

## Draft 2023 Legislative Session Concepts – 9/19/2022

For City Council consideration during a regular meeting on Sept. 19, 2022, for potential submission to Wilsonville members of the Oregon Legislative Assembly as prospective legislation.

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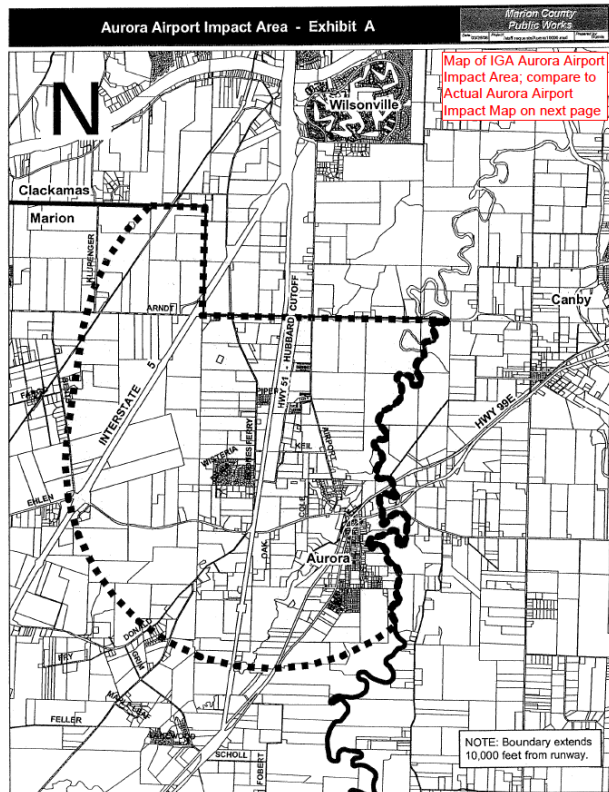
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## LEGISLATIVE CONCEPT #1:

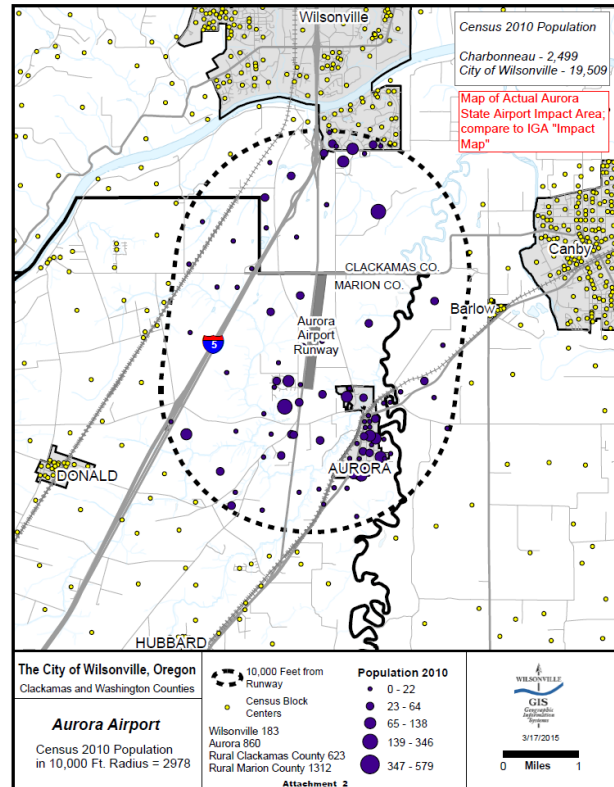
### Aurora State Airport Coordinated Intergovernmental Planning; Public Utilities Requirement for State Airports of 150 Acres; Transportation Facility Does Not Provide Land-use Goal Exception

**ISSUE:** The Oregon Dept. of Aviation (ODAV) has demonstrated over a 10-year period an inability to work in a collaborative fashion with the cities of Aurora and Wilsonville, communities located near the Aurora State Airport. Further, ODAV has demonstrated an attitude that appears to indicate the agency believes that it has a ‘federal pass’ to disregard Oregon land-use and public-process laws. Further ODAV has failed over the past 20 years to obtain a certified State Agency Coordination (SAC) Agreement from the Land Conservation and Development Commission (LCDC) as required for agencies that make land-use related recommendations.

A 2010 ODAV Intergovernmental Agreement (IGA) with Marion County and City of Aurora at the start of the failed 2012 Aurora State Airport master planning process utilized a sliced-oval “gerrymandered map” of a 10,000-foot Aurora Airport Impact Area to exclude the adjacent affected local governments of Clackamas County and Wilsonville; see below.



2010 ODAV IGA map showing “gerrymandered” Aurora Airport Impact Area that excludes Clackamas County and Wilsonville prior to start of failed 2012 ODAV Aurora State Airport master plan process.



Map of actual 10,000-foot Aurora State Airport Impact Area showing 2010 US Census block populations of both affected counties and cities in closest proximity to airport.

ODAV has shown that additional state mandates are required for agency compliance statewide planning goals through improved intergovernmental coordination and planning and utilization of clear and objective standards. This legislative concept is similar House Bill 2497 sponsored by Rep. Courtney Neron (HD-26) in the 2021 legislative session that did not advance, but is more limited and focused on the Aurora State Airport situation.

**The Legislative Concept advances three primary objectives:**

- 1) Developing an inclusive, transparent intergovernmental communications and decision-making process through an intergovernmental agreement among state agencies and affected local governments that advances compliance with Oregon land-use and public-process laws for implementation of any project or program of the airport master plan or airport layout plan.
- 2) Providing clear, objective and specific land-use regulations for state-owned and operated rural airports located in an unincorporated area with a total footprint of both public- and adjacent through-the-fence private-properties totaling 150 acres to require the provision of public utilities for urban infrastructure services for water, sewer and stormwater management. Such regulations would be consistent with Oregon's Statewide Planning Goals 11, Public Facilities and Services, and Goal 14, Urbanization, for airports of that scale that should have public utilities. Additionally, state rural airports would be limited to allowing 50 acres of through-the-fence development on private properties.
- 3) The current prohibition against reliance on a transportation facility to justify reasons exceptions to the statewide planning goals in LCDC's administrative rule would be codified in the goal exception statute.

**The first component of the Legislative Concept is to create an open, transparent Public Forum for improved Intergovernmental Communications and Planning regarding management and operations of the Aurora State Airport:**

Specifies the formation of an intergovernmental agreement (IGA) between key state agencies and affected local governments:

1. The state Department of Aviation (ODAV) with the Departments of Agriculture (ODA), Environmental Quality (DEQ), Land Conservation and Development (DLCD), and Transportation (ODOT); together with:
2. The participating affected local governments of Clackamas and Marion Counties and the Cities of Aurora and Wilsonville.

The IGA provides a public forum to facilitate intergovernmental communications and coordinated planning for land-use, transportation, environmental, infrastructure, through-the-fence access and related issues of concern regarding operations of the Aurora State Airport and implementation of any Master Plan or airport layout plan recommendations, projects or programs.

The legislation would mandate that any proposed expansion of the operations or the physical footprint of Aurora State Airport pursuant to Master Plan or Airport Layout Plan (ALP) project recommendations on public or through-the-fence private properties would be subject to consensus agreement by all of the parties to the IGA prior to proceeding or being approved to advance by ODAV. The consensus nature of the IGA ensures that ODAV is communicating and coordinating with relevant state agencies and affected local governments in a transparent, equitable manner in order to implement any master plan or airport layout plan project or program.

Specific issues that the IGA Forum to review include:

1. Surface transportation issues on local city and county and state roads pertaining to safety and traffic congestion for business and employee access to airport, including the provision of public-transit services to the Airport.
2. Environmental assessments of current Airport pollution levels, including storm/surface water, ground water, air and noise, that provide a scientific baseline of information.
3. Planning for the eventual potential annexation of the Aurora State Airport into the City of Aurora for municipal governance and the provision of urban infrastructure services to support operations at the Airport.

Additionally, the legislation would direct ODAV to implement all relevant components of the agency's State Agency Coordination (SAC) Agreement pursuant to ORS 738-130-0005 *et seq* in the IGA pertaining to approval, adoption and implementation of an Aurora State Airport master plan or airport layout plan project or program.

**The second component of the Legislative Concept provides clear, objective and specific land-use regulations** for state-owned and operated airports with a total footprint of both public- and adjacent through-the-fence private-properties totaling 150 acres or more located in unincorporated EFU lands to require the provision of public infrastructure services for water and wastewater processing and stormwater management.

ORS 836.608(5)(a) would be amended to indicate that a state airport with a total footprint of both public- and adjacent through-the-fence private-properties totaling 150 acres or more located in unincorporated EFU lands would define adequate public facilities to mean that the airport is served by public potable and firefighting water service, sanitary sewer, and stormwater utilities.

Additionally, to ensure that rural state airports located in unincorporated county lands remain rural in scale, the through-the-fence statute (ORS 836.640 – 836.642) would be amended to limit through-the-fence commercial and industrial development to 50 acres at a state airport located outside an incorporated city.

A third component of the legislative concept would be to codify in law a prohibition on goal exceptions currently in administrative rules. The current prohibition against reliance on a transportation facility as the basis of goal exceptions to allow development of residential, commercial, institutional uses on rural land is contained in LCDR administrative rule, OAR 660-012-0060(5). That prohibition would be moved into the goal exception statute, ORS 197.732. Subsection 197.732(2)(c) governs reasons exceptions, and currently has four requirements, items A-D. A new fifth requirement would include the OAR 660-012-0060(5) prohibition:

“The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional, or industrial development on unincorporated rural lands.”

Such a prohibition would have no impact on public infrastructure such as roads and utilities.

### **Additional Information**

The proposed legislation would require the state Departments of Aviation (ODAV), Agriculture (ODA), Environmental Quality (DEQ), Land Conservation and Development (DLCD), and Transportation (ODOT) to participate in the IGA. The local governments of Clackamas and Marion Counties and cities of Aurora and Wilsonville would be invited to participate in the IGA. Failure of a local government to participate in the IGA would deprive that agency of decision-making capacity regarding any proposed expansion of the operations or the physical footprint of Aurora State Airport. Any approved new operations at or expansion of the Airport as recommended by a master plan or airport layout plan reached by consensus agreement of the IGA participants would then be submitted to the local land-use authority, currently Marion County, for the regular permitting process.

The second component of the legislative concept provides for clear and objective standards for the scale of rural airports to help ODAV to comply with Oregon Goals 11 and 14. The third

component codifies the current LCDC administrative rule that prohibits goal exceptions based on the presence of a transportation facility in state law, making evasion more difficult.

## LEGISLATIVE CONCEPT #2:

### **SMART Service Territory Alignment with City Boundaries; Adjustment of TriMet District Boundary**

**ISSUE:** This legislative concept would enact a 2021-23 Wilsonville City Council Priority Goal to implement a conterminous boundary of the City of Wilsonville’s potential prospective city limits with the City’s South Metro Area Regional Transit (SMART) agency service and payroll-tax collection territory. In February 2016, the City Council adopted Resolution No. 2562, A Resolution of the Wilsonville City Council, Declaring Its Intent to Have the Service Boundaries of South Metro Area Regional Transit (SMART) Be Coterminous with the Wilsonville City Limits.”

SMART is the City of Wilsonville’s municipal public-transit agency underwritten by a City employer-paid payroll tax (per City Code section 7.200) collected from local businesses for the benefit of the mobility options of employees and residents. ***There are areas within the City of Wilsonville that fall within the service and taxing district of TriMet, where TriMet collects the payroll-tax revenue but does not provide services for the employees of the businesses and the community.***

**The Legislative Concept would be for the legislature to modify the TriMet district service territory boundary to allow for SMART to provide transit service to the withdrawn territory and eventual potential annexation of the lands to the City of Wilsonville for transit payroll-tax collection purposes.** Rather than painstakingly requesting that TriMet modify the district boundary every time the City annexes land, the legislation would provide for a long-term solution by modifying in one fell swoop the TriMet territory boundary to include those areas that the City may conceivably annex eventually as adjacent UGB expansion areas and within the 50-year timespan of the Metro-area Urban Reserves.

Wilsonville has been in ongoing discussions with TriMet about adjusting the boundaries for several years. Proposing legislation would facilitate the resolution of these boundary issues, avoiding protracted negotiation. The current methods of withdrawing territory from the TriMet district appear unlikely to be successful due to political and logistical hurdles; see Background Information for more details.

The proposed legislation would modify the TriMet district boundary territory for a limited amount of acreage for the specific UGB Expansion Areas and Urban Reserves adjacent to Wilsonville:

• **UGB Expansion Areas:**

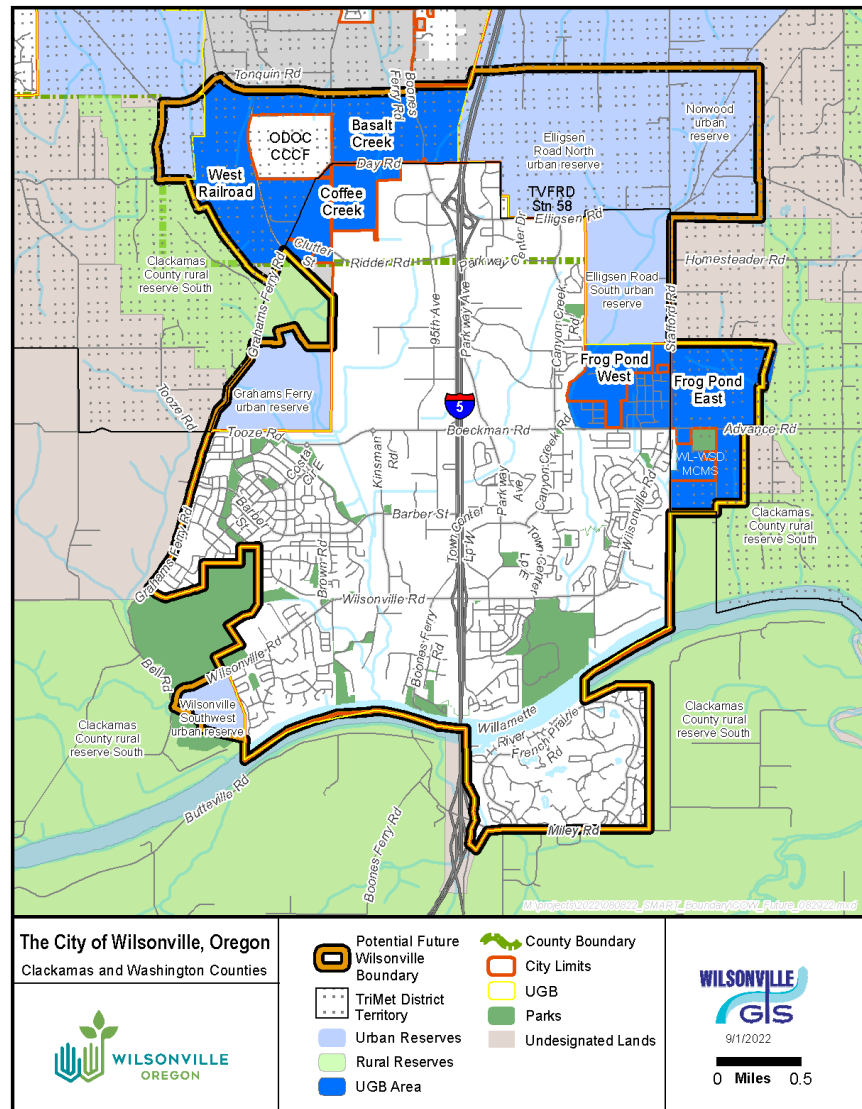
- Coffee Creek west portion
- Basalt Creek south portion
- West Railroad
- Frog Pond East

• **Urban Reserves:**

- Tonquin southeast portion
- Elligsen Road North portion
- Norwood southwest portion
- Frog Pond East

Specific sites located within existing or future City limits of various agencies are to transfer their transit tax/payment-in-lieu of transit tax to City:

- Oregon Dept. of Corrections Coffee Creek Correctional Institution (ODOC CCCF)
- Tualatin Valley Fire & Rescue District (TVFRD) Elligsen Road Station 53
- West Linn-Wilsonville School District Meridian Creek Middle School (WL-WSD MCMS)



Except for the specific sites of various jurisdictions noted above, the listed UGB Expansion Areas and Urban Reserves generally produce little payroll tax revenue due to few businesses with low employment. The total amount of transit tax/payment-in-lieu of transit tax paid by the three agencies represents a small amount of the total TriMet budget. Other than mandating the transfer of transit tax/payment-in-lieu of transit tax made by the Oregon Dept. of Corrections Coffee Creek Correctional Institution (ODOC CCCF), Tualatin Valley Fire & Rescue District (TVFRD) Elligsen Road Station 53 and West Linn-Wilsonville School District Meridian Creek Middle School

(WL-WSD MCMS) from TriMet to City of Wilsonville, the legislative concept is silent on other financial matters.

In order to reduce TriMet costs to make-up for a portion of lost transit tax revenue of three agencies and for which TriMet provides minimal service of Line 96 from Tualatin Transit Center (TC) to a porta-potty along Commerce Circle in Wilsonville, the City's SMART agency is to assume responsibility for providing public transit service—including Dial-a-Ride medical transport services—from Tualatin TC to Wilsonville TC. SMART already provides regular fixed-route transit service to the Tualatin TC and to the three agency sites that TriMet collects transit tax remittances without providing any service: Oregon Dept. of Corrections Coffee Creek Correctional Institution (ODOC CCCF), Tualatin Valley Fire & Rescue District (TVFRD) Elligsen Road Station 53, and West Linn-Wilsonville School District Meridian Creek Middle School (WL-WSD MCMS). Thus, in effect, TriMet is relieved of responsibility for providing transit service south of Tualatin to Wilsonville.

The City's GIS Division can supply coordinates language that corresponds to the Potential Future Wilsonville Boundary on the accompanying map.

### **Background information**

Jurisdictions served by TriMet may petition for a withdrawal of service under ORS 267.250. Those choosing this method must submit a petition to TriMet seeking withdrawal, and the petition must be signed by at least 15% of registered voters in the "affected area." The process then requires a lengthy public hearing and fiscal impact analysis prescribed in statute. Although there is no requirement to establish substitute transport service, that factor likely would weigh heavily in the final decision. The TriMet board must consider the effects of withdrawal on district riders, including the possibility that alternative service will be provided.

Petitions may be filed only during the period from January 1 to August 30 in calendar year 2001 and in every fifth calendar year thereafter. Therefore, petitions could be accepted on January 2016, January 2021 and January 2027.

Although previous opt-out cities have successfully left TriMet under ORS 267.250, this path is unlikely to be used in the future. The primary reason is that the statutory definition of "affected areas" excludes any portions of the TriMet district that are within cities that exceed a population of 10,000, so many areas would be categorically ineligible.

In addition, the TriMet board makes the final decision; and given the agency's financial problems, any city with a substantial base of employment (and thus tax revenue) probably would not be allowed to leave.



An alternative path would be a withdrawal of territory from TriMet under ORS 267.207 (4). This requires a district-wide vote throughout the TriMet service territory to approve any jurisdiction seeking to leave. The advantage of this option is that a jurisdiction could initiate it on its own; and the final decision would be up to district voters, not the TriMet Board. The law provides that the payroll-tax rate for the entire district is to increase so as to make-up for shortfall caused by the withdrawn territory. It is unlikely that metro-area voters would approve increasing their taxes so that Wilsonville can eventually collect tax and SMART provide transit service to withdrawn territory.

The last time the TriMet district territory was modified occurred on December 14, 2011, when the TriMet Board adopted Ordinance No. 320 allowing the Boring area petition to withdraw an approximate 28.8 square mile area in Clackamas County from the TriMet District. Pursuant to ORS 267.260(2), the Boring area withdrawal took effect on January 1, 2013.

## **LEGISLATIVE CONCEPT #3:**

### **ODOT Public Transportation Division Study of WES North Willamette Valley Extension from Wilsonville to Salem, with Stops in Woodburn and Keizer**

**ISSUE:** For the past nine years, since 2013, the City Council-adopted *State Legislative Agenda* has contained a key transit policy position: “The City of Wilsonville supports expanded Westside Express Service (WES) commuter rail transit service for full-day and Saturday service and extension of service to Salem.” This policy position was underwritten by several Council-adopted authorities, including:

- **Wilsonville City Council 2017-2018 Work Plan** - Administrative Initiatives: *Advocate for increased WES service.*
- **Wilsonville Transit Master Plan, 2017**, Commuter Rail, p. 28: *Expanding WES service would lead to more ridership for SMART as many customers transfer from WES.*
- **Wilsonville Transportation Systems Plan (TSP), 2016**, Public Transit, Policy 36: *Coordinate with other transit districts, including TriMet and Cherriots, to strengthen the efficiency and performance of the Wilsonville transit network.; Implementation Measures (Policy 36): 36.a.: Advocate for TriMet to provide full day and Saturday service for its Westside Express Service (WES) commuter rail; 36.b.: Advocate for the extension of WES to Salem.*
- **Wilsonville Comprehensive Plan, 2013**, Transportation: The Transportation Network, p. C-23, Implementation Measure 3.3.1.f.: *Support provision of full day and Saturday transit service in the WES corridor; Implementation Measure 3.3.1.g.: Advocate for the extension of WES to Salem.*

Although SMART and Salem-Keizer Mass Transit District share express bus routes on I-5 between Wilsonville and Salem, as traffic congestion on the South Metro and North Willamette Valley I-5 corridor continues to worsen, commuters could welcome a public-transit alternative unaffected by highway traffic congestion. Additionally, as ODOT undertakes the I-205 Toll Project and Regional Mobility Pricing Project (RMPP) for tolling all of I-5 and I-205 in the Portland metro region, issues of impacts to low-income populations of tolls to North Willamette Valley commuters will surface; to-date, most of ODOT's outreach has been to Portland-area communities. The lack of sufficient alternative, public-transit commute options along I-5 from Salem/Keizer area to Portland area makes a non-highway mobility option more attractive.

Major new traffic-generators along I-5 south of Wilsonville include that will increase traffic on the South Metro/North Willamette Valley portion of I-5 are now underway:

- a new 3.6-million-square-foot Amazon warehouse in Woodburn under construction that is to be served by hundreds of delivery trucks and with anticipated employment of approximately 1,500 workers set to open in 2023;
- a new Siletz Tribe Casino/Hotel entertainment complex in North Salem/Keizer area is planned with a of total of 1,473 direct jobs at the casino-hotel complex where a vast majority of patrons are anticipated to come from the Portland metro region, resulting in over 7,800 new weekday trips.

The old Oregon Electric Railway, a 122-mile state-operated rail line between Portland and Eugene that passes through Wilsonville, has a dedicated right-of-way that is not affected by traffic congestion on the highway or local roads, allowing the provision of reliable public-transit service no matter the roadway traffic conditions. Currently in the Wilsonville area, WES operates on a portion of the old Oregon Electric Railway now owned by Portland and Western Railroad.

**The Legislative Concept** supports a “joint House-Senate legislative memorial” that would direct ODOT Public Transportation Division, Rail Operations & Statewide Multimodal Network Unit, in conjunction with WES sponsor TriMet and WES operator Portland & Western Railroad to study and document the various costs, benefits and operational issues of extending the current rush-hour-only Westside Express Service (WES) commuter train from the current southern terminus in Wilsonville to Salem, with potential stops in Woodburn, Donald and Keizer.

Similar legislation was proposed unsuccessfully over multiple legislative sessions by the late Rep. Mitch Greenlick of Portland:

- [HB 2338 \(2013\)](#): Creates Task Force on Extending the Westside Express Service Commuter Line to Salem

- [HB 2553 \(2015\)](#): Creates Task Force on Extending the Westside Express Service Commuter Line to Salem
- [HB 2219 \(2019\)](#): Creates Task Force on Extending the Westside Express Service Commuter Line to Salem

Each of these bills would have created large task forces composed of legislators, community leaders along the route and transit/transportation agency representatives. When provided the opportunity, the City presented testimony in support of the proposed legislation.

Rather than set-up a large task force that involves considerable effort on behalf of many parties, the proposed legislation sponsors a technical study led by ODOT Public Transportation Division in conjunction with WES sponsor TriMet and WES operator Portland & Western Railroad. The technical study would review the specific operational and locational issues for extending and operating WES on the old Oregon Electric Railway to provide inter-city passenger-rail service for commuters of the North Willamette Valley and South Metro Region using the existing WES trains and Oregon Electric Line/Portland & Western railroad tracks. Consultants hired by ODOT would be directed to engage with the City Managers' Offices of cities to be potentially served by the WES service extension—including Wilsonville, Donald, Woodburn, Keizer and Salem—in order to better understand local-access and other related issues.

The study would also engage local transit agencies in addition to TriMet to include SMART, Salem-Keizer Mass Transit District and Woodburn Transit that would provide bus connections to the WES rail stops in Wilsonville, Woodburn, Donald, Keizer and Salem. The transit agencies would be charged to develop “last-mile” connections from WES station stops to each of the communities that they serve.

The legislation would call for ODOT to present the results of the WES North Willamette Valley Extension from Wilsonville to Salem Study to the legislature at the start of the 2024 legislative session. Depending on the results of the study, the legislature may wish at that time to convene a larger task force composed of multiple interests to further advance potential WES extension planning efforts.

In order to fund the study, a general fund or other appropriation is required, with a recommended allocation of \$500,000.

## **Background Information**

The 2018 Portland Metro Regional Transportation Plan (RTP) recommends extending WES commuter-rail service from the Portland metro region—including Beaverton, Tigard, Tualatin and Wilsonville—to Salem/Keizer with a stop in Woodburn.

Utilizing the old Oregon Electric Line right-of-way now licensed by Portland and Western Railroad provides the opportunity for a reliable transit-commute solution independent of I-5 highway traffic conditions. Extension of WES would provide a reliable car-free commute option for the North Willamette Valley/South Metro I-5 Corridor that also provides more highway capacity for trucks and the timely movement of freight.

Through a \$10 million grant under Federal Railroad Administration's (FRA) High Speed Intercity Passenger Rail Program, ODOT Public Transportation Division conducted a nine-year-long rail feasibility study between Portland and Eugene for Amtrak train use. In 2021 FRA selected Alternative 1 for the Oregon Passenger Rail alignment that follows the existing Amtrak Cascades passenger rail route and can accommodate increased passenger rail services by improving track, signal and communication infrastructure. The ODOT *Oregon Rail Plan* of 2020 notes issues with WES, but does not provide any detailed study or recommendations. In essence, no public body has ever conducted a detailed study of inter-city passenger rail for commuters of the North Willamette Valley and South Metro Region using the existing WES trains and Oregon Electric Line/Portland & Western railroad tracks.

## **Additional Legislative Authorization/Appropriation Request:**

### **Reauthorize and Fund the Business Oregon Regionally Significant Industrial Sites (RSIS) Program**

In addition to communicating to Wilsonville's state Representative and Senator support for legislative concepts that can be turned into bills, the Council may request a reauthorization and financial appropriation and for Business Oregon's Regionally Significant Industrial Sites (RSIS) program that sunsets in 2023.

The Regionally Significant Industrial Sites (RSIS) program is a profit-sharing economic development tool that offers state income tax reimbursements for approved industrial site readiness activities. Beginning the year after a project's employment thresholds are reached, tax reimbursements are annually distributed to the approved local community.

The program offers various financing mechanisms to advance industrial sites to a "shovel-ready" status. Due-diligence grants are available for eligible projects that have a public sponsor in order to create better understanding of constraints on regionally significant industrial sites.

Additionally, the program offers direct site preparation assistance by authorizing forgivable loans, low or no interest loans and/or a tax sharing arrangement to local governments and property owners with a public sector partner for regionally significant industrial sites that:

- Can provide significant additional employment
- Give the area significant advantages that are difficult or impossible to replicate in the region
- Have superior access to transportation and freight infrastructure

The program allows loans to be forgiven up to 50% of the site preparation cost, based on performance; tax sharing arrangement where 50% of the annual corporate and personal income tax revenues from the site reimburse the public investment up to the total site preparation cost.

The City of Wilsonville—together with the League of Oregon Cities, Port of Portland, Metro, Oregon Economic Development Association and local governments across the state—supported the original 2013 bills (HB 2284/HB 2285 and SB 253/SB 246) that authorized the Industrial Site Readiness Program. Several technical issues were identified subsequently by Business Oregon preventing implementation of the program, and SB 333 legislation of 2017 remedied those defects.

While authorized, the program has never been funded. Over 10 local governments across the state have applied, but no funding decisions made. Currently LOC, OEDA, Oregon Business and Industry, Metro and others have discussed working together to reauthorize the RSIS program and provide a \$50 million appropriation.