



**Rules of Conduct for Public Meetings**

No person shall be disorderly, abusive, or disruptive of the orderly conduct of the meeting. Microphones will be muted, and webcams will be turned off for remote participants unless called upon to speak or during public comment period.

Persons shall not comment or testify without first receiving recognition from the presiding officer and stating their full name and city of residence.

During public hearings no person shall present irrelevant, immaterial, or repetitious testimony or evidence.

There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the meeting. If online participant(s) disrupt the meeting, the participant(s) microphone and webcam will be turned off. If disruption continues, the participant(s) will be removed from the meeting.

*This meeting is being recorded for public review on the City of Millersburg website.*

**PLANNING COMMISSION WORK SESSION**

Millersburg City Hall  
4222 NE Old Salem Road, Millersburg, OR 97321  
October 4, 2022 @ 6:00 p.m.

Planning Commission meetings are in-person. Remote access continues to be available. Instructions for joining are at <https://www.cityofmillersburg.org/bc-pc/page/planning-commission-meeting>. If you need additional support, please contact City Hall prior to 5:00 p.m. on Monday, September 19.

Meeting link to join via computer:

<https://aspencu.accessionmeeting.com/j/1167491335>

Phone number to join meeting: 503-212-9900

Meeting ID: 116 749 1335

A. CALL TO ORDER

B. ROLL CALL

C. MEETING MINUTE APPROVAL

- 1) Approval of September 20, 2022, Planning Commission Work Session Minutes  
Action: \_\_\_\_\_

D. PUBLIC HEARING

File No: DC 22-01 Urban Growth Boundary Amendment (Comprehensive Plan Amendment) & Land Use/Zoning designations

The City of Millersburg is proposing an Urban Growth Boundary (UGB) swap. The Land Use designation will remain the same for both properties and will consist of a Comprehensive Plan Map and Zoning Map Amendment.

Action: \_\_\_\_\_

E. PLANNING UPDATE

F. ADJOURNMENT

Upcoming Meeting(s):

<https://www.cityofmillersburg.org/calendar>

*If you have a disability that requires accommodation to attend or participate, please notify the Millersburg City Hall in advance by calling 458-233-6300.*



## PLANNING COMMISSION WORK SESSION MINUTES

4222 NE Old Salem Road

Millersburg OR 97321

September 20, 2022

6:00 pm

A. CALL TO ORDER: Commission Chair Anne Peltier called the meeting to order at 6:01 pm.

B. ROLL CALL:

Members Present: Chair Anne Peltier, Commissioners Monte Ayers, Ryan Penning, Caryl Thomas and Jason Young

Members Absent: Wil Canate and vacant position

Staff Present: Matt Straite, Community Development Director; Sheena Dickerman, City Recorder; Kevin Kreitman, City Manager; and Janelle Booth, Assistant City Manager/City Engineer

Commission Chair Peltier opened the work session at 6:00 p.m.

C. INTRODUCTION OF NEW PLANNING COMMISSIONER

Community Development Director Matt Straite welcomed new planning Commissioner Jason Young

D. WORK SESSION

**6:02 p.m.**

Community Development Director Straite reminded the commission that this was Advisory Committee Meeting #2 and gave a brief overview of the Housing Element project. He explained the new Comprehensive Plan would have a new look when completed and would return to the Planning Commission in an official capacity later.

Straite shared key findings; Millersburg is forecasted to grow, the need for more affordable housing and the 20-year supply of housing sufficient. Staff disagrees with the housing supply being sufficient and expects the City will need to request the Urban Growth Boundary (UGB) to grow.

Anais Mathez, from 3J Consulting gave a recap of the first Planning Commission Advisory meeting and community involvement process. She presented the proposed Comprehensive Plan: Housing Goal and Policies (see agenda file).

Mathez pointed out that it is organized around three themes: new neighborhoods, retaining quality and housing for all.

Mathez and Straite emphasized the importance of using these meetings to educate the community.

Peltier asked for clarification on Goals and Policies, *Plan for new neighborhoods*. Straite gave an example of higher end employment would need higher end housing.



Commissioner Monte Ayers shared that he was hesitant in the beginning about confined, smaller lots but after seeing how Portland designed theirs, saw the value. Mathez affirmed that the role of design plays a key role in a community. The Commissioners agreed and mentioned other local communities with different housing types that were attractive.

Mathez continued going through the Housing Polices. Young suggested the need for language in the Housing Goal that would address that the City was complying with State Laws. Others agreed especially around the manufactured homes concerns.

Straite explained the Comprehensive Plan is broader and the Development Code has the details and gives directions.

Commissioner Ryan Penning asked about manufactured homes. Straite explained that the City has design standards that are strict with regards to how they look.

Mathez asked the Commission if Housing Element reflects what the community wanted and if the draft was ready to be considered to going to a hearing. Peltier replied that it answered the survey results and is defensible.

Straite explained the next steps in the process. The Planning Commission will have an opportunity to make changes before it goes to City Council. The Commission requested that more information be in the introduction regarding how the Housing Element was following State requirements.

Mathez explained the timeframe for the process. The Plan could be ready for a hearing in early November, with time for the Planning Commission to make any changes before submitting it to Council for approval.

Commission Chair Peltier closed work session at 6:52 p.m.

E. INTRODUCTION OF NEW PLANNING COMMISSIONER 6:52 p.m.

Peltier asked Young to share about himself.

F. ELECTION OF VICE-CHAIR 6:53 p.m.

Peltier opened nomination for Vice-Chair.

**ACTION: Motion to nominate Commissioner Wil Canate, Jr. as Vice Chair, made by Commissioner Monte Ayers; seconded by Commissioner Caryl Thomas**

Chair Peltier:	Aye
Commissioner Hickam:	Aye
Commissioner Penning:	Aye
Commissioner Thomas:	Aye
Commissioner Young:	Aye

**Motion Passed: 5/0**

**ACTION: Motion to Approve the July 19, 2022, minutes as written, made by Commissioner Monte Ayers; seconded by Commissioner Ryan Penning.**

Chair Peltier:	Aye
Commissioner Ayers:	Aye
Commissioner Penning:	Aye
Commissioner Thomas:	Aye
Commissioner Young:	Abstained

**Motion Passed: 4/0**

ADJOURNMENT: Meeting adjourned by Commission Chair Peltier at 6:55 p.m.

Respectfully submitted:

Reviewed by:

Sheena Dickerman  
City Recorder

Matt Straite  
Community Development Director

DRAFT



**File No: DC 22-01 Urban Growth Boundary Amendment  
(Comprehensive Plan Amendment) & Land Use/Zoning designations**

**Proposal:** The City of Millersburg is proposing an Urban Growth Boundary (UGB) swap. More specifically the City plans to remove 167.46 acres (10S-03W-33-00200, 10S-03W-29- 00300, and 10S-03W-29-00201) from the UGB (this has already been removed from the City limits) and add 162.89 acres (10S-03W-20-00402 and 10S-03W-29-00101) to the UGB. The Land Use designation of Industrial (I) and Zoning classification of General Industrial (GI) will remain the same for all properties. This will consist of a Comprehensive Plan Map and Zoning Map Amendment. A corresponding change to the County Comp Plan and Zoning will be included in this City action. This will include adding designations to two smaller areas that are already within the City UGB but do not yet have Comprehensive Plan or Zoning Designations. These are not part of the UGB swap. These include tax lot 10S-03W-29-00104, 0.74 acres, and a portion of tax lot 10S-03W-29-00206, 2.29 acres, which is currently split by two jurisdictions.

All actions by the City are tentative pending County approval, and Department of Land Conservation and Development (DLCD) review afterwards. Linn County will be jointly reviewing the UGB change and adding a Comprehensive Plan Land Use designation of Agricultural Resource and a Zoning classification of Exclusive Farm Use (EFU) to the three parcels proposed to be added to the unincorporated community.

**I. BACKGROUND**

A. Applicant: City of Millersburg

B. Location: The City plans to remove 167.46 acres (10S-03W-33-00200, 10S-03W-29- 00300, and 10S-03W-29-00201) from the UGB (this has already been removed from the City limits) and add 162.89 acres (10S-03W-20-00402 and 10S-03W-29-00101) to the UGB. Tax lot 10S-03W-29-00104, 0.74 acres, and a portion of tax lot 10S-03W-29-00206 are proposed for Land Use and Zoning designations, but are not part of the UGB swap.

C. Review Type: The proposed Comprehensive Plan and Zoning Map Amendment (DC) requires a Type IV hearing before the Planning Commission whereby the Commission makes a recommendation to the City Council. A subsequent hearing before the City Council is required, including the adoption of an ordinance. Because this requires changes to both the City and County shared boundary, the County is also required to review and approve the amendments. Lastly, the project also requires a review by the

DLCD<sup>1</sup>. ORS 197.633 and OAR 660-025-0175 require DLCD approval for all UGB changes over 50 acres. Any appeal of the decision relating to this matter will be considered by the Oregon Land Use Board of Appeals (LUBA).

D. Public Notice and Hearing: A notice was posted in City Hall and the *Albany Democrat-Herald* newspaper. A separate notice was sent to the DLCD on August 22, 2022. Information related to the hearing is posted on the City's website at <http://cityofmillersbrg.org/planning-commision>.

E. Review Criteria:

A. State of Oregon - Goal 9: Economic Development Oregon Administrative Rule, Division 9 - Goal 10: Housing Oregon Administrative Rule, Division 8 - Goal 14: Urbanization Oregon Revised Statute 197.298: Priority of land to be included within UGB Oregon Administrative Rule 660 Division 24, Urban Growth Boundaries - Oregon Administrative Rules 660-024 ;

B. Linn County - Urban Growth Management Agreement (between Linn County and Millersburg), Linn County Comprehensive Plan, and the Land Use Development Code (Sections 921.822 and 921.874);

C. City of Millersburg - Millersburg Comprehensive Plan and the Development Code, Sections 5.09.050 and 5.10.050.

F. Current Zoning: The existing zoning is EFU in unincorporated Linn County for site B, the proposed zoning for site B is General Industrial (GI). Site A is proposed to be zoned EFU.

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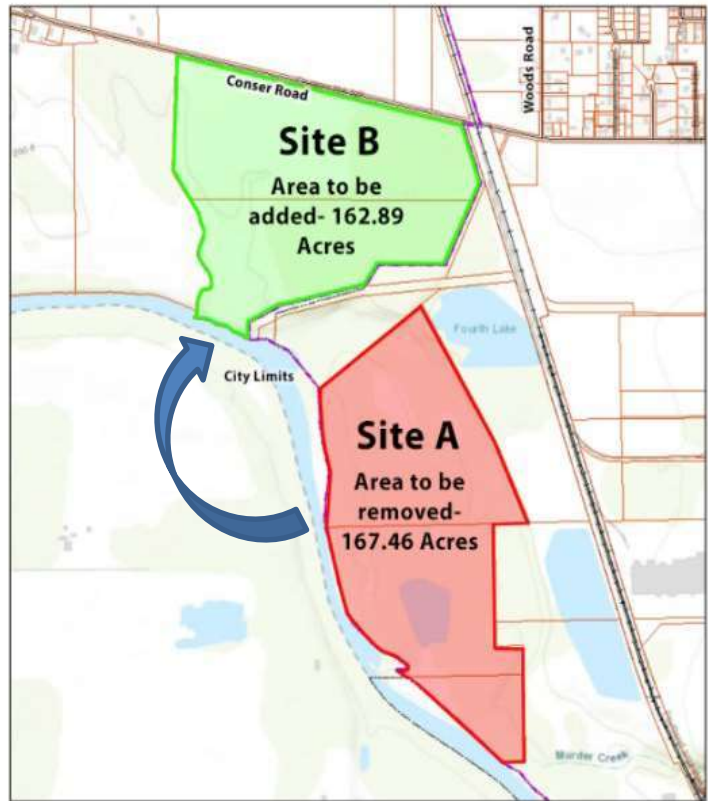
<sup>1</sup> A process called concurrence

G. Background:

*Land to be removed from the UGB*

As the City continues to see interest in industrial development, it has become apparent that some of the industrially zoned property in Millersburg was actually unbuildable for a host of reasons. Specifically, the area shown in the graphic as site A is property that is:

- heavily wooded,
- does not currently feature access,
- the typography of the site is challenging and features slopes over 25% that would not be conducive to industrial development,
- almost entirely within a Goal 15 Willamette River Overlay that prevents almost any kind of development,
- and is almost entirely within a FEMA designated floodway based on its location near the river.



The property is comprised of three tax lots totaling 167.46 acres. The entire western edge borders the Willamette River. The current Comprehensive Plan Land Use designation for all three lots is Industrial. The existing Zoning is General Industrial (GI). All three lots were removed from the City limits by Ordinance 197-22 in August of 2022. The UGB was not changed at that time, thus leaving the ability to swap the UGB location with site B. See the next section.

*A land swap*

For these reasons, the City is proposing an Urban Growth Boundary swap, to exchange unbuildable land for developable property. The concept is to swap two areas of land that are of similar size, and keep the land use and zoning designations the same. Thus, the total area within the UGB will

generally stay the same, and the amount of land in each Land Use Designation from the Comprehensive Plan will remain generally the same. Site B, shown on the graphic, is the preferred alternative from the attached alternatives analysis. This property was selected based on several factors, most specifically its close proximity to other industrially zoned property, its relatively flat topography, its proximity to utilities, access to the River, rail, and truck access. The attached alternative analysis contains a more detailed analysis that used ORS 660-024-0065 and 67 to identify an appropriate location.

Traditionally, any changes to a City's UGB require the City to analyze the need for the change. However, when proposing a UGB swap, OAR 660-024-0070 explains that a justification using employment lands is not required.

#### *The process*

The UGB change requires many steps, the first of which was completed on August 23, 2022 when the City Council adopted Ordinance No. 197-22 to remove three lots from the City. The UGB did not change as a result of this. The next step is to change the City's UGB. That takes an action by the City Council, but the boundary is shared with the County, so they have to approve the change as well. Millersburg will review it first, then the County Planning Commission and ultimately the Board of Commissioners. Last, the DLCDC will have to review the change. The last step would be annexation of the property that would not be within the City's UGB. That's up to the owners, not the City. This is not part of this action. This project will not change any City limits only the UGB.

Lastly, it should be mentioned that a UGB change requires that the Comprehensive Plan Map be revised, as the UGB is part of the Comprehensive Plan Map. The City is also required to designate the property with a Comprehensive Plan Land Use Designation (especially for a land swap). The City is not, however, required to designate zoning. However, we are proposing to add that as part of this process. If we did not, the zoning would have been added when annexed. The City felt it was important to add zoning now to help support the like-for-like swap nature of the requested land swap. It should also be noted that the property within the UGB is not actually part of the City until it is annexed. Before that, the Land Use Designation and Zoning classification are actually pre-designations. They are not binding until the property is annexed. Once they are annexed these established Comprehensive Plan Land Use Designations and Zoning Classifications would instantly take effect.



## **II. CRITERION**

As noted above there are many different criteria for altering a UGB. Each are reviewed below. These can be organized by jurisdiction, they include:

- A. State of Oregon - Goal 9: Economic Development Oregon Administrative Rule, Division 9 - Goal 10: Housing Oregon Administrative Rule, Division 8 - Goal 14: Urbanization Oregon Revised Statute 197.298: Priority of land to be included within UGB Oregon Administrative Rule 660 Division 24, Urban Growth Boundaries - Oregon Administrative Rules 660-024, and OAR 660-012-0060 also known as the Transportation Planning Rule.
- B. Linn County - Urban Growth Management Agreement (between Linn County and Millersburg), Linn County Comprehensive Plan, and Linn County Land Development Code Sections 921.882 and 921.874.
- C. City of Millersburg - Millersburg Comprehensive Plan and the Development Code, Sections 5.09.050 and 5.10.050.

Findings for the proposed action are included below, in Ordinance 197-22, in Resolution 2022-09, and in all staff reports related to the removal of territory.

### **A. STATE OF OREGON**

#### **1. STATE PLANNING GOALS**

- Goal 1: Citizen Involvement. The City has held several public meetings on this UGB swap, mostly related to the first step of the process, which was to remove three properties from the City limits. The process to de-annex territory required several special meetings before the Planning Commission and City Council which afforded the public several opportunities to address the decision makers and provide input. Additionally, the public will have an opportunity to address both the City and County during hearings for this proposed UGB update (Comprehensive Plan and Zoning Map Amendment). All public meetings have been noticed. The area to be removed, site A, has only 1 owner, and the area to be added, site B, has only 1 owner, both have expressed support for the changes. Goal 1 has been met.
- Goal 2: Land Use Planning. This goal essentially calls for each City to create a Comprehensive Plan and Zoning. This plan amendment is consistent with this goal, as it is working within the City's land use process, which complies with Goal

2.

- Goal 3: Agricultural Lands. This is not applicable pursuant to OAR 660-024-0020(1)(b).
- Goal 4: Forest Lands. This is not applicable pursuant to OAR 660-024-0020(1)(b).
- Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. The proposed swap will have beneficial effects on open spaces. Site A is forested and located along the river bank. Moving this area to the County's jurisdiction will help preserve this through limitations on allowable uses. Site B is currently farmed.
- Goal 6: Air, Water, and Land Resource Quality. The proposed action is a swap of property. Therefore, the impacts of industrial development in the area to be removed from the UGB would be similar to impacts developing the area to be added to the UGB. All impacts for new development will be addressed at the time of development.
- Goal 7: Areas Subject to Natural Hazards. Natural hazards were the primary driver behind this UGB revision. Site A is almost completely within a FEMA designated floodway. Additionally, there are wetlands and slopes within site A. Site B features a small area of floodway and floodplain. These are along the southwestern corner. This area would likely not have been developed with buildings. The majority of the property has no natural hazards.
- Goal 8: Recreational Needs. There are no parks on or near either site. The sites are similarly sized, and planned for industrial uses, so there will be no change in the demand for recreational areas. Site A could someday serve as a recreational area, due to its location along the banks of the River. Currently site A is not open to the public in any way. Removing site A from the UGB will place it in the jurisdiction of the County which will have more options for land use and zoning designations that may be more conducive to recreational uses. Site B is currently private property and would not be suited to recreational uses. There is far less access to the River and no other features that would contribute to a recreational use on the site.
- Goal 9: Economic Development. The proposed change is highly consistent with Goal 9 because it removes property from an area that cannot develop, and adds property that has a much stronger likelihood of new industrial development. As outlined in more detail in the alternatives analysis, site B has

better access, rails access, and other features that make site B a much better location than site A for industrial development.

- Goal 10: Housing. There is no housing proposed in the UGB expansion area. The swap will provide more jobs to the area, which will help foster additional residential development, as well as meet the need for close, walkable or bikeable jobs within the City of Millersburg.
- Goal 11: Public Facilities. The City Engineer has reviewed the proposal. She determined that site B has adequate ability to connect to public utilities, consistent with the standards of the utility master plans. Street connectivity and utility connections are possible for site B with far less cost and creativity that would be needed for site A.
- Goal 12: Transportation. Site B is located along Conser Road NE. The City has been master planning the industrial area south of NE Conser Road that is within the City. These plans include a new street designed to allow truck traffic east-west through the City without the need to place trucks on NE Conser Road. The new street would generally terminate at the intersection of NE Woods Road and NE Conser Road. It is being designed to provide a higher level of access for trucks across the railroad tracks on NE Conser Road because there is some industrially zoned property on the west side of those tracks already today that is viable. Adding site B will work very well with this new planned roadway. It should also be noted that the swap will ultimately have the total amount of industrial property remain the same, just in a different location. Also see the Transportation Planning Rule analysis later in this document.
- Goal 13: Energy Conservation. The proposed land swap will ultimately not change the total acreage of the industrial area in the City. As such the impacts would have been the same if either site were developed.
- Goal 14: Urbanization. Goal 14 manages the UGB system in the State. The proposed change to the UGB is consistent with the requirements of Goal 14, as implemented through State rules (OAR's) and regulations (ORS's). The details of how the project conforms are analyzed throughout this staff report, the alternatives analysis, and all resolutions and ordinances attached to this report.
- Goal 15: Willamette River Greenway. The City has a zoning overlay that implements Goal 15. Site A is within the overlay. The proposed UGB amendment will help protect site A by removing an industrial land use and zoning from the site and applying a County designation of open space. Site B will not include

any property with the zoning overlay.

- Goal 16: Estuarine Resources, Goal 17: Coastal Shorelands, Goal 18: Beaches and Dunes, and Goal 19: Ocean Resources do not apply to this area or change.

## **2. OREGON REVISED STATUTE (ORS) 197.298- PRIORITY OF LAND TO BE INCLUDED**

ORS 197.298(2) requires an analysis of the soil classifications through the Natural Resource Conservation Service (NRCS). This is analyzed in the attached Alternatives Analysis. In summary, all alternative locations that met the requirements for an industrial use shared similar soil classifications to each other and to the area to be removed from the UGB, site A. The selection of site B as the preferred alternative included a review of the NRCS system.

## **3. OREGON ADMINISTRATIVE RULES (OAR) CHAPTER 660, DIVISION 24**

This section of the OAR regulates UGBs. These implement Goal 14. Most of Division 24 addresses the establishment of UGBs and amendments. As discussed above, because this is a UGB swap all portions of the OAR that require the establishment of need do not apply. OAR 660-024-0065 through 67 address the requirements for an alternatives analysis, which is attached as a separate document.

UGB adjustments and swaps are regulated by 660-024-0070. Subsection (1) and (3) explain that while there is no requirement to analyze employment need, all other requirements of Division 24 still apply, including the need for an alternatives analysis. Subsection (3)(a)(B) explains that the amount of employment land added to the UGB must meet an employment need that is substantially equivalent to the amount of employment land removed. As explained above, site A is 167.46 acres and site B is 162.89 acres. These are substantially equivalent in terms of the amount of employment that could be generated from the land acreage.

This section also requires that rural zoning be adopted for the areas removed from the UGB. This will be done by the County as part of their review of the proposed swap. An analysis of the County Comprehensive Plan and Zoning criteria are included in this report in Section II subsection B. Further, OAR 660-024-0070 section 3(b) also requires that the Comprehensive Plan Land Use designation for the property added to the UGB generate the same employment levels as the land added to the UGB. For this swap the designations will be the same for both, GI. Subsection (c) takes that concept one step further and

requires that the type of industrial property be the same when swapped. For example, if the property removed would have been best suited to large storage of logs for lumber, then the property added to the UGB should also be well suited to that type of industrial. This played a key role in the alternatives analysis, because the City is assuring that the area added to the UGB can accommodate large utility users, like site A, access to the river, like site A, and users who would need exceptional access to streets and truck friendly routes. Site B can accommodate an even wider range of industrial types than site A did. As such, the proposal is highly compatible with these requirements, as well as all requirements of Division 24.

#### **4. TRANSPORTATION PLANNING RULE**

This is implemented by OAR 660-012. The State requires cities to align land use plans with transportation system plans. The City of Millersburg adopted its first Transportation System Plan (TSP) in 2016. The streets at that time were designed to accommodate the full buildout of the Land Use Plan. Part of that was built, part was just planned. Because the UGB amendment is a swap, and does not propose adding any new industrial land, the impacts will be identical. The roads were planned to accommodate the traffic from all the planned industrial, including the 160 acres proposed to be shifted from site A to site B. The actual buildability of the property was not taken into account when the TSP is drafted, just the full buildout. Therefore, the buildability of site A is irrelevant for purposes of the Transportation Planning Rule (TPR). The proposed amendment to the UGB is therefore consistent with the intent of the TPR because the traffic levels planned will remain the same.

It should also be noted that OAR 660-024-0020(d) explains that the TPR need not be applied to a UGB amendment if the underlying zoning is retained, or if a limitation on vehicle trips is applied to assure there is no difference in vehicle trips overall due to the change. A swap is similar in that vehicle trips were allotted to the land use of site A in the TSP, and now those identical trips will shift to site B. Likewise, the County currently features EFU zoning on site B and will apply EFU or open space zoning to site A when the amendment takes effect. That too will simply shift planned vehicle trips from one site to another, but they will stay identical.

## **B. LINN COUNTY**

### **1. URBAN GROWTH MANAGEMENT AGREEMENT BETWEEN LINN COUNTY AND THE CITY OF MILLERSBURG**

All cities in the State of Oregon are required to enter into an agreement with the local County to clarify the procedures between the two regarding land uses in UGBs and the general administration of the shared UGBs. Linn County and the City of Millersburg entered into an agreement in 1980. That was amended and superseded in 1981 by Ordinance 81-344. Conformance with the requirements of this document are reviewed below.

The agreement includes specific procedures for land use matters within the UGB area. The County retains jurisdiction within UGBs until the City annexes the area. The County will confer with the City prior to any land use action taken in the UGB.

The agreement explains that a UGB and zone change are both type III changes. Processes for land use application are prescribed in the agreement. However, the City and County have met and agreed to follow a slightly modified procedure which will cover all intentions of the agreement. The modified path also has the added benefit of following both County and City Development Code requirements to the letter. The modified procedure will be the following:

1. A preapplication between the City and County was held on March 7, 2022.
2. The application is filed with the City for a Comprehensive Plan Map Change and Zone Change.
3. The project will be heard by the City Planning Commission. They will make a recommendation to the City Council.
4. The project will then go to the City Council for a hearing. They will take a tentative action, pending the County's review and action.
5. An application will then be made to the County.
6. The County Planning Commission will hold a hearing for the project and make a recommendation to the County Board of Commissioners.
7. The project will then go to the Board of Commissioners for a hearing. They will take a final action.
8. Lastly, the project will go to the DLCD for review and concurrence that all criteria are met and State rules followed.



This process will comply with the intent of the agreement and each jurisdictions Development Code. The agreement did not contain any additional criteria of any kind for any land use actions. Therefore, as long as the procedures are complied with, the proposed project is consistent with the terms of the agreement.

## **2. LINN COUNTY COMP PLAN, CHAPTERS 900-907 OF TITLE 9**

The Linn County Comprehensive Plan (Comp Plan) is comprised of 4 chapters, Citizen Involvement, Natural Resource Element, Community Facilities and Development and Land Use. There is also an Administration Element which manages the plan. Each is briefly addressed below, more detail is provided for the Comp Plan Amendment Section, contained in the Administration Element Section, and the urbanization section of the Land Use Element because that specifically addresses UGB management.

### *Citizens Involvement Element*

Like the State's Goal 1, this Element is designed to assure public participation in the planning and land use process. The official tool for outreach is the Planning Commission. Notice of land use items notifies the public to opportunities to participate through comments to the Planning Commission. The proposed project will be fully noticed as required through the Development Code.

Section 902.200 addresses comprehensive plan amendments only to say that the administration element contains criteria for amendments.

### *Natural Resources Element*

This element addresses hazards, open spaces, vistas, historic and cultural areas, waterways and other resources. As discussed previously, site A, which is intended to become part of the County, is within a FEMA Floodway zone. Section 903.230 of the Comp Plan. This essentially requires that all FEMA rules are followed. Site A is probably not going to develop but will remain open space. As such, the area will not conflict with these policies. If building did occur, it would have to comply with all FEMA requirements. The proposed UGB changes will not conflict with any of the listed open space or scenic policies. Most of the listed policies speak to the need for the County to reach out to impacted/effected agencies regarding development of the property. The

County land use designation will help ensure that all policies of the Element are met.

### *Community Facilities and Development Element*

This element addresses the need for infrastructure when a property develops including water, sewer, storm, street and other County provided infrastructure. These provisions apply to site A if that property were to ever develop; however, as stated previously, it is unlikely that the site will develop. The County has land use and zoning designations that accommodate a property that is not planned for development, where the City does not have any such designations. The entire UGB system, as designed by the State, is intended to encourage development within a city, and discourage development in an unincorporated community. The Comp Plan explains that 90% of the County is open space or farmland. Because this property is not likely to develop, most of the policies of this element do not apply.

### *Land Use Element*

This element contains goals and policies for each specific Land Use designation. The County has indicated that they plan to designate site A with an Agricultural Land Use Designation, which is addressed in Section 905.120. The policies of 905.120 include limitations on residential uses in the designation, specific notifications of uses, minimizing conflicts with agricultural uses, keeping large tracks of land together, and a priority on maintaining property in agricultural use. The designation of site A as Agricultural is consistent with all of these Policies. The property is over 160 acres and is not suitable for development except as an agricultural or open space use.

### Urbanization Subsection

Section 905.610 addresses urbanization, which includes UGB amendment policies. This section says that the cities in the County will grow into surrounding areas based on need and serviceability. Site A is not serviceable, therefore should not be located within a City. Subsection C lists the following factors that should be considered when a UGB change is requested (analysis of each provided in *italics*):

- (1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals.
  - o *The proposed change is a UGB swap. As such, the acreage and uses of the swapped land will remain the same. The County will be*

*'exchanging' site B, which will also keep the same designation.*

- (2) Need for housing, employment opportunities, and livability.
  - *See above. The City is not expanding a use, just swapping for property that is more suited to development.*
- (3) Orderly and economic provision for public facilities and services.
  - *The proposed swap will remove property that is difficult to service, and bring property into the City's UGB that is better served by public facilities and services.*
  - *The alternatives analysis provides a more detailed review of the utilities and services as they relate to site B, the property to be brought into the City UGB.*
- (4) Maximum efficiency of land uses within and on the fringe of the existing urban area.
  - *As stated above, site A is currently designated for industrial zoning, but would be very costly to actually develop, including the need to change a FEMA floodway.*
  - *Site B is not within the floodway and is located along an existing street, which can accommodate utility extensions with ease. Site B is also flat and should be more efficient to develop with industrial uses.*
- (5) Environmental, energy, economic and social consequences.
  - *The swap will allow development on site B which is currently being farmed. Therefore, there are no environmental resources on the property.*
  - *Site B is further away from the River than site A, and will have less impacts to the River, in fact, site A is fully within the Willamete Greenway Overlay, site B is not.*
  - *This swap will help preserve site A from impactful industrial development. Site B is also closer to homes in the City, and could result in more walking or biking to work, yet the site is also located on the west side of the existing railroad tracks, which help separate the use from the homes.*
- (6) Retention of agricultural land as defined, with class I being the highest priority for retention and class VI the lowest priority.
  - *Because this is a swap, the amount of agricultural land is not*

changing, only changing locations.

- Each of the properties feature similar soil classifications. Site B is currently farmland, probably for the same reasons it is well suited for development, specifically that it is flat and easy to access. Site A has not been farmed and is not as well suited for future farming for the same reasons it is not well suited for development, specifically the topography and floodway designations. That is not to say it cannot be farmed someday, though that would have to comply with the Willamette Greenway Overlay. If the property were tilled and cleared it could potentially be farmed. Flooding would remain a concern.
- Additionally, Section 905.930 further explains that soil classifications should be used as an initial screening process, but a full case-by-case subjective analysis should be done for any property that is changing away from agricultural.<sup>2</sup>

(7) Compatibility of the proposed urban uses with nearby agricultural activities.

- Site B will be located near agricultural uses to the north and west. To the east and partially to the south is industrial uses (planned and constructed).
- Any development of site B will have to ensure compatibility through the design of the project.
- For site A the property to the west and south is the River, to the north and east is industrial land. For the places where site A is adjacent to future industrial development, and for site B where new development may border agricultural lands, the City's Comprehensive Plan and Development code include policies and standards that will help address any interface of agricultural and industrial land, as well as State requirements through DEQ and other sources to assure the impacts between industrial and agricultural uses will be minimized.

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<sup>2</sup> Section 905.930 defines and regulates the Non-Resource Comprehensive Plan Land Use Designations that the County applies to areas that are not agricultural or forest lands. This swap will not require the designation of Non-Resource lands, because site B will be placed into a City.

### Planning Area Subsection

Section 905.610(D) explains:

Further, several cities have established “planning areas” outside their UGBs which contain lands key to future urbanization. While these lands may not be presently needed inside the UGB, the cities are concerned with their development. The cities’ right to review and comment on county land use decisions within the planning area is secured within the UGB management agreement.

The City of Millersburg does have a planning area outside the UGB. Site B is within the Millersburg Planning Area. While the planning area is principally an ‘area of concern’ for the City in terms of being notified of County development in this area, it also acts as a placeholder for future development. In other words, the planning area is an area of possible future growth for the City. This is important because it shows that the City and the County have planned for the City to grow into the planning area someday. Again, site B is within that planning area.

### Willamette Greenway Subsection

Section 905.700 addresses regulations for the public interface with the Willamette River. The section of site A that is covered by the City’s Goal 15 overlay (the Greenway Overlay) will continue to be protected by the County’s Goal 15 greenway policies addressed in the County Comprehensive Plan Section 905.720. Site B is not included in the greenway.

## **3. LINN COUNTY LAND DEVELOPMENT CODE, CHAPTERS 920-940 OF TITLE 9**

The County Development Code requires that Comprehensive Plan and Zoning amendments comply with stated criteria from the Code. Each is reviewed below.

Section 921.874 Decision criteria for Comprehensive Plan map amendments  
*(analysis shown in italics)*

### **(1) The amendment is consistent with and does not alter the intent of applicable section (s) of the Comprehensive Plan;**

*A full analysis of each Comprehensive Plan element is shown above in Section B.2 of this staff report. The proposed changes are consistent with all elements of the County’s Comprehensive Plan.*

### **(2) The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area;**

For site A the property is currently vacant and wooded. It is within the County, because it was recently removed from the City limits. To the west and south of the site is the Willamette River, to the north is currently agriculture (though this swap proposes to make it industrial), and to the east of the site is industrially zoned property inside the City, though the property is currently vacant.

For site B the property is also currently within unincorporated Linn County with agricultural uses. The property to the east of site B is industrially zoned inside the City with a power substation. To the south is vacant wooded land that has recently been removed from the City limits. To the north and west the uses are agricultural.

Agricultural uses next to industrial uses do not typically present conflicts. Some industrial uses may create or manufacture products that may be harmful to agricultural crops, inversely, the application of some agricultural pesticides may conflict with food production or other sensitive industrial processes. These can be mitigated through the design of the industrial projects. Conflicts depend largely on the design of the industrial development. Potential conflicts will be identified and mitigated at the design review stage. The City has had Industrial Comprehensive Plan Land uses next to Agricultural Land Uses for years. Expanding the City Industrial Land Uses to the west with this swap will not result in new adjacency conditions that do not exist today.

**(3) The amendment, if within an adopted urban growth boundary, is in substantial conformity with the Comprehensive Plan and implementing ordinances of an affected city;**

Site A is within the Millersburg UGB, site B is not. Because the proposal is a UGB swap, this criteria does not apply. Regardless, there is a full review of the project's conformity with the City Comprehensive Plan in the next staff report section.

**(4) The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat;**

The proposed amendment will remove property near the Willamette River from the City UGB (site A) and place 160 acres (site B) into the City UGB. Site B touches the river, but not in a significant way. Site A is mostly located along the banks of the River. This action will help preserve the property better. The County Land Use and Zoning designations will be more inline with the preservation of the land than the City's industrial designations. The proposal will have beneficial impacts on the habitat.



**(5) The amendment will not have a significant adverse impact upon the provision of public facilities including police and fire protection, sanitary facilities and storm drainage facilities;**

*The City of Millersburg contracts police service through Linn County and fire service through the City of Albany. Site A is currently served by the City (through contracts). That will change to services provided by the County, though due to proximity, services will still often be provided by the same City services through an agreement with the County. This depends on who is closest in the event of an emergency. Site A is not anticipated to develop, which will mean minimal need for services.*

*As noted above, the City has been planning utility and access improvements to access site B, even before the proposed land swap,<sup>3</sup> and site A has been removed from the City partially because the site is highly difficult to get access and utilities to. The proposed expanded UGB over site B is contiguous with the existing City limits. Additional police and fire coverage will not be problematic. As such, the amendment will not have an adverse impact on facilities.*

**(6) The amendment will not have a significant adverse impact upon the transportation facilities;**

*Site A will be removed from the City's UGB and, as discussed previously, will likely not be developed. As such, there will be no impact to the County transportation facilities. Site B will be within the City UGB and ultimately, within the City (after annexation) and will easily be serviced by the existing NE Conser Road.*

**(7) The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity will not have a significant adverse affect on land uses permitted through the amendment;**

*As noted above, site A is fully within a floodway FEMA designation. Site B is not. There are no other hazards on either property. Site A will likely not develop, and part of the desire to swap the UGB is to help protect site A.*

**(8) An exception to the statewide planning goals is not required. If required, then findings have been prepared to meet the exception criteria; and**

*No exception is required.*

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<sup>3</sup> The City owns property on the west side of the railroad tracks that will be taking access and utilities from NE Conser Road.

**(9) The amendment is consistent with the statewide planning goals.**

*See Goal analysis above in staff report section A1.*

Section 921.822 Decision criteria for Zone map amendments (*analysis shown in italics*)

**(A) When a Zoning Map or Land Development Code text amendment is necessary due to a proposed Comprehensive Plan amendment, only findings and conclusions responding to the Comprehensive Plan amendment criteria for decision are necessary to amend the Zoning Map or Code text provisions.**

*Site A will be receiving a Comprehensive Land Use Designation of Agriculture and a Zoning designation of Exclusive Farm Use (EFU). The analysis for the Comprehensive Plan is included above. Pursuant to this criteria, no additional analysis of the Zoning criteria is needed because a Comprehensive Plan map amendment is proposed also.*

**C. CITY OF MILLERSBURG**

**1. MILLERSBURG COMPREHENSIVE PLAN**

The City of Millersburg Comprehensive Plan is structured into 7 chapters or elements. Each is reviewed below.

*Planning Element*

The Planning Element is different from the City's Land Use element. This element largely covers the basics like addressing public participation, explaining the outline of the plan and covering the State Goals. The only applicable portion to this proposal is the required public participation. Like noted in the County Comprehensive Plan Section, public participation is addressed through public participation in the hearings, including the Planning Commission and the City Council. Because these are fully noticed to the public, and because the project is processed through the land use system established by the State and required in the Comprehensive Plan, the project is compliant with the Planning Element.

*Environment Element*

This element is structured into several sections, each with their own policies. Only pertinent policies are reviewed below.

For topography site B is located in an area with no natural channels. There is some FEMA floodplain designation but that property is located near the river and is quite minimal, especially compared with site A which is being swapped for site B as far as the UGB is concerned. The banks of the Willamette River are protected by removing site A from the City.

Geological policies are aimed at development proposals more than land use changes. Therefore, all geological policies will be addressed at the time of development. As discussed previously hazardous areas have been avoided by swapping site A with site B.

The soils policies of the Comprehensive Plan specifically address UGB changes. Policies 1 and 2 state that the UGB is intended to protect agricultural soils. The policies state that those soils should be preserved. While site B features class 1 soils, it should be noted that all alternative sites and site A all contained class 1 soils. The swap will not consume more or less class 1 soils than if site A were developed. Because this is a swap, and the properties are essentially the same soils classification, the impacts are identical and this policy is met.

The policies on water resources generally require that all State and Federal programs are followed at the time a site is developed. These include review by the DEQ and compliance with the National Pollutant Discharge Elimination System (NPDES). These will be met using the standard land use and building permit process at the time the property is developed.

Policies regarding natural vegetation, fish and wildlife include Policies 1 and 2. These state that remaining areas of natural vegetation shall be preserved, especially along the River. Site B has been farmed and is highly disturbed. Site A is largely forested. As discussed previously, the proposed swap would help preserve site A, thus implementing the policy. All other policies generally require preservation of riparian areas and habitat. These too are implemented through the swap because site B is disturbed and has no water features or habitat.

All air policies are implemented through participation in State and Federal programs. Noise policies pertain to development proposals and will be addressed through the land use and building permit review.

### *Population and Economy Element*

This element largely addresses the need to accommodate increasing populations through residential development and foster a positive economic environment by responding to local and regional economic need. The proposed swap is addressing this by ensuring that the 160+- acres of industrial property are actually developed and not squandered in an area that could

never develop. The policies specifically call for the City to provide and maintain an adequate supply of land for commercial and industrial uses.

### *Housing*

This element does not apply to this proposed UGB swap.

### *Land Use*

This element also calls for the City to maintain adequate supplies of land for new uses. The policies are organized into types of uses. Residential and commercial do not apply to the proposed swap.

Industrial policies include requirements to allow interim farming on industrial property. Site B is currently farmed. The policies require industrial areas to be placed so that they do not disrupt residential uses. The advantages of site B have been discussed throughout the report. Site B will avoid most impacts to these sensitive uses. The policies encourage large parcel sizes. Site B will include over 160 acres. Most other policies will be addressed at the development stage. The proposed swap will implement these industrial policies and be consistent with the land use element.

Agricultural policies of the Land Use Element include a requirement that any expansion of the UGB into agricultural areas be carefully planned. Site B is within the planning area for future growth. This proposal helps implement the vision of the Comprehensive Plan. The City has already planned the expansion of utilities and streets to site B as part of the effort to get both to another City owned industrial site on the west side of the railroad tracks.

Agricultural Policies 4 and 5 explain that prime farmland outside the UGB should be preserved. Site B is indeed prime farmland. However, industrial sites require a specific mix of factors that can only be successfully met in a select number of locations. The alternatives analysis looked at several locations, and all included class 1 soils, as does site A which is being swapped for site B. Additionally, it should be noted that the LUBA has stated not every Comprehensive Plan policy must be followed in order determine consistency with the plan. The project, as a whole, remains consistent with the Cities Comprehensive Plan.

Open space and Willamette River Greenway policies also reiterate the need to preserve open spaces that are not well suited to development, especially wooded areas and those in the Willamette Greenway Overlay area, such as site A. As explained previously, the swap implements these by placing site A into the jurisdiction of the County who is better equipped to administer site A for non-development.

### *Public Facilities*

The public facilities element administers the implementation of infrastructure and City services as the City grows. Most policies require the City to respond to growth. They also require the City to implement specific policies when development occurs. All development-triggered policies have been translated into municipal and development code requirements. These policies do not relate specifically to a UGB swap, except that all services should be planned for in the new expanded area of the UGB. As explained before, utilities are planned for extension into the area. The swap is consistent with this element.

### *Growth Management*

The Growth Management element is the City's response to State Goal 14. The policies require the Planning Area (reserve area) and an agreement between the City and County to administer the Planning Area. This was all addressed previously in this report. Millersburg Planning Area Policy 3 requires that parcel lines be used when possible for growth areas, which we have done in creating site B. Policy 4 requests that the County maintain adjacent lands to the north and west of the City in agriculture until the areas are needed for urban expansion of the City. This swap is consistent with this policy because it will have the City growing to the west (even though technically, the City is not growing, just shifting).

Planning Area Policy 5 explains:

Urbanized development or annexation requests within the Planning Area boundary shall be considered a request for an amendment to the urban growth boundary and shall follow the procedures and requirements of Statewide Planning Goals 2 and 14.

This proposed project is being processed as a UGB amendment, consistent with this policy. The amendment is proposed within the City's Planning Area. The State Goals have been analyzed in this report.

## **2. MILLERSBURG DEVELOPMENT CODE**

Like the County, the City's Development Code includes specific criteria for Comprehensive Plan Map and Zoning Map Amendments. Each is reviewed below. *Analysis is shown in italics.*

### 5.09.050 Decision Criteria for Comprehensive Plan Map Amendments

Plan map amendment proposals shall be approved if the applicant provides evidence substantiating the following:

- (1) All information and analysis must justify the proposed change relative to the map designation to which the property is proposed to change, and to the map designation from which the property is changing. The analysis must speak to the impacts from the decrease in land acreage of one map designation and the increase in land acreage for the proposed map designation.**

*The proposed UGB swap will have no negative impacts from traffic and circulation patterns because the City has been planning, and will soon be building, improvements to the new NE Transition Parkway that will connect to site B. This will keep truck traffic away from the residential sections of NE Conser Road. Public facilities and services are also already planned for that area near site B because the City has been extending services to an area on the west side of the railroad tracks, and south of site B.*

*Swapping property should have no effect on parks because both are industrial use properties. The swap will have great benefits to the economy of the City because site A is unbuildable, and site B is ready for development. The proposed swap will help protect the natural areas within site A as discussed previously. This criteria is met.*

- (2) Compliance is demonstrated with the Statewide Land Use Planning Goals and Guidelines and any relevant Administrative Rules applying to the subject properties or to the proposed land use designation. If the proposed designation requires an exception to the Goals, the applicable criteria in the Oregon Land Conservation and Development Commission Administrative Rules for the type of exception needed shall also apply.**

*All Statewide Planning Goals and Administrative Rule requirements are reviewed in detail in Section A of this staff report. In summary, the proposed swap complies with all State requirements. This criteria is met.*

- (3) Consistency with the applicable goals and policies in the Comprehensive Plan is demonstrated.**

*All applicable Comprehensive Plan policies and procedures are reviewed*



above in Staff Report section C.1. In summary, the proposed swap complies with the Comprehensive Plan. This criteria is met.

- (4) The Plan does not provide adequate areas in appropriate locations for uses allowed in the proposed land use designation and the addition of this property to the inventory of lands so designated is consistent with projected needs for such lands in the Plan.**

*This criterion does not apply, because the application proposes a swap of property that is essentially the same acreage.*

- (5) The Plan provides more than the projected need for lands in the existing land use designation.**

*This criterion does not apply, because the application proposes a swap of property that is essentially the same acreage.*

- (6) The proposed land use designation will not allow zones or uses that will destabilize the land use pattern in the vicinity or significantly adversely affect existing or planned uses on adjacent lands.**

*As explained previously, for site A the property is currently vacant and wooded. It is within the County, because it was recently removed from the City limits. To the west and south of the site is the Willamette River, to the north is currently agriculture (though this swap proposes to make it industrial), and to the east of the site is industrially zoned property inside the City, though the property is currently vacant.*

*For site B the property is also currently within unincorporated Linn County with agricultural uses. The property to the east of site B is industrially zoned inside the City with a power substation. To the south is vacant wooded land that has recently been removed from the City limits. To the north and west the uses are agricultural.*

*Agricultural uses next to industrial uses do not typically present conflicts. Some industrial uses may create or manufacture products that may be harmful to agricultural crops, inversely, the application of some agricultural pesticides may conflict with food production of other sensitive industrial processes. These can be mitigated through the design of the industrial projects. Conflicts depend largely on the design of the industrial development. Potential conflicts will be*

identified and mitigated at the design review stage. The City has had Industrial Comprehensive Plan Land uses next to Agricultural Land Uses (within the county) for years. Expanding the City Industrial Land Uses to the west with this swap will not result in new adjacency conditions that do not exist today.

*This criteria is met.*

**(7) Public facilities and services necessary to support uses allowed in the proposed designation are available or will be available in the near future.**

*As discussed previously, there will be adequate public facilities to serve site B. This criterion is met.*

**5.10.050 Decision Criteria for Zone Map Amendments.**

**Zone change proposals shall be approved if the applicant provides evidence substantiating the following:**

**(1) The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.**

*There is currently no Comprehensive Plan Land Use designation on site B. The proposed Comprehensive Plan land Use classification is Industrial, and the Zoning proposed is General Industrial (GI). The two are highly compatible based on Table 9.500B in the Comprehensive Plan Land Use Element. This criterion is met.*

**(2) The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity.**

*Site B is over 160 acres and is generally flat. There are no hazards on the site except for a small flood designation on the southwestern corner that would not likely be developed anyway. The property is well suited to industrial development. This criterion is met.*

**(3) Allowed uses in the proposed zone can be established in compliance with the development requirements in this Code.**

*As discussed above, the property is well suited to industrial development. Industrial uses can be accommodated on the site, specifically the GI standards including setbacks and height limits can be easily accommodated. All other development standards can be met for most typical industrial developments including concrete tilt up warehouses, battery storage facilities and other industrial projects. This criterion is met.*

**(4) Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.**

*As discussed previously, there will be adequate public utilities based on the City's planned extensions and adequate transportation facilities in the form of the planned improvements to NE Conser Road and NE Transition Parkway. This criterion is met.*

**(5) For residential zone changes, the criteria listed in the purpose statement for the proposed residential zone shall be met.**

*The change is not a residential zone change. This criteria does not apply.*

**III. ADDITIONAL FINDINGS**

The following additional findings are included for the record.

- The City recently completed a new Housing Needs Analysis, which was not formally adopted by the City Council. None of the proposed changes directly affect or impact housing development in the City. The swap is for industrial property only. The proposed swap is not inconsistent with the Housing Needs Analysis.

**IV. STAFF RECOMMENDATION TO THE PLANNING COMMISSION**

Based on the above findings of fact, the Comprehensive Plan Map Amendment and Zoning Map Amendment satisfies the applicable criteria. Staff recommends that the Planning Commission recommend approval of Application No. DC 22-01 to the City Council.

**V. SUGGESTED MOTION FOR PLANNING COMMISSION**

I move that the Planning Commission recommend approval of DC 22-01 to the City Council because all applicable criteria are met, all findings of fact are included in the staff report and implementing ordinance.

**VI. STAFF RECOMMENDATION TO THE CITY COUNCIL** (*assuming the Planning Commission recommends approval*)


Based on the above findings of fact the proposed amendments satisfy the applicable criteria. The Planning Commission and staff recommend that the City Council approve Application No. DC 22-01 and adopt Ordinance No. 2022-XX, pending similar action by the County Board of Commissioners and finding of concurrence by the DLCD.

**VII. EXHIBITS**

- A. Alternatives Analysis dated September 2022
- B. Ordinance 197-22
- C. Resolution 2022-09
- D. DRAFT Ordinance 197-XX
- E. Amended Comprehensive Plan Map
- F. Amended Zoning Map
- G. Public Hearing Notice

## **EXHIBIT**

A. Alternatives Analysis dated September 2022



# Millersburg Urban Growth Boundary Alternatives Analysis

TECHNICAL MEMORANDUM FOR UGB SWAP  
PREPARED BY | MATT STRAITE, COMMUNITY DEVELOPMENT DIRECTOR

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## Intro

The City Council has expressed interest in making some changes to the City Urban Growth Boundary (UGB) and City limits. There are sections of the City that appear to be buildable, but for a host of reasons, are not. To address this, the City is proposing a UGB swap for industrially zoned property. No residential changes are proposed.

Traditionally, in the State of Oregon, a non-residential expansion of a UGB would only be done if there is a need for the City to grow in order to accommodate jobs for a 20 year population projection. At the time this was drafted, the City was starting to perform an Economic Opportunity Analysis to look at where City does, or does not, need to grow.<sup>1</sup>

However, the issue at hand is related to a need to shift unbuildable property out of the City and add new property into the City that can allow the levels of development that our plan intended. The City will be using a UGB land exchange (swap) as outlined in OAR 660-024-0070. Using these State provisions, the City can swap the location of the UGB. This allows for a slightly streamlined process. The acreage totals must be essentially the same, and the use must be identical. Using the OAR 660-024-0070, the City can move forward without the need for justification based on population data or jobs need.

The Department of Land Conservation and Development (DLCD) has explained that an alternatives analysis is still required, as outlined in OAR 660-024-0065. This report satisfies the requirements for an alternatives analysis as outlined in OAR 660-024-0065 through 67.

The City has already completed the first part of the UGB swap. About 160 acres was removed from the City limits in August of 2022. This did not alter the UGB in any way, but the proposed swap will remove that 160 from the UGB in order to add it to the City's UGB in another location.

## Regulatory Framework

The State of Oregon, Linn County, and the City of Millersburg all have policies and rules to direct when, where, and how to expand the UGB. Following is a list of the various pieces of this regulation framework.

- State of Oregon - Goal 9: Economic Development - Goal 14: Urbanization  
Oregon Revised Statute 197.298: Priority of land to be included within UGB  
Oregon Administrative Rule 660 Division 24, Urban Growth Boundaries - Oregon Administrative Rules 660-024
- Linn County - Linn County Comprehensive Plan - Urban Growth Management Agreement (between Linn County and Millersburg)
- City of Millersburg - Millersburg Comprehensive Plan and the Development Code

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<sup>1</sup> The City has commissioned an economic opportunities analysis to analyze this in more detail.



## What is an Alternative Analysis?

The State wants to be sure that any changes to a UGB are taken very seriously. UGBs are considered an invisible wall that is intended to keep urban uses inside and farmland outside. They are designed to protect farmland first. They are also designed to keep cities from growing like you see in California.

To help assure that significant thought is put into any UGB changes, the State has created a host of rules and regulations that guide UGB changes. Normally, a city has to do a lot of work to show there is a strong need to grow. The State also requires the city to look at all possible alternatives for where the UGB growth can occur. This document walks the reader through just such an analysis, following all State rules and regulations for the proposed UGB change.

## Preliminary Study area

OAR 660-024-0065 contains requirements to establish a study area to identify the best areas to be studied for the possible UGB swap areas. Subsection 1 requires that the study area must:

- Include all lands within ½ mile of the UGB.
  - The City's UGB is almost identical to the City limits. A ½ mile buffer has been drawn in Figure 1.
- Not be within another UGB
  - Millersburg only shares a border with Albany to the south, there are no other neighboring UGBs. Part of the study area would be within the Albany UGB and City limits. This is addressed further in the next step.
- Include all lands within an urban reserve.
  - Millersburg has no urban reserve, but when the Comprehensive Plan was a "Planning Area" was created that for all intents and purposes acts like an urban reserve. The Planning Area allows for shared jurisdictional responsibilities in this area. Additionally, the Planning Area is already identified as a possible growth area for the City.
- Include all exception lands within 1 mile of the UGB.
  - There are no exception lands within a ½ mile buffer or within one mile of the UGB.

The study area for this analysis is shown in Figure 1. <sup>2</sup>

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<sup>2</sup> All exhibits in this study do not reflect the 160 acres that was removed from the City prior to the completion of the study because they were made in advance of the property's removal from the City.

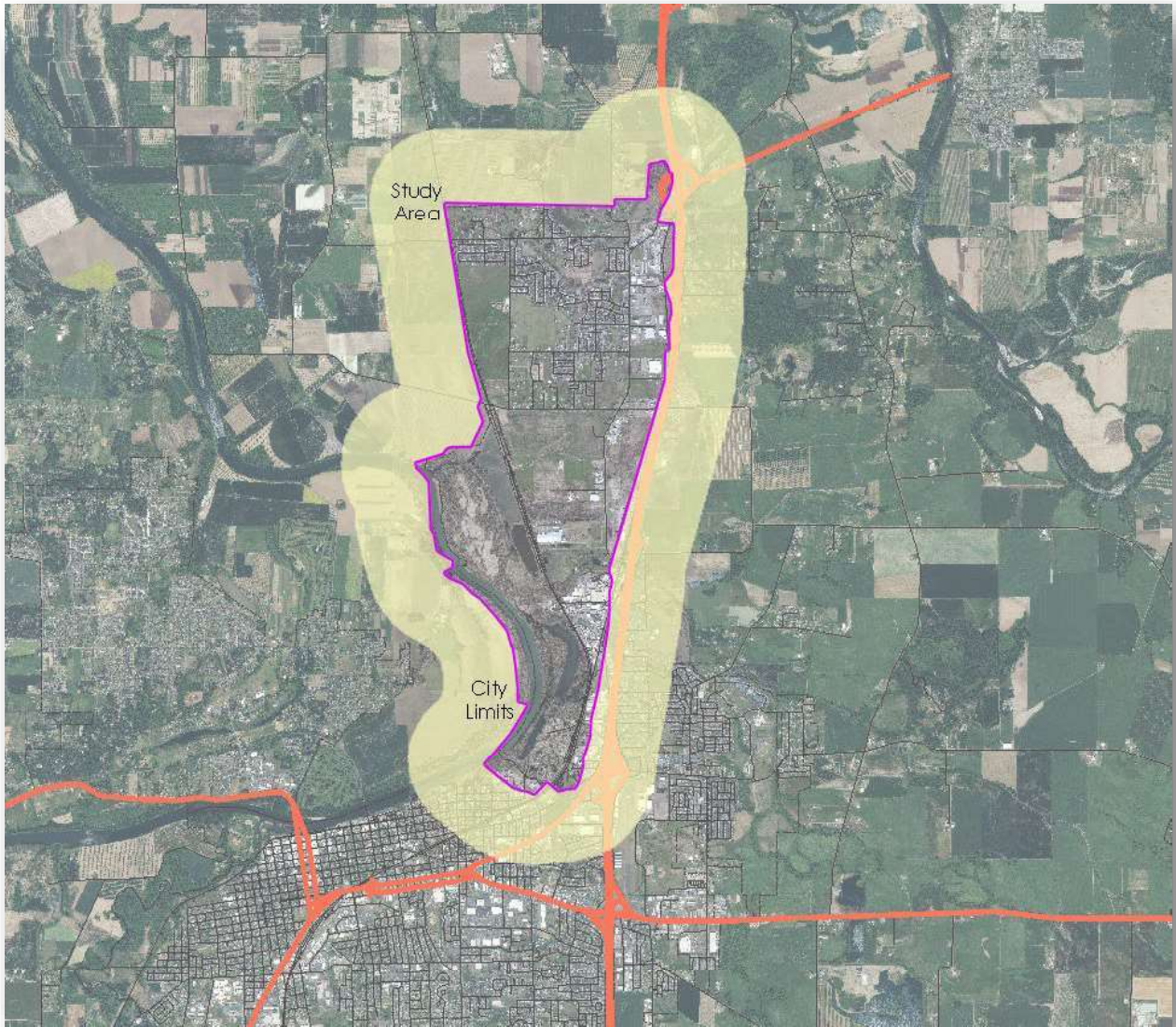


Figure 1 Study Area (1/2 Mile Buffer)

### Adjusted study area

OAR 660-024-0065(4) permits the City narrow the results of the study area. Specifically, the study area may omit any areas that cannot be serviced, have significant natural hazards, contain critical habitat, natural heritage areas, and federal government lands managed for rural uses. Regarding services, there are additional regulations for industrial UGB changes. See below.

## *Analysis of areas removed from the study area (creation of adjusted study area)*

### *Service Areas*

Areas within the ½ mile buffer were excluded from the study area because they cannot be serviced with water, sewer and other utilities. These include:

- Area that is located on the west side of the Willamette River, because bridges would be too expensive and thus infeasible.
- Area south and south east of the current limits because this area is already developed and is within another jurisdiction (Albany).
- Area along near the northeastern edge of the City, because the topography is too steep to be serviced for industrial development and because the larger water, sewer and natural gas service lines that industry requires are not located in or near this area.

### *Natural Hazards*

Mapped natural hazards include floodways and landslide areas. The following areas have been removed from the study area based on these hazards (see attached exhibits):

- Floodway areas near the west side of the City (these were the primary reason for the proposed UGB swap).
- The sloped areas on the northeast corner of the ½ mile buffer east of I-5 because they feature landslide areas as shown on the Oregon Department of Geology and Mineral Industries (DOGOMI) Statewide Landslide Information Database for Oregon (SLIDO).

### *Sensitive Habitat Areas*

Millersburg has no sensitive habitat areas that are specific to the City,<sup>3</sup> or designated State scenic corridors.

### *Industrial Uses*

Lastly, OAR 660-024-0065(3) explains that when the primary purpose for expansion of the UGB is to accommodate a particular industrial use that requires specific site characteristics and the site characteristics may be found in only a small number of locations, the preliminary study area may be limited to those locations within the one-mile study area boundary, that have or could be improved to provide the required site characteristics. The proposed swap is not being done for any one specific type of industrial use. It is important to explain that the City of Millersburg has several factors that make it ideal for industrial development, which explains the City's long, and proud, history in manufacturing and industry. Many of these are mapped, such as the location of significant water, power, natural gas, rail lines and access to the river. Each of these can be provided to just about any location, but as industry gets further from the sources of these services, the cost to provide them increases. Because this is not a simple clear

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<sup>3</sup> Any mapped sensitive habitat areas generally cover the entire Willamette Valley. See Compass mapping system <https://compass.dfw.state.or.us>

determining factor, this has not been used to limit the study area. Distance to vital services will play a role in the analysis of each alternative.

*OAR 660-024-0065(5)*

The State requirements explain in subsection 65 that the adjusted study area must be at least twice the amount of land needed for the deficiency. In this case, the City is proposing a swap so there is no deficiency; however, the amount of land intended to swap is about 160 acres. As such, the adjusted study area must be larger than 320 acres. As adjusted the area east of I-5, south of the sloped area previously discussed, is about 529 acres and the area north and west of the city shown in Figure 2 is about 1,306 acres, for a total Adjusted Study Area of about 1,835 acres.

OAR 660-024-0067(6) requires that the study area be adjusted. The OAR includes a list of factors that should be removed from the study area. The City reviewed these and modified the study area as noted above. An adjusted study area map has been



created. See Figure 2.

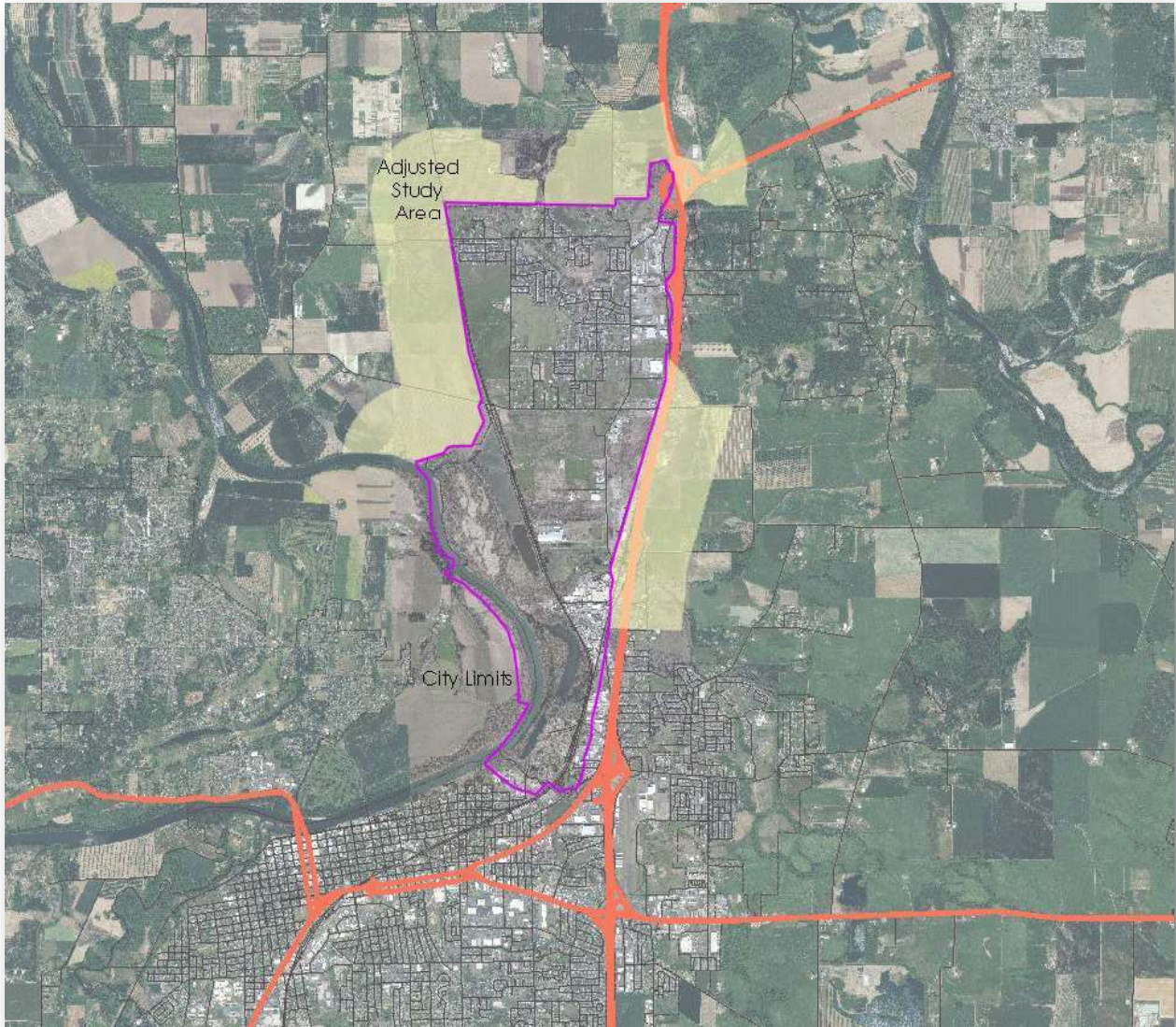


Figure 2 Adjusted Study Area

## Alternative Sites Analysis

With an adjusted study area completed, staff used OAR 660-024-0067 to further evaluate possible UGB swap areas for industrial uses.

### *Prioritization of lands*

Under the provisions of OAR 660-024-0067(2)a, a city must prioritize all "first priority" land. This includes the following:

- Urban Reserve Land
  - As discussed previously, the City does not have any urban reserve land, but does have an area designated in the Comprehensive Plan as a

'planning area.' No properties have been prioritized based on Urban Reserve because the entire study area is within the planning area.

- Exception and Non-resource land
  - The Comprehensive Plan does not identify any exception lands in the City. Regarding non-resource land, all of the land within the study area is *resource* land, there are no non-resource areas within the study area. Having that said, no properties have been prioritized based on exception lands or non-resource lands.

OAR 660-024-0067(2)b, requires that the City then prioritize "second priority" land, which is also considered marginal land. Marginal land must be classified as such in the City's Comprehensive Plan. The City of Millersburg Comprehensive Plan does not identify any marginal land.

Third priority land, as required by OAR 660-024-0067(2)c is forest or farmland that is not predominantly high-value farm land, or prime farmland. The concept is that the most productive soils remain in agricultural use and any farmland that is not of the highest soil quality be urbanized first. This is the State's way of protecting farmlands. However, all of the property within the adjusted study features class 1 soils. Therefore, applying the soil classifications from the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS) does not help narrow down any of the potential swap sites. It is also very important to understand that the property intended to remove from the City *also* features class 1 soils. Thus, the swap is not going change the total area of impacted class 1 soils. Indeed, OAR 660-024-0067(2)d explains that a city may not select land that is predominantly made up of prime farm soils *unless* there is an insufficient amount of other land to satisfy the land need, which is the case in this proposed swap.

#### *Boundary Location Factors*

The next step in the State process is outlined in OAR 660-024-0067(7) which is to apply the Goal 14 'boundary location factors' to the area that remains. As noted above, at this stage in the review, the adjusted study area was not changed with the application of the previous prioritization requirements. The swap requires a property of about 160 acres but the study area contains over 1,800 acres. Goal 14 contains 7 factors to consider all intended to narrow down possible alternative locations. Each is reviewed below.

1. Demonstrated need.

As discussed previously, the need for the land swap is driven by the depletion of industrial property in the City. The City has large areas of industrially designated property that was unbuildable for reasons discussed previously. The swap will allow the acreage totals to stay essentially the same, but unlock development by applying the industrial designation to property that can actually be built on. This factor does not limit or clarify which land should be added to the UGB.
2. Need for Housing, employment and livability.

The swap will not alter the amount of employment land, it will simply shift the land available for employment land out of an unbuildable area and move it to a place where development can occur. Pursuant to OAR 660-024-0070 need does not factor into a UGB swap. This factor does not limit or clarify which land should be added to the UGB.

3. Orderly economic provision of public facilities.

All possible UGB swap property within the adjusted study area has the ability to connect to public facilities and be serviced by the police and fire. Some locations are better suited to the extension of facilities and services. Specifically, expanding industrial areas within close proximity to other industrial areas will allow the City to capitalize on existing facilities and services that are more catered to industrial uses. This includes larger water pipes, abundant supply of natural gas, rail connectivity, adequate streets for truck use and access, and many other factors. For this reason, applying factor 3, the adjusted areas along the northern edge of the City would not be best suited to expanding industrial uses. The City generally features industrial uses south of NE Conser Road and residential uses north of NE Conser Road. Possible alternative locations were selected using the application of factor 3.

4. Maximum efficiency of land uses within and on the fringe of the existing urban area.

Similar to the analysis above, the expansion (swap) of industrial property will be most efficient when deployed near other industrial uses. There are economies of scale that come into play when industrial uses are built near other similar uses such as larger utility lines and railroad connections. Possible alternative locations were selected using the application of factor 4.

5. Environmental, energy, economic and social consequences.

Most of the adjusted study area is free from known wetlands except the northeast corner of study area, east of I-5. The Willamette River and all possible study area on the west side of the River have already been identified to be excluded from the adjusted study area. Other environmental issues will be addressed more closely when the property develops, through the Department of Environmental Quality (DEQ). Possible alternative locations were selected using the application of factor 5 by omitting the area northeast of I-5.

6. Retention of agricultural land with class 1 being the highest.

As discussed previously, the area to be swapped featured class 1 soils, and all of the property within the Study Area contains class 1 soils. As such, this factor did not reduce or eliminate any areas from further consideration.

7. Compatibility of the proposed area with nearby agricultural activities.

Agricultural uses next to industrial uses do not typically present conflicts. Some industrial uses may create or manufacture products that may be harmful to agricultural crops, inversely, the application of some agricultural pesticides may conflict with food production or other sensitive industrial processes. These can be mitigated through the design of the industrial projects. Conflicts



depend largely on the design of the industrial development. Potential conflicts will be identified and mitigated at the development review stage. The City has had Industrial Comprehensive Plan Land uses next to Agricultural Land Uses for years. Expanding the City Industrial Land Uses to the east with this swap will not result in new adjacency conditions that do not exist today.

Using these analysis above, three sites have been identified for additional evaluation. Each is reviewed below.

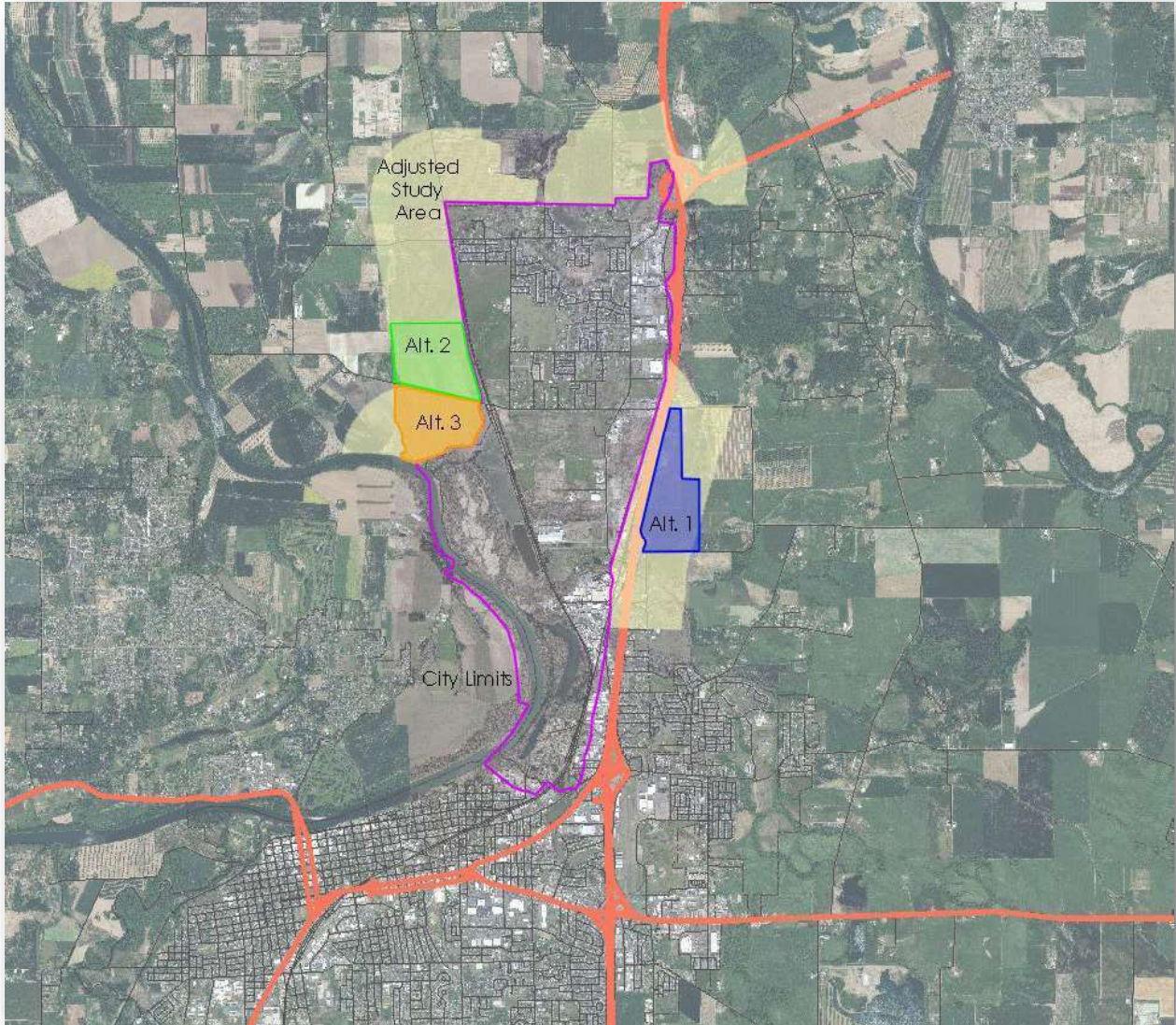


Figure 3 Alternative Study Sites

Consolidated comparison factors



Many of the requirements from OAR 660-024-0065 and 67 tend to be similar to each other. Many of these also mirror the City's goals for doing a UGB swap in the first place.

For the purposes of comparing the three identified alternative sites, this report uses consolidated versions of many of the requirements that come from the prioritization and Goal 14 factors, and overall goals of the City. These are stated below and used in a table form in each alternative site analysis shown below.

Consolidated comparison factors:

1. The swap should relocate the industrial property outside floodways.
2. Because the area to be removed is about 160 acres, all alternatives in this analysis will compare similarly sized areas outside the City and UGB. It is important to keep the size similar in order to comply with OAR 660-024-0070.
3. All property proposed to be added to the UGB (through the swap) should be suitable for industrial development.

Specifically:

- a. Industrial property should have adequate access to water and sewer.
- b. Industrial property should have adequate access for trucks and to a lesser extent rail access in case rail spurs are needed.
- c. Industrial property should be located in a place where possible impacts to residential property can be mitigated.

## Alternative 1

### Location

Figure 4 shows the location of Alternative 1. Alternative 1 is located on the east side of I-5, in unincorporated Linn County. The area is about 148 acres. The area features some topography, but not enough to rule it out as a potential alternative site. There is a knoll on the property. Low points on the property are at about 238 feet below sea level as shown on the County GIS system, to a height of about 288 feet, for a difference of about 50 feet. The site is mostly farmland. Access to the site is good with access to the south from Murder Creek Drive NE and from the west along an I-5 frontage road, Century Drive NE. Both are developed roads. There are no significant hazards on the property or significant known wetlands based on the County's GIS system.

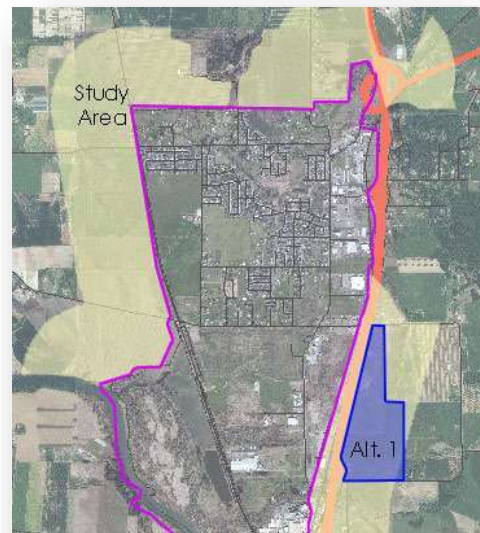


Figure 4 Alternative Site No. 1

## Constraints

As noted above, there is some topography on the site, and there are no significant development constraints.

## Analysis

In order to compare location number 1 with the others, the property was reviewed against key goals which echo the State requirements above in a consolidated form (for purpose of comparison). See table 1 below.

Table 1: Alternative 1 Analysis		
Consolidated Comparison Factors		
1	Floodways	This site is located completely out of any FEMA Floodway.
2	Near 160 acres (to match those removed)	Alternative 1 is about 148 acres.
3	Suitable for Industrial	Alternative 1 is located along I-5. While high visibility is good for retail, it is not a specific benefit to industrial uses. The topography may be a challenge for large concrete tilt-up projects.
3a	Access to water & Sewer	A 42" waterline under the jurisdiction of the City of Albany is adjacent to the western edge of the property. Alternative 1 would require an extension of a Millersburg water main the western edge of the property. Sewer lines would need to run to the site from the west of I-5. Sewer conveyance would require pumping and crossing an interstate and a major railroad line.
3b	Access- Trucks and Rail	Access to the property is available and suitable for trucks. Access to I-5 is good. There is no rail service near the site.
3c	Impacts to Residential	There are few homes near or on the property. The site is about 4,136 feet north of the Albany City limits where track homes are present, and I-5 separates the site from any residential uses in Millersburg. The site is generally far enough from homes to mitigate any potential impacts to residential uses.

## Alternative 2

### Location

Figure 5 shows the location of alternative 2. Alternative 2 is located just outside the west edge of the City, in unincorporated Linn County. The area is 178 acres. The site is generally flat, with a low of about 200 feet above sea level and a high of about 210, for a 10-foot difference. The site is currently farmland. Access to the site is good with access to the south from NE Conser Road and the proposed new NE Transition Parkway (specifically designed for trucks). There are no known significant hazards on the property or significant wetlands based on the County's GIS system.

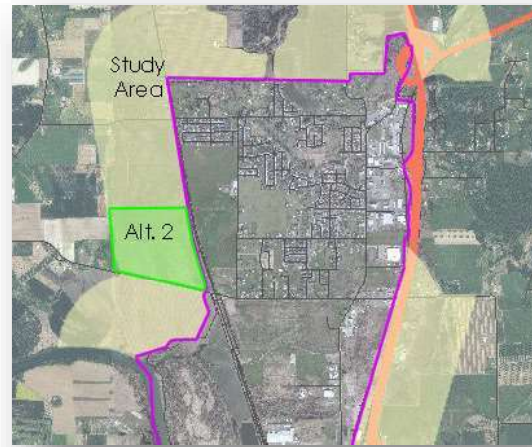


Figure 5 Alternative Site No. 2

### Constraints

The property does not feature any significant constraints, as mentioned above, it is free from slopes and other possible hazards.

### Analysis

In order to compare location number 2 with the others, the property was reviewed against key goals which echo the State requirements above in a consolidated form (for purpose of comparison). See table 2 below.

Table 2: Alternative 2 Analysis		
Consolidated Comparison Factors		
1	Floodways	This site is located completely out of any FEMA Floodway.
2	Near 160 acres (to match those removed)	Alternative 2 is about 178 acres.
3	Suitable for Industrial	Alternative 2 is located adjacent to residentially zoned property to the east of the site.
3a	Access to water & Sewer	There are water and sewer connections about 850 feet east of the subject site. The water line is 12", the sewer line is 8". Connections could also be made further south of the site. The City is planning to extend water to this area as part of an effort to connect a property that is located south of Alternative 3. Alternative 2 would benefit from these connections as well.
3b	Access- Trucks and Rail	Access to the property for trucks is available along NE Conser Road and the soon-to-be-constructed NE Transition Parkway, which is planned to accommodate truck traffic away from residential uses. Access to I-5 is possible

		through NE Transition Parkway. Future on-ramp plans for I-5 will make this even more accessible for truck traffic. There is a rail line along the western edge of the site for possible connections to the property.
3c	Impacts to Residential	The site is located adjacent to property zoned for residential uses, to the east of the site. Some housing units are currently under construction, the rest of the property is currently vacant. While some impacts from industry can be mitigated, proximity to residential could present issues.

## Alternative 3

### Location

Figure 6 shows the location of Alternative 3. Alternative 3 is located just outside the western edge of the City, south of Alternative 2, in unincorporated Linn County. The area is about 160 acres. About 7 of those acres are within a floodplain area, and about 1.2 acres are within floodway, near where the property touches the river. The site is generally flat, with a low of about 200 feet above sea level and a high of about 210, for a 10 foot difference. The site is currently farmland. Access to the site is good with access to the north from NE Conser Road and the proposed new NE Transition Parkway (specifically designed for trucks).

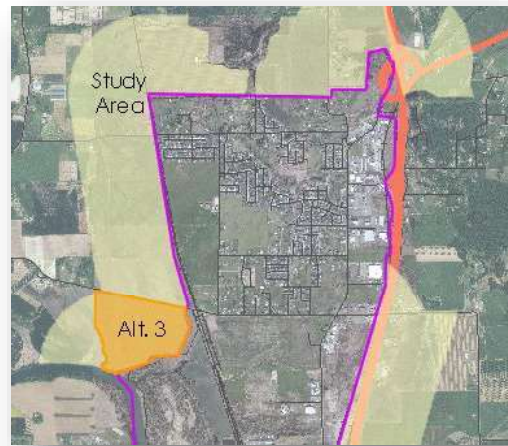


Figure 6 Alternative Site No. 3

### Constraints

Constraints on the property include the floodplain and floodway areas discussed above on the southwest corner of the property.

### Analysis

In order to compare location number 3 with the others, the property was reviewed against key goals which echo the State requirements above in a consolidated form (for purpose of comparison). See table 3 below.

Table 3: Alternative 3 Analysis		
Consolidated Comparison Factors		
1	Floodways	About 1.2 acres of the property are within a FEMA Floodway designation.
2	Near 160 acres (to match those removed)	Alternative 3 is about 160 acres.

3	Suitable for Industrial	Alternative 3 is not located adjacent to residentially zoned property. The site is outside the Willamete Greenway overlay, and is located adjacent to other industrially zoned property on the south and east.
3a	Access to water & Sewer	There are water and sewer connections about 850 feet east of the subject site. The water line is 12", the sewer line is 8". Connections could also be made further south of the site. The City is planning to extend water to this area as part of an effort to connect a property that is located south of Alternative 3.
3b	Access- Trucks and Rail	Similar to Alternative 2, access to the property for trucks is available along NE Conser Road and the soon-to-be-constructed NE Transition Parkway, which is planned to accommodate truck traffic away from residential uses. Access to I-5 is possible through NE Transition Parkway. Future on-ramp plans for I-5 will make this even more accessible for truck traffic. There is a rail line along the western edge of the site for possible connections to the property.
3c	Impacts to Residential	The site is not located next to any residentially zoned property. The closest residentially zoned property is north-east of the site. That property is currently vacant.

## Comparison

To compare the alternatives the study will again use the consolidated comparison factors.

### Goals:

- The City is not trying to expand the UGB to accommodate additional industrial development, rather the City is trying to exchange property by changing the location of the UGB.**

*All three alternatives achieve this goal.*
- A goal for the City is to remove industrial property from poorly suited areas within the City to better suited areas currently outside the City limits and UGB.**

*All three sites are better suited to industrial development than the 160 acres removed for the City. Alternative 1 has topography concerns, alternative 2 is located closest to residential uses, alternative 3 has some natural hazards, but those only impact a small amount of property. It should also be noted that access to the Willamete River could be an advantage to some industrial uses. Alternative 3 seems best suited.*



## Comparison Factors:

### 1. The swap should relocate the industrial property outside floodways.

*Only alternative 3 has any floodway impacts. This only impacts a very small portion of the property. Based on the shape of the parcel, the south-west corner of the parcel would likely not be used for structures even without the flood impacts. Therefore, while the site features some flood plain and floodway designations, they are not significant. All three alternatives seem to achieve this goal.*

### 2. Because the area to be removed is about 160 acres, all alternatives in this analysis will compare similarly sized areas outside the City and UGB (in order to continue to use the swap allowed by OAR 660-024-0070).

*All alternatives are close enough to the 160 acre 'swap' acreage to satisfy the requirements of OAR 660-024-0070.*

### 3. All property proposed to be added to the UGB (through the swap) should be suitable for industrial development, to assure the property is like-for-like.

*As discussed above, alternative 1 seems to have some topography challenges, alternative 2 seems to be too close to residential uses, and alternative 3 has some small floodplain designated areas. However, in balancing all of these of these alternatives, alternative 3 is best suited to industrial development.*

#### Specifically:

#### a. Industrial property should have adequate access to water and sewer.

*Alternative 1 is located along a large water main which is under the jurisdiction of the City of Albany. Alternative 1 will require extension of a Millersburg water main. The other two would require extensions of water services. All three would require extensions for sewer services. Both are planned.*

#### b. Industrial property should have adequate access for trucks and to a lesser extent rail access in case rail spurs are needed.

*All properties have adequate access for trucks. Alternatives 2 and 3 will have better access once planned offramp modifications are made and NE Transition Parkway is completed. Alternative 1 has no access to rail, alternatives 2 and 3 do. Alternative 2 and 3 have the best access.*

#### c. Industrial property should be located in a place where possible impacts to residential property can be mitigated.

*As noted above, only alternative 2 is proposed adjacent to residentially zoned property. Alternatives 1 and 3 have an advantage over alternative 2 in this category.*

## Summary

Based on the analysis, alternative 3 is the preferred alternative, because, comparatively, it has good truck and rail access, is relatively flat, has access to water and sewer, access to the river, and it is not located adjacent to residential uses.

### Exhibits

1. SLIDO Map
2. Habitat Map
3. Infrastructure Map
4. Planned Offramp
5. Planning Area (reserve)

Exhibit 1- SLIDO Map

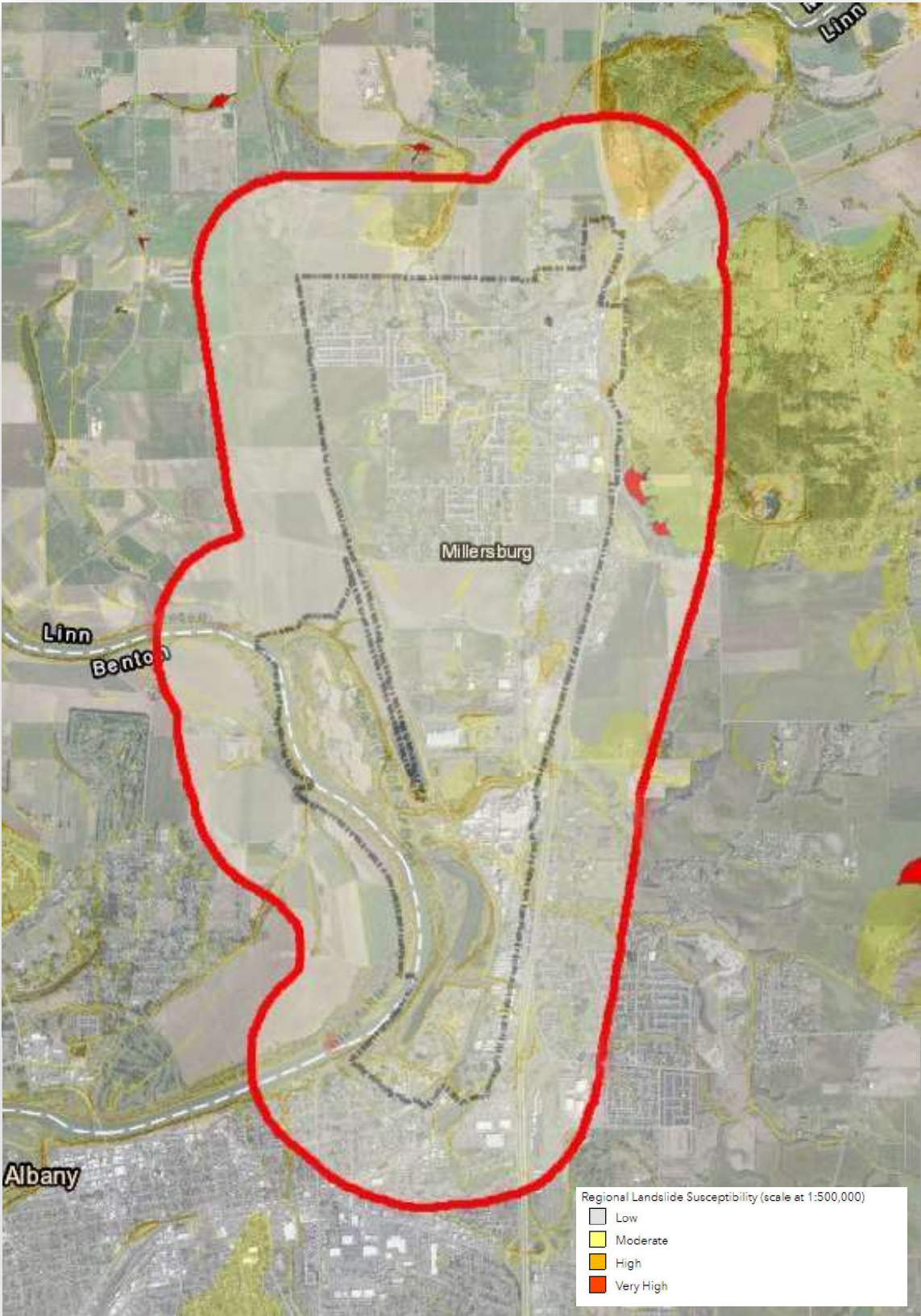
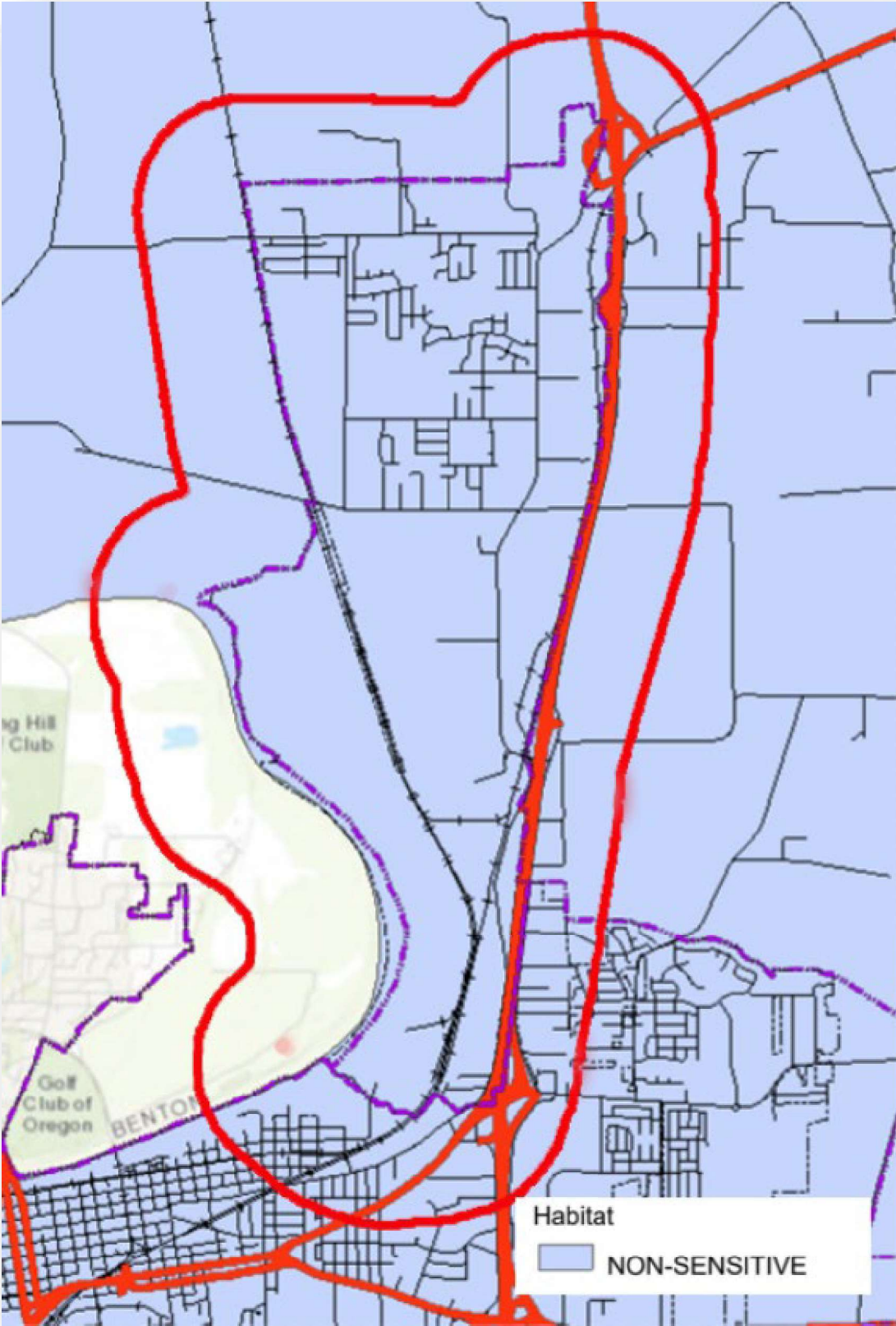
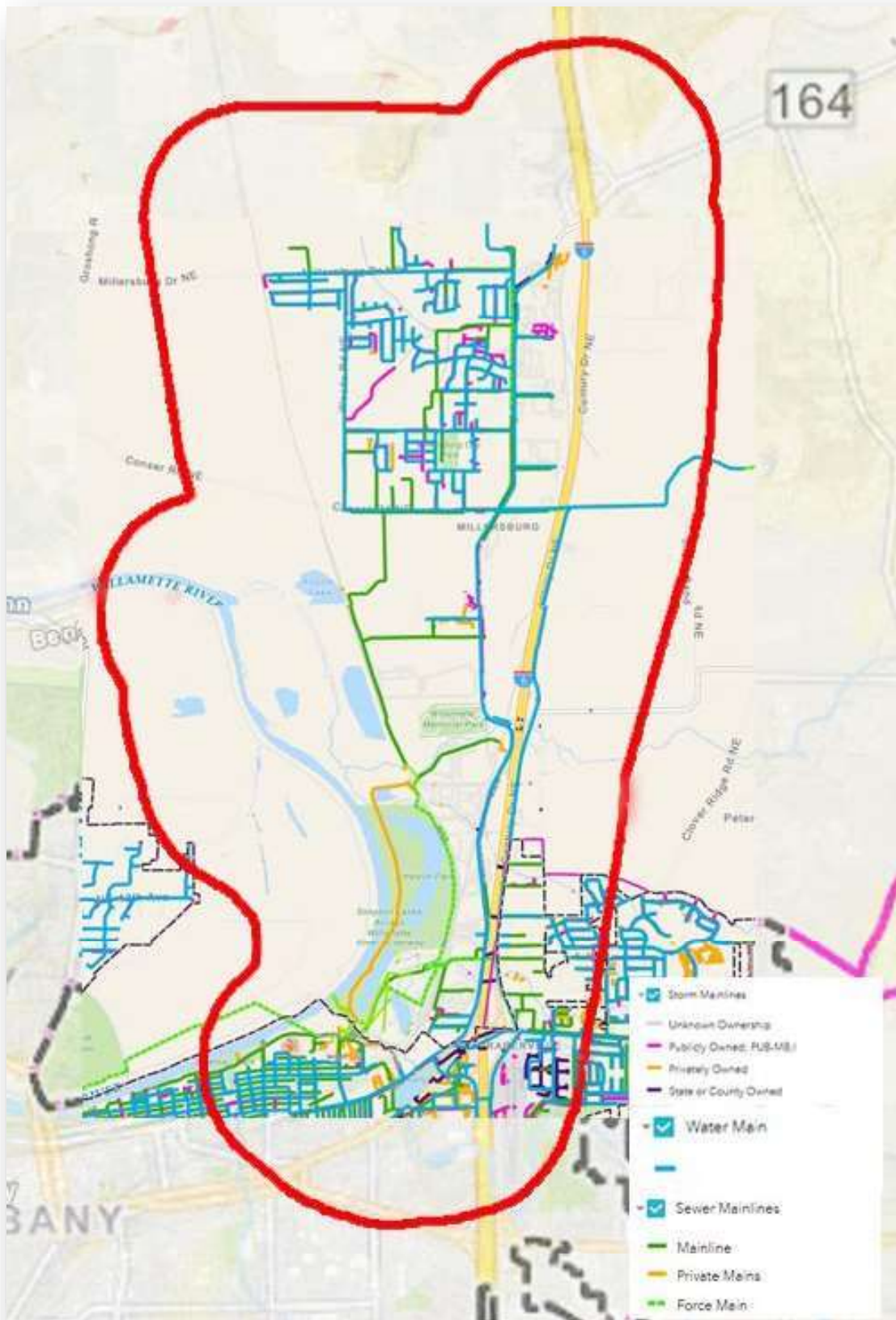




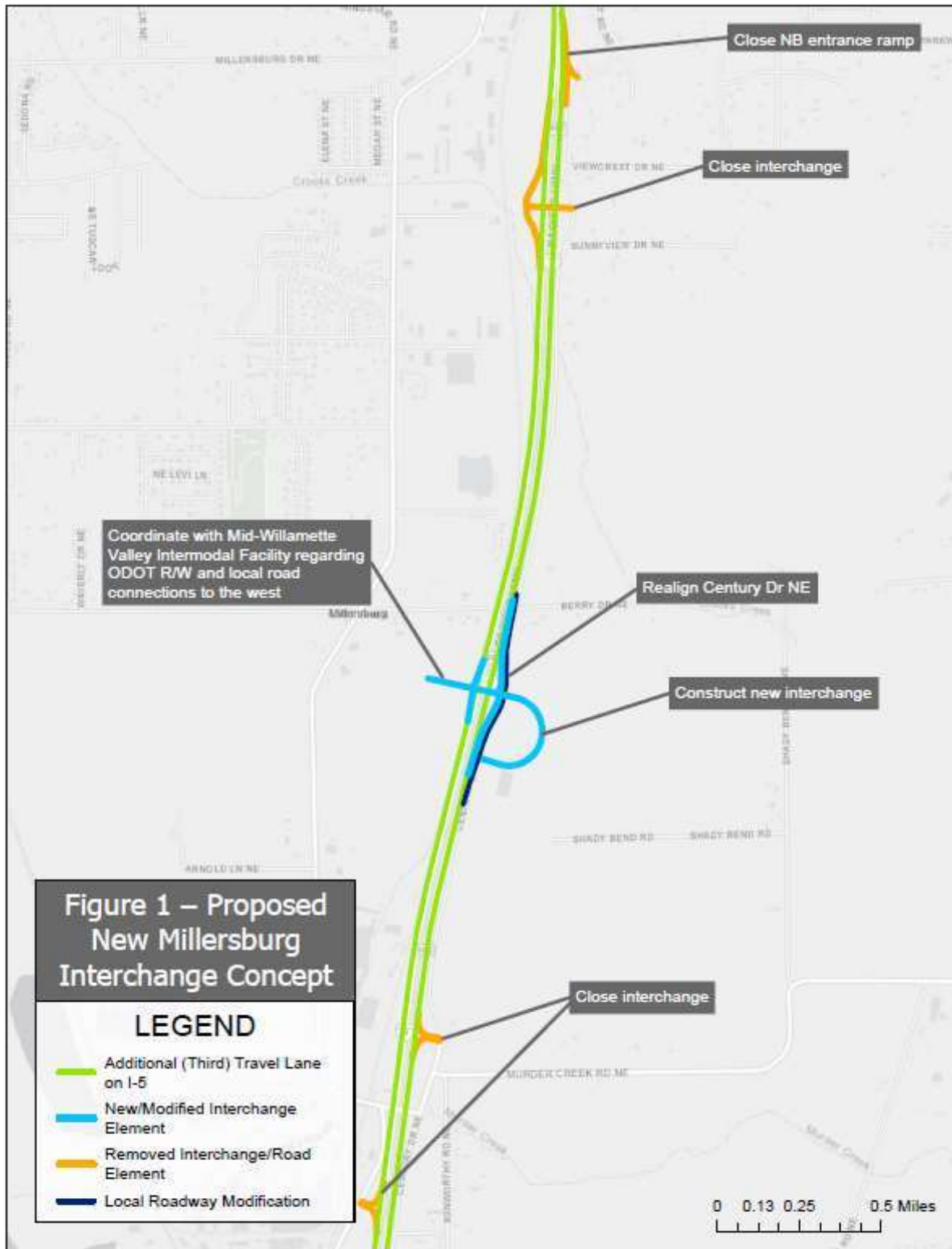
Exhibit 2- Habitat Map



# Exhibit 3- Infrastructure Map

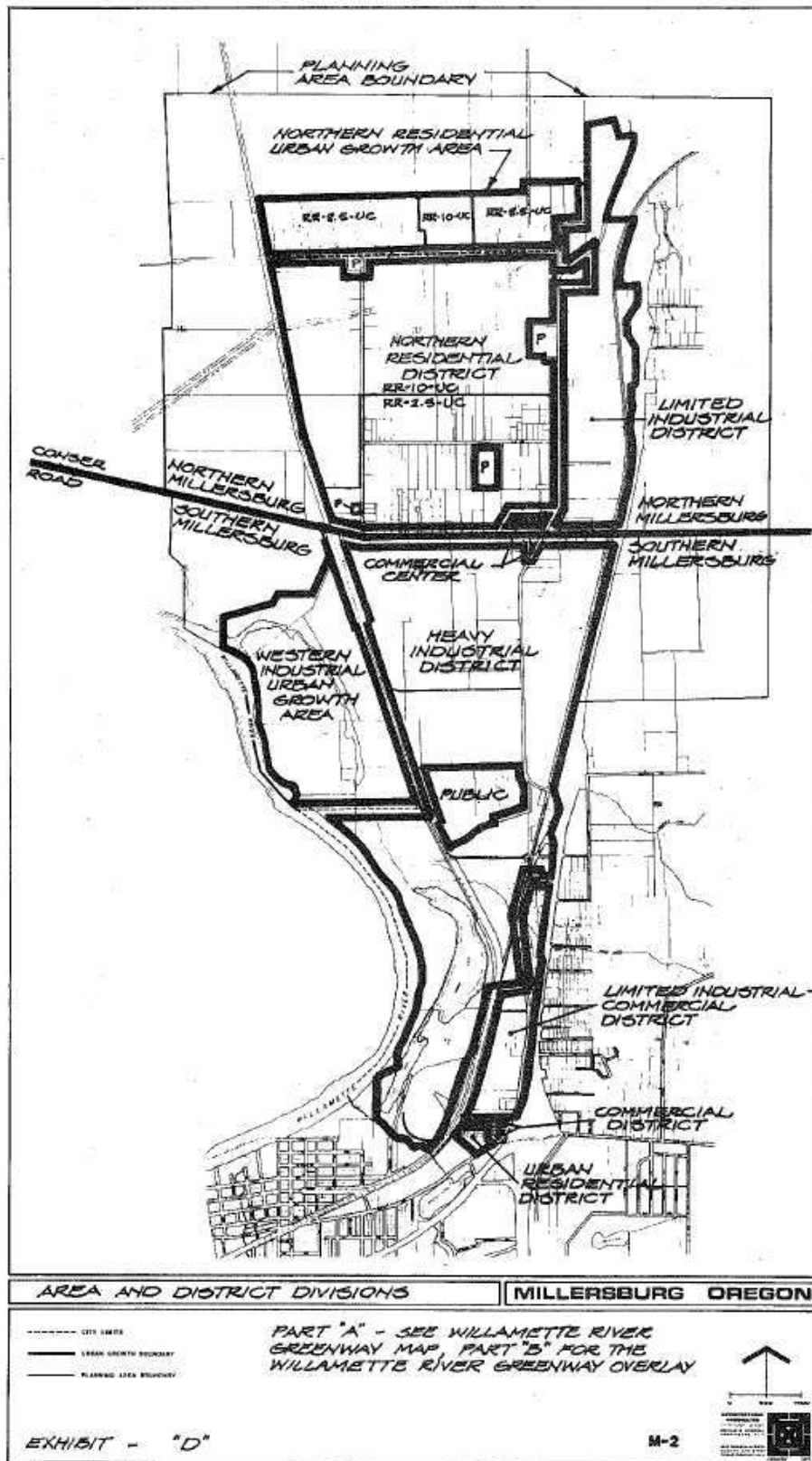


# Exhibit 4- Planned Offramp





# Exhibit 5- Planning Area



## **EXHIBIT**

B. Ordinance 197-22

## **ORDINANCE NO. 197-22**

### **AN ORDINANCE TO REMOVE TAX LOTS 10S-03W-33-00200, 10S-03W-29-00300, AND 10S-03W-29-00201 FROM THE CITY LIMITS AND AMEND THE MILLERSBURG COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP TO SHOW THE REVISED CITY LIMITS**

**WHEREAS**, the City of Millersburg City Council directed staff to move forward with an exchange of property (a swap) to remove property from the City limits and Urban Growth Boundary (UGB) and alter the UGB to include different property in a more viable location; and,

**WHEREAS**, in order to swap property by changing the UGB, two different land use actions are required; the first step is to withdraw territory; the second step is to revise the UGB; and,

**WHEREAS**, Oregon Revised Statute 222.460 contains requirements specific to the land use action of a de-annexation; and,

**WHEREAS**, on June 14, 2022, the City Council approved Resolution 2022-09 stating an intent to withdraw territory (de-annex) property and identifying tax lots 10S-03W-33-00200, 10S-03W-29-00300, and 10S-03W-29-00201 as the properties intended for removal; and,

**WHEREAS**, City and County staff met to discuss the proposed project and the County did not register any specific concerns with the City's proposal; and,

**WHEREAS**, a de-annexation does not require any land use actions on the part of the County; and,

**WHEREAS**, the project is fully consistent with the Urban Growth Management Agreement between the City and the County (and Urban Growth Boundary Procedural Ordinance 80-163); and,

**WHEREAS**, Oregon Revised Statute 222.460 contains requirements specific to the land use action of a de-annexation; and,

**WHEREAS**, public notice was posted twice in a newspaper for a public hearing to occur on July 12, 2022, before the City Council; and,

**WHEREAS**, on July 12, 2022, the City Council held a public hearing to provide the public with an opportunity to address the City Council about the de-annexation, the

Comprehensive Plan Map, and the Zoning Map amendment; and,

**WHEREAS**, on July 19, 2022, the Planning Commission held a public hearing and recommended the City Council adopt an ordinance to remove the property from the City limits, and furthermore, to amend the City's Comprehensive Plan Map and Zoning Map; and,


**WHEREAS**, the Department of Land Conservation and Development (DLCD) received hearing notice thirty-five days in advance of the first hearing; and,

**WHEREAS**, the Millersburg Planning Commission and City Council find that the project meets all criteria requirements from Section 5.09 and 5.10 of the Millersburg Land Use Development Code and all findings are included here and within the staff report dated July 5, 2022;

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF MILLERSBURG DO ORDAIN AS FOLLOWS:** tax lots 10S-03W-33-00200, 10S-03W-29-00300, and 10S-03W-29-00201 are hereby removed from the City limits and the Millersburg Comprehensive Plan Map and Zoning Map are amended as shown in Exhibit A.

This Ordinance shall become effective 30 days after its approval.

**PASSED by the Council and approved by the Mayor this 23<sup>rd</sup> day of August, 2022.**

  
\_\_\_\_\_  
Scott Cowan,  
Mayor

ATTEST:

\_\_\_\_\_  
Kimberly Wollenburg,  
City Recorder

# **EXHIBIT**

C.Resolution 2022-09



**RESOLUTION NO. 2022-09**

**A RESOLUTION INITIATING WITHDRAWAL OF TERRITORY  
FROM THE CITY OF MILLERSBURG**

**WHEREAS**, except as expressly prohibited by a city charter, ORS 222.460 provides that the legislative body of a city may order the withdrawal of territory from the city limits when it determines that it is in the public interest to take such action; and,

**WHEREAS**, ORS 222.460 further sets out procedures for withdrawing territory, including information that must be contained in city resolutions, requirements for public hearings, thresholds for when elections are required, and disposition of taxes and assessments; and,

**WHEREAS**, the City of Millersburg is requesting the removal of three properties from the City (totaling 167.46 acres): tax lot 10S03W2900200, 16.94 acres, tax lot 10S03W2900201, 86.92 acres, and tax lot 10S03W2900300, 63.60 acres; and,

**WHEREAS**, the three properties have no planned or existing public access (street) and are generally undevelopable because they are located completely within a floodway; and,

**WHEREAS**, the three properties are currently zoned General Industrial (GI), but are better suited to long-term protection from development interests based on reasons listed in this resolution; and,

**WHEREAS**, the City has no zoning designations that could assure long-term protection; and,

**WHEREAS**, leaving the current zoning designation of General Industrial (GI) on the three properties creates a false presumption that the property is viable for industrial development, which has negative ramifications on the presumed availability of land for non-residential development within the City limits, which could hamper any future economic development; and,

**WHEREAS**, the General Industrial (GI) zoning designation on the three properties is misleading due to a prohibition on any development due to its location within a floodway, and because no urban development of any kind would be permitted on these properties without unrealistic mitigation to remove the properties from the floodway; and,

**WHEREAS**, the City does not intend to revise the City's Urban Growth Boundary (UGB) at this time; and,

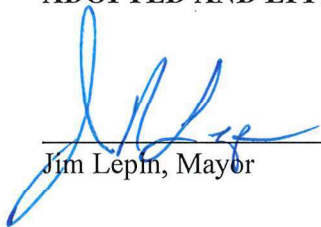
**WHEREAS**, the City Council discussed the proposal at the January 13, 2022 meeting and in subsequent meetings, where the Council indicated support for a series of land use actions that would essentially swap one set of properties out of the Urban Growth Boundary (UGB)

and another set into the UGB, the first step of which is a resolution to officially initiate removal of property from the City limits.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MILLERSBURG** as follows:

1. It is the intention of the City of Millersburg to change the boundary of the City by means of withdrawing the three properties listed below from the City limits.
2. The territories to be withdrawn from the City of Millersburg are real property in the County of Linn, State of Oregon, described as follows (full legal descriptions of each are attached as Exhibit B):
  - a. Tax lot 10S03W2900200, 16.94 acres
  - b. Tax lot 10S03W2900201, 86.92 acres
  - c. Tax lot 10S03W2900300, 63.60 acres
3. The territory is further illustrated on the Linn County Assessor's Map attached as Exhibit A.
4. The City will schedule a public hearing on July 12, 2022 to receive public input on the boundary change proposed. A tentative date to adopt an Ordinance to formally remove the property from the City is scheduled for August 23, 2022.

**ADOPTED AND EFFECTIVE THIS 14<sup>TH</sup> DAY OF JUNE, 2022.**

  
\_\_\_\_\_  
Jim Lepm, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Kimberly Wollenburg  
City Recorder

# Exhibit A- Linn County Assessors Map

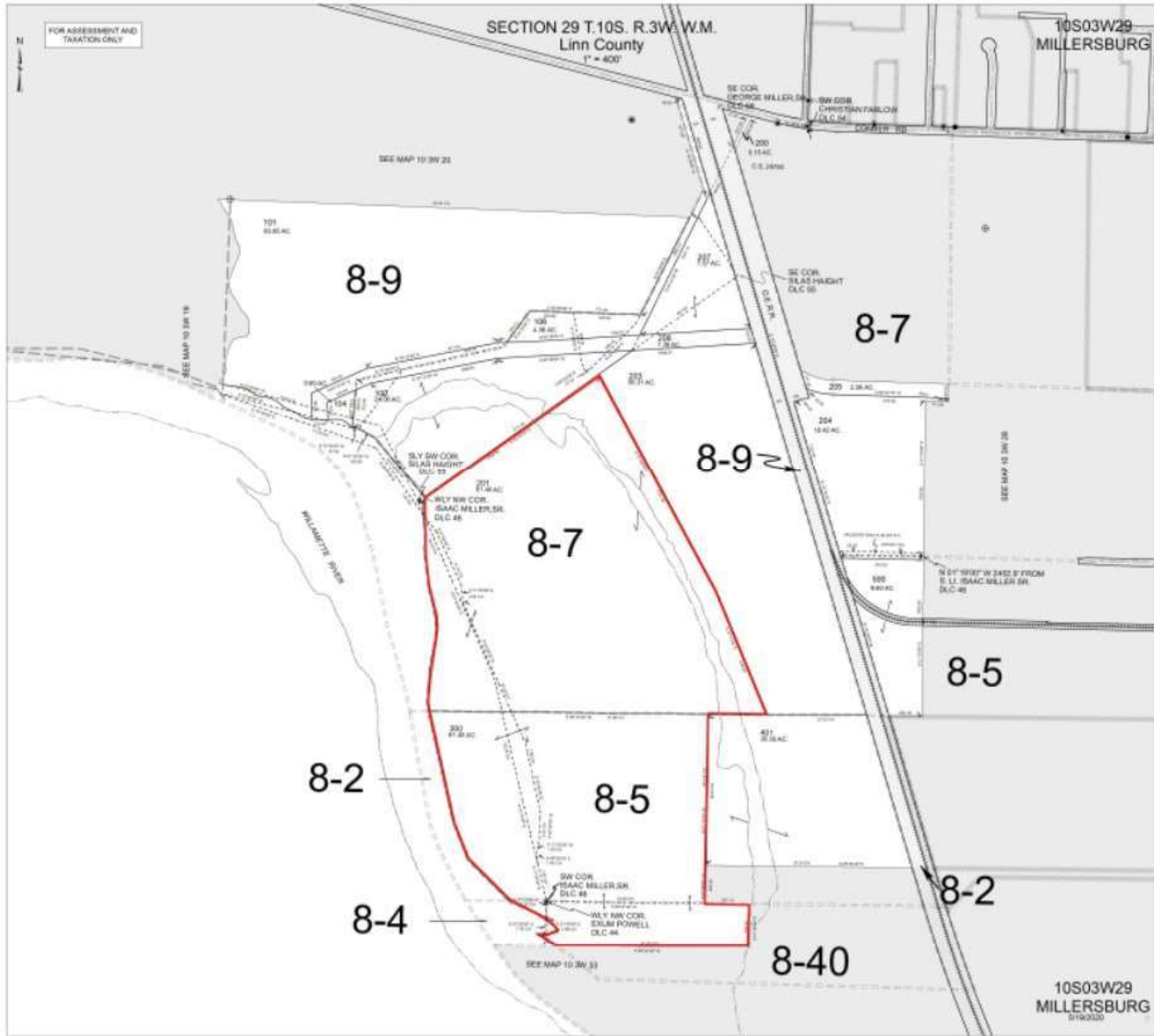




Exhibit B- Deeds with legal descriptions for all three properties.<sup>1</sup>

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<sup>1</sup> Two deeds are attached as one deed represents both tax lot 300 and tax lot 201, the second deed represents tax lot 100.



✓ After recording return to:  
 First American Title Insurance  
 Company  
 2101 Fourth Avenue, Suite 800  
 Seattle, WA 98121  
 Attn: Donna Koerber/T2007-439  
 Until a change is requested all tax statements  
 shall be sent to the following address:  
 IP EAT Three LLC  
 c/o International Paper Company  
 PO Box 2118  
 Memphis, TN 38101  
 File No.: 309302 CP7 (dk)

THIS SPACE RESERVED FOR RECORDER'S USE

LINN COUNTY, OREGON **2008-15425**  
 D-BS  
 Cnt=1 Stn=1 COUNTER **08/04/2008 11:56:45 AM**  
 \$130.00 \$11.00 \$10.00 **\$151.00**



00088688200800154250260266

I, Steve Druckenmiller, County Clerk for Linn  
 County, Oregon, certify that the instrument  
 identified herein was recorded in the Clerk  
 records.

Steve Druckenmiller - County Clerk



**STATUTORY BARGAIN AND SALE DEED**

**Weyerhaeuser Company**, a Washington corporation, successor by merger to Willamette Industries, Inc., an Oregon corporation, as to Parcels I, II, III, IV, VI, VII, XI, XII and XV and **Weyerhaeuser Company**, a Washington corporation, successor by merger to Willamette Industries, Inc., an Oregon corporation, successor by merger to Western Kraft Corporation, an Oregon corporation, as to Parcels V, VIII, IX, X, XIII, XIV and XVI, GRANTOR, conveys to **IP EAT Three LLC**, a Delaware limited liability company, GRANTEE, the following described real property: **See Exhibit "A"**

TOGETHER WITH all the tenements, hereditaments and appurtenances belonging or in any way appertaining to the Property.

TO HAVE AND TO HOLD the same in fee simple forever.

This conveyance is made subject only to those matters set forth in **Exhibit "B"**, attached hereto and incorporated herein by this reference (the "Permitted Exceptions").

And GRANTOR hereby covenants with GRANTEE that GRANTOR is lawfully seized of the Property in fee simple; that GRANTOR has good right and lawful authority to sell and convey the Property; and that GRANTOR does hereby fully warrant the title to the Property and will defend the same against lawful claims of all persons claiming by, through or under GRANTOR, but against none other.

First American Title  
 # 0808 - 205 (Ac Co)

FATCO. NO.

NCS - 309302 - CP7

The true consideration for this conveyance is \$20,884,890<sup>00</sup>. (Here comply with requirements of ORS 93.030)

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195-336 AND SECTIONS 5 TO 11, OF CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195-336 AND SECTIONS 5 TO 11, OF CHAPTER 424, OREGON LAWS 2007.

Dated this 28<sup>th</sup> day of July, 2008, but effective August 4, 2008, the effective date.



**GRANTOR:**

**WEYERHAEUSER COMPANY**, a Washington corporation, successor by merger to Willamette Industries, Inc., an Oregon corporation, and Weyerhaeuser Company, a Washington corporation, successor by merger to Willamette Industries, Inc., an Oregon corporation, successor by merger to Western Kraft Corporation, an Oregon corporation

By: Scott Marshall

By: G.W. Bjerke

Name: Scott Marshall  
Vice President

Name: G.W. Bjerke  
Assistant Secretary



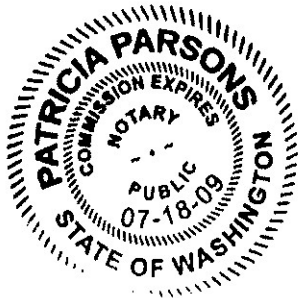
STATE OF Washington

County of King

This instrument was acknowledged before me on this 28<sup>th</sup> day of July, 2008  
By Scott Marshall as Vice President and by G.W. Bjerke as Assistant Secretary  
of Weyerhaeuser Company, a Washington corporation.

Patricia Parsons

Notary Public for ~~Oregon~~ Washington  
My commission expires: 7-18-09



## Exhibit "A"

### Legal Description – CP7

Real property in the City of Albany & Millersburg, County of Linn, State of Oregon, described as follows:

#### PARCEL I:

BEGINNING ON THE EAST LINE OF AND SOUTH 0°16' WEST, 34.20 CHAINS FROM THE NORTHEAST CORNER OF THE SARAH FARLOW DONATION LAND CLAIM NO. 59, IN TOWNSHIP 10 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, LINN COUNTY, OREGON; AND RUNNING THENCE NORTH 89°51' WEST 562.11 FEET TO A 1/2 INCH IRON ROD;  
THENCE NORTH 0°16' EAST, PARALLEL TO THE EAST LINE OF SAID CLAIM, 581.22 FEET TO A 1/2 INCH IRON ROD,  
THENCE SOUTH 89°51' EAST 562.11 FEET TO A 1/2 INCH IRON ROD ON THE EAST LINE OF SAID DONATION LAND CLAIM NO. 59,  
THENCE SOUTH 0°16' WEST 581.22 FEET TO THE POINT OF BEGINNING.

#### PARCEL II:

A 100-FOOT-WIDE STRIP OF LAND DESCRIBED IN VOLUME 135, PAGE 0687, LINN COUNTY, OREGON DEED RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" IRON ROD ON THE EASTERLY LINE OF THAT TRACT DESCRIBED IN LINN COUNTY DEED RECORDS, MF 135-687, SAID ROD BEING S1°08'13"E 1,856.44 FEET, S88°51'17"W 30.04 FEET AND N89°53'15"W 1,488.97 FEET FROM THE NORTHEAST CORNER OF THE ISAAC MILLER D.L.C. NO. 46 IN T10S, R3W, W.M., LINN COUNTY, OREGON.  
THENCE N89°53'15"W 956.065 FEET TO A 5/8" IRON ROD ON THE MOST EASTERLY LINE OF THAT TRACT DESCRIBED IN LINN COUNTY DEED RECORDS MF 379-278;  
THENCE ALONG SAID EASTERLY LINE, N1°07'49"W 100.03 FEET TO A 5/8" IRON ROD;  
THENCE S89°53'15"E 956.06 FEET TO A 5/8" IRON ROD;  
THENCE S1°08'14"E 100.02 FEET TO THE POINT OF BEGINNING.

#### PARCEL III:

##### TRACT A:

BEGINNING AT A POINT SOUTH 1° 09' EAST 318.12 FEET FROM THE SOUTHEAST CORNER OF THE CHRISTIAN FARLOW DONATION LAND CLAIM NO. 54, TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, LINN COUNTY, OREGON;  
THENCE NORTH 88° 50' EAST 1051.53 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD;  
THENCE SOUTH 14° 15' WEST ALONG THE SAID WESTERLY RIGHT OF WAY LINE 5082.80 FEET TO ITS INTERSECTION WITH THE SOUTHERLY RIGHT OF WAY LINE OF COUNTY ROAD NO. 308;  
THENCE NORTH 74° 55' WEST ALONG SAID SOUTHERLY RIGHT OF WAY LINE 37.84 FEET;  
THENCE SOUTH 88° 51' WEST 416.17 FEET;  
THENCE NORTH 17° 20' WEST 344.52 FEET TO THE SOUTHEAST CORNER OF THE ISAAC MILLER SR., DONATION LAND CLAIM NO. 46 IN SAID TOWNSHIP AND RANGE;  
THENCE NORTH 1° 09' WEST ALONG THE EAST LINE OF SAID CLAIM NO. 46, 4329.72 FEET;  
THENCE NORTH 88° 50' EAST 926.0 FEET TO A 3/4 INCH PIPE;  
THENCE NORTH 1° 09' WEST 710.16 FEET TO THE POINT OF BEGINNING.

## Legal Description – CP7 – Continued

SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED TRACT OF LAND LYING WITHIN THE BOUNDARIES OF PUBLIC ROADS AND HIGHWAYS.

SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PROPERTY CONVEYED TO THE STATE OF OREGON, BY AND THROUGH ITS STATE HIGHWAY COMMISSION, FOR ROADWAY PURPOSES, RECORDED JANUARY 17, 1945, IN VOLUME 167, PAGE 113, DEED RECORDS FOR LINN COUNTY, OREGON.

SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PROPERTY CONVEYED TO THE STATE OF OREGON, BY AND THROUGH ITS STATE HIGHWAY COMMISSION, FOR ROADWAY PURPOSES, RECORDED OCTOBER 30, 1956, BOOK 251, PAGE 434, DEED RECORDS FOR LINN COUNTY, OREGON.

SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PROPERTY CONVEYED TO SOUTHERN PACIFIC COMPANY, RECORDED MARCH 11, 1964, BOOK 300, PAGE 447, DEED RECORDS FOR LINN COUNTY, OREGON.

SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PROPERTY CONVEYED TO LINN COUNTY, FOR ROADWAY PURPOSES, RECORDED APRIL 18, 1977, VOLUME 162, PAGE 971, MICROFILM RECORDS FOR LINN COUNTY, OREGON.

SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PROPERTY CONVEYED TO LINN COUNTY, FOR ROADWAY PURPOSES, RECORDED DECEMBER 2, 1998, VOLUME 992, PAGE 457, MICROFILM RECORDS FOR LINN COUNTY, OREGON.

### TRACT B:

BEGINNING AT A POINT ON THE EAST LINE OF THE ISAAC MILLER, SR. DONATION LAND CLAIM NO. 46 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, LINN COUNTY, OREGON, NORTH 1° 09' WEST 204.0 FEET FROM THE SOUTHEAST CORNER OF SAID CLAIM;  
THENCE NORTH 1° 09' WEST ALONG SAID EAST LINE 60.00 FEET;  
THENCE SOUTH 88° 54' WEST PARALLEL WITH THE SOUTH LINE OF SAID CLAIM 2524.16 FEET MORE OR LESS, TO A POINT ON THE EASTERLY LINE OF THE RIGHT OF WAY OF THE OREGON ELECTRIC RAILROAD;  
THENCE SOUTH 18° 19' EAST ALONG SAID EASTERLY LINE 62 FEET MORE OR LESS, TO A POINT WHICH BEARS SOUTH 88° 54' WEST FROM THE POINT OF BEGINNING;  
THENCE NORTH 88° 54' EAST TO THE POINT OF BEGINNING.

SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PROPERTY CONVEYED TO LINN COUNTY, OREGON FOR ROADWAY PURPOSES, RECORDED APRIL 18, 1977, IN VOLUME 162, PAGE 971, MICROFILM RECORDS FOR LINN COUNTY, OREGON.

### TRACT C:

BEGINNING AT THE SOUTHEAST CORNER OF THE ISAAC MILLER DONATION LAND CLAIM NO. 46;  
THENCE NORTH 1° 11' 47" WEST 262.63 FEET;  
THENCE SOUTH 88° 54' WEST 2226.47 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE SOUTH 88° 54' WEST 300.31 FEET;  
THENCE SOUTH 18° 19' EAST 249.94 FEET;  
THENCE NORTH 42° 22' 18" EAST 328.97 FEET TO THE POINT OF BEGINNING.

## Legal Description – CP7 – Continued

### PARCEL IV:

PART OF THE ISAAC MILLER SR. DONATION LAND CLAIM NO. 46 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE ISAAC MILLER SR. DONATION LAND CLAIM NO. 46 IN SECTION 28, TOWNSHIP 10 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, SAID POINT BEING NORTH 1°15' WEST 2389.86 FEET FROM THE SOUTHEAST CORNER OF SAID CLAIM NO. 46;  
THENCE SOUTH 89°20' WEST 1200 FEET;  
THENCE SOUTH 0°40' EAST 418.5 FEET;  
THENCE NORTH 89°20' EAST 1204.2 FEET TO THE EAST LINE OF SAID CLAIM NO. 46;  
THENCE NORTH 1°15' WEST ALONG SAID EAST LINE 418.52 FEET TO THE POINT OF BEGINNING.

SAVE AND EXCEPT: A STRIP OF LAND 5.00 FEET IN WIDTH LYING SOUTH OF AND COTERMINOUS WITH THE FULL LENGTH OF THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN VOLUME 324, PAGE 308, LINN COUNTY, OREGON DEED RECORDS. SAID NORTH LINE ALSO BEING THE SOUTH LINE OF ARNOLD ROAD AND LYING 40.00 FEET SOUTH OF THE NORTH LINE OF ARNOLD ROAD.

SAVE AND EXCEPT THEREFROM THAT PORTION WHICH WAS CONVEYED TO LINN COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF OREGON BY INSTRUMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED DECEMBER 2, 1998 IN VOLUME 992, PAGE 453, LINN COUNTY RECORDS.

### PARCEL V:

BEGINNING AT A STONE ON THE SOUTHEASTERLY BOUNDARY LINE OF THE D.L.C. OF SILAS HAIGHT, ET UX, CLAIM NO. 55 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, LINN COUNTY, OREGON, SAID STONE BEING SOUTH 52°50' WEST 897.60 FEET DISTANT FROM THE MOST EASTERLY CORNER OF SAID CLAIM NO. 55 AND FROM  
THENCE RUNNING SOUTH 52°50' WEST 1777.60 FEET TO THE WILLAMETTE RIVER;  
THENCE DOWN SAID WILLAMETTE RIVER THE FOLLOWING COURSES AND DISTANCES, TO-WIT:  
NORTH 41°06' WEST 542.66 FEET;  
THENCE NORTH 61°42' WEST 132 FEET;  
THENCE NORTH 79°06' WEST 57.58 FEET TO A POINT SOUTH 1°09' WEST OF A 1+1/2 INCH PIPE, SAID PIPE BEING WEST 2660.50 FEET AND SOUTH 1093.81 FEET DISTANT FROM THE SAID MOST EASTERLY CORNER OF SAID D.L.C. NO. 55;  
THENCE NORTH 1°09' EAST 40 FEET, MORE OR LESS, TO SAID FIRST ABOVE MENTIONED 1+1/2 INCH PIPE;  
THENCE NORTH 1°09' EAST 332.55 FEET TO A 5/8 INCH BOLT;  
THENCE NORTH 75°29' EAST 1119.77 FEET TO A 5/8 INCH BOLT;  
THENCE NORTH 34°30' EAST 232.36 FEET TO A 1 INCH BY 40 INCH PIPE;  
THENCE SOUTH 89°46' EAST 771.83 FEET TO A 5/8 IRON BOLT;  
THENCE NORTH 25°00' EAST 973.54 FEET TO A 1 INCH x 50 INCH PIPE;  
THENCE NORTH 18°28' WEST 671.68 FEET TO A 3/4 INCH PIPE,  
THENCE SOUTH 77°33' EAST 46.62 FEET,  
THENCE SOUTH 18°28' EAST 677.33 FEET TO A 1 INCH x 50 INCH PIPE,  
THENCE SOUTH 24°27' WEST 1227.10 FEET TO THE PLACE OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO THE CITY OF MILLERSBURG BY INSTRUMENT RECORDED MAY 8, 1990, MF VOLUME 530, PAGE 769, LINN COUNTY RECORDS.

## Legal Description – CP7 – Continued

### PARCEL VI:

PART OF SECTIONS 19, 20, 29 AND 30 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, LINN COUNTY, OREGON AND DESCRIBED AS FOLLOWS:

BEGINNING IN THE CENTERLINE OF LINN COUNTY MARKET ROAD NO. 34 AT A POINT SOUTH 89°55' EAST 137.08 FEET, SOUTH 889.89 FEET AND SOUTH 77°32' EAST 1001.67 FEET FROM THE MOST WESTERLY SOUTHWEST CORNER OF THE GEORGE MILLER SR. DONATION LAND CLAIM NO. 58 IN SECTION 19, TOWNSHIP 10 SOUTH, RANGE 3 WEST, SAID DONATION LAND CLAIM CORNER BEING ON THE NORTHWESTERLY LINE OF THE SILAS HAIGHT DONATION LAND CLAIM #55; AND RUNNING THENCE SOUTH 1°18' WEST ALONG THE CENTER LINE OF A DITCH 1319.24 FEET TO THE INTERSECTION OF SAID DITCH WITH A SECOND DITCH;  
THENCE SOUTHERLY ALONG THE CENTERLINE OF THE LAST MENTIONED DITCH FOLLOWING THE MEANDERS THEREOF, APPROXIMATELY 1750 FEET TO THE RIGHT BANK OF THE WILLAMETTE RIVER;  
THENCE FOLLOWING THE MEANDERS OF SAID RIGHT BANK EASTERLY UP STREAM APPROXIMATELY 1150 FEET TO A POINT SOUTH 1°09' WEST OF A 1 1/2" IRON PIPE, SAID PIPE BEING WEST 2660.50 FEET AND SOUTH 1093.81 FEET FROM THE MOST EASTERLY CORNER OF SAID SILAS HAIGHT DONATION LAND CLAIM #55;  
THENCE NORTH 1°09' EAST 40 FEET, MORE OR LESS, TO SAID 1 1/2" IRON PIPE;  
THENCE CONTINUING NORTH 1°09' EAST 322.55 FEET TO A 5/8" IRON BOLT;  
THENCE NORTH 75°29' EAST 1119.77 FEET TO A 5/8" IRON BOLT;  
THENCE NORTH 34°30' EAST 232.36 FEET TO A 1" IRON PIPE;  
THENCE SOUTH 89°46' EAST 771.83 FEET TO A 5/8" IRON BOLT;  
THENCE NORTH 25°00' EAST 973.54 FEET TO A 1" IRON PIPE;  
THENCE NORTH 18°28' WEST 706.65 FEET TO THE CENTERLINE OF THE AFOREMENTIONED LINN COUNTY MARKET ROAD NO. 34;  
THENCE NORTH 77°32' WEST ALONG SAID CENTERLINE, TO THE POINT OF BEGINNING.

SAVE AND EXCEPT THEREFROM THAT PORTION DESCRIBED IN INSTRUMENT INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED MAY 8, 1990 IN VOLUME 530, PAGE 769, LINN COUNTY RECORDS.

### PARCEL VII:

ALL THAT PART OF THE FOLLOWING DESCRIBED TRACT LYING SOUTHWESTERLY OF AND ADJACENT TO THE SOUTHWESTERLY RIGHT OF WAY OF THE OREGON ELECTRIC RAILROAD:

BEGINNING AT THE SOUTHEAST CORNER OF THE GEORGE MILLER SR. DONATION LAND CLAIM NO. 58 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, LINN COUNTY, OREGON; AND RUNNING THENCE EAST 14.79 CHAINS TO A POINT ON THE NORTH LINE OF AND WEST 37.50 CHAINS FROM THE NORTHEAST CORNER OF THE ISAAC MILLER SR., DONATION LAND CLAIM NO. 46;  
THENCE SOUTH 1°15' EAST, 28.56 CHAINS;  
THENCE WEST 2.50 CHAINS;  
THENCE SOUTH 1°15' EAST 16.71 CHAINS, MORE OR LESS, TO A POINT NORTH 1°15' WEST 2402.9 FEET FROM THE SOUTH LINE OF THE SAID ISAAC MILLER SR., DONATION LAND CLAIM NO. 46;  
THENCE WESTERLY, PARALLEL TO SAID SOUTH LINE, 570.65 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE OREGON ELECTRIC RAILROAD;  
THENCE SOUTH 18°28' EAST, ALONG SAID RIGHT OF WAY, 1138.3 FEET TO A POINT NORTH 1°15' WEST 1320.0 FEET FROM THE SOUTH LINE OF THE ISAAC MILLER SR. DONATION LAND CLAIM NO. 46;  
THENCE WESTERLY, PARALLEL TO SAID SOUTH LINE 846.91 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL CONVEYED TO WESTERN KRAFT CORPORATION AND RECORDED IN VOLUME 281, PAGE 254, LINN COUNTY DEED RECORDS;  
THENCE NORTH 24°13' WEST 936.69 FEET TO A 1/2" IRON ROD AT AN ANGLE POINT IN THE EASTERLY LINE OF SAID WESTERLY KRAFT CORPORATION PARCEL;

## Legal Description – CP7 – Continued

THENCE NORTH 30°00' WEST 1721.5 FEET TO A 1/2" IRON ROD AT THE NORTHEAST CORNER OF SAID PARCEL, SAID 1/2" ROD BEING ON THE NORTHERLY LINE OF SAID ISAAC MILLER SR. DONATION LAND CLAIM NO. 46;

THENCE NORTH 52°50' EAST, ALONG SAID NORTHERLY LINE, 279.47 FEET TO A STONE WHICH BEARS SOUTH 52°50' WEST, 897.60 FEET FROM THE MOST EASTERLY CORNER OF THE SILAS HAIGHT DONATION LAND CLAIM NO. 55;

THENCE NORTH 24°27' EAST (CALLED NORTH 23° EAST IN OLD DEEDS) 1705.3 FEET TO THE SOUTHERLY LINE OF THE AFOREMENTIONED GEORGE MILLER SR. DONATION LAND CLAIM NO. 58; THENCE SOUTH 77°33' EAST, ALONG SAID CLAIM LINE, 414.60 FEET TO A POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PART LYING WITHIN THE RIGHT OF WAY OF THE OREGON ELECTRIC RAILROAD AS RECORDED IN VOLUME 98, PAGES 136 AND 311 AND VOLUME 344, PAGE 316, DEED RECORDS.

ALSO SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED TRACT OF LAND LYING WITHIN THE BOUNDARIES OF PUBLIC ROADS AND HIGHWAYS.

ALSO SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PROPERTY DEEDED TO THE CITY OF MILLERSBURG AS RECORDED IN VOLUME 530, PAGE 769, MARCH 8, 1990, LINN COUNTY DEED RECORDS.

### PARCEL VIII:

BEGINNING AT A 5/8 INCH IRON ROD AT THE SOUTHEAST CORNER OF THAT PARCEL DESCRIBED IN THE 3RD PARAGRAPH OF DESCRIPTIONS OF THAT DEED RECORDED IN BOOK 235, PAGE 491, LINN COUNTY DEED RECORDS WHICH POINT IS 1108.80 FEET NORTH 88°38'30" EAST ALONG THE CLAIM LINE AS MONUMENTED FROM THE SOUTHWEST CORNER OF THE ISAAC MILLER SR., D.L.C. 46, TOWNSHIP 10 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, LINN COUNTY, OREGON;

THENCE NORTH 1°13'30" WEST ALONG THE EAST LINE OF SAID PARCEL AND THE EAST LINE OF THAT PARCEL DESCRIBED IN THE FIRST PARAGRAPH OF THE DESCRIPTIONS OF SAID DEED 1320 FEET TO A 1 1/4 INCH SHAFT AT THE NORTHEAST CORNER OF SAID PARCEL;

THENCE ALONG THE NORTH LINE OF THE SAID LAST MENTIONED PARCEL SOUTH 88°38'30" WEST 1975.20 FEET TO A LOW WATER LINE OF THE WILLAMETTE RIVER FROM WHICH POINT A 5/8 INCH IRON ROD BEARS NORTH 88°38'30" EAST 136.3 FEET;

THENCE ALONG SAID LOW WATER LINE SOUTH 6°59' WEST 226.90 FEET SOUTH 21°49' EAST 273.57 FEET, SOUTH 14°46' EAST 269.05 FEET, SOUTH 21°23' EAST 192.52 FEET, SOUTH 37°19' EAST 309.5 FEET, SOUTH 51°02' EAST 301.86 FEET, SOUTH 78°40' EAST 106.23 FEET, SOUTH 53°30' EAST 101.80 FEET, SOUTH 66°11' EAST 152.74 FEET, SOUTH 74°23' WEST 61.78 FEET, NORTH 76°42' WEST 135.30 FEET, NORTH 84°09' WEST 149.40 FEET, SOUTH 56°10' WEST 103.18 FEET, SOUTH 17°12' EAST 66.93 FEET, AND SOUTH 47°02' EAST 39.0 FEET TO THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE SECOND PARAGRAPH OF DESCRIPTIONS OF THAT DEED RECORDED IN BOOK 235, PAGE 491, SAID DEED RECORDS;

THENCE NORTH 88°38'30" EAST ALONG THE SOUTH LINE THEREOF 1734.46 FEET TO THE EAST LINE OF THE NORTH PROJECTION OF THAT PARCEL DESCRIBED IN DEED RECORDED IN BOOK 284, PAGE 703, SAID DEED RECORDS;

THENCE NORTH 1°31' WEST ALONG SAID LAST MENTIONED LINE 308.88 FEET TO 1 1/2 INCH IRON PIPE ON THE SOUTH LINE OF SAID MONUMENTED CLAIM LINE;

THENCE SOUTH 88°38'30" WEST 307.10 FEET TO THE POINT OF BEGINNING.

## Legal Description – CP7 – Continued

### PARCEL IX:

BEGINNING AT A 1/2 INCH IRON ROD SOUTH 88°54' WEST PARALLEL TO THE SOUTH LINE OF THE ISAAC MILLER SR. D.L.C. #46, A DISTANCE OF 62.50 CHAINS FROM A POINT ON THE EAST LINE OF AND NORTH 1°09' WEST 4.00 CHAINS FROM THE SOUTHEAST CORNER OF SAID D.L.C. #46 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON AND RUNNING THENCE NORTH 1°09' WEST PARALLEL TO THE EAST LINE OF SAID CLAIM; 16.0 CHAINS;

THENCE NORTH 88°54' EAST PARALLEL TO THE SOUTH LINE OF SAID CLAIM 1150.95 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE OREGON ELECTRIC RAILROAD;

THENCE SOUTH 18°19' EAST ALONG SAID RIGHT OF WAY 1105.63 FEET TO A 1/2 INCH IRON ROD WHICH IS NORTH 1°09' WEST 264.0 FEET FROM THE SOUTH LINE OF SAID D.L.C. 46;

THENCE SOUTH 88°54' WEST PARALLEL TO THE SOUTH LINE OF SAID CLAIM 1477.59 FEET TO THE POINT OF BEGINNING.

EXCEPT A STRIP 50 FEET WIDE OFF THE EASTERLY END OF THE ABOVE DESCRIBED TRACT.

### PARCEL X:

#### TRACT I:

ALL OF THE FOLLOWING DESCRIBED TRACT OF LAND LYING WESTERLY OF THE WEST LINE OF THE OREGON ELECTRIC RAILROAD:

A PORTION OF THE ISAAC MILLER SR. D.L.C. #46 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD ON THE SOUTH LINE OF AND SOUTH 88°54' WEST 4125.0 FEET FROM THE SOUTHEAST CORNER OF SAID D.L.C. #46; AND RUNNING THENCE NORTH 1°09' WEST, PARALLEL WITH THE EAST LINE OF SAID D.L.C. #46, A DISTANCE OF 264.0 FEET TO A 1/2 INCH IRON ROD;

THENCE NORTH 88°54' EAST, PARALLEL WITH THE SOUTH LINE OF SAID D.L.C. #46, A DISTANCE OF 4125.0 FEET TO THE EAST LINE OF SAID CLAIM;

THENCE SOUTH 1°09' EAST ALONG SAID EAST LINE 60.0 FEET;

THENCE SOUTH 88°54' WEST PARALLEL WITH THE SOUTH LINE OF SAID D.L.C. #46, A DISTANCE OF 2628.85 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE O.E. RAILROAD;

THENCE SOUTH 18°19' EAST ALONG SAID WESTERLY RIGHT OF WAY LINE 213.57 FEET TO A 1/2 INCH IRON ROD ON THE SOUTH LINE OF SAID D.L.C. #46;

THENCE SOUTH 88°54' WEST ALONG THE SOUTH LINE OF SAID D.L.C. #46, A DISTANCE OF 1559.15 FEET TO THE POINT OF BEGINNING.

ALSO A PORTION OF THE ISAAC MILLER SR. D.L.C. #46 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD ON THE SOUTH LINE OF AND SOUTH 88°54' WEST 3823.24 FEET FROM THE SOUTHEAST CORNER OF THE ISAAC MILLER SR. D.L.C. #46 IN SAID TOWNSHIP AND RANGE; SAID BEGINNING POINT BEING ALSO NORTH 88°54' EAST 1415.04 FEET FROM THE NORTHWEST CORNER OF SAID EXUM POWELL D.L.C. #44; AND RUNNING THENCE SOUTH 1°30' EAST 1254.0 FEET TO A 1/2 INCH IRON ROD SET AT THE SOUTHWEST CORNER OF THAT TRACT OF LAND CONVEYED TO FLOYD E. FISHER BY DEED RECORDED IN VOLUME 147, PAGE 31, DEED RECORDS FOR LINN COUNTY, OREGON;

THENCE NORTH 88°54' EAST, ALONG THE SOUTHERLY LINE OF SAID FISHER TRACT AND PARALLEL TO



## Legal Description – CP7 – Continued

THE NORTH LINE OF SAID D.L.C. #44, A DISTANCE OF 377.79 FEET TO THE CENTER LINE OF MURDER CREEK;  
THENCE EASTERLY UP THE CENTER LINE OF SAID MURDER CREEK TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THE OREGON ELECTRIC RAILROAD, SAID POINT BEING SOUTH 1°30' EAST 1336.09 FEET FROM A POINT ON THE SOUTH LINE OF AND SOUTH 88°54' WEST 2042.37 FEET FROM THE SOUTHEAST CORNER OF SAID ISAAC MILLER SR. D.L.C. #46;  
THENCE NORTHWESTERLY ALONG THE WESTERLY RIGHT OF WAY LINE OF SAID RAILROAD TO A 1/2" IRON ROD ON THE NORTH LINE OF SAID D.L.C. #44;  
THENCE SOUTH 88°54' WEST ALONG SAID NORTH LINE 1257.39 FEET TO THE POINT OF BEGINNING.

SAVE AND EXCEPT THEREFROM, THE FOLLOWING DESCRIBED PROPERTY:  
BEGINNING ON THE WESTERLY RIGHT OF WAY LINE OF THE OREGON ELECTRIC RAILROAD AT A POINT NORTHWESTERLY 276.38 FEET FROM THE INTERSECTION OF SAID RIGHT OF WAY WITH THE SOUTH LINE OF THE ISAAC MILLER SR. D.L.C. #46, TOWNSHIP 10 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, LINN COUNTY, OREGON, SAID BEGINNING POINT BEING ON THE NORTH LINE OF THAT CERTAIN TRACT I CONVEYED TO WESTERN KRAFT CORPORATION BY DEED RECORDED IN BOOK 244, PAGE 558, OF THE DEED RECORDS AND RUNNING THENCE SOUTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE 1640 FEET, MORE OR LESS, TO THE NORTH LINE OF THAT CERTAIN SLOPE EASEMENT GRANTED TO THE SAID OREGON ELECTRIC RAILROAD AND DESCRIBED IN BOOK 215, PAGE 678, DEED RECORDS;  
THENCE WESTERLY, AT RIGHT ANGLES TO SAID RAILROAD, 50 FEET TO A POINT, 100 FEET FROM (MEASURED AT RIGHT ANGLES TO) THE CENTERLINE OF SAID RAILROAD;  
THENCE NORTHWESTERLY, PARALLEL TO THE CENTERLINE OF SAID RAILROAD TO THE NORTH LINE OF THE AFOREMENTIONED TRACT I;  
THENCE EASTERLY ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

### TRACT II:

A PORTION OF THE EXUM POWELL D.L.C. #44 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT A 1/2 INCH IRON ROD SOUTH 1°30' EAST 1785.3 FEET FROM A POINT ON THE SOUTH LINE OF AND SOUTH 88°54' WEST 3445.46 FEET FROM THE SOUTHEAST CORNER OF THE ISAAC MILLER SR., D.L.C. #46 IN SAID TOWNSHIP AND RANGE; AND RUNNING  
THENCE NORTH 1°30' WEST 531.30 FEET TO A POINT ON THE SOUTHERLY LINE OF THAT TRACT OF LAND CONVEYED TO FLOYD E. FISHER BY DEED RECORDED IN VOLUME 147, PAGE 31, DEED RECORDS FOR LINN COUNTY, OREGON, SAID POINT BEING SOUTH 1°30' EAST 1254.0 FEET FROM THE SOUTH LINE OF SAID D.L.C. #46;  
THENCE SOUTH 88°54' WEST ALONG THE SOUTHERLY LINE OF SAID FISHER TRACT AND PARALLEL TO THE SOUTH LINE OF SAID D.L.C. #46 588 FEET, MORE OR LESS, TO THE EASTERLY BANK OF THE WILLAMETTE RIVER;  
THENCE SOUTHEASTERLY ALONG THE BANK OF SAID RIVER TO A POINT SOUTH 88°54' WEST OF THE POINT OF BEGINNING;  
THENCE NORTH 88°54' EAST TO THE POINT OF BEGINNING.

ALSO, BEGINNING AT A 1/2" IRON ROD SOUTH 1°30' EAST, 1785.30 FEET FROM A POINT ON THE SOUTH LINE OF AND SOUTH 88°54' WEST 3445.46 FEET FROM THE SOUTHEAST CORNER OF THE ISAAC MILLER SR. D.L.C. #46 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON, AND RUNNING  
THENCE NORTH 88°54' EAST PARALLEL TO THE SOUTH LINE OF THE D.L.C. #46, A DISTANCE OF 1631.51 FEET TO A 1/2" IRON ROAD ON THE WESTERLY RIGHT-OF-WAY LINE OF THE O.E.R.;  
THENCE NORTH 28°21' WEST, ALONG SAID RIGHT OF WAY 496.58 FEET TO THE CENTER LINE OF

## Legal Description – CP7 – Continued

MURDER CREEK;

THENCE DOWN THE CENTER LINE OF MURDER CREEK AS FOLLOWS: SOUTH 83°15' WEST 44.83 FEET, NORTH 55°15' WEST 75.0 FEET; NORTH 70°45' WEST, 220.0 FEET, NORTH 73°00' WEST 118.0 FEET, SOUTH 79°45' WEST 100.0 FEET, SOUTH 67°45' WEST 80.0 FEET, SOUTH 47°50' WEST 130.0 FEET, SOUTH 77°30' WEST 200.0 FEET, NORTH 87°00' WEST 55.0 FEET, NORTH 79°20' WEST 80.0 FEET, NORTH 68°15' WEST 165.0 FEET, SOUTH 79°30' WEST 85.0 FEET; NORTH 80°30' WEST 60.0 FEET AND NORTH 75°11' WEST 92.09 FEET TO A POINT WHICH BEARS NORTH 1°30' WEST 531.3 FEET FROM THE PLACE OF BEGINNING;

THENCE SOUTH 1°30' EAST 531.3 FEET TO THE PLACE OF BEGINNING.

PARCEL XI:

BEGINNING AT A 5/8 INCH IRON ROD ON THE MOST EASTERLY LINE OF THAT TRACT DESCRIBED IN LINN COUNTY DEED RECORDS, MF VOLUME 379, PAGE 278, SAID ROD BEING SOUTH 1°08'13" EAST, 1,856.44 FEET, SOUTH 88°51'17" WEST, 30.04 FEET AND NORTH 89°53'15" WEST, 2,445.035 FEET FROM THE NORTHEAST CORNER OF THE ISAAC MILLER DONATION LAND CLAIM NO. 46 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, LINN COUNTY, OREGON.

THENCE NORTH 89°53'15" WEST, 810.68 FEET TO A 5/8 INCH IRON ROD;

THENCE ALONG A 528.339 FOOT RADIUS CURVE TO THE RIGHT, THE LONG CHORD OF WHICH BEARS NORTH 79°28'04" WEST, 191.12 FEET, TO A 5/8 INCH IRON ROD ON THE EASTERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

THENCE ALONG SAID RIGHT OF WAY LINE, NORTH 18°19'24" WEST, 141.40 FEET TO A 5/8 INCH IRON ROD;

THENCE ALONG A 428.339 FOOT RADIUS CURVE TO THE LEFT, THE LONG CHORD OF WHICH BEARS SOUTH 73°26'07" EAST, 242.62 FEET TO A 5/8 INCH IRON ROD;

THENCE SOUTH 89°53'15" EAST 808.50 FEET TO A 5/8 INCH IRON ROD;

THENCE SOUTH 1°07'49" EAST, 100.03 FEET TO THE POINT OF BEGINNING. ALL OF THE AFORESAID PROPERTY IS LOCATED IN SECTION 29, TOWNSHIP 10 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON.

PARCEL XII:

BEGINNING AT A 5/8 INCH IRON ROD ON THE WESTERLY RIGHT-OF-WAY LINE OF LINN COUNTY ROAD NUMBER 367, SAID ROD BEING SOUTH 1°08'13" EAST, 1,856.44 FEET AND SOUTH 88°51'17" WEST, 30.04 FEET FROM THE NORTHEAST CORNER OF THE ISAAC MILLER DONATION LAND CLAIM NO. 46 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, LINN COUNTY, OREGON.

THENCE NORTH 89°53'15" WEST, 1,488.97 FEET TO A 5/8 INCH IRON ROD ON THE WESTERLY LINE OF THAT TRACT DESCRIBED IN LINN COUNTY DEED RECORDS MF VOLUME 455, PAGE 459,

THENCE ALONG SAID WESTERLY LINE, NORTH 1°08'14" WEST, 100.02 FEET TO A 5/8 INCH IRON ROD;

THENCE SOUTH 89°53'15" EAST, 1,488.955 FEET TO A 5/8 INCH ROD ON THE WESTERLY RIGHT OF WAY LINE OF LINN COUNTY ROAD NUMBER 308;

THENCE ALONG SAID WESTERLY LINE, SOUTH 1°08'43" EAST, 100.025 FEET TO THE POINT OF BEGINNING. ALL OF THE AFORESAID DESCRIBED PROPERTY IS LOCATED IN SECTION 28, TOWNSHIP 10 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, LINN COUNTY, OREGON.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO LINN COUNTY FOR ROAD PURPOSES IN DEED RECORDED DECEMBER 02, 1998, IN VOLUME 992, PAGE 0459, MICROFILM RECORDS.

## Legal Description – CP7 – Continued

### PARCEL XIII

BEGINNING AT THE NORTHWEST CORNER OF THE ISSAC MILLER, SENIOR, D.L.C. #46 ON THE MEANDER LINE OF THE WILLAMETTE RIVER, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF THE SILAS HAIGHT D.L.C. #55 IN SECTION 29, TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON;  
THENCE NORTH 52° 50' EAST 1,565.89 FEET TO A ½" ROD ON THE SOUTH LINE OF AND SOUTH 52° 50' WEST 1,177.07 FEET FROM THE SOUTHEAST CORNER OF THE SILAS HAIGHT D.L.C. #55;  
THENCE SOUTH 30° 00' EAST 1,721.52 FEET TO A ½" ROD;  
THENCE SOUTH 24° 13' EAST 936.69 FEET TO THE SOUTH LINE OF THE FIRST TRACT DESCRIBED IN WARRANTY DEED FROM MARTHA E. MARSH TO MADELYN NELSON RECORDED DECEMBER 30, 1950 IN BOOK 218, PAGE 819, DEED RECORDS;  
THENCE SOUTH 88° 54' WEST (SOUTH 88° 37' WEST BY OLD DEEDS) ALONG THE SOUTH LINE OF SAID D.L.C. #46, 1,837.63 FEET TO THE RIGHT BANK OF THE WILLAMETTE RIVER;  
THENCE NORTHERLY FOLLOWING THE EASTERLY MEANDERS OF SAID RIVER DOWNSTREAM 1,561.56 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

### PARCEL XIV

BEGINNING AT A POINT ON THE EAST LINE OF THE NORTHERLY PROJECTION OF THAT PARCEL DESCRIBED IN DEED RECORDED IN BOOK 284, PAGE 703, LINN COUNTY DEED RECORDS WHICH POINT IS 1415.90 FEET NORTH 88° 38' 30" EAST AND 308.88 FEET SOUTH 1° 31' EAST OF THE NORTHWEST CORNER OF THE EXUM POWELL D.L.C. #44, TOWNSHIP 10 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, LINN COUNTY, OREGON, SAID BEGINNING POINT ALSO BEING THE SOUTHEAST CORNER OF THE PARCEL DESCRIBED IN THE SECOND PARAGRAPH OF DESCRIPTIONS OF THAT DEED RECORDED IN BOOK 235, PAGE 491, LINN COUNTY DEED RECORDS;  
THENCE SOUTH 1° 31' EAST ALONG THE EAST LINE OF SAID FIRST MENTIONED PARCEL 942.47 FEET TO A ½ INCH IRON ROD ON THE NORTH LINE OF THAT PARCEL DESCRIBED IN DEED RECORDED IN BOOK 244, PAGE 321, SAID DEED RECORDS;  
THENCE SOUTH 88° 54' WEST ALONG THE NORTH LINE THEREOF 302.0 FEET TO THE LOW WATER LINE OF THE WILLAMETTE RIVER;  
THENCE ALONG SAID LOW WATER LINE NORTH 47° 24' WEST 272.87 FEET, NORTH 57° 02' WEST 284.28 FEET; NORTH 62° 07' WEST 281.66 FEET, NORTH 60° 37' WEST 287.30 FEET, NORTH 65° 59' WEST 267.09 FEET, NORTH 64° 04' WEST 173.56 FEET AND NORTH 47° 02' WEST 161.60 FEET TO THE SOUTH LINE OF THE PARCEL DESCRIBED IN THE SECOND PARAGRAPH OF DESCRIPTIONS OF THAT DEED RECORDED IN BOOK 235, PAGE 491, SAID DEED RECORDS;  
THENCE NORTH 88° 38' 30" EAST 1734.46 FEET TO THE POINT OF BEGINNING.

### PARCEL XV

A TRACT OF LAND SITUATED IN THE CITY OF MILLERSBURG, COUNTY OF LINN AND STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8 IN IRON ROD ON THE WESTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD NO. 367, SAID IRON ROD BEING 264.00 FEET NORTH 1° 11' 50" WEST AND 30.00 FEET SOUTH 88° 50' 53" WEST FROM THE SOUTHEAST CORNER OF THE ISAAC MILLER SR. DONATION LAND CLAIM NO. 46 IN SECTION 28, TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON;  
RUNNING THENCE SOUTH 88° 54' 00" WEST 2513.26 FEET TO A ½ INCH IRON ROD;  
THENCE NORTH 18° 22' 20" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF THE OREGON ELECTRIC RAILWAY 2255.86 FEET TO A 2 INCH ANGLE IRON;  
THENCE NORTH 89° 24' 02" EAST, 1650.80 FEET;

### Legal Description – CP7 – Continued

THENCE SOUTH 0° 55' 50" EAST 5.87 FEET;  
THENCE NORTH 89° 38' 35" EAST, 117.62 FEET;  
THENCE ALONG A 474.28 FOOT RADIUS CURVE RIGHT 573.72 FEET (LONG CHORD WHICH BEARS SOUTH 38° 23' 23" WEST, 539.38 FEET) TO A ¾ INCH IRON PIPE;  
THENCE SOUTH 89° 20' 15" EAST, 580.34 FEET TO A 5/8 INCH IRON ROD;  
THENCE NORTH 89° 24' 39" EAST 1174.08 FEET TO A ¾ INCH BOLT ON THE WESTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD NO. 367;  
THENCE SOUTH 01° 11' 47" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE 1708.39 FEET TO THE POINT OF BEGINNING.

SAVE AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED PROPERTY DEEDED TO LINN COUNTY IN VOLUME 992, PAGE 455, DECEMBER 2, 1998, LINN COUNTY DEED RECORDS;

AND EXCEPT THAT PORTION BEGINNING AT A 5/8 INCH IRON ROD ON THE WESTERLY RIGHT OF WAY LINE OF COUNTY ROAD NO. 367, SAID ROD BEING 264.00 FEET NORTH 01°11'50" WEST AND 30.00 FEET SOUTH 88°50'53" WEST FROM THE SOUTHEAST CORNER OF THE ISAAC MILLER, SR. DONATION LAND CLAIM NO. 46 IN SECTION 28, TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON;  
RUNNING THENCE NORTH 01°11'50" WEST ALONG THE WESTERLY RIGHT OF WAY LINE OF COUNTY ROAD NO. 367 AND PARALLEL TO THE EAST LINE OF SAID DONATION LAND CLAIM NO. 46 A DISTANCE OF 1056.00 FEET TO A POINT 0.22 FEET NORTH 01°11'50" WEST FROM A 3/4 INCH IRON BOLT;  
THENCE SOUTH 88°50'53" WEST 2839.34 FEET TO A 5/8 INCH IRON ROD ON THE EASTERLY RIGHT OF WAY LINE OF THE OREGON ELECTRIC RAILWAY;  
THENCE SOUTH 18°22'23" EAST ALONG THE EASTERLY RIGHT OF WAY LINE OF THE OREGON ELECTRIC RAILWAY 1105.56 FEET TO A 5/8 INCH IRON ROD, SAID IRON ROD BEING 264.00 FEET NORTH 01°11'50" WEST FROM THE SOUTH LINE OF SAID DONATION LAND CLAIM NO. 46;  
THENCE NORTH 88°50'53" EAST AND PARALLEL TO THE SOUTH LINE OF SAID DONATION LAND CLAIM NO. 46 A DISTANCE OF 2512.87 FEET TO THE POINT OF BEGINNING.

#### PARCEL XVI

A PORTION OF THE EXUM POWELL D.L.C. #44 IN TOWNSHIP 10 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, IN LINN COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A ½" IRON ROD SOUTH 17° 20' EAST 344.52 FEET AND SOUTH 0° 21' WEST 344.74 FEET FROM THE SOUTHEAST CORNER OF THE ISAAC MILLER SR. D.L.C. #46 IN SAID TOWNSHIP AND RANGE; AND RUNNING THENCE SOUTH 71° 33' WEST 1232.40 FEET TO A ½" IRON ROD;  
THENCE SOUTH 33° 12' WEST 500 FEET TO A ½" IRON ROD;  
THENCE SOUTH 68° 46' WEST 405.18 FEET;  
THENCE SOUTH 61° 39' WEST 32.0 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE OREGON ELECTRIC RAILROAD;  
THENCE NORTH 28° 21' WEST ALONG THE SAID RIGHT OF WAY 311.25 FEET TO THE CENTER LINE OF MURDER CREEK;  
THENCE UP THE CENTER LINE OF MURDER CREEK AS FOLLOW: NORTH 83° 15' EAST 27.62 FEET, SOUTH 29° 30' EAST 210.0 FEET, NORTH 68° 45' EAST 205.0 FEET, NORTH 47° 40' EAST 157.0 FEET, NORTH 53° 20' EAST 227.0 FEET, NORTH 19° 00' EAST 162.0 FEET, NORTH 26° 10' EAST 165.0 FEET, NORTH 32° 25' EAST 125.0 FEET, NORTH 51° 55' EAST 68.0 FEET, NORTH 65° 40' EAST 140 FEET, NORTH 27° 25' EAST 95.0 FEET, NORTH 82° 50' EAST 85.0 FEET, NORTH 69°50' EAST 75.0 FEET, NORTH 49°30' EAST 33.0 FEET, SOUTH 78°55' EAST 85.0 FEET, NORTH 76° 10' EAST 35.0 FEET, SOUTH 79° 40' EAST, 80.0 FEET, SOUTH 61° 10' EAST, 55 FEET, SOUTH 80° 00' EAST 185.0 FEET, NORTH 76°

**Legal Description – CP7 – Continued**

10' EAST 180.0 FEET, NORTH 79° 35' EAST 85 FEET, NORTH 45° 55' EAST 80.0 FEET AND NORTH 52° 45' EAST 47.54 FEET TO A POINT WHICH BEARS NORTH 0° 21' EAST 149.85 FEET FROM THE POINT OF BEGINNING;  
THENCE LEAVING SAID CREEK AND RUNNING SOUTH 0° 21' WEST 149.85 FEET TO THE POINT OF BEGINNING.

SAVE AND EXCEPT THAT PORTION AS DESCRIBED IN WARRANTY DEED RECORDED OCTOBER 27, IN BOOK 343, PAGE 859.

**Exhibit "B"**  
**Permitted Exceptions - Site T2007-310/CP7**

1. Taxes or assessments for the year 2008, a lien not yet due and payable.
2. City liens, if any, for the city of Millersburg, a lien not yet due or payable .
3. These premises are within the boundaries of the Grand Prairie Water District and are subject to the levies and assessments thereof, none due and payable.

The Following Exceptions affects Parcel I

4. Rights of the public in and to that portion of the land lying within the limits of Old Salem Road.
5. Easement, including terms and provisions contained therein:  
Recording Information: July 31, 1937 in Book 146, Page 0342, Deed Records  
In Favor of: Mountain States Power Company, a Delaware Corporation, its successors and assigns  
For: pole and anchors
6. The terms and provisions contained in the document entitled "Agreement for Use and Maintenance on Drainage Pipe" recorded January 16, 1967 in Book 321, Page 0368, Deed Records .
7. Easement, including terms and provisions contained therein:  
Recording Information: April 08, 1999 in Volume 1025, Page 0415, Microfilm Records  
In Favor of: Linn County  
For: Roadway

The Following Exceptions affects Parcel II

8. Easement, including terms and provisions contained therein:  
Recording Information: August 26, 1982 in Volume 318, Page 0873, Microfilm Records  
In Favor of: City of Millersburg  
For: sewer pipeline
9. Legal consequences of the fact that the Environmental Protection Agency has designated this property as a hazardous waste site by placing it on their National Priorities List as disclosed by the Federal Register, Volume 54, No. 61, and as set forth in Warranty Deed recorded May 08, 1990 in Volume 530, Page 766, Microfilm Records.
10. Easement, including terms and provisions contained therein:  
Recording Information: May 08, 1990 in Volume 530, Page 0779, Microfilm Records  
In Favor of: Teledyne Industries, Inc., a California corporation  
For: A 50 foot wide tract to install, maintain, replace and/or remove underground piping for electrical, conduit, piping and pump activities further reserving the right to maintain the use of a 20 foot wide road right of way

**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

11. Covenants, conditions and restrictions contained in a deed recorded April 18, 1991 as document in Volume 560, Page 0267, Microfilm Records relating to, among other things: Restrictive covenants regarding construction and maintenance or use of any wells for drinking or Irrigation.

The Following Exceptions affects Parcel III

12. Rights of the public in and to that portion of the land lying within the limits of Old Salem Road.
13. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission recorded January 17, 1945 in Volume 167, Page 0113, Deed Records, which provides that no right of easement or right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property.
14. Covenants, conditions and restrictions as contained in deed recorded January 17, 1945 in Volume 167, Page 0113, Deed Records, as follows:

No part of the abutting private property of the grantors within a distance of five hundred (500) feet from the above described land shall ever be used for the placing and/or maintenance of advertising signs, bills or posters; provided, however, that these grantors reserve the right to use any part of said private property for the advertising of farm names or for the sale, renting or leasing of said property or for the sale of livestock or commodities or products produced or raised thereon. These burdens and covenants shall run with the land and shall forever bind the grantors and their successors in interest.

15. An easement for Electric power and signal-transmission line and incidental purposes, recorded October 16, 1946 in Book 185, Page 0631, Deed Records .  
In Favor of: Mountain States Power Company  
Affects: Tract A and Tract B of Parcel III

16. The terms and provisions of easement maintenance contained in the Warranty Deed recorded December 02, 1954 in Book 240, Page 0507, Deed Records .

(Affects Tract B)

17. The terms and provisions of easement maintenance contained in the Warranty Deed recorded December 02, 1954 in Book 240, Page 0511, Deed Records .

18. Easement, including terms and provisions contained therein:  
Recording Information: June 25, 1969 in Book 340, Page 0533, Deed Records  
In Favor of: Pacific Power and Light Company  
For: electrical, telephone, transmission and distribution lines



**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

19. An easement for electric transmission and distribution lines and incidental purposes, recorded July 12, 1971 in Volume 19, Page 0617, Microfilm Records .  
In Favor of: Pacific Power and Light Company, a corporation, its successors and assigns  
Affects: Tract A
20. An easement for electric transmission and distribution lines and incidental purposes, recorded July 31, 1972 in Volume 44, Page 0229, Microfilm Records .  
In Favor of: Pacific Power and Light Company, a corporation, its successors and assigns  
Affects: Tract A
21. An easement for electrical transmission and communication lines and incidental purposes, recorded September 08, 1975 in Volume 115, Page 0908, Microfilm Records .  
In Favor of: Pacific Power and Light Company  
Affects: Tract C
22. An easement for electric transmission and distribution lines and incidental purposes, recorded June 08, 1976 in Volume 136, Page 0249, Microfilm Records .  
In Favor of: Pacific Power and Light Company, a corporation, its successors and assigns  
Affects: Tracts A and B
23. An easement for sewer pipelines and incidental purposes, recorded August 02, 1979 in Volume 239, Page 0987, Microfilm Records .  
In Favor of: City of Millersburg  
Affects: Tract C
24. An easement for sewer pipeline and incidental purposes, recorded April 20, 1987 in Volume 440, Page 0015, Microfilm Records .  
In Favor of: City of Millersburg, Linn County, Oregon, a municipal corporation  
Affects: Tract A
25. An easement for sewer pipeline and incidental purposes, recorded April 20, 1987 in Volume 440, Page 0025, Microfilm Records .  
In Favor of: City of Millersburg, Linn County, Oregon, a municipal corporation  
Affects: Tract C
26. The terms and provisions contained in the document entitled Agreement for Easement, executed by and between Willamette Memorial Park, an Oregon non-profit corporation, formerly known as Linn-Benton Memorial Park Association and Willamette Industries, Inc., an Oregon corporation, recorded February 27, 1996 , in Volume 789, Page 0600, Microfilm Records.

**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

27. The terms and provisions contained in the document entitled Charitable Donation Agreement, executed by and between Dan Desler, Troy Cummins, and Willamette Industries, Inc. and Western States Family Foundation, a component fund of the American Foundation for Charitable Support, Inc., a qualified 501(c)(3) National Charitable Fund and Ben L. Schaub, president, recorded December 05, 2001 , in Volume 1241, Page 0725, Microfilm Records.

(Agreement does not contain a legal description)

28. Easement, including terms and provisions contained therein:  
Recording Information: February 05, 2007 as Fee No. 2007-002967 in Microfilm Records  
In Favor of: TDY Industries, Inc., a California corporation dba Wah Chang  
For: Gas

The Following Exceptions affects Parcel IV

29. Rights of the public in and to that portion of the land lying within the limits of Arnold Road.
30. Easement, including terms and provisions contained therein:  
Recording Information: December 29, 1987, in Volume 461, Page 0432, Microfilm  
Records  
In Favor of: The City of Millersburg, Oregon  
For: underground waterline
31. Easement, including terms and provisions contained therein:  
Recording Information: October 10, 1996, In Volume 830, Page 0628, Microfilm Records  
In Favor of: Pacificorp, an Oregon corporation, its successors and assigns  
For: electric transmission lines, distribution lines, and communication  
lines

The Following Exceptions affects Parcel V

32. Rights of the public and governmental bodies in and to that portion of the premises herein described lying below the high water mark of Willamette River and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.
33. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of Conser lake .
34. Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Willamette River or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.
35. Some portion of said land has not been continuously within the boundaries of the County of Linn.

**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

36. Easement, including terms and provisions contained therein:  
Recording Information: June 08, 1976, in Volume 136, Page 0249, Microfilm Records  
In Favor of: Pacific Power and Light Company, a corporation, its successors  
and assigns  
For: electric Transmission and distribution lines

37. Easement, including terms and provisions contained therein:  
Recording Information: May 19, 1987, in Volume 442, Page 0738, Microfilm Records  
In Favor of: City of Millersburg  
For: water pipeline

The Following Exceptions affects Parcel VI

38. The assessment roll and the tax roll disclose that the within described premises were specially zoned or classified for Farm use. If the land has become or becomes disqualified for such use under the statute, an additional tax or penalty may be imposed.

39. Rights of the public and governmental bodies in and to that portion of the premises herein described lying below the high water mark of Willamette River and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.

40. Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Willamette River or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.

41. Rights of the public in and to that portion of the land lying within the limits of Conser Road.

42. Easement, including terms and provisions contained therein:  
Recording Information: February 05, 1937, in Book 145, Page 0403, Deed Records  
In Favor of: Mountain States Power Company, a Delaware Corporation, its  
successors and assigns  
For: Anchors, wires and fixtures

43. Easement, including terms and provisions contained therein:  
Recording Information: October 03, 1947, in Book 196, Page 0196, Deed Records  
In Favor of: Mountain States Power Company, a Delaware Corporation, its  
successors and assigns  
For: poles and anchors

**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

44. Memorandum of oil, gas and Mineral lease executed by Paul E. Nofziger and Betty M. Nofziger as lessor and Mobil Oil Corporation, a New York Corporation as lessee, recorded October 01, 1975 in Volume 118, Page 0221, Microfilm Records .

The Lessee's interest under the lease has been assigned to American Quasar Petroleum Company of New Mexico by assignment recorded March 02, 1983 in Volume 329, Page 0828, Microfilm Records .

45. Easement, including terms and provisions contained therein:  
Recording Information: May 19, 1987, in Volume 442, Page 0738, Microfilm Records  
In Favor of: The City of Millersburg  
For: water pipelines and construction

The Following Exceptions affects Parcel VII

46. Easement, including terms and provisions contained therein:  
Recording Information: January 12, 1962, in Book 281, Page 0254, Deed Records  
For: water pipelines, pumping station, electrical power transmission lines and telephone lines

47. Easement, including terms and provisions contained therein:  
Recording Information: August 25, 1982, in Volume 318, Page 0792, Microfilm Records  
In Favor of: City of Millersburg  
For: sewer pipe line

48. Easement, including terms and provisions contained therein:  
Recording Information: May 19, 1987, in Volume 442, Page 0738, Microfilm Records  
In Favor of: City of Millersburg  
For: water pipeline and construction

The Following Exceptions affects Parcel VIII

49. Rights of the public and governmental bodies in and to that portion of the premises herein described lying below the high water mark of Willamette River and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.
50. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of Conser lake .
51. Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Willamette River or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.

**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

52. Some portion of said land has not been continuously within the boundaries of the County of Linn.
53. Rights of way of ditches, canals and reservoir sites for irrigation purposes as disclosed by Deed recorded August 13, 1953, in Book 235, Page 0491, Linn County Records.

The Following Exceptions affects Parcel IX

54. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of Murder Creek .
55. Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Murder Creek or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.
56. Easement, including terms and provisions contained therein:  
Recording Information:       October 31, 1969, in Book 344, Page 0114, Deed Records  
In Favor of:                 Wah Change Albany Corporation, a corporation  
For:                             Roadway

The Following Exceptions affects Parcel X

57. Rights of the public and governmental bodies in and to that portion of the premises herein described lying below the high water mark of Willamette River and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.
58. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of Murder Creek .
59. Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Murder Creek or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.
60. Easement, including terms and provisions contained therein:  
Recording Information:       April 22, 1929, in Book 136, Page 0429, Deed Records  
In Favor of:                 Mountain States Power Company, a Delaware Corporation, its successors and assigns  
                                     transmission and distribution line
61. Easement, including terms and provisions contained therein:  
Recording Information:       October 16, 1946, in Book 185, Page 0631, Deed Records  
In Favor of:                 Mountain States Power Company, a Delaware Corporation, its successors and assigns  
For:                             electric power and signal transmission lines

**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

62. Easement, including terms and provisions contained therein:  
Recording Information: June 23, 1950, in Book 215, Page 0675, Deed Records  
In Favor of: Oregon Electric Railway Co.  
For: Slope
63. Easement, including terms and provisions contained therein:  
Recording Information: June 23, 1950, in Book 215, Page 0678, Deed Records  
In Favor of: Oregon Electric Railway Co.  
For: Slope
64. Easement, including terms and provisions contained therein:  
Recording Information: July 09, 1953, in Book 233, Page 0388, Deed Records  
In Favor of: Oregon Electric Railway Co.  
For: Slope
65. Easement, including terms and provisions contained therein:  
Recording Information: December 02, 1954, in Book 240, Page 0507, Deed Records  
In Favor of: Oregon Electric Railway Co.  
For: water pipelines
66. Easement, including terms and provisions contained therein:  
Recording Information: December 02, 1954, in Book 240, Page 0511, Deed Records  
For: water pipelines
67. Easement, including terms and provisions contained therein:  
Recording Information: July 25, 1955, in Book 244, Page 0321, Deed Records  
For: 16 foot wide driveway
68. Easement, including terms and provisions contained therein:  
Recording Information: October 27, 1969, in Book 343, Page 0858, Deed Records  
For: water pipelines
- The Following Exceptions affects Parcel XI and XII
69. Rights of the public in and to that portion of the land lying within the limits of Old Salem Road.
70. An easement for anchor, wires and fixtures and incidental purposes, recorded March 02, 1937 in Book 145, Page 0470, Deed Records .  
In Favor of: Mountain States Power Company, a Delaware Corporation, Its successors and assigns  
Affects: Parcel XI

**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

71. An easement for sewer pipeline and incidental purposes, recorded August 25, 1982 in Volume 318, Page 0792, Microfilm Records  
In Favor of: City of Millersburg  
Affects: Parcel XI
72. An easement for utility purposes and road right-of-way and incidental purposes, recorded May 08, 1990 in Volume 530, Page 0775, Microfilm Records .  
In Favor of: City of Millersburg, a municipal corporation  
Affects: 50 feet wide on Parcel XI and 100 feet wide on Parcel XII
73. An easement for transmission and distribution lines and incidental purposes, recorded October 10, 1996 in Volume 830, Page 0628, Microfilm Records .  
In Favor of: PacifiCorp, a Oregon corporation  
Affects: Parcel XII
- The Following Affects Parcel XIII
74. Any adverse claim based upon the assertion that:
- a). Said land, or any part thereof, is now or at any time has been below the ordinary high water mark of the Willamette River and Conser Lake including any ownership rights which may be claimed by the State of Oregon now or at any time lying below the ordinary high water mark.
  - b). Some portion of said land has been created by artificial means or has accreted to such portion so created.
  - c). Some portion of said land has been brought within or removed from the boundaries thereof by a change in the location of the Willamette River and Conser Lake.
75. Such rights and easements for navigation, commerce, recreation and fishery which may exist over that portion of said land lying beneath the waters of Willamette River
76. Any adverse claim based upon the assertion that some portion of said land lies below the ordinary high water mark of Conser Lake.
77. Some portion of said land has not been continuously within the boundaries of the County of Linn.
78. Easement, including terms and provisions contained therein:  
Recording Information: January 12, 1962 in Book 281, Page 254, Deed Records  
In Favor of: Western Kraft corporation, an Oregon corporation  
For: Pipelines



**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

79. Easement, including terms and provisions contained therein:  
Recording Information: January 12, 1962 in Book 281, Page 254, Deed Records  
In Favor of: Western Kraft corporation, an Oregon Corporation  
For: Pumping Station Site #B
80. Easement, including terms and provisions contained therein:  
Recording Information: January 12, 1962 in Book 281, Page 254, Deed Records  
In Favor of: Western Kraft corporation, an Oregon Corporation  
For: Electric power transmission lines and one or more telephone lines

The Following Affects Parcel XIV

81. Any adverse claim based upon the assertion that:
- a). Said land, or any part thereof, is now or at any time has been below the ordinary high water mark of the Willamette River including any ownership rights which may be claimed by the State of Oregon now or at any time lying below the ordinary high water mark.
  - b). Some portion of said land has been created by artificial means or has accreted to such portion so created.
  - c). Some portion of said land has been brought within or removed from the boundaries thereof by a change in the location of the Willamette River.
  - d). Some portion of said land has not been continuously within the boundaries of the County of Willamette River.
82. Rights of the public, riparian owners and of governmental bodies in that portion of the above described property lying below the high water mark of unnamed creek to the use of the waters and the natural flow thereof.

The Following Affects Parcel XV

83. Easement, including terms and provisions contained therein:  
Recording Information: May 29, 1969 in Book 339, Page 793, Deed Records  
In Favor of: Pacific Power and Light Company, a corporation, its successors and assigns  
For: Electrical and telephone transmission and distribution lines

**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

84. The terms and provisions contained in the document entitled "Restrictive Covenant" recorded December 17, 1986 as Volume 429, Page 927, Microfilm Records .
85. Easement, including terms and provisions contained therein:  
Recording Information: April 03, 1987 in Volume 438, Page 764, Microfilm Records  
In Favor of: City of Millersburg  
For: Sewer pipeline systems
86. Easement, including terms and provisions contained therein:  
Recording Information: March 17, 1987 in Volume 495, Page 753, Microfilm Records  
In Favor of: City of Millersburg  
For: Utilities
87. Easement, including terms and provisions contained therein:  
Recording Information: October 10, 1996 in Volume 830, Page 628, Microfilm Records  
In Favor of: PacifiCorp, an Oregon Corporation  
For: Right of Way
- The Following Affects Parcel XVI
88. Sewer line as disclosed by Survey C.S. 10400, Survey Records of Linn County, Oregon.
89. Any adverse claims based upon the assertion that:
- a) Some portion of said land has been created by artificial means or has accreted to such portion so created.
  - b) Some portion of said land has been brought within the boundaries thereof by a change in the location of Murder Creek.
90. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.
91. Easement, including terms and provisions contained therein:  
Recording Information: April 20, 1933 in Book 136, Page 429, Deed Records  
In Favor of: Mountain States Power Company, a Delaware Corporation, its successors and assigns  
For: Electrical distribution line
92. Easement, including terms and provisions contained therein:  
Recording Information: November 30, 1954 in Book 240, Page 507, Deed Records  
In Favor of: Western Kraft Corporation  
For: Pipelines, Pumping station, common use rights, roadway and telephone lines

**Exhibit "B (Continued)"**  
**Permitted Exceptions - Site T2007-310/CP7**

93. Easement, including terms and provisions contained therein:  
Recording Information: June 10, 1970 in Book 350, Page 217, Deed Records  
In Favor of: Willamette Industries, Inc.  
For: Pipelines
94. Easement, including terms and provisions contained therein:  
Recording Information: August 22, 1979 in Volume 241, Page 894, Microfilm Records  
In Favor of: City of Millersburg  
For: Sewer pipeline system
95. Easement, including terms and provisions contained therein:  
Recording Information: April 20, 1987 in Volume 440, Page 17, Microfilm Records  
In Favor of: City of Millersburg  
For: Sewer pipeline system
96. Easement, including terms and provisions contained therein:  
Recording Information: April 20, 1987 in Volume 440, Page 21, Microfilm Records  
In Favor of: City of Millersburg  
For: Sewer pipeline system
97. An easement for electric power transmission, distribution, communication lines and incidental purposes, recorded June 18, 2008 as Document No. 2008-12264 .  
In Favor of: PacifiCorp, an Oregon corporation  
Affects: Parcel III

After recording  
return to Title

LINN COUNTY, OREGON 2013-08997  
D-WD  
Cnt=1 Stn=1 COUNTER 05/31/2013 11:21:25 AM  
\$50.00 \$11.00 \$15.00 \$19.00 \$10.00 \$105.00



I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.



Steve Druckenmiller - County Clerk

After recording return to:  
Millersburg Power LLC  
PO Box 2087  
Salem, OR 97308

Feb 20 18 11

GRANTOR: International Paper Company  
6400 Poplar Avenue  
Memphis, TN 38197

Until a change is requested, all tax statements shall be sent to Grantee at the following address:

Millersburg Power LLC  
PO Box 2087  
Salem, OR 97308

GRANTEE: Millersburg Power LLC  
PO Box 2087  
Salem, OR 97308

STATUTORY SPECIAL WARRANTY DEED

International Paper Company, successor and assign to IP Eat Three LLC ("Grantor") conveys and specially warrants to Millersburg Power LLC ("Grantee") the real property in Linn County, Oregon, more particularly described on Exhibit A attached hereto and by this reference incorporated herein (the "Real Property" or the "Land"), free of encumbrances created or suffered by the Grantor, except for those encumbrances set forth on Exhibit B, attached hereto and by this reference incorporated herein.

Together with a non-exclusive easement thirty feet (30') in width over, on and under the adjacent lands of Grantor, running in a northerly direction from the suction point of the withdrawal pipe of the ASB pond to the common boundary between the lands conveyed to Grantee by this deed for the sole purposes of ingress and egress, operating, repairing, maintaining, removing, improving and replacing the ASB Delivery System in such a manner as not to interfere with Grantor's operations on such lands. A sketch identifying the location of the aforementioned easement is attached hereto as Exhibit C and by this reference incorporated herein.

The true consideration for this conveyance in terms of dollars is \$1,200,000.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR

ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED: May 28, 2013

International Paper Company

By: Dan M. Davis

Name: Dan M. Davis

Its: Manager Surplus Properties

STATE OF TENNESSEE)

) ss.

COUNTY OF SHELBY)

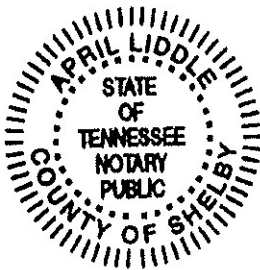
The foregoing instrument was acknowledged before me this 28 day of May, 2013, by Don M. Davis as Manager Surplus Properties of International Paper Company

April Liddle

Notary Public for State of Tennessee

My commission expires:

**MY COMMISSION EXPIRES:  
JUNE 29, 2015**



## EXHIBIT A TO SPECIAL WARRANTY DEED

### Legal Description

#### PARCEL 1:

The following described real property situated in the County of Linn and State of Oregon:

Beginning at a stone on the Southeastly boundary line of the Donation Land Claim of Silas Haight, et ux, Claim No. 55 in Township 10 South and Range 3 West of the Willamette Meridian, Linn County, Oregon, said stone being South 52° 50' West, 897.60 feet distant from the most Easterly corner of said Claim No. 55 and from thence running South 52° 50' West, 1777.60 feet to the Willamette River, thence down said Willamette River the following courses and distances: North 41° 06' West, 542.66 feet; thence North 61° 42' West, 132 feet; thence North 79° 06' West, 57.58 feet to a point South 1° 9' West of a 1 1/2-inch pipe, said pipe being West, 2660.50 feet and South 1093.81 feet distant from the said most Easterly corner of said Donation Land Claim No. 55; thence North 1° 09' East, 40 feet, more or less to said first above mentioned 1 1/2-inch pipe; thence North 1° 09' East, 332.55 feet to a 5/8-inch bolt; thence North 75° 29' East, 1119.77 feet to a 5/8-inch bolt; thence North 34° 30' East, 232.36 feet to a 1 inch x 40 inch pipe, thence South 89° 46' East, 771.83 feet to a 5/8-inch bolt, thence North 25° 00' East, 973.54 feet to a 1 inch x 50 inch pipe, thence North 18° 28' West, 671.68 feet to a 3/4-inch pipe, thence South 77° 33' East, 46.62 feet; thence South 18° 28' East, 677.33 feet to a 1 inch x 50 inch pipe; thence South 24° 27' West, 1227.10 feet to the place of beginning.

SAVE AND EXCEPT that portion conveyed to City of Millersburg, a municipal corporation of the State of Oregon, by deed recorded May 8, 1990 in Volume 530, Page 769, Microfilm Records for Linn County, Oregon, described as follows:

Beginning at the Southwest corner of Isaac Miller Donation Land Claim No. 46 in Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon; thence North 88° 38' 30" East, 1108.80 feet; thence North 1° 13' 30" West, 1320.00 feet; thence North 88° 38' 30" East, 1101.08 feet; thence North 18° 34' West, 2739.29 feet along the West right-of-way line of the Burlington Northern Railroad to the true point of beginning; thence South 84° 28' 35" West, 1798.57 feet; thence South 76° 12' 25" West, 898.88 feet; thence South 63° 23' 34" West, 326.66 feet; thence South 3° 30' East 119.51 feet; thence South 86° 30' West, 100.00 feet; thence North 3° 30' West, 185.56 feet; thence North 63° 23' 34" East, 403.94 feet; thence North 76° 12' 25" East, 917.33 feet; thence North 84° 28' 35" East, 1782.63 feet; thence South 18° 34' East, 102.65 feet to the true point of beginning.

ALSO SAVE AND EXCEPT that portion of the above described property lying North of the Northerly line of the above referenced City of Millersburg tract.

TOGETHER WITH a 450 foot wide perpetual and exclusive easement in and across the above described tract, described as follows:

Beginning at the Southwest corner of Isaac Miller Donation Land Claim No. 46 in Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon; thence North 88° 38' 30" East, 1108.80 feet; thence North 1° 13' 30" West, 1320.00 feet; thence North 88° 38' 30" East, 1101.08 feet; thence North 18° 34' West, 2739.29 feet along the West right-of-way line of the Burlington Northern Railroad to the true point of beginning; thence South 84° 28' 35" West, 450.00 feet; thence North 18° 34' West, 102.65 feet; thence North 84° 28' 35" East, 450.00 feet; thence South 18° 34' East, 102.65 feet to the true point of beginning.

#### PARCEL 2:

Part of Sections 19, 20, 29 and 30 in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon, and described as follows:

Beginning in the centerline of Linn County Market Road No. 34, at a point South 89°55' East 137.08 feet, South 889.89 feet, and South 77°32' East 1001.67 feet from the most Westerly Southwest corner of the George Miller, Sr., Donation Land Claim No. 58 in Section 19, Township 10 South, Range 3 West, said Donation Land Claim corner being on the Northwestern line of the Silas Haight Donation Land Claim No. 55; and running thence South 1°18' West, along the center line of a ditch, 1319.24 feet to the intersection of said ditch with a second ditch; thence Southerly, along the center line of the last mentioned ditch, following the meanders thereof, approximately 1750 feet to the right bank of the Willamette River; thence, following the meanders of said right bank Easterly upstream approximately 1150 feet to a point South 1°09' West of a 1-1/2 inch iron pipe, said pipe being West 2860.50 feet and South 1093.81 feet from the most Easterly corner of said Silas Haight Donation Land Claim No.

55; thence North 1°09' East 40 feet, more or less, to said 1-1/2 inch iron pipe; thence, continuing North 1°09' East 322.05 feet, to a 5/8 inch iron bolt; thence North 75°29' East 1119.77 feet to a 5/8 inch iron bolt; thence North 34°30' East 232.36 feet to a 1 inch iron pipe; thence South 89°46' East 771.83 feet to a 5/8 inch iron bolt; thence North 25°00' East 973.54 feet to a 1 inch iron pipe; thence North 18°28' West 706.65 feet to the center line of the aforementioned Linn County Market Road No. 34; thence North 77°32' West, along said centerline, to the point of beginning.

**PARCEL 3:**

All that part of the following described tract lying Southwesterly of and adjacent to the Southwesterly right of way of the Oregon Electric Railroad:

Beginning at the Southeast corner of the George Miller, Sr. Donation Land Claim No. 58 in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon; and running thence East 14.79 chains to a point on the North line of and West 37.50 chains from the Northeast corner of the Isaac Miller, Sr. Donation Land Claim No. 46; thence South 1°15' East 28.56 chains; thence West 2.50 chains; thence South 1°15' East 18.71 chains, more or less, to a point North 1°15' West 2402.9 feet from the South line of the said Isaac Miller, Sr., Donation Land Claim No. 46; thence Westerly, parallel to said South line, 570.65 feet to the Easterly right of way line of the Oregon Electric Railroad; thence South 18°28' East, along said right of way, 1138.3 feet to a point North 1°15' West 1320.0 feet from the South line of the Isaac Miller, Sr. Donation Land Claim No. 46; thence Westerly, parallel to said South line, 846.91 feet to the Southeast corner of that parcel conveyed to Western Kraft Corporation and recorded in Volume 281, Page 254, Linn County Deed Records; thence North 24°13' West 936.69 feet to a 1/2 inch iron rod at an angle point in the Easterly line of said Western Kraft Corporation parcel; thence North 30°00' West 1721.5 feet to a 1/2 inch iron rod at the Northeast corner of said parcel, said 1/2 inch rod being on the Northerly line of said Isaac Miller, Sr. Donation Land Claim No. 46; thence North 52°50' East, along said Northerly line, 279.47 feet to a stone which bears South 52°50' West 897.60 feet from the most Easterly corner of the Silas Haight Donation Land Claim No. 55; thence North 24°27' East (called North 23° East in old deeds) 1705.3 feet to the Southerly line of the aforementioned George Miller, Sr. Donation Land Claim No. 58; thence South 77°33' East, along said claim line, 414.60 feet to the point of beginning.

EXCEPTING THEREFROM that part lying within the right of way of the Oregon Electric Railroad, as recorded in Volume 98, Pages 136 and 311, and Volume 344, Page 316, Deed Records.

ALSO SAVE AND EXCEPT that portion of the above described tract of land lying within the boundaries of public roads and highways.



ALSO SAVE AND EXCEPT that portion of the above described property deeded to the City of Millersburg as recorded in Volume 530, Page 769, March 8, 1990, Linn County Deed Records.

PARCEL 4:

Beginning at a 5/8 inch iron rod on the Easterly line of that tract described in Linn County Deed Records, MF Volume 135, Page 687, said rod being South 1°08'13" East 1856.44 feet, South 88°51'17" West 30.04 feet, and North 89°53'15" West 1488.97 feet from the Northeast corner of the Isaac Miller Donation Land Claim No. 46 in Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon; thence North 89°53'15" West 956.065 feet to a 5/8 inch iron rod on the most Easterly line of that tract described in Linn County Deed Records, MF Volume 379, Page 178; thence, along said Easterly line, North 1°07'49" West 100.03 feet to a 5/8 inch iron rod; thence South 89°53'15" East 956.06 feet to a 5/8 inch iron rod; thence South 1°08'14" East 100.02 feet to the point of beginning.

PARCEL 5:

Beginning at a 5/8 inch iron rod on the Westerly right of way line of Linn County Road No. 367, said rod being South 1°08'13" East 1856.44 feet and South 88°51'17" West 30.04 feet from the Northeast corner of the Isaac Miller Donation Land Claim No. 46 in Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon; thence North 89°53'15" West 1488.97 feet to a 5/8 inch iron rod on the Westerly line of that tract described in Linn County Deed Records, MF Volume 455, Page 459.; thence, along said Westerly line, North 1°08'14" West 100.02 feet to a 5/8 inch iron rod; thence South 89°53'15" East 1488.955 feet to a 5/8 inch rod on the Westerly right of way line of Linn County Road No. 308; thence, along said Westerly line, South 1°08'43" East 100.025 feet to the point of beginning, all of the aforesaid described property is located in Section 28, Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon.

PARCEL 6:

Beginning at a 5/8 inch iron rod on the most Easterly line of that tract described in Linn County Deed Records MF Volume 379, Page 278, said rod being South 1°08'13" East 1856.44 feet, South 88°51'17" West 30.04 feet, and North 89°53'15" West 2445.035 feet from the Northeast corner of the Isaac Miller Donation Land Claim No. 46 in Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon; thence North 89°53'15" West 810.66 feet to a 5/8 inch iron rod; thence, along a 528.339 foot radius curve to the right, the long chord of which bears North 79°28'04" West 191.12 feet, to a 5/8 inch iron rod on the Easterly right of way line of the Burlington Northern Railroad; thence, along said right of way line, North 18°19'24" West 141.40 feet to a 5/8 inch iron rod; thence, along a 428.339 foot radius curve to the left, the long chord of which bears South 73°26'07" East, 242.62 feet to a 5/8 inch iron rod; thence South 89°53'15" East 808.50 feet to a 5/8 inch iron rod; thence South 1°07'49" East 100.03 feet to the point of beginning, all of the aforesaid property is located in Section 29, Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon.

**EXHIBIT B TO SPECIAL WARRANTY DEED**  
**Permitted Encumbrances**

**GENERAL EXCEPTIONS:**

1. Rights, if any, relating to the construction and maintenance, in connection with any public utility, of wires, poles, pipes, conduits and appurtenances thereto, on, under or across the Real Property;
2. The current year's taxes, assessments, water rates and other governmental charges of any kind or nature imposed on or levied against or on account of the Real Property, with adjustments to be made at Closing;
3. Restrictions on Grantee's ability to build upon or use the Real Property imposed by any current or future building or zoning ordinances or any other law or regulation of any governmental authority;
4. Any state of facts revealed by a survey, including, but not limited to the location of boundary lines, improvements and encroachments, if any;
5. All outstanding easements, servitudes, rights-of-way, flowage rights, restrictions, licenses, leases, reservations, covenants and all other rights in third parties of record;
6. All claims of governmental authorities in and to any portion of the Real Property lying in the bed of any streams, creeks or waterways or other submerged lands or land now or formerly subject to the ebb and flow of tidal waters or any claims of riparian rights;
7. Any and all restrictions on use of the Real Property or the Assets due to Environmental Laws, including wetlands protection laws, rules, regulations and orders;
8. All railroad side track agreements;
9. All previous reservations, exceptions and conveyances of oil, gas, associated hydrocarbons, minerals and mineral substances and royalty and other mineral rights;
10. Mechanics', materialmen's, warehousemen's and similar liens attaching by operation of law, incurred in the ordinary course of business and securing payments not yet delinquent or payments that are being contested in good faith; provided that Grantor shall remain responsible for such payments and this item shall survive Closing.

**SPECIFIC ITEMS AND EXCEPTIONS:**

11. Intentionally deleted.
12. Intentionally deleted.
13. Intentionally deleted.

14. Intentionally deleted.
15. Intentionally deleted.
16. The Land has been classified as Farm Use, as disclosed by the tax roll. If the Land becomes disqualified, said Land may be subject to additional taxes and/or penalties.
17. Intentionally deleted.
18. Rights of the public to any portion of the Land lying within streets, roads and highways.
19. Any adverse claim based upon the assertion that:
  - a) Said Land or any part thereof is now or at any time has been below the highest of the high watermarks of Willamette River and Murder Creek (Powell Creek) in the event the boundary of said Willamette River and Murder Creek (Powell Creek) has been artificially raised or is now or at any time has been below the high watermark, if said Willamette River and Murder Creek (Powell Creek) is in its natural state.
  - b) Some portion of said Land has been created by artificial means or has accreted to such portion so created.
  - c) Some portion of said Land has been brought within the boundaries thereof by an avulsive movement of Willamette River and Murder Creek (Powell Creek), or has been formed by accretion to any such portion.
20. Rights and easements for navigation and fishery which may exist over that portion of said Land lying beneath the waters of the Willamette River and Murder Creek (Powell Creek).
21. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Mountain States Power Company  
Purpose: Anchors, wires and fixtures Recording Date: February 5, 1937 Recording No: Book 145, Page 403 Affects: Parcel 2
22. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Mountain States Power Company  
Purpose: Electric transmission or distribution lines  
Recording Date: March 2, 1937 Recording No: Book 145, Page 470 Affects: Exact location not specified
23. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Mountain States Power Company  
Purpose: Electric transmission and distribution lines  
Recording Date: October 3, 1947  
Recording No: Book 196, Page 196  
Affects: Parcel 2 - exact location not disclosed of record
24. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Western Kraft Corporation, an Oregon corporation  
Purpose: Pipe lines  
Recording Date: December 2, 1954  
Recording No: Book 240, Page 507  
Affects: Various parcels - see document for specifics

25. Road Relocation Agreement, including the terms and provisions thereof,  
Recording Date: August 9, 1960 Recording No.: Book 272, Page 536
26. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;  
Reserved by: Owners of adjoining property  
Purpose: Pipe lines  
Recording Date: January 12, 1962 Recording No: Book 281, Page 254 Affects: Parcel 3
27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Granted to: City of Millersburg, Oregon Purpose: Sewer pipe line  
Recording Date: August 25, 1982 Recording No: Volume 318, Page 792 Affects: Parcels 3 and 6
28. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Granted to: City of Millersburg  
Purpose: Water and sewer pipelines Recording Date: May 19, 1987 Recording No: Volume 442, Page 738 Affects: Parcels 1, 2 and 3
29. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Granted to: PacifiCorp  
Purpose: Electric transmission lines, distribution lines, and communication lines  
Recording Date: October 10, 1996  
Recording No: Volume 830, Page 628  
Affects: Parcels 2 and 3
30. Well Ownership Information Form, including the terms and provisions thereof,  
Recording Date: October 9, 2001  
Recording No.: Volume 1222, Page 951  
Affects: Various locations on multiple parcels
31. Easement(s) for the purpose(s) shown below and rights incidental thereto as condemned by an instrument,  
Entitled: Notice of Supplemental Final Order and Judgment Court: U.S. District Court for the Southern District of Indiana Case No.: 1:02-cv-7004-DFH-TAB  
In favor of: AT&T Corp. and AT&T Communications-East, Inc. Purpose: Cable, conduits, power and replacement technology Recording Date: November 14, 2008  
Recording No: 2008-21446  
Affects: Portions adjacent to railroad corridor

32. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of Millersburg, Linn County, Oregon  
Purpose: Sewer pipeline  
Recording Date: December 17, 1986  
Recording No: Volume 429, Page 927  
Affects: A portion of Parcel 4

33. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of Millersburg, Oregon  
Purpose: Utility purposes and road right of way  
Recording Date: May 8, 1990  
Recording No: Volume 530, Page 775 Affects: Parcels 5 and 6

34. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Teledyne Industries, Inc.  
Purpose: Underground piping and road right of way  
Recording Date: May 8, 1990  
Recording No: Volume 530, Page 779  
Affects: Parcel 4

35. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: PacifiCorp  
Purpose: Electric transmission lines, distribution lines, and communication lines  
Recording Date: October 10, 1996  
Recording No: Volume 830, Page 628  
Affects: Parcel 6

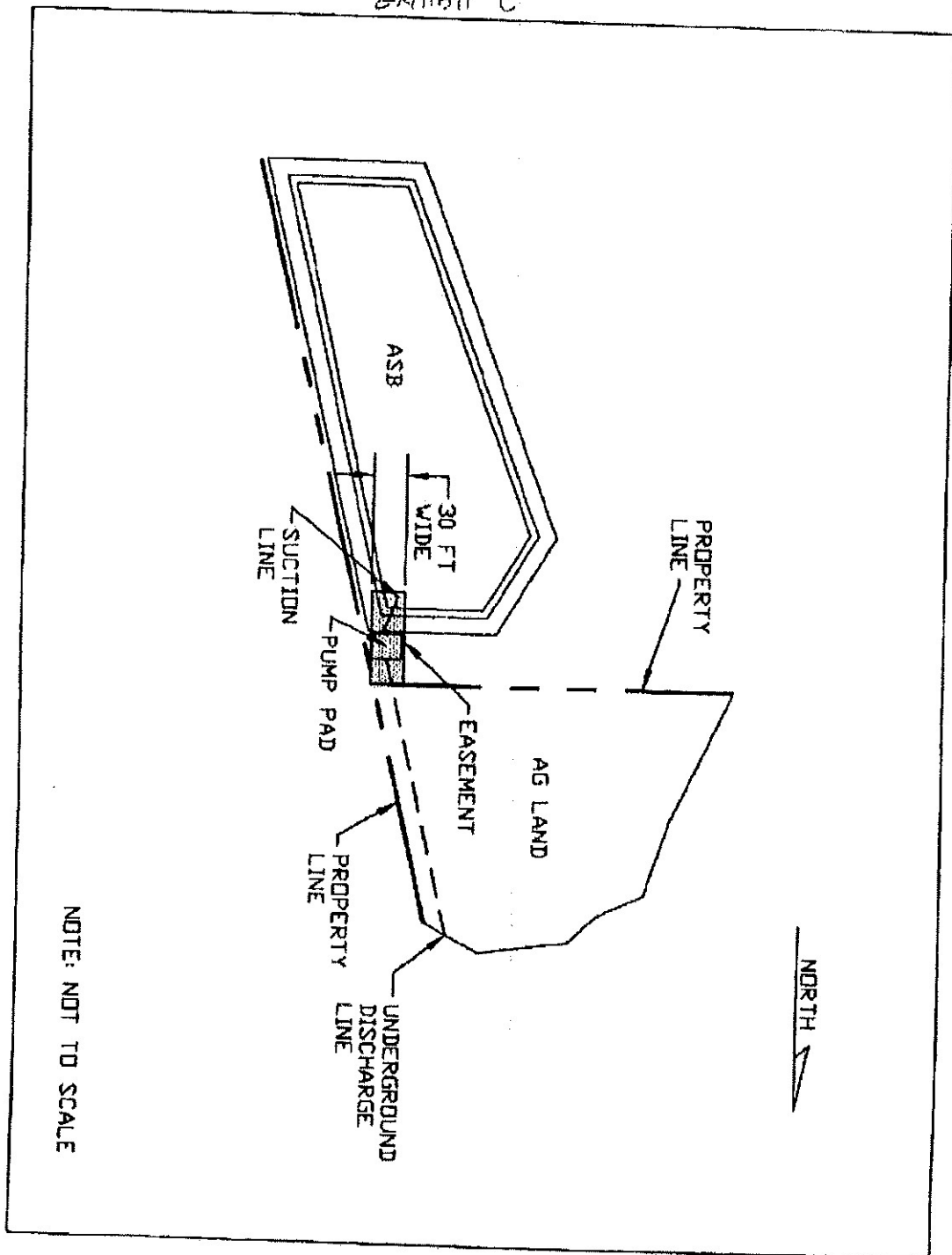
36. The effect, if any, of Charitable Donation Agreement, including the terms and provisions thereof, between Dan Desler, Troy Cummins and Willamette Industries, Inc., First Party, and Western States Family Foundation, a component fund of the American Foundation for Charitable Support, Inc.  
Recording Date: December 5, 2001  
Recording No.: Volume 1241, Page 725

Said Agreement contains no legal description and is shown on this report due to its execution by former owner, Willamette Industries, Inc., and its recordation in Linn County, Oregon

# EXHIBIT C TO SPECIAL WARRANTY DEED

## Sketch Identifying Location of Easement

EXHIBIT C



NOTE: NOT TO SCALE

# **EXHIBIT**

D.DRAFT Ordinance 197-XX



## **ORDINANCE NO. 197-XX**

### **AN ORDINANCE AMENDING THE URBAN GROWTH BOUNDARY ON THE COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP AND ADDING NEW COMPREHENSIVE PLAN LAND USE DESIGNATIONS AND ZONING DESIGNATIONS FOR THE EXPANDED AREA.**

**WHEREAS**, the City of Millersburg City Council directed staff to move forward with an exchange of property (a swap) to amend the Urban Growth Boundary (UGB) to remove undevelopable property from the UGB and include more developable property in a more viable location; and,

**WHEREAS**, consistent with State requirements in ORS 197.298 and OAR 660-24 the City completed a UGB alternatives analysis finding the proposed UGB expansion area to be the preferred alternative; and,

**WHEREAS**, City and County staff met to discuss the proposed project and the County did not register any specific concerns with the City's proposal; and,

**WHEREAS**, the project is fully consistent with the Urban Growth Management Agreement between the City and the County (and Urban Growth Boundary Procedural County Ordinance 80-163); and,

**WHEREAS**, public notice was posted in a newspaper on August 22, 2022 for public hearings before the Planning Commission and City Council; and,

**WHEREAS**, the public has had additional opportunities to address the City Council and Planning Commission regarding the proposed UGB expansion during the de-annexation hearings held on June 14, 2022, July 12, 2022, July 19, 2022, and August 23, 2022; and,

**WHEREAS**, on October 4, 2022, the Planning Commission held a public hearing and recommended the City Council adopt an ordinance to amend the City's UGB and to amend the City's Comprehensive Plan Map and Zoning Map to add Comprehensive Plan Land Use and Zoning designations, Industrial and General Industrial (GI) respectively, to the two parcels identified in the attached legal descriptions (at the time this was drafted they were tax lots 10S-03W-29-00104, 10S-03W-20-00402, 10S-03W-29-00101, and a 2.29 acre portion of 10S-03W-29-00206, the portion that is not currently within the City limits, but within the current UGB); and,

**WHEREAS**, the Department of Land Conservation and Development (DLCD) received hearing notice thirty-five days in advance of the first hearing; and,

**WHEREAS**, the Millersburg Planning Commission and City Council find that the project meets all criteria requirements, as outlined in the staff report for the October 4 Planning Commission hearing, including:

1. State of Oregon - Goal 9: Economic Development Oregon Administrative Rule, Division 9 - Goal 10: Housing Oregon Administrative Rule, Division 8 - Goal 14: Urbanization Oregon Revised Statute 197.298: Priority of land to be included within UGB Oregon Administrative Rule 660 Division 24, Urban Growth Boundaries - Oregon Administrative Rules 660-024;
2. Linn County - Urban Growth Management Agreement (between Linn County and Millersburg), Linn County Comprehensive Plan, and the Land Use Development Code (Sections 921.822 and 921.874);
3. City of Millersburg - Millersburg Comprehensive Plan and the Development Code, Sections 5.09.050 and 5.10.050.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF MILLERSBURG DO ORDAIN AS FOLLOWS:**

1. The City's UGB is hereby amended in the City of Millersburg's Comprehensive Plan Map and Zoning Map. The amendment removes 167.46 acres from the UGB, identified in the legal descriptions, also identified (at the time this was drafted) as tax lots 10S-03W-33-00200, 10S-03W-29- 00300, and 10S-03W-29-00201. The amendment adds 162.89 acres to the UGB, identified in the legal descriptions, also identified (at the time this was drafted) as tax lots 10S-03W-20-00402 and 10S-03W-29-00101.
2. The Comprehensive Plan Land Use map is hereby amended to designate three parcels, and a portion of a parcel identified in the attached legal descriptions, also identified (at the time this was drafted) as tax lots 10S-03W-29-00104, 10S-03W-20-00402, 10S-03W-29-00101, and a 2.29 acre portion of 10S-03W-29-00206, the portion that is not currently within the City limits, but within the current UGB, as Industrial.
3. The Zoning Map is hereby amended to designate three parcels, and a portion of a parcel identified in the attached legal descriptions, also identified (at the time this was drafted) as tax lots 10S-03W-29-00104, 10S-03W-20-00402, 10S-03W-29-00101, and a 2.29 acre portion of 10S-03W-29-00206, the portion that is not currently within the City limits, but within the current UGB, as General Industrial (GI).
4. These Comprehensive Plan Land Use designations and Zoning Designations do not take effect until the property is annexed into the City.

These actions will not take effect until the Linn County Board of Commissioners adopts the UGB amendment. This Ordinance shall become effective 30 days after its adoption.

**PASSED by the Council and approved by the Mayor this 11<sup>th</sup> day of October, 2022.**

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Scott Cowan,  
Mayor

ATTEST:

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Sheena Dickerman,  
City Recorder

Attachments:

Exhibit A- Amended Comprehensive Plan Map

Exhibit B- Amended Zoning Map

Exhibit C- Property Legal Descriptions

DRAFT

# **EXHIBIT**

E. Amended Comprehensive Plan Map

# Millersburg Comprehensive Plan




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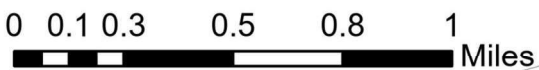


## Comp Type

-  Commercial
-  Industrial
-  Public & Semi Public
-  Residential

## Other

-  City Limits
-  taxlots
-  UGB



# **EXHIBIT**

F. Amended Zoning Map



# Millersburg Zoning Map






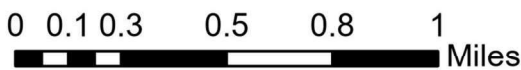
## Legend

### Zoning

-  COMMERCIAL OFFICE
-  GENERAL COMMERCIAL
-  GENERAL INDUSTRIAL
-  LIGHT INDUSTRIAL
-  MIXED USE
-  PUBLIC FACILITIES
-  RESIDENTIAL LOW
-  RESIDENTIAL MEDIUM
-  RURAL

### Other

-  City Limits
-  taxlots
-  UGB





## **EXHIBIT**

G. Public Hearing Notice



**NOTICE OF PUBLIC REVIEW**  
**October 4, 2022, 6:00 p.m. and**  
**October 11, 2022 at 6:30**

**Hearing will be in person and**  
**by phone/computer.**

**See Agenda on the City website for details**

The City of Millersburg will hold a **Planning Commission** hearing on October 4, 2022 and a **City Council** hearing on October 11, 2022 at the above time and place (respectively) to consider the action described below. The action may be heard later than the time indicated, depending on the agenda schedule. Interested parties are invited to send written comment or attend the hearing. A staff report relating to the proposal will be available seven (7) days prior to the first public hearing. Any action by the City on this matter is tentative pending approval by the County Board of Commissioners and a concurrence review by the Department of Land Conservation and Development (DLCD). For further information, contact Millersburg City Hall at (458) 233-6306.

The location of the meeting is accessible to the disabled. If you need any special accommodations to attend or participate in the meeting, please notify City Hall twenty-four (24) hours before the meeting.

- APPLICANT:** City initiated
- LOCATION:** South of NE Conser Road along the western edge of the City in the wooded property along the Willamette River. And southerly of NE Conser Road and westerly of NE Woods Road. For a map see the link below (removing 10S-03W-33-00200, 10S-03W-29-00300, 10S-03W-29-00201 and adding 10S-03W-20-00402 and 10S-03W-29-00101).
- CRITERIA:**
- A. State of Oregon - Goal 9: Economic Development Oregon Administrative Rule, Division 9 - Goal 10: Housing Oregon Administrative Rule, Division 8 - Goal 14: Urbanization Oregon Revised Statute 197.298: Priority of land to be included within UGB Oregon Administrative Rule 660 Division 24, Urban Growth Boundaries - Oregon Administrative Rules 660-024,
  - B. Linn County - Urban Growth Management Agreement (between Linn County and Millersburg), Linn County Comprehensive Plan, and the Land Use Development Code (Sections 921.822 and 921.874),
  - C. City of Millersburg - Millersburg Comprehensive Plan and the Development Code, Sections 5.09.050 and 5.10.050.
- FILE No.:** DC 22-01
- REQUEST:** The City of Millersburg is proposing an Urban Growth Boundary (UGB) swap. More specifically the City plans to remove 167.46 acres (10S-03W-33-00200, 10S-03W-29-00300, and 10S-03W-29-00201) from the UGB (this has already been removed from the City limits) and add 162.89 acres (10S-03W-20-00402 and 10S-03W-29-00101) to the UGB. The Land Use designation of Industrial (I) and Zoning classification of General Industrial (GI) will remain the same for all properties. This will

consist of a Comprehensive Plan and Zoning Code Amendment. A corresponding change to the County Comp Plan and Zoning will follow the City action. All actions by the City are tentative pending County approval, and DLCD review afterwards. Linn County will be jointly reviewing the UGB change and adding a Comprehensive Plan Land Use designation of Agricultural Resource and a zoning classification of Exclusive Farm Use (EFU) to the three parcels proposed to be added to the unincorporated community. See website for more details:

<https://www.cityofmillersburg.org/planning/page/dc-22-01-urban-growth-boundary-ugb-land-swap>

