Protection to Goal 5 Resources

12 The first general defense is the city’s repeated argument that, to the extent a LUCU
13 provision applies to an inventoried Goal 5 resource and merely *increases* the level of
14 protection afforded that resource, such an amendment is necessarily consistent with Goal 5,
15 without further inquiry, as long as the city’s Goal 5 inventory designates that resource for
16 “protection” against conflicting uses. In other words, the city argues, once the city chooses
17 as part of its original Goal 5 process to fully protect a resource from conflicting uses, and
18 adopts measures to protect that resource, the city may subsequently increase the level of
19 protection provided, and that increased protection either does not trigger Goal 5 review or is
20 axiomatically consistent with Goal 5.

21 We disagree. The city adopted its Goal 5 inventory and program to achieve the goal
22 under OAR chapter 660, division 16, which requires that the city make a policy choice, based
23 on its Goal 5 analysis, with respect to each resource site to (1) fully protect the site against
24 conflicting uses, (2) limit conflicting uses, or (3) fully allow conflicting uses. OAR 660-016-

1 0010.⁴⁴ The city explains that for most resource sites the identified conflicting uses were
2 “(1) aggregate extraction versus other Goal 5 values; (2) timber harvest versus other Goal 5
3 values; and (3) low density residential development as it encroaches upon natural resources
4 at the urban fringe.” Response Brief 57, *quoting* Appendix 134. In choosing to protect a
5 site, the city adopted various measures designed to protect the site from conflicting uses, and
6 those measures were acknowledged by LCDC to comply with Goal 5. Certainly the city
7 could not *decrease* the level of protection provided by those measures, without
8 demonstrating that such decreased protection is consistent with Goal 5. The rationale for
9 requiring that demonstration where the city *increases* the level of protection is less obvious,
10 but we believe that OAR 660-023-0250(3) nonetheless requires such a demonstration. In
11 relevant part, the text of the rule provides that any PAPA that amends a land use regulation
12 adopted in order to protect a significant Goal 5 resource must comply with Goal 5. The rule
13 is not limited to amendments that decrease levels of protection. If LCDC intended the rule to
14 exclude amendments that increase levels of protection to protected sites, it could have easily
15 said so.

16 Further, in originally choosing a level of protection consistent with Goal 5, the city
17 necessarily made a choice under Goal 5 to balance a variety of conflicting considerations,
18 including the relative value of the conflicting uses that the site is protected against, how
19 stringent protections should be, and the economic and social costs and benefits of those
20 protections. That choice was presumably based in part on the rule-required environmental,
21 social, economic and energy (ESEE) analysis that was developed by the city to decide to
22 protect, partially protect, or not protect the resource. OAR 660-016-0010. That choice may

⁴⁴The city’s original Goal 5 analysis and inventory was developed under the old Goal 5 rule at OAR chapter 660, division 16. A similar requirement to determine whether a significant resource should be protected, partially protected, or not protected against conflicting uses, based on an economic, social, environmental and energy (ESEE) analysis, is found at OAR 660-023-0040.

1 have involved balancing, for example, the city’s Goal 5 obligations with its obligations under
2 other statewide planning goals, such as Goals 9 (Economic Development) and 10. *See*
3 ORS 197.340 (local governments must give statewide planning goals equal weight). The city
4 must justify post-acknowledgment decisions to increase the level of protection given to
5 inventoried Goal 5 resources, which will presumably disturb the balance of conflicting
6 considerations arrived at 20 years earlier in its original Goal 5 analysis.

7 **2. Nonsubstantive Changes**

8 The second general defense is the city’s frequent argument that amendments to
9 certain challenged LUCU provisions are carried forward from the EC with only minor
10 editorial or nonsubstantive changes. The city argues that such nonsubstantive changes do not
11 require review under Goal 5.

12 We generally agree that provisions acknowledged to comply with Goal 5 that are
13 carried forward without substantive change into newly codified regulations do not constitute
14 an “amendment” of a Goal 5 regulation for purposes of OAR 660-023-0250(3). The
15 difficulty, of course, is determining whether any changes are truly nonsubstantive. For
16 example, LUCU 9.6715(3), which the city holds up as an example of nonsubstantive change,
17 carries forward the same height limitation in EC 9.536(c), in almost identical terms.⁴⁵ We

⁴⁵For example, petitioners allege that height limitation provisions at LUCU 9.6715(3) affect the inventoried Skinner’s Butte area, among others. The city argues that LUCU 9.6715(3) is substantively the same as EC 9.536(c). We quote the relevant LUCU and EC provisions below:

EC 9.536(c):

“Height limitations to be established to protect the view from and to the Skinner Butte area. This area is further described as follows: All property lying east of Washington Street and lying north of the Southern Pacific Railroad tracks, and lying west of Coburg Road, and lying south of the Willamette River.

“The maximum height of any building where the existing ground elevation is below 460 feet shall be to an elevation of 500 feet. The maximum height of any building where the existing ground elevation is above 460 feet shall be 40 feet above the existing ground elevation at all points. In neither case shall the maximum height in the zoning district within which the building or structure is located be exceeded.”

1 have little trouble agreeing with the city that any changes to the height limitation itself are
2 nonsubstantive. However, we note that LUCU 9.6715(3) also appears to change the southern
3 boundary of the Goal 5-protected Skinner’s Butte scenic area. *See* n 45. If *that* amendment
4 is challenged, a simple response that the change is “nonsubstantive” may not be sufficient to
5 demonstrate that the amendment does not require review under Goal 5. A change in the area
6 to which a regulation applies is a substantive change.

7 **D. Specific Challenges**

8 Column C of Table 2.1 lists more than a dozen categories of LUCU provisions that
9 petitioners argue apply to one or more of the Goal 5 resources listed in Column A.

10 **1. Height Limitation Areas**

11 In Table 2.2, footnotes 6 and 20, petitioners challenge height limitations at LUCU
12 9.6715(3) and (4). As noted above, LUCU 9.6715(3) includes height limitations for
13 Skinner’s Butte. LUCU 9.6715(4) includes height limitations for Gillespie Butte. We agree
14 with the city that the LUCU 9.6715(3) height limitations for Skinner’s Butte are the same as
15 in EC 9.536(c), which are acknowledged to comply with Goal 5. Petitioners offer no other
16 challenge to LUCU 9.6715(3). With respect to LUCU 9.6715(4), the city does not dispute
17 that the LUCU imposes new height limitations regarding Gillespie Butte, which under the
18 previous code was not subject to any Goal 5-related height limitations. The city’s only

LUCU 9.6715(3):

“Skinner Butte Height Limitation Area. The boundaries of the Skinner Butte Height Limitation Area are as follows:

“All property lying east of Washington Street, lying north of, and including, the north side of 6th Avenue, lying west of Coburg Road, and lying south of the Willamette River. (See Map 9.6715(3) Skinner Butte Height Limitation Area.) Within the Skinner Butte Height Limitation Area, the maximum height of any structure where the existing ground elevation is at, or below, 460 feet above mean sea level shall be to an elevation of 500 feet above mean sea level. The maximum height of any building where the existing ground elevation is above 460 feet mean sea level shall be 40 feet above the existing ground elevation at all points. In neither case shall the maximum height of any building or structure exceed the maximum allowed in the zone.”

1 response is that such new limitations are consistent with the “protected” status of Gillespie
2 Butte, and therefore necessarily consistent with Goal 5 and the Goal 5 rule, without further
3 inquiry. We rejected that general defense, above. OAR 660-023-0250(3) requires that the
4 city apply the Goal 5 rule to determine whether the additional protection imposed by LUCU
5 9.6715(4) is consistent with the goal and rule. There is no dispute that the city did not do so.
6 This subassignment of error is sustained.

7 **2. Subdivision, Site Review, PUD, and Conditional Uses**

8 Petitioners argue that a number of LUCU provisions governing subdivision, site
9 review, PUD, and conditional use permits change the level of protection afforded the
10 inventoried VWWH areas, the inventoried scenic areas, the inventoried water areas and
11 portions of the Willamette River Greenway, and therefore the city must demonstrate that they
12 comply with Goal 5 and the Goal 5 rule. The provisions applicable to conditional use
13 permits requiring preservation of significant natural features were set out earlier at n 43. The
14 LUCU contains similar or identical provisions for subdivisions, site review and PUD
15 applications.⁴⁶

16 The city responds that petitioners have not related any of the identified LUCU
17 provisions to any specific VWWH resource site, or explained why those provisions apply or
18 potentially apply to development of those sites. The city also argues that at least the
19 challenged subdivision provisions cannot apply to any of the eight identified significant
20 VWWH areas, because each is subject to a combination of zoning, minimum lot size or
21 comprehensive plan provisions that effectively prohibit any subdivision.⁴⁷

⁴⁶The challenged LUCU provisions include subdivision criteria at LUCU 9.8515(7) and 9.8520(8), site review criteria at LUCU 9.8440(2) and 9.8445(3), PUD criteria at LUCU 9.8320(4) and 9.8325(4), and conditional use criteria at LUCU 9.8090(5) and 9.8100(3). These criteria are challenged in Table 2.1, footnotes 7, 13, 14, 15, 21, 27, 28, 29, 36, 42, 44, 45, 49, 50, 53, and 56.

⁴⁷The city argues that the zoning, lot size and plan designation of the following sites listed as significant vegetation, wildlife and wildlife habitat areas effectively prohibit subdivision: (1) Bertlesen Slough, privately

1 We agree with the city that petitioners have not demonstrated that *all* of the identified
2 LUCU provisions apply to specific resource sites. The city may well be correct that the eight
3 listed VWWH sites cannot be subdivided, and therefore the challenged subdivision
4 provisions will never apply to those sites. On the other hand, it seems apparent that some
5 challenged provisions apply to at least some Goal 5 sites. For example, Bertelsen Slough, an
6 inventoried site, is zoned I-2, which permits a wide range of conditional uses. *See* LUCU
7 9.2450. The city does not argue that Bertelsen Slough cannot be developed with, for
8 example, conditional uses, nor dispute that such uses would be subject to the requirement at
9 LUCU 9.8090(5) that approved conditional uses preserve significant natural features to the
10 maximum extent feasible. *See* n 43. Similarly, Delta Ponds is zoned PL, which allows a
11 wide range of conditional uses. Further, Delta Ponds is subject to both PD and SR overlay
12 zones, which require that any proposed development, including permitted uses, comply with
13 the PUD and site review provisions that, again, require protection of significant natural
14 resources. In short, it appears that in one form or another the challenged requirements to
15 protect significant natural resources are potentially applicable to most if not all of the
16 identified VWWH areas. The city makes no argument that the inventoried scenic and water
17 areas and the Willamette River Greenway can never be subject to the identified criteria.

18 In sum, petitioners are correct that the city must apply the Goal 5 rule to these criteria,
19 and determine whether they are consistent with the goal and rule. If the city can better
20 explain why certain criteria, such as the challenged subdivision criteria, cannot apply to

owned, designated Natural Resources (NR) and zoned Light-Medium Industrial (I-2), with Wetland Buffer (WB) and Site Review (SR) overlays; (2) Willow Creek Wetlands, privately owned, designated NR and zoned Agriculture (AG) with WB and Waterside Protection (WP) overlays; (3) Willamette Wetlands, privately owned, designated Parks and Open Space and zoned AG; (4) Delta Ponds, publicly owned, designated Parks and Open Space and zoned Public Land (PL) with Planned Unit Development (PD) and SR overlays; (5) Skinner's Butte, publicly owned, designated Parks and Open Space and zoned PL; (6) Alton Baker Park, publicly owned, designated Parks and Open Space and zoned PL; (7) Hendricks Park, publicly owned, designated Parks and Open Space and zoned PL; and (8) Amazon Park, publicly owned, designated Parks and Open Space and zoned PL. The AG zone has a 20-acre minimum lot size; the PL zone has a minimum 6,000 square foot lot size. Response Brief 56-57 n 43.

1 identified Goal 5 resource sites, then the city need not evaluate those criteria under the rule.
2 Where challenged criteria potentially apply to development of Goal 5 resource sites, the city
3 must explain why those criteria are consistent with the goal and rule. This subassignment of
4 error is sustained.

5 **3. Public Land Zone**

6 Petitioners argue, in Table 2.1, footnotes 8 and 22, that specified amendments to the
7 provisions governing the Public Land (PL) zone, at LUCU 9.2680 to 9.2687, alter protections
8 afforded to inventoried VWWH areas and, to the extent any inventoried scenic areas fall
9 within the zone, to scenic areas.

10 The city disputes that the PL zone provisions constitute regulations that were adopted
11 “in order to protect a significant Goal 5 resource.” OAR 660-023-0250(3). We understand
12 the city to argue that the PL zone plays no role in the city’s program to achieve Goal 5 that
13 was acknowledged by LCDC, and therefore any amendments to the PL zone need not be
14 evaluated under the Goal 5 rule. As noted above, several inventoried VWWH areas are
15 zoned PL. Petitioners argue that the purpose of the PL zone is to implement the Metro Plan
16 by providing areas for government services including “parks and open space.” LUCU
17 9.2680. Petitioners contend that the PL zone implements Metro Plan Goal 5 policies to
18 protect inventoried VWWH and scenic areas.

19 As far as we can tell, none of the LCDC acknowledgment orders specifically discuss
20 the PL zone as a Goal 5 implementing measure. However, one order discusses the “parks
21 and open space” plan designation as a Goal 5 designation, and also plan policies that require
22 protection of open space through various means, including zoning. Response Brief App 136,
23 138. A zoning classification that implements a Goal 5 plan designation and is applied to an
24 inventoried Goal 5 resource would seem to be among the regulations that “protect a
25 significant Goal 5 resource” within the meaning of OAR 660-023-0250(3). Given the
26 purpose of the PL zone, and that each of the VWWH sites zoned PL is designated “parks and

1 open space,” it appears that the PL zone implements the “parks and open space” plan
2 designation. Although there is ambiguity on this point, we agree with petitioners that the PL
3 zoning classification implements a Goal 5 plan designation and, therefore, amendments to
4 that zone must comply with the Goal 5 rule. There is no dispute that the city did not evaluate
5 these amendments under the rule. This subassignment of error is sustained.

6 **4. Park, Recreation, and Open Space Zone**

7 The LUCU adopts a new zoning classification at LUCU 9.2600 *et seq.*, the Parks,
8 Recreation, and Open Space (PRO) zone, but that zone has not yet been applied to any
9 properties. The purpose of the PRO zone is to implement the Metro Plan by providing areas
10 that preserve parks, recreation areas and open spaces. LUCU 9.2600. The city explains that
11 the PRO zone is designed to be applied to sites that, under the EC, would be zoned PL. The
12 city’s Goal 5 findings explain that the zone is intended to protect the city’s Goal 5 open space
13 resources. Petitioners argue that many PRO provisions increase the level of protection
14 provided to parks and open spaces under the EC.

15 The city responds that because the PRO zone has not yet been applied to any
16 property, the adoption of the zone cannot possibly trigger Goal 5. For the reasons expressed
17 above in our discussion of the PL zone, we agree with petitioners that the PRO zone is
18 among the regulations that “protect a significant Goal 5 resource.” That the city has not yet
19 applied the zone to any property does not mean that adoption of the zone escapes scrutiny
20 under Goal 5 or the Goal 5 rule. This subassignment of error is sustained.

21 **5. Natural Resource Zone**

22 Petitioners contend in Table 2.1, footnotes 10 and 24, that six LUCU amendments to
23 the NR zone provisions at LUCU 9.2500 *et seq.* increase or decrease the protection afforded
24 Goal 5 resources. The city responds that three of the six amendments are merely
25 nonsubstantive clarifications of EC provisions. We do not agree that the three disputed

1 amendments are accurately characterized as nonsubstantive.⁴⁸ The city does not respond to
2 petitioners' arguments regarding the other three amendments. This subassignment of error is
3 sustained.

4 **6. Wetland Buffer Overlay**

5 Two of the VWWH sites are subject to the Wetland Buffer (WB) overlay zone, and
6 the zone is intended to protect wetlands, which are inventoried significant water areas.
7 Petitioners assert, and the city does not dispute, that the WB zone applies to portions of the
8 Willamette River Greenway. In Table 2.1, footnotes 11 and 40, petitioners argue that five
9 amendments to the WB zone provisions at LUCU 9.4800 *et seq.* increase or reduce
10 protections afforded these Goal 5 resources.⁴⁹

11 The city responds that each of the five amendments is merely a nonsubstantive
12 clarification or change to previous EC provisions. The only disputed amendment that is
13 clearly nonsubstantive is the deletion of EC 9.264(8), which is replicated in substantially

⁴⁸LUCU 9.2520(3)(c)(3) adds language to a section listing the uses permitted subject to site review, to state that “[s]tructures for the control of water are not considered impervious surfaces for the purpose of this section.” LUCU 9.2520(4)(h) changes EC 9.306, which prohibited application of chemicals unless necessary to address an imminent threat to public health and safety, to specify that the planning director must make the determination that application of chemicals is necessary. LUCU 9.2530(2)(a) deletes language at EC 9.305(b)(1)(e) that provided that vegetation removal is limited to the removal of “[t]he minimum area of native vegetation necessary for approved uses or conditional uses or uses allowed by exception as specified in [EC] 9.262 and 9.264.” That language was replaced by language at LUCU 9.2530(2)(b), which states that vegetation removal shall be “the minimum necessary for the proposed use and shall avoid removal of native vegetation to the extent practicable.”

⁴⁹EC 9.264(2) states that the Wetland Buffer overlay zone applies to land adjacent to wetlands identified in the West Eugene Wetlands Plan. LUCU 9.4815 states that the zone “may” be applied to such lands. Petitioners argue that this change renders application of the zone discretionary. LUCU 9.4820 removes “gravel parking areas” from the EC 9.264(3) definition of development exempt from the overlay zone, but adds a similar exemption for gravel areas constructed prior to May 24, 1995, as an essential component of the development. LUCU 9.4820 also specifies that “unauthorized fill” does not constitute exempt development. LUCU 9.4830(2)(a)(5) allows “[m]aintenance of existing utility *facilities* and easements” as a permitted use in the overlay zone. (Emphasis added.) EC 9.264(4)(b)(1)(e) formerly provided for “[m]aintenance of existing utility easements” as a permitted use in the zone. EC 9.264(6) specified that all development proposals shall be reviewed under the site plan review procedures. The LUCU deletes EC 9.264(6) but does not replace it with any specified procedure. EC 9.264(8) required a performance contract for any site or conditional use approval in the zone. The LUCU deletes EC 9.264(8), but imposes substantively identical requirements at LUCU 9.7025(1).

1 similar terms at LUCU 9.7025(1). We cannot say that the remaining amendments are
2 nonsubstantive. The city offers no other basis to conclude that these amendments are
3 consistent with Goal 5 or that they comply with the Goal 5 rule. This subassignment of error
4 is sustained, in part.

5 **7. Waterside Protection Overlay**

6 One of the VWWH sites is subject to the Waterside Protection (WP) overlay zone,
7 and the zone is intended to protect designated waterways, riparian areas and adjacent
8 wetlands. Petitioners assert, and the city does not dispute, that portions of the Willamette
9 River Greenway are subject to the WP zone. Petitioners argue, in Table 2.1, footnotes 12 and
10 41, that 11 LUCU amendments to the WP zone provisions at LUCU 9.4700 *et seq.* increase
11 or reduce protection to Goal 5 VWWH and water area resources.

12 The city responds that each of the 11 challenged amendments is not subject to review
13 under the Goal 5 rule because it either increases levels of protection to already protected
14 Goal 5 resources, or consists only of nonsubstantive changes. We rejected the first defense,
15 above. We cannot say that the remaining amendments are nonsubstantive, with the exception
16 of an amendment to LUCU 9.4760(2). Petitioners argue that LUCU 9.4760(2) deletes a
17 requirement at EC 9.262(7)(c) that four factors be considered “in the order listed.” We agree
18 with the city that, notwithstanding the deletion of the above-quoted language, the
19 requirement continues to exist in LUCU 9.4760(2) that the four factors be considered in the
20 order listed.⁵⁰ The city offers no other basis to avoid addressing the other amendments under
21 the Goal 5 rule. This subassignment of error is sustained, in part.

⁵⁰LUCU 9.4760(2) provides in relevant part:

“To determine the extent to which an exception is allowed under [LUCU] 9.4760(1)(a), the planning director shall consider the following provisions:

“(a) Where practical, relax other setbacks in order to accommodate buffer setbacks as defined in [LUCU] 9.4720 Waterside Protection Areas.

1 **8. Landscaping**

2 LUCU 9.6240(2) provides that developers “who choose to preserve significant
3 vegetation on the site” shall do so in the manner further described in the code. Petitioners
4 argue, in footnotes 16 and 30, that this “requirement” increases protection of inventoried
5 significant vegetation areas and scenic areas.

6 The city responds that petitioners have not established that the city’s landscaping
7 requirements, including LUCU 9.6240(2), apply to any inventoried Goal 5 resource. We
8 agree that petitioners’ argument is insufficiently developed. Petitioners have not established
9 that the city’s landscaping requirements are part of the city’s program to achieve the goal, or
10 that the landscaping requirement potentially applies to any inventoried resource. Nor have
11 petitioners explained why LUCU 9.6240(2) is a “requirement” that increases protection of
12 VWWH or scenic areas. This subassignment of error is denied.

13 **9. Drainageways**

14 Petitioners contend, in footnotes 31 and 35, that provisions at LUCU 9.6510(1)
15 change the level of protection afforded to drainageways, which petitioners argue are
16 inventoried significant scenic and water resources.⁵¹ Specifically, petitioners argue that

“ (b) If no economically viable use is feasible under (2)(a), relax WP overlay zone
 requirements applicable to riparian areas as defined in [LUCU] 9.4720 Waterside
 Protection Areas, outside buffer setback areas. * * *

“ (c) If no economically viable use is feasible under (2)(a) or (2)(b), reduce the buffer
 setback area to the minimum extent necessary to accommodate the development.
 * * *

“ (d) If no economically viable use is feasible under (2)(a), (2)(b), or (2)(c), allow
 alteration of the water feature(s) to the minimum extent necessary to accommodate
 the development. * * * ”

⁵¹LUCU 9.6510 deals with stormwater drainage, and requires in relevant part that conveyance of ownership
or dedication of easements may be required where:

“ * * * the subject property in the proposed development is or will be periodically subject to
accumulations of surface water or is traversed by any open drainageway, headwater stream,
creek, wetland, spring, or pond * * * .”

1 LUCU 9.6510(1) replaces EC 9.065, which required easement dedications if land is “subject
2 to accumulations of surface water or is traversed by any water course, channel, stream or
3 creek.” According to petitioners, LUCU 9.6510(1) adds drainageways, headwater streams,
4 wetlands, springs and ponds to the list of scenic and water resources that may require
5 dedication.

6 The city does not respond to this subassignment of error. It is sustained.

7 **10. Geotechnical Analysis**

8 LUCU 9.6710 requires that applicants submit a geotechnical analysis to ensure that
9 facilities in areas of known or potentially unstable soil conditions are located, designed and
10 constructed safely. Petitioners argue that erosion hazards along steep slopes adjacent to
11 stream channels or along the floodway fringe are inventoried significant water areas. *See*
12 Response Brief App 121 and 125. According to petitioners, the requirements for a
13 geotechnical analysis increase the level of protection afforded these Goal 5 resources.

14 The city does not respond to this subassignment of error. It is sustained.

15 **11. Cluster Subdivisions**

16 LUCU 9.8040 to 9.8055 provide for “cluster subdivisions,” which apparently allow
17 for greater density in return for providing for open space or protection to natural resources.
18 LUCU 9.8055(2) and (3) require that 25 percent of a cluster subdivision be devoted to open
19 space or protection of natural resources, including natural waterways or wetlands. Petitioners
20 argue that that requirement increases Goal 5 protection for inventoried water areas.

21 The city does not respond to this subassignment of error. It is sustained.

22 **III. Conclusion**

23 We conclude, above, that a number of challenged LUCU provisions are substantive
24 amendments that either decrease or increase the level of protection the city previously
25 afforded inventoried Goal 5 resources, and therefore affect a Goal 5 resource. A remaining
26 question is what must the city do to demonstrate that such amendments are consistent with

1 Goal 5. The city's Goal 5 findings are conclusory, and its responses in its brief rely mainly
2 on general defenses that we reject in whole or part. The short answer is that the city must
3 demonstrate that, to the extent the LUCU amends programs that were previously adopted to
4 protect significant Goal 5 resources, the challenged amendments comply with the Goal 5
5 rule. OAR 660-023-0250(3); *Pekarek v. Wallowa County*, 36 Or LUBA 494, 498 (1999)
6 (where a plan or zoning ordinance amendment affects inventoried Goal 5 resources, the local
7 government must apply the requirements of the Goal 5 rule and determine that the rule is
8 satisfied). That does not necessarily mean that the city must repeat the entire Goal 5 process,
9 or adopt new or amended ESEE analyses. Where the justification the city adopted to support
10 its original Goal 5 programs also supports the amended Goal 5 programs, the city may simply
11 explain why that is the case. However, where the original justification does not justify the
12 amended Goal 5 program, part or all of the original justification will need to be amended to
13 support the amended Goal 5 program.

14 For the foregoing reasons, we agree with petitioners that a number of LUCU
15 provisions amend land use regulations protecting inventoried Goal 5 sites, and therefore the
16 city must apply and find compliance with Goal 5 and the Goal 5 rule in adopting those
17 amendments.

18 The second assignment of error (Home Builders) and the fourth assignment of error
19 (Chamber) are sustained, in part.

20 **SECOND AND THIRD ASSIGNMENTS OF ERROR (CHAMBER)**

21 Chamber argues in these assignments of error that the city adopted a number of
22 resource preservation requirements that have the effect of reducing the city's inventories of
23 commercial, industrial and residential lands, without addressing whether those inventories
24 continue to comply with Goals 9 and 10. Chamber also challenges LUCU 9.9500, which
25 incorporates into the city's zoning ordinance specified refinement plan policies.

1 **I. Goals 9 and 10**

2 According to Chamber, Goal 9 and its interpretative rule requires that the city
3 “[p]rovide for at least an adequate supply of sites of suitable sizes, types, locations and
4 service levels for a variety of industrial and commercial uses[.]” Chamber argues that where
5 the city adopts plan or zoning amendments that further restrict development of industrial and
6 commercial lands so that the supply of such lands is effectively reduced, the city must
7 determine that the land designated for industrial and commercial use remains consistent with
8 Goal 9 requirements. *See Volny*, 37 Or LUBA at 510-11 (amendment that increases required
9 right-of-way on city streets could reduce the amount of commercial or residential lands in a
10 manner that implicates Goals 9 and 10); *Opus Development Corp. v. City of Eugene*, 28 Or
11 LUBA 670, 691 (1995) (legislative zone changes from industrial and commercial to mixed
12 use requires that the city demonstrate compliance with Goal 9 requirement for an adequate
13 inventory of commercial and industrial sites).

14 Chamber makes a similar argument under Goal 10, which requires that “[b]uildable
15 lands for residential use shall be inventoried and plans shall encourage the availability of
16 adequate numbers of needed housing units.” Chamber argues that where the city adopts plan
17 or zoning amendments that reduce the supply of buildable residential lands, the city must
18 determine that the remaining supply is consistent with Goal 10. *Volny*, 37 Or LUBA at 510-
19 11; *Mulford v. Town of Lakeview*, 36 Or LUBA 715, 731 (1999) (rezoning residential land
20 for industrial uses); *Gresham v. Fairview*, 3 Or LUBA 219 (same).

21 According to Chamber, the city’s decision adopts several new requirements that
22 individually and cumulatively function to reduce the amount of land that is available for
23 industrial, commercial and residential uses. The chief focus of Chamber’s argument is a set
24 of new tree protection measures that require that any development activity preserve a
25 minimum of 20 to 60 percent of “significant trees” on the site, which the LUCU defines as
26 trees with a minimum diameter at breast height of eight inches. LUCU 9.6885(2); 9.0500.

1 Moreover, development must protect at least 70 percent of the “critical root zone” of each
2 significant tree retained. The critical root zone (CRZ) is defined to include an area with a
3 radius of 18 times the diameter at breast height of the tree. According to Chamber, each
4 minimum eight-inch tree thus has a CRZ with a radius of 12 feet, and an unbuildable area of
5 452 square feet, while the CRZ for a 20-inch tree has a radius of 30 feet and an unbuildable
6 area of 2,826 feet. Chamber notes that according to the city’s urban forest plan, the city has
7 about 200,000 trees that meet or exceed the LUCU definition of “significant tree.” Chamber
8 argues that the number of acres potentially rendered unbuildable by these provisions could be
9 several thousand acres.

10 Chamber makes similar arguments with respect to new Open Waterway Protection
11 zones, which mandate a minimum 50-foot buffer between open waterways and development
12 for all conditional use permits, subdivisions, PUD and site review approvals. *See e.g.* LUCU
13 9.8100(3)(c). Other provisions require a minimum 100-foot buffer between rare plant
14 populations or rare animal populations. *See e.g.* LUCU 9.8100(3)(a) and (b). Chamber
15 argues that the city has made no effort to quantify how much buildable land has been
16 effectively rendered unbuildable under these provisions, or whether the remaining supply is
17 sufficient to satisfy Goals 9 and 10.

18 The city offers a number of responses. With respect to Goal 9, the city argues first
19 that the city need not comply with the Goal 9 rule, OAR chapter 660, division 9, until
20 periodic review. OAR 660-009-0010(2). Therefore, the city reasons, it need not undertake
21 any review of the adequacy of its Goal 9 inventory outside periodic review. Second, the city
22 argues that the EC previously contained a number of preservation requirements and that the
23 disputed tree retention, CRZ requirements and other buffers cited by petitioners do not
24 “increase” the limitations on buildable lands compared to the EC and thus trigger evaluation
25 of the city’s land inventories. The city next argues that petitioners have not established that
26 the tree retention, CRZ requirements and other buffers in fact reduce the city’s inventories of

1 industrial, commercial or residential land, much less that those reductions threaten the city's
2 ability to comply with Goals 9 and 10.⁵² The city argues also that other LUCU provisions
3 actually *increase* the number of industrial, commercial or residential uses that might be
4 developed.⁵³ Finally, with respect to Goal 10, the city cites to a 1992 residential land supply
5 study that found a surplus of 1,415 acres of residential land above that needed during the
6 period 1992 to 2015. The city concludes that, given increased opportunity for industrial,
7 commercial and residential uses under the LUCU, and the excess supply of residential land,
8 the record supports a finding that the city's inventories of such lands continue to satisfy
9 Goals 9 and 10, even assuming that the cited LUCU provisions reduce the supply of
10 buildable industrial, commercial or residential lands, as petitioners allege.

11 We agree with petitioners that the cited LUCU provisions trigger an obligation on the
12 part of the city to evaluate whether its Goal 9 and 10 inventories continue to comply with
13 those goals. The city's responses do not alter that conclusion. That the Goal 9 rule does not
14 apply to the city's decision does not mean that that decision need not comply with Goal 9
15 itself. *DLCD v. City of Warrenton*, 37 Or LUBA 933, 960 (2000). Petitioners advance
16 arguments under the goal, not the rule. The city may be correct that the EC contained some
17 kind of tree and natural resource preservation requirements, and that the disputed LUCU
18 provisions do not "increase" the restrictions previously imposed under the EC. However, the
19 city does not cite us to any such EC provisions, nor dispute that the tree retention, CRZ, and
20 buffer requirements have no counterparts in the EC.

⁵²The city also points out that the buffers cited by petitioners, using LUCU 9.8100(3)(a), (b) and (c) as examples, relate to applications for residential uses, and thus those restrictions do not impact the city's inventory of Goal 9 lands. The city is correct that LUCU 9.8100(3) relates to conditional use permits for residential development, specifically needed housing. However, we note that conditional use permits for non-residential development are subject to similar restrictions. *See e.g.* LUCU 9.8090(5).

⁵³For example, the city notes that various LUCU provisions allow for additional home occupations, or create residential zones that allow for higher densities.

1 Further, we disagree with the city that petitioners have failed to demonstrate that the
2 disputed LUCU provisions might impact the supply of industrial, commercial and residential
3 lands. Petitioners have made a facially plausible showing that the disputed provisions are
4 likely to reduce the supply of buildable lands. Under such circumstances, the city has an
5 obligation to demonstrate that despite any such reductions in development potential for
6 industrial, commercial and residential lands the city's inventories continue to comply with
7 Goals 9 and 10. *Volny*, 37 Or LUBA at 510-11; *Opus Development Corp.*, 28 Or LUBA at
8 691. The city's effort in its brief to do so fails because it makes no effort to quantify how
9 much land, if any, may be rendered unbuildable under the disputed provisions. Neither does
10 the city's brief make any reviewable attempt to compare the disputed LUCU provisions'
11 effect on development potential with the effect on development potential by replaced EC
12 provisions. Until the city makes some attempt to make that comparison, the city is in no
13 position to conclude that its inventories continue to comply with Goals 9 and 10.⁵⁴ This
14 subassignment of error is sustained.

15 II. ORS 197.195

16 ORS 197.195 requires that a "limited land use decision" shall be consistent with
17 applicable provisions of a city or county comprehensive plan.⁵⁵ However, the statute goes on
18 to provide:

⁵⁴The city protests that any such evaluation would require inventorying each of the 200,000 significant trees in the city to determine how much buildable land if any is consumed in protecting them. However, we see no reason why any quantification that may be necessary to compare the impacts of the old and new regulations should present any difficulty that could not be overcome. In originally adopting the city's inventories of industrial, commercial and residential land, the city presumably applied assumptions, expressly or implicitly, regarding how much land is available or buildable for particular uses, given restraints such as steep slopes, floodplains, setbacks, and public improvements such as streets. Similarly, the city could develop assumptions regarding how much the disputed tree retention, CRZ and buffers are likely to reduce development potential on inventoried industrial, commercial and residential lands. In so doing, we see no reason why the city could not, if it chose, also develop assumptions regarding how much other LUCU provisions are likely to *increase* density or opportunity for industrial, commercial or residential uses, and determine if such increases offset any reductions caused by the tree retention, CRZ and buffers.

⁵⁵ORS 197.015(12) defines a "limited land use decision" as:

1 “* * * Within two years of September 29, 1991, cities and counties shall
2 incorporate all comprehensive plan standards applicable to limited land use
3 decisions into their land use regulations. A decision to incorporate all, some,
4 or none of the applicable comprehensive plan standards into land use
5 regulations shall be undertaken as a post-acknowledgment amendment under
6 ORS 197.610 to 197.625. If a city or county does not incorporate its
7 comprehensive plan provisions into its land use regulations, the
8 comprehensive plan provisions may not be used as a basis for a decision by
9 the city or county or on appeal from that decision.” ORS 197.195(1)

10 At LUCU 9.9500 to 9.9710, the city’s zoning ordinance sets forth a large number of
11 selected refinement plan policies that, according to LUCU 9.9500, “shall be used when
12 applicable for purposes of evaluating applicable adopted plan policies pertaining to
13 subdivisions, partitions, and site review.” Chamber argues that the city erred in doing so, for
14 several reasons. First, Chamber argues that it is not clear if the adopted plan policies are
15 intended to apply as *approval criteria*, where relevant, to subdivision, partition and site
16 review applications under ORS 197.195. Chamber suggests that the city’s purpose may
17 instead be to provide context for interpretation or application of other, undisputable approval
18 criteria. That uncertainty is compounded, Chamber argues, by the fact that some of the
19 adopted plan policies contain terms that “recommend” or “encourage” various actions.
20 Chamber argues that such precatory comprehensive plan language is an indication that the
21 city did not intend the plan policies to constitute mandatory approval criteria applicable to
22 individual limited land use decisions. Finally, Chamber argues, if these plan policies are
23 intended as approval criteria, the imposition of a large body of new approval standards

“[A] final decision or determination made by a local government pertaining to a site within an urban growth boundary which concerns:

- “(a) The approval or denial of a subdivision or partition, as described in ORS chapter 92.
- “(b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.”

1 constitutes a substantial new burden on Goal 9 and 10 inventoried lands. Chamber contends
2 that such new burdens must be evaluated against Goals 9 and 10.

3 The city responds that its adoption of the disputed refinement plan policies is
4 intended to satisfy ORS 197.195, and to allow the city to apply such policies as approval
5 criteria for subdivisions, partition or site review applications. While the above-quoted
6 sentence from LUCU 9.9500 is awkwardly written, we agree with the city that the apparent
7 intent and purpose of adopting the disputed policies is to make it possible to apply them as
8 approval criteria, pursuant to ORS 197.195.

9 With respect to Goals 9 and 10, Chamber does not argue that application of these
10 refinement policies to subdivision, partition or site review applications reduces the
11 development potential of industrial, commercial or residential lands in a manner that
12 effectively reduces the *supply* of such lands. Instead, we understand Chamber to argue that
13 adoption of new, additional approval standards applicable to development of industrial,
14 commercial and residential lands is an additional regulatory *burden* on development of those
15 lands and therefore must be evaluated for consistency with Goals 9 and 10. However,
16 Chamber cites no authority for that proposition. Chamber does not identify in this
17 subassignment of error any requirement under Goals 9 or 10 that local governments not
18 increase regulatory burdens or that local governments refrain from imposing any particular
19 level of regulatory burden. Even assuming such a requirement exists or can be implied,
20 Chamber makes no effort to explain why adoption of the challenged refinement plan policies
21 as approval criteria to certain development in certain areas of the city threatens to violate that
22 requirement. Absent a more developed argument from Chamber, we cannot say that the
23 city's adoption of refinement policies pursuant to ORS 197.195 requires greater or different
24 evaluation under the goals than the city performed here. This subassignment of error is
25 denied.

26 The second and third assignments of error (Chamber) are sustained, in part.

1 **FIRST ASSIGNMENT OF ERROR (CHAMBER)**

2 Chamber argues that the city’s decision violates Statewide Goal 2 (Land Use
3 Planning), because (1) the decision is not supported by adequate explanations of compliance
4 with applicable goals; (2) the decision is not supported by an adequate basis in fact; (3) the
5 city failed to adopt ultimate policy choices; and (4) the city failed to adequately coordinate its
6 decision with affected agencies and local governments, as required by Goals 2 and 10.

7 With the exception of the coordination argument, Chamber’s arguments under the
8 first assignment of error appear to be entirely derivative of other arguments in other
9 assignments of error, and do not provide an independent basis for reversal or remand.
10 Accordingly, we address only the coordination argument.

11 Goal 2 requires that “[e]ach plan and related implementation measure shall be
12 coordinated with the plans of affected governmental units.” The Goal 10 rule at OAR 660-
13 008-0030 requires that “[e]ach local government shall consider the needs of the relevant
14 region in arriving at a fair allocation of housing types and densities.”⁵⁶ Petitioners argue that
15 the city’s decision effectively restricts the city’s ability to meet its “fair share” of regional
16 residential, commercial and industrial growth, with the result that nearby cities, such as
17 Springfield, Junction City, Cottage Grove, Harrisburg, Monroe and Creswell, may have to
18 accommodate more than their fair share. *See Creswell Court LLC v. City of Creswell*, 35 Or
19 LUBA 234 (1998) (limits on new manufactured home parks violate the Goal 10 coordination
20 requirements, where the city failed to coordinate with nearby jurisdictions that might have to

⁵⁶OAR 660-008-0030 provides:

- “(1) Each local government shall consider the needs of the relevant region in arriving at a fair allocation of housing types and densities.
- “(2) The local coordination body shall be responsible for ensuring that the regional housing impacts of restrictive or expansive local government programs are considered. The local coordination body shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.”

1 accommodate Creswell’s share of demand for such housing). According to petitioners, there
2 is little evidence in the record that the city coordinated with other cities, or attempted to
3 balance the needs of these governmental units as well as the needs of its citizens.

4 The city points out that the Goal 2 coordination requirement is limited to “affected
5 governmental units,” which Goal 2 defines to include only governments with “programs,
6 land ownerships or responsibilities within the area included in the Plan.” Goal 2 does not
7 require, as Goal 10 arguably does, that the city coordinate with governments outside the plan
8 area. The city cites to evidence that it notified and coordinated with every government
9 within the plan area, and argues that the Goal 2 coordination requirement was satisfied. We
10 agree.

11 With respect to Goal 10, the city argues that the Goal 10 coordination requirement
12 applies only if the city amends its plan or implementing regulations in a manner that affects
13 the city’s “allocation of housing types and densities.” The city submits that the LUCU does
14 not affect the allocation of housing types or housing density, and thus adoption of the LUCU
15 does not trigger an obligation to coordinate with nearby cities under Goal 10.

16 We agree that no identified LUCU provision affects the “fair allocation of housing
17 types or density” within the meaning of OAR 660-008-0030(1). Not all local government
18 programs with arguable impacts on housing or Goal 10 compliance trigger the coordination
19 requirement at OAR 660-008-0030(1), only those that affect the allocation of housing types
20 or density, as was the case in *Creswell*. OAR 660-008-0030(2) may impose a coordination
21 obligation with respect to such broader impacts, but it imposes that obligation on the local
22 coordination body. Chamber does not argue that the city is the local coordination body.

23 The first assignment of error (Chamber) is denied.

24 The city’s decision is remanded.

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

3
4 MEL STEWART,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF SALEM,
10 *Respondent.*

11
12 LUBA No. 2009-009

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from City of Salem.

18
19 Mel Stewart, Salem, filed the petition for review and argued on his own behalf.

20
21 Daniel B. Atchison, Salem, filed the response brief and argued on behalf of
22 respondent.

23
24 BASSHAM, Board Chair; HOLSTUN, Board Member; RYAN, Board Member,
25 participated in the decision.

26
27 REVERSED

04/27/2009

28
29 You are entitled to judicial review of this Order. Judicial review is governed by the
30 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals the city's denial of his application for approval of a partition.

FACTS

The subject property is a .84-acre parcel zoned RS (Single-Family Residential). Hansen Avenue, a city collector street, borders the property to the south.

Petitioner applied to the city to divide the property into three parcels. The minimum parcel size in the RS zone is 4,000 square feet. Proposed parcels 1 and 2 border Hansen Avenue and would be approximately 6,700 square feet in size. Parcel 3 is a flag lot 21,350 square feet in size located on the north half of the parent parcel, accessed by a 20-foot wide driveway located between Parcels 1 and 2. Petitioner proposed that Parcels 1 and 2 would access Hansen Avenue via their own direct driveways.

The city deemed the partition application complete on September 23, 2008. On November 25, 2008, the city planning administrator approved the application, with conditions. On December 2, 2008, petitioner filed a timely appeal of the administrator's decision, challenging several conditions of approval. On December 8, 2008, the city council initiated its own review of the administrator's decision, pursuant to Salem Revised Code (SRC) 114.210, and scheduled a public hearing on January 5, 2009.¹

¹ SRC 114.210 provides:

- “(a) Whether or not an appeal is filed pursuant to SRC 114.200, the council may by majority vote initiate review of a commission, administrator, or hearings officer decision; and the commission may initiate council review of a hearings officer final decision by resolution filed with the city recorder.
- “(b) Review under subsection (a) of this section shall be initiated prior to the adjournment of the first regular council meeting following council notification of the decision.
- “(c) Review shall proceed as provided for appeals in subsections (c) to (g) of SRC 114.200.

1 On December 10, 2008, petitioner wrote a letter to the city attorney requesting that
2 the city identify the basis for the city council's review so that he could prepare an appropriate
3 response. As far as the record reflects, the city did not respond to petitioner's request. At
4 the January 5, 2009 hearing, city staff presented a staff report that addressed petitioner's
5 appeal of the challenged conditions of approval, and recommended modifications to two
6 conditions. The city council then gave petitioner ten minutes to testify, and petitioner spoke
7 to the issues raised in his appeal. At the end of petitioner's testimony, a city councilor
8 questioned petitioner regarding whether he intended to further divide Parcel 3 at some time
9 in the future. Petitioner replied that he had not made a decision, but that it is something he
10 might consider in the future. The city council then questioned the planning administrator,
11 regarding the city's practice with respect to a partition that proposes a large parcel that could
12 be further divided in the future. The planning administrator discussed SRC 63.065, which
13 provides:

14 "When it appears to the planning administrator, commission, or council that
15 the area of a proposed partition is to be ultimately divided into four or more
16 lots or parcels, the provisions of this chapter pertaining to subdivisions shall
17 apply."

18 The planning administrator testified that he had discussed SRC 63.065 with staff and
19 petitioner, and decided not to require that the application be processed as a subdivision,
20 because there would be no substantive change or different improvements required under the
21 subdivision standards or process. After further discussion, the city council closed the hearing
22 and deliberated, ultimately voting to deny the partition application because Parcel 3 could be
23 divided in the future and therefore the application should have been processed as a

“(d) Unless subsequently discontinued, review shall replace filed or possible appeal of the decision below.”

1 subdivision, pursuant to SRC 63.065. On January 12, 2009, the city council convened and
2 adopted a final written decision denying the partition application.² This appeal followed.

3 **THIRD AND FOURTH ASSIGNMENTS OF ERROR**

4 Petitioner argues that in denying the partition under SRC 63.065 the city
5 misconstrued that code provision, exceeded its authority, and improperly acted with the
6 purpose of avoiding the requirements of ORS 227.178. Petitioner requests that the city's
7 denial be reversed for several reasons, including that the city's action was "for the purpose of
8 avoiding the requirements of" ORS 227.178. ORS 197.835(10)(a)(B).³

² The city's final order states, in relevant part:

"(d) The State mandated 120-day decision date for this decision is January 28, 2009.

"(e) * * * The partition application proposes three lots, however proposed lot three is over three times the size of the other two proposed lots. The applicant's testimony indicated that proposed lot 3 was designed in such a way to add another lot in the future. Further, the applicant testified that he agreed that a division of proposed lot 3 might be considered in the future.

"(f) Pursuant to SRC 63.065, the City Council finds that based on the testimony of the applicant, and a review of the proposed layout of the three lots, this partition application should have been processed as a subdivision, in compliance with the City's subdivision regulations.

"NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF SALEM, OREGON:

"Section 1. The Planning Administrator's decision approving Partition Case No. 08-22 is hereby rescinded, and the application denied. The Applicant may submit an application for a subdivision of the subject property, as provided by SRC 63.065." Record 2.

³ ORS 197.835(10)(a) provides:

"[LUBA] shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:

"(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances; or

"(B) That the local government's action was for the purpose of avoiding the requirements of ORS 215.427 or 227.178."

1 Under ORS 227.178(1), the city was required to take final action on the partition
2 application within 120 days of the date the application was deemed complete.⁴ In addition,
3 ORS 227.178(3)(a) provides that the city must approve or deny petitioner's application
4 "based upon the standards and criteria that were applicable at the time the application was
5 first submitted."

6 According to petitioner, the relevant application requirements and the approval
7 criteria for both partitions and subdivisions of the subject property under SRC chapter 63 are
8 substantively identical, and as required by SRC chapter 63 petitioner's application included
9 all information required of a subdivision and in fact complied with all applicable subdivision
10 approval standards. Petitioner contends that SRC 63.065 simply identifies a procedural
11 route, and is not a "standard or criteria" within the meaning of ORS 227.178(3)(a) that can be
12 a basis for approval or denial. Therefore, petitioner argues, the city misconstrued SRC
13 63.065 and exceeded its authority in denying the application and effectively forcing
14 petitioner to file a new partition application subject to the SRC subdivision procedures and
15 standards.

16 Petitioner also contends that

17 "The denial of an application, in the eleventh hour, under SRC 63.065, after
18 the applicant had submitted all information necessary for both a 'partition'

⁴ ORS 227.178 provides, in relevant part:

"(1) Except as provided in subsections (3) and (5) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

"* * * * *

"(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted."

1 and a ‘subdivision’ at the time the application was deemed ‘complete’ serves
2 no legitimate planning purpose, and the action was taken clearly for the
3 purpose of avoiding its ORS 227.178 responsibilities.” Petition for Review
4 23.

5 Elsewhere in the petition for review, petitioner argues:

6 “The reason the City Council chose to flatly deny [petitioner’s] ‘partition’
7 application, rather than re-process it as a ‘subdivision’ under SRC 63.065, is
8 that the City recognized that it had simply waited too long to decide how to
9 process [petitioner’s] application. With the 120-day time limit running out
10 under ORS 227.178, the City Council openly elected to deny [petitioner’s]
11 application, without justification in fact or law to avoid the effect of
12 ORS 227.178, rather than to reprocess it. * * * ORS 197.835 provides LUBA
13 with the authority to award a Petitioner attorney fees on two grounds, the
14 second of which is: ‘That the local government’s action was for the purpose of
15 avoiding the requirements of [ORS 227.178], *i.e.*, the oft mentioned ‘120-day
16 rule.’” Petition for Review 28 (emphases omitted).⁵

17 **A. ORS 197.763(1) Waiver**

18 The city responds, initially, that petitioner waived all challenges to the city council’s
19 application of SRC 63.065 or any claim that a denial under SRC 63.065 would violate any
20 provision of ORS 227.178 by failing to raise those challenges below. ORS 197.763(1); ORS
21 197.835(3).

22 We disagree. ORS 197.835(4) provides that a petitioner may raise new issues
23 relating to applicable criteria that were omitted from the notice required by ORS 197.195 or
24 197.763, unless LUBA finds that the issue could have been raised before the local
25 government.⁶ Neither of the notices the city sent out mentioned SRC 63.065 at all, and

⁵ For reasons not clear to us, the arguments quoted in the text appear at the end of the fifth assignment of error. As discussed below, the fifth assignment of error argues that SRC 63.065 is not “clear and objective” and, in petitioner’s view, cannot be applied to deny the proposed partition under ORS 197.307(6), part of the needed housing statutes. The above-quoted arguments under ORS 197.835(10)(a) have no obvious bearing on the issue raised in the fifth assignment of error, but appear to have much to do with the issues raised under the third and fourth assignments of error. Accordingly, we address the quoted arguments in resolving the third and fourth assignments of error.

⁶ ORS 197.835 provides, in relevant part:

“(3) Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable.

1 clearly did not list SRC 63.065 as an applicable approval criterion or basis to approve or
2 deny the partition application. Record 147, 193. Nor do we agree that the issue could have
3 been raised during the city council hearing. The city did not respond to petitioner's written
4 request to be informed of the basis for the city council's review and the issues to be
5 addressed. As far as the record reflects, it was only late in the city council hearing, after
6 petitioner testified, that SRC 63.065 was first mentioned, or any concern was raised
7 regarding future division of Parcel 3. While the city council gave petitioner three minutes for
8 rebuttal before closing the hearing and entering deliberations, it is difficult to fault petitioner
9 for failing to recognize that the city council might deny the partition application under SRC
10 63.065, or for failing to advance legal challenges to denial under SRC 63.065 during rebuttal.
11 Under these circumstances, we do not think petitioner had reasonable notice that the city
12 might apply SRC 63.065 to deny the application, or that petitioner had a reasonable
13 opportunity to raise issues regarding application of SRC 63.065.

14 **B. Denial based on Standards and Criteria**

15 On the merits, the city first argues that SRC 63.065 was in effect and "applicable at
16 the time the application was first submitted," and is a "standard or criteria" for purposes of
17 ORS 227.178(3) that can be the basis for approval or denial. We agree with the city that
18 SRC 63.065 was potentially "applicable," but not that it constitutes a "standard" or
19 "criterion" within the meaning of ORS 227.178(3). SRC 63.065 simply allows the city to
20 require, in certain circumstances, that a partition application be subjected to the procedures
21 and approval standards that apply to subdivisions, but SRC 63.065 does not itself constitute

"(4) A petitioner may raise new issues to the board if:

"(a) The local government failed to list the applicable criteria for a decision under ORS 197.195 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government[.]"

1 an approval standard or a basis for approval or denial. Stated differently, all SRC 63.065
2 authorizes the city to do is to apply subdivision procedures and standards to the partition
3 application. While any applicable subdivision standards would presumably constitute
4 “standards and criteria” for purposes of ORS 227.178(3),” nothing in SRC 63.065 or
5 elsewhere cited to our attention purports to authorize the city to summarily deny a partition
6 application based solely on a determination under SRC 63.065 that the application is subject
7 to subdivision procedures and standards.

8 In our view, once the city determined at the January 5, 2009 hearing that, pursuant to
9 SRC 63.065, the “provisions of this chapter pertaining to subdivisions shall apply,” the city’s
10 permissible options included review of petitioner’s application for partition approval under
11 whatever additional standards or requirements might apply to applications for subdivision
12 approval. However, the city’s permissible options did not include summarily denying
13 petitioner’s partition application based solely on SRC 63.065, and effectively forcing
14 petitioner to re-submit that partition application and start the process all over again.⁷ As
15 explained, SRC 63.065 itself is not a “standard” or “criterion” on the basis of which an
16 application can be approved or denied, consistent with ORS 227.178(3)(a).

17 Stated differently, nothing in the city’s code or elsewhere authorized the city to deny
18 the application based solely on the city’s belated determination that the application must be
19 reviewed under the subdivision procedures and standards. In our view, the city’s most
20 straightforward course, if not the course compelled by ORS 227.178(1) and (3), was for the
21 city to identify whatever additional or different procedures and approval standards applied to

⁷ It is worth noting, in this respect, that any delay in recognizing that SRC 63.065 might require review of petitioner’s application under the subdivision procedures and standards appears to be due entirely to the city. The planning administrator initially determined that SRC 63.065 did not require that petitioner’s application be reviewed under the subdivision procedures or standards, after consulting with staff and petitioner. As far as we can tell, petitioner did not dispute that Parcel 3 could be further divided. While the city council may be entitled under SRC 63.065 to take a different approach or to reverse the planning administrator’s initial determination, it seems unfair, at least, to impose on petitioner the consequences for the city’s last minute reversal of course.

1 the proposed partition under the SRC subdivision provisions, and apply any such additional
2 or different standards to approve or deny the partition application. We discuss and resolve
3 below the parties' dispute regarding whether the SRC Chapter 63 includes different or
4 additional procedures and approval standards for partitions and subdivisions that would
5 govern petitioner's proposal. For present purposes, the salient point is that, even if additional
6 or different approval standards apply if the application is reviewed as a subdivision, the city
7 made no effort during the proceedings below to identify, much less base its decision on, any
8 such additional or different approval standards.

9 With respect to procedures, petitioner argues, and the city does not dispute, that the
10 only procedural difference between partition and subdivision review is that for the latter the
11 city conducts a "subdivision review conference" between the applicant, city staff and any
12 persons entitled to notice of the application who choose to attend.⁸ We are cited to no reason
13 to believe, and it seems doubtful, that conducting a subdivision review conference in the
14 present case would make any meaningful difference in whether or not the application would
15 be approved, or under what conditions. Further, we held in *Wal-Mart Stores, Inc. v. City of*
16 *Central Point*, 49 Or LUBA 472, 482 (2005), that nothing in ORS 227.178 prohibits a city
17 from modifying or waiving procedural requirements in order to expedite the local review
18 process to meet the 120-day deadline, as long as such an expedited process would not require
19 one or more parties to sacrifice their substantial right to fully and fairly present their position
20 on the merits of the application. No party in this appeal argues that expediting or even
21 entirely waiving the requirement for a subdivision review conference in the present case
22 would prejudice any parties' rights. Even if waiving the requirement for a subdivision
23 review conference would prejudice one or more parties' substantial rights, the appropriate
24 course for the city would have been to require that the subdivision review conference be held

⁸ The subdivision review conference is not required by the city's code, but is required by supplemental procedures adopted by the planning administrator, pursuant to authority granted by SRC 63.042(d).

1 before rendering its decision. It is true that pursuing that course of action might have led to
2 petitioner filing a petition for a writ of mandamus under ORS 227.179, but the city's desire
3 to avoid that possibility does not provide a basis for summarily denying petitioner's partition
4 application.

5 With respect to substantive subdivision standards, petitioner argues that the approval
6 criteria that would apply to either partition or subdivision of the subject property are identical
7 or nearly identical. Petitioner appears to be correct. SRC Chapter 63, entitled
8 "subdivisions," governs both subdivisions and partitions. SRC 63.038 sets out the same
9 application submittal requirements for both subdivisions and partitions, with minor
10 differences that no party argues are applicable here. The general approval standards for
11 subdivisions are set out in SRC 63.046 and those for partitions in SRC 63.047.⁹ The first

⁹ SRC 63.046(b) provides, in relevant part:

"Before approval of a [subdivision] tentative plan the planning administrator shall make affirmative findings that:

- "(1) Approval does not impede the future use of the remainder of the property under the same ownership, or adversely affect the safe and healthful development of the remainder or any adjoining land or access thereto; and
- "(2) Provisions for water, sewer, streets, and storm drainage facilities comply with the city's public facility plan; and
- "(3) The tentative plan complies with all applicable provisions of this Code, including the Salem zoning ordinance, except as may be waived by variance granted as provided in this chapter; and
- "(4) The proposed subdivision provides safe and convenient bicycle and pedestrian access from within the subdivision to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development."

SRC 63.047(b) provides in relevant part:

"* * * Before approval of a tentative plan, the planning administrator shall make affirmative findings that:

- "(1) Approval does not impede the future use of the remainder of the property under the same ownership, or adversely affect the safe and healthful development of the remainder or any adjoining land or access thereto; and

1 three standards in both code provisions are identical. SRC 63.046 includes an additional
2 fourth standard for subdivisions, but no party argues that it would apply or make a
3 meaningful difference in the present case.

4 SRC Chapter 63 includes a number of specific subdivision and partition standards, for
5 internal roads or boundary improvements, for example. The city argues that at least three
6 such specific standards would apply in the present case and would require additional review.
7 The first is SRC 63.145(j), which requires that subdivisions or partitions that result in a lot or
8 parcel one-half acre or larger must include tentative lot lines and other details for future
9 division. However, it is undisputed that none of the proposed parcels exceed one-half acre in
10 size.

11 The second standard the city cites is SRC 63.295 and Table 63-1, which applies to
12 both partitions and subdivisions and establishes different width standards for accessways,
13 depending on the number of lots served. The city argues that if three or more lots are served
14 by the proposed access to Parcel 3 then the accessway must be 25 feet wide, not 20 feet wide
15 as proposed. However, the city's argument is based on an understanding that the proposed
16 accessway is an easement over Parcels 1 or 2. Instead, it is the pole of a flaglot that is part of
17 Lot 3. *See* Record 31 (partition plat). As city staff noted at the January 5, 2009 hearing,
18 parcels 1 and 2 have access directly to Hansen Avenue. Nothing cited to us in the record
19 suggests that parcels 1 and 2 have an access easement over Parcel 3's flagpole. The city has
20 not established that if Parcel 3 were further divided that the access strip must be wider than
21 the proposed 20 feet.

“(2) Provisions for water, sewer, streets, and storm drainage facilities comply with the city's public facility plan; and

“(3) The tentative plan complies with all applicable provisions of this Code, including the Salem zoning ordinance, except as may be waived by variance granted as provided in this chapter.”

1 The third standard the city cites is SRC 63.237(a), which authorizes the city to require
2 half-street dedication and improvement of streets bounding a subdivision. The city concedes
3 that Hansen Street adjoining the subject property is already fully developed to city collector
4 street standards, but argues that “some pavement improvement could be warranted.”
5 Response Brief 16. However, SRC 63.238 also authorizes the city to require similar half-
6 street dedication and improvements for a partition. The planning director did not require
7 petitioner to make any improvements to Hansen Street under SRC 63.238, and testified that
8 if reviewed as a subdivision no additional requirements or improvements would be
9 warranted. The city has not established that, if reviewed under SRC 63.237, new or different
10 boundary improvements would be required.

11 In any case, as explained above, even if the city had identified a substantive
12 additional or different subdivision approval criteria that would apply to the partition
13 application and require meaningful review, the city offers no reason why that identification
14 and review could not have occurred following the January 5, 2009 city council hearing.
15 Based on the transcripts attached to the petition for review, it appears that city staff advised
16 the city council that the hearing could be continued to the following week to address issues
17 raised at the hearing, consistent with the 120-day deadline, which did not expire for over
18 three weeks.¹⁰ For reasons that are not entirely clear, the city council declined that option

¹⁰ The transcript states:

“COUNCILOR NANKE: Yeah. Just a quick weigh-in in regards to the 120 day rules and what – what our timing is and – and would staff be able to come back with response to this. Mr. Stewart went through a lot of effort to – to provide us with written testimony and I –

“MR. GROSS [Planning Administrator]: Yes.

“COUNCILOR NANKE: -- I would like to understand the issues?

“MR. GROSS: Yes. We can do that. The 120 day decision date is January 28th. So, if we came back next week on it there would still be time.

“COUNCILOR NANKE: Okay.

1 and instead voted to summarily deny the partition application under SRC 63.065, rather than
2 approve or deny the application based on applicable approval standards.

3 For the foregoing reasons, we agree with petitioner that the city exceeded its authority
4 under SRC 63.065 and took action inconsistent with ORS 227.178(3)(a), in summarily
5 denying the application based solely on that code provision.

6 **C. ORS 197.835(10)(a)**

7 Not only was the city's denial under SRC 63.065 inconsistent with
8 ORS 227.178(3)(a), under the present circumstances it placed the city in a position where it
9 is potentially vulnerable to a claim that its action was either "outside the range of discretion
10 allowed the local government under its comprehensive plan and implementing ordinances,"
11 or "for the purpose of avoiding the requirements of ORS 215.427 or 227.178."
12 ORS 197.835(10)(a)(A) and (B).

13 **1. Subsection (B) of ORS 197.835(10)(a)**

14 Petitioner argues that LUBA should reverse the city's decision and order the city to
15 grant approval of the application under ORS 197.835(10)(a)(B), because the city's action
16 was "for the purpose of avoiding the requirements" of ORS 227.178. ORS 227.178(1)
17 requires that the city take final action on the application within 120 days of the date the
18 application is deemed complete. If the city does not do so, ORS 227.179 grants the applicant
19 the right to file a writ of mandamus with the circuit court to compel the city to approve the
20 application or, in the alternative, to elect to proceed with application before the city after the

"MR. GROSS: If it goes on for too much longer we would need to ask the applicant for an extension, of course.

"COUNCILOR ROGERS: Councilor Sullivan?

"COUNCILOR SULLIVAN: Glen, if we wanted – or what additional conditions would be, if any, imposed on this if this was brought back as a subdivision.

"MR. GROSS: I'm not aware of any." Attachment 5 to the Petition for Review, page 42.

1 120 day deadline has expired.¹¹ In the latter circumstance, the local government must refund
2 half of the application fees, unless the applicant agrees to an extension of time.
3 ORS 227.178(8).

4 ORS 197.835(10)(a)(B) is intended to protect the rights of development applicants
5 under the foregoing statutes, by discouraging local governments from denying an application
6 for spurious or bad faith reasons prior to the 120th day, to avoid complying with the statutory
7 requirements to approve or deny the application based on the applicable approval standards
8 within the 120-day deadline. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA
9 697, 708 (2005); *Miller v. Multnomah County*, 33 Or LUBA 644 (1997), *aff'd* 153 Or App
10 30, 956 P2d 209 (1998). Conversely, ORS 197.835(10)(a)(B) does not apply where the local
11 government denial, timely or untimely, is based on the merits of the application, that is, on
12 findings of noncompliance with applicable approval criteria. 49 Or LUBA at 707-08.

13 Petitioner contends that the city denied the application under SRC 63.065 in part
14 because it recognized that time was running out under the 120-day deadline and there was
15 not sufficient time to reprocess the application under the subdivision procedures and
16 standards. Although it is close question, petitioner has not established on the present record

¹¹ ORS 227.179 provides in relevant part:

“(1) Except when an applicant requests an extension under ORS 227.178(5), if the governing body of a city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the applicant may file a petition for a writ of mandamus under ORS 34.130 in the circuit court of the county where the application was submitted to compel the governing body or its designee to issue the approval.

“* * * * *

“(4) If the governing body does not take final action on an application within 120 days of the date the application is deemed complete, the applicant may elect to proceed with the application according to the applicable provisions of the local comprehensive plan and land use regulations or to file a petition for a writ of mandamus under this section. If the applicant elects to proceed according to the local plan and regulations, the applicant may not file a petition for a writ of mandamus within 14 days after the governing body makes a preliminary decision, provided a final written decision is issued within 14 days of the preliminary decision.”

1 that the city council chose to deny the application under SRC 63.065, rather than subject it to
2 the subdivision procedures and standards, because it believed that there was insufficient time
3 to do so or because it wished to avoid the requirements of ORS 227.178. The city council
4 was clearly aware of the 120-day deadline, as the portion of the transcript quoted above
5 indicates, but there is little or no indication in the record that the city council chose to deny
6 the application under SRC 63.065 because it believed there was insufficient time to apply the
7 subdivision procedures and standards. Indeed, in the above-quoted passage staff appeared to
8 inform the city council that there *was* time for additional proceedings. As far as we can tell,
9 the city council believed, erroneously, that once it determined under SRC 63.065 that the
10 partition application is subject to the code subdivision provisions that the city's only option
11 was to start over again, no matter at what point in the proceedings that determination was
12 made, by denying the partition application and effectively requiring petitioner to file a new
13 application that is processed from the beginning under the subdivision procedures and
14 standards. As explained above, that is an erroneous application of SRC 63.065 and
15 inconsistent with ORS 227.178(3)(a). However, there is no evidence that the city's
16 erroneous view of its options represented a spurious or "bad faith" denial for the purpose of
17 avoiding the requirements of the 120-day rule, as opposed to an honest misunderstanding of
18 the applicable law. Accordingly, petitioner has not established that the circumstances
19 warrant reversal under ORS 197.835(10)(a)(B).

20 **2. Subsection (A) of ORS 197.835(10)(a)**

21 ORS 197.835(10)(a)(A) authorizes LUBA to reverse the city's denial if petitioner
22 establishes that the city's action was "outside the range of discretion allowed the local
23 government under its comprehensive plan and implementing ordinances." Petitioner cites
24 ORS 197.835(10)(a) in general, and advances arguments under subsection (B) of that statute,
25 but does not specifically cite subsection (A). Nonetheless, petitioner has argued, and we
26 have agreed, that SRC 63.065 does not authorize or provide a basis for the city to deny the

1 partition application and that the city therefore exceeded its authority under the SRC in
2 denying the application based solely on that code provision. Petitioner also argued that it
3 was not “within the City’s range of discretion to deny the application,” given that the
4 application met the applicable standards for both a partition and a subdivision. Petition for
5 Review 23-24. As explained above, petitioner appears to be correct that the application
6 meets all applicable partition and subdivision requirements, or at least on appeal the city has
7 not identified any applicable subdivision standards that would require any further review,
8 and the city made no effort to identify any such standards below. As noted, the planning
9 administrator testified that no additional improvements or conditions would be required
10 under the applicable subdivision standards. In our view, petitioner’s arguments on this point
11 squarely invoke the authority granted LUBA under ORS 197.835(10)(a)(A), notwithstanding
12 petitioner’s failure to specifically cite that subsection. Accordingly, we will treat petitioner’s
13 arguments and request for reversal under ORS 197.835(10)(a) as encompassing subsection
14 (A) as well as subsection (B).

15 For the reasons explained above, the city’s denial of the partition application under
16 SRC 63.065 was not authorized by that code provision or any other code provision cited to
17 our attention. We conclude, therefore, based on the evidence in the record, that the city’s
18 denial was “outside the range of discretion allowed the local government under its
19 comprehensive plan and implementing ordinances.” ORS 197.835(10)(a)(A). Consequently,
20 we must reverse the city’s decision and order the city to approve the application.

21 The third and fourth assignments of error are sustained.

22 **FIRST, SECOND, AND FIFTH THROUGH EIGHTH ASSIGNMENTS OF ERROR**

23 Petitioner’s first and second assignments of error are labeled “precautionary,” and
24 apparently are intended to correct perceived implications from statements in the decision that
25 petitioner regards as misleading. Petitioner does not explain why any arguments in these

1 precautionary assignments of error would lead to reversal or remand, if sustained.
2 Accordingly, we do not reach or resolve these assignments of error.

3 The gravamen of the fifth assignment of error is that petitioner’s partition application
4 constitutes an application for “needed housing” as defined at ORS 197.303(1), and therefore,
5 pursuant to ORS 197.307(6), the city cannot apply any approval standards or procedures that
6 are not “clear and objective.”¹² Petitioner contends that SRC 63.065 is not “clear and
7 objective.” The city responds that petitioner cites no authority for the proposition that an
8 application to partition or subdivide land is itself an application for “needed housing” and
9 therefore subject to ORS 197.303 or 197.307, and that nothing in the definition of “needed
10 housing” suggests that the needed housing statutes apply to applications for partition or
11 subdivision of land, even if the ultimate purpose of the lots or parcels created is for housing.
12 However, we need not and do not resolve the parties’ dispute on this point, because we have

¹² ORS 197.303(1) provides:

“As used in ORS 197.307, until the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, ‘needed housing’ means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, ‘needed housing’ also means:

- “(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- “(b) Government assisted housing;
- “(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
- “(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.”

ORS 197.307(6) provides:

“Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

1 already concluded that the city’s decision must be reversed under ORS 197.835(10)(a)(A),
2 and therefore no purpose would be served by resolving the fifth assignment of error.

3 The sixth, seventh and eighth assignments of error argue that the city’s denial
4 violated petitioner’s rights under the Takings, Due Process, Free Speech, and Equal
5 Protection Clauses of the U.S. Constitution, and similar provisions of the state constitution.
6 We seriously question petitioner’s claims that the circumstances in this case give rise to a
7 constitutional violation. However, we need not and do not reach those arguments.

8 **NINTH, TENTH AND ELEVENTH ASSIGNMENTS OF ERROR**

9 Under the ninth, tenth and eleventh assignments of error petitioner challenges three
10 conditions of approval that the planning administrator imposed on the partition, for the
11 reasons stated in petitioner’s appeal below to the city council. Petitioner requests that
12 Condition 2 be eliminated, and that the wording of Conditions 1 and 3 be modified to more
13 accurately reflect SRC requirements. Petitioner labels these assignments of error
14 “precautionary,” and states that they are “solely for the purpose of preserving the issue of the
15 imposed ‘conditions’ of approval.” Petition for Review 36.

16 We understand petitioner to argue that if pursuant to ORS 197.835(10)(a) LUBA
17 reverses the city’s decision and orders the city to grant approval of the application, then
18 LUBA need not reach these assignments of error, but can “wait to see if the City resolves
19 these issues when they grant [approval of the] application.” *Id.*

20 The city responds generally that it is not within LUBA’s scope of review to resolve
21 petitioner’s “precautionary” challenges to Conditions 1-3. We agree, although for a
22 different reason. As noted, ORS 197.835(10)(a) requires that when LUBA concludes that a
23 local government denied a development application under the circumstances listed in the
24 statute LUBA must both (1) reverse the decision and (2) “order the local government to grant
25 approval of [the] application for development[.]” The statute does not mention conditions of
26 approval or specify what LUBA should do in circumstances where, as here, the local

1 government has initially imposed conditions of approval that the applicant either proposed or
2 is willing to accept, as well as conditions of approval that the applicant has challenged in a
3 local appeal and on appeal to LUBA. For that matter, it is unclear whether the term
4 “application” as used in ORS 197.835(10)(a) refers to the application as submitted or the
5 application as modified or amended during the proceedings below.

6 To our knowledge, the present case is the first decision we have reversed under
7 ORS 197.835(10)(a), and we are aware of no guiding precedent. Because applicants often
8 voluntarily revise or amend applications after submission, and ORS 197.835(10)(a) is
9 intended to be generally protective of applicants, we do not think the legislature intended
10 “application” to refer to the initial application as submitted. Where ORS 197.835(10)(a)
11 applies, that might result in LUBA ordering the local government to approve a version of the
12 proposed development that the applicant has abandoned and no longer wants. Instead, we
13 believe that “application” refers to the application as proposed at the time of the local
14 government’s denial, including any conditions of approval that the applicant has proposed
15 and the local government has accepted. Such applicant-proposed conditions can be
16 understood to effectively modify or amend the application. Although it is a closer question,
17 for the same reason we also believe that “application” includes any conditions of approval
18 that the local government imposed in an initial decision and that the applicant has not
19 objected to or attempted to appeal to the final decision maker.

20 However, we do not believe that the “application” includes conditions of approval
21 that the applicant has objected to or attempted to appeal to the local government’s final
22 decision maker, such as Conditions 1-3, prior to the city’s denial. Such conditions have
23 never become attached to the “application” in any sense. Consequently, in the present case
24 the city must grant approval of the application as proposed at the time of the city’s denial,
25 including any conditions of approval initially imposed that petitioner did not object to or

1 challenge in his local appeal, but not including Conditions 1-3.¹³ Due to that disposition, it
2 would serve no purpose to address the merits of petitioner’s challenges to Conditions 1-3,
3 under these assignments of error.

4 We do not reach the ninth, tenth and eleventh assignments of error.

5 **CONCLUSION**

6 For the reasons stated, above, the city’s decision is reversed under ORS
7 197.835(10)(a)(A), and the city is ordered to approve the application.

¹³ We do not mean to foreclose the possibility that, at the time the city grants approval of the application as required by ORS 197.835(10)(a) and this decision, the city and petitioner may agree to include modified versions of Conditions 1-3. With respect to Conditions 1 and 3, petitioner challenges only the specific wording of those conditions, and is apparently willing to accept the conditions with different wording. Whether and where any such mutually modified conditions could be challenged by third parties is not clear. However, as it now stands, Conditions 1-3 are not part of the “application” and therefore ORS 197.835(10)(a) does not authorize LUBA to order the city to impose those conditions, much less modified conditions, in granting approval.