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## **Notice of Withdrawal**

### ***I. Withdrawal Notice***

On March 14, 2023, the Linn County Board of Commissioners (the "Board") voted to deny the proposed comprehensive plan map amendment and zone change request under Case No. PLN-2022-00807. On March 31, 2023, the City of Millersburg (the "City") asked for the Board to reconsider its preliminary decision and meet with the City under Linn County Ordinance 80-163, amended by Ordinance 81-344. The Board directed staff from Linn County (the "County") to meet with staff from the City to discuss these requests before the adoption of a final land use decision. Following this meeting, Commissioner Nyquist provided a letter to the City declining the request for reconsideration or further meetings, stating such actions cannot occur until after a final land use decision has been adopted by the County. The City hereby notifies the County that the City's request for a comprehensive plan map amendment and zone change map amendment are withdrawn under consolidated land use application No. PLN-2022-00807. LCDC 921.160(C).

In addition to this notice of withdrawal, the City provides the following comments to respond to unsubstantiated statements made during the deliberations and provide direction to the parties as to options for satisfaction of their planning obligations.

### ***II. The Reasoning Offered by the Board for Denial of the Application is Not Supported by the Record***

During the hearing on March 14, 2023, Commissioners Roger Nyquist and Sherri Sprenger explained their reasoning for denial was based on LCC 192.874(7). In addition to noting the proposal was unpopular with many local farmers based on the size of the UGB amendment, they cited the potential contamination of the former IP site as their reason for the denial. In his remarks, Commissioner Nyquist mentioned potential contamination concerns with ponds on the current IP property, which are not a part of the proposed UGB transfer, as the reason for denial.

The record shows the property to be included in the County's agricultural designation was used by the former property owners during operation of the Willamette Industries Paper Mill for limited uses. During the operation of the mill by Willamette Industries, Weyerhaeuser Corporation, and International Paper, effluent from the mill was treated and discharged to the Willamette River under a DEQ industrial wastewater discharge permit. In accordance with the permit, during times of low flow in the Willamette River,

primarily during the summer months, the effluent was not allowed to be discharged directly into the Willamette River due to temperature concerns. During those times, the property proposed to be removed from the City's UGB was used as a "rapid infiltration" basin. The use of this property was mistakenly described by Linn County Planning staff during the hearing on March 14, 2023, as having been utilized for the "filtration" of the mill's effluent, implying it was used to filter out contaminants. The record does not support these statements.

During the Willamette River's low flow periods, when water normally discharged directly into the river was diverted to the rapid infiltration basins, it was also used to irrigate property owned by the companies located north and east of the rapid infiltration basin. This water was pumped from the aeration pond referenced by Commissioner Nyquist as a potential concern for contamination.

The property proposed to be brought into the UGB through the swap process was previously owned by Willamette Industries before the current owner, Willamette Valley Land, LLC. This property was irrigated during the summer months with the same water applied to the rapid infiltration basins through 2014. The two properties subject to the UGB swap are identically situated in this case, and there is no evidence of environmental constraints on farming use for either of the properties.

Additionally, the County previously owned the property that generated the effluent (former mill site and current intermodal facility). If the County is aware their property was responsible for generating hazardous substances that affected the surrounding surface, groundwater, and/or properties, the County is liable for any damages and must remediate such hazards. The City requests the County disclose any such reports or information substantiating these assertions or issue a retraction acknowledging there is no evidence of environmental contamination on the subject properties.

### ***III. Expectations Going Forward***

After consultation with the City, the County processed Case No. PLN-2022-00807 as a Type III B application. The City was the applicant, and the County was the quasi-judicial body reviewing the application. It is now clear that that the County erred in processing the application in this manner. The County should have initiated a legislative comprehensive plan map amendment and zone change. The County is the only party who can cure this error. It must move forward with its own comprehensive plan map amendment and zone change to whatever comprehensive plan map designation and zoning the County considers most appropriate for Site A. The County should be aware, its current GIS zoning map already identifies Site A as zoned Exclusive Farm Use (EFU) notwithstanding the Commissioners vote to deny Case No. PLN-2022-00807.

The City has already removed Site A from the City's limits and adopted an ordinance designating new comprehensive plan map and zoning map designations for Site B. See Ordinance 197-22, adopted August 23, 2022 (de-annexation) and 199-22, adopted October 11, 2022 (UGB amendment). These decisions are not subject to review by the County.

ORS Chapter 197 and its implementing rules grant the Oregon Land Conservation and Development Commission (LCDC) with exclusive jurisdiction to review city land use decisions affecting UGBs greater than 50 acres such as this case. LCDC has exclusive jurisdiction to review the City's UGB amendment decision.

The County misconstrued its role in this process when the Commissioners identified the size of the UGB adjustment as part of their reasoning in denying Case No. PLN-2022-00807. No statute or administrative rule provides the County authority to prohibit, review, delay, or otherwise veto a UGB amendment by the City. It is not the City's obligation to rezone and redesignate Site A. It is the County's sole obligation to adopt appropriate comprehensive plan map amendment designations and zoning for the properties already removed from the City's limits. The County has no further role in the UGB amendment process.

