



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

### NOTICE OF ADOPTED AMENDMENT

July 11, 2008

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Adair Village Plan Amendment  
DLCD File Number 001-08



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: July 28, 2008**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist  
Gloria Gardiner, DLCD Urban Planning Specialist  
Ed Moore, DLCD Regional Representative  
Drew Foster, City of Adair Village

<paa> y

JUL 08 2008

LAND CONSERVATION AND DEVELOPMENT

# Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

For DLCD Use Only

Jurisdiction: **City of Adair Village**

Local file number: **08-001**

Date of Adoption:

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Select one Date:

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amends text of Comprehensive Plan Section 9.800, Growth Management, Policy 4 regarding planned residential densities for urban growth boundary expansion areas. Amendment clarifies ambiguity identified by Court of Appeals decision in Hildenbrand v. City of Adair Village, 217 Or. App 623 (2008). As amended, Plan Policy 4 now provides that UGB expansion areas shall be planned and zoned to result in an average of six point five (6.5) dwelling units per net residential acre.

Does the Adoption differ from proposal? Yes, Please explain below:

The original proposal as initially noticed to DLCD called for UGB expansion areas to be planned and zoned to result in an average of four (4) dwelling units per gross acre. The proposal was modified based in part on discussions with DLCD Field Representative Ed Moore.

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

- |                          |                                     |                          |                          |                          |                          |                          |                          |                          |                                     |                                     |                                     |                          |                                     |                          |                          |                          |                          |                          |
|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1                        | 2                                   | 3                        | 4                        | 5                        | 6                        | 7                        | 8                        | 9                        | 10                                  | 11                                  | 12                                  | 13                       | 14                                  | 15                       | 16                       | 17                       | 18                       | 19                       |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted?  YES  NO

DLCD # 001-08 (16845)

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

---

DLCD file No. \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

001-08

---

Local Contact: **Drew Foster**

Phone: (541) 745-5507 Extension:

Address: **6030 NE Wm. R. Carr Ave**

Fax Number: **541-745-5508**

City: **Adair Village** Zip: **97330-**  
**drew.foster@cityofadairvillage.org**

E-mail Address:

---

**BEFORE THE CITY COUNCIL OF THE  
CITY OF ADAIR VILLAGE, OREGON**

In the Matter of Amending the Text of the    )  
City of Adair Village Comprehensive Plan    )  
Section 9.800, Policy 4 and Declaring an    )  
Emergency    )

**ORDINANCE NO. 2008 – 07**

WHEREAS, the City of Adair Village received an application from J.T. Smith Companies, Inc. for a legislative amendment to Comprehensive Plan Section 9.800, Policy 4 that would clarify an ambiguity in said Policy 4 that was identified by the Oregon Court of Appeals in *Hildenbrand v. City of Adair Village*, 217 Or. App. 623, 177 P.3d 40 (2008); and

WHEREAS, this legislative amendment to the Comprehensive Plan is necessary in order to clarify the density requirements for urban growth boundary expansion areas, and to proceed with the remand from the Court of Appeals and the Land Use Board of Appeals in the *Hildenbrand* matter; and

WHEREAS, the City of Adair Village Planning Commission and City Council held joint public hearings and received testimony regarding the proposed text amendment on June 2, 2008, June 12, 2008; and June 16, 2008; and

WHEREAS, on June 16, 2008, after considering all of the evidence and testimony, the Planning Commission recommended approval of the legislative text amendment and the City Council voted to adopt the amendments to Plan Section 9.800, Policy 4, as revised in the course of the proceedings; and

NOW, THEREFORE, THE CITY OF ADAIR VILLAGE CITY COUNCIL  
ORDAINS AS FOLLOWS:

**SECTION 1. AMENDMENT TO COMPREHENSIVE PLAN.** The text of City of Adair Village Comprehensive Plan Section 9.800, Policy 4 is hereby amended to provide in full as follows:

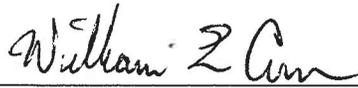
"In order to provide for the efficient utilization of lands in urban growth boundary expansion areas and to meet the city's identified and acknowledged land needs, such expansion areas shall be planned and zoned to result in an average of six point five (6.5) dwelling units per net residential acre. For purposes of this policy, a 'net residential acre' shall consist of 43,560 square feet of residentially designated buildable land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces and restricted resource protection areas."

**SECTION 2. ADOPTION OF FINDINGS.** In support of this Ordinance, the City Council adopts the attached Findings of the City of Adair Village City Council Approving Legislative Amendment to Comprehensive Plan Section 9.800, Policy 4.

**SECTION 3. EMERGENCY CLAUSE.** This Ordinance being immediately necessary to protect the public health, safety, and general welfare, and to allow the application for an urban growth boundary to proceed and adopting this ordinance by emergency furthers this interest an emergency is declared, and this Ordinance shall take effect upon its adoption.

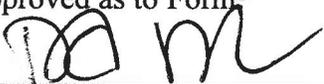
City of Adair Village, Oregon July 1, 2008.

**APPROVED:**

  
\_\_\_\_\_  
Bill Currier, Mayor

  
\_\_\_\_\_  
Andrew Foster, City Administrator

Approved as to Form

  
\_\_\_\_\_  
City Attorney

First Reading: July 1, 2008

Second Reading: July 1, 2008  
(By Title)

Recording Secretary:   
\_\_\_\_\_

**FINDINGS OF THE CITY OF ADAIR VILLAGE  
CITY COUNCIL APPROVING LEGISLATIVE AMENDMENT TO  
COMPREHENSIVE PLAN SECTION 9.800, POLICY 4**

**I. INTRODUCTION**

This document supports City of Adair Village Ordinance No. 08-07, which approves a legislative amendment to the text of the City of Adair Village Comprehensive Plan Section 9.800, Policy 4.

**II. APPLICANT**

J.T. Smith Companies, Inc. submitted the application

**III. NATURE OF THE AMENDMENT**

City of Adair Village Comprehensive Plan ("Plan") Section 9.800, "Growth Management," Policy 4 provides as follows: "In order to provide for the efficient utilization of residential lands, the City will provide for new minimum lot sizes that result in an overall average lot size of 6,000 square feet."

The Oregon Court of Appeals in *Hildenbrand v. City of Adair Village*, 217 Or. App. 623, 177 P.3d 40 (2007) considered the meaning of this Plan policy in the context of the proposed Urban Growth Boundary (UGB) expansion. The court concluded: "The adopted findings do not determine what residential density will be required in the [UGB] expansion area in order to meet the purported plan [Plan Section 9.800, Policy 4] standard. The plan policy provides no guidance for any assumed residential density without that context."

The UGB expansion area referred to by the Court of Appeals in its decision is the area on the south boundary of the City that was added to the city's UGB by Benton County and the City of Adair Village on April 17, 2007 (Benton County Ordinance No. 2007-0216 and Adair Village Ordinance No. 07-01). This aspect of the court's decision refers to an ambiguity in Plan Policy 4, which applies to all existing and future UGB expansion areas and therefore requires a legislative text amendment to correct the ambiguity. This legislative amendment does not address other aspects of the remand of the UGB expansion by LUBA and the Court of Appeals, which will be considered in a separate quasi-judicial remand proceeding before both the City of Adair Village and Benton County.

Based on the ambiguity identified by the court regarding the meaning of Plan Section 9.800, Policy 4, the applicant submitted an application proposing that the City adopt a legislative amendment to the text of Policy 4 that would identify a specific residential density for UGB expansion areas. The applicant's proposed language was modified during the course of this proceeding, based on advisory comments from the City and the Department of Land Conservation and Development (DLCD). As modified, and approved by the Adair Village City Council on June 16, 2008, the amendment changes Policy 4 to read as follows:

**"In order to provide for the efficient utilization of lands in urban growth boundary expansion areas and to meet the city's identified and acknowledged land needs, such expansion areas shall be planned and zoned to result in an average of six point five (6.5) dwelling units per net residential acre. For purposes of this policy, a 'net residential acre' shall consist of 43,560 square feet of residentially designated buildable land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces and restricted resource protection areas."**

The legislative process used for this amendment included an initial joint evidentiary hearing before the Adair Village Planning Commission and City Council on June 2, 2008. The Planning Commission and City Council received oral and written testimony at that hearing, and the hearing was continued to June 16, 2008. The procedures utilized at the hearings are outlined in the staff report dated June 12, 2008, which is hereby adopted and incorporated by reference. To the extent there is any discrepancy between the staff report and these findings, the express findings of the City Council in this document shall govern.

#### **IV. BACKGROUND OF REQUEST AND PROCEDURES**

The applicant submitted the application in April, 2008. The City provided the required 45-day pre-initial evidentiary hearing notice to DLCD on April 18, 2008. Thereafter, DLCD Field Representative Ed Moore provided comments on the application to the city. Mr. Moore recommended that the proposed text amendment be modified by referring to an "average" of 6.5 acres, rather than "approximately" 6.5 acres, and that the measurement be "net acres" rather than "gross acres." The applicant agreed with Mr. Moore's comments and submitted revised text to the City on May 12, 2008.

The Planning Commission and City Council opened their joint evidentiary hearing on June 2, 2008. Mr. Moore appeared on behalf of DLCD and submitted a

letter dated that same date. After hearing argument and evidence, the Planning Commission and City Council granted a request that the hearing be continued by continuing the hearing until June 16, 2008 at 6:30 p.m.

Following the June 2, 2008 public hearing, the applicant, city staff, and Mr. Moore met to discuss the proposed text amendment. The applicant proposed a revision which it submitted to city staff and Mr. Moore on June 12, 2008. The revised text amendment provided as follows:

"In order to provide for the efficient utilization of residential lands in urban growth boundary expansion areas and to meet the City's identified and acknowledged residential land needs, such expansion areas shall be planned and zoned to result in an average of 6.5 dwelling units per net residential acre. 'Net residential acre,' for purposes of this policy, shall be as 'net buildable acre' as defined in OAR 660-024-0040(9)."

After receiving and reviewing the amended text amendment language, Mr. Moore confirmed in a subsequent email that DLCD was satisfied with the revised language. The City provided the revised language to those who had requested notice concerning the text amendment.

At the continued joint hearing on June 16, 2008, the Planning Commission and City Council heard additional evidence on the revised text amendment, and agreed with a staff recommendation to amend the proposal by deleting the citation to the definition of "net buildable acre" in OAR 660-024-0040(9), instead replacing that citation with a recitation of the actual text of the definition itself. After the hearing was closed, the Planning Commission recommended approval of the application and the City Council tentatively voted to adopt the revised amendments to Plan Section 9.800, Policy 4. The City Council directed the applicant to prepare proposed approval findings for review by staff and signing by the mayor.

## **V. APPLICABLE STANDARDS AND CRITERIA**

Legislative decisions are described in City of Adair Village Land Use and Development Code (LUDC) 2.700(3)(a). This amendment is a text amendment that affects a group or class of properties and is classified as a legislative amendment because it can apply to any UGB expansion area. This legislative amendment is processed by an evidentiary hearing before the Planning Commission, preceded by forty-five (45) day notice to DLCD. The Planning Commission makes a recommendation for approval, denial, or approval with standards to the City Council. LUDC 2.700(3)(c). Upon adoption by the City Council, the City gives five (5) working day notice of the amendment's adoption to DLCD.

LUDC 2.700(2) contains the applicable approval criteria for an amendment to a Plan policy. The approval criteria are as follows:

*"All requests for an amendment to the text, zoning map or comprehensive plan map of this Code may be permitted upon authorization by the City Council in accordance with the following findings:*

- (a) The proposed amendment is consistent with the intent of the comprehensive plan.*
- (b) There is a public need for the proposed amendment to comply with changing conditions or new laws.*
- (c) The amendment will not adversely impact adjacent areas or the land use plan of the City.*
- (d) The amendment will not have an adverse environmental impact.*
- (e) The amendment will not have an adverse impact on public facilities.*
- (f) The amendment will not have an adverse impact on transportation.*
- (g) The amendment will not have an adverse impact on economy of the area.*
- (h) The amendment is consistent with the intent of Statewide Planning Goals."*

Each of these approval criteria is addressed below.

*"(a) The proposed amendment is consistent with the intent of the comprehensive plan."*

**Findings:** City of Adair Village Ordinance No. 06-02 adopted Plan Section 9.800, Policy 4. The purpose of the ordinance adoption was to adopt new growth management principles.

The intent of the Plan is to be consistent with applicable Statewide Planning Goals. ORS 197.175(2)(a). Plan Section 9.120, "Comprehensive Planning", describes the purpose of the Plan as:

"...to provide guidelines for conservation and development of community resources and to promote the public health, safety and general welfare of community residents. It is intended to ensure that the City's livability will be enhanced rather than weakened in the face of growth and change. It should not be considered a detailed development proposal, nor is it intended to offer solutions for problems that will require action at higher governmental levels. Nevertheless, local officials, public agencies, and private citizens are continually confronted by development decisions that can be facilitated if a general plan for future growth is established."

..."The comprehensive plan for Adair Village will become the City's official policy guide for conservation and development of community resources."

..."The comprehensive plan is the document through which the citizens of Adair Village will implement their choices on how growth and change will occur and how it will be managed."

In the context of these policy statements and consistent with the Goals, the City Council finds that the purpose and intent of this Plan Policy is to provide guidance for urbanization of UGB expansion areas consistent with the city's identified land needs found elsewhere in the city's acknowledged Plan.

The reason for this amendment is the Court of Appeals decision in *Hildenbrand* wherein the court found that Plan Section 9.800, Policy 4, might apply to the entire city. Notwithstanding that the City Council can interpret this provision on remand to direct future changes to the Plan or LUDC to implement this policy, it is prudent to amend Plan Policy 4 to specify that it applies only to UGB expansion areas. The City Council finds that this is the case for two reasons. First, as noted above, the purpose of the Plan is to guide development of the City consistent with the Goals. Second, Plan Policy 4 is in the section of the Plan entitled "Growth Management Policies." The intent of Policy 4 is to guide density for expansion areas, not density for existing urban areas.

To the extent any opponents have argued that the intent of the Adair Village Comprehensive Plan is not met by the proposed text amendment because it reduces the efficient use of residential land within the UGB, such arguments misconstrue the purpose of Comprehensive Plan, Section 9.800, Policy 4. As intended by the City Council, the proposed policy makes clear that it would apply only to UGB expansion areas and not to the entire City. Policy 4 is one of four new policies in Plan Section

9.800 entitled "Growth Management" that were adopted by the City on February 28, 2006. The other three new policies address appropriate lands to accommodate the City's 20-year population and employment projections and need for housing and jobs. Two of the other three new policies address urban reserves. The City Council finds that the context of these four growth management policies, read together, demonstrates the City Council's intent to address the expansion of the UGB rather than lot sizes within the existing city.

Alternatively, with the proposed modification to reflect 6.5 dwelling units per net acre, the City Council finds that the amendment represents an efficient use of UGB expansion of residential land.

The City Council finds that the proposed amendment is consistent with the intent of the comprehensive plan, and that this criterion is satisfied.

*"(b) There is a public need for the proposed amendment to comply with changing conditions or new laws."*

**Findings:** The public need for the amendment to Plan Policy 4 is the proper administration of Plan policies. The phrase "changing conditions or new laws" necessarily includes the court's decision in *Hildenbrand*. Based on this decision, the City Council finds that it is appropriate to expressly provide that Policy 4 applies only to UGB expansion areas. The proposed amendment to Policy 4 specifically establishes the required residential density to be achieved. The City Council finds that this criterion is satisfied.

*"(c) The amendment will not adversely impact adjacent areas or the land use plan of the City."*

**Findings:** The amendment to Plan Policy 4 itself has no impact on adjacent areas. Once the amendment to Policy 4 is adopted and applied to a UGB expansion area, impact on adjacent areas, if any, will be determined by the UGB expansion application and subsequent land division and permit applications providing for development of the UGB expansion area after annexation. The amendment can have no present impact until the UGB is expanded and new areas are annexed to the city, and therefore does not adversely impact the land use plan of the city. Because future UGB expansion areas must be appropriately planned and zoned, this text amendment will not have an adverse impact on the land use plan of the city. The City Council has found the amendment to be consistent with the intent of the Plan, and therefore the amendment will have the beneficial impact of making the Plan internally consistent. The City Council finds that this criterion is satisfied.

*"(d) The amendment will not have an adverse environmental impact."*

**Findings:** The amendment itself will have no environmental impact because it authorizes no development. To the extent that the amendment has any environmental impact, the City Council finds that it has a beneficial impact because it encourages greater density within UGB expansion areas. The City Council finds that this criterion is satisfied.

*"(e) The amendment will not have an adverse impact on public facilities."*

**Finding:** The amendment will have no impact on public facilities because no development will be authorized by the amendment. To the extent it could be argued that some impact does exist, the public facilities analysis shall be required at the time future UGB expansion areas are planned and zoned. Nevertheless, in the context of the present UGB expansion area, the decision approving that expansion found that Statewide Planning Goal 11, "Public Facilities and Services," as well as relevant City and county comprehensive plan policies implementing Goal 11 were satisfied by the UGB expansion. No party appealed relevant findings concerning Goal 11 or the implementing plan policies. Therefore, the City finds that even if the UGB expansion were relevant to this text amendment, there is no adverse impact on public facilities.

The City Council finds that this criterion is satisfied.

*"(f) The amendment will not have an adverse impact on transportation."*

**Finding:** The City Council finds that this amendment will have no adverse impact on transportation because it does not authorize land development. Any impact on transportation will occur at the time future UGB expansion areas are planned and zoned.

To the extent any party has argued that the UGB expansion proposal is relevant to this amendment, petitioners appealed the joint City and County findings regarding Statewide Planning Goal 12 and OAR Chapter 660, Division 12 (the Transportation Planning Rule). LUBA rejected that assignment of error and affirmed the findings in *Hildenbrand*.

Moreover, the Oregon Department of Transportation ("ODOT") submitted comments regarding the proposed text amendment on May 21, 2008, which it stated: "ODOT's comments submitted as part of the public hearing process remain unchanged. The Department understood that the development proposed would result in an average density of 4 units per acre in the expansion area." The proposed

amendment of 6.5 dwelling units per net acre is equivalent to about 4 units per gross area as originally understood by ODOT.

The City Council finds that this criterion is satisfied.

*"(g) The amendment will not have an adverse impact on economy of the area."*

**Findings:** Because the amendment does not authorize development, it has no impact on economy of the area. To the extent that the amendment has any impact, it will be a beneficial impact because it encourages residential development by defining the density required for UGB expansion areas. The City Council finds that this criterion is satisfied.

*"(h) The amendment is consistent with the intent of Statewide Planning Goals."*

The following findings demonstrate consistency with five of the Statewide Planning Goals:

*(1) Goal 2, "Land Use Planning"*

*"To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."*

**Findings:** The City Council finds that Goal 2 is satisfied because the application demonstrates that there is an adequate factual basis for amending Plan Policy 4. Also, the City has coordinated this application with affected governmental entities including but not limited to Benton County and the Oregon Department of Transportation, as coordination is defined in ORS 197.015(5).

*(2) Goal 10, "Housing."*

*"To provide for the housing needs of citizens of the state."*

**Finding:** The City Council finds that this Plan amendment is consistent with Goal 10 because it clarifies the density requirement for UGB expansion areas.

*(3) Goal 11, "Public Facilities and Services."*

*"To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."*

**Findings:** The City Council finds that the amendment to Plan Policy 4 itself does not have any direct effect on the provision of public facilities and services. To the extent it is determined that some effect does exist, the net density number proposed for UGB expansion areas at the time of planning and zoning will result in a timely, orderly and efficient arrangement of public facilities and services to serve as the framework for urban development. The City has found that it has sufficient public facilities and services to serve a UGB expansion area. The current UGB expansion proposal will accommodate the 6.5 dwelling units per net acre proposed in this text amendment. Therefore, the City Council finds that the text amendment satisfies Goal 11. Also, to the extent the City must consider future impacts of the text amendments, those impacts will be considered at the time planning and zoning designations are made for UGB expansion areas.

(4) *Goal 12, "Transportation."*

*"To provide and encourage a safe, convenient and economic transportation system."*

**Findings:** The City Council finds that the present UGB expansion area, to the extent it requires to be planned and zoned to require for 6.5 dwelling units per net acre, will not have an adverse impact on the surrounding transportation facilities, which means there will be a safe, convenient, and economic transportation system. To the extent it applies to future actions, those transportation impacts will be determined at the time such areas are planned and zoned to implement this policy.

Goal 12 is implemented by OAR Chapter 660, Division 12, the Transportation Planning Rule. OAR Chapter 660.012-0060(1) requires a determination of whether an amendment to a comprehensive plan policy has a "significant affect" on affected transportation facilities. The City Council finds that the text amendment will have no impact and that such impact will be determined at the time such areas are planned and zoned to implement this policy. No urban development will be allowed until this policy, as proposed to be amended, is implemented through future post-acknowledgement amendments. Therefore, compliance with the Transportation Planning Rule can be determined at that time. See *Citizens for Protection of Neighborhoods v. City of Salem*, 47 Or LUBA 111 (2004).

(5) *Goal 14, "Urbanization."*

*"To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment"*

*inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."*

**Findings:** Goal 14 provides for an orderly and efficient transition from rural to urban land use, and requires local governments to ensure the efficient use of land. This text amendment does not directly implicate the urbanization of land, because it creates density requirements for expansion areas once the decision to urbanize land has already been made under the applicable Goal 14 criteria. However, the City Council finds that the density requirement created by the amendment to Plan Policy 4 is consistent with Goal 14 because it provides for efficient residential development in new UGB expansion areas by establishing express minimum density standards that require relatively dense development for the City of Adair Village. This amendment clears up the ambiguity in Plan Policy 4 identified by the Court of Appeals regarding applicability of the density requirement, and provides a clear standard that allows the City and developers to maximize the amount of land used for residential purposes, while ensuring livability as required by Goal 14 and other implementing Plan policies calling for a pedestrian-friendly community and compact community development.

## **VI. RESPONSES TO SPECIFIC ISSUES RAISED BY OPPONENTS**

Some parties argued that the hearing was a quasi-judicial hearing, or that quasi-judicial procedures should be applied. However, as addressed above, this process is a legislative process, both as a matter of local law and state law. It is legislative and not quasi-judicial because it amends the text of a Plan policy that will have city-wide application, because it would apply to any UGB expansion area, and does not relate to a discrete parcel of land. Therefore, the procedures in ORS 197.763 do not apply to this proceeding.

Several parties argued that the amendment to Plan Policy 4 is inadequate because it fails to address the issue on which the Court of Appeals and LUBA remanded the UGB expansion in the *Hildenbrand* decision. However, this Plan amendment process is separate and distinct from the UGB expansion application, and is not intended to address the issues on remand from LUBA and the Court of appeals. Separate proceedings will be conducted by the City of Adair Village and Benton County to consider the remand from LUBA and the Court of Appeals of the UGB expansion.

One party contended that the amendment to Plan Policy 4 is inconsistent with the city's adopted Buildable Lands Inventory ("BLI"), because the amendment would result in more low density housing. The City Council notes that the BLI is merely an inventory of buildable lands, and does not create an approval criterion for this text

amendment. With this amendment, the City Council is making a policy decision regarding the future density of UGB expansion areas. Opponents have not identified any specific portion of the BLI that is allegedly inconsistent with this decision and have not clearly explained how this decision is allegedly inconsistent with the BLI. The City Council finds that the opponents have not identified a basis on which the amendment should be denied.

## **VII. CONCLUSION**

Based on the findings set forth above and all of the evidence in the record, the City Council approves the proposed amendment

**BEFORE THE CITY COUNCIL OF THE  
CITY OF ADAIR VILLAGE, OREGON**

In the Matter of Amending the Text of the    )  
City of Adair Village Comprehensive Plan    )  
Section 9.800, Policy 4 and Declaring an    )  
Emergency    )

**ORDINANCE NO. 2008 – 07**

WHEREAS, the City of Adair Village received an application from J.T. Smith Companies, Inc. for a legislative amendment to Comprehensive Plan Section 9.800, Policy 4 that would clarify an ambiguity in said Policy 4 that was identified by the Oregon Court of Appeals in *Hildenbrand v. City of Adair Village*, 217 Or. App. 623, 177 P.3d 40 (2008); and

WHEREAS, this legislative amendment to the Comprehensive Plan is necessary in order to clarify the density requirements for urban growth boundary expansion areas, and to proceed with the remand from the Court of Appeals and the Land Use Board of Appeals in the *Hildenbrand* matter; and

WHEREAS, the City of Adair Village Planning Commission and City Council held joint public hearings and received testimony regarding the proposed text amendment on June 2, 2008, June 12, 2008; and June 16, 2008; and

WHEREAS, on June 16, 2008, after considering all of the evidence and testimony, the Planning Commission recommended approval of the legislative text amendment and the City Council voted to adopt the amendments to Plan Section 9.800, Policy 4, as revised in the course of the proceedings; and

NOW, THEREFORE, THE CITY OF ADAIR VILLAGE CITY COUNCIL  
ORDAINS AS FOLLOWS:

**SECTION 1. AMENDMENT TO COMPREHENSIVE PLAN.** The text of City of Adair Village Comprehensive Plan Section 9.800, Policy 4 is hereby amended to provide in full as follows:

"In order to provide for the efficient utilization of lands in urban growth boundary expansion areas and to meet the city's identified and acknowledged land needs, such expansion areas shall be planned and zoned to result in an average of six point five (6.5) dwelling units per net residential acre. For purposes of this policy, a 'net residential acre' shall consist of 43,560 square feet of residentially designated buildable land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces and restricted resource protection areas."

**SECTION 2. ADOPTION OF FINDINGS.** In support of this Ordinance, the City Council adopts the attached Findings of the City of Adair Village City Council Approving Legislative Amendment to Comprehensive Plan Section 9.800, Policy 4.

**SECTION 3. EMERGENCY CLAUSE.** This Ordinance being immediately necessary to protect the public health, safety, and general welfare, and to allow the application for an urban growth boundary to proceed and adopting this ordinance by emergency furthers this interest an emergency is declared, and this Ordinance shall take effect upon its adoption.

City of Adair Village, Oregon \_\_\_\_\_, 2008.

**APPROVED:**

\_\_\_\_\_  
Bill Currier, Mayor

\_\_\_\_\_  
Andrew Foster, City Administrator

Approved as to Form:

\_\_\_\_\_  
City Attorney

First Reading: July 1, 2008

Second Reading: July 1, 2008  
(By Title)

Recording Secretary: \_\_\_\_\_

**BEFORE THE CITY COUNCIL OF THE  
CITY OF ADAIR VILLAGE, OREGON**

In the Matter of Amending the Text of the     )  
City of Adair Village Comprehensive Plan     )  
Section 9.800, Policy 4 and Declaring an     )  
Emergency     )

**ORDINANCE NO. 2008 – 07**

WHEREAS, the City of Adair Village received an application from J.T. Smith Companies, Inc. for a legislative amendment to Comprehensive Plan Section 9.800, Policy 4 that would clarify an ambiguity in said Policy 4 that was identified by the Oregon Court of Appeals in *Hildenbrand v. City of Adair Village*, 217 Or. App. 623, 177 P.3d 40 (2008); and

WHEREAS, this legislative amendment to the Comprehensive Plan is necessary in order to clarify the density requirements for urban growth boundary expansion areas, and to proceed with the remand from the Court of Appeals and the Land Use Board of Appeals in the *Hildenbrand* matter; and

WHEREAS, the City of Adair Village Planning Commission and City Council held joint public hearings and received testimony regarding the proposed text amendment on June 2, 2008, June 12, 2008; and June 16, 2008; and

WHEREAS, on June 16, 2008, after considering all of the evidence and testimony, the Planning Commission recommended approval of the legislative text amendment and the City Council voted to adopt the amendments to Plan Section 9.800, Policy 4, as revised in the course of the proceedings; and

NOW, THEREFORE, THE CITY OF ADAIR VILLAGE CITY COUNCIL  
ORDAINS AS FOLLOWS:

**SECTION 1. AMENDMENT TO COMPREHENSIVE PLAN.** The text of City of Adair Village Comprehensive Plan Section 9.800, Policy 4 is hereby amended to provide in full as follows:

"In order to provide for the efficient utilization of lands in urban growth boundary expansion areas and to meet the city's identified and acknowledged land needs, such expansion areas shall be planned and zoned to result in an average of six point five (6.5) dwelling units per net residential acre. For purposes of this policy, a 'net residential acre' shall consist of 43,560 square feet of residentially designated buildable land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces and restricted resource protection areas."

**SECTION 2. ADOPTION OF FINDINGS.** In support of this Ordinance, the City Council adopts the attached Findings of the City of Adair Village City Council Approving Legislative Amendment to Comprehensive Plan Section 9.800, Policy 4.

**SECTION 3. EMERGENCY CLAUSE.** This Ordinance being immediately necessary to protect the public health, safety, and general welfare, and to allow the application for an urban growth boundary to proceed and adopting this ordinance by emergency furthers this interest an emergency is declared, and this Ordinance shall take effect upon its adoption.

City of Adair Village, Oregon \_\_\_\_\_, 2008.

**APPROVED:**

\_\_\_\_\_  
Bill Currier, Mayor

\_\_\_\_\_  
Andrew Foster, City Administrator

Approved as to Form:

\_\_\_\_\_  
City Attorney

First Reading: July 1, 2008

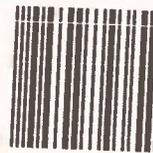
Second Reading: July 1, 2008  
(By Title)

Recording Secretary: \_\_\_\_\_

Adair Village  
6030 William R Carr  
Adair Village, OR 97330



7003 1680 0005 2338 5977



0000

97301

U.S. POSTAGE  
PAID  
CORVALLIS, OR  
97333  
JUL 07, 08  
AMOUNT

\$5.55  
00021718-1

Attention: Plan Amendment Specialist  
Department of Land Conservation and Development  
635 Capitol St. NE, Suite 150  
Salem, OR 97301-2540