

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

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

**PETITION FOR REVIEW**

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**PETITION FOR REVIEW**

**I. Petitioners’ Standing**

Petitioners Marion County Farm Bureau and Friends of French Prairie have standing to challenge the land use decision below because they participated in that decision, orally and in writing, because the decision has a practical effect on them and because they filed a timely notice of intent to appeal the decision with the Land Use Board of Appeals (“LUBA” or “the Board”). R. 412 (Testimony of Friends of French Prairie), 414 (Testimony of Farm Bureau); ORS 197.830(2).

**II. Statement of the Case**

**A. Nature of Decision and Relief Sought**

Petitioners seek review of Marion County’s decision denominated “Marion County Notice of Adoption: Legislative Amendment (LA) 08-2”. On October 1, 2008, the Marion County Board of Commissioners adopted Ordinance No. 1270.

That Ordinance amended the Marion County Comprehensive Plan by concurring in and adopting the City of Donald Comprehensive Plan text and map amendments which: a) adopted an amended population projection; and b) expanded the City’s Urban Growth Boundary (UGB) to include an additional 42.5 acres in four parcels in order to meet alleged “employment land needs”. Petitioners object to the revised population projection and to the inclusion of one of those parcels, comprising about 27 acres of Exclusive Farm Use (EFU) land. Petitioners ask that the Board reverse or remand the adoption of the amended population projection and the County’s decision to

1 include the 27-acre parcel within the City's UGB. The County's Ordinance  
2 No. 1270 appears at pages 21-263 of the record, and a copy is attached  
3 hereto (bound separately). The decision became final on October 1, 2008,  
4 and Petitioners filed their Notice of Intent to Appeal on October 21, 2008,  
5 within the 21 days provided in OAR 661-010-0015(1)(a).

6 **B. Summary of Arguments**

7 **1. The City and County failed to base the UGB change on**  
8 **“demonstrated need to accommodate long range urban population” as**  
9 **required under Goal 14.** The County failed to implement Goal 14 because  
10 it based its decision on a speculative perceived potential to attract a  
11 warehouse and distribution facility rather than evaluating the actual  
12 employment needs of its population as required by Goal 14. Goal 14  
13 requires a coordinated demonstration of need to accommodate long range  
14 population and of need for employment opportunities for that population.  
15 The County sought to demonstrate “employment land need” without  
16 relating that need to its population projections or to any employment  
17 projection and went through the motions of projecting population without  
18 using those population projections to demonstrate need for employment  
19 lands during the 20-year planning period in any quantifiable way.

20 **2. The population projection adopted by the City and County**  
21 **does not meet the “coordination” or “safe harbor” requirements of rule**  
22 **and statute.** The City and County relied for their 20-year population  
23 projection on the “safe harbor” provision of OAR 660-024-0030(3), but they  
24 failed to comply with that provision because neither the City nor the County

1 provided "notice to all other local governments in the county" as required  
2 by OAR 660-024-0030(1), which is incorporated in OAR 660-024-0030(3).  
3 Notice of the UGB expansion was given to other local governments, but  
4 notice of the revised population projection, which the rule requires, was  
5 not.

6 Finally, as opponents pointed out in oral testimony to the county, the  
7 City held a hearing on a different, lower population projection and adopted  
8 it by ordinance, and never held a subsequent hearing to formally adopt the  
9 revised higher forecast. For this reason as well, the projection is not  
10 properly coordinated under ORS 195.036 and Goal 2. Nor did the City and  
11 County extend the existing population projection that ends in 2020 to 2028  
12 as required for "safe harbor" status under OAR 660-024-0030(3)(b). Instead,  
13 they agreed on a new projection based on the City's estimated 2007  
14 population, rather than extending the existing forecast as required by rule.  
15 For this additional reason, the population projection on which the decision  
16 relied does not comply with the controlling rule.

17 **3. The decision fails to apply the Goal 14 compatibility**

18 **factors.** Goal 14 requires the City and County to evaluate the compatibility  
19 of proposed urban uses with adjacent farm uses outside the UGB. The only  
20 finding in the decision that remotely addresses compatibility of the  
21 proposed new uses with surrounding farm uses is one in which the City notes  
22 that there is farmland in all directions, so compatibility (whatever it is)  
23 would be similar for any expansion and that traffic impacts for the proposed

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1 industrial use might be less than if the use were residential. That is not a  
2 compatibility assessment under Goal 14.

3 **C. Summary of Material Facts**

4 In July of 2008, the City of Donald adopted a new population forecast  
5 and approved an urban growth boundary expansion due to its perceived  
6 employment land needs. The City currently has 29.6 acres of industrial land  
7 within its UGB, 20.5 of which are developed, 9.1 of which are vacant or  
8 have potential for redevelopment. R. 428. Adding 38.2 industrial acres to  
9 the City, the current proposal would more than double the amount of  
10 industrial land within the Donald UGB. The proposal was “primarily in  
11 response to individual property owner requests” but was also intended to  
12 address what the City perceived as a deficit in developable industrial land.  
13 R. 427. Three of the parcels that the City included in the UGB expansion  
14 are for growth of current commercial and industrial employers in the city.  
15 *Id.* Petitioners do not object to the County’s decision for these three  
16 parcels. R. 414. The final parcel is 27 acres of Class II and III soil EFU land  
17 on French Prairie intended to lure an unspecified future warehouse/transfer  
18 facility. It is to the inclusion of this parcel of farmland within the UGB that  
19 petitioners object.

20 Marion County is the largest producer of agricultural products in  
21 Oregon, growing some 250 crops and commodities. R. 414. Agricultural  
22 products account for 25% of all Oregon exports. R. 416. French Prairie is  
23 considered to contain the best farmland in the state and “remains widely  
24 regarded as the heart of Oregon’s agricultural industry”. R. 566. Since it is

1 between Portland and Salem along I-5 it is often a target for development.  
2 There is concern that development on French Prairie will encourage the  
3 expansion of the Metro UGB south of the Willamette River and onto the  
4 Prairie. R. 413, 415.

5 The City proposed the expansion of its UGB to include the 27 acre  
6 parcel in hopes of attracting warehouse and distribution development.  
7 Other localities are also pursuing warehouse facilities. Woodburn is  
8 pursuing a UGB expansion to attract a warehouse and distribution center to  
9 land between Butteville Road and I-5. The Maletis brothers are trying to  
10 include Langdon Farms in the Metro UGB or have the land placed in tribal  
11 trust in order to attract a warehouse and distribution center to I-5. Salem is  
12 also seeking to attract a warehouse and distribution center to its Mill Creek  
13 Industrial Center a few miles further south along I-5. R. 565. This is all  
14 despite the fact that Woodburn's study of potential industries found that a  
15 warehouse and distribution industry survey "placed the Northwest as the  
16 lowest priority for expansion." R. 566.

17 The City of Donald formulated its employment land needs UGB  
18 expansion under the authority of Goal 9. It prepared an Employment  
19 Opportunity Analysis (EOA) as part of its Goal 9 analysis. R. 428. The City  
20 prepared a list of target industries based upon national economic trends and  
21 the proximity of the city to I-5 and a railroad. It targeted expansion of  
22 existing firms, trade and services, and warehousing and distribution. Donald  
23 then examined site requirements for the three targeted industries and found  
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1 its land supply wanting. Based upon this undersupply of land for the  
2 targeted industries, Donald proposed its UGB expansion. R. 409-11.

3 The City explicitly declined to base its UGB expansion proposal on any  
4 projected increase in population:

5 Since the City of Donald is not basing its need for employment  
6 land on population growth but rather on the need for specific  
7 sites to accommodate target industries identified in its  
8 [Employment Opportunities Analysis] EOA, a 20-year population  
9 forecast to the year 2028 is not a crucial factor in the land need  
10 analysis under the UGB amendment proposal.

11 R. 32. The City and County went through the motions of a population  
12 projection but did not rely on that projection in proposing an expanded  
13 UGB. On the other hand, the City found:

14 The subject analysis addresses the employment land needs (in  
15 this case, specifically industrial land needs) for a 20-year  
16 population projection.

17 R. 77.

18 As part of its employment lands analysis, Donald projected its  
19 population growth for a 20-year planning horizon. Initially, Donald  
20 presented a 20-year population estimate of 1,255 based on the safe-harbor  
21 provision of the rule, which was computed by taking the population the City  
22 projected in coordination with Marion County for 2020 (1,050) and applying  
23 the annual growth rate that it projected in coordination with the County  
24 (2.25%). However, in the UGB amendment, the City changed the  
25 computation for its 20-year population growth estimate at the request of  
26 Marion County. Instead of extending its original 20-year population  
27 projections done in coordination with Marion County, it took its estimated

1 2007 population of 995 and used the annual growth rate from the  
2 coordinated 20-year estimate to reach a projected population of 1,588 - an  
3 increase of 333 (or 27%) from its initial projection. R. 431-32. Donald and  
4 the County identified this new estimate as a "safe harbor" estimate under  
5 OAR 660-24-030(3). R. 8, 431. They did not notify the other cities in the  
6 County of the new population projection. R. 567.

7 **D. The decision is a Land Use Decision**

8 The County's adoption of Ordinance No. 1270 is a final decision by a  
9 local government amending the Marion County Comprehensive Plan. It is  
10 therefore a "land use decision" under ORS 197.015(10)(a)(A)(ii).

11 **III. ARGUMENT**

12 **A. INTRODUCTION**

13 Almost one third of the 29.6 acres of industrial land inside the existing  
14 City of Donald UGB is available for development or redevelopment. The  
15 City's proposal to extend its UGB by 11 acres to accommodate the expansion  
16 of existing industrial enterprises will increase the available industrial land in  
17 Donald by another 37%. Petitioners do not object to this part of the City's  
18 proposal. However, the speculative hope for an industrial warehouse and  
19 distribution facility is no basis for the urbanization of an additional 27 acres  
20 of French Prairie farmland. As pointed out at the hearing below, when  
21 hopes for warehouse development on near-freeway sites go unfulfilled, as is  
22 likely in uncertain economic times, the too-frequent outcome is the seeding  
23 of these fallow urbanized lands with big-box, fast food, mini storage,  
24 housing or other uses not worthy to replace French Prairie's established

1 industry—agriculture on prime Willamette Valley farmland. R. 415 (Mr.  
2 Friedman); 417 (Mr. Wendolowski).

3 **B. FIRST ASSIGNMENT OF ERROR**

4 **The City and County failed to base the UGB change on**  
5 **“demonstrated need to accommodate long range urban**  
6 **population” as required under Goal 14. The decision violates**  
7 **Goal 14, Goal 9, Goal 2, Part I, and OAR chapter 660,**  
8 **divisions 9 and 24.**

9 Goal 14 requires a demonstration of need before prime farmland (or  
10 other land) may be urbanized:

11 Establishment and change of urban growth boundaries shall be  
12 based on the following:

13 (1) Demonstrated need to accommodate long range urban  
14 population, consistent with a 20-year population forecast  
15 coordinated with affected local governments; and

16 (2) Demonstrated need for housing, employment opportunities,  
17 livability or uses such as public facilities, streets and roads,  
18 schools, parks or open space, or any combination of the need  
19 categories in this subsection (2).

20 The two “need” factors in Goal 14 are stated in the conjunctive —  
21 they both apply and must both be satisfied. A local government may not  
22 expand its UGB to create “employment opportunities” without considering  
23 the needs of its population over the 20-year planning period.

24 The Goal 14 rule is explicit that the UGB must be based on a 20-year  
population forecast, and that the UGB must provide land for employment

1 and housing needs over that 20-year period, no more and no less. OAR 660-  
2 024-0040 (1) provides:

3 "The UGB must be based on the adopted 20-year population  
4 forecast for the urban area described in OAR 660-024-0030, and  
5 must provide for needed housing, employment and other urban  
6 uses such as public facilities, streets and roads, schools, parks  
7 and open space over the 20-year planning period consistent with  
8 the land need requirements of Goal 14 and this rule."

9 The rule states that at periodic review, a UGB must provide  
10 employment lands for a 20-year period:

11 "When evaluating or amending a UGB, a local government must  
12 inventory land inside the UGB to determine whether there is  
13 adequate development capacity to accommodate 20-year needs  
14 determined in OAR 660-024-0040. \* \* \* For employment land, the inventory must in  
15 for industrial or other employment use. . . ."  
16 OAR 660-024-0050(1).

17 Oregon towns and cities are where people live and work. They are not free-  
18 floating employment centers generating profit for landowners without  
19 regard for the needs of their citizens:

20 Employment land need may be based on an estimate of job  
21 growth over the planning period; local government must provide  
22 a reasonable justification for the job growth estimate but Goal  
23 14 does not require that job growth estimates necessarily be  
24 proportional to population growth.

OAR 660-024-0040(5) (emphasis added).

Statewide planning Goal 9, (Economic Development), complements  
Goal 14. Goal 9 and its administrative rules direct and guide cities in how  
to assess their economic development needs and potential, inventory their  
employment lands, and provide land to meet their employment needs,  
within a 20-year UGB. The Goal 9 rule defines "total land supply" inside a

1 UGB as “the supply of land estimated to be adequate to accommodate  
2 industrial and other employment use for a 20-year planning period.” OAR  
3 660-009-0005(13); *see also* OAR 660-009-0025 (2) .

4       The problem with the County’s decision below is that there is no  
5 relationship quantified anywhere in the record between the employment  
6 needs of the people of Donald and the addition of 27 acres of prime  
7 farmland to the industrial land inventory inside the UGB. Goal 14 does not  
8 require that job growth estimates be necessarily proportional to population  
9 growth, but this record offers no job growth estimates at all nor is there any  
10 estimate of how much industrial land will develop over the 20-year planning  
11 period. City Manager Janet Lane says the City’s “goal is to provide jobs for  
12 the citizens” (R. 411), and that indeed should be the object of any  
13 employment lands expansion (unless it is to keep existing jobs in the  
14 jurisdiction). However, there is no evidence in this record to suggest any  
15 relationship between the anticipated needs of the projected population  
16 growth and the warehouse the City hopes to attract to this Class II and III  
17 farmland. There is no showing of the number of jobs needed nor of the  
18 number of jobs the desired warehouse might provide.

19       In fact, the City and the County disavow any reliance on population  
20 projections. While they run through population projections in what seems  
21 to be an effort to satisfy Goal 14, they admit repeatedly that those

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1 projections really have nothing to do with the alleged need for employment  
2 land that drives this proposal:

3         Since the City of Donald is not basing its need for employment  
4         land on population growth but rather on the need for specific  
5         sites to accommodate target industries identified in its  
6         [Employment Opportunities Analysis] EOA, a 20-year population  
7         forecast to the year 2028 is not a crucial factor in the land need  
8         analysis under the UGB amendment proposal.

9 R. 32. As Les Sasaki, the County's Principal Planner, testified at the  
10 hearing below, the City "did not choose" to consider "population growth  
11 relative to employment growth" and "did not look at employment growth in  
12 relation to population growth." R. 408-09. City Consultant Walter  
13 Wendolowski, testifying in support of the proposal, conceded that the  
14 City's population projection "did not have an impact with regard to  
15 industrial land". R. 409.

16         The City recognized the requirement of OAR 660-024-0040 that "the  
17 UGB must be based on the adopted 20-year population forecast for the  
18 urban area . . .". Indeed, the City claimed at one point that

19         The subject analysis addresses the employment land needs (in  
20         this case, specifically industrial land needs) for a 20-year  
21         population projection.

22 R. 77. However, as above, the evidence is to the contrary. The City and  
23 County witnesses repeatedly conceded that there was no actual relationship  
24 between the 20-year population projections and the 27-acre UGB expansion  
for industrial land.

       The City and County seemed to confuse the need for employment  
lands with the availability of such lands. For example, the City responded

1 to the requirement of OAR 660-024-0040(5) for a “determination of the  
2 need for a short-term supply of land for employment uses” with a finding  
3 that, with the approval of this proposal, there would be land available for  
4 industrial development. R. 83. Thus “the immediate and short term needs  
5 of the community will be met through this amendment.” Id. That is not a  
6 “determination of need”. It assumes the need and proceeds to find that it  
7 will be met.

8 As argued below to the County, the City’s proposal to add 27 acres of  
9 industrial land is not based on a 20-year population projection nor, for that  
10 matter, on a 20-year projection of employment land needs. R. 567.

11 Nothing in the record would support any assertion about how much  
12 employment land is needed or when. The general assertion that Donald  
13 would like to provide more local employment opportunities for its residents  
14 is as far as this record goes. There is no way to tell from the record how  
15 many jobs are needed, how many might be provided by the hoped-for  
16 warehouse development or why the proposal is to add 27 acres rather than  
17 2700 acres to the UGB.<sup>1</sup>

18 The proposal speaks in terms of “the needs of the targeted industry”,  
19 not the needs of the citizens of Donald. R. 87. The primary flaw in the  
20 city’s implementation of the targeted industries approach is that it is not

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22 <sup>1</sup>Opponents testified at the hearing below that the 27-acre proposal  
23 would create four times as much industrial land per resident as the City has  
24 maintained in the past. R. 415-16. Nothing in the record rebuts that  
assertion.

1 tied to the city’s projected employment, or to a 20-year time span. Goal 2,  
2 Part I requires “an adequate factual base” for all land use decisions. There  
3 is nothing in the record that ties the targeted industries method to a 20-  
4 year land supply, 20-year employment projections, 20-year population  
5 projections or any other factual basis in any other time frame. The proposal  
6 identifies warehouse distribution as a target industry, but fails to take the  
7 next legally required step – translating that idea into a factually based 20-  
8 year land supply need for employment for the citizens of Donald.

9 The logic of the City’s proposal is “We need more local jobs. A  
10 warehouse facility might be good because we’re near the highway and the  
11 railroad. A warehouse needs 25 to 50 acres. Let’s add 27 acres to the UGB  
12 to satisfy the needs of warehousing.” That logic fails to demonstrate any  
13 quantifiable need for employment lands related to population or projected  
14 employment in the City. The City’s proposal fails to comply with Goal 14,  
15 Goal 9, Goal 2 or chapter 660, and the County’s decision adopting it should  
16 be remanded.

17 **C. SECOND ASSIGNMENT OF ERROR**

18 **The Population Projection adopted by the City and County**  
19 **does not meet the “coordination” or “safe harbor”**  
20 **requirements of rule and statute. The UGB expansion violates**  
21 **Goal 14 because Donald’s Population Projection was**  
22 **Improper.**

21 The adopted comprehensive plan amendments include a revised  
22 population forecast for the city of Donald of 1,588 in the year 2028. Even if  
23 the City and County had based the UGB expansion on the revised population  
24 projection, both the expansion and the revised population forecast would be

1 illegal because the forecast was neither “coordinated” nor compliant with  
2 the safe harbor provisions in the applicable rule. “The UGB must be based  
3 on the adopted 20-year population forecast for the urban area.” OAR 660-  
4 024-0040(1).

5 Counties must adopt and maintain a coordinated 20-year  
6 population forecast for the county and for each urban area  
7 within the county consistent with statutory requirements for  
8 such forecasts under ORS 195.025 and 195.036 . . . . In  
9 adopting the coordinated forecast, local governments must  
10 follow applicable procedures and requirements in ORS 197.610  
11 to 197.650 and must provide notice to all other local  
12 governments in the county. The adopted forecast must be  
13 included in the comprehensive plan or in a document  
14 referenced by the plan.

15 OAR 660-024-0030(1). The City and County have a coordinated population  
16 forecast through 2020 but not through the year 2028—the 20-year planning  
17 horizon for these UGB amendments. The coordinated 2020 forecast is 1,050  
18 and was adopted by Marion County Ordinance No. 1091 on October 21, 1998.  
19 R. 45. The coordinated population forecast was adopted less than 10 years  
20 prior to the adoption of these amendments.

21 As part of its adopting ordinance for these proposed UGB  
22 amendments, Donald adopted a population forecast of 1,588 for 2028. The  
23 city applied a 2.25% annual growth rate to its 2007 PSU population estimate  
24 of 995. The city contends that this is a “safe harbor” population forecast

1 under OAR 660-024-0030(3). R. 45. That contention is wrong. OAR 660-  
2 024-0030(3) provides:

3 As a safe harbor, if a coordinated population forecast was  
4 adopted by a county within the previous 10 years but does not  
5 provide a 20-year forecast for an urban area at the time a city  
6 initiates an evaluation or amendment of the UGB, a city and  
7 county may adopt an updated forecast for the urban area  
8 consistent with this section. The updated forecast is deemed to  
9 comply with applicable goals and laws regarding population  
10 forecasts for purposes of the current UGB evaluation or  
11 amendment provided the forecast:

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

15 (b) Extends *the current urban area forecast* to a 20-year  
16 period commencing on the date determined under OAR 660-024-  
17 0040(2) by using the same growth trend for the urban area  
18 assumed in the county's current adopted forecast.

19 (Emphasis added).

20 The population forecast of 1,588 in 2028 adopted by Donald does not  
21 comply with the preceding "safe harbor provisions." First, it does not  
22 comply with OAR 660-024-0030(3)(a), which requires adoption "in  
23 accordance with the notice, procedures and requirements described in  
24 section (1) of this rule." Among other provisions, section (1) requires that  
"local governments must provide notice to all other local governments in  
the county." OAR 660-024-0030(1).

Neither Donald nor Marion County notified the other cities in Marion  
County that they were adopting a revised population forecast for Donald.  
While a notice from the County was sent to all cities within it, the notice  
referenced only the UGB expansion and made no mention of the revised  
population forecast. Nothing in the record below demonstrates that notice

1 of the revised population forecast was given to other Marion County cities.  
2 Since there was insufficient notice to the other affected jurisdictions, the  
3 county cannot meet its requirements under ORS 195.025 and 195.036 to  
4 properly coordinate the planning activity. Under OAR 660-024-0030(3)(a)  
5 the notice was deficient and thus the population projection made by Marion  
6 County and the City of Donald is not a legal "safe harbor" population  
7 projection.

8 The forecast also does not comply with OAR 660-024-0030(3)(b),  
9 which protects a forecast under safe harbor provisions if the forecast  
10 "extends the current urban area forecast" to a 20-year period by using the  
11 same growth trend for the urban area assumed in the county's current  
12 adopted forecast. The county's current adopted urban area forecast  
13 projects a population of 1,050 in 2020, based on an assumed annual growth  
14 rate of 2.25%. Rather than extend this forecast, as required by the rule, the  
15 city (and county staff) applied the annual growth rate of 2.25% to Donald's  
16 2007 PSU population estimate of 995. As the city concedes in the UGB

17 Amendment Proposal:

18 [The] 'safe harbor' estimate. . . allows the extension of the  
19 same growth rate as the study currently in place. Therefore,  
20 continuing with an assumed growth of 2.25%, extending the  
21 population trend from 2020 to 2028 arrives at a population  
22 estimate of 1,255. . . The County suggested a population  
23 estimate of 1,588 for 2028 as more realistic, given current  
24 estimates.

22 The City of Donald concurs and accepts Marion County's 2028  
23 estimate of 1,588 as its 'safe harbor' population.

1 R.45. As the City concedes, an extension of the “current urban area  
2 forecast” would result in a population estimate of 1,255. The estimate of  
3 1,588 that Donald and the County formulated is not an extension of the  
4 previous estimate as required by the “safe harbor” provision of OAR 660-  
5 024-0030(3)(b), but rather a new estimate based upon 2007 population  
6 numbers. *Id.*

7 Finally, as opponents pointed out in oral testimony to the county, the  
8 City held a hearing on a different, lower population projection and adopted  
9 it by ordinance. The City never held a subsequent hearing to formally adopt  
10 the revised higher forecast. For this reason as well, the forecast is not  
11 properly coordinated under ORS 195.036 and Goal 2. The County did not  
12 coordinate the forecast with the local governments within its boundary as  
13 required by ORS 195.036. The City either did not hold a public hearing on  
14 the forecast as required by Goal 1 and Goal 2 or did not incorporate it into  
15 its plan, as required by 660-024-0030(1) and (3).

16 Because the 2028 forecast of 1,588 did not extend the current  
17 adopted forecast for 2020, and because it was adopted without regard to  
18 the notice and coordination requirements in statute and rule, it is not a  
19 “safe harbor” population forecast under OAR 660-024-0030(3) despite the  
20 City’s assertions to the contrary. The City and County have therefore  
21 violated the population forecasting methodology required under Goal 14 and  
22 its implementing regulations, and the County’s decision should be  
23 remanded.

24



1 "have similar impacts" does not address compatibility. The suggestion that  
2 "industrial designation" would create traffic impacts less severe than  
3 residential uses might is unsupported by any evidence and does not seriously  
4 address the relationship between industrial and agricultural use. There is  
5 no description of the crops grown on nearby farmland, the types of farming  
6 practices employed or the scale of farming on adjacent tracts. There is no  
7 discussion of the impacts of farming, livestock, crop spraying, runoff or  
8 other agricultural activities or impacts on the hoped-for warehouse facility.  
9 A comparison of industrial traffic impacts with those that might be imposed  
10 by a different (residential) use not contemplated for the relevant tract does  
11 not address the compatibility factor.

12 The County's decision should be remanded for proper application of  
13 the Goal 14 compatibility factor.

14 **IV. CONCLUSION**

15 For each of the three reasons discussed above, the County's decision  
16 amending its Comprehensive Plan to allow the expansion of the City of  
17 Donald UGB should be remanded.

18 Dated December 3, 2008.

19 **SWANSON THOMAS & COON**

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on December 3, 2008, I filed the original of this Petition for Review together with four (4) copies, with the Land Use Board of Appeals, 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552, by first class United States mail.

I also certify that on December 3, 2008, I served a true and correct copy of this Notice of Intent to Appeal on the following by first class mail:

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DATED: December 3, 2008.

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