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Via email: [alyssa.boles@co.linn.or.us](mailto:alyssa.boles@co.linn.or.us)

Linn County Board of Commissioner  
c/o Alyssa Boles, Planning Manager  
Rm 114, Linn County Courthouse  
PO Box 100  
Albany, OR 97321

RE: Case No. **PLN-2022-00807**

Dear Commissioners:

The City of Millersburg (herein the "City" or "Applicant") proposes a Linn County Comprehensive Plan (Plan) map amendment and Zoning map amendment in conjunction with the City's corresponding City of Millersburg Comprehensive Plan Map amendment and zone change and an urban growth boundary (UGB) amendment. The UGB exchange will add and remove properties within the City UGB. The total area of land to be added to the UGB is 162.89 acres. The total area to be removed from the UGB is 167.46 acres. The City approved the proposed UGB amendments per City Ordinance No. 199-22, adopted October 11, 2022.

In addition to the City's approvals, Linn County Planning Staff has reviewed and recommended approval of the process. The purpose of this letter is to respond to certain comments from 1000 Friends of Oregon and Friends of Linn County (collectively "Friends"). The comments from Friends do not respond to the applicable criteria. They request a misapplication of applicable law, or they simply disagree with the evidence provided in the record. This letter will summarize and respond to each comment from the letter provided by Friends dated January 10, 2023.

### **Goal 14 Policy – General**

Friends make general arguments that the proposed UGB exchange "is exactly the kind of parcel-by-parcel, individual landowner-driven decision-making that the Oregon statewide planning program was designed to avoid." Friends' comments do not adequately raise any issue with any mandatory approval criterion with enough specificity that the City or County staff can respond. The City disagrees with the assertion that the UGB exchange is not consistent with the designs and intentions of Goal 14. Friends' assertion contradicts the plain text of OAR 660-024-0070, which implements Goal 14 as it pertains to UGB exchanges.

OAR 660-024-0070 specifically allows for UGB property exchanges, and as explained in City and County staff reports, this UGB exchange fully follows all requirements of these and all other Goal 14 provisions. The purpose of Goal 14 is “[t]o provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.” The proposal of a UGB exchange (exchanging lands previously identified as developable that are now constrained from development with the same amount of unconstrained land) avoids a needless expansion of the UGB and is an efficient way addressing the purpose of Goal 14. It follows the plain text of OAR 660-024-0070. The staff report and the support letter from DLCDC both show full consistency with all state requirements, including Goal 14 and its implementing rules.

### **Noncompliance with Legal Requirements**

Friends assert that the staff report contains inadequate findings of fact regarding the applicable criteria. Page 1 of the staff report dated January 17, 2023 to the Board of Commissioners (herein the “Report”) identifies that Linn County Land Development Code (LCC) 921.822(A) and 921.874 and the Oregon Statewide Planning Goals contain the applicable decision criteria. Friends assert findings must be adopted regarding “Goal 14, state statutes (ORS 197.298), LCDC rules (OAR 660 Division 24) and city and county comprehensive planning requirements for UGB amendments, including Linn County Comprehensive Plan and Land Use Development Code (Section 921.822 and 921.874), Millersburg’s Comprehensive Plan and Development Code (Sections 5.09.050 and 5.10.050) and the UGMA between Millersburg and Linn County Land Development Criteria.”

As the Report identifies, the City’s findings of fact and conclusions have detailed findings regarding Oregon Statewide Planning Goals, state law, and OAR 660, Division 24, as applicable, including alternative site analysis. The County may adopt those findings in full and incorporate them into the County’s decision by reference. Once incorporated, the County will address the comments of Friends adequately.

### **Farmland Protection Policies**

Friends’ comments renew several assertions regarding the compliance with alternative site analysis under OAR 660, Division 24, and ORS 197.298, 197A.320 (non-Metro cities). Friends first assert the County errs in failing to show compliance with OAR 660-024-0065. Friends’ comments are not a basis for the County to deny the proposal. OAR 660-024-0065 requires the City to make certain findings of fact when “considering a UGB amendment to accommodate a need deficit identified in OAR 660-024-0050(4).” OAR 660-024-0065. This rule does not apply to the County’s decision and is not a basis for denial of the proposed comprehensive plan map amendment and zone change.

Even if applicable, the County may adopt the City’s findings and incorporate them into its decision, which addresses the criteria for study area and alternative site analysis under OAR 660-024-0065. Moreover, ORS 197.298 only applies to lands inside the Metro area. The requirements of ORS 197A.320 are not requirements for a County to follow; they are requirements for LCDC to use in creating OARs, which the City followed in its decision. Friends make no argument explaining how implementing rules of LCDC contradicts ORS 197A.320.

ORS 197.320A.320(7) provides "Notwithstanding any other provision of this section, the commission may adopt rules that specify circumstances under which a city may exchange land within the urban growth boundary of the city for land that is outside of the urban growth boundary and that is designed to avoid adverse effects of an exchange on agricultural or forest operations in the surrounding area." LCDC adopted and amended OAR 660-024-0070 to implement ORS 197A.300 - 197A.325. Conformance with OAR 660-024-0070 addresses the City's obligations under ORS 197.320A as a matter of law. Friends' comments regarding ORS 197.320A.320 do not provide a basis for the County to deny this proposal.

The City's findings of fact, which the Report adopts, and the County may adopt in full, explain the requirements for a UGB exchange under OAR 660-024-0070. First, OAR 660-024-0070(3)(a)(B) states the "amount of employment land added to the UGB to meet an employment need is substantially equivalent to the amount of employment land removed." Determining the amount of land required to be added and removed to be "substantially equivalent" is entirely limited to analysis of acreage size of land exchanged. OAR 660-024-0070(3)(a)(B) is not a requirement for findings about the suitability of the land for any particular use. Second, OAR 660-024-0070 (3)(b)(B) requires the properties' Comprehensive Plan, land use, and zoning designations to be the same when exchanged. The City's decision and County's decision will accomplish these requirements. Nothing in the comments from Friends supports denial by the County of the proposal based on the requirements of OAR 660-024-0070.

The City's Comprehensive Plan and OAR 660-024-0067(2) prioritize the retention of higher soil classes. This is included in the Report, Exhibit A, page 91. The concept of preserving property with higher soil classifications is intended to be a method of comparing potential properties when considering the expansion of an UGB. Soil classes were reviewed as a way to differentiate the alternative sites and the two exchange properties. As explained in the analysis, the alternative sites and the two exchange properties all contained mostly Class 1 soils. All of the alternative sites and the two exchange properties are equally fourth-priority properties. Further classification based on soils or farmability is not required and is not a basis for denial of the requested proposal. The comments from Friends identify no local or state law supporting such an assertion.

The preference to farm one property over another because one property may be more profitable or have fewer burdens is not an applicable factor under state or local law. The size is substantially the same. The soil classifications are the same. The designations will also be the same. The requested approval follows the local and state laws identified by Friends' comments.

### **Impact on Commercial Agricultural Land Base**

Comments from Friends assert that the proposal contradicts the compatibility requirements of LCC Section 921.874(A)(2) and Linn County Comprehensive Plan 905.610(7). The Report has detailed findings explaining why future industrial uses will be compatible with surrounding uses once developed under the City's development standards. Traditional impacts of farming on surrounding uses are often associated with noise, dust, truck and farm equipment traffic, and odors. These uses will not impact future industrial uses in a significant way. Similarly, future industrial uses will be developed under the City's site plan review and zoning requirements. The City has existing industrial uses adjacent to farming and residential uses without adverse

impacts. For example, the City owned industrial land has a long history of being farmed adjacent to existing farm uses and has operated as a transitional use to new industrial uses. The local and state development regulations will ensure impacts of the future uses do not significantly impact the surrounding uses. The proposal will increase the amount of land zoned EFU, and the soil classification of the two properties are both predominantly Class II soils. The property owner of Site B has not objected to the proposal and has indicated that it may continue its existing farm operations on other lands. Similarly, the property owner of Site B has expressed an interest in farming Site A. The proposal is for an exchange of lands that are contiguous and are all in large tracts. The evidence in the record supports the staff's recommendation that the future industrial uses may be made compatible with the surrounding uses and the exchange of properties will not adversely impact the overall land use pattern of the area.

### **Asserted Violation of UGMA**

The comments from Friends assert that the County has violated the procedures required under the UGMA; however, these comments do not provide a basis for denial or remand of the application.

Under the City's procedural code, a Type IV proposal must have hearings before the City Planning Commission and the City Council. Similarly, the County's Development Code requires hearings before the County Planning Commission and the County Board of Commissioners. This is the fourth public hearing for the proposal. The UGMA contradicts the requirements of both jurisdictions' procedural codes. It provided for a shorter review time with both jurisdictions acting at the same time. Based on the UGMA, the Planning Commission review by the City was not required and the County Planning Commission must only provide comments. Thus, the modified path provides more opportunity for public input because it adds two more opportunities for public hearings. Given the inconsistencies of the applicable codes and the UGMA, the current procedure provided for greater notice and greater opportunities for participation to give evidence and testimony. No party's substantial right has been prejudiced, and the comments from Friends provide no such explanations. The comments from Friends do not provide a basis for denial of the proposal.

### **Conclusion**

The City requests the County to approve the proposal and adopt findings of fact and conclusions of law consistent with the comments of the City in this letter.

Sincerely,

Alan M. Sorem  
Of Counsel – City Attorney