



Planning & Community Dev.

117 N Molalla Avenue

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Molalla, Oregon 97038

Phone: (503) 759-0219

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AGENDA
Molalla Planning Commission
6:30 PM, April 7, 2021

Meeting Location: Molalla Adult Center
315 Kennel Avenue.
Molalla, OR 97038

The Planning Commission Meeting will begin at 6:30pm. The Planning Commission has adopted Public Participation Rules. Copies of these rules and public comment cards are available at the entry desk. Public comment cards must be turned in prior to the start of the Commission meeting. The City will endeavor to provide a qualified bilingual interpreter, at no cost, if requested at least 48 hours prior to the meeting. To obtain services call the City Recorder at (503) 829-6855.

- I. CALL TO ORDER**
- II. FLAG SALUTE AND ROLL CALL**
- III. PUBLIC COMMENT** – Limited to 3 minutes per person
- IV. MINUTES:**
 - March 3, 2021 Planning Commission Meeting
- V. DISCUSSION ITEMS:**
 - Rough Proportionality
 - Residential-Industrial Compatibility
 - PC 101 Training
- VI. REPORTS AND ANNOUNCEMENTS**
 - Planning Report
 - Directors Report
- VII. ADJOURNMENT**



**Molalla Planning Commission
MINUTES Molalla Adult
Center
315 Kennel Ave., Molalla, OR
97038
March 3, 2021**

The March 3, 2021 meeting of the Molalla Planning Commission was called to order by Chair Rae Botsford at 6:33pm.

COMMISSIONER ATTENDANCE:

Chair Rae Lynn Botsford – Present
Commissioner Rick Deaton – Present
Commissioner Doug Eaglebear – Present
Commissioner Jennifer Satter – Present
Commissioner Jacob Giberson – Present
Commissioner Connie Farrens – Present

STAFF IN ATTENDANCE:

Mac Corthell, Planning Director - Present
Dan Zinder, Associate Planner – Absent
Julie Larson, Planning Specialist - Present

AGENDA:

- I. WORK SESSION 5:30PM**
 - Multi-family C2 Zoning
- II. CALL TO ORDER**
- III. FLAG SALUTE AND ROLL CALL**
- IV. PUBLIC COMMENT** – Limited to 3 minutes per person
- V. MINUTES:**
 - Minutes from the February 3, 2021 Planning Commission Meeting
- VI. DISCUSSION ITEMS:**
 - Property line adjustment surveys
 - Rough proportionality

VII. REPORTS AND ANNOUNCEMENTS

- New Planning Commissioner Announcement
- Director’s Report

VIII. ADJOURNMENT

DECISIONS:

No decisions made during this meeting.

PLANNING COMMISSION MEETING CAN BE VIEWED IN IT’S ENTIRIETY HERE:

March 3, 2021 Planning Commission Meeting Video

Chair, Rae Lynn Botsford

Date

ATTEST: _____
Mac Corthell, Planning Director



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Staff Report

DCA04-2021

Subject: Rough Proportionality, Amending MMC 17-3.6.010.

Staff Recommendation: Recommend adoption to the City Council.

Fiscal Impact: Mitigation of engineering fees associated with rough proportionality analysis; mitigation of attorney fees for avoided litigation.

Date of Meeting to Be Presented: March 3, 2021 – PC Discussion; April 7, 2021 – PC Recommendation

Background:

Rough proportionality is a concept that stems from a set of land use cases called Nolan and Dolan. It basically means that a public exaction on property must be 'roughly proportionate' to the property's use of the exaction. With the amount of development happening in Molalla, and the generally unimproved nature of our infrastructure, developer required improvements and dedications are common for most applications. The City's land use attorney has advised that some language could be added to the development code to help mitigate some Nolan/Dolan related challenges.

This proposal will place the financial burden of rough proportionality analysis on the developer, and remove it from the taxpayers.

This proposal will mitigate potential litigation and attorney fees by requiring a logical gateway that can eliminate frivolous suits.

This topic was presented to the Planning Commission March 3, 2021. After that discussion staff solicited a memorandum on this topic from the City's Land Use Attorney, it is attached hereto.

Attachments:

Staff Report for Legislative Land Use Action
City Attorney's Office Memorandum

**Staff Report
DCA04-2021**

PROPOSAL

Amending MMC 17-3.6.010 Purpose and Applicability to include the following language:

D. Limitations on Public Improvement Requirement. If the applicant asserts that it cannot legally be required, as a condition of building permit or site plan approval, to provide easements, dedications, or improvements at the level otherwise required by this section, then:

1. The building permit or site plan review application shall include a rough proportionality report, prepared by a qualified civil or traffic engineer, as appropriate, showing:
 - a. The estimated extent, on a quantitative basis, to which the improvements will be used by persons served by the building or development, whether the use is for safety or for convenience;
 - b. The estimated level, on a quantitative basis, of improvements needed to meet the estimated extent of use by persons served by the building or development;
 - c. The estimated impact, on a quantitative basis, of the building or development on the public infrastructure system of which the improvements will be a part;
 - d. The estimated level, on a quantitative basis, of improvements needed to mitigate the estimated impact on the public infrastructure system; and
2. The applicant shall, instead, be required to provide easements, dedications, and improvements that are roughly proportional to what is needed for the safety or convenience of persons served by the building or development, plus those additional easements, dedications, and improvements that are roughly proportional to what is needed to mitigate the impact of the building or development on the public infrastructure system of which the improvements will be a part, if the impacts are not fully mitigated by the easements, dedications, and improvements needed for the safety or convenience of persons served by the building or development.

PROCESS

MMC 17-4.6.020 Procedure

Except for corrections, amendments to Development Code text are Legislative (Type IV).

MMC 17-4.6.030 Criteria

Planning Commission review and recommendation, and City Council approval, of an ordinance amending the Zoning Map, Development Code, or Comprehensive Plan shall be based on all of the following criteria:

- A. If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;

Staff Finding: This proposal does not involve an amendment to the Comprehensive Plan. This criterion is not applicable.

- B. The proposal must be consistent with the Comprehensive Plan (the Comprehensive Plan may be amended concurrently with proposed changes in zoning);

Staff Finding: This proposal does not implicate the Comprehensive Plan. This criterion is not applicable.

- C. The City Council must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or code; and

Staff Finding: The City of Molalla is developing at an accelerated rate, and now has a population over 10,000. With increased development and proper enforcement of development associated exactions, comes more potential challenges to improvement requirements.

The city's position on exactions is that the requirements of the Municipal Code are roughly proportionate on their face. The current state of the code is that a challenge to the rough proportionality of an exaction may be brought by an applicant without information to support their claim, which places the cost burden of proving rough proportionality on the taxpayers.

This amendment would require a developer to provide an engineered rough proportionality analysis prior to bringing a rough proportionality claim. This will allow City Staff to review and negotiate if the analysis shows an exaction to be disproportionate, and will mitigate any claim that the analysis shows an exaction to be proportionate.


This proposal is in the public interest with regard to community conditions (mitigation of financial impact and risk), and responds to changes in the community (increased development and proper enforcement of development related improvements). This criterion is met.

- D. The amendment must conform to Section 17-4.6.050 Transportation Planning Rule Compliance. (Ord. 2017-08 §1).

Staff Finding: Transportation is not implicated in this proposal. This criterion is not applicable.

MEMORANDUM

TO: Mac Corthell, Molalla Planning Director

FROM: Spencer Parsons, City Attorney's Office 

SUBJECT: Codification of a Rough Proportionality Analysis

DATE: March 31, 2021

Question Presented:

You have requested a brief memorandum addressing the City's authority to adopt a Development Code requirement requiring a land use applicant to provide the City with a rough proportionality analysis where the applicant is raising potential takings claims related to the proposal before the City.

Short Answer:

The City does indeed have authority to address such a requirement, and many of Molalla's sister jurisdictions have enshrined the requirement into their own development codes, both as a way to control land use application processing costs, and to dissuade applicants from asserting frivolous takings claims in an effort to shirk addressing the impacts of their own developments. Such a requirement has been recognized as a valid approach in Oregon.

Analysis:

As you know, conditions requiring dedications must be based on "*Dolan* findings" (referring to *Dolan v. City of Tigard*, 512 U.S. 374 (1994)). *Dolan* findings are required only where the local government has required a property owner to dedicate property in return for land use approval. Where the line is drawn between what amounts to a taking, and what is a legitimate approval condition requiring a dedication to address a particular impact remains tricky questions. Two U.S. Supreme Court cases provided the foundational direction on the constitutional limits on conditions of approval.

The first case is *Nollan v. California Coastal Comm'n*, 483 U.S. 825, in which the United States Supreme Court held that a condition of approval must substantially advance a legitimate public purpose and must have a "rational nexus" with the proposed development. The second case is *Dolan*, in which the U.S. Supreme Court held that a condition of approval requiring a dedication

must be supported by findings demonstrating that the dedication required was “roughly proportional” to the impact of the development that the condition is intended to address. Thus, based on *Nollan* and *Dolan*, a condition of approval must have: 1) an essential nexus to a legitimate governmental interest; and 2) must be roughly proportional to the impacts of the development being conditioned, based on an individualized determination.

Generally speaking, the burden of establishing rough proportionality of conditions is on the governmental body imposing condition, rather than on an applicant. Although no precise mathematical calculation is required, there must be considerable particularity in local government findings aimed at showing the relationship between developmental condition and impacts of development. The issue is “whether the evidence in the record would lead a reasonable person to conclude that there is a need for the condition to further a relevant planning purpose.” *Carter v. Umatilla County*, 29 Or LUBA 181 (1995) (upholding condition of approval requiring interior road system to serve proposed subdivision).

The nature and extent of evidence necessary to establish defensible *Dolan* findings depends, to some extent, on the exaction at issue. However, recent case law highlights the incredible difficulty a local government faces in drafting defensible *Dolan* findings, even when the exactions are closely related, in location and degree, to the proposed development. However, the Courts have recognized this difficulty, and have suggested that it can be overcome by requiring applicants to provide such analysis where rough proportionality becomes an issue.

In *Lincoln City Chamber of Commerce v. City of Lincoln City*, the petitioners argued that cities did not have the authority to impose a requirement that applicants raising *Dolan* issues be required to provide the City a rough proportionality analysis as part of the application. LUBA held that the requirement was a valid exercise of local discretion in land use administration.

In the present case, petitioners argue that . . . requiring an applicant to submit a rough proportionality report before challenging a proposed exaction before LUBA [is unconstitutional]. . . . [P]etitioners' argument under this assignment of error asks this Board to render an advisory opinion regarding the outcome of LUBA's review in specific as-applied challenges. We decline to do so.

Lincoln City, 36 Or LUBA at 413–14. Since that time, several jurisdictions have adopted such rough proportionality analysis requirements. I will provide you with references to development code provisions of other jurisdictions that have codified rough proportionality analysis requirements for your reference.

Please do not hesitate to contact me if you have any additional questions.



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Staff Report

Planning Commission Discussion

Subject: Review and discuss noise mitigation strategies for Residential – Industrial Compatibility

Staff Recommendation: Provide guidance to staff for proposal of development code amendments.

Date of Meeting to Be Presented: March 3, 2020 – PC Discussion; April 7, 2020 – PC Discussion

Background:

On March 3, 2021 the Planning Commission defined the issue surrounding development of residential uses near industrial zones as, ensuring compatibility between adjacent residential development and industrially zoned properties.

Planning Staff reviewed several strategies in the “Planning and Urban Design Standards,” a reference book of best practices published by the American Planning Association.

The guidance pointed to potential zoning considerations (this will be considered as the Comprehensive Plan is reviewed), noise ordinances (this is already on our list), and **“requiring mitigation measures in site design and construction where it is necessary to allow noise sensitive uses to be built in high-noise areas.”**

Noise Mitigation Techniques:

1. Noise sensitive uses should be built as far as possible from the noise source.
 - a. *This could be applied to both industrial builds and residential builds where the two are located on adjacent properties. There is nothing implicating this in the current code.*
2. Where possible obstructions should be placed between the noise sensitive uses and the noise source.
 - a. *MMC 17-3.4.030 provides the Planning Official the ability to require screening, however it limits the screening to the fence heights allowed in MMC 17-3.4.040 (max 8 ft for industrial, 6 for residential). Other options should be considered here.*
3. Requirement for sound Insulation to a given noise reduction level.
 - a. *This is done either by a performance standard that a builder must demonstrate prior to occupancy, or by specific construction standards. Construction standards would need to be reviewed and approved by the Clackamas County Building Official, which could require modification of our current operating agreement.*



Mac Corthell – Planning Director
117 N Molalla Avenue, PO Box 248, Molalla, Oregon 97038
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To: Planning Commission

From: Planning Director, Mac Corthell

Date: April 07, 2021

Re: Monthly Planning Report

Dear City Council,

Following is an update on the major activities of the Planning Department.

Develop and Implement Tracking Metrics

Tracking metrics provide an objective dataset that serves as the foundation for analyses both internal (e.g. departmental needs), and external (e.g. growth projection and planning). They also provide a data driven basis to communicate departmental activities and associated trends with various stakeholders (e.g. the Community, prospective developers, the City Council, etc.).

It recently came to Staff's attention that many noteworthy activities of the Planning Department were not being tracked in a way that makes data readily available to apply to a given analysis or inquiry. With that in mind, Planning Staff, led by Julie Larson, set out to create and implement a practical set of tracking metrics.

1. Staff has developed a set of tracking metrics for the land use and permitting functions of the department.
 - a. The next step is to integrate the metrics into our database.

Once the metrics have been fully integrated in the land use and permitting functions, staff will develop a set of tracking metrics for the department's code enforcement functions and integrate them in the code enforcement database.

Tools for Land Use & Permitting

Over the last several months Planning Staff has developed several new tools to enhance access to information and planning processes, and begun development of others. As the population continues to grow, the tools being developed now will be heavily relied upon to enhance access to planning processes while keeping the costs to the taxpayers at a sustainable level. Additionally, some of these tools will be utilized by staff to increase efficiency and ensure accuracy.

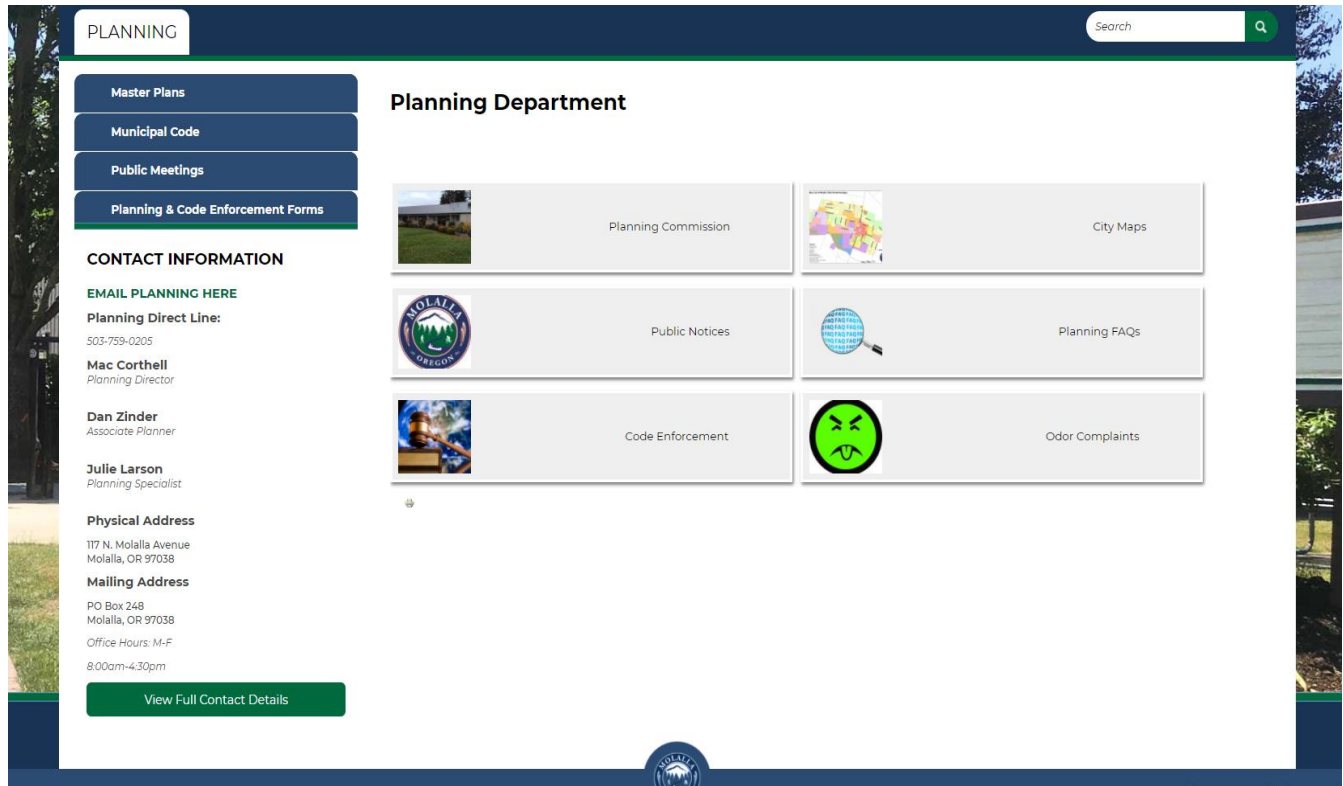
FORMS/APPLICATIONS

1. Land Use Verification & Zoning Letter – Information on a property in it's current state.
2. Zoning Checklist – Due Diligence & Pre-Application – Information on a property and development proposal.
3. Zoning Checklist – Building Permit Authorization
4. Zoning Checklist – Change of Use/Occupancy

- 5. Zoning Checklist – Home Occupation
- 6. Zoning Checklist – Other Type 1

DIGITAL TOOLS

- 1. Simplified and Updated Planning Webpage (see below).
- 2. Integrated Database for Project Tracking and Performance Metrics.
- 3. Conditions Tracker to ensure proper tracking, retention, accuracy, and follow-through around land use and permitting decisions.



Planning Department Webpage

Community Development

Vision to Action. The Molalla Area Vision to Action Plan 2020-2030 is in full-swing with four action teams, a steering committee and potentially more support coming in the form of a RARE AmeriCorps Participant.


Each action team has selected a set of first-year initiatives and Planning Staff has developed a Webpage on the City of Molalla site to support these efforts and recruit additional team members. The pages include each action team’s mission, contact information, current projects, and next meeting dates.

The page can be found by clicking the “Community Vision and Action” button on the home page of www.cityofmolalla.com or at this direct link: <https://www.cityofmolalla.com/community/page/community-visioning-project>



Councilors Klein (middle) and Childress (right) share the community vision and recruit action team members at the January 28th Kickoff Meeting!

In January, 2021, the Economic Development Steering Committee hosted a kickoff meeting that resulted in 4 action teams, please visit the Community Vision and Action page for details on their work, or to join!

COMMUNITY Search 


- Steering Committee
- Beautification Action Team
- Identity & Branding Action Team
- Business Advocacy Action Team
- LatinX Action Team

CONTACT INFORMATION

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 Planning Director
 P: 503.759.0205
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View Full Contact Details

Community Visioning Project



Welcome to the Molalla Community Vision and Action Project Page!








Here is the completed **Molalla Area Vision and Action Plan 2030**, adopted by Council in January 2020.

Between April 2017 and February 2018, we have been collecting information from the Community Area of Molalla.

We have provided several documents for your review. We've had some great feedback! Thank you to all that have taken the time to fill out the survey and attend our meetings.

We appreciate you, Molalla!

Supporting Documents

-  Molalla Area Vision and Action Plan 2020-2030 (5 MB)
-  Community Word Cloud (2 MB)
-  Visioning Survey - English Version (127 KB)
-  Visioning Survey - Spanish Version (126 KB)
-  Visioning Meeting - October 2017 (217 KB)
-  Visioning Survey Question #3 - Responses (204 KB)
-  Survey Message to Council (From Citizens - Through Oct. 2017) (421 KB)

Community Vision and Action Webpage

Economic Development Roadmap. A separate, but related effort is taking place to develop an economic roadmap to help guide future economic development efforts. The city has partnered with Johnson Economics, and Mary Bosch – Marketek, to help complete this work.

Travel Oregon Grant. The Planning Department has submitted a grant application to support the work of the Action Teams. If awarded, the Molalla Area Informational Kiosk Project will place 4 wayfinding and informational kiosks in strategic locations in Molalla.

RARE AmeriCorps Program. The Planning Department has submitted an application for a RARE AmeriCorps Participant. If awarded the program will provide a Bachelor’s level participant to work full-time in the city for 11 months, on a pre-ordained work plan. The total cost to the City is \$23,500 less any grants received to offset.

Temporary Outdoor Dining. In response to the COVID measures eliminating indoor dining for local restaurants, City Staff developed a Temporary Emergency Outdoor Dining program which allows restaurants to set up temporary dining spaces at no cost and with an extremely expedited process. This program is ongoing until 30 days after the emergency declaration ends.



February 9, 2021- The Sundowner and San Blas are two local restaurants that have used the Temporary Outdoor Dining policy to help keep their businesses afloat.

Development Code

Planning Staff maintains a list of Development code related deficiencies and/or needs. They are taken on one at a time with a goal of having one ready to process at each PC meeting, and in-turn at one CC meeting per month. This all of

course is contingent upon operational workload. Additionally, these proposed amendments are prioritized based on: 1) Council Direction, 2) Planning Commission Desire, 3) Legal and Process Impacts (volume and magnitude).

1. **Mobile Food Units** – At City Council Level.
2. **Change of Use** – Adopted January 2021.
3. **Residential and Industrial Use Compatibility**
4. **Rough Proportionality**
5. **Property Line Adjustments**
6. **Duplex's on SFR Sites**
7. **Adjustments**
8. **Noise**

Code Enforcement

Planning Staff has been working to clear a substantial backlog of code enforcement cases while disposing of new complaints in a timely manner.

1. Notable Case Data:
 - a. 62 Cases closed since October 1, 2020; 49 of those by compliance.
 - b. Only 2 cases remain from 2019, down from 11. one of which is CHTC (down from 11).
 - c. Only 15 open cases remain, all but 5 have been initiated and are working toward a resolution.

Land Use & Permitting – It's Happening in Molalla!

Over the last couple of months the Planning Department has begun seeing a substantial influx of project proposals, most of which are actually materializing into applications. We currently have 4 pre-application reviews for commercial and multi-family development coming up in the next two weeks, with an additional 2 site design reviews being prepared (commercial and industrial), as well as 4 single family building permits, and an expected 4 more pre-applications within the next 2-3 months.

All of that is to say that Molalla is beginning to develop fast and furious! Your Planning Department anticipates a very busy summer that is going to bring a lot of new development to the community, and that doesn't even account for the permitted developments currently ongoing.



New homes on Stuart Dr.



Cascade Center is a 9 Commercial Lot development. Lot 1 (above) is slated to be a Grocery Outlet supermarket.



Hwy 213 at 211 is the future site of the Colima Apartments, a 36 unit complex.



2 New Duplex's under construction on Eckard Dr.

UGB Expansion

Each city in the State of Oregon is required to have a 20-year supply of land in its Urban Growth Boundary, Molalla's has not formally expanded since sometime in the 1980's. In the early 2000's the city completed the studies required to analyze the UGB land supply and it was found to be at a fairly substantial deficit. Since then, more land has developed (see above), but none has been added to the UGB, which means that deficit has to have grown.

UGB expansions are generally a multi-year, heavily burdensome process, with copious public input. The facts on the ground are that the DLCD can issue an order and require the City to expand its UGB, and while this would be highly atypical, other less formal forms of pressure are not. We are not quite at that point, but discussions with DLCD have shown that we are fast approaching it, and we are in the sweet spot where we have their full support and that of the County. Additionally, Phase II of the Comprehensive Plan includes investigating UGB expansion, and expanding as necessary. In the coming weeks, Staff will be asking for Council to direct beginning Phase II, which will begin the preliminary work create and implement a plan that ultimately leads to appropriate UGB expansion.