September 16, 2013

Jim Rue  
Angela Lazarean  
Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301

Re: Objections to City of Newberg submittal

Dear Mr. Rue and Ms. Lazarean:

On August 26, 2013, the City of Newberg mailed notice of adoption of an Economic Opportunities Analysis (EOA), other plan amendments, and an amendment adding 260 acres to the city’s urban growth boundary. These amendments have been submitted to DLCD pursuant to 197.626 to 197.650.

1000 Friends of Oregon and Friends of Yamhill County submitted written and oral testimony at the public hearings on these amendments and have standing to file objections. As explained below, we have several objections to the city’s submittal.

To summarize, the city has overestimated the amount of industrial land Newberg will need over the planning period and underestimated the capacity within the existing UGB to meet those needs, resulting in an overly large UGB expansion.

Moreover, the area selected by the city for inclusion within the UGB contains some of the best farmland in the region. Alternative areas that are by law a higher priority for inclusion can reasonably accommodate Newberg’s industrial development, and can do so in a manner that will cost taxpayers less and produce jobs sooner than the city’s proposed expansion area.

INTRODUCTION

Until recently, Newberg had a large supply of high quality industrial land in the areas now covered by the Springbrook Oaks Specific Plan and the Springbrook Master Plan. Between 1999 and 2007, the city systematically rezoned most of this land for other uses, even as it was citing a critical need for more industrial land as a justification for expanding its urban reserves, which LCDC remanded in 2009.

In 2007, years before undertaking this EOA to determine its industrial land needs, and years before completing an analysis of alternative locations, the city signed an agreement with a

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1 See R.6011-13 for a more complete timeline of the events described below.  
2 R.6019-20, R.6045, R.6252-65 (Springbrook Oaks); R.6224, R.6652-53 (Springbrook Master Plan area)  
3 R.6080-82, R.6155-56
private landowner to pursue inclusion of his land – Class I and II soils zoned for Exclusive farm Use – in the UGB.4 In 2009, the city began master planning this landowner’s property, along with other prime farmland under county jurisdiction, for an industrial district – prior to its inclusion in the UGB, prior to adoption of an EOA to justify need, and prior to an analysis of alternative locations.5

Since 2009, the city has used at least four different population projections,6 at least four different projections of future industrial jobs,7 and at least three different versions of its “Required Site Suitability Characteristics.”8 Regardless of changes in projections or assumptions, with each one, the city says it needs the same 260-acre UGB expansion.

The adopted UGB expansion is legally flawed. Among other things, it contains more large industrial sites than the city itself says it needs.9 It is possible to provide land to meet Newberg’s employment needs, respect the agricultural industry that powers our economy, and fully comply with the law. As Councilor Howard said during the local hearings, “I think we could achieve our goals with a more modest, maybe phased, project,”10 and, the city “can do better with what we already have.”11

The most significant flaw in the city’s proposed 260-acre expansion is the large block (about 113 acres) of predominantly Class II cultivated farmland east of Highway 219. Farmland is not undeveloped land waiting for urbanization. It is already-developed land that supports the leading industry in Yamhill, Polk and Marion Counties: agriculture. Agriculture accounts for more than 23% of the total employment (direct and indirect) in the three-county region.12

While it is unlikely the city can legally justify including any of the farmland it has proposed, we met with city representatives to discuss a potential compromise. The meetings were productive. They resulted in a proposed solution that would provide the industrial land the city says it needs on a contiguous block of land consisting of part of the city’s proposed EFU expansion area and of adjacent shovel-ready vacant land that straddles the existing UGB and Urban Reserve.13

However, after meeting in executive session, the full city council rejected the compromise and instead chose to continue pursuing this expansion.

The city has now spent eight years and many taxpayer dollars trying to reverse-engineer justifications for a stale and unsupported conclusion. Despite remands from LCDC, LUBA, the Court of Appeals, and LUBA again, the city still has not reconsidered its conclusions. Instead, it just keeps trying out new justifications for the same proposal.

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4 R.6266-82
5 R.697-801
6 R.6300, R.2371, R.4107, R.5833
7 R.6309, R.1263, R.2401, R.5862
8 Record, R.6329, R.2408, R.5869
9 See Objection 6 below
10 Audio record, Item 13
11 R.5647
12 R.5150
13 R.5537, R.6651-52
The Department should not acknowledge the submittal. Instead, it should be returned to the city and county with instructions to develop a proposal that is consistent with the relevant statutes, goals, and administrative rules.

OBJECTION 1: SITE CHARACTERISTICS

The EOA, comprehensive plan amendments, and UGB amendment violate OAR 660-009-0015(2), OAR 660-009-0005(11), OAR 660-024-0060(3), Goal 2, Goal 14, and ORS 197.298, because: 1) they lack an adequate factual base to support a conclusion that the EOA’s “Required Site Suitability Characteristics” are universally “typical” of Newberg’s targeted industries, and that there is an important relationship between those site characteristics and the successful operation of the city’s targeted industries; 2) they are internally inconsistent; and 3) because they fail to distinguish and keep separate the required site characteristics and the Goal 14 location factors.

Introduction

Newberg has adopted overly prescriptive “Required Site Suitability Characteristics” that improperly reduce capacity within the existing UGB to meet the needs of targeted industries and that remove land in higher-priority areas outside the UGB from consideration. In many respects, the site characteristics appear to be reverse-engineered to support a conclusion that the only suitable site is the large block of prime farmland that the city master planned as the South Industrial Area in 2009. (R.697)

Under Goal 9 and its implementing rules, an EOA’s identification of required sites must be based on the site characteristics that are typical of expected uses and that are necessary for particular industrial or other employment uses to operate:

OAR 660-009-0005(11):
(11) "Site Characteristics" means the attributes of a site necessary for a particular industrial or other employment use to operate. Site characteristics include, but are not limited to, a minimum acreage or site configuration including shape and topography, visibility, specific types or levels of public facilities, services or energy infrastructure, or proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes.

OAR 660-009-0015(2):
Identification of Required Site Types. The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses. Cities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that may be needed for expansion. Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories.

OAR 660-009-0025(1):
Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories.

In its remand of Newberg’s 2010 EOA, LUBA devised a two-pronged test to interpret these requirements. In order to be a valid site characteristic: (1) the attribute must be typical of the expected use and (2) the attribute must have some meaningful connection with the operation of the use. LUBA further held that “typical” attributes are those that are “typically required for a business to operate successfully.” The Court of Appeals upheld LUBA’s test, noting that “‘necessary’ site characteristics are those attributes that are reasonably necessary to the successful operation of particular industrial or employment uses, in the sense that they bear some important relationship to that operation.” (Emphasis added) Friends of Yamhill County v. City of Newberg, 240 Or App 238 (2011).

While all industries need appropriate access, topography, and public facilities, an EOA must determine what attributes are “reasonably necessary” for each “particular industrial use.” What is critical for one use may be unimportant to another use, or may even be detrimental. While compatible industries that have similar site needs can be grouped together into “broad site categories,” as provided by OAR 660-009-0015(2) and -0025(1), an EOA must still consider the site characteristics necessary for particular industries.

Newberg’s targeted industries include a wide range of businesses, such as manufacturers, information technology, cyber-security firms, wineries, nurseries, architectural and engineering firms, production studios, lumber mills, specialty aircraft-related businesses, and semiconductor fab plants. (R.5859) Such disparate uses clearly have differing site needs. Common sense and the law dictate sorting these uses into different “broad site categories.”

For example, lumber mills and semiconductor fab plants need larger sites with access for heavy trucks, high-capacity electric service, and buffering from residential areas. Cyber security and architecture firms need smaller sites in a location acceptable to clients, and have little to no need for heavy truck access or residential buffering. Some site needs may vary with the size of the business: a small-scale manufacturer might ship its products via a once-a-day visit from UPS or FedEx, whereas a large manufacturer of the same type of product might generate a high volume of heavy truck traffic or rail shipments.

One study cited by the EOA is a March 2013 document entitled Typical Characteristics of Industrial Sites for Newberg Targeted Industrial Uses (hereafter “Site Study”). (R.5965-95) The Site Study examines some characteristics of 25 industrial districts in Newberg and other Willamette Valley cities. If a particular trait was seen in a majority of these 25 districts, the Site Study deems the trait “typical” for all the targeted industries for purposes of OAR 660-009-0015(2).

While it is interesting to consider the layout of other cities’ industrial areas, a finding that a certain layout is common does not mean that layout is universally “typical” of all Newberg targeted industries. Nor does it demonstrate that there is any meaningful connection between a common district layout and the operation of the resident businesses; that determination requires a

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14 Friends of Yamhill County v. City of Newberg, 62 Or LUBA 5 (2010).
separate inquiry, which is beyond the scope of the Site Study. (R.5967) The layout could have more to do with the physical characteristics of the cities themselves, and with the many forces that operate over time as an area develops, rather than any specific business needs.

The test articulated by LUBA and the Court of Appeals concerns the attributes of individual sites and the needs of particular industries, not the characteristics of larger industrial districts. The city’s approach has a fundamental shortfall: it defines needed site characteristics as those that are average across industrial districts; it does not consider the disparate site needs of its particular target industries – “particular industrial or employment uses,” in the words of the Court of Appeals and OAR 660-009-0005(11). Friends of Yamhill County v. City of Newberg, 240 Or App at 747.

Instead, the city concludes that the average characteristics of generalized industrial areas are the site characteristics that all industrial uses must have. The analysis treats land that is not in the middle of the curve as unusable, even though it might have site characteristics that are typical of some industrial uses. Therefore, the EOA fails to consider what is “typical” for particular kinds of industrial uses, and instead considers only what is “predominate” across a sample of industrial districts.

For example, based on the Site Survey, the EOA concludes that all industrial sites for its targeted industries must have “suitable truck access to a state highway or arterial within 1/4 mile” that does not require “travel through or adjacent to a residential neighborhood.” Yet certain targeted industries do not need that, based on the EOA itself. For professional and creative services (legal, financial, web design, etc.) the EOA merely states that “they benefit from close access, even if only for passenger vehicles.”

For other industries, the EOA uses examples of businesses that are located outside of the districts that are part of the site survey. Thus, there is no evidence in the record to support any conclusions regarding these businesses’ site characteristics. See, at a minimum, the references in Table 12-24 to businesses in Dundee, Beaverton, Hood River, and Aurora, as well as to Berry Noir, which is on land zoned EFU that is within the city’s proposed UGB expansion.

**Sub-Objection 1A: Separation of site characteristics and Goal 14 location factors**

Newberg has conflated site characteristics and the Goal 14 location factors; site characteristics and the location factors are practically and legally different. Many of the site characteristics Newberg adopted as “required” are actually locational factors. However, site characteristics describe what characteristics the site itself should possess, not where it should be located.

The following specific industrial and commercial site characteristics adopted by Newberg are actually locational factors, not bona fide site characteristics:

**Industrial & Commercial “Compatibility” Site Characteristics**

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15 R.5869, 5877, 5887-88
16 R.5882-88, R.708
“Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.” (Industrial sites, EOA Table 12-23, R.5869)

“Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.” (Industrial sites, EOA Table 12-23, R.5869)

“Exclude sites that for community [commercial] centers, abut residential neighborhood on more than 50% of the site perimeter unless effective topographical or road buffers are present or planned.” (Commercial sites, EOA Table 12-28, R.5897)

The above characteristics are about the location of the site relative to existing residential areas – or compatibility - they are not site characteristics. Instead, issues of residential compatibility must be considered during the city’s Goal 14 locational analysis, Factor 3 (social consequences). OAR 660-024-0060(3) states, “The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.”

In *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 17, 38 P3d 956 (2002), the Court of Appeals concluded that the locational factors in Goal 14 “do not stand alone but represent *** several factors to be considered and balanced when amending a UGB. *** No single factor is of such importance as to be determinative in a UGB amendment proceeding, nor are the individual factors necessarily thresholds that must be met.”

Residential compatibility is only one consideration under the locational factors, and must be balanced against the other factors. Including residential compatibility in the EOA’s site characteristics impermissibly elevates residential compatibility over all other ESEE considerations and, in turn, elevates Goal 14’s Factor 3 above the other locational criteria; it then becomes “determinative in a UGB amendment proceeding.”

**Industrial “Proximity” Site Characteristics:**

“Adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.” (Industrial sites, EOA Table 12-23, R.5869)

As discussed in the following Sub-Objection 1B, this site characteristic is meant to address the efficient provision of land and public facilities, residential compatibility, economic efficiency, and energy efficiency. Therefore, it is actually several Goal 14 location factors masquerading as a site characteristic: Factor 1 (efficient accommodation of identified land needs), Factor 2 (orderly and economic provision of public facilities and services), and Factor 3 (social, economic and energy consequences). It is not itself a bona fide site characteristic.
**Sub-Objection 1A Conclusion:** By using Goal 14 locational factors as "Required Site Suitability Characteristics,” Newberg has a) impermissibly screened out many alternative sites from its Goal 14 locational analysis that are either within the UGB or are a higher-priority under ORS 197.298; and b) impermissibly elevated some locational factors over other locational factors, instead of balancing them. Therefore, the city’s decision violates Goal 14, ORS 197.298 and OAR 660-024-0060(3).

**Sub-Objection 1A Remedy:** For these reasons, the Department should remand the UGB amendment, comprehensive plan amendments, and the EOA, with instructions to remove the required site characteristics that address residential compatibility and district proximity and/or district size, and instead consider these issues under the city’s analysis of the Goal 14 locational factors.

**Sub-Objection 1B: District Size & Adjacency to Commercial**

We object to the following site characteristic:

> “Adjoin an existing industrial or commercial area, or an area with sufficient buildable land [50 acres] to allow expansion of the industrial district.”

(Industrial sites, *EOA* Table 12-23, R.5869)

This characteristic is based on the *Site Study’s* observation that “Of the 25 industrial districts studied, 23 or 92%, were adjacent to a large commercial area, were over 50 acres in size, or were both.” (R.5977)

There are four major problems with this site characteristic, detailed separately below:

**District Size & Adjacency to Commercial, Problem #1:**

First, this site characteristic is illogical, and creates an internal inconsistency within the *EOA*, when viewed alongside another adopted site characteristic:

> “Site contains a parcel or group of parcels in close proximity with buildable land that contains at least 20 buildable or industrially developed acres (or smaller if adjacent to existing industrial district).”

(Industrial sites, *EOA* Table 12-23, R.5869)

Taken together, these two criteria mean that a new 20-acre industrial district adjacent to an existing 5-acre industrial area would be acceptable, because a 20-acre district is deemed sufficient so long as it is adjacent to any size existing commercial or industrial area.

On the other hand, a new 25-acre industrial area that is not adjacent to existing industrial or commercial land would be rejected since without adjacency to an existing commercial or industrial area, a new district must have at least 50 acres.

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17 *EOA* p. 54, see p. 58 for clarification that “sufficient buildable land” means 50 acres (R. 5869, R. 5873)
18 *EOA* p. 54, R.5869
That doesn’t make sense, since in either case the end result would be the same: a 25-acre industrial district.

**District Size & Adjacency to Commercial, Problem #2:**

Second, the *EOA* fails to show, via an adequate factual base and findings, that a 50-acre district size is universally “typical” for all of Newberg’s diverse targeted industries.

The areas surveyed by the city’s *Site Study* are not representative of all the industrial districts in the study area. We identified 12 smaller districts that were improperly excluded from the *Site Study*. Since the *Site Study* reviewed only 25 sites, the effect of excluding the 12 smaller sites is significant. The selection of a non-representative sample badly skewed the outcome of the report: the *Site Study* concluded that industrial districts tend to be large simply because it ignored the districts that are small. All but one of the 12 excluded districts are smaller than 50 acres, and 10 districts are smaller than 20 acres.

When these 12 excluded districts are added back to the 25 districts examined by the *Site Study*, the results are much different: about half of the 37 districts are smaller than 50 acres, and about one-third are smaller than 20 acres. Thus, the city erred in concluding that “typical” industrial districts are larger than 50 acres. The record shows that there is no particular size of district that is most common; they are evenly distributed throughout the range. It would equally reasonable to conclude that “typical” industrial districts are less than 50 acres.

It is unsurprising that there is no particular district size that is “typical”. Just as there is no one size of individual industrial lot that is universally seen across all industry, there is no one size of industrial district that is uniformly seen across all types of industry, or across all communities. The evidence in the record shows that businesses thrive across a wide range of industrial district sizes; there is no one-size-fits-all “typical” district that all industries typically require to operate successfully.

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19 See Attachment 13 to our June 2, 2011 letter, which identified 15 sites missing from an earlier version of the *Site Study*. Of these, Forest Grove-1, Forest Grove-2, and Sherwood-1 have been added to the revised March 2013 *Site Study*. (R.6475-6505)

20 There are additional problems with the *Site Study* that are explained in more detail in our June 2, 2011 letter, and attachment titled “Site Study Analysis and Supplemental Information.” (R.6429-30, R.6475-6505) These problems further skew the *Site Study*’s conclusions, making it appear that industrial districts are larger than they really are.

First, it appears that some of the acreages claimed for the districts may be inaccurate. The Canby map has a blue circle around the “Canby West Side” district that is just under a half-mile in diameter, based on the map’s scale. (R.6476) This is about 100 acres; it is apparent that the district is much smaller than the circle. However, an appendix to the *Site Study* titled “Typical Characteristics of Industrial Sites” lists Canby West Side as over 100 acres. (R.5980) It also appears that the “Woodburn-Commerce” site is actually in the 20-50 acre range, not the 50-100 acre range as claimed by the *Site Study*. (R.6503, R5985)

Also, it appears that some separate districts that are not contiguous were grouped together, making them seem like one large district, rather than two smaller districts. It is difficult to know exactly how these were assessed, but areas of concerns are noted with 7 green circles on our “Site Study Analysis and Supplemental Information” document. We are particularly concerned about the “Tualatin-Boones Ferry” and “Woodburn-Hwy 99S” sites. (R.6499, 6503)

21 See attachment 6 to our June 13, 2013 letter, which shows that at least 18 of the 37 sites are smaller than 50 acres. (R.5695) However, if errors identified on that attachment are corrected (Woodburn-Commerce site should be counted as a 20-50 acre site, and the Tualatin-Boones Ferry and Woodburn-Hwy 99S sites should each be counted as two sites, not one) then there are 39 total sites, and 22 of those are smaller than 50 acres.

22 For example, wineries are one of Newberg’s targeted industries. The only winery in the Site Study is located in a 20-50 acre district. (R. 5981)
District Size & Adjacency to Commercial, Problem #3:

Third, even if it could be established that a 50-acre or larger industrial district is the one-and-only “typical” size, the EOA still fails to show, via an adequate factual base and findings, that there is an important relationship between a 50-acre district size and the successful operation of particular industrial businesses.

Just because a district layout is common does not mean that layout was deliberate, or that it is necessary for particular industries to operate successfully. The Goal 9 rules are silent about the characteristics of industrial districts, and focus instead on the needs of “particular industrial or other employment use[s].”

What matters is that the operational requirements of individual businesses are met; these are not necessarily the same across different types or sizes of business. Newberg’s targeted industries are so different from one another that they may see no benefit at all from co-location, and may even experience conflicts.

The fact that so many businesses in Newberg’s targeted industries thrive in districts smaller than 50 acres refutes the city’s claim that larger districts are required. The city has offered no explanation for the success of these businesses despite their location in small districts.

According to the Court of Appeals, “‘necessary’ site characteristics are those attributes that are reasonably necessary to the successful operation of particular industrial or employment uses, in the sense that they bear some important relationship to that operation.” Friends of Yamhill County v. City of Newberg, 240 Or App at 747.

The EOA contains 23 seven justifications for the claim that it is “necessary” for industries to locate in 50-acre districts. (R.5882-88, R.5871) As discussed in Sub-Objection 1A, all of these justifications are actually Goal 14 location factors, and not bona fide industrial operational requirements. Therefore, they cannot be addressed by a Goal 9 site characteristic.

Each EOA justification is addressed below:

Claim: “Typical uses have frequent truck traffic that requires adequately sized roads provided in industrial areas.”

Claim: “Typical uses have electrical requirements that only are met in industrial or industrial/commercial areas.”

While it may be more efficient to provide adequately sized roads and electric facilities if industries are clustered together in larger districts, as discussed in Sub-Objection 1A, infrastructure efficiency is a Goal 14 Factor 2 (orderly and economic provision of public facilities and services) locational analysis consideration, not a site characteristic.

23 Table 12-24 and page 56 (R.5882-88 and R.5871)
If there is a legitimate concern that some candidate lands cannot be served with adequate roadways or electrical facilities, then the EOA can be amended to add a site characteristic that lands must be serviceable. If a site is deemed serviceable, then as those lands are annexed and developed, the city’s transportation improvement process will ensure that the needed roadways are built, and the electrical service provider will be able to extend the needed electrical facilities.

The record contains no evidence to support a conclusion that new industrial areas smaller than 50 acres in size, or those not adjacent to an existing industrial or commercial area, cannot be adequately served with roadways or electricity.

Claim: “Residential compatibility issues are addressed when use is adjacent to industrial or commercial areas.”

Issues of residential compatibility should be evaluated on a site-by-site basis, not by a broad preemptive requirement for 50-acre industrial districts. Compatibility issues are best addressed directly, via appropriate placement of industrial areas and/or the use of 50-100’ wide buffer strips, as described in the EOA.

The record contains no evidence to support a conclusion that new industrial areas smaller than 50 acres in size, or those not adjacent to an existing industrial or commercial area are incompatible with residential uses.

Even if it could be demonstrated that clustering industries in larger districts might result in better residential compatibility, as discussed in Sub-Objection 1A, residential compatibility is a Goal 14 Factor 3 (social consequences) locational analysis consideration, not a site characteristic.

Claim: “Uses benefit from combined delivery services to the district.”

Claim: “There are economies of scale when many industrial uses can be served by the same suppliers or delivery systems.”

Newberg’s diverse targeted industries – which range from wineries, to engineering firms, to semiconductor fab plants, to wood products– will have similarly diverse suppliers and delivery systems. However, even if some of these businesses would have some shared suppliers, and even if combined delivery services were more convenient for some suppliers, the record contains no evidence that industrial businesses would be unable to get services and supplies delivered, or would have to pay more, if the businesses were located in an industrial area less than 50 acres in size, or without adjacency to a commercial area.

Even if it could be demonstrated that clustering industries in larger districts would result in some cost savings to suppliers or business customers, as discussed in Sub-Objection 1A, this would still be a Goal 14 Factor 3 (economic consequences) locational analysis consideration, not a site characteristic.
Claim: “Uses have employee bases that need close amenities provided in the district or nearby commercial areas.”

According to the EOA, these amenities include things like a fitness center, daycare, or coffee shop. In Newberg, all these amenities are available within a mile or two of any location in the city. The record contains no evidence that businesses would be unable to attract and retain qualified employees, or would have to pay higher salaries, if the businesses were located in an industrial district that did not have these amenities.

In addition, nothing in Newberg’s proposal requires development of a new industrial district to include “close amenities.” Therefore, even if a minimum 50-acre industrial district size were established, that would not ensure that any amenities would actually be available.

The record also contains no evidence to support a conclusion that industrial uses in new industrial areas smaller than 50 acres in size, or those not adjacent to an existing industrial or commercial area, would be less successful due to a lack of “close amenities.”

Even if it could be demonstrated that clustering industries in larger districts would result in additional “close amenities” that would increase businesses’ ability to attract and retain qualified employees, as discussed in Sub-Objection A, this would still be a Goal 14 Factor 3 (economic consequences) locational analysis consideration, not a site characteristic.

Claim: “Uses frequently include small manufacturers producing supplies or parts for other manufacturers, so close proximity is very beneficial.”

Claim: “One industry’s by-products can be used by another industry as resources.”

As noted above, Newberg’s targeted industries are diverse – they range from wineries, to engineering firms, to semiconductor fab plants, to paper factories. While some businesses could theoretically produce some supplies and parts for each other, few could survive as the supplier of just one or two other businesses, and so would serve non-local businesses as well.

Nearly all businesses are equipped to ship products farther than one or two blocks away. Even if some businesses produce parts and supplies for other Newberg businesses, the record contains no evidence that it would matter to any of them whether their client businesses were within the same industrial district.

Obviously, most of these businesses would not be shuttling parts and supplies by hand carrying them next door, or by running a forklift down the city street to the next block. Instead, the materials would be loaded on a truck. Once there, the difference between delivering to a location in the same industrial district versus across town is probably five to ten minutes. Most of the time involved in shuttling parts and supplies would be spent packing, loading, unloading, and unpacking, not driving – no matter where in Newberg the businesses were located.
The record contains no evidence that businesses would be unable to sell their supplies and parts to other Newberg businesses, or that transport would cost appreciably more, if the businesses were in new industrial areas smaller than 50 acres in size, or not adjacent to an existing industrial or commercial area.

Even if it could be demonstrated that clustering industries in larger districts would result in transportation cost savings to suppliers or business customers, as discussed in Sub-Objection 1A, this would still be a Goal 14 Factor 3 (energy and economic consequences) locational analysis consideration, not a site characteristic.

Claim: “This industry benefits from expansion opportunities on adjacent or close sites in the industrial district.”

This claim is difficult to understand, since most facility expansions require land that is directly adjacent to the current facility; land on “close sites” generally isn’t helpful. For example, forklifts cannot ferry materials down the street, and conveyors cannot cross over adjacent properties to reach the expansion site. The EOA itself acknowledges this; it states that sites should be sized in order to accommodate future expansion, because splitting a business across two sites would result in “lost production and investment.”

Most importantly, nothing in the city’s proposal ensures that a vacant expansion site will be maintained next to each business, and not filled in with other businesses. Therefore, even if a minimum 50-acre industrial district size were established, that would not ensure that expansion sites would be available in the future. Therefore, this claim is not relevant to the alleged need for 50-acre districts.

Even if it could be demonstrated that clustering industries in larger districts would result in adjacent expansion sites for businesses that need them, as discussed in Sub-Objection 1A, these would still be Goal 14 Factor 1 (Efficient accommodation of identified land needs) and Factor 3 (economic consequences) locational analysis considerations.

District Size & Adjacency to Commercial, Problem #4:

Fourth, the EOA fails to show, via an adequate factual base and findings, that there is an important relationship between commercial land adjacency and the successful operation of the neighboring industrial businesses.

The Site Study states, “Of the 25 industrial districts studied, 23 or 92%, were adjacent to a large commercial area, were over 50 acres in size, or were both.” (R.5977) This observation is essentially meaningless, in light of the fact that fully 100% of these 25 districts were adjacent to a residential area, were over 50 acres in size, or were both. (R.5980-86) In other words, it is even more common for industrial land to be adjacent to residential. Using the EOA’s logic, one could craft a site characteristic that requires a new industrial area to be either 50 acres in size, or adjoin an existing residential area.

EOA page 54: “In addition, many industries require land for long-term expansion so that they aren’t forced to move their business down the road or split their sites, resulting in lost production and investment.”
Why are so many of these industrial districts adjacent to residential and commercial land? The most likely reasons are coincidence and historical development patterns. Uses must be proximate simply due to the realities of spatial organization; there are only so many ways to lay out a city. Proximity of industrial land to other zones is an inevitable outcome, and doesn’t necessarily have a larger meaning. The record contains no evidence that industrial adjacency to commercial is any more deliberate or necessary than the even more common adjacency to residential.

A finding that a certain layout is common does not mean that layout is deliberate, or that the layout is necessary for particular industries to operate successfully. The EOA contains four rationales that supposedly justify adjacency to commercial land as a site characteristic. (R.5872) However, none establish that industrial businesses need commercial adjacency. They are individually discussed below:

Claim: “Street and utility sizes are similar for commercial and some industrial users.” As discussed in Sub-Objection 1A, infrastructure efficiency is a Goal 14 Factor 2 (orderly and economic provision of public facilities and services) locational analysis consideration, not a site characteristic. A site characteristic addressing the feasibility of adequate facilities and services and the city’s street and utility planning processes are the most effective methods to assure adequate street and utility sizing for industrial districts.

Claim: “Compatibility issues are not as great between commercial and industrial uses.” As discussed in Sub-Objection 1A, residential compatibility is a Goal 14 Factor 3 (social consequences) locational analysis consideration, not a site characteristic. Compatibility issues should be addressed directly, via appropriate placement of industrial areas and/or the use of 50-100’ wide buffer strips as described in the EOA.

Claim: “Delivery services can serve both commercial and industrial businesses for many supplies such as office equipment.” As discussed in Sub-Objection 1A, even if it could be demonstrated that clustering industries in larger districts would result in cost savings to suppliers or business customers, this would still be a Goal 14 Factor 3 (energy and economic consequences) locational analysis consideration, not a site characteristic. The record contains no evidence that businesses would be unable to get office equipment and supplies delivered, or would have to pay more, if the industrial businesses were not adjacent to a commercial district.

Claim: “Employee amenities such as a fitness center, daycare, or coffee shop, can be provided in the commercial area.” If these uses are truly necessary – which we dispute, as noted above – then Newberg’s Light Industrial zone already allows them to be sited inside the industrial area.25 There is no need for an adjacent commercial zone.

10. Bakeries, wholesale and retail.
12. Building maintenance services.
14. Car washes, coin-operated or mechanical.
17. Convenience grocery stores with a maximum of 2,000 square feet.
20. Equipment rental yards.
30. Plumbing supplies and services.
32. Printing and publishing.
33. Public and private parking areas and garages.
Even if it could be demonstrated that clustering industries in larger districts would result in additional “close amenities” that would increase businesses’ ability to attract and retain qualified employees, as discussed in Sub-Objection 1A, this would still be a Goal 14 Factor 3 (economic consequences) locational analysis consideration, not a site characteristic.

**Sub-Objection 1B Conclusion:** The EOA’s “Required Industrial Site Suitability Characteristics” require candidate industrial lands to “Adjoin an existing industrial or commercial area, or an area with sufficient buildable land [defined elsewhere as 50 acres] to allow expansion of the industrial district.” (R.5869)

As discussed in Sub-Objection 1A, the EOA, comprehensive plan amendments, and UGB amendment violate Goal 14, ORS 197.298, and OAR 660-024-0060(3), because they treat economic provision of public facilities, efficient accommodation of land needs, residential compatibility, economic efficiency, and energy efficiency as site characteristics, rendering those considerations “determinative in a UGB amendment proceeding,” and not Goal 14 location factors that are “to be considered and balanced when amending a UGB.” *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 17, 38 P3d 956 (2002).

Even if district size and commercial adjacency were valid site characteristics, the EOA, comprehensive plan amendments, and UGB amendment would still violate OAR 660-009-0015(2) and OAR 660-009-0005(11) and Goal 2, because they lack an adequate factual base and findings to support the city’s conclusion that:

1) A 50-acre or larger district size is “typical” for each of Newberg’s targeted industries.

2) There is an important relationship between a 50-acre district size and the successful operation of particular industrial uses within the district.

3) There is an important relationship between commercial land adjacency and the successful operation of particular neighboring industrial uses.

The EOA, comprehensive plan amendments, and UGB amendment also violate Goal 2 because this site characteristic creates an internal inconsistency within the EOA, when viewed alongside another adopted site characteristic: “Site contains a parcel or group of parcels in close proximity with buildable land that contains at least 20 buildable or industrially developed acres (or smaller if adjacent to existing industrial district).”

**Sub-Objection 1B Remedy:** For these reasons, the Department should remand the UGB amendment, comprehensive plan amendments, and the EOA, with instructions to delete this site

36. Repair garages.
37. Restaurants.
38. Secondhand stores.
44. Theaters, drive-ins.
45. Transit centers.
characteristic: “Adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.”

**Sub-Objection 1C: Proximity to residential**

We object to the following site characteristics regarding residential compatibility:

“Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.” (Industrial sites, *EOA* Table 12-23, R.5869)

“For community [commercial] centers, abut residential neighborhood on more than 50% of the site perimeter unless effective topographical or road buffers present or planned.” (Commercial sites, *EOA* Table 12-28, R.5897)

As discussed in Sub-Objection 1A, residential compatibility is a Goal 14 locational analysis consideration, not a site characteristic. Even if residential compatibility were an appropriate site characteristic, the *EOA*’s rationale for the 25% boundary limitation for industrial sites is flawed. And, there is no evidentiary support whatsoever for the 50% residential boundary limitation for commercial sites. The *EOA* states:

“In our review of local and regional industrial parks, two-thirds of the areas had less than 15% of their boundary with residential areas. All except two (92%) had less than 25% of their boundary with residential areas. It follows that it would be feasible to create a large buffer from residential areas on one side of an industrial development, but it would be very difficult to do that on every side without wasting a large amount of usable space. Therefore, being adjacent to a residential neighborhood on 25% of an industrial property’s boundary would be feasible, but more than that would seriously hamper the industrial use.” (R.5878-79)

This statement acknowledges that buffers can be provided between new industrial areas and existing residential. However, the *EOA* not only excludes sites that have more than 25% adjacency with residential areas unless buffers are already present; it relies solely on *Site Study* (R.5965-5995) to conclude that buffering more than 25% of a boundary would be infeasible.

First, the areas surveyed by the city’s *Site Study* are not representative of all the industrial districts in the study area. As previously discussed, we have identified 12 districts that were improperly excluded from the *Site Study* – all but three have more than 25% adjacency to residential land.

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26 The *EOA* includes information on the creation of buffers for industrial sites: “Adequate buffers may consist of vegetation, landscaped swales, roadways, and public use parks/recreation areas. Depending upon the industrial use and site topography, site buffers range from approximately 50 to 100 feet.” (R.5878)

27 See Attachment 13 to our June 2, 2011 letter, which identified 15 sites missing from the original *Site Study*. (R.6475-6505) Of these, Forest Grove-1, Forest Grove-2, and Sherwood-1 have been added to the revised March 2013 *Site Study*. All but three of the 12 excluded sites (the Canby-2, McMinnville-2, and the Woodburn-1 sites) have obvious residential adjacency that exceeds 25%.
When these 12 excluded districts are added back to the 25 districts examined by the Site Study, the results are much different: 11 of the 37 districts (about 1/3) have more than 25% unbuffered adjacency to residential.\(^{28}\) Thus, the city erred in concluding that “typical” industrial districts have less than 25% unbuffered residential adjacency.

Second, the Site Study did not find that, “All except two (92%) [industrial districts] had less than 25% of their boundary with residential areas,” as claimed by the EOA. (R5878). The Site Study only examined the amount of *unbuffered* residential adjacency, not the amount of buffered perimeter:

> “The study measured the percentage of each industrial district’s perimeter that is adjacent to residential areas without adequate buffers. Adequate buffers included arterial streets or highways, rail lines, parks, stream corridors, and natural areas.” (*Site Study*, R.5973)

In other words, if an industrial district was already buffered from adjacent residential areas, the Site Study did not count that part as having residential adjacency. For example, the Steel Tek site is considered to have less than a 25% residential boundary, even though it is surrounded on all sides by residential, because it has vegetative buffers surrounding the facility.\(^{29}\)

Third, despite the evidence in the Site Study, the EOA failed to consider the feasibility of adding buffer strips to new industrial districts. As graphically depicted below, even if 50’ buffer strips were needed on 75% of a 50-acre district, that would require only 5 acres of land, or 10% of the area.\(^{30}\) This is well within the EOA’s expectations for industrial sites,\(^{31}\) and is hardly enough to “seriously hamper the industrial use,” as claimed by the EOA.

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\(^{28}\) Two of the original sites, plus 11 of the excluded sites, had more than 25% residential adjacency.

\(^{29}\) See *Site Study* R.5983 Steel Tek site entry: “One entire lot on east side of district is a wooded buffer area from residential.”

\(^{30}\) One acre = 43,560 sq. ft. 50 acres = 2,178,000 sq. ft. = 1475’ x 1475’ district dimensions. Buffer strip = 3 x 1475’ x 50’ = 221,250 sq. ft. = 5 acres.
The *EOA* also fails to consider that Newberg’s targeted industries have differing residential compatibility challenges, and hence do not require identical buffering strategies. For example, cyber-security and architectural firms – two of the city’s targeted industries – do not generate noises and odors on a par with metals manufacturers and lumber mills. (R.5859) As with other site characteristics, the city based this characteristic on, and applied it to, overall industrial *districts* rather than the tailoring the characteristics to provide the site attributes that are necessary for particular industrial uses.

Fourth, the *EOA* fails to consider that some residential lands do not need to be buffered, due to large parcel size and distant home placement. The *EOA* wrongly treats proximity to sparsely populated 2.5-acre rural residential lots as a constraint on par with proximity to a densely populated urban area:

“For these purposes, ‘residential neighborhood’ includes land that is within urban residential comprehensive plan or zoning district, and rural residential zoned land with a 2.5 acre or smaller minimum lot size or developed predominantly with residential lots of 2.5 acres or less.” (R.5880)

In rural residential areas, there is far more separation between houses and adjacent uses than in urban areas. As shown by the below diagram, a 2.5-acre rural lot is roughly 20 times larger than a typical 1/8-acre urban lot.\(^3\)\(^2\) There is no evidence to support the conclusion that conflicts between rural residential and adjacent industrial uses will be of equal magnitude as conflicts in urban areas, or that buffering requirements would be identical.

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\(^3\) The *EOA* explains, “Some sites require buffers for noise, smell, vibration, and visual barriers. *** As a result, most industrial sites are only 40% to 60% developable for basic industrial use with remaining areas used for parking, landscaping, buffers, utilities, environmental protections, employee break areas, and security.” (R.5869)

\(^2\) One acre = 43,560 sq. ft. 2.5 acres = 108,900 sq. ft. = 330’ x 330’ dimensions. Newberg minimum lot size = 5,000 sq. ft. per Newberg Zoning Standards Matrix. 1/8 acre = 5,445 sq. ft. = 68’ x 80’ dimensions. (R.5674, 5696)
Below is a screenshot of a Google Earth aerial view of a portion of study area Site 8 (Fox Farm Road) in the Newberg-Dundee corridor north of Highway 99. (R.5674, 5806) It shows three adjacent rural residential homes, and Google’s measurement (yellow line) of 255 feet from the edge of the home to the edge of the study area. This distance is far wider than the 50-100 feet that the EOA states is adequate to create a buffer area. (R.5878) Most likely, these homes will not require any buffering from industrial uses in study area Site 8. If they do, there is ample room on either the residential lot or the industrial parcel for vegetative screening.

This example clearly illustrates why the city should not categorically exclude from consideration all potential UGB expansion areas that have more than 25% perimeter adjacency to rural residential land, without regard to the number and location of residential structures. Instead, the
city should examine each site individually, to determine whether or not there is a bona fide potential conflict. In those few cases where a conflict is found to be likely, the city can then assess whether 50-100’ buffer strip can be established.

Sub-Objection 1C Conclusion: The EOA’s “Required Industrial Site Suitability Characteristics” require candidate industrial lands to abut residential neighborhoods on less than 25% of the site perimeter unless buffers are already present. The EOA also requires candidate commercial lands to abut residential neighborhoods on less than 50% of the site perimeter, unless buffers are already present or are planned.

As discussed in Sub-Objection 1A, the EOA, comprehensive plan amendments, and UGB amendment violate Goal 14, ORS 197.298, and OAR 660-024-0060(3), because they treat residential compatibility as a site characteristic, rendering it “determinative in a UGB amendment proceeding,” and not as a Goal 14 location factor that is “to be considered and balanced when amending a UGB.” Citizens Against Irresponsible Growth v. Metro, 179 Or App 12, 17, 38 P3d 956 (2002).

Even if residential compatibility were an appropriate site characteristic, the EOA, comprehensive plan amendments, and UGB amendment would violate OAR 660-009-0015(2) and OAR 660-009-0005(11) and Goal 2, because they lack an adequate factual base and findings to support the conclusion that:

1) Unbuffered residential perimeter adjacency of 25% or less is universally “typical” for all of Newberg’s targeted industries.

2) Buffering more than 25% of an industrial site’s perimeter is universally infeasible for all of Newberg’s targeted industries, and all potential industrial sites.

3) Buffering is universally required for all of Newberg’s targeted industries.

4) Buffering is universally required for all rural residential parcels up to 2.5 acres, regardless of parcel size, shape, and home placement (or lack of home).

5) Unbuffered residential perimeter adjacency of candidate commercial lands cannot exceed 50%.

Sub-Objection 1C Remedy: For these reasons, the Department should remand the UGB amendment, comprehensive plan amendments, and the EOA, with instructions to: 1) delete the industrial site characteristic, “Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park;” and 2) delete the commercial site characteristic, “For community centers, abut residential neighborhood on more than 50% of the site perimeter unless effective topographical or road buffers present or planned.”

Sub-Objection 1D: Traffic through residential areas

We object to the following industrial site characteristic regarding residential compatibility:
“Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.” (R.5869)

As background, the arterials in Newberg today pass through and adjacent to residential areas, including arterials that serve industrial users. A good example is the A-Dec site at the north end of town. To reach the highway, industrial traffic from the A-Dec area must take a long route along minor arterials that pass through residential areas on both sides: Mountainview Drive, College Street, and Springbrook Road. There are many other examples of this situation in Newberg and surrounding cities.

The inconsistency and illogic of this site characteristic is demonstrated by the fact that the EOA does not consider truck travel on arterials that pass through residential areas to be a constraint. Apparently, truck travel on arterials that go through neighborhoods is fine. It is only the route that truck traffic takes to actually reach the arterial that is deemed a problem.

As discussed in Sub-Objection 1A, residential compatibility is a Goal 14 locational analysis consideration, not a site characteristic. Even if residential compatibility were an appropriate site characteristic, the EOA’s rationale for the requirement that truck traffic through or adjacent to a residential area must be routed entirely on a state highway or arterial street is flawed. The EOA states:

“One prominent industrial business is currently adjacent to residential development on one side, and says that they have issues with large truck traffic getting mixed in with neighborhood pedestrian, bicycle and vehicle traffic, causing visibility and safety problems. *** Having to route truck traffic through or adjacent to residential neighborhoods also can severely hamper an industrial business’s operation. As noted in the previous section, residential streets are not built to accommodate truck traffic. Residents in those areas can be bothered by the vibration, noise, and odor of the truck traffic, and demand that truck traffic be rerouted or limited to certain volumes or hours.” (R.5878-79)

The city does not explain why state highways and arterial streets are considered acceptable truck routes through residential neighborhoods, but no other streets – such as major collectors – could be acceptable. Both arterials and major collectors traverse residential areas. Major collectors are nearly as wide as arterials, and like arterials, do not provide any parking and have bikeways on both sides.

The EOA might be correct that “residential streets are not built to accommodate truck traffic,” but major collectors are not “residential streets.” Also, the record contains no evidence that explains why the adverse impacts on adjacent residential neighborhoods, or the businesses generating truck traffic, would be less with a minor arterial than it would be with a major collector. It defies logic that “vibration, noise, and odor of the truck traffic” would somehow be

33 Comparison of Newberg Transportation System Plan and Newberg Zoning Map (R.6506-07)
34 Figure 6-2 from the Newberg Transportation System Plan shows that major collectors are very similar to minor arterials; the only difference between them is the center turn lane. (R.6737)
less on a more heavily travelled minor arterial street than on a major collector that has nearly identical physical and functional characteristics.  

More importantly, the city errs in assuming that the road network is static. When considering the future development of land, the city erred by assessing travel routes to arterials and state highways based solely on the city’s current road network. The city must instead consider the access that could be provided once a new industrial area is developed. Higher capacity roadways do not presently serve surrounding rural properties, or underdeveloped parts of the city or UGB, because there is little or no development to serve.

The absence of an urban road system cannot be a reason to exclude rural properties, or underdeveloped parts of the existing city or UGB, from consideration as future urban industrial land. Road upgrades are a normal part of urbanization. For example, Zimri Drive will be upgraded to major collector status as part of the Springbrook development. (R.6508-10) However, if study area Site 20 just to the north were added to the UGB, there would be reason to designate Zimri Road an arterial. (R.5805) If that were done, then Site 20 would have direct access to an arterial without passing through a residential neighborhood, and so would meet the site characteristic.

Finally, the city erred by assuming that all businesses generate significant truck traffic. As noted above, Newberg’s targeted industries include a wide range of businesses, such as manufacturers, information technology, cyber-security firms, wineries, nurseries, architectural and engineering firms, production studios, lumber mills, specialty aircraft-related businesses, and semiconductor fab plants. (R.5859) Such disparate uses clearly generate differing amounts of truck traffic. For example, lumber mills and semiconductor fab plants generate heavy truck traffic, while cyber security and architecture firms likely do not.

**Sub-Objection 1D Conclusion:** The EOA’s “Required Industrial Site Suitability Characteristics” require candidate industrial lands to have truck access to an arterial street or state highway without passing through or adjacent to residential areas. As applied in the UGB amendment, the city looked at existing access, rather than potential access.

As discussed in Sub-Objection 1A, the EOA, comprehensive plan amendments, and UGB amendment violate Goal 14, ORS 197.298, and OAR 660-024-0060(3), because they treat residential compatibility as a site characteristic, rendering it “determinative in a UGB amendment proceeding,” and not a Goal 14 location factor that is “to be considered and balanced when amending a UGB.” *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 17, 38 P3d 956 (2002).

Even if residential compatibility were an appropriate site characteristic, the EOA, comprehensive plan amendments, and UGB amendment violate OAR 660-009-0015(2) and OAR 660-009-0005(11) and Goal 2, because they lack an adequate factual base and findings to support the conclusion that:

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35 Because this site characteristic addresses compatibility with residential neighborhoods, it is actually a Goal 14 Factor 3 (social consequences) location factor. See Sub-Objection 1A.
1) *Only* state highways and arterial roadways can be acceptable truck routes through residential neighborhoods, and not major collectors, which are physically and functionally similar to minor arterials.

2) *Only* present-day street configurations can be considered when evaluating proximity to state highways, arterials, and/or major collectors, and not the access that *could* be provided once a new industrial area is developed.

3) *All* of Newberg’s targeted industries generate significant truck traffic.

**Sub-Objection 1D Remedy:** For these reasons, the Department should remand the UGB amendment, comprehensive plan amendments, and the EOA, with instructions to delete this site characteristic: “Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.”

**Sub-Objection 1E: Access to existing streets**

We object to the following site characteristics:

“For neighborhood [commercial] centers – access to major collector or minor arterial street at a minimum” (Commercial sites, EOA Table 12-28, R.5897)

“For community [commercial] centers – access to minor or major arterial” (Commercial sites, EOA Table 12-28, R.5897)

“Include parcels or contiguous group of parcels that have suitable truck access to a state highway or arterial street within ¼ mile.” (Industrial sites, EOA Table 12-23, R.5869)

The EOA’s rationale for the ¼-mile industrial site requirement is as follows:

“Of the 25 local and regional industrial sites studied, 19 had immediate access to a major road (arterial or state highway). Only two districts had access to a major road that was further than 1/8 mile, and both of those were within ¼ mile of a major road. No districts had access more than ¼ mile away.

“It is typical for industries to need to be as close as possible to a major road for easy access; every site in the nearby communities studied was within ¼ mile. Adequate access has a meaningful connection to industry because most businesses rely on being able to receive supplies and ship goods readily and easily. It is harmful to the business, to surrounding uses, and to the safety of pedestrian, bicycle, and neighborhood traffic to have large trucks regularly traveling through neighborhoods that are not built to handle large truck traffic.” (R.5877)

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36 To the extent that this site characteristic addresses compatibility with surrounding uses, it is actually a Goal 14 Factor 3 (social consequences) location factor. See Sub-Objection 1A.
We agree with the city’s statement: “Adequate access has a meaningful connection to industry because most businesses rely on being able to receive supplies and ship goods readily and easily.” However, per the Court of Appeals, “‘necessary’ site characteristics are those attributes that are reasonably necessary to the successful operation of particular industrial or employment uses.” (Emphasis added) Friends of Yamhill County v. City of Newberg, 240 Or App at 747. The city’s ¼-mile standard is overly prescriptive; there is no set distance required to ensure “adequate access” for all of Newberg’s targeted industries. As noted above, Newberg’s targeted industries include a wide range of businesses; the city erred in concluding that all businesses have the same access needs.

Also, the EOA wrongly implies that every industrial site the city studied was within ¼ mile of an arterial or state highway. In fact, the Site Study did not consider individual sites; it looked only at the road’s distance from an outer border of the much larger industrial districts. (R.5877, 5974) Since some districts are well more than ¼ mile wide,37 the actual distance from an industrial site at the edge of a district may be ½ mile or more. Thus, the city erred in its conclusion that the industrial sites it studied are typically within ¼ mile of an arterial or state highway.

In addition, the city has not explained why only state highways and arterial roadways should be considered acceptable truck routes. As previously discussed, major collector streets are also built to handle truck traffic.

Regardless of the merits of the city’s claims about the need for arterial or state highway access within ¼ mile, those claims are moot because the city made a fatal error by assuming its road network is static. As discussed in Sub-Objection 1D, when considering the future development of land, proximity to appropriate access cannot be based on the city’s current road network. Instead, one must consider the access that could be provided once a new industrial area is developed. This is true for land within the city limits, where roads can be upgraded, it is true for urbanizable land in the UGB where the urban road network has not yet been planned or constructed, and it is true of land outside the UGB, where urban infrastructure will be planned and constructed once the land is urbanized.

**Sub-Objection 1E Conclusion:** The EOA’s “Required Industrial Site Suitability Characteristics” require candidate industrial lands to have truck access to a state highway or arterial street within 1/4 mile. The EOA’s “Required Commercial Site Suitability Characteristics” require candidate commercial lands to have access to major collectors or arterial streets. As applied in the UGB amendment, the city looked at existing access, rather than potential access.

The EOA, comprehensive plan amendments, and UGB amendment violate OAR 660-009-0015(2) and OAR 660-009-0005(11) and Goal 2, because they lack an adequate factual base and findings to support the conclusion that:

1) Location within ¼ mile of an arterial or state highway is universally “typical” for all of Newberg’s targeted industries.

37 A ¼-mile square contains 40 acres; most industrial districts considered by the Site Study are larger than that.
2) Only state highways and arterial roadways can be acceptable truck routes, and not major collectors, which are physically and functionally similar to minor arterials.

3) Only present-day street configurations can be considered when evaluating proximity to state highways, arterials, and/or major collectors, and not the access that could be provided once a new industrial or commercial area is developed.

**Sub-Objection 1E Remedy:** For these reasons, the Department should remand the UGB amendment, comprehensive plan amendments, and the EOA, with instructions to modify the industrial site characteristic, “Include parcels or contiguous group of parcels that have suitable truck access to a state highway or arterial street within 1/4 mile” to reflect that: 1) not all businesses require the same level of truck access, 2) the feasibility of providing adequate future transportation facilities must be directly assessed – the existing road network is not determinative, and 3) major collectors are also an acceptable conveyance for truck traffic to reach arterials.

Also, the commercial site characteristics, “For neighborhood centers – access to major collector or minor arterial street at a minimum” and “For community centers – access to minor or major arterial” should be modified to reflect that the feasibility of providing adequate future transportation facilities must be directly assessed – the existing road network is not determinative.

**Sub-Objection 1F: Slopes between 5% and 10%**

The EOA contains two industrial site characteristics related to slope:

“Exclude:
- Slopes of 10% or greater
- Sites\(^{38}\) that are not predominantly less than 5% slope within buildable areas”
(R.5869)

We do not object to the first criterion: the exclusion of land over 10% slope. The Department of Land Conservation’s *Goal 9 Guidebook* identifies slopes over 10% as a physical constraint for industrial use.

However, we do object to the second criterion, which deems unsuitable all land within entire study areas – which are often hundreds of acres in size – “that are not predominantly less than 5% slope within buildable areas,” even if the study area contains significant blocks of buildable land.

The EOA’s reasons for these two slope criteria are:

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\(^{38}\) For purposes of this site characteristic, the city misinterprets the word “site” to mean the UGB alternatives analysis study areas, not individual building sites. For example, the *Findings* exclude the entire study area Site 20 – which is hundreds of acres in size – because more than half of the overall study area is over 5% slope: “Site 20 is the North Hills URA. This site is predominantly over 5% slope, and has many areas >10% slope. Thus, Site 20 does not meet the topography criteria.” (Rec. 5741)
“All of the 25 local and regional industrial districts studied were predominantly less than 5% slope, and all had our targeted industries represented in them. Therefore, a slope of less than 5% is typical for industrial uses, and slopes over 10% are not considered buildable industrial land.” (R.5875)

This combination of criteria is illogical, because it deems candidate lands with 5-10% slopes acceptable, so long as those lands are part of a larger study area that is “predominantly less than 5% slope within buildable areas” – but would reject those same lands if the study area boundary were simply drawn differently, so that at least half the buildable land in the overall study area had greater than 5% slope.

The city’s study areas are arbitrarily drawn, and some are hundreds of acres in size. (R.5804) While some large study areas are “predominantly” over 5% slope, they have substantial portions that are less than 5% slope and should not be excluded merely because the suitable lands were placed into study areas with steeper lands.39 The record contains no evidence that links the characteristics of the larger study areas to the characteristics of smaller, buildable portions of those areas, or to the operational needs of the particular employment uses that could locate therein.

It is also illogical, and internally inconsistent, to penalize lands that are 5-10% slope, when the EOA considers that slope range to be buildable. Implicit in the EOA’s assertion that “slopes over 10% are not considered buildable industrial land” is an acknowledgment that slopes under 10% are buildable industrial land. And in fact, the EOA does not argue that that slopes of 5-10% are not buildable; rather, the argument is that slopes over 5% are not “typical.”

However, the reason the Site Study found that “typical” industrial land is less than 5% slope is that all areas it included were, like most of the Willamette Valley floor, fairly flat. In areas that do not have any sloped land, all industrial districts will be flat by default, whether or not the resident businesses needed that characteristic to operate successfully. The results of the Site Survey therefore cannot establish the slope needs of particular industries.

The EOA acknowledges that some businesses can use sites that are steeper that 5%, and may even prefer them: “If a community is located in a hilly region it is still possible to find an acceptable site by laying out a plan that locates the firm on a plateau or terraced section of a hill. This could be very attractive, particularly if the community takes into consideration easy access and high visibility potentials.” (R.5874)

**Sub-Objection 1F Conclusion:** The EOA’s “Required Industrial Site Suitability Characteristics” require candidate industrial lands to be part of a study area that is “predominantly less than 5% slope within buildable areas.”

The EOA, comprehensive plan amendments, and UGB amendment violate Goal 2 because this site characteristic – which excludes land from 5-10% slope – creates an internal inconsistency

39 An example of this is Site 20: North Hills URA. (R.5804) This is a very large study area that is over a mile long and a half-mile wide, and that contains hundreds of acres. It is primarily sloped, but contains a block of flat farmland along Zimri Drive, a major collector. This portion of the study area contains suitable, buildable industrial land, but it was excluded from consideration because the majority of the much larger overall study area exceeded 5% slope. (R.6733) Another example is Site 1 on North Valley Road.
within the EOA, when viewed alongside another established site characteristic: “Exclude slopes of 10% or greater.” Implicit in the EOA’s assertion that “slopes over 10% are not considered buildable industrial land” is an acknowledgment that slopes under 10% are buildable industrial land.

The EOA, comprehensive plan amendments, and UGB amendment also violate OAR 660-009-0015(2), OAR 660-009-0005(11) and Goal 2, because they lack an adequate factual base and findings to support the conclusion that:

1) Slopes of 5% or less are universally “typical” for all of Newberg’s targeted industries.

2) There is any meaningful relationship between the slope characteristics of the city’s arbitrarily chosen study areas and the characteristics of the smaller, buildable portions of those areas, or the operational needs of individual businesses that could locate therein.

Sub-Objection 1F Remedy: For these reasons, the Department should remand the UGB amendment, comprehensive plan amendments, and the EOA, with instructions to delete this site characteristic: “Exclude sites that are not predominantly less than 5% slope within buildable areas.”

OBJECTION 2: SITE SIZES

The city’s EOA, comprehensive plan amendments, and UGB amendment violate OAR 660-009-0015(2), Goal 14, OAR 660-024-0050(4), and Goal 2, adequate factual base, because the sizes of sites claimed to be needed to accommodate expected employment growth are not supported by evidence or findings, and are contrary to factual information in the record.

Newberg has based its industrial land needs on inflated site sizes that are unsupported by evidence in the record, resulting in an overly large UGB expansion. This both undermines the efficient use of urban infrastructure and unnecessarily reduces the land base that supports the vital agricultural sector of Oregon’s economy.

The EOA projects industrial land need through 2030 by estimating the number of firms in each of three size-of-workforce categories, then assigning an average site size to each category. It also assigns job growth to either infill and redevelopment sites, or to new sites. It is reproduced below.
This table assumes that businesses with 0-9 employees need sites that average one acre in size, businesses with 10-74 employees need sites that average five acres, and businesses with 75 or more employees need sites that average 20 and 40 acres. The city’s decision does not adequately support or explain these arbitrary assumptions. Instead, substantial evidence in the record and in the EOA itself supports smaller site sizes.

For example, the EOA assigns 273 employees to the 0-9 employee category, in 46 firms, for an average of 6 employees per firm. This average 6-employee firm is assumed to require a 1-acre site. The EOA does not explain why a 1-acre average site size was chosen, instead of some other size, such as 0.5 acres or 1.5 acres.

Similarly, the EOA assigns 729 employees to the 10-74 employee category, in 21 firms, for an average of 35 employees per firm. This average 35-employee firm is deemed to require a 5-acre site. The EOA does not explain why a 5-acre average site size was chosen, instead of, for example, 3 acres or 8 acres.

Finally, the EOA predicts that four firms with more than 75 employees will locate in Newberg. Between them, these four firms are expected to have 820 employees. The EOA asserts that an infill/redevelopment site (Suntron, R.5862), two 20-acre sites, and one 40-acre site will be needed to accommodate these 820 jobs. The EOA does not explain why two new 20-acre sites and a new 40-acre site were determined to be “needed,” instead of some other combination, such as two 10-acre sites and a 50-acre site, or three 30-acre sites.

These “needed” site sizes in the EOA are not only unexplained, they also make it more difficult to meet the need within the existing UGB.

Instead of explaining how the average site size assumptions were derived, the EOA points to the following table, which lists “site size ranges” for different industries.
The extreme variation in the various ranges renders Table 12-21 useless for determining Newberg’s actual land needs. For example, “Sustainable Industries” may need a site anywhere from 5 acres to 200 acres in size. Food processing ranges from 1 acre to 150 acres. Biotech ranges from 5 acres to 60 acres. Airport-related businesses need anywhere from 1 acre to 70 acres. The table and accompanying text provide no guidance on how to select a site size from within the given range.

The *EOA* suggests that if a proposed site size falls within the table’s wide size range, that is enough to demonstrate that the proposed size is a needed site characteristic:

“Site size ranges were verified against OBDD data relating to real firms seeking sites in Oregon, in the targeted industry clusters. Industry clusters containing firms that could potentially require large sites – 10-30 acres or 30-50 acres in size – are identified by the Potential Large Site Category columns. Thirteen industry

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**Table 12-21: Site Size Ranges by Targeted Industrial Cluster and Sector**

<table>
<thead>
<tr>
<th>Industry Cluster</th>
<th>Uses</th>
<th>ECO/WB* (Acres)</th>
<th>OBDD** (Acres)</th>
<th>Newberg Examples (Acres)</th>
<th>Potential Large Site Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Tech Manufacturing</td>
<td>Electronics, Other</td>
<td>10 - 30</td>
<td>10 - 60</td>
<td>6 - 55</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Health, Nano/Micro Tech, Cyber Security</td>
<td>5 - 20</td>
<td></td>
<td>6 - 55</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Bio-Tech/Bioscience/Pharmaceuticals, Health Services</td>
<td>5 - 40</td>
<td>2 - 60</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>General Manufacturing</td>
<td>Dental Equipment</td>
<td>5 - 40</td>
<td></td>
<td>2 - 55</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Fabricated Metals, Plastics</td>
<td>10 - 20</td>
<td>10 - 20</td>
<td>3 - 7</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Transportation Equipment</td>
<td>10 - 30</td>
<td>10</td>
<td>1</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Industrial Machinery</td>
<td>10 - 20</td>
<td>10</td>
<td>3 - 6</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Lumber and Wood Products (Value Added)</td>
<td>1 - 10</td>
<td>10</td>
<td>243</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Sustainable Industries</td>
<td>5 - 25</td>
<td>25 - 200</td>
<td>1 - 7</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Distribution and Logistics</td>
<td>5 - 60</td>
<td>30 - 60</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Sports and Recreational Campus</td>
<td>10 - 50</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Airport Related Industrial</td>
<td>Specialty Aircraft Equipment, Aircraft Repair, Machine Shops, Small Entrepreneur Business</td>
<td>1 - 70</td>
<td>70</td>
<td>1 - 3</td>
<td>X</td>
</tr>
<tr>
<td>Agriculture</td>
<td>Winery</td>
<td>1 - 10</td>
<td>10 - 150</td>
<td>5</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Specialty Foods and Food Processing</td>
<td>1 - 10</td>
<td>10 - 150</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Nursery and Ag Products (Value Added)</td>
<td>1 - 10</td>
<td>10</td>
<td>2 - 13</td>
<td>X</td>
</tr>
<tr>
<td>Services</td>
<td>Professional Services</td>
<td>1 - 5</td>
<td></td>
<td>1 - 2</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Creative Services, Printing, Publishing</td>
<td>1 - 10</td>
<td></td>
<td>1 - 2</td>
<td>X</td>
</tr>
</tbody>
</table>

*ECO/WB: EcoNorthwest and Winterbrook Planning  
**Outside Investment Prospects, OECDD (OBDD), Oct 2008  
R.5864
clusters include firms that could potentially require 10-30 acre sites, and nine include firms that could potentially require 30-50 acre sites.

“OBDD reviewed the site size ranges by targeted industry cluster in Table 12-21 and supports the estimated site sizes and ranges as viable and marketable for Newberg’s targeted industries.” (R.5863)

Significantly, OBDD did not make a determination that the proposed specific average site sizes were necessary for the types and sizes of firms that are actually expected. Instead, OBDD made a general determination that the size ranges are “viable and marketable for Newberg’s targeted industries.”

OAR 660-009-0015(2) requires the EOA to “identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses.” Goal 14 requires the UGB to based upon demonstrated need. Thus, the question is not whether a given site size is “viable and marketable,” but whether it is “needed.” Newberg did not address the law’s requirement.

LUBA has already rejected Newberg’s market-based approach to site sizing in *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010). LUBA held:

“** the city’s apparent belief that it can select site characteristics solely to give it sites that will have competitive advantages gives no meaning to the OAR 660-009-0005(11) requirement that a site characteristic must be an ‘attribute’ that is ‘necessary’ for the desired industrial use to ‘operate.’” (R.2006)

The present EOA’s basis for site sizing has not changed since the remand; it is still based on the same size ranges found in Table 12-21 and nearly identical accompanying text. LUBA has already rejected this information as inadequate:

“[The city] cites to general testimony that Newberg lacks sites with sufficient size and suitable characteristics to attract the kinds of industry the city wants to attract. But that evidence falls substantially short of demonstrating that the site characteristics set out above are ‘typical’ of the industries the city wishes to attract *** it seems likely that a minimum parcel size of some sort and some minimal access to arterials or other transportation facilities is also typical. But the city does not identify anything that supports a conclusion that 5 acres is a typical attribute or that industries typically require that arterials be no more than 1/8 mile away.” (R.2009)

Furthermore, the scant evidence in the record that could help determine appropriate site size needs actually undermines the city’s conclusions. As discussed above, the city’s decision assumes that one acre of land can accommodate 6-7 employees. However, the EOA itself suggests that Newberg expects its employment capacity to be substantially higher; it cites three

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40 For example, Table 12-20 (R.5863) states that a 6-employee firm requires a 1-acre site, and a 35-employee firm requires a 5-acre site.
manufacturing businesses that “employ slightly over 1,000 people on 67 acres of industrial land” and assumes that Newberg will have “similar success” in the future:

“Newberg has an excellent example of a high tech traded-sector manufacturing cluster – three large firms in the dental industry. A-Dec, A.R.E. Manufacturing, and Dental Components Inc. employ slightly over 1,000 people on 67 acres of industrial land. It is not unreasonable for Newberg to assume similar success with another targeted-industry cluster. As such, 10-30 and 30-50 acre sites should be included to provide the City with this opportunity.” (R.5865)

The EOA also assumes that all businesses larger than 75 employees – which collectively will employ 820 people – require sites larger than 10 acres, and that most will require sites in the 20-40 acre range. However, these site sizes are much larger than those used by the majority of Newberg’s current large industrial employers:

<table>
<thead>
<tr>
<th>COMPANY</th>
<th>EMPLOYEES</th>
<th>ACRES</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-Dec</td>
<td>952</td>
<td>44</td>
</tr>
<tr>
<td>Suntron</td>
<td>220</td>
<td>12</td>
</tr>
<tr>
<td>Climax Portable</td>
<td>131</td>
<td>2.7</td>
</tr>
<tr>
<td>Marus Dental</td>
<td>100</td>
<td>2</td>
</tr>
</tbody>
</table>

A-Dec, Suntron, Climax, and Marus are examples of industries that Newberg has targeted and for which it proposes to provide large sites: dental equipment, machinery, and high-tech. The employment capacity of these sites is 18-50 employees per acre. The EOA does not explain why all future large employers will instead need sites of at least 20-40 acres each, when Newberg’s existing businesses in the same employee size range, and of the same type, locate on 2-12 acre sites.

According to OAR 660-009-0015(2), the employment capacity of existing Newberg industrial sites is important and relevant information: “Cities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that may be needed for expansion.” Such an examination indicates that the city substantially underestimates the employment capacity of existing and future industrial lands, and as a result has inflated its needed site sizes.

**Conclusion:** OAR 660-009-0015(2) requires the EOA to estimate “the number of sites by type reasonably expected to be needed to accommodate the expected employment growth.” Goal 14 and OAR 660-024-0050(4) require the UGB to be based upon demonstrated need, and a showing that “estimated needs cannot reasonably be accommodated on land already inside the UGB.” Goal 2 requires the city’s decision to have an adequate factual base.

Because the site sizes the city claims are needed to accommodate expected employment growth are not supported by evidence or findings, and instead are contrary to factual information in the

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41 See the 2009 EOA’s Table 12-10 (R.6307) and Attachment 6 to our testimony dated June, 2, 2011: *Existing Newberg Targeted Industries Over 75 Employees* (R.6454-62)

42 See EOA Table 12-22. (R.5865)
record demonstrating that smaller sites would be adequate, the city’s decision violates these provisions of law.

**Remedy:** For these reasons, the Department should remand the UGB amendment, comprehensive plan amendments, and the EOA, with instructions to reevaluate the industrial site size needs. The city should determine the site sizes that are “reasonably expected to be needed to accommodate the expected employment growth” based on factual information about the employment capacity of Newberg’s existing industrial lands and the future capacity needs of its targeted industries.

**OBJECTION 3: BUILT SPACE CAPACITY**

The city’s EOA, comprehensive plan amendments, and UGB amendment violate OAR 660-009-0015(2), Goal 14, OAR 660-024-0050(4), and Goal 2 (adequate factual base), because the employment capacity of existing built industrial space was not adequately considered when determining the number of sites needed to accommodate expected employment growth.

According to OAR 660-009-0015(2), “The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses.”

In addition, OAR 660-024-0050(4) requires that “Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB.” Compact urban form is a cornerstone of Oregon’s land use planning program. It ensures efficient use of urban infrastructure while also preserving the resource lands that enable Oregon’s agriculture and forest industries.

To comply with these requirements, and to effectively meet the city’s employment capacity needs, the city must make a reasonable, fact-based determination of how much capacity the existing UGB has to accommodate Newberg’s expected employment growth. Existing employment capacity is not limited to vacant, redevelopable and infill sites where new structures can be built; it also includes the capacity of vacant or underutilized existing built space.

In normal economic times, new industrial space is created in response to increased demand, and vacant and underutilized built space is minimal. With the recent recession, however, large numbers of Newberg’s industrial jobs were rapidly shed, and have not yet been regained.

The built space those employees occupied is still there, waiting to be refilled. This capacity, which far exceeds normal vacancy rates, reduces the need for additional industrial sites. This capacity is also fully serviced with infrastructure – making it far more economical to the city and its taxpayers than adding new land that lacks any roads, sewers, water, and other necessary urban services. However, the EOA has not adequately considered this built space capacity when making the OAR 660-009-0015(2) site needs determination.

The below table shows that from 2007 to 2010, Newberg shed 552 industrial jobs – almost 20% of the city’s industrial job base:
<table>
<thead>
<tr>
<th>NEWBERG INDUSTRIAL SECTORS</th>
<th>Percent Industrial Use(^{43})</th>
<th>2007 Total Jobs(^{44})</th>
<th>2007 Industrial Jobs</th>
<th>2010 Total Jobs(^{45})</th>
<th>2010 Industrial Jobs</th>
<th>Industrial Job Change 2007-2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>30%</td>
<td>773</td>
<td>232</td>
<td>387</td>
<td>116</td>
<td>(116)</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>91%</td>
<td>2608</td>
<td>2373</td>
<td>1,164</td>
<td>1,969</td>
<td>(404)</td>
</tr>
<tr>
<td>Wholesale</td>
<td>82%</td>
<td>103</td>
<td>84</td>
<td>115</td>
<td>94</td>
<td>10</td>
</tr>
<tr>
<td>TWU</td>
<td>82%</td>
<td>178</td>
<td>146</td>
<td>119</td>
<td>98</td>
<td>(48)</td>
</tr>
<tr>
<td>Information</td>
<td>40%</td>
<td>57</td>
<td>23</td>
<td>51</td>
<td>20</td>
<td>(2)</td>
</tr>
<tr>
<td>Prof. &amp; Bus. Services</td>
<td>14%</td>
<td>430</td>
<td>60</td>
<td>370</td>
<td>52</td>
<td>(8)</td>
</tr>
<tr>
<td>Other Services</td>
<td>40%</td>
<td>397</td>
<td>159</td>
<td>439</td>
<td>176</td>
<td>17</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
<td><strong>3,077</strong></td>
<td><strong>2,525</strong></td>
<td></td>
<td></td>
<td><strong>(552)</strong></td>
</tr>
</tbody>
</table>

Of these 552 lost jobs, 190 were due to Suntron’s closure in 2009. (R.6606) That means that an additional 362 industrial jobs were lost on other sites. Most of those jobs were shed broadly across many different employers, and are not due to isolated closures. Between A-Dec, SP Newprint, Harris Thermal Transfer, PPM Technologies and A.R.E. Manufacturing, 161 industrial jobs were shed in the 2009-2010 period alone.\(^{46}\)

It seems likely that most of these employers are still in business, albeit at reduced staffing levels. Therefore, much of Newberg’s expected job growth can be accommodated in existing buildings, and should be so accommodated to make economically efficient use of scarce city resources for infrastructure.

The *EOA*\(^{47}\) projects 20-year industrial employment growth of 1,822 jobs. Since Newberg has a demonstrated refill capacity of at least 362 jobs, plus the Suntron building, it is evident that many of these 1,822 expected new jobs will not require construction of new industrial space. However, the *EOA* allocates *all* of Newberg’s projected industrial job growth to 71 *new* firms located on vacant, redevelopable or infill sites:

\(^{43}\) *EOA* Table 12-19 (R.5862)

\(^{44}\) January 2010 *EOA*, Table 12-10 (R.1111)

\(^{45}\) *EOA* Table 12-9 (R.5839)

\(^{46}\) Table 12-11 of the January 2010 *EOA* lists the employment of Newberg’s major employers as of 2009. (R.1112) Comparing this to Table 12-10 of the current *EOA*, which contains the same data set for 2010, it is evident that many of Newberg’s major manufacturers lost substantial employment between 2009 and 2010. (R.5840) From 2009 to 2010, A-Dec went from 978 to 952 employees. SP Newprint: 324 to 265. Harris Thermal: 73 to 68. PPM Technologies: 109 to 54. A.R.E. Manufacturing: 51 to 35.

\(^{47}\) Table 12-19. (R.5862)
The EOA explains some of the assumptions:

“The table also includes assumptions that most (55%) of Newberg’s future industrial employment will be located on sites 10 acres or less, and that one-third of those future new industrial firms 2-10 acres in size, and one-half of firms under 2 acres in size, will find a site through infill, redevelopment or intensification of existing employment land uses. The table also assumes that for sites over 10 acres, one currently unoccupied site (Suntron) will be reoccupied, and that some infill will occur within existing larger sites.” (emphasis added, R.5862)

Thus, the EOA assumes that 100% of Newberg’s future industrial jobs will be provided by 71 “new industrial firms,” each of which needs a site, and that none of these jobs are expected to be filled via re-hiring at existing businesses (which would not require a separate site or any new built space). This is not reasonable.

The employment capacity of the vacant Suntron building is included as an “infill and redevelopment” site for firms with 75+ employees. The inclusion of Suntron as an available site in the EOA accounts for a portion of the 552 lost industrial jobs documented above, but the built space that housed the other 362 lost jobs must be accounted for.

Many of the lost jobs will likely be accommodated in the same places that shed them, when the existing industrial companies re-hire laid-off employees. Not all of those jobs will need one of the 71 sites listed in Table 12-20; the workers will simply reoccupy built space at existing companies.

Given the demonstrated refill potential at existing Newberg businesses, the EOA’s assumption that 100% of all new industrial jobs will be provided by “new industrial firms” needing a vacant, infill, or redevelopment site is not reasonable. The EOA overestimated the number of sites needed to accommodate the expected new industrial jobs.

**Conclusion:** OAR 660-009-0015(2) requires the EOA to estimate “the number of sites by type reasonably expected to be needed to accommodate the expected employment growth.” Goal 14 and OAR 660-024-0050(4) require the UGB to be based upon demonstrated need, and a showing
that “estimated needs cannot reasonably be accommodated on land already inside the UGB.”

Goal 2 requires that the UGB amendment, the comprehensive plan amendments, and the EOA have an adequate factual base.

Because the city’s submittal fails to adequately consider the employment capacity of existing built industrial space when determining the number of sites needed to accommodate expected employment growth, its decision violates these provisions of law.

**Remedy:** For these reasons, the Department should remand the UGB amendment, comprehensive plan amendments, and the EOA, with instructions to estimate the number of jobs that could be accommodated by existing built space employment capacity, and then subtract that from the number of new industrial jobs that will need a vacant, infill, or redevelopment site.

**OBJECTION 4: INVENTORY OF EMPLOYMENT LAND:**

The EOA, comprehensive plan amendments, and UGB amendment fail to comply with OAR 660-009-0015(3), Goal 14, OAR 660-024-0050(1) and (4), and Goal 2, because: 1) they lack the required inventory of suitable vacant and developed land, 2) they instead rely on incomplete and erroneous summary tables and maps that lack an adequate factual base, 3) they are internally inconsistent, and 4) they fail to consider the capacity of all buildable commercial land.

**Failure to prepare a legally compliant employment land inventory**

An accurate assessment of employment capacity within the existing UGB is essential to a properly-sized boundary, and, in turn, to ensuring both an adequate supply of urban employment land and an adequate land base to support our farm and forest industries. This assessment begins with an accurate employment land inventory.

660-009-0015(3) requires (emphasis added):

> Inventory of Industrial and Other Employment Lands. Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed\(^{48}\) lands within the planning area designated for industrial or other employment use.

(a) For sites inventoried under this section, plans must provide the following information:

(A) The description, including site characteristics, of vacant or developed sites within each plan or zoning district;
(B) A description of any development constraints or infrastructure needs that affect the buildable area of sites in the inventory; and

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48 ‘Vacant” and “developed” are further defined in OAR 660-009-0005. "Developed Land" means non-vacant land that is likely to be redeveloped during the planning period. Therefore, for purposes of Goal 9, “developed land” actually means land that, although already developed to some extent, has additional development capacity. “Developed land” can include sites that are partially vacant, as well as sites that are fully developed with structures, but are deemed likely to redevelop due to age or other factors.
(C) For cities and counties within a Metropolitan Planning Organization, the inventory must also include the approximate total acreage and percentage of sites within each plan or zoning district that comprise the short-term supply of land.

(b) When comparing current land supply to the projected demand, cities and counties may inventory contiguous lots or parcels together that are within a discrete plan or zoning district.

(c) Cities and counties that adopt objectives or policies providing for prime industrial land pursuant to OAR 660-009-0020(6) and 660-009-0025(8) must identify and inventory any vacant or developed prime industrial land according to section (3)(a) of this rule.

In 2009, the City of Newberg prepared a Buildable Lands Inventory that was subsequently remanded by LUBA. In *Friends Of Yamhill County V. City Of Newberg*, 62 Or LUBA 211 (2010). LUBA concluded: “there is not an adequate factual base in the record to support the city’s exclusion of land from the inventory….”

The *UGB Justification Report and Findings* (Findings) adopted by the city state for industrial land, “The comprehensive plan inventory of buildable industrial land was updated in 2012, consistent with the requirement in OAR 660-009-0015(3) for an inventory of industrial and other employment land.” (R.5724). For commercial land, the city does not assert that it has updated its inventory since the remand. And the *EOA* ignores completely other employment land (institutional, residential-professional).

Contrary to the city’s finding, the city has not adopted a legally-compliant inventory of employment land nor does the record of this proceeding contain a “comprehensive plan inventory of buildable industrial land *** updated in 2012, consistent with the requirement in OAR 660-009-0015(3).”

In testimony to Yamhill County, the city pointed to what it considers its inventory of employment land- the summary tables and maps labeled “Buildable Industrial Land, Newberg UGB, 2012” (R.5890-91) and “Buildable Commercial Land, Newberg UGB, 2010” (R.5900, 5902).

These summaries are the only indication in the record of what the city considers to be its supply of vacant and developed employment land. They are not an adequate substitute for an accurate, verifiable, legally compliant inventory of employment lands.

Neither Newberg’s decision nor its comprehensive plan explain the assumptions the city used in preparing the summary maps and tables it now calls an employment lands inventory. While the city states the assumptions it used for industrial land, no explanation whatsoever is provided for

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49 R.6345
50 R.6004
51 At a minimum, an adequate inventory would identify buildable parcels and the amount of vacant and/or redevelopable land each one contains, and identification of any development constraints or infrastructure needs that affect the buildable area of sites.
other employment land, including commercial land. Instead, the city apparently extrapolated the remanded inventory based on assumptions not contained in the comprehensive plan.

Extrapolation of a buildable lands inventory based on assumptions not contained in the comprehensive plan is not compatible with the Goal 2, *Lengkeek v. City of Tangent*, 52 Or LUBA 509 (2006). It does not comply with the Goal 2 requirement that decisions have an adequate factual base and be based on the comprehensive plan.

Moreover, Newberg has not described site characteristics of vacant or developed sites, as required by OAR 660-009-0015(3)(a)(A). Nor has it described any development constraints or infrastructure needs that affect the buildable area of sites in the inventory, as required by OAR 660-009-0015(3)(a)(B). Without a comprehensive inventory that includes this required information, it is impossible to accurately assess the capacity within the existing UGB to accommodate 20-year industrial needs, as required by OAR 660-024-0050(1).

*Failure to account for all land shown in summary tables and maps*

Newberg has not even accurately used the information in the *EOA’s* incomplete summary maps and tables. For example, in 2012, we pointed out that the map of vacant industrial land in the city’s *EOA* and *Findings* omitted a vacant, 4-acre industrial parcel in the western portion of the Springbrook Employment area. The city now includes the parcel on its map of buildable industrial land and in the acreage total in the table but it has, without explanation, failed to add it as a buildable site.52

*Commercial land missing from summary tables and maps*

Had Newberg conducted an accurate, verifiable, legally compliant inventory of employment lands, that inventory would show a surplus of commercial land. Some of this surplus could potentially be rezoned to accommodate industrial employment. Instead, the *EOA* asserts a deficit of commercial land, even though the city has not updated its inventory of commercial land.

In local testimony, we identified extensive additional vacant employment land that does not appear on the city’s summary maps. This includes at least 20 acres of vacant commercial land in the Springbrook Village area where retail, offices, restaurants, wineries and other commercial uses are permitted, and an additional 5-10 acres of vacant commercial land north of the Allison Hotel. An excerpt of our local testimony is reproduced below:

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52 Comparing Table 12-1 and Figure 12-6 from the draft February 2012 *EOA* (R.4318-19) to Table 12-1 and Figure 12-11 from the adopted May 2013 *EOA* (R.5890-91) illustrates this problem. This error results in the unnecessary inclusion of an additional site in the UGB expansion. It also is an internal inconsistency in the *EOA*. 
The un-inventoried commercial land is outlined in red and is less than 1/4 mile from an existing arterial. It could be rezoned, in whole or in part, to accommodate industrial use. Alternatively, surplus commercial land elsewhere, such as Portland Road or Elliot Road, could be redesignated for industrial use. Newberg is required to consider such re-zonings to meet its industrial land needs.

53 Its current zoning already allows wineries, one of Newberg’s targeted industries.
shortage, per OAR 660-024-0050(4): “Prior to expanding the UGB, a local government must
demonstrate that the estimated needs cannot reasonably be accommodated on land already inside
the UGB.”

**Conclusion:** Goal 9 and its implementing rules require that the *EOA* and comprehensive plan
include an inventory of vacant and developed employment land conducted in accordance with
OAR 660-009-0015. OAR 660-024-0050(1) requires that a local government that evaluates or
amends a UGB conduct an inventory of vacant and developed employment land in accordance
with OAR 660-009-0015, and use that inventory “to determine whether there is adequate
development capacity to accommodate 20-year needs.” Goal 14 requires that the UGB be based
upon demonstrated need. Goal 2 requires that the UGB amendment, the comprehensive plan
amendments, and the *EOA* have an adequate factual base.

Because the city’s submittal lacks the required employment land inventory, and instead relies on
incomplete and erroneous summary tables and maps that are internally inconsistent, and that
omit the capacity of all buildable commercial land, its decision violates these provisions of law.

**Remedy:** For these reasons, the Department should remand the UGB amendment, the *EOA*, and
the comprehensive plan amendments with instructions to conduct an accurate, verifiable, legally
compliant inventory of employment lands in accordance with OAR 660-009-0015, and apply the
conclusions to the city’s OAR 660-024-0050 land need determination.

**OBJECTION 5: ACCOMODATION OF LAND NEEDS**

The UGB and comprehensive plan amendments violate Goal 14, ORS 197.298, OAR 660-
024-0050(4), OAR 660-024-0060(1), and Goal 2, because they lack an adequate factual base
and findings to support a conclusion that a UGB expansion onto prime farmland was
necessary; the city failed to demonstrate that land within the UGB and/or higher priority
sites outside the UGB could not meet the identified land needs.

Under Goal 14 and OAR 660-024-0050(4), prior to expanding an urban growth boundary, a local
government must demonstrate that needs cannot reasonably be accommodated on land already
inside the UGB.

Under ORS 197.298 and OAR 660-024-0060(1), the highest priority land for inclusion in an
expanded UGB is land that is designated urban reserve land. The next highest priority is land
adjacent to an urban growth boundary that is an exception area. Lowest priority is land
designated in an acknowledged comprehensive plan for agriculture or forestry, and within this
lowest priority category, higher priority shall be given to land of lower capability soils. Lower
priority lands can only be included in the UGB if identified land needs cannot reasonably be
accommodated on higher priority lands.

This prioritization reflects sound land use and economic policy – it focuses growth on lands for
which the public and private sectors have already made investments, helps foster walkable
communities, and protects the agricultural land base that supports the #2 industry in the state
and, what is by some measures, the #1 industry in Yamhill County.
Newberg’s proposed UGB expansion includes 194 acres of agricultural land, the lowest priority for inclusion in the UGB. Newberg’s UGB amendment violates these provisions of law because the city’s industrial land need could reasonably be accommodated on suitable land already inside the UGB, or on suitable higher priority urban reserve and exception lands. It is not necessary to include any farmland in the city’s UGB expansion. Many of these suitable areas are shown in this figure from the Ad-Hoc Committee on Newberg’s Future Final Report, and are separately discussed below:

**Zimri Drive (Site VI)**

Zimri Drive (Site VI) contains at least 30 buildable acres of unincorporated, urbanizable land within the UGB, but outside the city limits. This area meets the city’s “Required Industrial Site Suitability Characteristics” and can reasonably accommodate some of the identified land need.

54 Findings, Table 13 (R.5766).
Throughout this process, the city has advanced ever-changing rationales for the claim that the Zimri Drive site (Site VI) cannot accommodate industrial employment. The city’s rationales, contained in the revised Findings, are not supported with substantial evidence and fail to meet the requirements of statewide planning goals 2, 9, and 14 and related administrative rules and statutes.

Newberg previously argued that Site VI could not accommodate industrial employment because, the city asserted, Site VI abuts residential land on more than 25% of its boundary. This assertion was proven to be wrong. The revised Findings now rely on a new argument to eliminate the Zimri site – that its access is inadequate:

The closest access would be on Zimri Drive, which still would be over ¼ mile distant from the nearest arterial (unless access was through a site with a historic home, which would not be reasonable). Truck traffic on Zimri would have to go past a residential neighborhood. Truck access from Springbrook Road would be even more distant. Zimri and Springbrook both go north through hilly terrain with grades in excess of 10%, and end at Bell Road, which is narrow, hilly, and windy. So neither reasonably could be redesignated an arterial. (R.5730)

Like its previous argument, the city’s new argument is factually wrong. First, as we pointed out in local testimony, in configuring the study area, the city inexplicably excluded a large, mostly vacant parcel at the SW corner of Site VI that is well within ¼ mile of the existing arterial, Mountainview Drive. The excluded area is marked with a red X in the clipping below, from the Findings’ Map 2.

The Newberg GIS map and Google Earth screenshots reproduced below show that this excluded parcel has vacant buildable land (currently in farm use), and that it is less than ¼ mile from Mountainview Drive, an existing arterial street. Despite our previous testimony, the city still offers no explanation as to why this parcel was not included in the study area. If it were included, the study area would be within ¼ mile of an existing arterial.
Second, Zimri Drive itself is designated as a major collector, according to the Springbrook Master Plan. The city does not explain why this ¼ mile of major collector that separates Site VI from the existing arterial cannot be upgraded to arterial standards when Site VI is annexed into the city and urbanized.\(^{55}\) Instead, the city appears to believe that since portions of Zimri Drive

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\(^{55}\) As explained in Objection 1D, the city also failed to justify the required site characteristic for access via an arterial, and not a major collector. Like arterials, major collectors are through-traffic streets with no on-street parking, and are sufficient for most industrial access. The only difference between them is that arterials have a
that lie to the north of Site VI exceed 10% grade, and since Zimri Drive terminates at Bell Road, which is “narrow, hilly, and windy,” this somehow precludes the other parts of Zimri Drive that are already within the UGB from being upgraded to arterial status. However, the record contains multiple examples of roads in Newberg that are designated arterials only for a portion of their length. \textsuperscript{56} Further, the city has already made the choice to upgrade the Site VI portion of Zimri Drive to major collector status. As previously noted, major collectors are physically identical to arterials, with the exception of the center turn lane.

There is no evidence to support a conclusion that Zimri Drive cannot be upgraded to an arterial from the study area to Mountainview Drive, nor is there evidence to support a conclusion that a major collector cannot provide adequate access for some or all of the city’s targeted industrial users.

Third, the city for the first time alleges that an historic home prevents closer access to potential access routes. This is unsupported by any evidence in the record. It is not clear where this home is, the city does not explain why merely crossing a parcel that contains a historic structure elsewhere on the site would be unreasonable, and the city does not offer any information as to how close to the structure access would pass. At any rate, it is clearly evident from the aerial photos above and elsewhere in the record that there is adequate room and many options to access North Springbrook Road, NE David Lane, or Zimri Drive without taking out any houses, or even coming unduly close to any houses.

Fourth, the city continues to assert that Site VI “is adjacent to a resort hotel,” and potential “dust, noise, smell, and truck traffic” make all industrial uses unreasonable. There is no evidence in the record to support these assertions. To the contrary, as noted in the \textit{county} staff report:

“Visual inspection of the air photo indicates the Allison Hotel is actually buffered by over 400 feet of land between the hotel and adjacent property.” (R. 5248)

The \textit{EOA} states, quoting EcoNorthwest:

“Adequate buffers... range from approximately 50 to 100 feet. Selected commercial office, retail, lodging, and mixed-use (e.g. apartments or office over retail) activities are becoming acceptable adjacent uses to light industrial areas.” (Emphasis added) (R.5878)

The 400-foot buffer identified by county staff is 4 to 8 times wider than the 50 to 100 feet the \textit{EOA} found to be adequate. The hotel itself is also already closer to existing industrial land across Mountainview Drive and N. Springbrook Road than it is to Site VI. \textsuperscript{57} The city does not explain why it considers a 400-foot buffer between the hotel and Site VI to be an inadequate buffer, but at the same time considers the Mountainview Drive arterial – which is less than 100 feet wide – to be adequate.

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\textsuperscript{56} R.5683

\textsuperscript{57} See \textit{Findings}, Map 1 (R.5800) and details below from Newberg Comprehensive plan maps.
Moreover, as discussed in Objection 1, the city’s generic site characteristics do not distinguish between its disparate target industries. While some of the target industries may produce “dust, noise, smell, and truck traffic,” there is no evidence to support a conclusion that they all do.

Finally, the city erroneously asserts that Site VI is not adjacent to an existing industrial or commercial district. Both the city’s EOA (R.5902) and the details below from the comprehensive plan map show that Site VI is adjacent to the SD/H Springbrook-Hospitality commercial district.

In summary, the Zimri Drive area meets the city’s “Required Site Suitability Characteristics,” and can reasonably accommodate some of the identified land need.

**S. Springbrook Road (Site XII and Site 12)**

Site XII and Site 12 consist of unincorporated, urbanizable land within the UGB and adjacent land in the South Springbrook Urban Reserve, but outside the city limits. Site XII (urbanizable land in the UGB) is largely vacant. Site 12 (South Springbrook URA) has only a handful of structures and is developed at densities of considerably less than 1 dwelling per 10 acres.
Together, these two areas from a contiguous block of developable land currently zoned for rural residential use that meet the city’s “Required Industrial Site Suitability Characteristics.” They are illustrated below:

We testified that this block of developable land should have been studied as one study area. The city did not respond to our testimony, nor do the findings address the contiguous area as a whole, even though the city’s Economic Opportunities Analysis Findings acknowledge that, “Where blocks [of] vacant rural residentially designated land can be found, they are to be considered for industrial uses.” (R.5923)

Instead, the city broke the block of land into two parts, studied them separately, and continues to assert that UGB Site XII abuts residential areas on more than 25 percent of its boundary:

While the site does access South Springbrook Road, a major arterial, it also abuts residential areas along more than 25 percent of its boundary. It abuts one industrial use to the south and one across South Springbrook Street; however, it also abuts manufactured dwelling parks across the street, and residential uses to the north. Thus the site does not meet the industrial site suitability characteristics. (R.5731)

However, the manufactured dwelling parks cited by Newberg are across South Springbrook Road, a major arterial that meets the city’s own criteria for an adequate buffer. The northern border of the area is only 13% of the total boundary. (R.5667)

The city likewise asserts that URA Site 12 “abuts residential land on the west, and is across the street from residential on the north. Thus, the site has [sic] abuts residential on more than 25% of its perimeter.” (R.5745)

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58 In fact, several developable parcels lie partially within Site XII and partially within Site 12. (R.5300-5301)
However, the “residential land on the west” that the city claims is abutting URA Site 12 is the adjacent UGB Site XII. The contiguous block of land was broken into two areas and studied separately, so each area abuts the other. UGB Site XII is urbanizable land that is plan-designated for residential use, but is largely vacant.

The city also contends that the urbanizable land in URA Site XII cannot reasonably accommodate industrial uses because it is designated for future medium- and high-density residential uses that would be difficult to replace if it were redesignated for industrial use.

This argument should be rejected.

First, Newberg does not have a quantified need for residential land upon which it can rely. LUBA remanded the city’s housing analysis and its calculation of needed dwelling units in the same decision in which its buildable lands inventory was remanded, and the city has not adopted a new housing need analysis. *Friends Of Yamhill County V. City Of Newberg*, 62 Or LUBA 211 (2010). (R.6339)

Second, residential uses, including multifamily residential, have much less exacting requirements than those Newberg adopted for its targeted industries. Rather than expand onto prime farmland, which is the lowest priority for inclusion in a UGB, the city could instead redesignate this land for industrial and redesignate other land for multi-family residential within the existing UGB or expand the UGB for residential use onto higher priority land.

**Surplus Commercial Lands**

As detailed in Objection 4, Newberg failed to include at least 20 acres of vacant commercial land in the Springbrook Village area in its summary of buildable commercial land. A legally compliant inventory of employment lands would show a surplus of commercial land instead of a deficit; at least some of which could be rezoned to accommodate industrial employment.

Moreover, commercial uses have much less exacting requirements than those Newberg adopted for its targeted industries. Rather than expand onto prime farmland, which is the lowest priority for inclusion in a UGB, the city should instead redesignate suitable commercial land; and, if a need exists, designate other land for commercial use within the existing UGB or expand the UGB for commercial use onto higher priority land.

*Portland Road* (Site VII) contains approximately 40 buildable acres. It is adjacent to State Highway 99W across from Providence Hospital and medical complex. This area can meet the city’s “Required Industrial Site Suitability Characteristics” and can reasonably accommodate some of the identified land need.

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59 Multifamily housing need not locate in a district of at least 50 acres or be adjacent to an existing industrial or commercial district. It need not access to an arterial. It does not have compatibility issues with other residential uses.

60 Compare “Required Industrial Site Suitability Characteristics” (R.5869) to “Required Commercial Site Suitability Characteristics” (R.5897)
According to the Newberg Ad-Hoc Committee on Newberg’s Future Final Report, the site can “meet Newberg’s need for large industrial sites” and “could be developed for a single user or as an industrial park.”

The \textit{Findings} assert that Site VII abuts residential land on more than 25\% of its boundary (R.5730). In fact, less than 3\% of its boundary abuts \textit{urban residential areas} in the city. The remainder abuts plan-designated parkland, a medical complex across a state highway that is plan designated public/quasi-public, and unincorporated land outside the UGB that is under county zoning.

The city asserts that adjacency to county exception areas with a 2.5-acre or smaller minimum lot size excludes consideration of a site for industrial use, \textit{unless effective buffers are present}. The evidence in the record shows that there is a large, wide vegetative buffer present between the site and the rural residential area to the north. The buffer is readily seen on this aerial photo:

![Aerial photo of Site VII](R.5684)

The \textit{Findings} also assert that Site VII is the only commercial site in the Newberg UGB with large parcels suitable for a community commercial center and high access and visibility to Highway 99W. But adjacency to Highway 99W is not a site characteristic for community commercial – access to an arterial is.

The \textit{Findings} also wrongly assert that Site VII is the only commercial site with large parcels suitable for a community commercial center. However, the College/Mountainview site is within the city limits. It is zoned for commercial use and it is adjacent to State Hwy 219 and has 12 buildable acres, large enough for a community commercial center.

Additionally, the Portland Road site has nearly 40 acres – large enough for \textit{both} a community commercial area and industrial uses.

\begin{footnotes}
\item[\textsuperscript{61}] Newberg Future Land Use Options, Final Report, July 21, 2005, p. 41. (R.285)
\item[\textsuperscript{62}] 10-15 acres are needed, per the \textit{EOA}. (R.5900, 5902)
\end{footnotes}
The city also rejected the area because “it is not adjacent to an industrial or commercial area.” As discussed in Sub-Objection 1B, this is not a reasonable site suitability requirement supported by evidence in the record. Nonetheless, the adjacent medical complex fits the city’s cited reasons for requiring adjacency to a commercial area and its quasi-public plan designation cannot be used as a pretext to dismiss it. Moreover, the site is only about 500 feet from an extensive commercial district that includes Fred Meyer, Safeway, and many other commercial businesses.\(^{63}\)

In our local testimony, we also proposed and described a “Modified Site VII” comprised of the eastern portion of Site VII. (R.3865, R.3886) It meets even the unreasonable site characteristics that the city proposes because it would adjoin a commercial district. The city did not respond to our testimony, nor do their findings address, our proposed Modified Site VII. The city should not draw the boundaries of its alternative sites so as to disqualify them, when it could also draw the boundaries in a manner that would not disqualify them.

Site VII (or Modified Site VII) can reasonably accommodate a portion of Newberg’s industrial employment needs in a manner that supports a more compact UGB, preserves farmland, and fully complies with the law.

_**Other commercial sites within the UGB.**_

Our local testimony also pointed to other vacant commercial parcels that could be redesignated to accommodate industrial needs, as illustrated below.

\(^{63}\) R.3865. This commercial district is also adjacent to the industrial area that includes the former Suntron property
Parcels along Hancock, Elliot, and S. Springbrook are in an area of existing quasi-industrial uses and the city should consider their redesignation as well. Commercial uses have much more flexible siting requirements than industrial uses. Any shortfall of commercial land can be met without resorting to the conversion of prime farmland, which is by law the lowest priority for inclusion within a UGB.

Moreover, the surrounding area is already well-served by a plethora of commercial uses, including major retailers, supermarkets, restaurants, services, and professional offices. If the city does need additional commercial development, it is not in this part of town.

**Newberg-Dundee Corridor**

The area generally referred to as the Newberg-Dundee corridor is an exception area on both sides of Highway 99, served by rail, which is adjacent to the southwest boundary of the city’s UGB and adjacent to an existing industrial district within the city. As such, it is next highest priority for inclusion in the UGB after the land referenced above (urban reserve land and vacant land in the UGB).

The city analyzed two isolated areas of the corridor. One does not include lands adjacent to the UGB (Site 8). The other does include lands adjacent to the existing industrial district (Site 9.) The city then concluded that the entire area is not suitable for industrial use.

As noted above, the exception area is both adjacent to the UGB and an existing industrial district within the city. See detail below from the City of Newberg’s comprehensive plan map.

In the map above the dashed line depicts the city limits, the colored area defines the UGB, and the blue lines depict land within the stream corridor. Note that the UGB extends to the outer

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64 R. 3865
65 R. 5742.
edge of the stream corridor and that the outermost industrially-zoned parcel extends beyond the UGB boundary and beyond the stream corridor. Note that the relatively large parcels adjacent to the city’s industrial district along Stevenson Road and Zard Lane extend into the stream corridor and the existing UGB.

The same information is depicted in the detail below from the County’s comprehensive plan map which, in addition, depicts the large number of parcels already zoned for industrial use in the corridor (shown in blue with “I” denoting industrial land):

The two isolated areas of the corridor that the city analyzed are depicted in the detail below from Map 6 of the Findings. Note that they do not include the vacant buildable land (depicted in yellow) adjacent to the city’s industrial district along Stevenson Road and Zard Lane:

Contrary to the city’s conclusions, the corridor contains a large block of land adjacent to the UGB and existing industrial districts. The map below shows buildable industrial sites in red and existing industrial districts in blue. As noted above, the parcels along Stevenson Road and Zard Lane extend past the red line and border industrial land within the UGB.
The Newberg-Dundee Corridor can supply two industrial sites in the < 2-acre size range, six industrial sites in the 2-10 acre size range, three industrial sites in the 10-30 acre size range, and one industrial site in the 30-50 acre size range.

Similar information is also shown on page 37 of the Ad-Hoc Committee’s final report, which is reproduced below.
Under ORS 197.298, exception areas like the Newberg-Dundee corridor must be included in the UGB ahead of farmland unless:

“a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;

b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or

c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.”
None of these three narrow justifications apply here. Each is discussed separately below:

(1) The area can reasonably accommodate the identified need for industrial land, since it meets all of the city’s listed Industrial Site Suitability Characteristics:

It “contains a parcel or group of parcels in close proximity with buildable land that contains at least 20 buildable or industrially developed acres and is also adjacent to existing industrial district.”

It contains sites that are predominantly less than 5% slope in buildable areas.

It is within, or adjacent to the existing UGB.

It adjoins an industrial or commercial area.

It is adjacent to a state highway and a railroad.66

It is effectively buffered from all residential areas of the city by the Chehalem Creek stream corridor.

(2) No topographical or other physical constraints prevent the reasonable provision of urban services.

The city’s findings regarding the two isolated portions of the corridor that it studied question the reasonableness of providing urban services to Site 8 and Site 9, citing distance from the UGB and the need to cross the Chehalem Creek stream corridor as factors that would make the extension of public facilities “problematic,” or very difficult,” and that a new wastewater pump station would be needed.

However, these findings don’t stand up to scrutiny, especially when the area is viewed as a contiguous whole. First, the farmland east of Highway 219 that the city proposes for inclusion will also require an expensive pump station.67 Second, while the city’s own studies show that, when viewed as a whole, the area may be more expensive to serve than the area selected by the city, the studies also show that the additional cost is not unreasonable.

The following chart from the Newberg URA Justification Report breaks out cost of service by “analysis area” on a per acre basis. Area SE B includes the area the city proposes for inclusion in the UGB. It is highlighted in blue in the chart below. SW C and SW D include the portions of the Newberg-Dundee corridor that are north and south of Highway 99, respectively. Cost to provide the full range of urban services to area SW D in the corridor is estimated to be 33,900 per buildable acre, or about 1/3 more than the cost per acre of providing the same urban services to SE B. Cost to serve SW C is somewhat higher, but still less than twice the cost of servicing SE B.

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66 The Findings speculate that although Site 8 abuts Highway 99, “direct highway access may not be allowed by ODOT.” (R.5749) However, no evidence is cited to support this speculative assertion.

67 R.740
As the city itself explained, it is within the “reasonableness” standard to pay 1/3 to twice as much to serve an exception area than farm land.68

(3) The city has not asserted that inclusion of the farmland in its proposed expansion is required in order to include or to provide services to higher priority lands. Therefore, it cannot be included in the UGB ahead of the exception lands in the Newberg-Dundee corridor.

We proposed studying the Newberg-Dundee corridor as a large area that actually borders the existing UGB, unlike the isolated ones studied by the city. (R.5267) The city did not respond to our suggestion, nor do their findings address it. The city should not draw the boundaries of its alternative sites so as to disqualify them, when they can also draw the boundaries in a manner that would not disqualify them.

The Newberg-Dundee corridor can reasonably accommodate identified land needs. Under ORS 197.298 it is a lower higher priority for including in the UGB than land in urban reserves, but it is a higher priority for inclusion than resource land.

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68 In the July 21, 2009 Newberg URA hearing before LCDC, a discussion ensued regarding how much more expense would render it unreasonable to provide urban services to an exception area. The city’s consultant said it’s a question of cost of service and yield per buildable acre, explaining that if it was three times more expensive to serve the exception area, then it is a close call. R.5273 If it is ten times more expensive, then it is not. While this remark was made in the context of a URA expansion rather than a UGB expansion, the incrementally higher costs to serve the N-D corridor are well within the standard the city previously articulated to LCDC.
North Valley/Chehalem Road (Modified Site I (in UGB) and Sites 1 & 3 (EFU))

Site I (in UGB) and Sites 1 and 3 (EFU) are adjacent to one another. Sites I and 1 contain steeply sloped-land as well as a large block of land with suitable topography near the intersection of Chehalem Drive and North Valley Road.

We proposed modified study areas comprised of Site I and Sites 1 & 3. (R.3868-69)

The city did not respond to our testimony, nor do the findings address these modified study areas.

The western portion of Site I and the SW portion of Site 1 have suitable topography. This contiguous area is located on both sides of North Valley Road, just east of, and adjacent to, Chehalem Drive. Chehalem Drive is a major collector.\(^69\) It contains approximately 50-60 acres of vacant buildable land with predominantly less than 5% slope and a similar amount of buildable land with 5-10% slopes.\(^70\) This gently sloped buildable area does not abut any existing residential development and only abuts residually zoned land for a very small portion of its boundary.

However, the city analyzed Site I and Site 1 as separate sites, even though they are adjacent to each other. In each case, the city combined the suitable portion of the site with other, much steeper land—then concluded that the areas could not reasonably accommodate employment needs.

The suitable portions of Site I and Site 1 are also adjacent to Site 3, which the city concedes meets all of their site suitability criteria save one: like most undeveloped sites outside of an Urban Growth Boundary, it is not already served by an arterial.

\(^69\) R.5683
\(^70\) See Findings, Maps 2, 4, and 5 at R5801-04. See also topographical map and aerial photo at R.3890-91.
As further explained in Sub-Objections 1D and 1E, the city errs in:

(a) Assuming that the road network is static. Undeveloped land is not typically served by city arterials because there is no development to serve.

(b) Assuming that some or all of its disparate targeted industries cannot be adequately served by major collectors.

No evidence supports a conclusion that Chehalem Drive cannot be upgraded to an arterial, nor is there evidence to conclude that a major collector cannot provide adequate access for some or all of the city’s targeted industrial users.

Rather than breaking up the suitable areas and studying them with larger areas that disqualify them, the city should have studied the suitable areas together or together in combination with Site 3.

Our proposed combination site consists entirely of land that has a higher statutory and Goal 14 priority status than the land proposed by the city: highest priority land within the UGB and higher-priority agricultural land with lower soil classifications. It can reasonably accommodate a portion of Newberg’s employment needs in a manner that supports a more compact UGB and preserves prime agricultural land. Therefore, the city’s decision to instead include lowest-priority land in the UGB does not comply with the law.

**Conclusion:** Newberg’s proposed UGB expansion includes 194 acres of agricultural land (R.5766), the lowest priority for inclusion in the UGB. However, the city’s need for land to serve its targeted industries can reasonably be accommodated on land within the existing UGB, or on urban reserves and exception lands that the city did not include in the boundary.

The city’s decision violates Goal 14, OAR 660-024-0050(4), and Goal 2, because it lacks an adequate factual base to support the conclusion that its identified land needs could not reasonably be accommodated on land already inside the UGB.

Even if land beyond the UGB were needed, the city’s decision would still violate Goal 14, ORS 197.298, OAR 660-024-0060(1), and Goal 2, because it lacks an adequate factual base to support the conclusion that its identified land needs could not reasonably be accommodated on land that is higher priority land for inclusion than the agricultural land the city selected.

**Remedy:** The Department should remand the UGB amendment with instructions to delete the agricultural land from the UGB amendment and to instead meet its identified land need within the existing UGB and on land that is of higher priority land under ORS 197.298.

**OBJECTION 6: FAILURE TO DEMONSTRATE NEED**

The comprehensive plan and UGB amendments violate Goal 14, OAR 660-024-0040(1), and Goal 2, because they expand the UGB to include more large sites and more acreage than the city needs, and because they underestimate the buildable capacity of land added to the UGB.
Under Goal 14 and its implementing rules, a city must have a demonstrated need for land it adds to its UGB. Generally, "a local government is not permitted to establish an urban growth boundary containing more land than the locality 'needs' for future growth." *Families For Responsible Gov't*, 64 Or App at 243

The city’s UGB expansion includes more sites and more acreage than the city itself says it needs. There is no demonstrated need for these additional sites or the additional acreage and their inclusion is contrary to Oregon’s stated goal of protecting agricultural land

**Sub-Objection 6A: Extra Sites**

The city included more large sites than it says it needs within its proposed UGB expansion.

The city asserts a deficit of *one* site in the 10-30 acre size range and *one* site in the 30-50 acre size range. This is illustrated in the city’s *Findings*:

<table>
<thead>
<tr>
<th>Size Range (Acres)</th>
<th>Number of Sites - 2012 UGB</th>
<th>Buildable Acres - 2012 UGB</th>
<th>2032 Needed Buildable Sites</th>
<th>2032 Needed Gross Buildable Acres</th>
<th>2032 Deficit # of Sites</th>
<th>2032 Deficit Buildable Acres</th>
</tr>
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<tbody>
<tr>
<td>&lt;2</td>
<td>5</td>
<td>6</td>
<td>23</td>
<td>26</td>
<td>(18)</td>
<td>(20)</td>
</tr>
<tr>
<td>2 to 10</td>
<td>7</td>
<td>30</td>
<td>14</td>
<td>81</td>
<td>(7)</td>
<td>(51)</td>
</tr>
<tr>
<td>10 to 30</td>
<td>1</td>
<td>24</td>
<td>2</td>
<td>42</td>
<td>(1)</td>
<td>(18)</td>
</tr>
<tr>
<td>30 to 50</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>42</td>
<td>(1)</td>
<td>(42)</td>
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<td><strong>13</strong></td>
<td><strong>60</strong></td>
<td><strong>40</strong></td>
<td><strong>191</strong></td>
<td><strong>(27)</strong></td>
<td><strong>(131)</strong></td>
</tr>
</tbody>
</table>

R.5733

Instead, the city has added *two* sites in the 10-30 acres size range (tax lot 3228-1100 & tax lot 3228-1900) and *two* sites in the 30-50 acre size range (tax lot 3228-900 and tax lot 3228-1000).\(^{71}\)

This is also illustrated in the city’s *Findings* (R.5757, 5767-68):

<table>
<thead>
<tr>
<th>Buildable Acres</th>
<th>Alternative A</th>
<th>Alternative B</th>
<th>Alternative C</th>
</tr>
</thead>
<tbody>
<tr>
<td>128</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>125</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>126</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

\(^{71}\) In addition to the problems described in the body of this sub-objection, the city has also classified tax lots 1100 and 1900 as two 10-30 sites, even though they are adjacent and could be combined into one 30-50 acre site. Thus, these two parcels could satisfy the city’s need for a 30-50 site, and the dumpster storage site (tax lot 1200) described in the next paragraph could satisfy the city’s need for a 10-30 acre site.
In addition, the city has almost entirely discounted a third 10-30 acre site included in the expansion: Tax Lot 3228-01200 located south of Wynooski, just west of Highway 219. This is a 13.3-acre parcel identified in the South Industrial Area Master Plan as a large, developable tract (area circled in yellow).

For purposes of the UGB amendment, however, city staff classified most of Tax Lot 3228-01200 as having no capacity to accommodate industrial needs because it has some dumpsters stored on it. The city, in testimony to the county made after the record was closed to all other parties, makes two new assertions regarding this site.  

First, it asserts that this storage area is “paved” and “improved.” There is no evidence in the record to support this assertion. In fact, the photographs below confirm this is an unimproved gravel area and there are no impediments to more intensive development of the property once city water and sewer are made available. However, even if the area were paved, that would not justify excluding the site from inventory. Pavement does not represent a barrier to development, unlike a building or other permanent structure.

72 R.6003
Aerial Photograph of TL 3228-01200 (R.5228)

Figure 1-5: Subsite 11.3 looking south from Wynooski Road

City photograph of TL 3228-01200, classified by the city as developed (R.5956)
Second, in the same testimony to the county, the city also asserts that:

“The South Industrial Area Master Plan did consider the possibility of whether in the longer term (through 2040), the site would need access or other improvements for further development. However, that master plan is for a time period out to 2040, which is much longer than the 20-year “planning period” specified in OAR 660. For purposes of the current UGB amendment we are obligated to follow state law and classify this land as built.” (R.6003)

The South Industrial Area Master Plan does not support a finding that the site needs access or other improvements for further development nor did the city adopt such a finding. Nor does this new assertion, made in testimony after the adoption of findings, explain why conditions for development of this large site are unlikely over the 20-year planning period, but are likely after the period.

**Sub-Objection 6A Conclusion:** The city’s comprehensive plan amendments and UGB expansion violate Goal 14 and OAR 660-024-0040(1) because they include additional large sites in the UGB, for which there is no demonstrated need. They also violate Goal 2 because they underestimate the buildable capacity of land added to the UGB.

**Sub-Objection 6A Remedy:** For these reasons, the Department should remand the UGB amendment with instructions to: a) Include only the number of industrial sites in the expansion for which it has demonstrated a need. This includes one 30-50 acre parcel and one 10-30 acre parcel; and b) Reclassify tax-lot 3228-01200 as a 10-30 acre site.

**Sub-Objection 6B: Extra acreage**

The city’s UGB expansion includes 128 acres of unbuildable land on the fringe of the expansion area, for which there is no identified need. This nearly doubles the size of the proposed expansion area. Most of this unbuildable land is in floodplain and in stream corridors (land adjacent to streams). Some of this land is resource land in agricultural use; some of it is forested.

Newberg justifies including these additional acres as follows:

“Goal 14 requires cities to show a demonstrated need for livability. It goes on to say that local governments may specify characteristics necessary for land to be suitable for an identified need. The South Industrial Area Master Plan shows the stream corridors as meeting needs for livability for the future industrial area, both as buffers and amenities for the industrial uses. Therefore, there is an inherent need for those things that can only be met through inclusion of the stream corridors. The boundary location requirements direct that you take into account ‘efficient accommodation of identified land needs’ when deciding which land can meet the need. In this case, a need for buffering (for livability of both the industrial area employers and workers as well as adjacent residents) for the future

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73 The proposed UGB amendment includes 132 buildable acres for industrial needs and a water treatment plant. However, the City has proposed a UGB expansion that is double this size: 260 total gross acres.

74 See photographs from R.5697 and R.5807 reproduced in our Objection 7 (Locational Factors).
industrial area cannot be met in other areas not immediately adjacent to the future industrial area.” (R.5792)

The Findings also assert:

“The stream corridors serve very important functions as buffers and amenities for the adjacent industrial development. They are only needed to be included in the UGB if the adjoining upland portion also is included.”

This assertion of demonstrable need should be rejected.

First, the city did not specify proximity to a stream corridor as a characteristic necessary for land to be suitable for its targeted industries.

Second, the stream corridors will continue to function as buffers and amenities in their current uses under their county plan designations.

Third, in determining its needed site sizes, the city factored in a need for buffers and outdoor park-like areas on site. These were included as part of its buildable land needs calculations: Newberg based its needed site sizes in part on a conclusion that “most industrial sites are only 40% to 60% developable for basic industrial use,” with remaining areas used for buffers, environmental protections and employee amenities, among other uses.

This site size inflation through double buffers – calculated both into the needed site sizes, and then also added as an additional need – is one reason the city assumes that future industrial development will accommodate employment less efficiently than it has in the past.

The city has unnecessarily included large areas that cannot reasonably accommodate any identified needs. The city classifies land in floodplains and stream corridors as unbuildable. Nonetheless, the city proposes to extend the UGB beyond the buildable portions of the proposed expansion to nearly double the amount of acreage needed. The buildable areas are adjacent to the existing UGB; including these extra acres of farmland is neither justified nor necessary.

A similar issue arose before the Department when it considered McMinnville’s UGB expansion in 2004. In that report, the Department wrote:

“1000 Friends objects to the inclusion of large areas of land that are within the 100-year floodplain in the UGB on the basis that there is no need for such lands, as they are not suitable for urban uses. In both the Three Mile Lane area and the Norton Lane area, the amount of floodplain and buildable land are about equal (Appendix C, pages C-49 and C-160). From the point of view of Goal 14, Factor 4 (maximum efficiency) and Factor 6 (protection of farmland), these areas should rate low for urbanization because about two acres of farmland are lost for every acre of buildable land gained. To address this issue the city needs to either delete

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75 Findings page 47, footnote 14. (R.5754)
76 EOA, p. 54. (R.5869)
the unbuildable floodplain portions of these sites from the UGB or justify a need for these lands for urban use under Goal 14, Factors 1 and 2.”

In its subsequent order, the Commission remanded the portions of the “Grandhaven,” “Norton Lane,” and “Three Mile Lane” UGB expansion areas that lie within the 100-year floodplain based on the Director’s report and the Oregon Court of Appeals’ decision in *Milne v. City of Canby*, 195 Or App 1, 96 P3d 1267 (2004).

**Sub-Objection 6B Conclusion:** The city’s UGB expansion violates Goal 14 and OAR 660-024-0040(1) because it includes additional acreage for which there is no demonstrated need.

**Sub-Objection 6B Remedy:** Consistent with the decision in McMinnville, the Department should remand the UGB amendment with instructions to delete the unbuildable acreage in the floodplain and stream corridors.

**OBJECTION 7: GOAL 14 LOCATIONAL FACTORS**

The city’s UGB and comprehensive plan amendments violate Goal 14 and OAR 660-024-0060(1) and (3), because the city did not determine the change in its UGB boundary consistent with Goal 14 locational factors.

The city’s UGB boundary is not consistent with Goal 14 locational Factors 3 and 4. Goal 14 requires an evaluation of alternative boundary locations to consider, among other factors, the compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB. A city is also required to consider the comparative environmental, energy, economic and social consequences of alternative boundary locations.

The revised *Findings* contain cursory, inaccurate findings on Factor 4, which are reproduced below in their entirety:

“Factor 4: Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the urban growth boundary

“The interface between agriculture uses and industrial uses does not pose the same compatibility issues as with other urban uses. For example, siting residential uses near agricultural lands can create conflicts as farmers plow fields, spray chemicals, and operate farm machinery near houses. Conducting these same farming practices near industrial land does not necessarily generate conflicts. Having nearby industrial land can in fact enhance the farm activities, as farmers can have a nearby location to store and process agricultural products, and to store equipment. Conflicts can arise, but they generally are not as severe as for other urban uses.

“All three boundary alternatives have minimal borders with agricultural land.

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77 Staff report to LCDC, March 30, 2004
78 Partial approval and remand order No. WK Task- 001646
There is little significant difference between the three alternatives.

“Boundary Alternative A would border agricultural land on the south side of Site 11.8, and on the east side of 14.3. Overall, this alternative has the least border with agricultural land of the three alternatives.

“Boundary Alternative B would border agricultural land only on the south side.

“Boundary Alternative C would border agricultural land on the both the north and south side, and adjacent to Site 11.6. This has the longest border of the three alternatives.”

It is not accurate that all three alternatives, including the selected Boundary Alternative B, only have “minimal border with agricultural land” and that Alternative B “would border agricultural land only on the south side.” To the contrary, the expansion area adopted by the city borders land designated for exclusive farm use to the east as well as to the south – a distance of about 1.75 miles. This includes nearly a mile of border that is not buffered by any roadway or stream.

In addition to this unbuffered area, the Findings includes an aerial photograph that mislabels as “water features” areas that are clearly forested or in agricultural use, creating an illusion of a more extensive buffer than actually exists:

The mislabeling of land in resource use as “water features” is also illustrated in another city map, which shows the much smaller area contained within the actual 100-year floodplain and delineated wetlands:

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79 Because it is inaccurate, the city’s decision also violates Goal 2’s requirement that the plan amendment have an adequate factual base.
Finally, the aerial photograph below also illustrates this mislabeling.
Second, the city's findings consist of a speculative, generic, over-simplified statement that does not meet the requirements for an adequate Goal 14, factor 4 analysis. Among its flaws:

- It does not describe the "nearby agricultural and forest activities occurring on farm and forest land" are. Hazelnut orchards, small grain production, and grass seed all appear to be grown on nearby lands. These activities typically include considerable crop spraying and produce significant dust.
- It does not describe the potential impacts of the industrial uses that are likely to occur. Depending on the type of farm crop(s) and practices, and the type(s) of nearby industries, the conflicts could be negligible to severe, going in both directions. Some crops and farm practices generate vibrations or truck traffic that might disrupt an industry that requires low vibrations (like some high tech industries). Some industries cannot tolerate the possibility of dust in its manufacturing machinery. The conflicts between an organic farm operation and bio-tech (gmo) firm would be very different from the conflicts between a winery and a grass seed field.
- What about crop spraying - does it occur on surrounding lands and if so, could the potential industries tolerate that? What is the danger to the industry of spray drift?
- Are there livestock in the area that could pose a problem for an industrial user? Would the industry's building change the micro-climate in any way harmful to the crops, such as through lights shining on fields, blocking wind, or the clearing of shade vegetation?
- What are the likely traffic patterns of the various alternatives? Does either the farm or the industry inside the UGB generate truck traffic that could disrupt the other's operations? What about employee traffic - do the surrounding farming enterprises frequently move equipment around on roads so that either the farmer or those commuting to the industry would be negatively impacted? How far beyond the immediate boundary
do those negative impacts extend? Do those conflicts extend to nearby agricultural land in Marion County?

The city’s finding that “There is little significant difference between the three alternatives,” is not supported by the evidence. The rejected alternatives include land closer to Highway 99W, which is a state-designated freight route in the Oregon Highway Plan.80 The selected alternative includes land closer to rural Marion County farm roads.

The Marion County Farm Bureau, Friends of French Prairie, the Marion County Planning Department, and at least five individuals all testified to the likely conflicts with farming activities in northern Marion County that would result from the traffic pattern generated by the city’s selected boundary location.81 Despite this testimony, the City of Newberg never considered the comparative traffic impacts to northern Marion County farmers of the various alternatives.

In short, the city has not addressed the current and potential agricultural and forest activities of land near the various boundary alternatives and then compared compatibility conflicts among the lands it considered for inclusion, as required by Goal 14, Factor 4.

Furthermore, the city cannot adequately consider the economic consequences of the boundary location, as required by Goal 14, Factor 3, without an adequate consideration of the impacts to the agricultural economy.

Finally, as explained in Sub-Objection 1A, the city conflated Goal 9 site characteristics and the Goal 14 location factors. Many of the “requirements” it adopted as site characteristics are actually Goal 14 locational factors that impermissibly screen out many higher-priority alternatives, resulting in a deficient analysis of the comparative environmental, energy, economic and social consequences.82

**Conclusion:** The proposed UGB amendment fails to comply with the locational factors of Goal 14 and OAR 660-024-0060 (1) and (3). Moreover, because the description of the boundary alternative is factually inaccurate and based upon a map that mislabels as “water features” areas that are clearly forested or in agricultural use, the city’s decision violates Goal 2, which requires that the plan amendments have an adequate factual base.

**Remedy:** For these reasons, the Department should remand the UGB amendment with instructions to evaluate the alternative boundary locations, based on an adequate consideration of: (a) the compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB; and (b) the comparative environmental,

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80 R.1533, R.1611
81 R.1547, R.1518, R.1691, R.1545, R.1546, R.3805, R.3839, R.5643, R.5658
82 For example, the consequences of truck traffic through an urban neighborhood must balanced with the comparative consequences of extending services past the urban fringe and the comparative economic consequences of taking prime farmland out of production and/or of routing industrial truck traffic on roads used by farm machinery. Instead, the city pre-empted this comparison by using site characteristics to eliminate all candidate lands that might generate truck traffic through residential areas. Without that comparison, the city lacks an adequate ESEE analysis and has not adequately addressed the locational factors of Goal 14.
energy, economic and social consequences of alternative boundary locations, including boundary locations not previously considered due to location factors posing as site characteristics.

**CONCLUSION**

To recap, Newberg’s proposal:

1) Inflates the sizes of industrial sites claimed to be needed

2) Uses factually unsupported, internally inconsistent “site characteristics,” many of which are actually Goal 14 location factors, as artificial screens to eliminate higher priority land from consideration

3) Fails to consider the employment capacity of existing built industrial space

4) Lacks the required inventory of suitable vacant and developed land, and fails to consider the capacity of all buildable commercial land

5) Expands the UGB onto Class II, cultivated farmland even though lands already within the UGB and/or higher priority sites outside the UGB could meet the identified site needs

6) Includes more large sites and more acreage than the city needs

7) Does not determine the UGB boundary consistent with Goal 14 locational factors

For all these reasons, we urge the Department to return the proposal to Newberg and Yamhill County, with instructions to develop a proposal that is consistent with the relevant statutes, goals, and administrative rules. A revised proposal could provide *all* the industrial sites the city says it needs while also protecting Yamhill County’s thriving agricultural industry.

Sincerely,

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