



Oregon

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EXHIBIT: 14 AGENDA ITEM: 15
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 6-5-09
PAGES: 1
SUBMITTED BY: DLCD Staff



June 5, 2009

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
Steven Oulman, AICP, Mid-Willamette Valley Regional Representative

SUBJECT: **Agenda Item 15, June 4-5, 2009 LCDC Meeting
Hearing Outline**

The department anticipates a lengthy discussion involving a number of parties to Newberg's decision. Staff recommends that the commission proceed along the lines suggested in the outline below.

Introductions & initial comments

LCDC review standard and criteria

Need Analysis

Issue: How does local government determine land for inclusion in urban reserve?
Generalized need based on population/employment forecast?
Specialized need based on specific analysis (more like a UGB analysis)?

Overall need
Large sites need
Industrial
Commercial
Institutional
"Complete communities/livability"

Location Analysis

Issue: What does "urban services cannot reasonably be provided" mean?
Applying priorities in selecting land for urban reserve, exceptions:
Southwest (urban services)
Northeast (urban services)
South/southeast (maximum efficiency)

Conclusion & decision

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 21 URBAN RESERVES

EXHIBIT: 13 AGENDA ITEM: 15
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 6-4-09 Discussed under
PAGES: 6 "Other"
SUBMITTED BY: DLCD Staff

660-021-0000

Purpose

This division authorizes planning for areas outside urban growth boundaries to be reserved for eventual inclusion in an urban growth boundary and to be protected from patterns of development that would impede urbanization.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0010

Definitions

For purposes of this division, the definitions contained in ORS 197.015 and the Statewide Planning Goals (OAR chapter 660, division 015) apply. In addition, the following definitions apply:

- (1) "Urban Reserve": Lands outside of an urban growth boundary that will provide for:
 - (a) Future expansion over a long-term period; and
 - (b) The cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary.
- (2) "Resource Land": Land subject to the Statewide Planning Goals listed in OAR 660-004-0010(1)(a) through (f), except subsection (c).
- (3) "Nonresource Land": Land not subject to the Statewide Planning Goals listed in OAR 660-004-0010(1)(a) through (f) except subsection (c). Nothing in this definition is meant to imply that other goals do not apply to nonresource land.
- (4) "Exception Areas": Rural lands for which an exception to Statewide Planning Goals 3 and 4, as defined in OAR 660-004-0005(1), have been acknowledged.
- (5) "Developable Land": Land that is not severely constrained by natural hazards, nor designated or zoned to protect natural resources, and that is either entirely vacant or has a portion of its area unoccupied by structures or roads.

(6) "Adjacent Land": Abutting land.

(7) "Nearby Land": Land that lies wholly or partially within a quarter mile of an urban growth boundary.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

660-021-0020

Authority to Establish Urban Reserve

(1) Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan area urban growth boundary, may designate urban reserves under the requirements of this division, in coordination with special districts listed in OAR 660-021-0050(2) and other affected local governments, including neighboring cities within two miles of the urban growth boundary. Where urban reserves are adopted or amended, they shall be shown on all applicable comprehensive plan and zoning maps, and plan policies and land use regulations shall be adopted to guide the management of these reserves in accordance with the requirements of this division.

(2) As an alternative to designation of urban reserves under the requirements of this division, Metro may designate urban reserves for the Portland Metropolitan area urban growth boundary under OAR 660, division 027.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

660-021-0030

Determination of Urban Reserve

(1) Urban reserves shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary. Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land.

(2) Inclusion of land within an urban reserve shall be based upon the locational factors of Goal 14 and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land. Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan Area Urban Growth

Boundary, shall first study lands adjacent to, or nearby, the urban growth boundary for suitability for inclusion within urban reserves, as measured by the factors and criteria set forth in this section. Local governments shall then designate, for inclusion within urban reserves, that suitable land which satisfies the priorities in section (3) of this rule.

(3) Land found suitable for an urban reserve may be included within an urban reserve only according to the following priorities:

(a) First priority goes to land adjacent to, or nearby, an urban growth boundary and identified in an acknowledged comprehensive plan as an exception area or nonresource land. First priority may include resource land that is completely surrounded by exception areas unless these are high value crop areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture;

(b) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, second priority goes to land designated as marginal land pursuant to former ORS 197.247 (1991 edition);

(c) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

(4) Land of lower priority under section (3) of this rule may be included if land of higher priority is found to be inadequate to accommodate the amount of land estimated in section (1) of this rule for one or more of the following reasons:

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

(b) Maximum efficiency of land uses within a proposed urban reserve requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.

(5) Findings and conclusions concerning the results of the above consideration shall be adopted by the affected jurisdictions

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 7-1996, f. & cert. ef. 12-31-96; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

660-021-0040

Urban Reserve Area Planning and Zoning

(1) Until included in the urban growth boundary, lands in urban reserves shall continue to be planned and zoned for rural uses in accordance with the requirements of this section, but in a manner that ensures a range of opportunities for the orderly, economic and efficient provision of urban services when these lands are included in the urban growth boundary.

(2) Urban reserve land use regulations shall ensure that development and land divisions in exception areas and nonresource lands will not hinder the efficient transition to urban land uses and the orderly and efficient provision of urban services. These measures shall be adopted by the time the urban reserves are designated, or in the case of those local governments with planning and zoning responsibility for lands in the vicinity of the Portland Metropolitan Area Urban Growth Boundary, by the time such local governments amend their comprehensive plan and zoning maps to implement urban reserve designations made by the Portland Metropolitan Service District. The measures may include:

- (a) Prohibition on the creation of new parcels less than ten acres;
- (b) Requirements for clustering as a condition of approval of new parcels;
- (c) Requirements for preplatting of future lots or parcels;
- (d) Requirements for written waivers of remonstrance against annexation to a provider of sewer, water or streets;
- (e) Regulation of the siting of new development on existing lots for the purpose of ensuring the potential for future urban development and public facilities.

(3) For exception areas and nonresource land in urban reserves, land use regulations shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted by acknowledged zoning in effect as of the date of establishment of the urban reserves. Such regulations shall remain in effect until such time as the land is included in the urban growth boundary.

(4) Resource land that is included in urban reserves shall continue to be planned and zoned under the requirements of applicable Statewide Planning Goals.

(5) Urban reserve agreements consistent with applicable comprehensive plans and meeting the requirements of OAR 660-021-0050 shall be adopted for urban reserves.

(6) Cities and counties are authorized to plan for the eventual provision of urban public facilities and services to urban reserves. However, this division is not intended to

authorize urban levels of development or services in urban reserves prior to their inclusion in the urban growth boundary. This division is not intended to prevent any planning for, installation of, or connection to public facilities or services in urban reserves consistent with the statewide planning goals and with acknowledged comprehensive plans and land use regulations in effect on the applicable date of this division.

(7) A local government shall not prohibit the siting of a single family dwelling on a legal parcel pursuant to urban reserve planning requirements if the single family dwelling would otherwise have been allowed under law existing prior to the designation of the parcel as part of an urban reserve.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

660-021-0050

Urban Reserve Agreements

Urban reserve planning shall include the adoption and maintenance of urban reserve agreements among cities, counties and special districts serving or projected to serve the designated urban reserves. These agreements shall be adopted by each applicable jurisdiction and shall contain:

(1) Designation of the local government responsible for building code administration and land use regulation in the urban reserves, both at the time of reserve designation and upon inclusion of these reserves within the urban growth boundary.

(2) Designation of the local government or special district responsible for the following services: sewer, water, fire protection, parks, transportation and storm water. The agreement shall include maps indicating areas and levels of current rural service responsibility and areas projected for future urban service responsibility when included in the urban growth boundary.

(3) Terms and conditions under which service responsibility will be transferred or expanded for areas where the provider of the service is expected to change over time.

(4) Procedures for notification and review of land use actions to ensure involvement by all affected local governments and special districts.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

660-021-0060

Urban Growth Boundary Expansion

All lands within urban reserves established pursuant to this division shall be included within an urban growth boundary before inclusion of other lands, except where an identified need for a particular type of land cannot be met by lands within an established urban reserve.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

660-021-0070

Adoption and Review of Urban Reserve

(1) Designation and amendment of urban reserves shall follow the procedures in ORS 197.610 through 197.650.

(2) Disputes between jurisdictions regarding urban reserve boundaries, planning and regulation, or urban reserve agreements may be mediated by the Department or Commission upon request by an affected local government or special district.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

660-021-0080

Applicability

The provisions of this rule are effective upon filing with the Secretary of State.

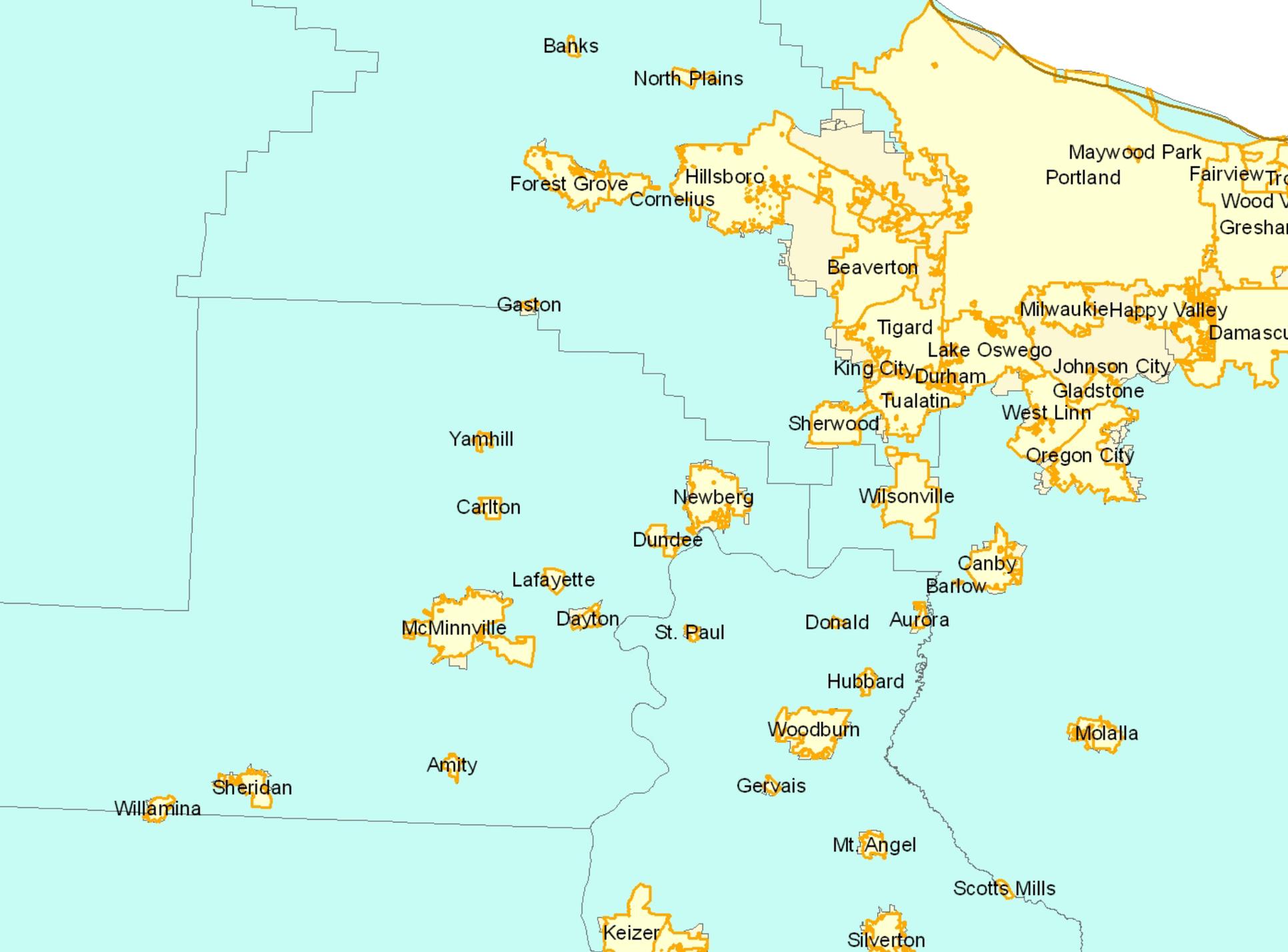
Stat. Auth.: ORS 183, 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-1997, f. & cert. ef. 12-23-97; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

Newberg Urban Reserve

Land Conservation and
Development Commission
Hearing June 5, 2009



Banks

North Plains

Forest Grove

Hillsboro

Cornelius

Beaverton

Maywood Park

Portland

Fairview

Wood V

Gresham

Gaston

Tigard

Lake Oswego

Milwaukie

Happy Valley

Damascus

King City

Durham

Johnson City

Gladstone

West Linn

Oregon City

Yamhill

Sherwood

Wilsonville

Carlton

Newberg

Dundee

Canby

Lafayette

Barlow

McMinnville

Dayton

St. Paul

Donald

Aurora

Hubbard

Woodburn

Molalla

Amity

Gervais

Sheridan

Willamina

Mt. Angel

Keizer

Silverton

Scotts Mills

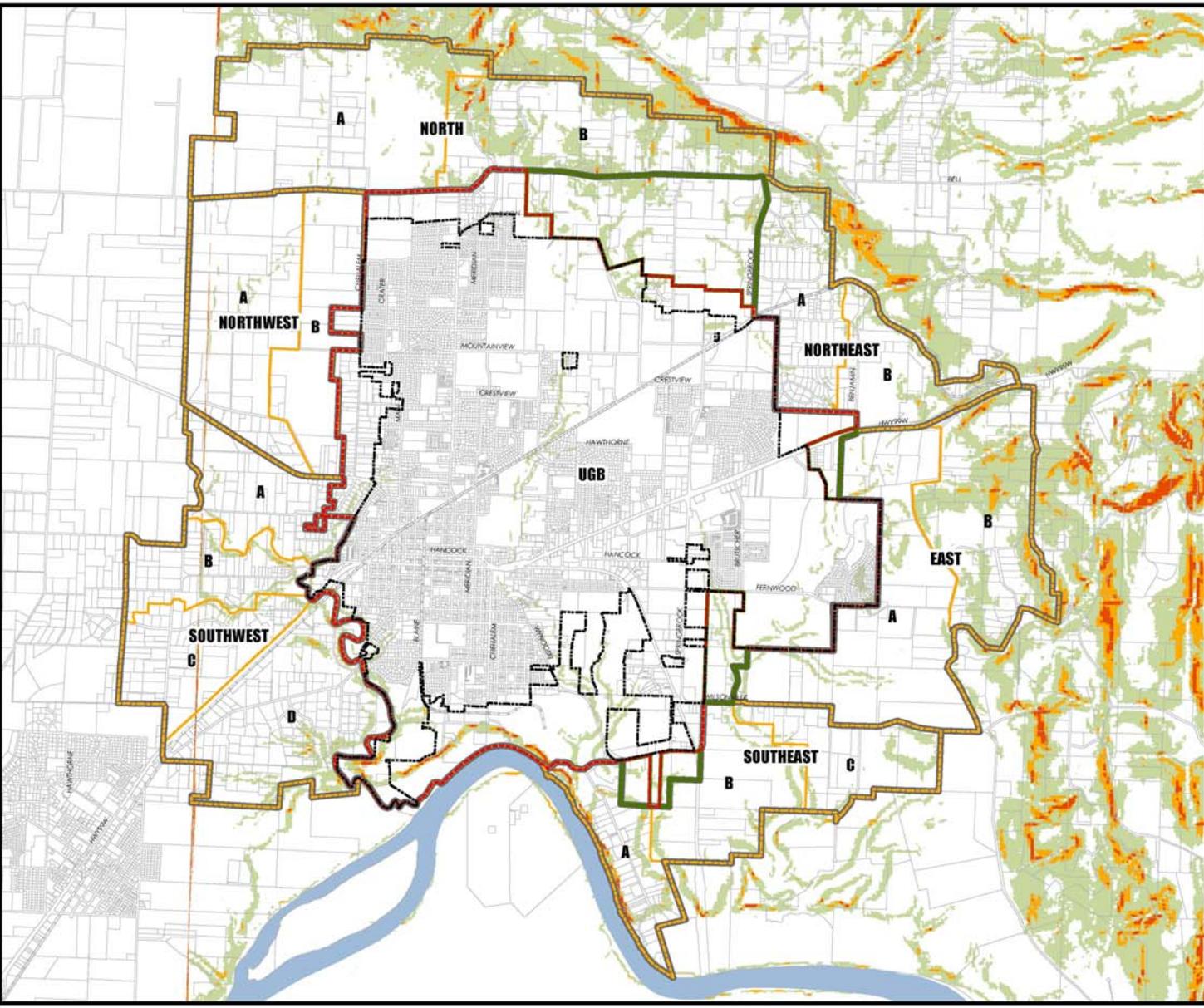
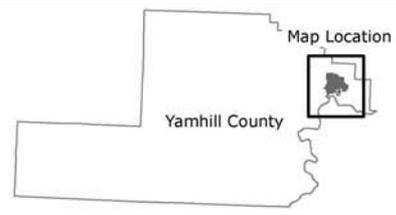
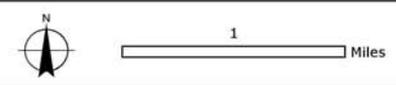
MAP 5

URBAN RESERVE STUDY AREAS WITH SLOPE

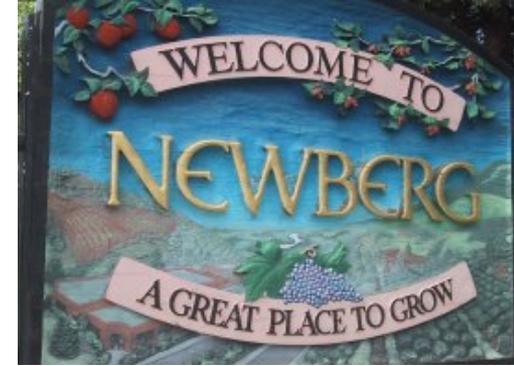
-  City Boundary
-  Urban Growth Boundary (Existing)
-  Urban Reserve (Existing)
-  Urban Reserve Study Area Subdistrict
-  Urban Reserve Study Area Boundary
-  Willamette River

Percent Slope

	< 10 %
	10 - 20 %
	20 - 25 %
	> 25 %



About Newberg



- Home of George Fox University
- Home of several large industrial manufacturers
 - A-dec world campus
 - SP Newsprint
 - About twice national average for manufacturing employment per capita
- Providence Newberg Hospital
- Newberg School District
- Chehalem Parks and Recreation District

How we got here

- 1981: Newberg's Comprehensive Plan acknowledged
- Early 1990's: Periodic Review
 - UGB to 2010
- 1995: Newberg adopted an urban reserve area
 - URA to 2020
- 2004: Appointed Ad Hoc Committee on Newberg's Future
- 2005: City Council accepted Committee's report

Vision and Goals

- Population: Medium growth – 54,097 by 2040
- Housing: * * * *ensure there is an adequate supply of affordable housing units to meet the needs of City residents of various income levels.*
- Density: Plan envisions 27% increase in residential density
- Complete Neighborhoods: Plan envisions complete neighborhoods with walking trails, bike paths, with parks, shopping and schools in close proximity.
- Shopping: *Community commercial centers are preferred to a large, regional shopping center.*
- Industry: *In order to increase the percentage of persons who live in Newberg and work in Newberg, the City shall encourage a diverse and stable economic base.*

Live here, work here, shop here, play here

Steps to Making it Happen

- Coordinated population projections: *adopted and acknowledged*
- Land needs for housing, institutions, commercial lands, and industrial lands: *adopted and acknowledged*
- 2006 UGB amendment: *adopted and acknowledged*
- Several plan changes in UGB – partially meet commercial, multi-family, institutional needs
- **Urban Reserve: adopted in 2008**
- UGB amendment to meet 20-year land needs
- Many other planning efforts: affordable housing action plan (Phase I adopted), transportation and land use planning for areas, industrial area master plan

OAR 660-021-0030 (1)

*Urban reserves shall include an amount of land **estimated** to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary.*

Table 1: Year 2040 Buildable Land Needs

Land Use Category	Buildable Acres Needed 2005-2040 (per Ord. 2005-2626)	Land Built 2004-2007	Remaining Acres Needed 2007-2040	Buildable Acres in 2007 UGB	Remaining Buildable Acres Needed 2007-2040
Residential	1,883	131	1,752	805	947
Commercial	220	10	210	125	85
Industrial	307	16	291	65	226
Public / Semi Public	597	8	589	182	407
Total	3,007	165	2,842	1,177	1,665

Goal 14: Suitability Characteristics

*In determining need, local government may **specify characteristics**, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.*

Table 3: Summary of Unmet Large Site Needs

Time Period	Industrial	Commercial	Parks	Schools	Total
2007-2025	(80)	(0)	(60)	(77)	(217)
2025-2040	(120)	(15)	(85)	(105)	(325)
2007-2040	(200)	(15)	(145)	(182)	(542)

Source: URA Findings, Record p. 3116

Industrial Land Needs

Column	A	B	C	D	E	F	G
	Buildable Acres Needed 2005-2040	Buildable Acres Needed 2025-2040	Buildable Acres Needed 2005-2040	Land Built 2004-2007	Remaining Acres Needed 2007-2040	Buildable Acres in 2007 UGB	Remaining Buildable Acres Needed 2007-2040
Source	Newberg Comp. Plan	Newberg Comp. Plan	A+B	City of Newberg	C-D	City of Newberg	E-F
Small site industrial needs (1/2 of employment)	50	37	87	16	71	45	26
Large site industrial needs (1/2 of employment)	100	120	220	0	220	20	200
Total Industrial Need	150	157	307	0	291	65	226

Table 15: Industrial Site Suitability Criteria

Criteria	
1. Site Size	5+ acres 20+ acres
2. Topography	5% or less preferred Not more than 10%
3. Land Ownership	2 or fewer separate ownerships
4. Development Level	1:1 improvement to land value ratio (assessor's records)
5. Natural Features	Natural features located at site perimeter
6. Street Access	Direct access to state highway
7. Shape	At least 200 feet depth At least 400 feet width
8. Serviceability	Tier 1-4
9. Compatibility	Buffer zone with LDR and MDR areas

Targeted Industries

- ◆ Established
 - ◆ High Tech (Semiconductors/Silicon, Imaging & Display Technology)
 - ◆ Metals, Machinery, Transportation Equipment
 - ◆ Nursery Products
 - ◆ Specialty Foods and Food Processing
 - ◆ Lumber and Wood Products

- ◆ Emerging
 - ◆ High Tech (Nano & Micro Technology, Cyber-Security, Health/Medical Information Technology)
 - ◆ Creative Services (Advertising, Public Relations, Film and Video, Web/Internet Content and Design)
 - ◆ Sports Apparel/Recreation-Related Products

- ◆ Targeted (clusters desired to create and establish)
 - ◆ Biotech/Bioscience (Medical Devices, Bioinformatics, Pharmaceuticals, Genomics, Anti-Virals)
 - ◆ Sustainable Industries (Renewable Energy, Resource Efficiency Technologies, Sustainable Building Materials, Green Chemistry)
 - ◆ Professional Services (Architecture, Engineering, Legal and Financial Services, etc.)
 - ◆ Distribution & Logistics

Table 2. Typical Lot Size Requirements for Firms in Selected Industries

Industry	Lot Size (acres)	Site Needs
Printing & Publishing	5 - 10	Flat, serviceable
Stone, Clay & Glass	10 - 20	Flat, serviceable, arterial access, no residential conflict
Fabricated Metals	10 - 20	Flat, serviceable, arterial access, no residential conflict
Industrial Machinery	10 - 20	Flat, serviceable, arterial access, no residential conflict
Electronics - Fab Plants	50 - 100	Suitable soil, serviceable, arterial access
Electronics - Other	10 - 30	Flat, suitable soil, serviceable, arterial access
Transportation Equipment	10 - 30	Flat, serviceable, arterial access, no residential conflict
Trucking & Warehousing	Varies	Flat, serviceable, no residential conflict, arterial or collector access
Wholesale Trade	Varies	Flat, serviceable, no residential conflict, arterial or collector access
Non-Depository Institutions	1 - 5	Flat, serviceable
Business Services	1 - 5	Flat, serviceable, arterial or collector access
Health Services	1 - 10	Flat, serviceable, arterial or collector access
Engineering & Management	1 - 5	Moderate slope, serviceable, collector access

Source: ECONorthwest.

Table 11: Commercial Site Suitability Criteria

Criteria	Option 1: Provide Large Shopping Center Tracts	Option 2: Limit the Supply of Large Shopping Center Tracts
1. Site Size	Regional: 20-30 Acres Community: 10-15 Acres Neighborhood: 3-5 Acres	Regional: Not Applicable Community: 10-15 Acres Neighborhood: 3-5 Acres
2. Topography	5% or less preferred Not more than 10%	5% or less preferred Not more than 10%
3. Land Ownership	2 or fewer separate ownerships	3 or fewer separate ownerships
4. Development Level	1:1 improvement to land value ratio (assessor's records)	1.5:1 improvement to land value ratio (assessor's records)
5. Natural Features	Natural features located at site perimeter	Natural features located at site perimeter
6. Street Access	Regional: direct highway Community: direct arterial Neighborhood: direct collector	Regional: not applicable Community: direct arterial Neighborhood: direct collector
7. Shape	At least 200 feet depth At least 1:2 width to depth ratio	At least 200 feet depth At least 1:2 width to depth ratio
8. Services	Tier 1-4	Tier 1-4
9. Compatibility	Not more than 25% border with LDR zoned land, except for neighborhood commercial	Not more than 50% border with LDR zoned land, except for neighborhood commercial

Table 18: School and Park Site Suitability Criteria

Criteria	Schools	Parks
1. Site Size	High School: 30-50 acres Middle School: 16-20 acres Elementary School: 10-12 acres Alt. H.S.: 3-5 acres	District/City Park: 25 acres Community Park: 20 acres Neighborhood Park: 3-5 acres
2. Topography	5% or less preferred Not more than 10% Small portion of site may exceed these slope criteria	5% or less preferred Not more than 10% Portions of site may exceed slope criteria
3. Land Ownership	1 owner	1 owner
4. Development Level	Maximum 50% improvement value to land value (assessor's records)	Maximum 50% improvement value to land value (assessor's records)
5. Natural Features	Wetlands, floodplains, streams removed from buildable area Natural features located at site perimeter	Wetlands, floodplains, streams removed from buildable area Natural features located at site perimeter
6. Street Access	High School: Minor arterial Middle School: Minor Collector Elementary School: Minor Collector Alt. H.S.: Minor Collector	District/City Park: Major Collector Community Park: Minor Collector Neighborhood Park: Minor Collector
7. Shape	At least 1:2 width to depth ratio	At least 1:2 width to depth ratio
8. Serviceability	Tier 1-4	Tier 1-4
9. Compatibility	Not more than 50% border with LDR zoned land, except for elementary school	Not applicable with sensitive park design

Source: Ad Hoc Committee on Newberg's Future Report, Record p. 122

Livability

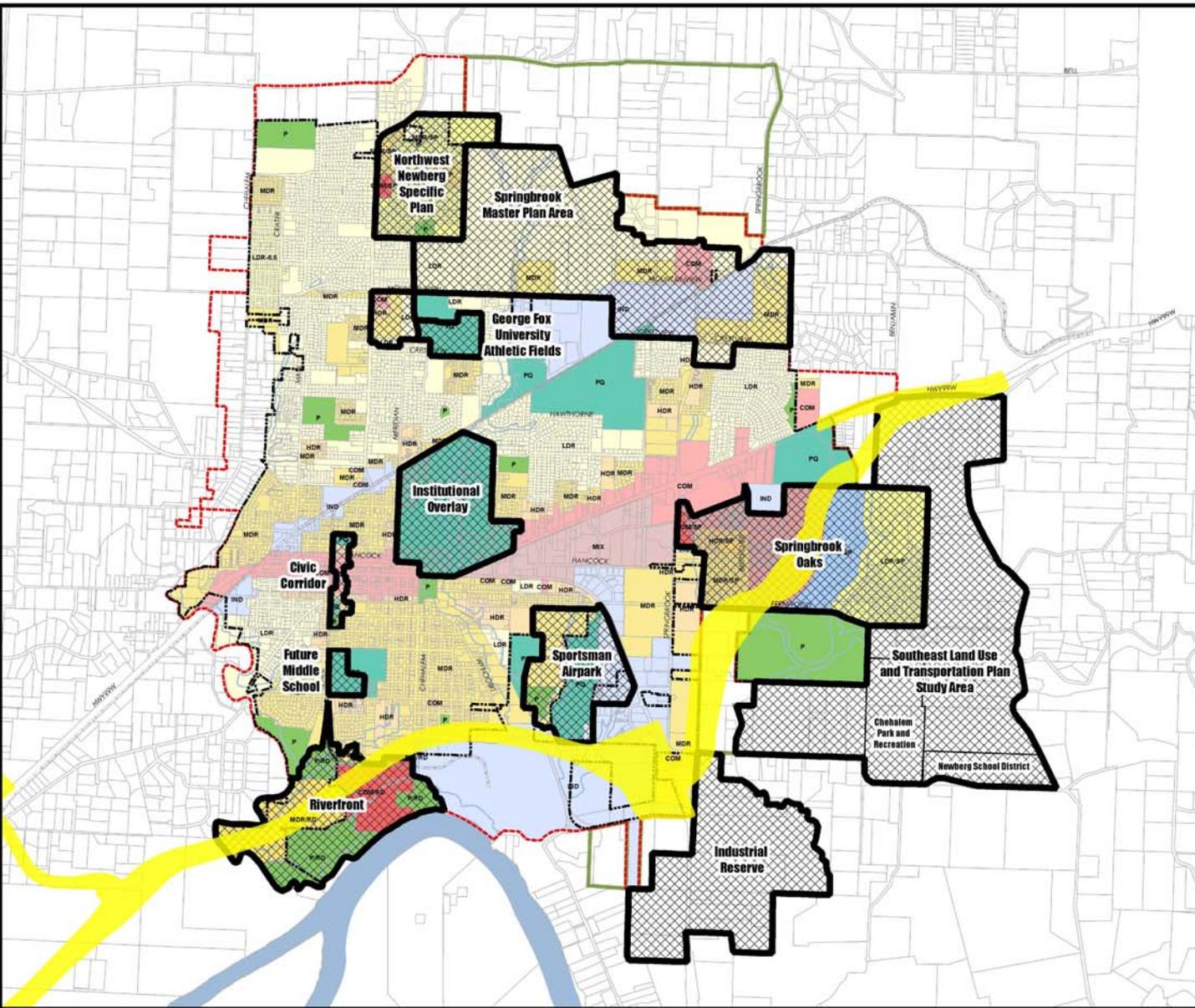
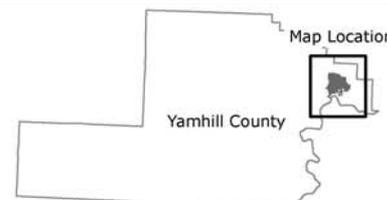
Goal 14: *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and **to provide for livable communities.***

Goal 14 Land Need Factor (2): *Demonstrated need for housing, employment opportunities, **livability** or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).*

MAP 2

NEWBERG SPECIAL AREA PLAN BOUNDARIES AND LAND NEEDED FOR SPECIAL USES

-  City Boundary
-  Urban Growth Boundary (Existing)
-  Urban Reserve (Existing)
-  Special Area Districts
-  Newberg-Dundee Bypass Corridor
-  Willamette River
-  COM Commercial
-  COM/RD Commercial Riverfront
-  COM/SP Specific Plan
-  IND Industrial
-  IND/RD Industrial Riverfront
-  IND/SP Specific Plan
-  LDR Low Density Residential
-  LDR-6.6 Low Density Residential 6.6 d.u./ac
-  LDR/RD Low Density Residential Riverfront
-  LDR/SP Specific Plan
-  MDR Medium Density Residential
-  MDR/RD Medium Density Residential Riverfront
-  MDR/SP Specific Plan
-  HDR High Density Residential
-  HDR/SP Specific Plan
-  P Parks
-  P/RD Parks Riverfront
-  PQ Public-Quasi Public
-  MIX Mixed Use
-  MIX/SP Specific Plan



OAR 660-021-0000: Purpose

Purpose

This division authorizes planning for areas outside urban growth boundaries to be reserved for eventual inclusion in an urban growth boundary and to be protected from patterns of development that would impede urbanization.

OAR 660-021-0010 (1): Definition

"Urban Reserve": *Lands outside of an urban growth boundary that will provide for:*

(a) Future expansion over a long-term period; and

(b) The cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary.

OAR 660-021-0030 (2)

*Inclusion of land within an urban reserve shall be based upon the **locational factors of Goal 14** and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land. Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan Area Urban Growth Boundary, shall **first** study lands adjacent to, or nearby, the urban growth boundary **for suitability** for inclusion within urban reserves, **as measured by the factors** and criteria set forth in this section. Local governments shall **then** designate, for inclusion within urban reserves, that suitable land which satisfies the priorities in section (3) of this rule.*

Goal 14 Locational Factors

- (1) Efficient accommodation of identified land needs;*
- (2) Orderly and economic provision of public facilities and services;*
- (3) Comparative environmental, energy, economic and social consequences; and*
- (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB*

OAR 660-021-0030 (3)

*Land found **suitable** for an urban reserve may be included within an urban reserve only according to the following priorities:*

*(a) First priority goes to land **adjacent to, or nearby**, an urban growth boundary and identified in an acknowledged comprehensive plan as an **exception area or nonresource** land. First priority may include resource land that is completely surrounded by exception areas unless these are high value crop areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture;*

*(b) * * * (marginal land)*

(c) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

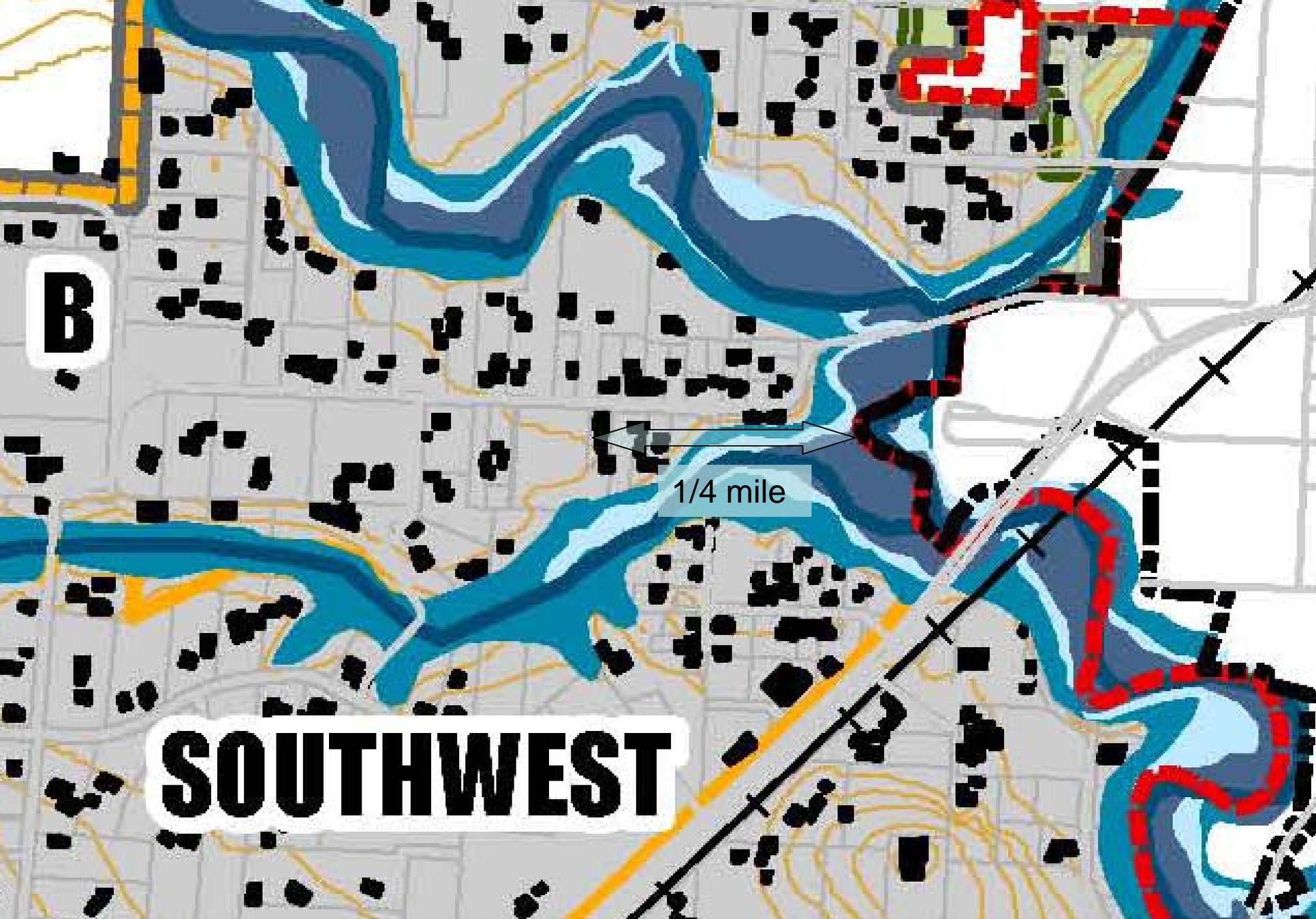
OAR 660-021-0030 (4)

Land of lower priority under section (3) of this rule may be included if land of higher priority is found to be inadequate to accommodate the amount of land estimated in section (1) of this rule for one or more of the following reasons:

- (a) Future **urban services could not reasonably be provided** to the higher priority area due to topographical or other physical constraints; or*
- (b) **Maximum efficiency** of land uses within a proposed urban reserve requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.*

Summary: To add an exception area to an urban reserve it

- Must be **nearby** (w/in ¼ mile)
- Must be **suitable**
 - (1) *Efficient accommodation of identified land needs;*
 - (2) *Orderly and economic provision of public facilities and services;*
 - (3) *Comparative environmental, energy, economic and social consequences; and*
 - (4) *Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB*
- Can exclude if *Future urban services **could not reasonably be provided** to the higher priority area due to topographical or other physical constraints*



B

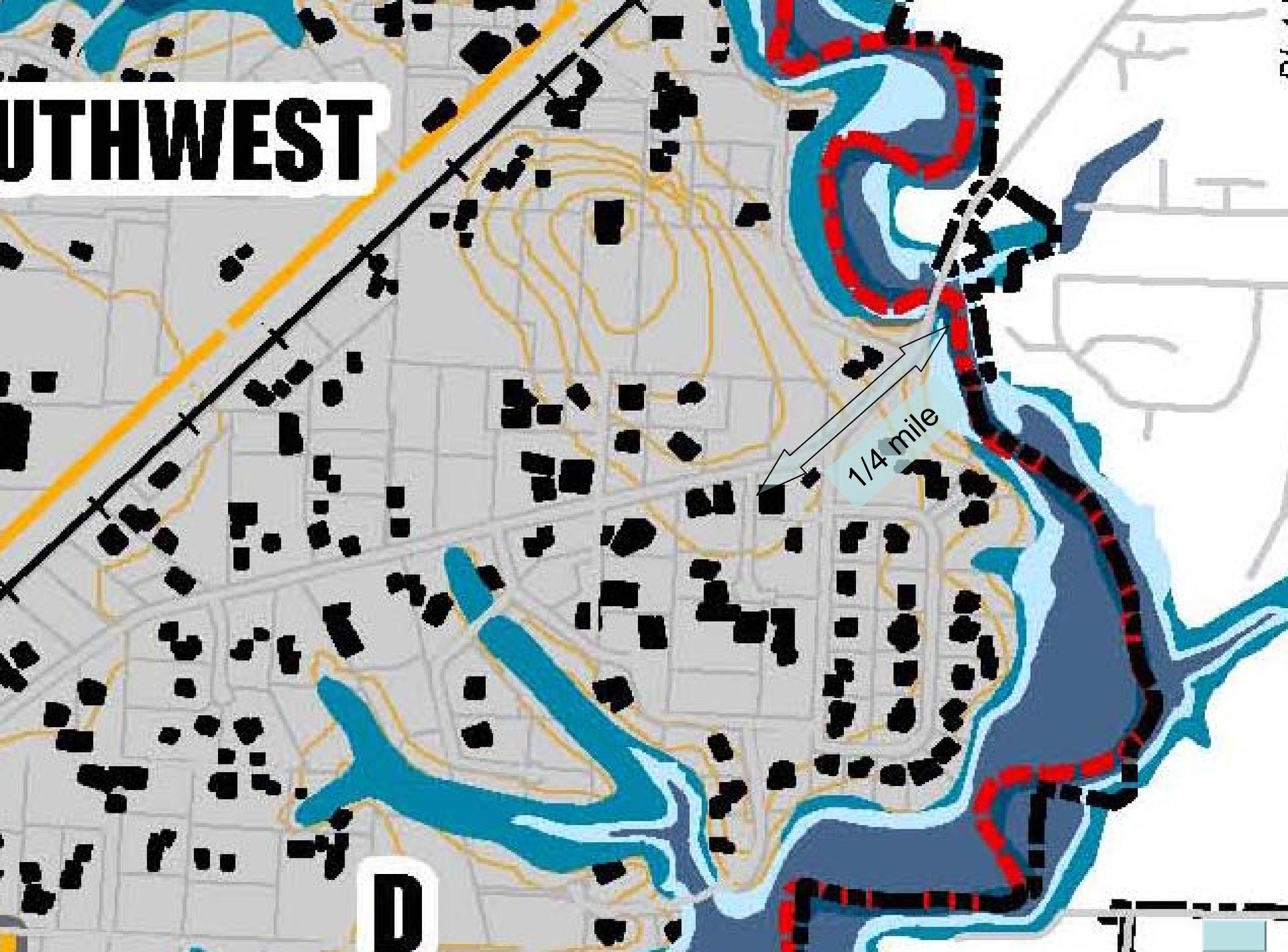
1/4 mile

SOUTHWEST

Summary: To add an exception area to an urban reserve it

- Must be **nearby** (w/in ¼ mile)
- Must be **suitable**
 - (1) *Efficient accommodation of identified land needs;*
 - (2) *Orderly and economic provision of public facilities and services;*
 - (3) *Comparative environmental, energy, economic and social consequences; and*
 - (4) *Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB*
- Can exclude if *Future urban services **could not reasonably be provided** to the higher priority area due to topographical or other physical constraints*

OUTHWEST



1/4 mile

D

Summary: To add an exception area to an urban reserve it

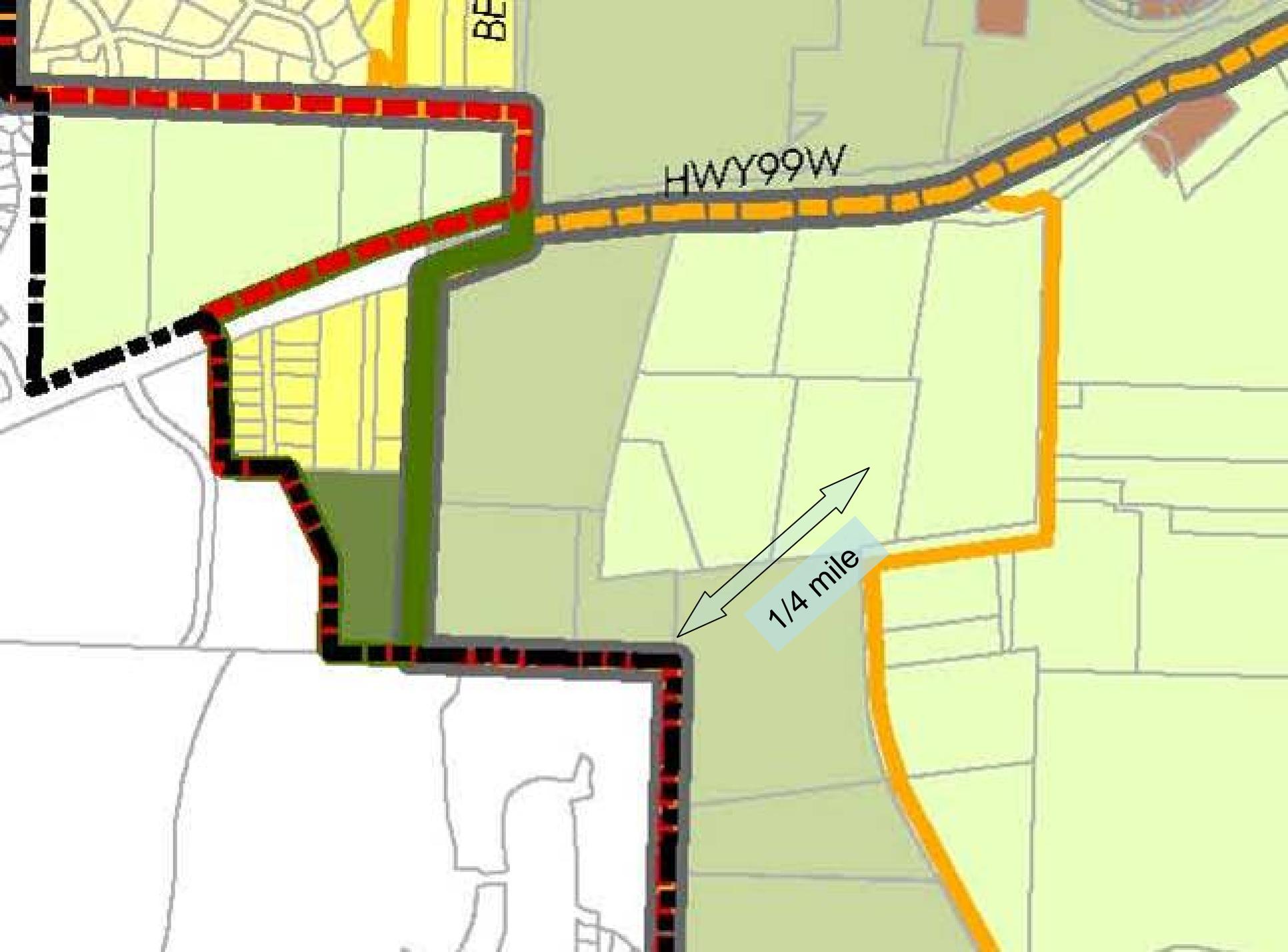
- Must be **nearby** (w/in ¼ mile)
- Must be **suitable**
 - (1) *Efficient accommodation of identified land needs;*
 - (2) *Orderly and economic provision of public facilities and services;*
 - (3) *Comparative environmental, energy, economic and social consequences; and*
 - (4) *Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB*
- Can exclude if *Future urban services **could not reasonably be provided** to the higher priority area due to topographical or other physical constraints*



1/4 mile
BROOK

Summary: To add an exception area to an urban reserve it

- Must be **nearby** (w/in ¼ mile)
- Must be **suitable**
 - (1) *Efficient accommodation of identified land needs;*
 - (2) *Orderly and economic provision of public facilities and services;*
 - (3) *Comparative environmental, energy, economic and social consequences; and*
 - (4) *Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB*
- Can exclude if *Future urban services **could not reasonably be provided** to the higher priority area due to topographical or other physical constraints*



BE

HWY 99W

1/4 mile

MAP 1

2007 URBAN RESERVE AREA

NEWBERG, OREGON

As Proposed For Adoption

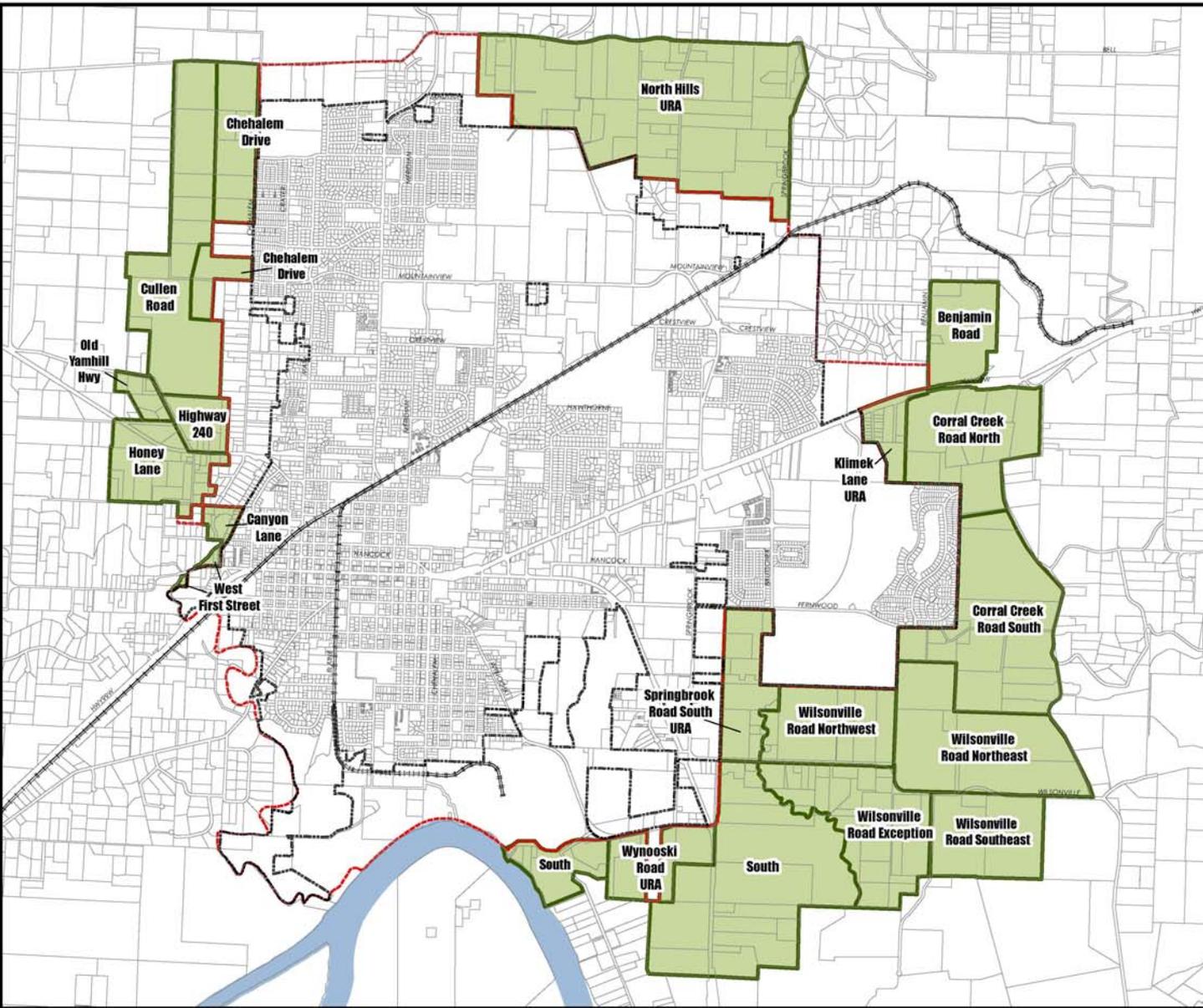
-  City Boundary
-  Urban Growth Boundary
-  2007 Urban Reserve Areas
-  Lot Line
-  Rail Road Tracks
-  Willamette River



0.5 Miles



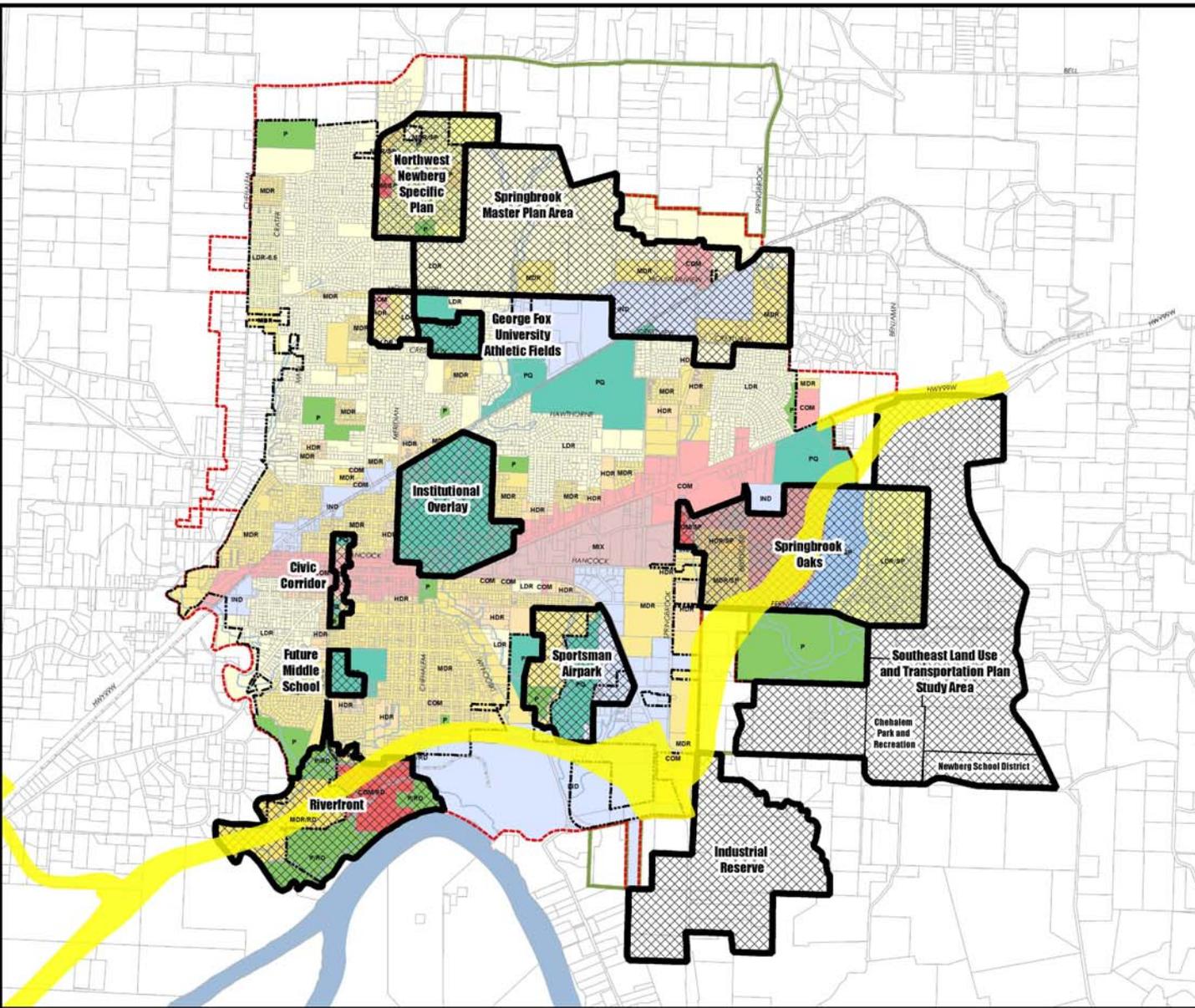
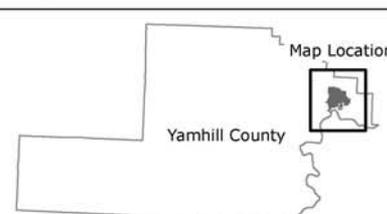
Map Document: (Z:\FILES\URA\2007\URA 05-019\Map\2007_URA.mxd)



MAP 2

NEWBERG SPECIAL AREA PLAN BOUNDARIES AND LAND NEEDED FOR SPECIAL USES

-  City Boundary
-  Urban Growth Boundary (Existing)
-  Urban Reserve (Existing)
-  Special Area Districts
-  Newberg-Dundee Bypass Corridor
-  Willamette River
-  COM Commercial
-  COM/RD Commercial Riverfront
-  COM/SP Specific Plan
-  IND Industrial
-  IND/RD Industrial Riverfront
-  IND/SP Specific Plan
-  LDR Low Density Residential
-  LDR-6.6 Low Density Residential 6.6 d.u./ac
-  LDR/RD Low Density Residential Riverfront
-  LDR/SP Specific Plan
-  MDR Medium Density Residential
-  MDR/RD Medium Density Residential Riverfront
-  MDR/SP Specific Plan
-  HDR High Density Residential
-  HDR/SP Specific Plan
-  P Parks
-  P/RD Parks Riverfront
-  PQ Public-Quasi Public
-  MIX Mixed Use
-  MIX/SP Specific Plan



MAP 3

URBAN RESERVE STUDY AREAS (2004), URBAN RESERVE AREAS (1995), EXCEPTION AREAS, AND AGRICULTURAL SOIL CAPABILITY CLASSES FOR AGRICULTURAL LANDS

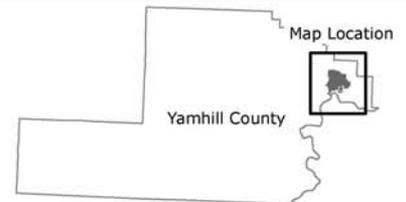
-  City Boundary
-  Urban Growth Boundary (Existing)
-  1995 Urban Reserve Areas
-  Urban Reserve Study Area Subdistrict
-  Willamette River

Agricultural Soil Capability Class

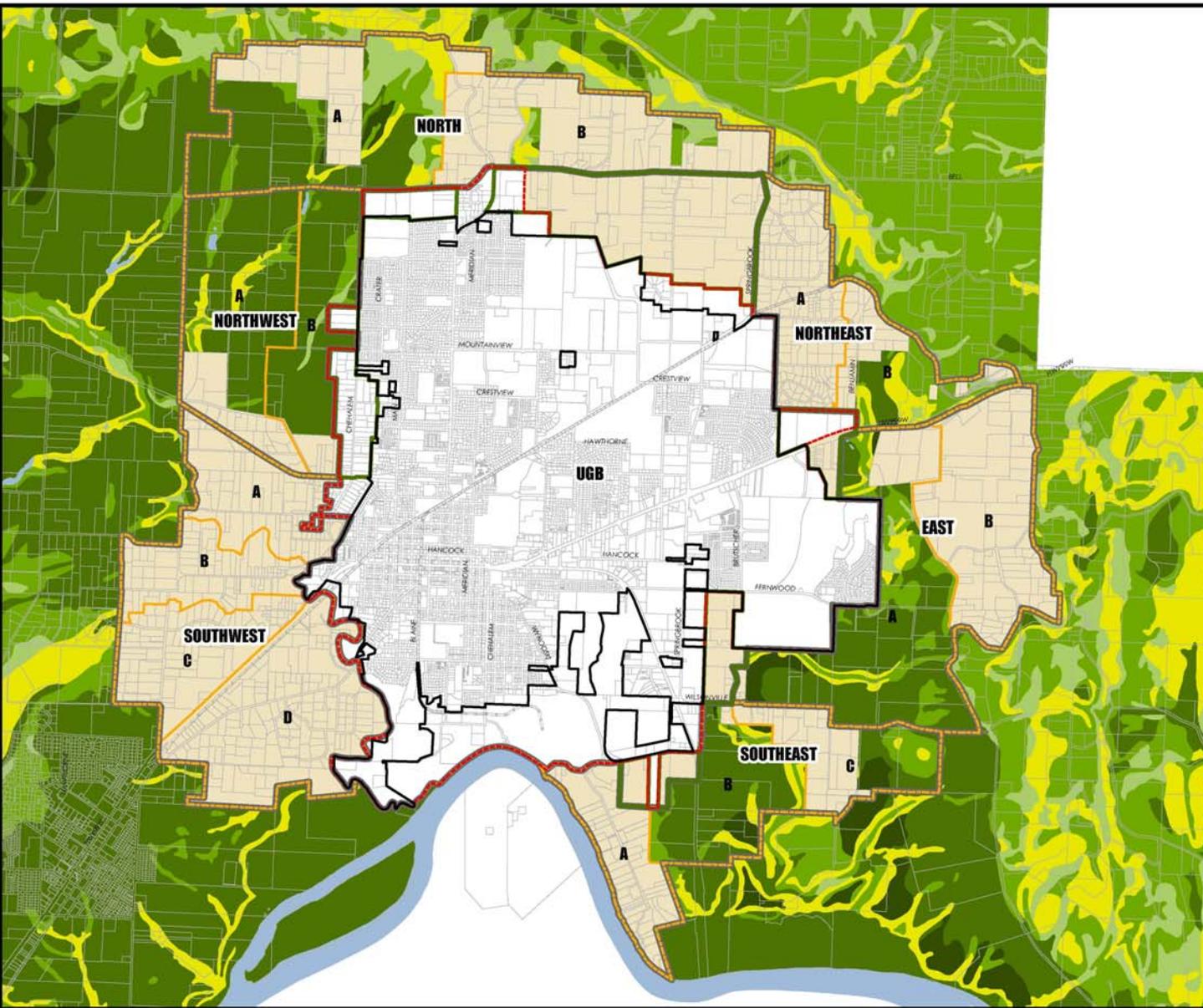
-  Water
-  I
-  II
-  III
-  IV
-  VI
-  VII
-  VIII



1 Miles



Map Document: J:\WP\PLA20\421\Luka\Newberg.mxd



MAP 4

YAMHILL COUNTY ZONING, 2006

- City Boundary
- Urban Growth Boundary (Existing)
- Urban Reserve (Existing)
- Urban Reserve Study Area Subdistrict
- Urban Reserve Study Area Boundary
- Willamette River

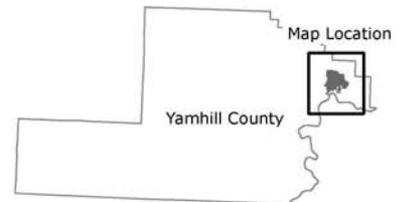
Zoning Designation

- | | | | |
|--|-----------|--|----------|
| | AF-10 | | MR-1 |
| | AF-20 | | MR-2 |
| | AF-40 | | NC |
| | AF-80 | | NCU |
| | BLM | | PAI |
| | EF-20 | | PALF |
| | EF-40 | | PRO |
| | EF-80 | | PWS |
| | F-80 | | RC |
| | HC | | RI |
| | HI | | SNF |
| | LDR-12000 | | TRBL |
| | LDR-6750 | | VLDR-1 |
| | LDR-9000 | | VLDR-2.5 |
| | LI | | VLDR-5 |
| | MDR-5000 | | |

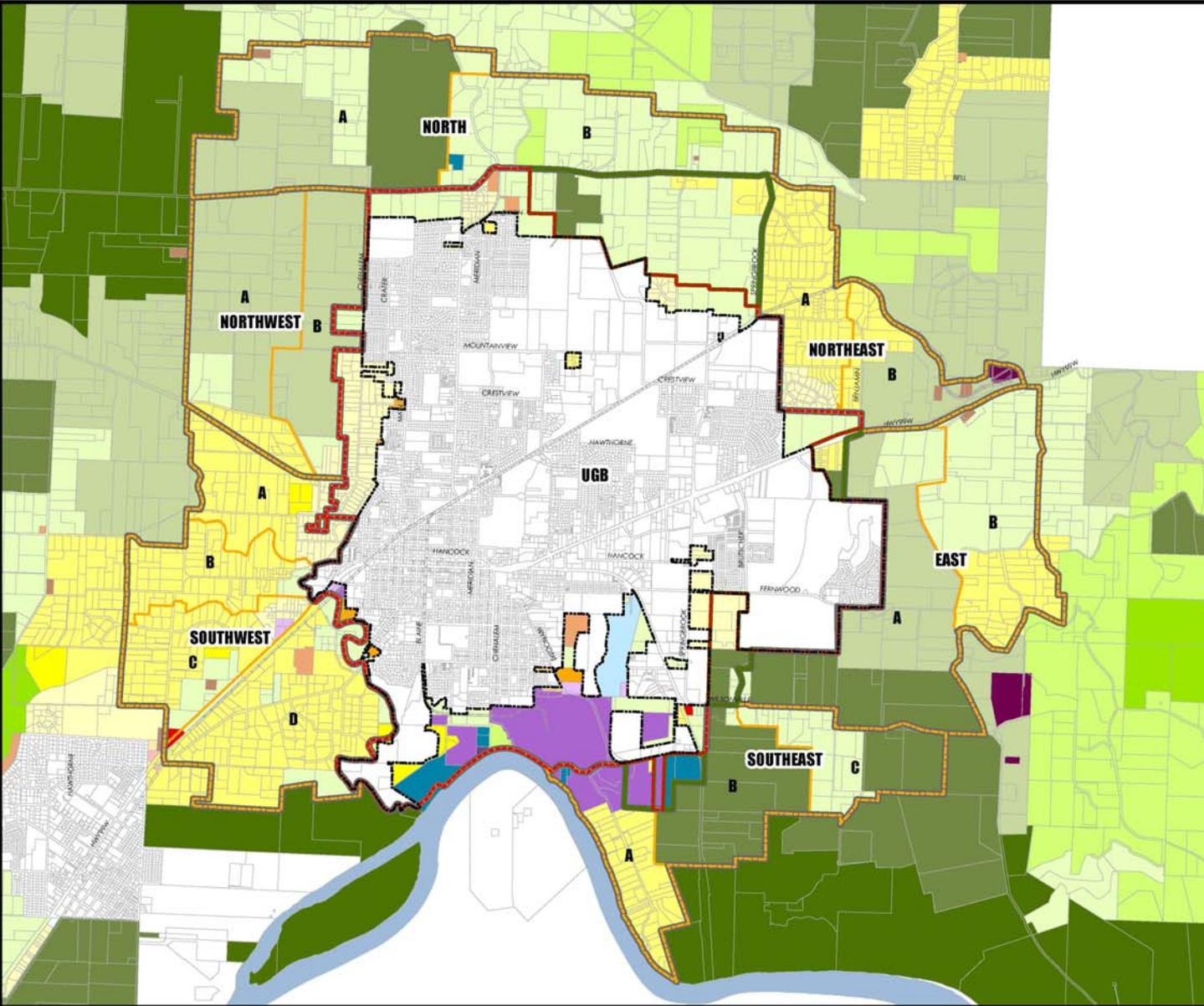


1

Miles



Map Document: \\WP7LAPR\FD\114612\newberg.mxd



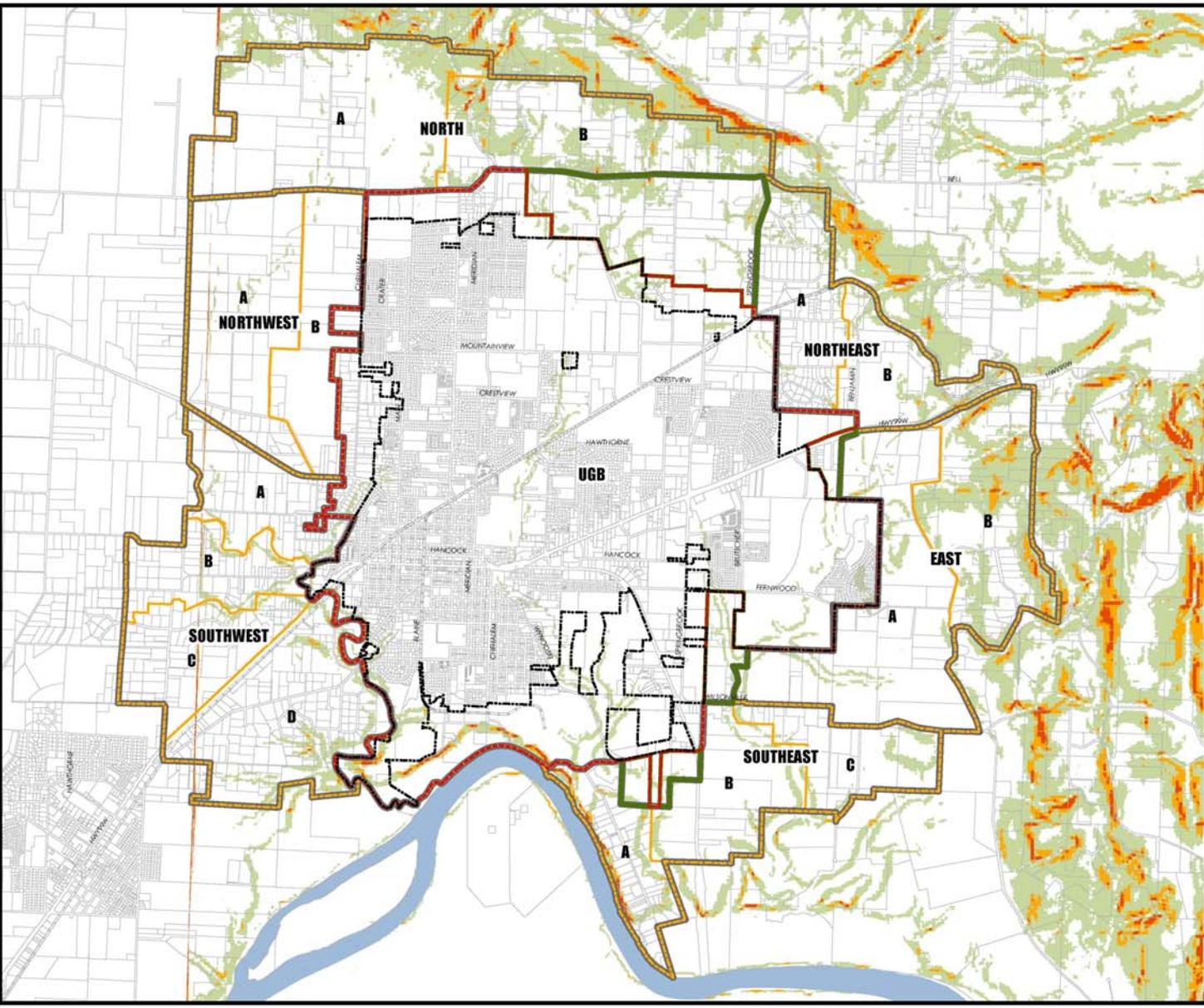
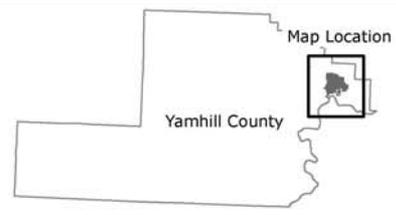
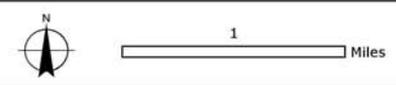
MAP 5

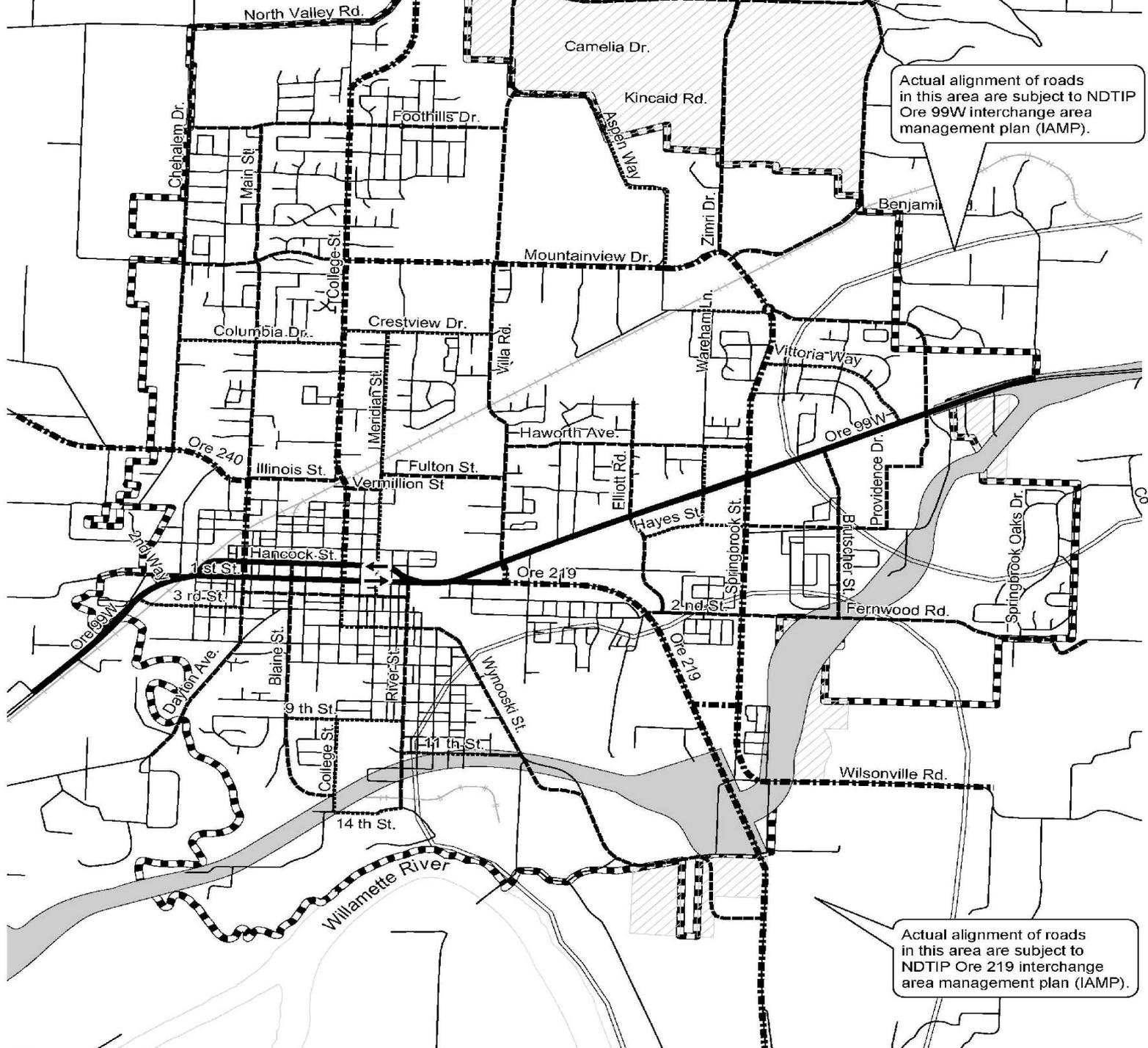
URBAN RESERVE STUDY AREAS WITH SLOPE

-  City Boundary
-  Urban Growth Boundary (Existing)
-  Urban Reserve (Existing)
-  Urban Reserve Study Area Subdistrict
-  Urban Reserve Study Area Boundary
-  Willamette River

Percent Slope

	< 10 %
	10 - 20 %
	20 - 25 %
	> 25 %





Actual alignment of roads in this area are subject to NDTIP Ore 99W interchange area management plan (IAMP).

Actual alignment of roads in this area are subject to NDTIP Ore 219 interchange area management plan (IAMP).

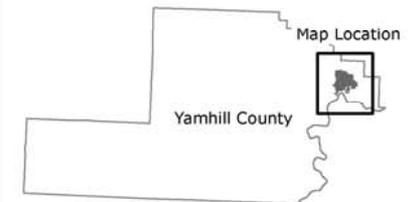
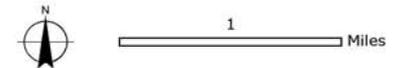
MAP 8

SANITARY SEWER SYSTEM PLANS

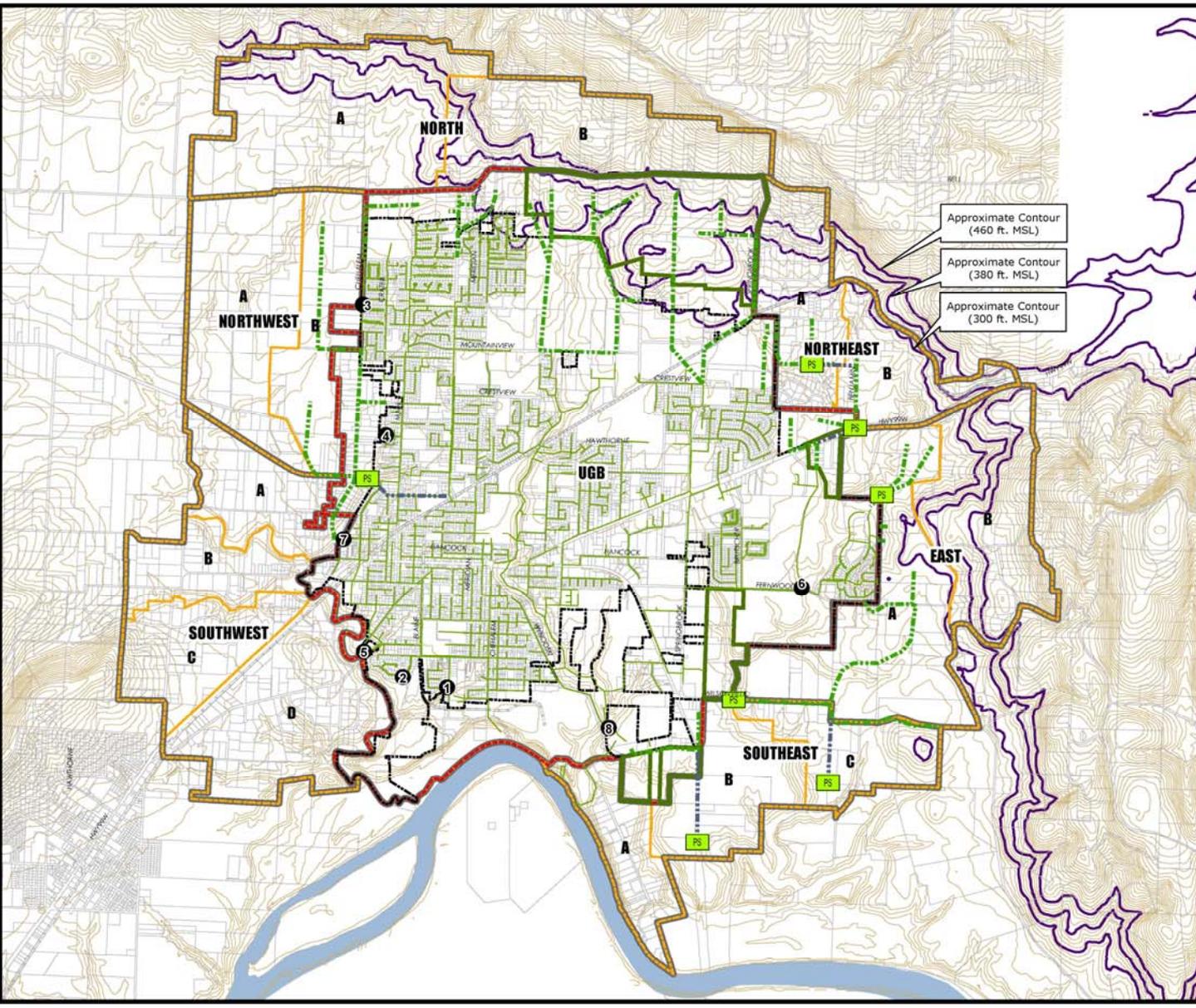
-  City Boundary
-  Urban Growth Boundary (Existing)
-  Urban Reserve (Existing)
-  Urban Reserve Study Area Subdistrict
-  Urban Reserve Study Area Boundary
-  Willamette River
-  20' Elevation Contour
-  Current Sanitary Sewer System
-  Potential Future Pump Stations
-  Potential Future Gravity Main
-  Potential Future P.M./Force Main

Sanitary Sewer Pump Stations

- | | |
|---|---|
|  1 Andrew St |  5 Dayton Ave |
|  2 Charles St |  6 Fernwood Rd |
|  3 Chehalem Dr |  7 Sheridan St |
|  4 Creekside |  8 Influent Pump Station |



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Approximate Contour
(460 ft. MSL)

Approximate Contour
(380 ft. MSL)

Approximate Contour
(300 ft. MSL)

MAP 9

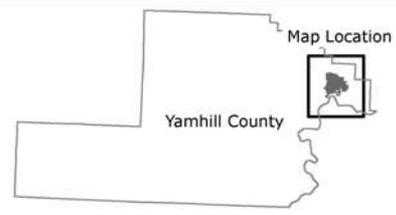
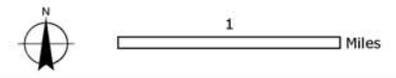
TOPOGRAPHICALLY AND PHYSICALLY CONSTRAINED AREAS

- City Boundary
- Urban Growth Boundary (Existing)
- 2007 Urban Reserve Areas
- Urban Reserve Study Area Boundary
- Urban Reserve Study Area Subdistrict
- Physically Constrained Lots
- Rural Buildings
- Street
- Railroad
- 20' Elevation Contour
- Willamette River
- 100 Year Floodplain
- 500 Year Floodplain
- Water Features

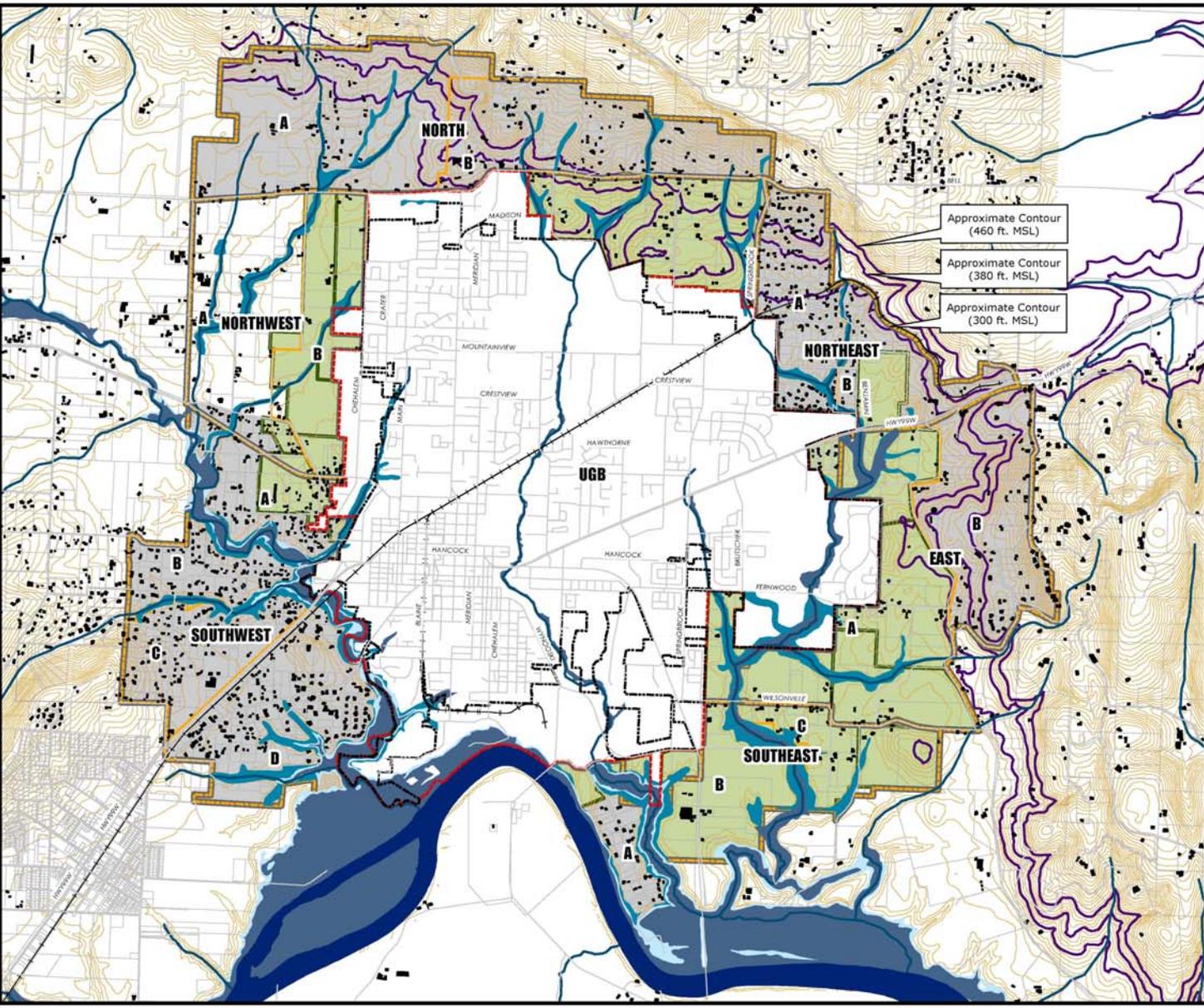
Approximate Contour
(460 ft. MSL)

Approximate Contour
(380 ft. MSL)

Approximate Contour
(300 ft. MSL)



Map Document ID: WPL\PLAN\B421\U44\2007_SRA_Map9.mxd





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 Central Oregon Office • PO Box 242 • Bend, OR 97709 • (541) 382-7557 • fax (541) 317-9129

September 9, 2008

Richard Whitman
 Steve Oulman
 Department of Land Conservation and Development
 635 Capitol Street, NE
 Suite 150
 Salem, Or 97301

EXHIBIT: 17 AGENDA ITEM: 15
 LAND CONSERVATION & DEVELOPMENT
 COMMISSION
 DATE: 6-5-09
 PAGES: 23
 SUBMITTED BY: 1000 Friends
Sid Friedman

Subject: Objection to City of Newberg and Yamhill County submittal

Dear Mr. Whitman and Mr. Oulman:

On July 23, 2008, Yamhill County mailed notice of adoption of Ordinance 828, approving a Revised Urban Reserve Area (URA) for the City of Newberg. The notice stated that notice of adoption was mailed to DLCD on July 23. Because it is our understanding that the amendments and notice of adoption were not actually sent to DLCD until August 28, in an abundance of caution we are re-filing these previously filed objections to ensure that they are timely filed. The amendments have been submitted to DLCD pursuant to 197.628 to 197.650.

The amendments expand the existing URA to include a total of 2,146 acres to provide for projected land needs through 2040. These 2,146 acres are comprised of 923 acres of exception lands and 1,223 acres of resource lands. According to the city and county, these 2,146 acres include 1,645 buildable acres.¹

We generally concur with the comments offered by the Oregon Department of Land Conservation and Development and Oregon Department of Agriculture in their letter dated October 1, 2007. The city has not justified the amount of land proposed for inclusion nor has it justified the inclusion of prime farmland, instead of alternative higher priority areas not included within the proposal.

1000 Friends of Oregon and Friends of Yamhill County submitted written testimony during the local process leading to adoption of these amendments and we therefore have standing to file objections. As explained below, we have several objections to the city's submittal.

To resolve our objections, 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.

¹ 2007 Urban Reserve Area Justification Report and Findings (URA Report), July 7, 2008, p. 47, Table II-1. Exhibit 8.

I. Land Needs

The designation of URAs requires both concurrence between the city and county *and* review by DLCD and LCDC in the manner provided for periodic review under ORS 197.628 to 197.650.

The land needs identified in the Newberg Urban Reserve Area Justification & Findings Report, dated July 7, 2008 (URA Report), are largely predicated upon post-acknowledgment plan amendments to the Newberg comprehensive plan adopted in 2005. These amendments purport to establish the amount of land needed through 2040 in a variety of categories. In some cases the amendments also purport to establish needed parcel characteristics, such as parcel size or topography.

To the extent the city contends that the prior plan amendments shield the size of the URA expansion from county and state review, we are highly skeptical.

Pursuant to ORS 197.626, LCDC has exclusive jurisdiction to review the designation of URAs for compliance with the statewide planning goals. DLCD and LCDC have both the authority and the responsibility to assess the *need for* and *size of* the URA expansion and not just its location. We believe that review cannot be truncated by discreet plan amendments that were not submitted to the commission.

Indeed, LUBA has already ruled on a similar issue involving McMinnville. McMinnville sought to establish its land needs through discreet plan amendments prior to submitting a UGB expansion to LCDC. In *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001) LUBA ruled that:

“[W]here the analysis indicates that the UGB includes insufficient buildable lands, the city *cannot* ‘obtain finality regarding its needs analysis before... proceeding [to amend its UGB or its regulations]’.” (emphasis in original).

Newberg has understated the amount of buildable land within its existing UGB and has overstated the amount of land it will need through 2040.

Objection 1: The City Has Understated Its Existing Supply of Industrial Land

The URA Report (1) states that 16 acres of industrial land were developed from 2004-2007; (2) identifies a need for 291 buildable acres of industrial land for the period of 2007-2040; and (3) states that there are 65 buildable acres of industrial land in the 2007 UGB; (4) leaving a need for an additional 226 acres of industrial land beyond the existing supply.²

² URA Report, Table 1, p. 21

The URA Justification Report states that there are 65 buildable acres of industrial land in Newberg's 2007 UGB.³ This understates the buildable industrial acreage by 78 acres.

Newberg's adopted comprehensive plan identifies 159 acres of buildable industrial land in the 2004 UGB.⁴ Of these 159 acres, 16 acres were developed between 2004 and 2007.⁵ This leaves 143 acres of buildable industrial land within the 2007 UGB (159 - 16 = 143). This more than double the amount of buildable industrial land (65 acres) stated in the URA Report.

While there is no explanation offered for the discrepancy, the city has apparently discounted buildable industrial sites for reasons that are either unexplained or impermissible.

The findings merely state, "potential [existing buildable industrial] sites are hampered by one or more problems."⁶ With the exception of a large parcel on Sandoz Road, none of these excluded buildable industrial sites are identified.

The city has previously stated that some of the existing industrial land supply should be rezoned for other uses because of proximity to residential neighborhoods or other factors.⁷ However, there is no evidence in the record to suggest that the city has in fact rezoned this land and/or counted this buildable land in some other category, such as residential or commercial.

The city also apparently takes the position that buildable land currently being used for outdoor storage is no longer available for development.⁸ This position is in error. Between now and 2040 it is not reasonable to conclude that this buildable land will not develop.

Finally, although the current UGB contains 3 large sites that are 20 acres or larger, at least one and possibly two of these sites are discounted because of the potential Newberg Dundee Bypass. However, as ODOT has stated:

"At this time, we are not able to identify the Newberg-Dundee Bypass as a planned facility that is reasonably likely to be funded and constructed within the 20-year-planning horizon."⁹

³ *Id.*

⁴ Newberg Comprehensive Plan p. 63, Table IV-1 and p. 72, Table IV-14, and p. 69, "The industrial buildable land inventory inside the current UGB has approximately 159 acres." Exhibit 1

⁵ URA Report, Table 1, p. 21

⁶ URA Report p. 22

⁷ Newberg Comprehensive Plan, p. 69

⁸ *Id.*

⁹ March 28, 2007 letter from Region 2 ODOT manager, Erik Havig, to Newberg's planning director, Barton Brierley. See Exhibit 2

And:

"Until the money needed to construct the bypass has been identified, the city cannot rely on the bypass as an officially planned project that will be available to mitigate the impacts of land use ... on the state transportation system,"¹⁰

In no case does the URA Report quantify the amount of affected buildable industrial land it has discounted because it is "hampered by problems" or tie specific sites to specific problems.

Conclusion

For these reasons, there is not an adequate factual basis to support the conclusion that Newberg has only 65 acres of buildable industrial land left in its existing UGB. Therefore, the submittal violates Goal 2.

The city's adopting ordinance also amends, "the Newberg Comprehensive Plan supply and demand tables... to reflect these changes." There is not an adequate factual basis to support reducing the amount of industrial land in Newberg's Comprehensive Plan supply and demand tables. For this reason, as well, the submittal violates Goal 2.

Finally, because the submittal amends the city's plan in a manner that discounts the development of existing buildable land within the existing UGB, the submittal violates Goal 14's directive to ensure the efficient use of urban land.

Remedy

The Department should remand the submittal with instructions to either:

- a) Include all of the 143 buildable acres of industrial land within the existing UGB in its industrial land supply- the 159 acres identified in the comprehensive plan, minus the 16 acres that have developed between 2004 and 2007; or
- b) Redesignate industrial land the city finds no longer suitable for industrial use to commercial or residential use and add the land to its commercial or residential land supply.

Since either alternative will result in a reduced need for industrial, commercial, and/or residential land the Department should further direct Newberg to make a corresponding reduction in the size of its URA expansion.

¹⁰ Erik Havig, quoted in McMinnville News-Register, June 12, 2007, see **Exhibit 2**

Objection 2: The URA Includes an Overstated Need for Industrial Land that is Unjustified.

OAR 660-021 requires a URA to be based on demonstrated need, the locational factors of Goal 14, and a “demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land.” Goal 2 requires that plans have an adequate factual basis. All of the land included in the URA for industrial use is resource land.

Newberg’s combined URA and UGB includes roughly double the industrial land need identified in the comprehensive plan through 2040 based on the high employment growth scenario and roughly quadruple the industrial land need identified in the URA Report through 2040 based on the high employment growth scenario.

Newberg’s comprehensive plan identifies a need for 162 acres of buildable industrial land from 2005 through 2040, based on a “high employment growth scenario.”¹¹ The plan further assumes that approximately 50 percent of the future industrial employment will take place on parcels that are 20 acres or larger.¹² The URA Report identifies a need for 71 buildable acres of industrial land for the period of 2007-2040 based on a “high employment growth scenario.”¹³

Despite the conclusions regarding industrial land need based on the high employment growth scenario, both the post-acknowledgment plan amendments to the Newberg comprehensive plan we previously referred to and the URA report assert that that Newberg will need a total of 309 acres of industrial land from 2005 through 2040 (comprehensive plan), or 291 acres from 2007 through 2040 (URA report).¹⁴ This is roughly double the identified land need based on the high employment growth scenario in the comprehensive plan (162 acres) and roughly quadruple the identified land need based on the high employment growth scenario in the URA Report (71 acres).

The extreme oversupply of land is largely due to the purported need for large flat parcels:

“In addition to an overall supply of buildable land, Newberg needs to have sites available to meet the specific needs of target industries... Thus, to provide choice among suitable sites to meet these aspirational employment projections, the City determined they need 4-5 large industrial sites of at least 20 acres in size for the period 2005-2025, and 5-6 large industrial sites from 2026-2040, for a total of 220 acres [in large sites].”¹⁵

¹¹ Newberg Comprehensive Plan p. 69, Table IV-10, see Exhibit 1

¹² *Id.*

¹³ URA Report, pp. 33-34

¹⁴ Newberg Comprehensive Plan p. 72 and URA Report, p. 36, see Exhibit 1. Acreage totals include two categories 2005 (or 2007) through 2025 and 2026 through 2040.

¹⁵ URA Report, p. 34

There is no factual basis for these conclusions. Neither the city's Economic Opportunities Analysis, (EOA), the comprehensive plan, nor the URA Report list any specific target industries for Newberg or their site requirements. The EOA (adopted *after* the previously discussed plan amendments) perhaps comes closest in that it lists industry clusters identified in the Portland Regional Business Plan and concludes that, "it is reasonable to think that some of the businesses within these industries may find that they would like to establish themselves in Newberg." The EOA also discusses the growth potential of existing industries located within the existing UGB. However, the EOA does not identify any site requirements for either the regional or any other industries.¹⁶

Even though the EOA does not identify site requirements, the URA Report states:

"Employment land needs are based on site requirements of targeted employment rather than population. To provide for choice among employment sites, Newberg has relied on the needs identified in the acknowledged Newberg Comprehensive Plan, which identifies both small and large site industrial needs."¹⁷

Because neither the comprehensive plan, or the URA Report, nor the EOA identify "specific needs" or site requirements of target industries, nor even identify target industries, there is no factual basis to support the conclusions regarding needed industrial land and approval would therefore violate Goal 2.

Furthermore, even if the city *had* identified target industries and their site requirements, which it did not, it cannot use the "targeted industries" approach to evade the requirement that a URA be based upon demonstrated need and a demonstration that no alternatives exist which require less resource land. The city has already adopted a "high employment growth scenario" and concluded it translated into a need for 162 acres of industrial land.¹⁸ Use of the targeted industries approach cannot allow a URA to contain substantially more land than is demonstrably needed.

There is nothing inherent in the targeted industries methodology that requires exceeding the land supply over the planning period. The primary flaw in the city's *implementation* of the targeted industries approach is that it is not tied to the site needs of target industries, not tied to the city's projected employment, nor is it tied to the planning period. Nothing in the city's estimate of employment sites and sizes and resulting projection of needed industrial land in any way relates to the projected number of employees, the planning period or the site requirements of target industries.

¹⁶ EOA, pp. 14-16, Local Economic Development Industry Clusters and Target Industries, see Exhibit 3

¹⁷ URA Report, p. 34

¹⁸ Newberg Comprehensive Plan p. 69, Table IV-10, see Exhibit 1

Finally, site requirements for target industries are a relevant factor to be considered when assessing land needs for a UGB, not a URA. Under OAR 660-009-0025 explicitly refers to “the anticipated 20-year land need” within the UGB and “the total projected land needs... during the 20-year planning period” covered by the UGB.

There is no similar authorization in statute or rule to base a URA on the site requirements of target industries. When planning for potential users in the more distant future covered by the URA, it is simply not possible to predict with any precision what industries will be viable or which of those may be attracted to Newberg, much less what their specific site requirements will be.

Conclusion

For these reasons, there is not an adequate factual basis to conclude that Newberg will need 291 acres of industrial land from 2007 through 2040. This is roughly quadruple the identified land need based on the high employment growth scenario in the URA Report (71 acres). Approval would therefore violate Goal 2.

Because all of the land included in the URA for industrial use is resource land and because it was included without an adequate factual basis to conclude that either that much land is needed or that only large, flat sites could accommodate the need, approval also would violate OAR 660-021, which requires a URA to be based on demonstrated need, the locational factors of Goal 14, and a “demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land.”

Remedy

The Department should remand the submittal with instructions to base the URA on either:

- a) The need for 162 acres of buildable industrial land from 2005 through 2040 identified Newberg’s comprehensive plan, based on a “high employment growth scenario;” or
- b) The need for 71 buildable acres of industrial land from 2007 through 2040 identified in the URA, based on a “high employment growth scenario.”

Since either alternative will result in a reduced need for industrial land the Department should further direct Newberg to make a corresponding reduction in the size of its URA expansion.

Objection 3: There Is Not an Adequate Factual Basis to Support the Amount of Public and Semi-Public Land Included in the URA.

The URA Report (1) identifies a need for 589 buildable acres of land for public schools, private schools, parks, churches, etc. from 2007 through 2040; (2) states that there are 182 acres of buildable acres of public and semi-public land in the 2007 UGB; (3) leaving a need for an additional 407 buildable acres of public and semi-public land beyond the existing supply.¹⁹ Of this, the city asserts that, "327 acres will be needed on large, flat sites, (i.e. farm land)." ²⁰

We share the concern expressed by DLCD and ODA in written comments they submitted to the city:

"... the acreages for schools and parks appear to be excessive."²¹

Like DLCD and ODA, we are also concerned with the extent to which the city asserts these needs must be met on farmland. While schools, commercial uses, and other public and semi-public uses may prefer flat sites, "Goal 14 accommodates needs, not preferences."²²

As we pointed out in our local testimony, Oregon's Transportation Growth Management website contains the following relevant information:

"Acreage Standards for School Sites

"Until recently, the Arizona-based Council of Educational Facility Planners International (CEFPI) recommended large sites for new schools... But under new guidelines (*Creating Connections: CEFPI Guide for Educational Facility Planning/2004 Edition*) published by CEFPI in 2004, school districts are encouraged to base the size of school sites on educational program needs instead of on arbitrary acreage standards. This more flexible approach has the potential of reducing "school sprawl" and of making it easier for communities to build (or preserve and renovate) schools on smaller sites located in walkable neighborhoods, as opposed to constructing stand-alone facilities on large, remote sites accessible only by car or bus. Other publications by CEFPI include: *A Primer on the Renovation and Rehabilitation of Older/Historic Schools and Schools for Successful Communities: An Element of Smart Growth.*"²³

¹⁹ URA Report, Table 1, p. 21

²⁰ URA Report, p. 42

²¹ Letter from DLCD and ODA to City of Newberg, October 1, 2007

²² *Id.*

²³ <http://www.lcd.state.or.us/LCD/TGM/walkableschools.shtml>

Conclusion

For these reasons, there is not an adequate factual basis to conclude that Newberg will need 589 acres of public and semi-public land from 2007 through 2040, nor is there an adequate factual basis to conclude that “327 acres will be needed on large, flat sites, (i.e. farm land).”

Approval would therefore violate Goal 2.

Because much of the land included in the URA for public and semi-public uses is resource land and because it was included without an adequate factual basis to conclude that either that much land is needed or that only large, flat sites could accommodate the need, approval also would violate OAR 660-021, which requires a URA to be based on demonstrated need, the locational factors of Goal 14, and a “demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land.”

Remedy

The Department should remand the submittal with instructions to:

- a) Base the URA on a public and semi-public land need that has an adequate factual basis;
- b) Accommodate the revised land need on the alternative that requires the least, or has the least effect upon, resource land; and
- c) Direct Newberg to make corresponding revisions to the size and/or location of its URA expansion.

Objection 4: There Is Not an Adequate Factual Basis to Support the Commercial Land Need That Forms the Basis for the URA.

Newberg identified a specific need for large, flat parcels for “targeted industries, community commercial centers, community parks, and public schools.”²⁴ The industrial and the public and semi-public uses are discussed in the preceding objections. This objection addresses the commercial land need.

There is not an adequate factual basis to support the conclusion that Newberg cannot meet its need for commercial land unless it has 3 “community shopping centers” on large, flat sites of “about 15 acres each”.²⁵ There is no evidence in the record to support such a conclusion.

²⁴ URA Report, p. 49

²⁵ URA Report, pp. 37-38

As DLCD and ODA pointed out in the letter we previously cited, “Goal 14 accommodates needs, not preferences.”²⁶

Newberg included high-value agricultural land in the Southeast Study Area to meet the asserted need for a third large, vacant, flat site for community shopping center.²⁷ The findings indicate that this was because an ad hoc committee recommended putting it there, not because there were no reasonable alternatives that will require less, or have less effect upon, resource land.²⁸

Conclusion

For these reasons, there is not an adequate factual basis to conclude that Newberg will need to site a shopping center on a large, flat parcel of farmland in order to meet its commercial land needs.

Because all of the large flat parcels included in the URA for commercial use are on resource land and because this resource land was included without an adequate factual basis to conclude that only large, flat sites could accommodate the need, approval also would violate OAR 660-021, which requires a URA to be based on demonstrated need, the locational factors of Goal 14, and a “demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land.”

Remedy

The Department should remand the submittal with instructions to remove the large, flat site included within the URA for shopping centers.

II. Lands included and excluded

Newberg *included* 1,223 acres of lower priority resource land in its proposed URA while *excluding at least* 1,773 hundreds of buildable land in higher priority exception areas.²⁹

Under OAR 660-021-0030 (2):

“Inclusion of land within an urban reserve shall be based upon the locational factors of Goal 14 and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land.”

²⁶ *Id.*

²⁷ URA Report, p. 38

²⁸ *Id.*

²⁹ Included resource land total from URA Report, p. 47, Tables II-1 and II-2. Excluded exception land total from URA Report, p. 57, Table II-6 and URA Report Map 3

In addition, under OAR 660-021-0030(3)

Land found suitable for an urban reserve may be included within an urban reserve only according to the following priorities:

- (a) First priority goes to land adjacent to, or nearby, an urban growth boundary and identified in an acknowledged comprehensive plan as an exception area or nonresource land. First priority may include resource land that is completely surrounded by exception areas unless these are high value crop areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture;
- (b) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, second priority goes to land designated as marginal land pursuant to former ORS 197.247 (1991 edition);
- (c) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

Under OAR 660-021-0030(4) lower priority land, i.e. resource land, may *only* be included in an urban reserve ahead of higher priority land if :

- (a) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or
- (b) Maximum efficiency of land uses within a proposed urban reserve requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.”

Objection 5: The Inclusion of Prime and High-Value Farmland, Instead of Alternative Exception Areas and Other Higher Priority Areas Within the URA is Not Justified.

A. Use of improper criteria

ORS 197.298 establishes the priority of land for inclusion within a UGB. Under ORS 197.298(3) lower priority land may be included ahead of higher priority land if specific types of identified land needs, like a need for large flat parcels, cannot reasonably be accommodated on higher priority lands when amending a *UGB*.

OAR 660-021-0030 establishes the priority of land for inclusion within a URA. GAR 660-021-0030(4) is identical to ORS 197.298 *except* that it does not authorize the inclusion of lower priority land ahead of higher priority land based on accommodation of a specific type of identified land need. While that is a consideration in the designation and amendment of the 20-year land supply within a UGB, that finer-grained criterion is not a justification for including lower priority land ahead of higher priority land when designating the very long-term supply of land in a *URA*.

In developing its URA proposal:

“Newberg identified three basic types of land needs: (a) land uses that require large, flat parcels (targeted industries, community commercial centers, community parks, and public schools); and (b) other land uses that may benefit from large, flat sites but do not necessarily require such sites (residential, neighborhood commercial centers, neighborhood parks, and other smaller scale public and semi-public uses); and (c) land uses that require a master-planned setting to achieve the livability objectives of the Newberg Comprehensive Plan.... Exception areas are not suited to meet large site needs...”³⁰

The first category of land listed above might arguably fit the definition of a specific identified land need. The second and third categories do not. Be that as it may, while lower priority land may be included ahead of higher priority land if specific types of identified land needs cannot be reasonably accommodated on higher priority lands when amending a *UGB*, that is not a justification for including lower priority land ahead of higher priority land when designating a *URA*.

If, when amending its *UGB*, Newberg identifies a specific type of identified land need that cannot be met within the *URA* or on other higher priority land, the city *can* amend its *UGB* to include resource land. However, the city *cannot* include lowest priority resource land in the *URA* ahead of exception land based on a specific type of identified land need.

Exception areas are threatened by development that will preclude or hinder future urban development. Resource lands are protected from development. If, at some future date, Newberg can justify expansion onto these resource lands, they will still be there- as readily urbanizable as they are now- whether or not they are included in the Urban Reserves.

Nor can the city amend its *URA* to include resource land and then bring that land into its *UGB* ahead of exception land in the pre-existing *URA* for a use that can be accommodated in the pre-existing *URA*. That would be contrary to the purposes of ORS 197.298, OAR 660-021, and Goal 14.

³⁰ URA Report, p. 49

Despite this legal framework, the URA Report:

“[I]dentifies siting requirements for commercial shopping centers, large-site industrial users and institutional development. Approximately 542 acres of agricultural land are needed in the planning period for these uses.”³¹

Of the 542 “large-site” acres, 200 acres are for industrial use, 15 for commercial use and 327 are for public and semi-public use.³² Of the 542 acres of resource land included to provide large sites, 517 acres are high-value soils.³³ Fully 74% of the higher value agricultural soils included in the URA are included to provide large, flat sites.

In *addition* to, the 542 acres of resource land included for large sites, *another 383 acres* of resource land is included in the expanded URA on an asserted “livability need” based on the now-repealed Southeast Transportation Plan (212 acres) and the Newberg Southeast Transportation Plan Industrial Reserve (171 acrea).³⁴ The city and county found:

“[The} agricultural land is needed to achieve the livability objectives of the southeast area.”³⁵

First, there is no demonstrated “livability need” for another 171 acres industrial land in *addition to* the 200 acres of large, flat sites already included for industrial use nor can there be “livability need” for 212 acres based on a Southeast Transportation Plan that the County refused to adopt and that the city has now repealed.³⁶ Furthermore, the city and county’s argument is circular. If the prime farmland in the southeast area was not included in the URA there would be no need to include additional prime farmland to meet the area’s “livability objectives.”

Perhaps more importantly, “livability need” is not even a specific type of identified land need let alone a criterion that is applicable to the designation of a URA. Nor is it a criterion applicable to the designation of a URA under OAR 660-021-030 or the locational factors of Goal 14. Even if it were, the findings do not explain what it is or why it must be met on resource land, other than to discuss the now-repealed Southeast Land Use and Transportation Plan as if it were still in effect.³⁷

Conclusion

³¹ URA Report, p. 66

³² URA Report, p. 51, Table II-5

³³ URA Report, p. 30, Table 6

³⁴ URA Report, p. 30, Table 6

³⁵ URA Report, p. 7

³⁶ URA Report, pp. 19-110

³⁷ URA Report, pp. 24-25

Under OAR 660-021-0030(4) lower priority land, i.e. resource land, may only be included in an urban reserve ahead of higher priority land if:

- (a) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or
- (b) Maximum efficiency of land uses within a proposed urban reserve requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.”

Instead of applying these criteria, the city and county included high-value resource land in the expanded URA ahead of higher priority land based on criteria that are inapplicable to the designation and amendment of an urban reserve- the asserted siting requirements of specific uses and a purported “livability need.” For this reason, approval would violate OAR 660-021-0030(3) and (4) which explicitly establish the criteria to be used when designating or amending a URA.

Because of the impacts to resource land from both the 542 acres of large-site land and the 383 acres of “livability need” land, approval would also violate OAR 660-022-0030(2), which requires “a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land.”

Because of the lack of justification for the “livability need” land, approval would also violate Goal 2, which requires that plans have an adequate factual basis and the requirements that a URA to be based on demonstrated need.

Remedy

The Department should remand the submittal with instructions to:

- a) Remove from the URA the 542 acres resource land included in order to provide large, flat sites;
- b) Remove the 383 acres of resource land included as “livability need” land; and
- c) Resubmit a URA based upon the criteria that are in the applicable law- OAR 660-021-0030.

B. Improper application of criteria

The city has excluded exception areas from the URA even though topographical or other physical constraints do not preclude the reasonable provision of future urban services.

1. Excluded Southwest Exception Areas

There are 693 buildable acres of exception land in the Southwest study area that were excluded from the URA.³⁸ This land was excluded based on a finding that, “much of the land west of Chehalem Creek (to the south and west) cannot be served by the existing or planned City sewer system due to topographic and physical constraints.”³⁹ This finding does not stand up to scrutiny.

First, the findings states the *existing* Dayton pump station does not have sufficient capacity to handle additional flows.⁴⁰ This ignores the fact that the pump station and associated lines *are already planned for upgrades or replacement.* (See **Exhibit 5**)

The City of Newberg Dayton Avenue Pump Station Data/Information Summary (August 2007) identifies a new waste water treatment plant at the Dayton pump station location as “a great location to receive sewage from both Dundee and the new growth of Newberg to the west.”

“The City of Dundee is exploring the option of connecting to the Newberg wastewater treatment plant. The Dayton Ave. pump station would likely be the best location to receive this sewage, unless a completely new force main is built from Dundee all the way to the WWTP, because this station is at a low elevation. The southwest corner of the city would also be a good place for a new wastewater treatment plant. The city could run two wastewater treatment plants, which may become a necessity as the city continues to grow. If built, a new plant would ease the existing pressures on the system; particularly the deficiencies in the Dayton pump station, and would be in a great location to receive sewage from both Dundee and the new growth of Newberg to the west.”⁴¹

Second, the city’s 2007 Sewerage Master Plan Update *did not* conclude that the area could not be served, as the findings assert. It did not even consider the area because the city didn’t include it in its proposed URAs. The Sewerage Master Plan Update only evaluated service to areas that were proposed for conclusion in the URA. Because the Southwest areas were not included in the URA, the update did not evaluate it:

“The boundary of the study area is defined by the City’s urban growth boundary (UGB) and by the urban reserve areas (URAs). The UGB and current URAs are defined by the most recently adopted Comprehensive Plan

³⁸ See URA Report, p. 57 Table II-6 and p. 48, Table II-3

³⁹ URA Report, p. 55

⁴⁰ URA Report, p. 58

⁴¹ Dayton Avenue Pump Station Data/Information Summary p. 6

<http://ci.newberg.or.us/website/Community%20Development/Operations/Dayton%20Data%20&%20Info%20Summary%208-2007/Dayton%20Data%20&%20Info%20Report.pdf>. **Exhibit 5**

(revised November 2004). Several proposed URAs are defined by the *City of Newberg and Yamhill County, 2007 URA Expansion, Justification and Findings Report*, March 7, 2007.”⁴²

Finally, the city has previously acknowledged that Chehalem Creek does not pose an obstacle to provision of wastewater treatment or other urban services. Over fifteen years ago, when Newberg was considering its first Urban Reserves, a City memorandum stated:

“Area J [Southwest Area] along Dayton Avenue can be served by sewer in the short term... by relocating the pump station near the Dayton Avenue bridge, a large portion of area “J” can be served by sewer in the next two years. This significantly changes the outlook on how to approach the Newberg-Dundee corridor.”⁴³

The findings advance one more reason for excluding the Southwest exception areas. The findings contend that:

“Existing development and parcelization typically is most dense at the edge of the 2007 UGB. The result is that these fringe areas have almost no development potential, and serve as a “plug” to urbanization of outlying areas.”⁴⁴

This finding is in error. The URA Report maps show that much or most of 2007 UGB border with the Southwest exception area is adjacent to larger parcels that exceed the average size listed in the URA report for the exception area as a whole. This is especially true for Subareas B, C, and D, where many of the parcels bordering the existing UGB are of sufficient size to meet all or part the asserted need for large, flat sites.⁴⁵

It is almost always easier to urbanize flat farmland than exception areas. Exception lands – by their definition – are more difficult to urbanize than farm land because exception areas are already partially developed. ORS 197.732(1), OAR ch. 660, div. 04. And yet, exception lands are given higher priority for UGB expansions than farm and forest lands because of the state’s policy to protect farm and forest lands and recognition that expansion of urban development into rural areas is a matter of “state concern.”⁴⁶ The Court of Appeals has

⁴² Sewerage Master Plan Update
http://ci.newberg.or.us/website/Community%20Development/Operations/Sewerage%20Master%20Plan%20Update/Chapter02.html#_Toc170112304. Exhibit 6

⁴³ City of Newberg Planning Department Memorandum dated February 20, 1992. Exhibit 7

⁴⁴ URA Report, p. 58

⁴⁵ URA Report Maps 3 and 4

⁴⁶ ORS 215.243 states:

observed on other occasions that simply because exception areas are more difficult to serve than other areas, are more “geographically challenged,” or can only provide for low density urban development; these are not reasons alone to exclude them. *City of West Linn v. LCDC*, 201 Or App 419, 434, 436, 446 (2005).

The city and county have not established that future urban services could not reasonably be provided to the excluded exception area due to topographical or other physical constraints.

2. Excluded Northwest Exception Area

The city and county have excluded an unknown number of buildable acres of exception land in the Northwest study area, including a block of relatively large parcels in the county’s AF-10 zone, stating:

“The Highway 240 area and Old Yamhill Highway area define the projected extent that the area could be served using the future Highway 240 sanitary sewer pump station. Further west, due to the topography, the area would likely need an additional sanitary sewer pump station.”⁴⁷

This conclusory finding is not supported by evidence in the record and does not justify the exclusion of this exception area.

First, as with the Southwest area, the city’s 2007 Sewerage Master Plan Update did not even consider service the area because the city didn’t include it in its proposed URAs. Of course the plan doesn’t call for the future pump station plan to serve the area, since it didn’t consider it. This does not mean it cannot be reasonably served.

Second, the city and did not find an additional pump station would be needed to serve it. Instead, the findings merely speculate that it is likely.

In fact, the area appears to be at a higher elevation than the future Highway 240 sanitary sewer pump station.⁴⁸ If this is the case, an additional pump station would likely not be needed to serve the area.

“(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

“(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.”

⁴⁷ URA Report, p. 59

⁴⁸ URA Report Map 8

The city and county have not established that future urban services could not reasonably be provided to the excluded exception area due to topographical or other physical constraints.

3. Excluded North Exception subarea B

The city has excluded approximately 350 acres of buildable land in North exception area subarea B, *east* of Chehalem drive.⁴⁹ No sanitary sewer lift stations would be needed to serve the area and there is no intervening resource land.⁵⁰ The subarea is in the County's AF-10 zone (10 acre minimum) and thus remains in large parcels.⁵¹

The findings assert that the subarea cannot reasonably be served with urban services solely because:

“Most of the North area is above the level that could be served by the City's existing reservoirs, and a large portion is even higher than could be served by the City's planned higher level reservoirs (planned to serve the North Hills URA).”⁵²

First, as the findings acknowledge, a significant portion of the subarea, abutting the existing UGB, is below 460 feet and can thus be served by reservoirs that are *already planned*. These reservoirs will serve property up to 460 feet in elevation.⁵³ These reservoirs are planned before 2025, before the URA planning period even begins.

The 2004 City of Newberg Water Distribution Plan runs through the year 2025. It states:

ES.1.3 Study Period

The study period for this plan is through the year 2025. Recommended annual improvements are provided for the individual years ranging from 2004 to 2009 and in 5-year intervals thereafter, to 2025. It is recommended that this plan be updated approximately 5 years (2010).⁵⁴

Second, for areas that are higher than 460 feet we note that the water distribution plan runs through the year 2025. It is intended to be updated every 5 years. The URA provides a land supply for the years 2025 through 2040. A water distribution plan that *ends in 2025* cannot justify exclusion of land to be served *after 2025*.

⁴⁹ URA Report, p. 57, Table II-6. A small portion of the 393 buildable acres of land in the study area is resource land.

⁵⁰ URA Report, p. 59 and URA Report Map 8 and Map 4

⁵¹ URA Report Map 4

⁵² URA Report, p. 59

⁵³ URA Report, p. 53

⁵⁴ 2004 City of Newberg Water Distribution Plan., p. ES-2.

<http://ci.newberg.or.us/website/Community%20Development/Operations/2004%20City%20of%20Newberg%20Water%20Distribution%20System%20Plan.pdf>. Exhibit 4

The city and county have not established that future urban services could not reasonably be provided to the excluded exception area due to topographical or other physical constraints.

4. Excluded Northeast Exception areas

Within the Northeast study area the city has *included* 53 buildable acres of resource land and 5 buildable acres of exception land, and *excluded* 249 buildable acres of exception land, including exception land in Northeast subarea B where the city estimates the cost per buildable acre of providing urban services as *low*.⁵⁵

The findings cite the views of current residents as a topographical or physical constraint that justifies the area's exclusion:

"Residents of the area have stated that they view their properties as fully developed, and not as lots with infill potential."

"Given that most property owners view their properties as fully developed, few if any would be motivated to form an LID or other mechanism needed to improve the roads."

"It [is] highly unlikely that annexation would be supported by the majority of land owners or property owners, as required by state law."

"Thus, future urban services could not be reasonable provided to the Northeast Area due to topographical and physical constraints."⁵⁶

These findings do not justify the exclusion of the exception area.

First, political considerations are not topographical or other physical constraints. Second, the planning period for the URA is 2025 to 2040. It is unlikely that many current residents will continue to live in the study area 20 or 30 years from now and those that do may well hold different views in the distant future.

The city also contends that portions of the area can be excluded because they are higher than the city's *existing* water service area, even though the city's Water Distribution Plan calls for improvements that will allow for service by 2025, *before the planning period for the URA* even begins:

The area north of the railroad tracks is largely higher than could be served by the City's existing water system. A new reservoir system will need to be developed with multiple zones to serve these higher areas. A portion of the

⁵⁵ See URA Report, p. 57 Table II-6 and p. 48, Table II-3

⁵⁶ URA Report, pp. 59-60

northeast area is even higher than the highest level planned to serve the adjacent North Hills URA, making it unreasonable to serve.⁵⁷

For areas that are higher than 460 feet we again note that the water distribution plan runs through the year 2025. The URA provides a land supply for the years 2025 through 2040. A water distribution plan that *ends in 2025* cannot justify exclusion of land to be served *after 2025*.

Finally, the city cites the cost of providing services as another reason to exclude the area.⁵⁸ This finding does not hold up to scrutiny. The city has excluded exception land in Northeast subarea B where the city estimates the cost per buildable acre of providing urban services as *low*.⁵⁹

The city and county have not established that future urban services could not reasonably be provided to the excluded exception area due to topographical or other physical constraints.

5. Excluded East Exception area

The city has excluded 361 buildable acres of exception land in East subarea B (east of Corral Creek Road) because, (a) a portion of the area has “steep” slopes; and (b) some of the area is higher than existing water service elevations or water system service elevations planned through 2025.⁶⁰

These findings do not constitute topographical or other physical constraints that justify exclusion of the area.

First, *the finding regarding slope is wrong*. The city asserts that “The areas east of Corral Creek Road are on a steep hillside with 10 to 40% slopes.”⁶¹ In fact, Map 5 of the URA Report shows approximately *half the area has slopes less than 10% including several large parcels in the northern portion of the subarea* bordering the amended URA. Only a tiny fraction of the area has slopes greater than 20%. The city itself considers land with less than 25% slope to be buildable.⁶²

Second, the finding regarding existing and planned water service levels is misleading at best. About half the subarea- the portion closest to the existing UGB- is below the 460 foot elevation planned for improvements that will allow for service by 2025, before the planning

⁵⁷ URA Report, p. 60

⁵⁸ *Id.*

⁵⁹ URA Report, p. 57 Table II-6

⁶⁰ URA Report p. 62

⁶¹ *Id.*

⁶² URA Report, p. 15, “Unbuildable land was constrained by steep slopes (25% or greater), within stream corridor boundaries, or designated as permanent open space.”

period for the URA even begins. This is especially true for the portion of the subarea zoned AF-10 by the County, where most of the land remains in large parcels.⁶³

For areas that are higher than 460 feet we again note that the water distribution plan runs through the year 2025. The URA provides a land supply for the years 2025 through 2040. A water distribution plan that *ends in 2025* cannot justify exclusion of land to be served *after 2025*.

The city and county have not established that future urban services could not reasonably be provided to the excluded exception area due to topographical or other physical constraints.

6. Excluded Southeast Exception areas

The city and county have *excluded* approximately 88 buildable acres of exception land in Southeast subarea A and *included* approximately 220 buildable acres of resource land in adjacent Southeast subarea B.⁶⁴ The stated reason for excluding this exception area is that the area is parcelized and the cost of providing urban services is “unreasonable.”⁶⁵

First, as explained above, exception areas by their very nature are parcelized and partially developed, yet they are still the highest priority for inclusion within a URA. Parcelization does not justify their exclusion.

Second, the city’s own analysis estimates cost of service for the subarea A at \$26,900 per buildable acre. It estimates cost of service for subarea B at \$22,400.⁶⁶ The city does not explain why an additional cost of \$4500 per buildable acre to serve exception land is a topographical or physical constraint that makes providing urban services unreasonable.

The city has not established that future urban services could not reasonably be provided to the excluded exception area due to topographical or other physical constraints.

Conclusion

Under OAR 660-021-0030(4) lower priority land, i.e. resource land, may only be included in an urban reserve ahead of higher priority land if :

- (a) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or

⁶³ URA Report, Map 4 and Map 8

⁶⁴ URA Report, p. 57, Table II-6

⁶⁵ URA Report, p. 61

⁶⁶ URA Report, p. 57, Table II-6

(b) Maximum efficiency of land uses within a proposed urban reserve requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.”

The City and County have unjustifiably excluded higher priority exception areas from the URA based on erroneous findings that they could not reasonably be provided to the higher priority area due to topographical or other physical constraints. These erroneous findings are clearly unsupported by the record.

These highest priority exception areas that were wrongly excluded include *at least 1,733 buildable acres*. This far exceeds all the buildable acreage in the resource lands included within the URA (1,026 acres).

Remedy

The Department should remand the submittal with instructions to:

- a) Include the exception areas above, to the extent a need can be demonstrated;
- b) Remove all resource land from the URA; and
- c) Resubmit a URA based upon the criteria that are in the applicable law- OAR 660-021-0030.

III. Conclusion

The city has not justified the amount of land proposed for inclusion nor has it justified the inclusion of prime farmland, instead of alternative higher priority areas not included within the proposal.

While it is clear that inclusion of these resource lands will harm our county’s agricultural base, it is also clear that their inclusion will not benefit the City if Newberg. The designation of Urban Reserves is intended to protect Newberg’s future options to urbanize surrounding lands as growth occurs over time. The excluded exception areas are threatened by development that will preclude or hinder future urban development. The resource lands proposed for inclusion are not.

If, at some future date, Newberg can justify expansion onto these resource lands, they will still be there- as readily urbanizable as they are now- whether or not they are included in the Urban Reserves. On the other hand, failure to include hundreds of acres of exception lands will likely foreclose Newberg’s option to urbanize them in the future, since without URA protection they may very well develop in ways that preclude future urbanization.

For these reasons, we respectfully request that the Department not acknowledge the proposed amendments.



Sid Friedman
1000 Friends of Oregon

Sincerely,

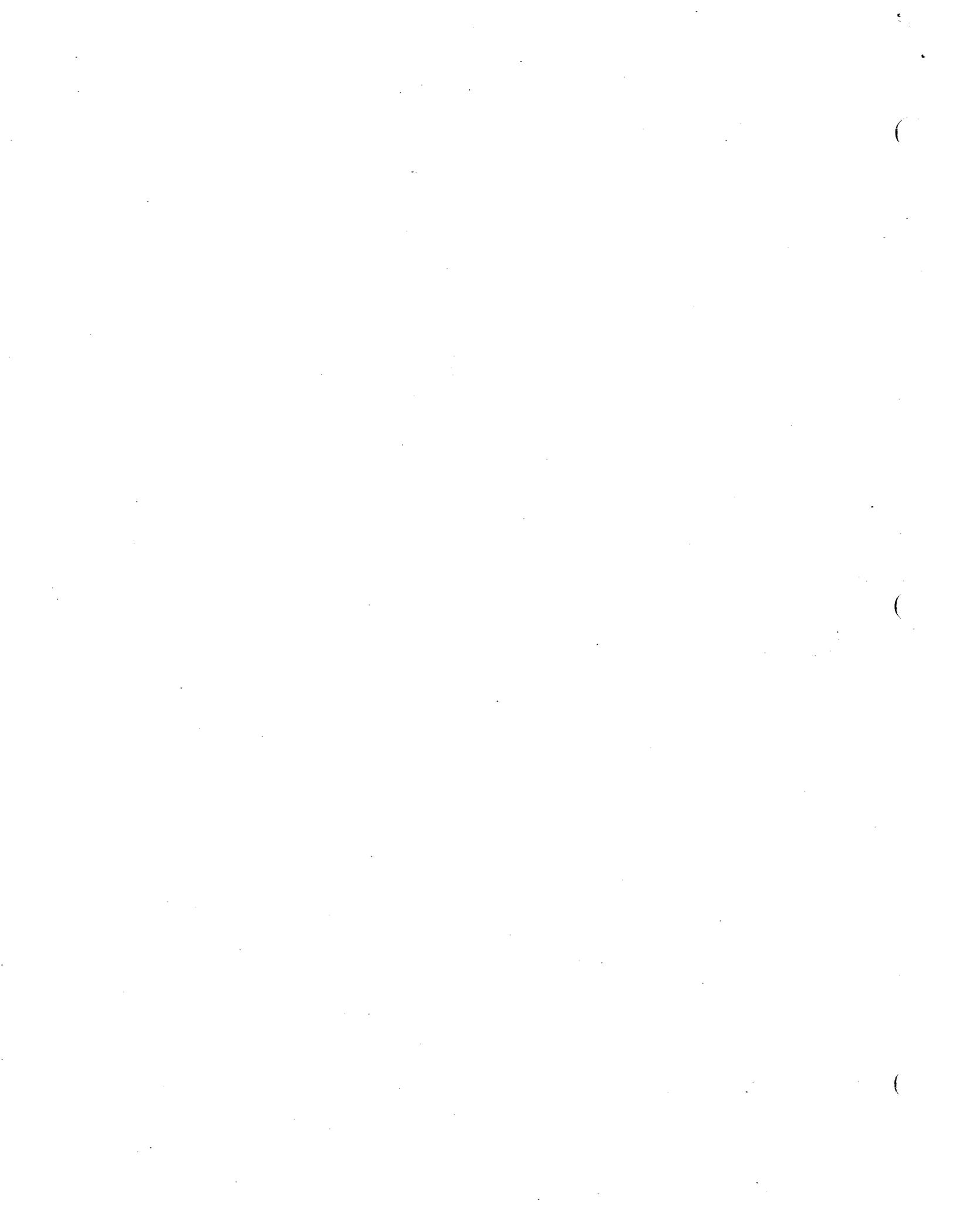


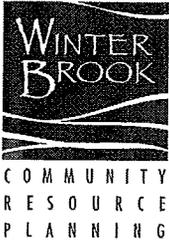
Ilsa Perse
Friends of Yamhill County

Cc: (w/o attachments)
Yamhill County
City of Newberg

Excerpts from local record:

- Exhibit 1** Newberg Comprehensive Plan excerpts
- Exhibit 2** McMinnville News-Register Article, June 12, 2007
- Exhibit 3** Newberg Economic Opportunities Analysis excerpts
- Exhibit 4** Excerpts from 2004 City of Newberg Water Distribution Plan.
- Exhibit 5** Dayton Avenue Pump Station Data/Information Summary
- Exhibit 6** Excerpts from 2007 Sewerage Master Plan Update
- Exhibit 7** City of Newberg memoranda, 1992
- Exhibit 8** Exhibit C of Yamhill County Ordinance 823 "2007 Urban Reserve Area Justification and Findings Report"
- Exhibit 9** URA Report Maps, adopted by Newberg City Council, October 15, 2007





MEMORANDUM

To: Ad Hoc Committee on Newberg's Future
From: Greg Winterowd
Date: REVISED – December 2, 2004
Re: **Task 2.1– Preliminary Site Suitability Criteria for Commercial and Industrial Uses**

Under Tasks 2.1 and 3.1, Winterbrook is responsible for preparing preliminary site suitability criteria for future Commercial, Industrial, Residential and Public / Institutional land uses. This memorandum focuses on Commercial and Industrial needs and siting criteria, and raises major policy choices regarding the type of community that Newberg would like to become.

These siting criteria, once approved by the Ad Hoc Committee, would be used to evaluate land within approximately seven study areas for plan amendments. Once the Ad Hoc Committee has formulated recommendations regarding commercial and industrial siting needs, Winterbrook will work with staff to finalize a second memorandum that focuses on residential and public / institutional siting needs.

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Task 2.1 Industrial and Commercial Suitability Criteria

Winterbrook has worked with ECONorthwest to develop preliminary suitability criteria for commercial and industrial land use categories. It is important that suitability criteria be objective and measurable, so that they can be mapped using GIS.

We have reviewed industrial and commercial site suitability criteria from comparably sized and located communities that have prepared Economic Opportunities Analyses (EOAs) as required by Statewide Planning Goal 9, Economy of the State. These include Dallas, McMinnville, Sherwood, Tualatin, Wilsonville and Woodburn.¹

¹ We have reviewed EOAs, target industries identification, and site suitability criteria from these cities. The 2003 PSU population estimates for these cities are highlighted below.

We have also considered 'target industries' site suitability criteria prepared by the Portland Development Commission (PDC) in coordination with the Regional Development Partnership, which is chaired by Doug Rux of the city of Tualatin. Metro recently developed industrial site suitability criteria on a regional basis to support recent UGB expansion.

For commercial siting criteria, we have reviewed two ULI (Urban Land Institute) publications: *The Shopping Center Development Handbook* and *Dollars and Cents of Shopping Centers*. We have also relied on our experience in preparing site suitability criteria in other Oregon and Washington jurisdictions.

As envisioned by the Goal 9 (Economy of the State) Rule,² cities typically look at regional, state and national trends to determine the types of commercial developments and industrial firms they want to attract. Different categories of commercial and industrial development have varying siting requirements.

Based on discussions with David Beam, Newberg has not identified formally the types of commercial or industrial development it would like to attract. This does not mean that Newberg has not thought about the issue. However, because there are no published documents that target specific types of commercial and industrial development, the site suitability criteria offered in this preliminary memorandum are generalized. We anticipate that these criteria will be refined as the Ad Hoc Committee and City Council develop a more formal list of target industries and commercial development forms, based on local experience.³

City	2003 Population
Dallas	13,270
Sherwood	14,050
Wilsonville	15,880
Newberg	19,530
Woodburn	21,560
Tualatin	24,790
McMinnville	28,890

² OAR 660-009-0025 (1) requires communities to identify the approximate number and acreage of sites needed to accommodate industrial and commercial uses to implement plan policies. This determination depends, in part, on plan policies and the City's economic development strategy. Those determinations will be made in the future when the City takes up the issue of economic development strategies and policies. OAR 660-009-0025 (1) also indicates that the need for sites be specified in several broad "site categories", (e.g., light-industrial, heavy industrial, commercial office, commercial retail, highway commercial) that combine compatible uses with similar site requirements. The rules do not require cities to provide a different type of site for each industrial or commercial use that may locate in the planning area.

³ As part of this study, ECONorthwest will conduct interviews with local and regional economic development interests to refine the types industries and commercial development Newberg would like to attract. Once "target" commercial and industrial development, then the development of site suitability criteria can be more focused.



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EXHIBIT: 15 AGENDA ITEM: 15
LAND CONSERVATION & DEVELOPMENT
COMMISSION

DATE: 6-5-09

PAGES: 22

SUBMITTED BY: DLCD Staff

January 11, 2000



TO: Land Conservation and Development Commission

FROM: Richard Benner, Director

SUBJECT: Agenda Item 4: January 27, 2000, LCDC Meeting

**Public Hearing and Possible Adoption
of Amendments to the Urban Reserve Rules**

Overview

This agenda item concerns the department's proposal to amend the "urban reserve" administrative rules (OAR Chapter 660, Division 021). The attachments to this report include a copy of the draft rule that was mailed to local governments and other interested parties on November 15 (Attachment A). This attachment is the document that the commission should refer to during the hearing. Also attached to this report is a proposed "declaration of legislative intent." By adopting this document, the commission would declare certain reasons and intentions regarding their approval of these rule amendments. This document would be made a permanent record of this rule proceeding.

The department's proposal has four main features:

1. The amended rule will make adoption of an urban reserve area ("UR area") optional for all jurisdictions, i.e., Metro and Medford would not be required to complete urban reserve planning, but they and other jurisdictions would be authorized to continue such efforts on their own volition.
2. The amended rule will eliminate the current prohibition on land divisions within two miles of the urban growth boundaries (UGBs) around Metro and Medford. However, the department is simultaneously proposing rules establishing a minimum lot size for new land divisions on rural residential land in urban fringe areas. These rules would be part of the proposed "Application of Goal 14 to Rural Residential Zone" rules (See Item 5 on the agenda for the January 27, 2000, LCDC meeting). The urban reserve rule amendments in this regard would not become effective until the commission completes their consideration of the rural residential rulemaking;



3. The amended rule will eliminate the current rule authorization for Metro to bypass restrictions that make farm and forest land last priority for inclusion in UR areas. Currently, Metro may avoid this priority, and therefore more easily designate farm or forest land as urban reserve, in order to accommodate "specific types of identified land needs," such as the need to correct an imbalance of jobs and housing.
4. The Department has proposed several amendments intended to clarify wording in the current rules, including definitions and other criteria.

The department recommends that the commission adopt the proposed amendments and statement of legislative intent at this meeting, after testimony on the rules is complete.

History

LCDC first adopted urban reserve rules in 1992, and the rules were amended in 1996. In 1995 parallel statutory provisions were enacted by the Oregon legislature, codified at ORS 19.145 (Attachment B). The urban reserve rules were originally intended to resolve several issues, including:

1. The need to protect rural residential land immediately outside UGBs from development patterns that would hinder or prohibit more efficient "urban" development in the future. A substantial amount of rural residential land surrounds many of Oregon's large and/or rapidly growing urban areas. Such land is likely to be divided and developed in low-density (e.g., one or two acre lot) subdivisions long before it is looked to for urban expansion needs. This type of low density development, usually relying on wells and on-site sewage disposal, is enormously difficult to serve and infill when and if it is brought into the UGB, and planners therefore favor larger tracts of undeveloped land such as farm or forest land. If rural residential land is not maintained in larger lot sizes conducive to future infill and urban development, farm and forest land will likely be the only available choice to provide for urban land needs over the long term. The urban reserve rules include provisions to prevent further subdivision of residential land on the urban fringe.
2. Speculation on farmland near UGBs. Reportedly many farms in the vicinity of urban areas have been purchased and are being held by investors hoping these areas can be brought into the UGB in the foreseeable future. In theory, if a city adopts a 50-year urbanization plan (an UR area), supplementing a 20-year plan (the UGB), speculation on farmland will decrease. This is because farmland that is not likely to be urbanized for 50 years is more attractive for farming than for real estate speculation.
3. The necessity to provide "enabling" legislation to more clearly authorize planning for urban reserve areas, and to provide standards and procedures for this planning. In

1992 Metro had begun to consider designating an urban reserve area, but was not certain whether LCDC goals authorized such action. Other cities had previously designated urban reserve areas, but the state provided no guidance on this activity and no standards for its review.

4. The fact that UGB amendments are often proposed and decided in a “quasi-judicial” setting in response to an application to add specific parcels or areas to a UGB, and are often initiated by an interested property owner or developer. Urban reserve planning encourages cities to “legislatively” decide the location of future UGB amendments. Many planners would advise that urban growth decisions should flow from a careful, long term evaluation of development options, rather than from incremental, somewhat random, case-driven expansions. In planning the direction of future UGB expansions well in advance of individual applications, decision makers are likely to examine a range of potential land alternatives, consider a variety of long term public facility options, and involve citizens throughout the jurisdiction.
5. The need to provide a way for cities and counties to plan, size, and locate major public facilities (roads, sewer and water lines) to serve land projected for growth over a time frame longer than the 20-year UGB planning period, e.g., 50-year time frame. Major urban facilities are built to last considerably longer than 20 years, and they are more economical if sized to serve a projected 50-year growth pattern.

Mandatory Urban Reserve Planning

One of the key features of the urban reserve rule is protection of surrounding rural exception lands from further land divisions. Rural residential land within two miles of the UGB is held in larger lot sizes by rule restrictions on further land divisions. In areas where UR planning is mandatory, this land division prohibition must remain in place until an urban reserve area is adopted and acknowledged by the applicable jurisdictions. But the protection does not stop then, because adopted UR areas must also include agreements and zoning measures to protect the urbanization potential of residential exception areas. Farm or forest land at the urban fringe is not subject to special restrictions because large lot zoning is already mandated through Goals 3 and 4.

When first conceived, the UR rule was to be mandatory for a number of large and growing urban areas throughout the state. However, actions by the commission and the legislature substantially trimmed the list of those jurisdictions required to adopt UR areas. Currently, the rules are mandatory for only four urban areas, including: Metro and the cities of Sandy, Newberg, and Medford. Two cities, Newberg and Sandy, have adopted and acknowledged urban reserve areas. Medford and surrounding jurisdictions have been considering potential urban reserve areas for several years, but there is yet no agreement on an urban reserve.

Metro adopted an urban reserve area in 1997, which was appealed and remanded by LUBA. The LUBA ruling in the Metro case is on appeal to the Oregon Court of Appeals. The two-mile land division restriction is currently in effect around the Medford and Metro UGBs because an urban reserve area is not acknowledged in either case.

Reasons to Amend the Urban Reserve Rules

Because of its application to only four urban areas, it is clear this rule has not been successful in resolving all the problems identified above, especially protection of rural residential exception areas surrounding the urban fringe of many Oregon cities. It has successfully resolved some issues - the rule does provide enabling legislation and uniform standards for adopting urban reserve areas, and also provides a way for cities to plan facilities and future growth areas over a 50-year horizon should they so choose. However, except for the mandatory jurisdictions, only a couple of large cities have voluntarily provided an urban reserve area: Eugene and Bend. In both these cases, the urban reserve was adopted before LCDC rules.

Not only has the urban reserve option been declined by most local governments, it has also been the subject of great controversy and litigation by those jurisdictions trying to use it. The Metro UR area designation of 18,579 acres in March, 1997, was highly contested. Twenty-one parties, including DLCD and two other state agencies filed eight appeals. Resolving this enormously complicated case stressed LUBA's resources and took over two years. LUBA overturned Metro's UR area designation in February, 1999.

Other jurisdictions also found the UR designation process contentious and time consuming. A Yamhill County/Newberg disagreement about managing the urban reserve area resulted in the introduction (but not passage) of legislation by the 1999 Oregon legislature. Medford and neighboring areas have been struggling with this matter for many years, but an adoption of a Medford UR area still does not seem imminent.

Following LUBA's remand of the Metro UR area, Metro officials told the department that they found UR area adoption to be at least as controversial, time consuming, and expensive as amending the UGB itself. Metro is currently engaged in amending the UGB as required by state law. These simultaneous efforts have stretched the limited resources of Metro, the department and other involved agencies. In the spring of 1999, in response to Metro's complaints about the process, the department agreed to reexamine the rule and consider whether the urban reserve process should continue to be mandatory. That examination ultimately led to this rule amendment proposal.

Special Land Needs

The Metro urban reserve adoption raised other issues that are also addressed in this amendment proposal. As described above, the UR rule includes wording that allows Metro to consider special needs such as the balance of jobs and housing. Farm and forest land is generally of lower priority for inclusion in an UR area, but that priority may be waived under Section 0030(4)(a) (see Page 4, lines 5-10 of Attachment A). This issue was a primary point of debate and litigation when Metro adopted its UR area. The department and other parties were concerned about the interpretation of the special needs provision, asserting that Metro had not done enough to show that the projected imbalance couldn't be corrected by (1) infill and redevelopment of existing lands in the UGB, and/or (2) consider redesignation of the zoning of land within the UGB (e.g., changing industrial to residential if there are more job opportunities than dwelling opportunities, or changing residential to industrial if the reverse).

This debate was partially settled by LUBA, although the ruling is currently under appeal. While one solution would be to insert detailed language interpreting the special needs section, the department proposes instead to eliminate the special needs provision entirely. Besides the issues of clarity and interpretation noted above, there are two more reasons for DLCD's proposal to eliminate this provision.

First, it is important to note that land (including farmland) included in the UR area becomes highest priority for placement in the UGB, under state law. It is therefore imperative that LCDC adopt clear criteria for including farmland in the UR area, and such criteria should not make it easier to include farmland in the UR area than in the UGB itself. Otherwise, the UR process could be used as a way to circumvent the more stringent statutory criteria, i.e., farmland that might not qualify for immediate placement in a UGB might nevertheless end up in the UGB through more lenient UR criteria. Arguably, the special needs criteria for UR area land selection make it easier to include farmland in the UR area than in the UGB itself.

Second, and even more compelling, DLCD believes that special needs such as an imbalance of jobs and housing are most appropriately demonstrated and addressed in the short term rather than the long term. If a documented problem exists, such as a shortage of affordable housing in the vicinity of jobs, this problem should be dealt with sooner rather than later, either by amending zoning of land currently in the UGB, or by amending the UGB itself. If the imbalance problem is dealt with through UR area designation, it is conceivable that 20 or more years could pass before land is brought into the UGB to solve the problem. It is therefore inappropriate to address these special needs by designating farmland as urban reserve. We note that EFU zoning acts as a reserve in and of itself.

DLCD's proposal includes a "declaration of intent" (Attachment D) to be adopted by the commission declaring that special needs such as jobs/housing balance should not be addressed by designating farmland for urban reserves. The department is currently considering new rules for the UGB amendment process, and we will address this issue as part of that effort. To reassure those concerned about this, the "declaration of legislative intent" also directs the department to consider this matter in that venue and return to the commission with a recommendation at such time as UGB amendment rules are proposed.

Other Amendments

Although urban reserve planning would no longer be mandatory, it may be desirable to local governments, especially if the rules can be streamlined and clarified. The department has proposed several other amendments to the rule intended to clean up wording that is unclear. These include an amendment to the definitions of "Urban Reserve Area" (Attachment A; page 1, lines 19-20) and "Adjacent Land"; and a proposed new definition for "Nearby Land." (see page 2, lines 7 through 11). An amendment to Section 0050 (page 6, lines 21-22) resolves a dispute about management agreements that prompted a legislative proposal last session.

The department is proposing two additional amendments that are not shown in Attachment A. First, in section 0030(5) (page 4, lines 19-21), the department suggests a revision to the requirement that "findings and conclusions concerning" the selection of UR areas "be included in the comprehensive plan". Instead, the department would propose that local governments shall adopt these findings. The amended section would be as follows:

"(5) Findings and conclusions concerning the results of the above consideration shall be [~~included in the comprehensive plans of~~] **adopted by the** affected jurisdictions."

Finally, on page 5, line 26 of the staff proposal, the word "affect" should be "effect".

Comments

The department received the following comments in response to the draft rules mailed on November 15, 1999:

ISSUE 1: Removal of provision allowing farmland into the urban reserve area ahead of exceptions lands to correct a "jobs/housing imbalance."

1. Gordon Faber, Mayor, City of Hillsboro: The city is concerned about elimination of the "'jobs/housing balance' as a proper reason for designating lower priority resource lands as urban reserve." The city believes eliminating this provision "would be counterproductive and would frustrate state, regional, and local government

compliance with the TPR . . ." Mr. Faber states that it would remove an important mechanism . . . to attain a balance among jobs (GOAL 9), housing (Goal 10), and resource lands protection (Goal 3) . . . It would prevent urban reserves, themselves, from addressing identified specific land needs even though the statute allows UGB expansion onto lower priority lands for such specific land needs."

2. Mark Greenfield (on behalf of Standring Investment Company): Mr. Greenfield raises the same issues addressed by the city of Hillsboro (above), adding that "In the 1980's . . . it was enough that the region contained sufficient housing units to meet overall regional needs, even if many miles separated jobs from housing. The result was continued reliance on the automobile . . . Given the vast size and scale of the Portland metropolitan area, this need must be addressed on a sub-regional level to be effective . . ."
3. Dan Cooper, General Counsel for Metro: Metro is concerned about the elimination of the "jobs/housing" balance provision. Mr. Cooper indicates that this provision was added to the rule in 1996 at Metro's request, and that "the concept of obtaining a favorable jobs\housing balance in the Portland Metropolitan area is part of our acknowledged Regional Urban Growth Goals and Objectives."
4. Mary Kyle McCurdy, Staff Attorney for 1000 Friends of Oregon: 1000 Friends supports elimination of the "jobs/housing" provision, because "it has caused an inordinate amount of focus on . . . designat[ing] farm and forest lands ahead of exception areas. . . Resource lands can still be designated, they just have to truly be the last resort. The current rule's parameters for what is a jobs housing balance are vague and incomplete." 1000 Friends indicates several questions about this process that remain to be resolved, such as "What is a proper 'balance'? What is an appropriate region? Which should be balanced – jobs or housing?"

RESPONSE TO ISSUE 1: The department believes special land needs, including land needs to correct an imbalance of jobs and housing, are most appropriately demonstrated and addressed in the short term rather than the long term. If a documented problem exists, such as a shortage of affordable housing in the vicinity of jobs, this problem should be dealt with by amending zoning of land currently in the UGB, or by amending the UGB itself. If the problem were dealt with only through the UR rule, it is conceivable that 20 or more years could pass before land is brought into the UGB to solve the problem.

This issue is best resolved by rules clarifying UGB amendments, not urban reserve designation. The department is currently considering new rules for the UGB amendment process, and will have the existing UGB Amendment Working Group address this issue as part of that effort. That committee will be working on this and other UGB amendment issues over the next few months.

ISSUE 2: Retroactive application of rule amendments. Metro Senior Assistant Counsel Larry Shaw indicates that Metro wishes to see "clarifying language in the rule to assure" that the rule is not intended to apply to any ultimate remand of Metro's 1997 urban reserve designation.

RESPONSE TO ISSUE 2: The department does not intend for these rule amendments to apply retroactively. The attached "statement of legislative intent" indicates that the new rules would only apply to urban reserve areas adopted after the effective date of the rules. The intent statement also clarifies that the rules would not apply to any future remand of Metro's urban reserves adopted in 1997.

ISSUE 3: Why have the rule at all? Mary Kyle McCurdy, Staff Attorney for 1000 Friends of Oregon, questions "whether the rule should exist anymore at all. It has proven to be unwieldy to use and ineffective in its mission. At a minimum . . . it should only apply to exception areas adjacent to UGBs . . . protecting those areas from development patterns that would hinder future urbanization."

RESPONSE TO ISSUE 3: As indicated in the body of this report, the urban reserve rule has successfully resolved some planning issues. Most important, this rule provides a way for cities to plan facilities and future growth areas over a 50-year horizon should they so choose. Public facilities such as sewers, water systems, and roads are extremely expensive, but costs can be reduced when the long term direction of urban growth is assured. The rule also provides enabling legislation and uniform standards for adopting urban reserve areas. Prior to the rule jurisdictions declared UR areas without some of the safeguards currently in the rules.

ISSUE 4: Time frame for UR needs analysis. Mary Kyle McCurdy, Staff Attorney for 1000 Friends of Oregon, raises another issue arising from the Metro UR experience: the "time frame" for land need determination, i.e., what should be the planning period or time horizon for an UR area? Metro did not clearly indicate the planning period for urban reserves.

RESPONSE TO ISSUE 4: The rule currently states that "Urban reserve areas shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the time frame used to establish the urban growth boundary" (Section 0030(1)). Urban reserve areas identify land for inclusion in the UGB when the current supply is exhausted. UGB's provide for a 20-year land need, so UR areas in general are intended for needs arising as the UGB supply is exhausted.

The department agrees that a jurisdiction should clearly declare what time frame it is using as it designates land for the UR area. Unless this information is provided, the findings about the amount of land needed for urban reserves cannot be evaluated. In reply

to this comment, staff proposes an amendment to Section 0030(1) of the rule (see page 2, lines 35-37 of Attachment A):

(1) Urban reserve areas shall include an amount of land estimated to be at least a 10-year supply and no more than a 30 year supply of developable land beyond the **20-year** time frame used to establish the urban growth boundary. **Local governments designating urban reserves shall adopt findings specifying the time frame used to determine urban reserve land needs.**

ISSUE 5: Reference to Goal 2. Mary Kyle McCurdy of 1000 Friends of Oregon comments that there has been no explanation for the removal of the reference to Goal 2 on page 3, lines 2-3 of the proposal.

RESPONSE TO ISSUE 5: The urban reserve rule currently requires jurisdictions to consider factors 3 through 7 of Goal 14 and the criteria for exceptions in Goal 2 and statute. The exceptions requirements are intended to apply to the designation of new exceptions land, either because it is committed or because it is needed for a special use. It is unclear how these criteria apply to UR area decisions. The department is therefore proposing a refinement of this requirement, intending to translate key features of the exceptions rule to urban reserve circumstances. The department has proposed the following wording to replace the general reference to the exceptions requirements:

“that there be a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land.”

ISSUE 6: Not permitting farm or forest land in UR areas (see Attachment A, page 3, lines 32-37). Mary Kyle McCurdy of 1000 Friends of Oregon recommends that the rule simply not allow farm or forest land in UR areas. As such, she would propose that the commission eliminate Section 0030(3)(d)(e) from the rule.

RESPONSE TO ISSUE 6: It is unlikely that there will always be sufficient exceptions or nonresource land to meet a projected 50-year need for urban growth. Some farm and forest land will inevitably be necessary for inclusion in urban reserves and UGBs.

Conclusions and Recommendation

The department recommends that the commission hear testimony on this proposal and then adopt the proposed amendments shown in Attachment A, except as modified in the above report. The department also recommends that the commission adopt the “Statement of Legislative Intent” in Attachment D.

Attachments

A: Urban Reserve Rule with Propose Amendments

B: Related urban reserve statutes.

C: Comments Received

D: Statement of Legislative Intent

ATTACHMENT A
Proposed Rule Amendments

PROPOSED REVISIONS TO URBAN RESERVE RULES
Draft 1 11/3/99

Department of Land Conservation and Development
OAR Chapter 660

DIVISION 021
URBAN RESERVE AREAS

1 **660-021-0000**

2 **Purpose**

3 This division authorizes planning for areas outside urban growth boundaries
4 to be reserved for eventual inclusion in an urban growth boundary and to be
5 protected from patterns of development [~~which~~] **that** would impede urbanization.
6

7 Stat. Auth.: ORS 183 & ORS 197

8 Stats. Implemented: ORS 197.145 & ORS 197.040

9 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92
10

11 **660-021-0010**

12 **Definitions**

13 For purposes of this division, the definitions contained in ORS 197.015 and
14 the Statewide Planning Goals (OAR Chapter 660, Division 15) apply. In addition,
15 the following definitions apply:
16

17 (1) "Urban Reserve Area": Land[s] outside of an urban growth boundary
18 identified as highest priority for inclusion in the urban growth boundary when
19 [~~additional urbanizable land is needed in accordance with the requirements of~~] **the**
20 **boundary is expanded in accordance with** Goal 14.
21

22 (2) "Resource Land": Land subject to the Statewide Planning Goals listed in
23 OAR660-004-0010(1)(a) through (f), except subsection (c).
24

25 (3) "Nonresource Land": Land not subject to the Statewide Planning Goals
26 listed in OAR660-004-0010(1)(a) through (f) except subsection (c). Nothing in this
27 definition is meant to imply that other goals [~~, particularly Goal 5,~~] do not apply to
28 nonresource land.
29

30 (4) "Exception Areas": Rural lands for which an exception to Statewide
31 Planning Goals 3 and 4, as defined in OAR 660-004-0005(1), has been
32 acknowledged.

1
2 (5) "Developable Land": Land that is not severely constrained by natural
3 hazards, nor designated or zoned to protect natural resources, and **that** is either
4 entirely vacant or has a portion of its area unoccupied by structures or roads.
5

6 (6) "Adjacent **Land**": [~~Lands either abutting or at least partially within a~~
7 ~~quarter of a mile of an urban growth boundary~~] **Abutting land.**
8

9 **(7) "Nearby Land": Land that lies wholly or partially within a quarter**
10 **mile of an urban growth boundary.**
11

12 Stat. Auth.: ORS 183 & ORS 197

13 Stats. Implemented: ORS 197.145 & ORS 197.040

14 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92
15

16 **660-021-0020**

17 **Authority to Establish Urban Reserve Areas**

18 Cities and counties cooperatively, and the Metropolitan Service District for
19 the Portland Metropolitan area urban growth boundary, [~~are authorized to~~] **may**
20 designate urban reserve areas under the requirements of this rule, in coordination
21 with special districts listed in OAR660-021-0050(2) and other affected local
22 governments, including neighboring cities within two miles of the urban growth
23 boundary. Where urban reserve areas are adopted or amended, they shall be shown
24 on all applicable comprehensive plan and zoning maps, and plan policies and land
25 use regulations shall be adopted to guide the management of these areas in
26 accordance with the requirements of this division.
27

28 Stat. Auth.: ORS 183 & ORS 197

29 Stats. Implemented: ORS 197.145 & ORS 197.040

30 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92
31

32 **660-021-0030**

33 **Determination of Urban Reserve Areas**

34 (1) Urban reserve areas shall include an amount of land estimated to be at
35 least a 10-year supply and no more than a 30-year supply of developable land
36 beyond the time frame used to establish the urban growth boundary.
37

38 (2) Inclusion of land within an urban reserve area shall be based upon
39 factors 3 through 7 of Goal 14 and [~~the criteria for exceptions in Goal 2 and ORS~~

1 ~~197.732]~~ **a demonstration that there are no reasonable alternatives that will**
 2 **require less, or have less effect upon, resource land.** Cities and counties
 3 cooperatively, and the Metropolitan Service District for the Portland Metropolitan
 4 Area Urban Growth Boundary, shall first study land[s] adjacent to **or nearby** the
 5 urban growth boundary for suitability for inclusion within urban reserve areas, as
 6 measured by ~~[Factors 3 through 7 of Goal 14 and by the requirements of OAR~~
 7 ~~660-004-0010]~~ **the factors and criteria set forth in this section.** Local
 8 governments shall then designate for inclusion within urban reserve areas ~~[these]~~
 9 **that** suitable land[s] which satisf[y]ies the priorities in section (3) of this rule.

10
 11 (3) Land found suitable for an urban reserve may be included within an
 12 urban reserve area only according to the following priorities:

13
 14 (a) First priority goes to land[s] adjacent to **or nearby** an urban growth
 15 boundary ~~[which are]~~ **and** identified in an acknowledged comprehensive plan as
 16 exception area[s] or nonresource land. First priority may include resource land that
 17 is completely surrounded by exception areas unless these are high value crop areas
 18 as defined in Goal 8 or prime or unique agricultural lands as defined by the United
 19 States Department of Agriculture;

20
 21 (b) If land of higher priority is inadequate to accommodate the amount of
 22 land estimated in section (1) of this rule, second priority goes to land designated as
 23 marginal land pursuant to ORS 197.247;

24
 25 ~~[(c) If land of higher priority is inadequate to accommodate the amount of~~
 26 ~~land estimated in section (1) of this rule, third priority goes to land designated as~~
 27 ~~secondary if such category is defined by Land Conservation and Development~~
 28 ~~Commission rule or by the legislature;]~~

29
 30 ~~[(d] c)~~ If land of higher priority is inadequate to accommodate the amount
 31 of land estimated in section (1) of this rule, ~~[fourth]~~ **third** priority goes to land
 32 designated in an acknowledged comprehensive plan for agriculture or forestry, or
 33 both. Higher priority shall be given to land of lower capability as measured by the
 34 capability classification system or by cubic foot site class, whichever is appropriate
 35 for the current use.

36
 37 (4) Land of lower priority under section (3) of this rule may be included if
 38 land of higher priority is found to be inadequate to accommodate the amount of

1 land estimated in section (1) of this rule for one or more of the following reasons:

2
3 (a) [~~Specific types of identified land needs including the need to meet~~
4 ~~favorable ratios of jobs to housing for areas of at least 100,000 population served~~
5 ~~by one or more regional centers designated in the regional goals and objectives for~~
6 ~~the Portland Metropolitan Service district or in a comprehensive plan for areas~~
7 ~~outside the Portland area, cannot be reasonably accommodated on higher priority~~
8 ~~lands; or~~

9
10 (b) Future urban services could not reasonably be provided to the higher
11 priority area due to topographical or other physical constraints; or

12
13 (eb) Maximum efficiency of land uses within a proposed urban reserve area
14 requires inclusion of lower priority lands in order to include or to provide services
15 to higher priority lands.

16
17 (5) Findings and conclusions concerning the results of the above
18 consideration shall be included in the comprehensive plans of affected
19 jurisdictions.

20
21 Stat. Auth.: ORS 183 & ORS 197

22 Stats. Implemented: ORS 197.040

23 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 7-1996, f. & cert. ef.

24 12-31-96

25
26 **660-021-0040**

27 **Urban Reserve Area Planning and Zoning**

28 (1) Until included in the urban growth boundary, [L]lands in the urban
29 reserve area shall continue to be planned and zoned for rural uses in accordance
30 with the requirements of this section, but in a manner that ensures a range of
31 opportunities for the orderly, economic and efficient provision of urban services
32 when these lands are included in the urban growth boundary.

33
34 (2) Urban reserve area land use regulations shall ensure that development
35 and land divisions in exception areas and nonresource lands will not hinder the
36 efficient transition to urban land uses[;] and the orderly and efficient provision of
37 urban services [~~in the future~~]. These measures shall be adopted by the time the
38 urban reserve area is designated, or, in the case of those local governments with

1 planning and zoning responsibility for lands in the vicinity of the Portland
2 Metropolitan Area Urban Growth Boundary, by the time such local governments
3 amend their comprehensive plan and zoning maps to implement urban reserve area
4 designations made by the Portland Metropolitan Service District. The measures
5 may include:

6
7 (a) Prohibition on the creation of new parcels less than ten acres;

8
9 (b) Requirements for clustering as a condition of approval of new parcels;

10
11 (c) Requirements for preplatting of future lots or parcels;

12
13 (d) Requirements for written waivers of remonstrance against annexation to
14 a provider of sewer, water or streets;

15
16 (e) Regulation of the siting of new development on existing lots for the
17 purpose of ensuring the potential for future urban development and public
18 facilities.

19
20 (3) For exception areas and nonresource land[s] in urban reserve areas, land
21 use regulations shall prohibit zone amendments allowing more intensive uses,
22 including higher residential density, than permitted by acknowledged zoning
23 [applied] **in effect** as of the date of establishment of the urban reserve area. **Such**
24 **regulations shall remain in affect until such time as the land is included in the**
25 **urban growth boundary.**

26
27 (4) Resource land[~~s which are~~] **that is** included in urban reserve areas shall
28 continue to be planned and zoned under the requirements of applicable Statewide
29 Planning Goals.

30
31 (5) Urban reserve area agreements consistent with applicable
32 comprehensive plans and meeting the requirements of OAR 660-021-0050 shall be
33 adopted for urban reserve areas.

34
35 (6) Cities and counties are authorized to plan for the eventual provision of
36 urban public facilities and services to urban reserve areas. However, this division
37 is not intended to authorize urban levels of development or services in urban
38 reserve areas prior to their inclusion in the urban growth boundary. This division is

1 not intended to prevent any planning for, installation of, or connection to public
2 facilities or services in urban reserve areas consistent with acknowledged
3 comprehensive plan and land use regulations in effect on the applicable date of
4 this division.

5
6 (7) A local government shall not prohibit the siting of a single family
7 dwelling on a legal parcel pursuant to urban reserve planning requirements if the
8 single family dwelling would otherwise have been allowed under law existing
9 prior to the designation of the parcel as part of an urban reserve area.

10
11 Stat. Auth.: ORS 183, ORS 197.040, ORS 197.050 & ORS 197.145

12 Stats. Implemented: ORS 197.145

13 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef.
14 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. &
15 cert. ef. 8-1-97

16
17 **660-021-0050**

18 **Urban Reserve Area Agreements**

19 Urban reserve area planning shall include the adoption and maintenance
20 of urban reserve agreements between cities and counties and among cities,
21 counties and special districts serving or projected to serve the designated urban
22 reserve area. These agreements shall be adopted by each applicable jurisdiction
23 and shall contain:

24
25 (1) Designation of the local government responsible for building code
26 administration and land use regulation in the urban reserve area, both at the time of
27 reserve designation and upon inclusion of these areas within the urban growth
28 boundary.

29
30 (2) Designation of the local government or special district responsible for
31 the following services: Sewer, water, fire protection, parks, transportation and
32 storm water. The agreement shall include maps indicating areas and levels of
33 current rural service responsibility and areas projected for future urban service
34 responsibility when included in the urban growth boundary.

35
36 (3) Terms and conditions under which service responsibility will be
37 transferred or expanded[,] for areas where the provider of the service is expected
38 to change over time.

(4) Procedures for notification and review of land use actions to ensure involvement by all affected local governments and special districts.

Stat. Auth.: ORS 183 & ORS 197
Stats. Implemented: ORS 197.145 & ORS 197.040
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0060

Urban Growth Boundary Expansion

[(1)] All lands within urban reserve areas established pursuant to this division shall be included within an urban growth boundary before inclusion of other lands, except where an identified need for a particular type of land cannot be met by lands within an established urban reserve area.

~~[(2) The interim requirements of OAR 660-021-0100 are not intended to prohibit urban growth boundary amendments meeting state and local requirements.]~~

Stat. Auth.: ORS 183 & ORS 197
Stats. Implemented: ORS 197.145 & ORS 197.040
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0070

Adoption and Review of Urban Reserve Areas

(1) Designation and amendment of urban reserve areas shall follow the procedures in ORS 197.610 through 197.650.

~~(2)[Interim protection under OAR 660-021-0080(4) or 660-021-0100, as applicable, shall apply until affected cities and counties, or the Metropolitan Service District and affected local governments for the Portland Metropolitan Area Urban Growth Boundary, have adopted the following:~~

~~(a) Urban reserve area policies and related requirements in the comprehensive plan and land use regulations; and~~

~~(b) Appropriate amendments to comprehensive plan and zoning maps.]~~

1 ([3]) Disputes between jurisdictions regarding urban reserve area
2 boundaries, planning and regulation, or urban reserve agreements may be mediated
3 by the Department or Commission upon request by an affected local government
4 or special district.

5
6 Stat. Auth.: ORS 183 & ORS 197

7 Stats. Implemented: ORS 197.145

8 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 2-1997(Temp), f. & cert.
9 ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97

10
11 **[660-021-0080**

12 **Applicability**

13 ~~(1) The provisions of this rule are effective upon filing with the Secretary of~~
14 ~~State. The amendments to OAR 660-021-0040(2) and 660-021-0070(2), first~~
15 ~~adopted by the commission on May 20, 1997, apply to all actions of affected cities~~
16 ~~and counties and of the Portland Metropolitan Service District to designate urban~~
17 ~~reserve areas taken on or after January 1, 1997.~~

18
19 ~~(2) All local governments may designate urban reserve areas under the~~
20 ~~requirements of this division. The Commission may require a local government to~~
21 ~~designate an urban reserve area during its periodic review in accordance with the~~
22 ~~standards for periodic review under ORS 197.628.~~

23
24 ~~(3) The Commission may require a local government to designate an urban~~
25 ~~reserve area outside of periodic review if:~~

26
27 ~~(a) On November 4, 1993, the local government is located inside a Primary~~
28 ~~Metropolitan Statistical Area or a Metropolitan Statistical Area as designated by~~
29 ~~the Federal Census Bureau; and~~

30
31 ~~(b) The local government was required to designate an urban reserve area~~
32 ~~by rule adopted prior to November 4, 1993;~~

33
34 ~~(c) Pursuant to subsection (a) and (b) of this section, local governments~~
35 ~~with planning and zoning responsibility for lands in the vicinity of the following~~
36 ~~urban growth boundaries shall designate urban reserve areas in accordance with~~
37 ~~the requirements of this division: the cities of Medford, Newberg, and Sandy, and~~
38 ~~the Portland Metropolitan Service District for the Portland Area Urban Growth~~

1 Boundary.

2
3 (4) Where the requirements of OAR 660-021-0090(1) are not satisfied, and
4 the director has not approved additional time under OAR 660-021-0090(2), the
5 following shall apply until the requirements of OAR 660-021-0090(1) have been
6 met, as authorized by ORS 197.646(3):

7
8 (a) No subdivisions or partitions shall be approved in exception areas and
9 nonresource lands within two miles of the urban growth boundary;

10
11 (b) In addition, the Commission may review whether or not enforcement
12 action under ORS 197.646(3) shall be initiated.

13
14 (5) The requirements of section (4) of this rule do not apply to lands within
15 two miles of the Portland Metropolitan Service District (Metro) Urban Growth
16 Boundary after Metro has designated urban reserve area pursuant to these rules.
17 This section applies as of March 1, 1997.

18
19 (6) Upon a finding by a county that a city listed in section (3) of this rule
20 has failed to negotiate in good faith toward meeting the requirements of OAR
21 660-021-0090(1)(a), the Commission may authorize the county to unilaterally
22 adopt an urban reserve area for the applicable urban area.

23
24 (7) Jurisdictions not listed under section (3) of this rule with acknowledged
25 plan and/or zone provisions that designate specific rural areas as priority for future
26 inclusion in an urban growth boundary shall review and amend such provisions as
27 necessary to ensure consistency with the requirements of this division as part of the
28 evaluation required at the jurisdiction's next regularly scheduled periodic review.]

29
30 Stat. Auth.: ORS 183, ORS 195 & ORS 197

31 Stats. Implemented: ORS 195.145

32 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef.
33 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. &
34 cert. ef. 8-1-97; LCDD 4-1997, f. & cert. ef. 12-23-97

35
36 [~~660-021-0090~~

37 **Implementation Schedule**

38 (1) Local governments listed in OAR 660-021-0080(3) shall complete urban

PROPOSED REVISIONS TO URBAN RESERVE RULES

Draft 1

1 ~~reserve area planning under the following schedule:~~

2
3 ~~(a) Adopt final urban reserve area boundaries, including all mapping,~~
4 ~~planning, and land use regulation requirements specified in OAR 660-021-0040~~
5 ~~within 24 months from the effective date of this rule; and~~

6
7 ~~(b) Adopt urban reserve area agreements meeting OAR 660-021-0050~~
8 ~~within one year from adoption of urban reserve areas.~~

9
10 ~~(2) The Director may grant an extension to time lines under subsections~~
11 ~~(1)(a) or (b) of this rule if the Director determines that the local government has~~
12 ~~provided proof of good cause for failing to complete urban reserve requirements~~
13 ~~on time.]~~

14
15 Stat. Auth.: ORS 183 & ORS 197

16 Stats. Implemented: ORS 197.145 & ORS 197.040

17 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

18
19 **[660-021-0100**

20 **~~Interim Protection of Potential Reserve Areas~~**

21 ~~For local governments listed in OAR 660-021-0080(3) the following~~
22 ~~requirements for land use decisions in all exception areas and nonresource lands~~
23 ~~within two miles of the urban growth boundary shall immediately apply. These~~
24 ~~requirements shall remain in effect until application of planning and land use~~
25 ~~regulations and acknowledgment of urban reserve areas meeting OAR~~
26 ~~660-021-0090(1)(a):~~

27
28 ~~(1) Prohibit land use regulation or map amendments allowing higher~~
29 ~~residential density than allowed by acknowledged provisions in effect prior to the~~
30 ~~effective date of this rule; and~~

31
32 ~~(2) Prohibit land use regulation or map amendments allowing commercial~~
33 ~~or industrial uses not allowed under acknowledged provisions in effect prior to the~~
34 ~~effective date of this rule, except that mineral and aggregate sites inventoried in~~
35 ~~the plan may be rezoned to authorize mining activities;~~

36
37 ~~(3) For review of divisions on parcels currently ten acres or larger, notify~~
38 ~~the department consistent with local notification requirements which must at~~

PROPOSED REVISIONS TO URBAN RESERVE RULES

Draft 1

1 ~~minimum conform with the procedures of notice contained in ORS 215.402–~~
2 ~~215.428, 227.162–227.178, and 197.763. In addition, local review of land~~
3 ~~divisions of parcels currently ten acres or larger shall ensure that the proposed~~
4 ~~division will not allow development patterns which interfere with the timely,~~
5 ~~orderly and efficient transition from rural to urban uses, and the efficient~~
6 ~~expansion of urban areas in the future.~~

7
8 (4) ~~After Metro has designated urban reserve areas pursuant to these rules,~~
9 ~~and until application of planning and land use regulations meeting OAR~~
10 ~~660-021-0090(1)(a), sections (1) through (3) of this rule shall continue to apply to~~
11 ~~lands within two miles of the Metro Urban Growth Boundary, but only to such~~
12 ~~lands that are within urban reserve areas designated by Metro. In addition, until~~
13 ~~application of planning and land use regulations meeting OAR~~
14 ~~660-021-0090(1)(a), no new lots or parcels of less than 20 acres shall be created or~~
15 ~~approved within urban reserve areas designated by Metro.]~~

16
17 Stat. Auth.: ORS 183, ORS 195 & ORS 197

18 Stats. Implemented: ORS 195.145

19 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-1997, f. & cert. ef.
20 12-23-97

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