



534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org  
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389  
Willamette Valley Office • 189 Liberty Street NE, Suite 307A • Salem, OR 97301 • (503) 371-7261 • fax (503) 371-7596  
Central Oregon Office • PO Box 242 • Bend, OR 97709 • (541) 382-7557 • fax (541) 317-9129

September 9, 2008

Marion County Board of Commissioners  
Les Sasaki , Marion County Planning Division  
P.O Box 14500  
Salem, Oregon 97309

**Re: Donald UGB Amendment.**

Dear Commissioners and staff,

Thank you for the opportunity to provide testimony on the proposed amendments to the City of Donald's urban growth boundary. We have reviewed the "City of Donald Urban Growth Boundary Amendment Proposal: Employment Lands" (UGB Amendment Proposal) and offer the following comments.

The city has asked for Marion County's concurrence in the proposed expansion of its UGB, by approximately 40 acres in 4 separate parcels, to provide additional employment land.

Two parcels, approximately 7 and 5 acres in size respectively, are located adjacent to existing industrial employers within the western and southern portions of the existing UGB. The UGB expansion would provide them with land to expand their businesses. We have no objection to the inclusion of these 2 parcels.

A 3<sup>rd</sup> parcel of approximately 1.7 acres is proposed for inclusion to provide additional commercial land. We have no objection to the inclusion of this parcel.

A 4<sup>th</sup> parcel of approximately 27 acres is adjacent to Butteville Road north of the existing UGB. This parcel is proposed for inclusion to attract a warehousing and distribution center. Our objections to the inclusion of this parcel are detailed below.

In addition, as part of its adopting ordinance, the City of Donald adopted a population projection of 1588 persons in 2028. Our objections to this population projection are detailed below.

**Overview**

We object to two portions of the city's proposed amendments because they do not comply with law. The city could eliminate these portions and still proceed with the remaining UGB expansion – for the 3 smaller parcels. Our objections to the two portions can be summarized:

- The city has not demonstrated a need to urbanize 27 acres of prime farm land – land already in the county’s #1 industrial use – agriculture.
- The city’s 2028 population projection has not been coordinated with the county or other cities in the county
- The city could have, but did not, follow the “safe harbor” methodology provided by law when projecting its population to the year 2028.
- It makes no sense for the county to approve this population projection, and thus get into a potentially protracted legal matter, when it could:
  - Use the legally allowed safe harbor method for projecting the Donald population to 2028, or
  - Wait until the end of this year, when the county plans to have completed a comprehensive, county-wide population forecast.

According to the UGB Amendment Proposal, the proposed amendments are primarily in response to requests by individual property owners. Two existing industrial businesses need land for expansion.

Donald could have met these needs through discrete amendments. Instead, the City Council voted to combine the requests in a legislative action that includes an additional large flat parcel of prime farmland, based on a conclusion that it has the potential to attract a warehouse and distribution center.<sup>1</sup>

The city and county do not have a coordinated population forecast for 2028, which is the planning horizon of this UGB expansion, but anticipate having one within six months to a year of this legislative amendment, as part of the Marion County 2030 population forecast project.

The UGB expansion portion of this amendment would commit a large block of prime farmland to urban industrial use north of the city adjacent to Butteville Road, based on speculation that the site has the potential to attract a warehousing and distribution center since the land is near I-5.

Donald joins several other cities in Marion County and French Prairie in pursuing the same “prize” – a warehouse and distribution site along I-5. Woodburn is pursuing a UGB expansion to attract a warehouse and distribution center to land between Butteville Road and I-5. The Maletis brothers are trying to include Langdon Farms in the Metro UGB or have it placed in tribal trust, in order to attract a warehouse and distribution center to I-5. Salem is also seeking to attract a warehouse and distribution center to its Mill Creek Industrial Center a few miles further south along I-5.

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<sup>1</sup> According to a *Woodburn Independent* article dated August 19, 2008, the city intends to seek an additional expansion for residential land once these amendments are completed.

According to the attached Oregonian article, French Prairie “remains widely regarded as the heart of Oregon's agricultural industry.” And, as Woodburn’s study of potential industries found, a warehouse and distribution industry survey “placed the Northwest as the lowest priority for expansion.”<sup>2</sup>

In other word, cities along the I-5 corridor in Marion County are rushing to commit prime farmland to their UGBs to provide duplicative land for an industry that is not likely to expand in the region, and certainly not on the multiple sites that are proposed to be provided.

The unfortunate outcome is clear: Frustration over unrealized economic development plans will lead to the conversion of these freeway sites to big-box, fast food, or other commercial or residential uses, and loss of the prime farmland that supports Marion County’s leading industry- agriculture.

And, if cities in Marion County develop French Prairie with industrial uses there will be much less reason for Metro to stay north of the Willamette River, compounding the loss of prime farmland and putting additional pressure on the heart of Oregon's agricultural industry.

Donald has a much better way to address its legitimate needs: Adopt a limited expansion of about 12 acres to address the identified needs of its existing industrial users, and defer a larger consideration of overall employment *and* residential needs until after the completion of Marion County’s 2030 population forecast project. At that time, the overall review will be fully coordinated with all French Prairie cities and other affected jurisdictions.

### **Population Projection**

The City and County have a coordinated population forecast through 2020 but not through the year 2028, which is the 20-year planning horizon for these UGB amendments. The coordinated 2020 forecast is 1,050 and was adopted by Marion County Ordinance No. 1091 on October 21, 1998.

As part of its adopting ordinance for these proposed UGB amendments, Donald adopted a population forecast of 1588 in 2028. While it is not explained in the UGB Amendment Proposal, county planning staff explained in a recent phone conversation that the city applied a 2.25% annual growth rate to its 2007 PSU population of 995. The city asserts this is a “safe harbor” population forecast under OAR 660-024-0030(3). This assertion is wrong.

OAR 660-024-0030(3) provides:

As a safe harbor, if a coordinated population forecast was adopted by a county within the previous 10 years but does not provide a 20-year forecast for an

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<sup>2</sup> Site requirements for Woodburn Target Industries, p. 7.

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

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

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

The population forecast adopted by of 1588 in 2028 Donald does not comply with the preceding “safe harbor provisions.”

First, it does not comply with subsection (a), which requires adoption, “in accordance with the notice, procedures and requirements described in section (1) of this rule.” Among other provisions, section (1) requires compliance with ORS 195.025 and 195.036 *and* that “local governments must provide notice to all other local governments in the county.”

Neither Donald nor Marion County has notified the other cities in Marion County that it is adopting a revised population forecast for Donald. While the attached notice from the county was sent to all cities within it, the notice only references the UGB expansion and makes no mention of the revised population forecast. Since there has been insufficient notice to the other affected jurisdictions, the county cannot meet its requirements under ORS 195.025 and 195.036 to properly coordinate the planning activity.

Second, and perhaps more importantly, the forecast does not comply with subsection (b), which protects a forecast under safe harbor provisions if the forecast *extends* the *current urban area forecast* to a 20-year period by using the same growth trend for the urban area assumed in the county's current adopted forecast.

The county’s current adopted urban area forecast projects a population of 1,050 in 2020, based on an assumed annual growth rate of 2.25%. Rather than *extending* this forecast, as required by the rule, the city (and county staff) instead applied the annual growth rate of 2.25% to Donald’s 2007 PSU population.

As the city concedes in the UGB Amendment Proposal:

“[The] ‘safe harbor’ estimate... allows the extension of the same growth rate as the study currently in place. Therefore, continuing with an assumed growth

of 2.25%, extending the population trend from 2020 to 2028 arrives at a population estimate of **1,255...**

The County suggested a population estimate of **1,588** for 2028 as more realistic, given current estimates.

The City of Donald concurs and accepts Marion County's 2028 estimate of **1,588** as its 'safe harbor' population" (emphasis in original)

Because the 2028 forecast of 1588 does not extend the current adopted forecast for 2020, and because it was adopted without regard to the notice and coordination requirements in statute and rule, it is not a "safe harbor" population forecast under OAR 660-024-0030(3) despite the city's assertions to the contrary.<sup>3</sup>

It is puzzling why the city and county would even consider a population projection that does not comply with law, when it seems that adopting a projection that *does* comply with the law would still allow the 3 smaller UGB expansions needed for existing businesses. And the larger UGB expansion has flaws regardless of which population forecast is used.

Finally, the city acknowledges that the 2028 population forecast, "is only relevant for this UGB amendment," and the city "will adopt a new population forecast for 2030 as part of Marion County's population forecast project." In a phone conversation on August 28, Marion County planning staff indicated that they hope to have the coordinated county-wide forecasts adopted by the end of this year. Instead of adopting a population forecast that violates state rule and statute, Donald and Marion County should wait 6 or 12 months and adopt a fully coordinated forecast that complies with statute and rule.

### **Industrial Land Needs**

The City of Donald has included 3 parcels for industrial uses in its proposed UGB expansion. Two parcels, totaling about 12 acres, address the identified needs of existing industrial users on adjacent parcels within the existing UGB. We have no objection to including these two parcels.

However, Donald has included an additional 27 acre parcel of prime farmland in its UGB for a targeted industry- warehouse and distribution- based on speculation that the site has the potential to attract a warehousing and distribution center since the land is near I-5. The inclusion of this parcel is not justified.

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<sup>3</sup> The City found: "[660-024-0030] Subsection (3) provides a 'safe harbor' for establishing a new 20-year projection. This was addressed in Section 2.0 of this document and established a new population estimate of 1,588 for the year 2028." (UGB Amendment Proposal p. 35). This finding has no basis in fact.

The primary flaw in the city's *implementation* of the targeted industries approach is that it is not tied to the city's projected employment, or to a 20-year time span. Donald found, with no basis:

"The subject analysis addresses the employment land needs (in this case, specifically industrial land needs) for a 20-year population projection."<sup>4</sup>

There is *nothing* in the record to support this finding. There is nothing in the UGB Amendment Proposal that ties the targeted industries method to a 20-year land supply, or any other time frame for that matter. It identifies warehouse distribution as a target industry, but fails to take the next legally required step - translating that into a 20-year land supply for employment.

Under Goal 14 and OAR 660-024-030, the establishment and change of a UGB must be based on demonstrated *need* to accommodate growth in population and employment over the 20-year planning period. OAR 660-0240040(5) calls for the "determination of 20-year employment land need for an urban area."

Inclusion of the additional 27 acres is not based on demonstrated *need*. Nothing in the UGB Amendment Proposal ties the inclusion of the parcel to the projected growth in population, nor is there any forecast of employment growth, nor even any determination of how much employment land may be *needed* over the *20-year planning period*.

Instead, inclusion of the additional 27 acres is based on speculative market *demand*. In the UGB Amendment Proposal, the city found, for example:

"Based on the City's proximity to I-5 and the railroad, the creation of a distribution center is entirely feasible." (p. 20)

"Donald anticipates additional external demand for industrial land due to its proximity to I-5 and the existing rail services." (p. 25)

"This [warehouse and distribution site] could attract firms from the Portland and Salem area in search of lower cost and greater quantities of land..." (p. 22)

Under OAR 660-024-0040(5), local government must provide a reasonable justification for the *job* growth estimate, not the *employer* growth estimate. OAR 660-024-0040(8) also provides a "safe harbor" for determining employment needs, which again is calculated based upon "job" growth, not employer growth.

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<sup>4</sup> UGB Amendment Proposal p. 35.

The UGB Amendment Proposal provides valuable context in evaluating this amendment. Donald expects to grow by 593 people over the planning period to a population of 1588. Table 3-2 shows that Donald has developed 20.5 acres of industrial land over its entire history as it grew to a town of 995, which is .02 acres of industrial land per person. After the proposed amendments, Donald will have an *additional* 47.8 acres of developable industrial land for the additional 593 people, which is .08 acres per person.

In other words, the city is providing 4 times the amount of industrial land for each new resident than it has historically needed. The city does not explain why it needs to be so land consumptive in the future, or how this represents *efficient* accommodation of identified lands as required by Goal 14.

The city asserts that this could result in less commuting. On the contrary, the freeway location of the warehouse parcel makes it likely employees will commute to the site from other communities on the I-5 corridor.

This increased commuting will only exacerbate existing transportation problems along Butteville Road, Ehlen Road, and the Fargo I-5 interchange, especially when added to the increased truck traffic from a new warehouse distribution center. For this reason, inclusion of this 27 acre parcel conflicts with the with the 2<sup>nd</sup> location factor of Goal 14- the orderly and economic provision of public facilities and services.

### **ESEE Analysis**

The UGB Boundary Amendment Proposal recognizes that “farming is a major local industry.”<sup>5</sup> However, the city’s brief analysis of the environmental, energy, economic, and social consequences of the UGB expansion does not even mention agriculture.

Donald is located in the agricultural heartland of Marion County, where direct agricultural sales topped \$600 million in 2007. Farmland is not undeveloped land waiting for urbanization. It is already developed industrial land that supports the leading industry in Marion County.

Year in and year out, Marion County leads all Oregon counties in gross agricultural sales. Agriculture is a traded sector industry. Agricultural exports rank #2 among all Oregon exports, accounting for about 25% of all Oregon exports. Agricultural exports increased 46% between 2006 and 2007 and are up nearly \$1 billion since 2002.

The continued vitality of the Agricultural Industry in French Prairie, in Marion County, and in Oregon and depends on the continued protection of the land base that makes it possible.

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<sup>5</sup> UGB Amendment Proposal, p. 16

The city's analysis of the environmental, energy, economic, and social consequences of the UGB expansion is fundamentally flawed because it fails to consider the economic consequences of committing the 27 acre parcel of prime farmland to urban uses.

### **Compatibility with agricultural activities**

The locational factors of Goal 14 require the city and county to evaluate the compatibility of the proposed urban uses on the 27 acre parcel with nearby agricultural activities occurring on farmland outside the UGB.

The UGB Amendment Proposal fails to adequately address this factor. The sole finding or discussion of this issue is the following:

“Compatibility of the proposed urban uses with nearby agricultural activities

FINDINGS: The City recognizes that with few exceptions, Donald is located in an area of significant agricultural production. Expansion of the city limits will likely have similar impacts regardless which direction the City expands. It is anticipated that the industrial designation will not create traffic impacts or uses (as compared to residential activities) thereby somewhat mitigating impacts on these adjacent farm lands.”

Neither this finding nor anything else in the document addresses the actual factor of compatibility. There is no explanation of the crops grown on nearby farmland, the types of farm practices, the scale of farming, the potential conflicting uses, or how the proposed industrial use is or is not compatible, or could be rendered compatible with measures designed to reduce adverse impacts. For this reason, inclusion of the parcel would conflict with Goal 14.

### **County Planning Commission input is needed**

The proposed amendments come before the Board of Commissioners pursuant to Resolution No. 08-23R, wherein, “the Marion County Board of Commissioners hereby initiates consideration of amendment to the Marion County Comprehensive Plan relating to the City of Donald urban growth area and urban growth boundary.” They amend the Marion County comprehensive plan and map in addition to Donald's.

The amendments have the potential to redirect industrial development from existing industrial land in the Salem-Keizer UGB and other cities to what is now farmland, undermine ongoing efforts to protect the heart of Oregon's agricultural industry, and put additional strains on the I-5 interchange and county roads in northern Marion County.

Broad citizen input is advisable, appropriate, and legally required in this instance. Marion County fulfills its obligations under Goal 1 to promote citizen involvement in part through its

Planning Commission, composed of diverse group of citizen representatives from various geographical areas and perspectives. Unlike the Board of Commissioners, they meet in the evening, when most ordinary citizens are more able to attend. Bypassing the Planning Commission is not only poor policy; it also appears to violate the county's own code provisions.<sup>6</sup>

We have pointed out the legal necessity for Planning Commission input on at least one previous occasion. It is therefore somewhat frustrating to have to once again remind the county of its obligation to adhere to its own rules and regulations and to not short-circuit citizen involvement.

Please include this letter and its attachments in the official record of this proceeding and notify us of your decision and/or future proceedings in this matter.

Sincerely,

Sid Friedman  
Willamette Valley Advocate  
1000 Friends of Oregon

Attachments: Woodburn Independent article, dated August 26, 2008  
Excerpt from Woodburn EOA, "Target Industries"  
Excerpt from Woodburn LCDC order, "Location of Industrial Land"  
City of Salem web pages: "Mill Creek Industrial Park"  
Oregonian article, dated August 24, 2008  
Site requirements for Woodburn Target Industries, p. 7.  
Marion County Notice of Public Hearing  
Marion County Resolution No. 08-23R

Cc: (electronic w/o attachments) DLCD  
ODA

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<sup>6</sup> Chapters 43 and 38 of the Marion County Zoning Ordinance state:

**"43.01 PROCEDURES FOR LEGISLATIVE PLAN AMENDMENTS.** Procedures and criteria for legislative plan amendments shall be as provided in Chapter 38 for legislative zone amendments."

**"38.03 PLANNING COMMISSION REVIEW.** Whenever a legislative amendment is initiated by the Board, the resolution shall be referred to the Planning Commission. If the Planning Commission is not designated to hold the required public hearing it shall forward a recommendation or report of its deliberations to the hearing body before the close of the public hearing."