

**BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON**

FRIENDS OF FRENCH PRAIRIE,	)	
AND MARION COUNTY FARM BUREAU	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	LUBA No. 2008-186
MARION COUNTY,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
CITY OF DONALD and	)	
SUTHERLAND DEVELOPMENT, LLC	)	
	)	
Intervenors-Respondents.	)	

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**JOINT RESPONSE BRIEF OF RESPONDENT AND INTERVENORS-RESPONDENTS**

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1    **I.     STANDING**

2                   Respondent Marion County (“County”) and Intervenor-Respondents the City  
3 of Donald (“City”) and Sutherland Development, LLC (“Sutherland”), concur that Petitioners  
4 Friends of French Prairie and Marion County Farm Bureau (“Petitioners”) have standing to  
5 appeal. The City and Sutherland timely filed motions to intervene on October 31, 2008, and  
6 October 28, 2008, respectively.

7    **II.    STATEMENT OF THE CASE**

8           **A.     Nature of the Decision**

9                   In the decision on review, the County adopted an urban growth boundary  
10 (“UGB”) expansion proposed by the City and reviewed by the County pursuant to the City-  
11 County Urban Growth Boundary and Policy Agreement. (Petitioners have not appealed the  
12 City’s own decision to adopt the UGB expansion.)

13           **B.     Summary of Arguments**

14                   (1) The City needs new employment opportunities in order to correct an  
15 existing jobs deficit and to keep pace with its rapid population growth. To meet that need  
16 consistently with the Goal 9 and Goal 14 rules, the City was required to identify the types of  
17 employers it is likely to attract and the site characteristics necessary to accommodate those  
18 employers. The City’s Goal 9 analysis, which is not challenged in this appeal, showed that  
19 the City’s industrial sites are inadequate to accommodate likely employer categories—  
20 namely, expansion of existing agriculture-related industries and warehousing and distribution  
21 facilities. To attract any new employment opportunities, the City had to expand the UGB.  
22 The expansion was a modest one: two sites to accommodate expansion of existing  
23 businesses and one site to accommodate a new warehousing and distribution facility. The  
24 latter, a 27-acre site, is at the small end of the range of site sizes necessary to accommodate  
25 the warehousing and distribution industry. As such, it was the minimum necessary to meet

1 the City's need for new employment opportunities. A remand, in this circumstance, is  
2 unwarranted and would be contrary to Petitioners' underlying goal.

3 (2) The County reasonably justified and properly coordinated the population  
4 forecast. The decision to adopt a population forecast that deviated from the *optional safe*  
5 harbor methodology is not in itself an error; Petitioners raise no other substantive objection to  
6 the forecast, and any error (if there were one) would be harmless. Procedurally, the County  
7 spent more than a year coordinating the population forecast with the City. Notice of the  
8 UGB amendment put all other local governments on notice of the new population forecast.

9 (3) The City and County properly evaluated alternative UGB expansion sites  
10 according to the Goal 14 boundary location factors, including the agricultural compatibility  
11 factor. Because all of the alternative sites (and all surrounding land) were high-value, Class  
12 II farm land, the City and County concluded that choosing any of the alternative sites would  
13 have a similar effect on agriculture. It thus was appropriate for other boundary location  
14 factors to have more significance in the alternatives analysis.

### 15 **III. SUMMARY OF MATERIAL FACTS**

16 Donald is a small city, surrounded by farm land, with a growing population  
17 and few local employment opportunities. The City sits approximately one-half mile from  
18 Interstate 5, just a mile and a half by road from the nearest freeway interchange. See Rec.  
19 122. The Burlington Northern Railroad tracks, running parallel to I-5, bisect the City. Rec.  
20 122, 165. All land adjacent to the City is high value farmland zoned for Exclusive Farm Use.  
21 See Rec. 36, 76. The City's population grew by 370 people, from 625 to 995, between the  
22 2000 Census and the 2007 Portland State University population estimate. Rec. 33, 66, 45.  
23 This represents a population increase of nearly 60 percent over seven years. Few of Donald's  
24 residents are able to work in the City: by analyzing census data, the City determined that a  
25 scarcity of employment opportunities had forced four out of five of its residents to commute  
26 to jobs outside the City. Rec. 58-59, 67.

1 Land zoned for employment (commercial and industrial land) comprises  
2 approximately 38 acres, or 35 percent, of the City's land base. Before the present UGB  
3 expansion, the City had 20.51 developed acres of industrial land, most of which is in  
4 agriculture-related industrial use. Rec. 48, 65. Of the remaining 9.12 acres of industrially  
5 zoned land, 2.74 acres were vacant and 6.38 were considered redevelopable because they  
6 were used for outdoor storage or contained dilapidated buildings. Rec. 48. The sole vacant  
7 industrial parcel was between three and four acres, as was the largest redevelopable parcel.  
8 Rec. 84, 120. Other redevelopable parcels were approximately one acre or less. Rec. 120.

9 In an effort to reduce the number of City residents forced to travel for job  
10 opportunities, the City conducted a Goal 9 economic opportunities analysis. Rec. 49-67. A  
11 Goal 9 analysis must, among other things, (1) consider economic development trends,  
12 including identification of the types of industrial uses that could reasonably be expected to  
13 locate in the planning area; (2) identify site types needed to accommodate those expected  
14 uses; (3) inventory industrial lands; and (4) assess the industrial uses likely to occur in the  
15 planning area, considering its particular economic advantages and disadvantages. OAR 660-  
16 009-0015(1) to (4). Following the Goal 9 rule, the City's analysis evaluated trends and  
17 identified two types of industrial uses that could reasonably be expected to locate in the City.  
18 First, existing agriculture-related industries could be expected to expand as the agriculture  
19 industry consolidates. Rec. 61. Second, because of the City's advantageous location relative  
20 to transportation corridors, the City could expect to attract warehousing and distribution uses.  
21 Rec. 60-62.

22 The City then identified site types needed to accommodate expansion of  
23 existing businesses and warehousing and distribution facilities, respectively. Rec. 63-65.  
24 Expansion parcels generally had to be adjacent to the existing firms. Rec. 89. Warehousing  
25 and distribution required large sites (25 to 50 acres) with good transportation access—  
26 including rail access—and easily integrated services, among other things. Rec. 63, 87. The

1 City determined that its existing vacant and redevelopable industrial land could not  
2 accommodate the likely types of industrial uses that its Goal 9 analysis had identified. Rec.  
3 65, 85. No vacant or redevelopable parcel was adjacent to industrial users seeking to expand.  
4 Rec. 65. Nor was any vacant or redevelopable parcel close to the 25 to 50 acres required for  
5 warehousing and distribution; no site was larger than four acres. Rec. 65.

6 Because the City's existing industrial land supply could not accommodate the  
7 industrial uses considered likely to locate in the City, the City proposed to add three parcels  
8 to its UGB. One, a 4.84-acre parcel, was adjacent to the City's largest employer, G&K  
9 Machine; the record suggests that the parcel had already been committed to industrial use by  
10 G&K. *See* Rec. 26, 68, 85. The second, a 6.9-acre parcel, was adjacent to a propane  
11 distributor and intended to provide the distributor with additional storage space. Rec. 26, 68,  
12 85. The third parcel, 27 acres with excellent rail and freeway access, was intended to  
13 accommodate a warehousing and distribution facility and is the subject of Petitioners' appeal.

14 The City evaluated a number of alternative sites suitable for a warehousing  
15 and distribution facility before selecting the 27-acre site. Rec. 87-89, 122. Many of the  
16 adjacent alternative sites were over 100 acres, larger than the City needed and intruding more  
17 heavily on farm land. Rec. 87-89. Others were located south of town, requiring truck traffic  
18 to traverse residential areas. Rec. 87-89. Others lacked rail access. Rec. 87-88. All the  
19 alternative parcels were dominated by high-quality, Class II soils. Rec. 76, 87-89.  
20 Recognizing that selection of any parcel would impact farmland, the City selected the 27-  
21 acre site because it disturbed a minimum of farmland while meeting the City's needs, was the  
22 most accessible by road and rail, could easily have services integrated into the City's  
23 adjacent, existing industrial district, and had the fewest impacts on the residential  
24 community. Rec. 89.

25 The City worked closely with County staff, ODOT, DLCD, the state  
26 economic development department, and interested property owners on the UGB expansion

1 proposal (including the population forecast) for more than a year, securing the agreement of  
2 all state agencies. Rec. 28, 410-411, 547-557. The City finalized its UGB expansion  
3 proposal in July 2008 and submitted it to the County for review and adoption pursuant to the  
4 City-County Urban Growth Management and Policy Agreement.<sup>1</sup> Rec. 28, 637. The County  
5 adopted the UGB expansion on October 1, 2008, and this appeal followed.

#### 6 **IV. JURISDICTION and SCOPE OF REVIEW**

7 LUBA has jurisdiction under 197.825(1). LUBA reviews a comprehensive  
8 plan amendment for compliance with the statewide planning goals. ORS 197.835(6). Where  
9 the parties' briefs identify relevant record evidence to support the decision, those briefs may  
10 substitute for local findings in support of a legislative decision. Redland/Viola/Fischer's Mill  
11 Community Planning Organization v. Clackamas County, 27 Or LUBA 560, 563-64 (1994);  
12 see also ORS 197.835(11)(b).

#### 13 **V. RESPONSES TO PETITIONERS' ASSIGNMENTS OF ERROR**

14 In their general presentation of the case, Petitioners fault the City for being  
15 surrounded by high value farm land and for "speculating" as to the types of industrial uses  
16 likely to locate in the City. Those are not faults. The City can no more change its location  
17 than it can avoid Goal 9's requirement (and, therefore, Goal 14's requirement) that it identify  
18 industries likely to be attracted to the City and the types of sites needed to accommodate  
19 them. Consistent with its Goal 9 analysis, the City selected a single site for new business that  
20 is on the small end of the range of site sizes adequate to accommodate the warehouse and  
21 distribution industry—which Petitioners do not dispute is the industry most likely to be  
22 attracted to the City's transportation advantages.

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<sup>1</sup> Because this appeal is of the County's decision only, the record does not reflect the City proceeding. However, the County appended the City's UGB analysis and proposal to its final decision (Rec. 41-263), included the County's and DLCD's comment letters to the City (Rec. 547-557), and described the City proceeding in its findings (Rec. 27-28). The County's findings state that the City's decision and plan amendments "become[] effective following concurrence and adoption of the City's proposed amendments by the County." Rec. 27.

1                    Petitioners' objective is to prove that the City's UGB expansion was too large.  
2     But all Petitioners have succeeded in suggesting is that the City may not have added *enough*  
3     land to accommodate its employment needs for the next 20 years. The City's rapid  
4     population growth, existing deficit of employment opportunities, and unchallenged Goal 9  
5     economic opportunities analysis all justify the UGB expansion that was adopted. Without  
6     further quantifying the job growth expected to be provided by that UGB expansion, however,  
7     the record may not demonstrate that the City achieved a full, 20-year supply. A remand for  
8     the City to further quantify its job growth estimates can accomplish, if anything, only the  
9     opposite of Petitioners' objective.

10            A.     **Response to First Assignment of Error: The UGB expansion satisfied**  
11                    **Goals 9 and 14 because it was justified by a *need* for more local**  
12                    **employment, an economic development *strategy* for meeting that need,**  
13                    **and a *selection of site types* needed to carry out that strategy.**

14                    To determine an employment land need for a UGB expansion, the Goal 14  
15     rule requires local governments to conduct a Goal 9 economic opportunities analysis. OAR  
16     660-024-0040(5).<sup>2</sup> For employment lands, the Goal 14 rule also allows local governments to  
17     disaggregate the 20-year job growth estimate from the 20-year population forecast, thereby  
18     overriding the general principle that UGBs must be based on 20-year population forecasts.  
19     Compare OAR 660-024-0040(5) with OAR 660-024-0040(1). This flexibility in Goal 14  
20     allows employment land UGB expansions to remain consistent with Goal 9's emphasis on  
21     realistic economic development strategies: providing sites of the type needed by industries

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<sup>2</sup> OAR 660-024-0040(5) states, in full:

Except for a metropolitan service district described in ORS 197.015(14), the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses consistent with OAR 660-009-0025. Employment land need may be based on an estimate of job growth over the planning period; local government must provide a reasonable justification for the job growth estimate but Goal 14 does not require that job growth estimates necessarily be proportional to population growth.

1 that are likely to locate in the planning area, rather than strictly correlating total industrial  
2 acreage with population or jobs.

3           While insisting that the City erred in quantifying its industrial acreage needs,  
4 Petitioners ignore the *requirement* of Goal 9 (and, therefore, of Goal 14) that the City  
5 develop and implement a realistic economic development strategy. The record demonstrates  
6 that the City needs more local employment opportunities in order to (1) reduce the present  
7 in-city/out-of-city jobs imbalance, which forces four out of five city residents to commute to  
8 work outside the city; and (2) to accommodate a growing population, even at the present  
9 disproportion between in-city to out-of-city jobs. As Goal 9 requires, the City analyzed  
10 strategies for attracting the needed employment opportunities. Its analysis showed that the  
11 small industrial parcels in the existing UGB were not capable of serving the type of employer  
12 that the City is positioned to attract. To provide any significant new employment  
13 opportunities (beyond minor expansion of existing businesses<sup>3</sup>), the City needed a  
14 serviceable, 25- to 50-acre site. Thus, the record *at minimum* supports the expansion of the  
15 UGB to include the single 27-acre site.

16           Yet the record, Petitioners argue, does not explain “why the proposal is to add  
17 27 acres rather than 2700 acres.” Pet. Br. at 12. Indeed, although the record contains  
18 adequate data to justify a need to add at least 24 to 54 jobs (as explained below), it does not  
19 quantify how many jobs are expected to be provided by the UGB expansion sites. Therefore,  
20 Petitioners may be correct that the record does not demonstrate whether the three UGB  
21 expansion areas can provide enough employment opportunities for the next 20 years.  
22 Petitioners cannot, however, demonstrate that the UGB expansion is too large. The record

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<sup>3</sup> Again, the record suggests (1) that the G&K expansion site was already committed to industrial use; and (2) that the other expansion site would be used to store more propane tanks. Rec. 26, 68, 85. Neither of those expansions of existing businesses could be expected to generate more than a handful of new jobs.

1 properly justifies expansion of the UGB to include *at least* one 25- to 50-acre, accessible,  
2 serviceable industrial site.

3 **1. The record justifies the need for new employment opportunities.**

4 Although the record does not contain an express estimate of job growth over  
5 the planning period, the record supports at least two justifications of the 20-year need for  
6 additional employment opportunities. LUBA can credit those justifications according to the  
7 analysis in this brief, per Redland/Viola/Fischer's Mill Community Planning Organization  
8 and ORS 197.835(11)(b).

9 First, the record establishes a need to reduce the disproportionate number of  
10 city residents who, because of a lack of local employment opportunities, must commute to  
11 work outside the city. Census data demonstrates that, in 2000, more than four out of five city  
12 residents commuted to jobs outside the City. Rec. 59. The raw census numbers show 231  
13 out of 286 employed City residents (approximately 80 percent) working outside the City,  
14 leaving only 55 working in the City. Rec. 58-59. For a variety of reasons, the City  
15 determined that this 4.2 to 1 ratio of out-of-city to in-city jobs was too high. Rec. 67.  
16 Reducing the ratio could reduce traffic impacts associated with commuting, improve the  
17 City's ability to meet local program demands, and encourage the population to become more  
18 engaged in the community. Rec. 67. In short, the City recognized an existing employment  
19 deficit that needed to be corrected.

20 Second, even if the City chose not to correct that existing deficit, the City  
21 would have to increase employment opportunities at a level at least proportional with its  
22 population growth. The 2000 Census showed a population of 625. Rec. 45. Census data  
23 reflected a workforce of 286 people, Rec. 58, or approximately 45 percent of the population.  
24 Twenty percent of the employed population worked in the City. Rec. 58-59. At either the

1 “safe harbor” (1,255) or the adopted (1,588) population estimates for 2028,<sup>4</sup> significant job  
2 growth would be expected in proportion to the population increase. Using the “safe harbor”  
3 estimate, 45 percent of 1,255 people (565 people) would be in the workforce, with 20 percent  
4 of those working in the City, for a total of at least 113 in-city jobs. Using the higher, adopted  
5 population estimate, 45 percent of 1,588 people (715 people) would be in the workforce, with  
6 20 percent of those working in the City, for a total of at least 143 in-city jobs. Like the  
7 population increase itself, this increase in the number of needed jobs is substantial. The  
8 census data analysis (45 percent in the workforce, 20 percent of those working in the City)  
9 demonstrates that there were 89 jobs in the City in 2007.<sup>5</sup> To go from 89 jobs to 113 or 143  
10 jobs, depending on whether the safe harbor or adopted population estimates are used, the City  
11 needs to attract either 24 or 54 new jobs by 2028.

12 In short, the record demonstrates that the City needed to provide employment  
13 opportunities for a substantial number of residents. To determine how to attract new  
14 employment opportunities, the City conducted a Goal 9 economic opportunities analysis.

15 **2. The Goal 9 economic development strategy was appropriate (and**  
16 **unchallenged).**

17 Consistent with Goal 9, the UGB expansion was based on a careful evaluation  
18 of economic trends, the City’s competitive advantages, the employer categories reasonably  
19 likely to locate in the City, and the site characteristics necessary to accommodate those likely  
20 employers. The City determined that proximity to transportation corridors—both rail and  
21 road—was its primary competitive advantage in attracting employers, along with retention of  
22 existing employers. Rec. 60-61. Expansion of existing agriculture-related industrial sites

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<sup>4</sup> See discussion of alternative population forecasts under Second Assignment of Error, Part V.B.1.

<sup>5</sup> Forty-five percent of the PSU population estimate of 995 is 448 workers, with 20 percent of those—89 people—working in the City.

1 and warehouse and distribution facilities were the most likely sources of new industrial  
2 employment opportunities. Rec. 60-65, 85-89.

3           Petitioners do not assign error to this Goal 9 economic development analysis.  
4 They do not argue that the City misidentified the types of industries likely to locate in the  
5 City (nor that the City mischaracterized the types of sites that those industries require). The  
6 adopted economic development strategy is not challenged and therefore must be considered  
7 an appropriate strategy for meeting the City's employment needs.

8           **3. The UGB expansion properly implemented the economic strategy.**

9           The Goal 9 rule acknowledges that there is a wide variation in particular sizes  
10 and characteristics of sites needed to accommodate different categories of employment uses.  
11 Goal 9's focus is on creating a supply of sites with the characteristics necessary to implement  
12 economic development strategies. Sites with those characteristics may or may not match  
13 precisely the estimate of acreage needed based on population or job growth estimates. OAR  
14 660-009-0025(2) is telling: it states that the total acreage of employment land "must *at least*  
15 equal the total projected land needs." (Emphasis added.) This, and the entire context of the  
16 Goal 9 rule, suggests that a strict acreage-population or acreage-jobs correlation is less  
17 significant than identifying the types of sites that realistically are attractive to employers  
18 likely to bring jobs to the planning area. If a particular site type is necessary to accommodate  
19 the type of employer that a jurisdiction is likely to attract, but the site type is larger than  
20 would be strictly proportional to population or job growth estimates, then OAR 660-009-  
21 0024(2) supports making such a site available. In turn, the Goal 14 rule provides the  
22 necessary flexibility to achieve an employment land UGB expansion consistent with Goal 9.  
23 See OAR 660-024-0040(5) (requiring employment land need determinations to be consistent  
24 with Goal 9 and allowing employment land need to be disassociated from population  
25 growth).

1            In this case, the City determined that the most likely category for new  
2 industrial employers (warehousing and distribution) could be attracted only by a site of 25 to  
3 50 acres. The nine acres of vacant and redevelopable industrial land, with a maximum site  
4 size of four acres, were not adequate to accommodate that type of employer. Existing  
5 industrial parcels in the UGB were too small to accommodate a new warehouse and  
6 distribution facility and were not located where they could serve existing businesses. Rec.  
7 65, 85. *Only* inclusion of a larger site in the UGB could implement the economic  
8 development strategy. The City chose a single site, at the small end of the needed acreage  
9 range. This action reasonably satisfied Goal 9, and through it, Goal 14, because it provided  
10 the minimum supply of sites needed to carry out the Goal 9 economic development strategy.

11            **4.        *Conclusion: Remand for further quantification is likely to hinder,***  
12            ***not advance, Petitioners' objectives.***

13            Admittedly, the record does not contain an estimate of how many jobs a  
14 warehouse and distribution facility is likely to generate, nor of whether that number of jobs  
15 will be sufficient to meet the City's employment needs for the next 20 years (as identified  
16 above). A remand for the City and County to quantify that need, however, would not disrupt  
17 the unchallenged foundation principles of the City's analysis: that its competitive advantages  
18 make a warehouse and distribution facility the most likely new employment category and  
19 that the present UGB cannot accommodate such a facility. The most a remand proceeding  
20 could show is that the City *underestimated* its employment land needs for the next 20 years,  
21 and that it needs more than one site suitable for likely new industrial employers. Instead of  
22 this counterproductive remand, Respondent and Intervenors-Respondents ask LUBA to deny  
23 this assignment of error and affirm the County's decision to approve a modest employment  
24 lands expansion that is adequately justified under Goal 9 and Goal 14.

1           **B.     Response to Second Assignment of Error: The population projection,**  
2           **while not based on a safe harbor, was reasonably justified and properly**  
3           **coordinated.**

4                   **1.     The projection was reasonably justified.**

5                   The City and County reached a population projection that accounted for the  
6 long-term demographic trend (the City’s historical 2.4 percent growth rate) and recent events  
7 that altered that long-term trend (the City’s higher-than-expected growth from 2000 to 2007).  
8 Petitioners do not challenge the information, methodology, or assumptions used in arriving at  
9 this estimate. They do not argue that the estimate violates OAR 660-024-0030(2), which  
10 contains the substantive standards for population projections.<sup>6</sup> Instead, they argue that the  
11 projection fails to satisfy OAR 660-024-0030(3), the safe harbor provision.

12                   In reviewing the City’s proposed UGB amendment, the County noticed that  
13 the “safe harbor” population projection was out of line with reality. Rec. 32-35, 45. The  
14 forecast adopted by the County in October 1998 had predicted 1,050 people in the City by  
15 2020, using an annual growth rate of 2.25 percent. Rec. 33, 45. The “safe harbor” available  
16 under OAR 660-024-0030(3) would have been to extend that adopted forecast to the end of  
17 the new planning period, resulting in an estimate of 1,255 people in 2028. Rec. 33, 45.  
18 However, new data showed that the City’s growth had outpaced the adopted forecast  
19 considerably. The City’s 2007 PSU population estimate was 995 people, only 55 people  
20 short of the 2020 population predicted by the adopted forecast. Rec. 33, 45. Rather than rely  
21 on a formal safe harbor that was certain to be inaccurate, the County and City agreed to a

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<sup>6</sup> OAR 660-024-0030(2) states, in full:

The forecast must be developed using commonly accepted practices and standards for population forecasting used by professional practitioners in the field of demography or economics, and must be based on current, reliable and objective sources and verifiable factual information, such as the most recent long-range forecast for the county published by the Oregon Office of Economic Analysis (OEA). The forecast must take into account documented long-term demographic trends as well as recent events that have a reasonable likelihood of changing historical trends. The population forecast is an estimate which, although based on the best available information and methodology, should not be held to an unreasonably high level of precision.

1 reasonable mechanism for producing a more accurate prediction: applying the adopted  
2 growth rate to the City’s actual 2007 population estimate. Rec. 33, 45, 418.

3           The County and City continued to refer to this more realistic estimate as a  
4 “safe harbor,” perhaps to distinguish the UGB-related forecast from the broader 2030  
5 population forecasting exercise in which the County was (and is) engaged. See Rec. 22, 33,  
6 45. Arguably, the safe harbor provision (OAR 660-024-0030(3)(b)<sup>7</sup>) could be interpreted to  
7 require that local governments continue to use the adopted *growth trend*, but to allow them to  
8 apply that trend to actual, updated population figures, as the City and County did here.  
9 Petitioners, of course, argue to the contrary, interpreting the safe harbor provision to prohibit  
10 local governments from looking to any data outside the original forecast.

11           Resolving this interpretative issue is not necessary to resolving this  
12 assignment of error. The fact that the County continued to characterize the population  
13 estimate as a “safe harbor” does not mean that the safe harbor provision is the only way to  
14 justify the population forecast. Failure to take advantage of a safe harbor, alone, does not  
15 establish that a population projection is flawed:

16           “‘Safe harbor’ means an optional course of action that a local  
17 government may use to satisfy a requirement of Goal 14. . . . A  
18 safe harbor is not the only way or necessarily the preferred way  
19 to comply with a requirement[.]”

20 OAR 660-024-0010(2). A reasonable population forecast—not alleged to be inconsistent  
21 with the substantive standards in OAR 660-024-0030(2)—may not be remanded simply  
22 because it does not align with the optional safe harbor methodology. Petitioners make no  
23 other challenge to the substance of the projection.

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<sup>7</sup> OAR 660-024-0030(3)(b) reads, in full:

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.

1                   **2. The projection was coordinated and properly noticed.**

2                   The County coordinated the projection with the City and provided notice of  
3 the projection to all other local governments in the County.

4                   The record reflects extensive collaboration and, ultimately, agreement  
5 between the City and the County with respect to the population projection. Rec. 33-34, 45,  
6 637. This demonstrates Goal 2 coordination. See City of Damascus v. Clackamas County,  
7 50 Or LUBA 514 (2005) (quoting cases that describe Goal 2 coordination as making a  
8 reasonable effort to accommodate the needs and legitimate interests of the affected  
9 governmental entities). ORS 195.036 requires nothing more than Goal 2.<sup>8</sup> The County  
10 negotiated the projection with the City, reached agreement with the City, and thereby met its  
11 coordination obligations under OAR 660-024-0030(1). Any separate procedural obligations  
12 of the City are not at issue in this appeal, which is solely of the County's decision.

13                  The County provided other local governments with notice of its public hearing  
14 on the UGB amendment. Rec. 602-604. Other local governments within the County would  
15 be aware that the last-adopted county-wide population forecast was in October 1998, with  
16 County Ordinance No. 1091. See Rec. 45. They also would be aware that every UGB  
17 amendment must be accompanied by a population forecast extending 20 years from the UGB  
18 amendment date. See OAR 660-024-0040(2)(a). With this common background knowledge,  
19 other local governments would have been on notice that a new population forecast was to be  
20 adopted in connection with the UGB amendment. The County mailed other local  
21 governments a copy of the final ordinance, which described the population forecast in detail.

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<sup>8</sup> ORS 195.036 states, in its entirety:

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

1 Rec. 12-19. The notice requirements of OAR 660-024-0030(1) are thereby satisfied.<sup>9</sup>  
2 Petitioners have identified no error in the County’s adoption of the population projection.

3 **3. Any error in the population projection would be harmless.**

4 As discussed above (in Part V.A.1), the City expressly justified its  
5 employment need based on an existing deficit of in-city jobs. The City’s need also can be  
6 justified based on either the adopted population projection (1,588) or the more conservative  
7 “safe harbor” projection (1,255). With either justification (or both), the City needed more  
8 than the handful of new jobs that could reasonably be expected to come from expansion of  
9 two existing businesses. In neither case does the City’s need determination depend upon  
10 which population forecast is used. Therefore, any error in failing to adhere to the safe harbor  
11 methodology is harmless.

12 In sum, this assignment of error should be denied because the alleged failure  
13 to follow the optional safe harbor methodology—the only substantive challenge raised—does  
14 not establish an error. Even if it were error, it would be harmless because either population  
15 projection justifies a need for more than a handful of new employment opportunities.

16 **C. Response to Third Assignment of Error: The alternatives analysis**  
17 **demonstrated that the selected UGB expansion sites were as compatible**  
18 **with agricultural uses as other potential sites.**

19 Petitioners misunderstand Goal 14’s boundary location factors. They fault the  
20 County for failing to address agricultural compatibility per se, rather than asserting an error  
21 in the County’s analysis of the relative appropriateness of alternative UGB expansion areas,  
22 in view of the agricultural compatibility factor in context with other boundary location  
23 factors. Petitioners also raise a findings challenge to a legislative decision without asserting  
24 that the record, as distinct from the findings, lacks evidence as to compatibility.

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<sup>9</sup> Petitioners do not explain their assertion that ORS 195.025 and 195.036 require further coordination with other local governments.

1           Goal 14's boundary location factors require an alternatives analysis of the  
2 relative merits of potential UGB expansion areas. They call for a comparative, not an  
3 absolute, evaluation. In addition, as OAR 660-024-0060 states, "[t]he boundary location  
4 factors of Goal 14 are not independent criteria," but rather are considerations to be weighed  
5 and balanced in relationship to one another. For instance, a jurisdiction must consider  
6 whether urban uses in one UGB expansion area will be more or less compatible with farm  
7 uses than the same uses in another UGB expansion area. But the jurisdiction need not  
8 demonstrate that those urban uses *will be* compatible with agriculture. Nor must the  
9 jurisdiction select the UGB expansion area most compatible with farm uses, if other  
10 boundary location factors favor an alternative selection.

11           Consistent with Goal 14, the findings and the record here reflect an analysis of  
12 the relative appropriateness of alternative UGB expansion areas. The findings explain that  
13 all properties adjacent to the city limits were considered as alternative locations and that soil  
14 classifications and other site characteristics of all those properties were examined by the City,  
15 County, and DLCD staff. Rec. 36. Five specific alternative sites meeting the size and  
16 transportation access demands for the economic development strategy were considered. Rec.  
17 87-89, 129-142. All surrounding properties had primarily Class II soils. Rec. 36, 76, 89.  
18 Land containing "drainage ways and creeks" was excluded. Rec. 76. The conclusion was  
19 that similar impacts to farmland would occur with expansion in any direction. Rec. 36, 76.  
20 Many of the larger surrounding properties would have resulted in greater impact to farm land  
21 and resulted in lower efficiency, exceeding the employment need. Rec. 87. Others would  
22 adversely impact residential neighborhoods. Rec. 88. Also, the selected site, which adjoins  
23 the existing industrial district, was the most readily integrated into the City's service  
24 infrastructure. Rec. 95.

25           With those considerations, the County appropriately weighed and balanced the  
26 competing Goal 14 boundary location factors, including the agricultural compatibility factor.

1 All surrounding land was dominated by high-value, Class II soils. Extensive findings of the  
2 type suggested by Petitioners (e.g., crop spraying, runoff) were not required where all  
3 alternative UGB expansion areas would equally impact farm land.

4 **VI. CONCLUSION**

5 The County and City demonstrated that an employment need exists and chose  
6 UGB expansion sites that are the minimum realistically necessary to enable the City to attract  
7 new employment opportunities. The County adopted a reasonable population forecast—one  
8 more likely to be accurate than the optional safe harbor method—and properly coordinated it  
9 with the City and other jurisdictions. Finally, where all surrounding land was high-value,  
10 Class II farm land, the alternatives analysis appropriately concluded that impacts on  
11 agricultural use would be similar with any expansion parcel. For all of the above reasons,  
12 Respondent and Intervenor-Respondents ask LUBA to affirm the County's decision.

13 DATED this 23<sup>rd</sup> day of December, 2008.

14

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15

By: 

16

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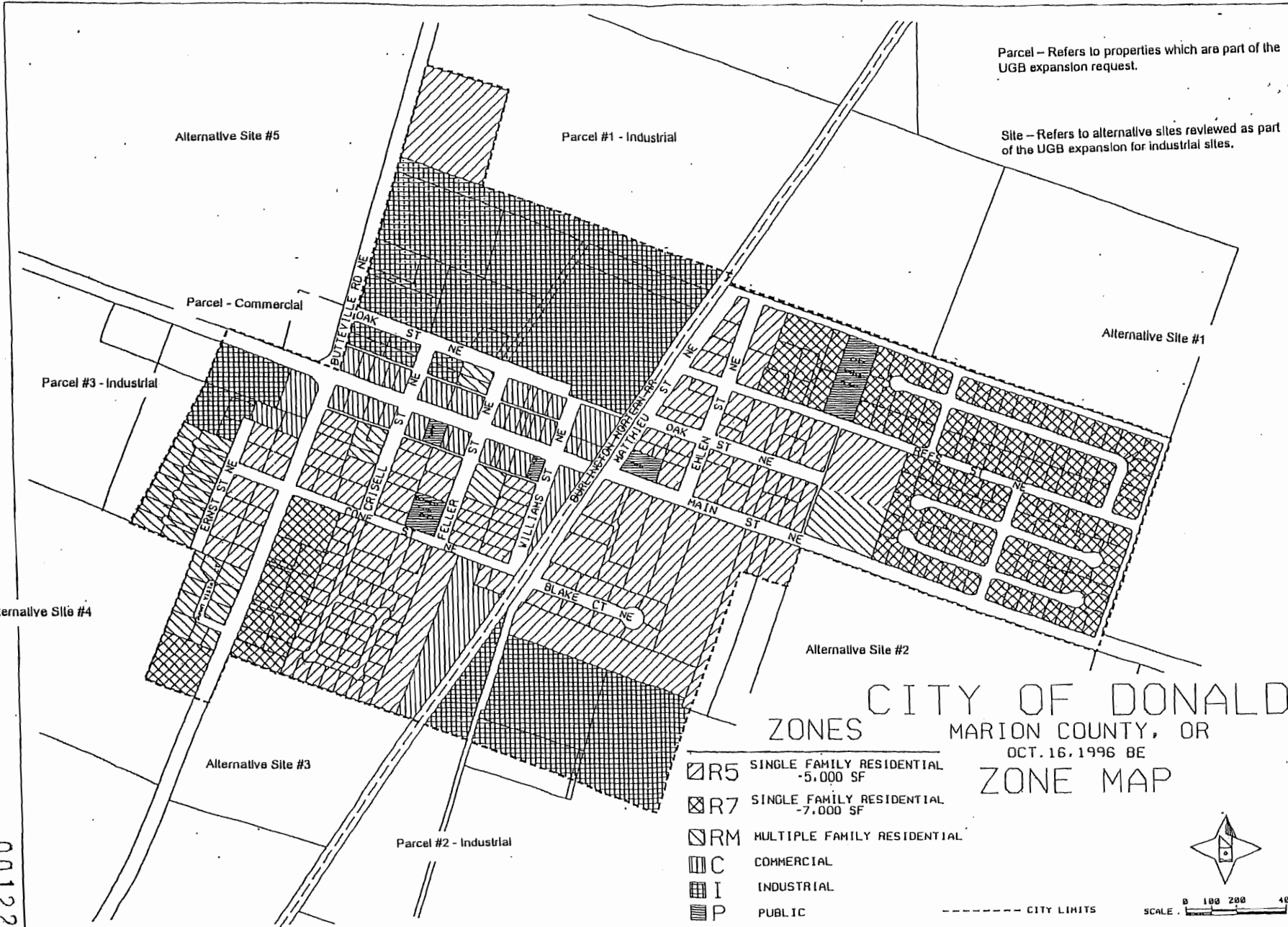
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APP 1

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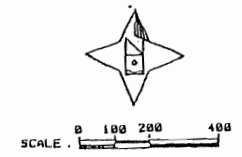
Parcel - Refers to properties which are part of the UGB expansion request.

Site - Refers to alternative sites reviewed as part of the UGB expansion for industrial sites.

CITY OF DONALD  
 ZONES MARION COUNTY, OR  
 OCT. 16, 1996 BE  
 ZONE MAP

- R5 SINGLE FAMILY RESIDENTIAL - 5,000 SF
- R7 SINGLE FAMILY RESIDENTIAL - 7,000 SF
- RM MULTIPLE FAMILY RESIDENTIAL
- C COMMERCIAL
- I INDUSTRIAL
- P PUBLIC

----- CITY LIMITS



**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on December 23, 2008, I filed the original and 4 copies of the attached Joint Response Brief of Respondent and Intervenor-Respondents by certified mail with the State Court Administrator at this address:

State Court Administrator  
Supreme Court Building  
1163 State Street  
Salem, OR 97301-2563

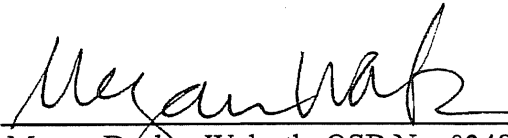
I also certify that on December 23, 2008, I served a copy of the attached Joint Response Brief of Respondent and Intervenor-Respondents by certified mail on all persons listed below:

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Respectfully submitted this 23<sup>rd</sup> day of December, 2008.

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