

LINN COUNTY BOARD OF COMMISSIONERS HEARING STAFF REPORT

PREPARED BY: Alyssa Boles, Planning Manager

DATE ISSUED: January 17, 2023

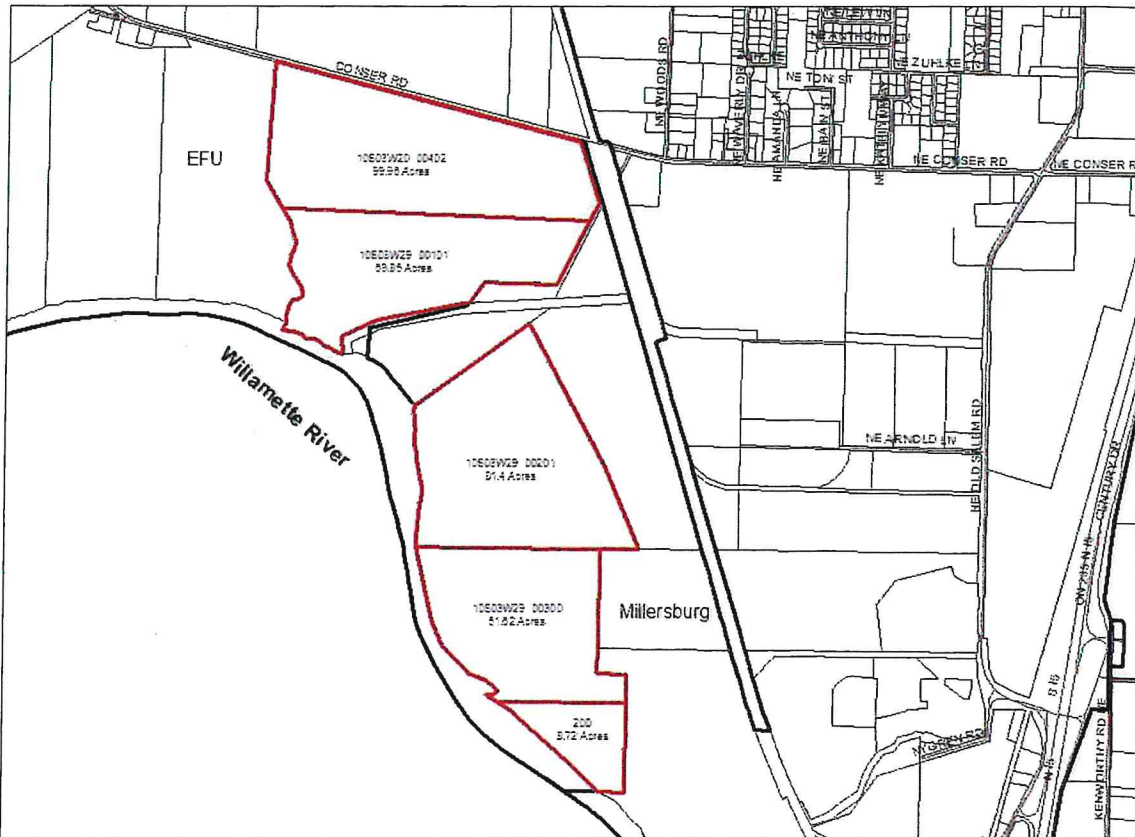
HEARING DATE: January 24, 2023



APPLICATION: **PLN-2022-00807**: concurrent applications by city of Millersburg for a *Comprehensive Plan (Plan)* map amendment and Zoning map amendment. The amendments are proposed as part of an urban growth boundary (UGB) amendment approved by Millersburg to add and remove properties within the Millersburg UGB. The total area to be added to the UGB is 162.89 acres. The total area to be removed from the UGB is 167.46 acres. The amendments would change the *Plan* designation and Zoning map designation on five properties.

LOCATION: The properties are identified as T10S, R03W, Section 33, Tax Lot 200; T10S, R03W, Section 29, Tax Lots 201 and 300; T10S, R03W, Section 20, Tax Lot 402; T10S, R03W, Section 29, Tax Lot 101.

CRITERIA: Linn County Land Development Code (LCC) 921.822(A) and 921.874 and the Oregon Statewide Planning Goals contain the applicable decision criteria.



1 inch = 1,200 feet

Linn County Planning & Building Department

Date: 12/28/2022

I. APPLICATION SUMMARY

Applications by the City of Millersburg for a *Comprehensive Plan (Plan)* map amendment and Zoning map amendment. The amendments are proposed in conjunction with an urban growth boundary (UGB) amendment approved by the City of Millersburg to add and remove properties within the Millersburg UGB. The total area of land to be added to the UGB is 162.89 acres. The total area to be removed from the UGB is 167.46 acres. The City of Millersburg approved the proposed UGB amendments per City Ordinance No. 199-22, adopted October 11, 2022. The amendments would change the *Plan* designation and Zoning map designation on the five properties, listed below. If approved, the properties proposed to be added to the Millersburg UGB would subsequently be annexed into the city limits.

The following table lists the subject properties, whether they will be added or removed from the UGB, the affected acreage, and current and proposed *Plan* and zoning designations:

Map	Tax Lot	Acres	Owner	Added/Removed	Current Plan/Zoning	Plan/Zoning After Amendment
10S 03W 29	201	81.40	IEP Eat Three LLC	Removed	Industrial/General Industrial	Agricultural Resource/EFU
10S 03W 29	300	51.62	IEP Eat Three LLC	Removed	Industrial/General Industrial	Agricultural Resource/EFU
10S 03W 33	200	16.94	IEP Eat Three LLC	Removed	Industrial/General Industrial	Agricultural Resource/EFU
10S 03W 20	402	99.96	Willamette Valley Land, LLC	Added	Agricultural Resource/EFU	Industrial/ UGA-EFU-80
10S 03W 29	101	63.85	Willamette Valley Land, LLC	Added	Agricultural Resource/EFU	Industrial/UGA-EFU-80

Until such time that the properties are annexed into city limits, a County zoning designation must be applied. Pursuant to LCC 905.570(B)(14), an Urban Growth Area - Exclusive Farm Use-80 acre minimum property size (UGA-EFU-80) zone designation may be applied to future industrial sites located within a city planning area or urban growth boundary. The intent of the designation is to retain properties for industrial uses requiring a large land area until the property can be incorporated. This zoning district acts as an industrial reserve zoning until such time the properties are annexed into the city. Upon annexation, the City of Millersburg indicates the property will be zoned General Industrial (GI). Staff recommends the Board adopt a County zoning of UGA-EFU-80 for tax lots 402 and 101. Upon annexation, the GI zoning district would be applied.

For reference, the applicant has included a map designating properties to be removed from the Millersburg UGB as Site A and properties to be added to the Millersburg UGB as Site B (**Exhibit A, page 20**). The applicant has submitted information to address the applicable decision criteria, the *Plan* policies, and the Statewide Planning Goals. The application and applicant submittals are attached to this staff report as **Exhibit A**.

II. PLANNING COMMISSION RECOMMENDATION

The Planning Commission (Commission) held a public hearing on this matter at 7:00 p.m., January 10, 2023. After considering the staff analysis and the written and oral testimony presented at the Commission hearing, the Commission voted 6-0 to adopt a motion to recommend that the Board deny the proposed amendments. Voting in favor of the motion were Commissioners Alderman, Boshart, Cromwell, Legras, McHenry, and Stutzman.

III. LAND USE INFORMATION

A. SITE LOCATION

The subject properties are identified on Linn County Assessor maps as T10S, R03W, Section 33, Tax Lot 200; T10S, R03W, Section 29, Tax Lots 201 and 300; T10S, R03W, Section 20, Tax Lot 402; T10S, R03W, Section 29, Tax Lot 101

B. ZONING AND DEVELOPMENT BACKGROUND

Zoning and development background varies among the subject properties. Department records indicate tax lot 402 on map T10S, R03W, Section 20 and tax lot 101 on map T10S, R03W, Section 29 were zoned Exclusive Farm Use (EFU) prior to September 2, 1980. Tax lots 201 and 300 on map T10S, R03W, Section 29 were zoned Urbanizing Heavy Industrial (UHI) prior to September 2, 1980. Tax lot 200 on map T10S, R03W, Section 33 was zoned UHI prior to September 2, 1980.

**Table 1
Existing and Proposed Conditions**

CONDITION	EXISTING	PROPOSED
Plan Designation	Agricultural Resource, Industrial	Agricultural Resource, Industrial
Zone Designation	Exclusive Farm Use (EFU), General Industrial (GI)	EFU, Urban Growth Area Exclusive Farm Use (UGA-EFU-80), GI upon annexation
Site Location	See maps (Exhibit A, page 20)	Same

IV. PROPERTY CHARACTERISTICS

- A. SOIL TYPES** – The soils types identified on the subject properties vary. Soil types on the subject properties are identified and documented by the Natural Resource Conservation Service (NRCS). Soils data is contained in **Exhibit F**.
- B. TOPOGRAPHY** – The topography of the subject properties varies. Elevation of the subject properties is identified on adopted United States Geologic Survey (USGS) maps.
- C. NATURAL AND/OR GEOLOGIC HAZARDS** – There are no potential geologic hazards identified on the subject properties (Bulletin 84, Environmental Geology of Western Linn County Oregon).

T10S, R03W, Section 33, Tax Lot 200 and T10S, R03W, Section 29, Tax Lots 201 and 300 are located almost entirely within an identified flood hazard area and floodway according to the Federal Emergency Management Agency (FEMA) Flood Insurance Study for Linn County, Oregon and Incorporated Areas dated September 29, 2010.

Portions of T10S, R03W, Section 20, Tax Lot 402 and T10S, R03W, Section 29, Tax Lot 101 are located within an identified flood hazard area according to the Federal Emergency Management Agency (FEMA) Flood Insurance Study for Linn County, Oregon and Incorporated Areas dated September 29, 2010.

V. PUBLIC FACILITIES AND SERVICES

- A. **FIRE** – T10S, R03W, Section 20, Tax Lot 402 and T10S, R03W, Section 29, Tax Lot 101 are served by the Jefferson Rural Fire District. T10S, R03W, Section 33, Tax Lot 200 and T10S, R03W, Section 29, Tax Lots 201 and 300 are served by the Millersburg Fire District.
- B. **POLICE** - The Linn County Sheriff's Department serves all the subject properties.
- C. **SEWAGE DISPOSAL** – The properties are predominately used for pasture and open space/wetlands. Sewage disposal on the subject properties may vary.
- D. **WATER SUPPLY** The properties are predominately used for pasture and open space/wetlands. Water supply on the subject properties may vary.
- E. **ACCESS** – The properties are predominately used for pasture and open space/wetlands. Access to the subject properties may vary from access via Linn County roads to access via private roads.

VI. ANALYSIS

DECISION CRITERIA

Linn County Code (LCC) 921.822, 921.874, and the Oregon Statewide Planning Goals contain the decision criteria for use in this land use review. The decision criteria are attached to this report as **Exhibit B**.

LCC 921.822(A) Decision criteria for Zoning Map amendments

When a Zoning Map or Land Development Code text amendment is necessary due to a proposed *Comprehensive Plan (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.

STAFF ANALYSIS: Both a zoning map amendment and a *Plan* map amendment are proposed with this application. The *Plan* amendment criteria described in 921.874 are addressed below. This criterion is satisfied.

LCC 921.874 Decision criteria for Plan Map amendments

LCC 921.874(A)(1): The amendment is consistent with and does not alter the intent of applicable section(s) of the *Comprehensive Plan*.

APPLICANT STATEMENT: The applicant statement addressing this criterion is contained in **Exhibit A, pages 67-72**. Findings adopted by the City of Millersburg (City) as part of Ordinance No. 199-22 approving the UGB amendments are contained in **Exhibit A, pages 115-140**.

STAFF ANALYSIS: The Citizen Involvement, Natural Resource Element, Community Facilities and Development and Land Use elements of the *Plan* are the applicable sections for this review.

The City adopted Ordinance No. 199-22 approving the proposed amendments. The ordinance included findings that the proposed amendments were found to be consistent with the Millersburg *Comprehensive Plan* and the Development Code, Sections 5.09.050 and 5.10.050, along with 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 (**Exhibit A, pages 122-123**).

The applicant statement, included below, adequately addresses the applicable elements of the County's *Plan*.

Citizens Involvement Element

Like the State's Goal 1, this Element is designed to assure public participation in the planning and land use process. An effective tool for outreach is the public hearing process, specifically for the Planning Commission. Notice of land use items allows the public an opportunity to participate through comments to the Planning Commission at the City and County level. 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 and Willamette Greenway River Overlay. Section 903.230 of the Comp Plan 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.
 - *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 A and B.*
- 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 within the Willamette 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. 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 forestlands. This swap will not require the designation of Non-Resource lands, because site B will be placed into a City.

(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 are 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.

Comments received from 1000 Friends of Oregon/Friends of Linn County (**Exhibit D**) state that the County staff report does not address the requirements in OAR 660-024-0065 for establishing a study area to evaluate land for inclusion in the UGB and that the report relies on Millersburg's alternative sites analysis. There is no requirement in OAR for the County to conduct an additional or separate study area or alternative sites analysis.

The comments also state that the staff report fails to address LCC 905.610(C)(6), which lists factors to be considered when a change of a UGB is requested. Staff notes that the factors listed in 905.610(C)(6) are the same criteria contained in OAR 660-024 regarding UGB amendments, which have been addressed by the City in its alternative sites analysis. The applicant also addresses this criterion earlier in this section.

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.

Policies within the Industrial Lands element of the County's *Comprehensive Plan* support city's efforts to plan and prepare land for industrial development, specifically LCC 905.570(B)(4). This policy states:

(4) The majority of new industrial sites will be located within an urban growth boundary to take advantage of public facilities and utilities. The county supports the efforts of the various cities to plan and prepare land for industrial development.

LCC 921.874(A)(2): The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area.

APPLICANT STATEMENT: The applicant statement addressing this criterion is contained in **Exhibit A, pages 72-73**. Findings adopted by the City as part of Ordinance No. 199-22 approving the UGB amendments are contained in **Exhibit A, pages 115-140**.

STAFF ANALYSIS: The proposed amendments would both add and remove properties from the Millersburg UGB. The total area of land to be added to the UGB is 162.89 acres. The total area to be removed from the UGB is 167.46 acres. The amendments would change the *Plan* designation and Zoning map designation on the five properties.

No comments have been received from surrounding property owners regarding the proposed amendments as of the date this staff report was prepared. One comment was received from 1000 Friends of Oregon/Friends of Linn County (**Exhibit D**) asserting that the application does not meet this criterion. The comment states that removing a large block of agricultural land that has been farmed as part of the area's commercial agricultural land base destabilizes the land use pattern in the vicinity in a profound way and that it adversely affects the existing agricultural operations that depend on the tract as a critical component of their industrial land base. The applicant addresses this criterion as noted above on pages 72-73 of Exhibit A.

The City adopted Ordinance No. 199-22 approving the proposed amendments. The ordinance included findings that the proposed amendments, Plan re-designations, and zone changes are compatible with the abutting land uses and development patterns within the City's UGB. Future development on the properties being added to the UGB is required to comply with the City's Comprehensive Plan policies and Development Code criteria and standards.

The applicant statement addresses this criterion. The applicant states:

"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. 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 result in new adjacency conditions that do not exist today.

Future development on the properties being removed from the UGB is required to comply with applicable County Plan policies and Development Code criteria, requirements, and standards. Depending on uses proposed, findings are required determining whether a use can be made reasonably compatible with surrounding uses. The proposed amendment is considered an exchange of land, whereby the amount of acreage being added and removed is similar. The amendment will result in a similar amount of acreage remaining industrial land within the UGB and Agricultural Resource land within the County.

Land adjacent to the properties being moved in and out of the UGB is either within the city limits of Millersburg or zoned Exclusive Farm Use. The three tax lots moving into the County are proposed to be zoned Exclusive Farm Use. Soils on the three tax lots to be included in the County are predominately Class I soils based on USDA-NRCS data, similar to surrounding farmland (**Exhibit F**).

LCC 921.874(A)(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.

STAFF ANALYSIS: The amendment is within the Millersburg UGB. The proposal will add and remove specified properties to and from the UGB. Proportionately equal areas will be added to and removed from the UGB, and the land to be added will be placed in the same land use designation as the land to be removed. The proposal has been evaluated by the City through its adopted review and decision process, and it has been found to conform to the City's Comprehensive Plan and implementing ordinances. The City's review, analysis, and findings are included in Millersburg Ordinance No. 199-22, adopted on October 11, 2022. Findings adopted by the City as part of Ordinance No. 199-22 approving the UGB amendments are contained in **Exhibit A, pages 115-140.**

The ordinance includes findings that the proposed amendments were found to be consistent with the Millersburg Comprehensive Plan and the Development Code, Sections 5.09.050 and 5.10.050, along with 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.

The applicant statement and City ordinance findings adequately address this criterion (**Exhibit A, pages 73 and 122-123**).

LCC 921.874(A)(4): The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat.

APPLICANT STATEMENT: *"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 site A better. The County Land Use and Zoning designations will be more in line with the preservation of the land than the City's industrial designations. The proposal will have beneficial impacts on the habitat."*

STAFF ANALYSIS: The City adopted Ordinance No. 199-22 approving the proposed amendments. The ordinance included findings that the proposed amendments complied with the policies implementing Goal 5 contained in the Millersburg Comprehensive Plan, along with compliance with Oregon Statewide Planning Goal 5.

None of the properties are located within a mapped wildlife habitat area. The three properties currently located inside the UGB of Millersburg are adjacent to the Willamette River, which is a mapped sensitive fish and riparian habitat. Oregon Department of Fish and Wildlife (ODFW) was sent notice regarding the proposed amendments. The ODFW did not submit comments indicating any impacts to the fish habitat as a result of the UGB amendments, as of the date this staff report was prepared.

Historical use of the properties is open space and wetlands. If the properties are amended to be in the County, applicable Goal 5 policies implemented in the County *Comprehensive Plan* protecting fish and riparian habitat would apply, specifically LCC 903.510(B)(12), which requires Linn County to rely upon the Oregon Forest Practices Act, the Willamette River Greenway program, and a building setback provision to protect identified sensitive riparian habitat. The proposed *Agricultural Resource Plan* designation and Exclusive Farm Use zoning to be applied to the properties also protects Goal 5 resources due to limited development options and its classification as open space in the County's *Plan*.

LCC 921.874(A)(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.

APPLICANT STATEMENT: *"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 (The City owns property on the west side of the railroad tracks that will be taking

access and utilities from NE Conser Road), even before the proposed land swap 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."

Findings adopted by the City as part of Ordinance No. 199-22 approving the UGB amendments are contained in **Exhibit A, pages 115-140**.

STAFF ANALYSIS: Tax lots 201 and 300 on map T10S, R03W, Section 29 and tax lot 200 on map 10S, R03W, Section 33 are all proposed to be removed from the Millersburg UGB. These properties are not served by any City utility services. These properties are currently served by the Millersburg Fire District and the Linn County Sherriff's Department and will continue to be served by the Millersburg Fire District.

Tax lot 402 on map T10S, R03W, Section 20 and tax lot 101 on map T10S, R03W, Section 29 are proposed to be amended to be part of the Millersburg UGB and then subsequently annexed. Both tax lots are currently served by the Jefferson Rural Fire District, and the Linn County Sherriff's Office. Once annexed into the city limits, development on those properties will continue be served by the Linn County Sherriff's Office and city utilities. Millersburg Fire District fire protection/emergency services may be provided upon agreements between the City and the Jefferson Rural Fire District or Albany Fire Department.

Notice was sent to the Linn County Sherriff's Department, the City of Millersburg, the Jefferson Rural Fire Protection District, and the Albany Fire Department. As of the time of writing this staff report, the Department has not received comments from any of those agencies indicating any adverse impacts as a result of the proposed amendments.

The Exclusive Farm Use zoning designation that would be applied to the three properties moving into the County does not require approval for a septic system if there is no existing development on the property and if no development is proposed for the property or if the proposed development would not contain any plumbing (LCC 933.140). Septic suitability is generally not a factor in determining whether the property is appropriate for an EFU zoning designation.

The applicant statement and City ordinance findings adequately address this criterion.

LCC 921.874(A)(6): The amendment will not have a significant adverse impact upon the transportation facilities.

APPLICANT STATEMENT: *"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."*

STAFF ANALYSIS: The Linn County Road Department comments did not indicate any significant adverse impact upon transportation facilities as a result of the amendments (**Exhibit E**).

Tax lots 201 and 300 on map T10S, R03W, Section 29 and tax lot 200 on map 10S, R03W, Section 33 are not currently served by any City maintained roads. As the applicant indicates, the three properties to be removed from the UGB will be designated as

Agricultural Resource land and zoned EFU. LCC 907.230(D) indicates that the County Comprehensive Plan and Land Development Code have established specific development limitations in the EFU zoning district. The uses permitted in this zone are not expected to have a significant impact on the transportation system. The scale and density of the permitted uses will allow only a rural level of development. No urban scale development is expected to occur within the County. Based on the capacity analysis of the road network and population and economic projections for the region, future levels of development in this unincorporated area will not result in adverse impacts to the transportation system.

Tax lot 402 on map T10S, R03W, Section 20 has access via Conser Road, a County maintained road. Tax lot 101 on map 10S, R03W, Section 29 is served agricultural access through tax lot 402 off of Conser Road. Future development upon annexation into city limits will require compliance with applicable transportation policies and standards contained within the City's Plan and Development Code.

The City adopted Ordinance No. 199-22 approving the proposed UGB amendments. The ordinance included findings that the proposed amendments were found to be consistent with the City's Comprehensive Plan policies regarding transportation, as well as and Statewide Planning Goal 12 (Transportation Planning Rule)(**Exhibit A, pages 123-124**).

LCC 921.874(A)(7): The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity will not have a significant adverse effect on land uses permitted through the amendment.

APPLICANT STATEMENT: *"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."*

STAFF ANALYSIS: There are no potential geologic hazards identified on any of the subject properties (Bulletin 84, Environmental Geology of Western Linn County Oregon); therefore, there should be no significant adverse effects on land uses permitted through this amendment.

T10S, R03W, Section 33, Tax Lot 200 and T10S, R03W, Section 29, Tax Lots 201 and 300 are located almost entirely within an identified flood hazard area and floodway according to the Federal Emergency Management Agency (FEMA) Flood Insurance Study for Linn County, Oregon and Incorporated Areas dated September 29, 2010. Development is unlikely on these tax lots; however, new construction on these properties would be required to comply with LCC Chapter 870, Floodplain Management Code. The application of an Agricultural Resource Comprehensive Plan designation and an Exclusive Farm Use zoning designation to the subject properties does not exempt the properties from compliance with floodplain development standards. Any permitted or conditional uses approved on the subject properties must comply with applicable floodplain development standards. Farm uses are allowed on lands located within the special flood hazard area.

Portions of T10S, R03W, Section 20, Tax Lot 402 and T10S, R03W, Section 29, Tax Lot 101 are located within an identified flood hazard area according to the Federal Emergency Management Agency (FEMA) Flood Insurance Study for Linn County, Oregon and Incorporated Areas dated September 29, 2010. Upon annexation into the City, any

future development within the identified flood hazard are will have to comply with any applicable standards contained in the City's Plan and Development Code.

The water quality or the presence of existing wells or water service on the subject properties is unknown. Oregon Water Resources Department regulates the establishment of new wells. Proof of adequate supply of potable water is generally required to be provided to the Department prior to the issuance of development permits. Proof of water quality and quantity is dependent on the type of use proposed on the property. Because the need for this requirement is based on the proposed use of a property, there should be no significant adverse impact to the land uses allowed as part of this amendment. Any development within the City of Millersburg is subject to any requirements to connect to utility services.

The City adopted Ordinance No. 199-22 approving the proposed UGB amendments. The ordinance included findings that the proposed amendments were found to be consistent with the City's Comprehensive Plan and Statewide Planning Goal 7 (Natural Hazards) (**Exhibit A, pages 115-140**).

LCC 921.874(A)(8): An exception to the statewide planning goals is not required. If required, then findings have been prepared to meet the exception criteria.

The applicant statement indicates that no exception is needed.

STAFF ANALYSIS: The total area to be added to the Millersburg UGB is 162.89 acres. The total area to be removed from the Millersburg UGB is 167.46 acres. The City of Millersburg approved the proposed UGB amendments per City Ordinance No. 199-22, adopted October 11, 2022. The amendments would change the *Plan* designation and Zoning map designation on the five properties, listed below. If approved, the properties proposed to be added to the Millersburg UGB would subsequently be annexed into the city limits.

The following table lists the subject properties, whether they will be added or removed from the UGB, the affected acreage, and current and proposed *Plan and zoning* designations:

Map	Tax Lot	Acres	Owner	Added/Removed	Current <i>Plan/Zoning</i>	<i>Plan/Zoning After Amendment</i>
10S 03W 29	201	81.40	IEP Eat Three LLC	Removed	Industrial/General Industrial	Agricultural Resource/EFU
10S 03W 29	300	51.62	IEP Eat Three LLC	Removed	Industrial/General Industrial	Agricultural Resource/EFU
10S 03W 33	200	16.94	IEP Eat Three LLC	Removed	Industrial/General Industrial	Agricultural Resource/EFU
10S 03W 20	402	99.96	Willamette Valley Land, LLC	Added	Agricultural Resource/EFU	Industrial/UGA-EFU-80
10S 03W 29	101	63.85	Willamette Valley Land, LLC	Added	Agricultural Resource/EFU	Industrial/UGA-EFU-80

Tax lots 402 and 101 are proposed to be amended to a *Plan* designation of Agricultural Resource and a zoning map designation of Exclusive Farm Use, which is consistent with Linn County *Plan* Sections 905.100-905.120. The proposed amendments are consistent with Statewide Planning Goal 3; therefore, no goal exception is required.

Until such time that the properties are annexed into city limits, a County zoning designation must be applied. Pursuant to LCC 905.570(B)(14), an Urban Growth Area - Exclusive Farm Use-80 acre minimum property size (UGA-EFU-80) zone designation may

be applied to future industrial sites located within a city planning area or urban growth boundary. The intent of the designation is to retain properties for industrial uses requiring a large land area until the property can be incorporated. This zoning district acts as an industrial reserve zoning until such time the properties are annexed into the city. Upon annexation, the City of Millersburg indicates the property will be zoned General Industrial (GI). Staff recommends the Board adopt a County zoning of UGA-EFU-80 for tax lots 402 and 101 until such time those tax lots are annexed into city limits.

The City's adopted ordinance include findings that the proposed amendments were found to be consistent with the Millersburg Comprehensive Plan and the Development Code, Sections 5.09.050 and 5.10.050, along with 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.

The applicant statement and City ordinance findings addressing this criterion can be found in **Exhibit A, pages 73 and 122-123**.

LCC 921.874(A)(9): The amendment is consistent with the statewide planning goals.

STAFF ANALYSIS: The statewide planning goals are adequately addressed in **Exhibit A, pages 61-64** of the application materials.

The City adopted Ordinance No. 199-22 approving the proposed amendments. The ordinance included findings that the proposed amendments were found to be consistent with the Oregon Statewide Planning Goals, along with 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.

Future development of T10S, R03W, Section 33, Tax Lot 200 and T10S, R03W, Section 29, Tax Lots 201 and 300 is subject to the Linn County Comprehensive Plan and Linn County Land Development Code, in compliance with the Oregon Statewide Planning Goals.

VII. NOTICE AND HEARING PROCEDURE

A. NOTICE

Notice of this application was printed in the Albany Democrat-Herald newspaper at least 21 days prior to the hearing. Affected public agencies and owners of properties within 1,000 feet of the subject properties were also provided written notice of this application. No comments have been submitted from surrounding property owners as of the time this staff report was prepared. One comment was received from an affected agency regarding the applications (**Exhibit E**).

**Table 2
Public Agency Notice and Comments**

AGENCY	NOTICE	RESPONSE	AGENCY	NOTICE	RESPONSE
Environmental Health			DLCD	x	
Linn County Assessor	x		DSL	x	
Linn County Road Dept.	x	x	City of Millersburg	x	
GIS	x		RFPD: Albany	x	
Floodplain Manager	x		ODFW	x	
			WRD	x	

B. PROCEDURE

The Planning Commission (Commission) conducted a public hearing to review the application on January 10, 2023 and made a recommendation to the Linn County Board of Commissioners (Board) to deny the Plan Map and Zoning Map amendment applications.

The Board is scheduled to conduct a public hearing on this matter at 10:00 a.m., Tuesday, January 24, 2023. The Board may consider the application for up to 42 days from the close of the Board hearing. Tabling of the request for a period not to exceed 35 days may also occur if the applicant consents. Specified findings, stating the reason for decision, are required in taking action on the proposed amendments.

The Board may consider the application for 42 days from the close of the public hearing. Tabling of the request for a period not to exceed 35 days may also occur if the applicant consents. Specified findings, stating the reason for decision, are required in taking action on the proposal. The Board will consider all the testimony in the matter and may take action to: (1) Approve the application; (2) Deny the application; or (3) Modify the application.

All testimony and evidence must be directed toward the applicable decision criteria including applicable criteria in the plan or other land use regulations. Failure to raise an issue before the close of the record, or failure to provide statements or evidence sufficient to afford the decision maker(s) and the parties an adequate opportunity to respond to each issue raised precludes an appeal based on that issue.

If additional documents or evidence are provided by any party, the Board may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Board shall grant the request by either (a) continuing the public hearing or (b) leaving the record open for additional written evidence or testimony. If the Board grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the initial hearing.

VIII. EXHIBITS

Exhibit A: Application and Supporting Documentation
Exhibit B: Application Decision Criteria
Exhibit C: Public Notice and other letters
Exhibit D: Public Comment
Exhibit E: Agency Comment
Exhibit F: NRCS Soils Report