



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

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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**

**APPEAL OF DIRECTOR'S DECISION (ORDER NO. 001767)
CITY OF NEWBERG URBAN RESERVE AREA DESIGNATION**

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

Newberg and Yamhill County have designated approximately 2,150 acres as urban reserves (of which approximately 1,650 acres are considered buildable). ORS 197.626 provides that the local government decision establishing or amending urban reserves shall be submitted to the commission in the manner provided for periodic review.¹

This item is before the commission because four parties appealed the director's action remanding the local decision. The director found that the City of Newberg/Yamhill County has not applied requirements of OAR chapter 660, division 21 as required by law, and that its findings and conclusions related to the designation of the urban reserve area (URA) are inadequate.

The commission's role is to address the issues raised by the appellants and the department staff and either (1) affirm the director's decision remanding the local decision, (2) remand the urban reserve designation on different or additional grounds, or (3) approve the local decision.

¹ ORS 197.626. A * * * city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve under ORS 195.145 * * * shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.650.

B. Staff Contact Information

If you have questions about this agenda item, please contact Steve Oulman, Regional Representative, at (503) 373-0050 ext. 259 or steve.oulman@state.or.us.

II. SUMMARY OF RECOMMENDED ACTION

Newberg's 2007 urban reserve area designation presents the commission with important questions related to the state's urban growth management program. State policy generally directs future growth of cities away from the most productive resource lands, particularly productive farm and forest land, and towards areas of existing development and land previously committed to non-resource use.

While local governments may include resource lands in future urbanization plans, the department believes that local decision makers bear a substantial burden to show why resource land is selected over non-resource land in designating urban reserves. Two main questions arise from review of the Newberg urban reserve, and are themes throughout this report:

1. What level of showing is required when determining land need to be accommodated within an urban reserve area?
2. What is the burden on a local government to demonstrate that urban services cannot reasonably be provided to an area in order to include resource land in an urban reserve while bypassing higher priority exception land?

The department recommends that the commission sustain the director's original decision remanding the urban reserve decision for additional analysis and findings. The department believes that on remand, the city must accommodate future land needs (particularly residential land needs) on land presently designated as exception land or establish that such lands cannot reasonably accommodate the identified need.

III. BACKGROUND

A. Organization of this Report

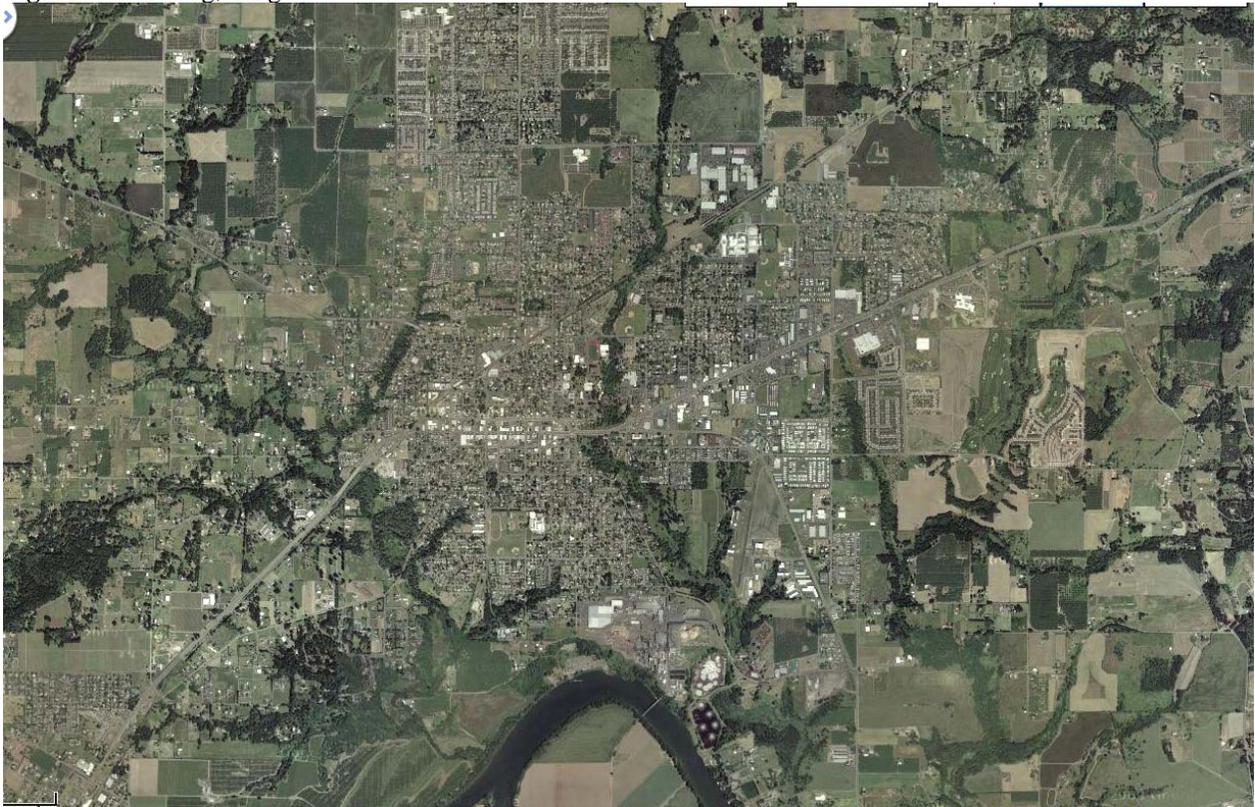
This report is organized to address procedural and substantive issues in their entirety before proceeding to the next issue. Background and review criteria are presented first, followed by discussion of the city's needs analysis and the city's locational analysis. Objections to the director's decision and the department's response to those objections are presented alongside the department's main analysis. Recognizing that the URA proposal is a joint decision of Newberg and Yamhill County, references to both jurisdictions in this report shall be to the "city."

B. Local Action

Newberg's 2008 designation of urban reserves marks the second time the city has designated urban reserves. In 1995, the city designated 916 acres (750 acres buildable) intended to accommodate anticipated urban growth needs until approximately 2020.

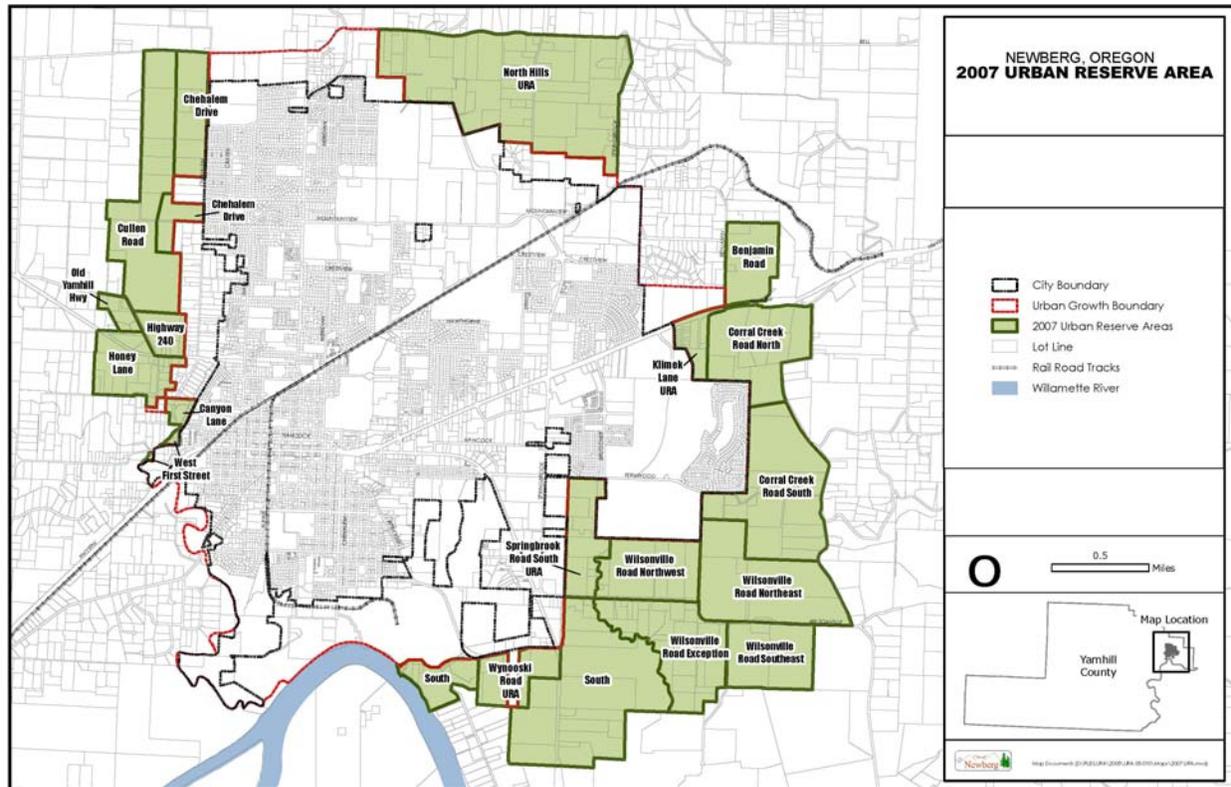
In 2004, Newberg began assembling technical information and holding public forums to consider the city's future growth and development needs. A citizen advisory task force, the Ad Hoc Committee on Newberg's Future (Ad Hoc Committee) undertook studies, public outreach, and deliberations to forecast future population growth, to identify buildable land in the community, to assess the need for residential, commercial and industrial land, and to select land for an urban reserve area (URA) to accommodate long-term population growth through the year 2040.

Figure 1. Newberg, Oregon



Based on recommendations from the Ad Hoc Committee, the City Council adopted a series of post-acknowledgment comprehensive plan amendments updating the city's plans and policies relating to a coordinated population forecast, residential land needs, economic development, public facilities and services, and growth management strategies. In 2006, the city also amended the Newberg urban growth boundary (UGB) to address some shorter term land needs. In October 2007, the Newberg City Council adopted initial urban reserve designations. Subsequent coordination with Yamhill County resulted in a revised proposal re-adopted by the City Council in July 2008, and followed with county adoption of the same.

Figure 2. Newberg 2007 Urban Reserve Area



C. Director's Decision and Appeals

The director issued Order No. 001767 on April 10, 2009. The order remanded the city's decision for further consideration of identified land needs and lands selected for inclusion in the URA consistent with OAR chapter 660, division 21.

Four parties appealed the director's decision: City of Newberg, 1000 Friends of Oregon, Mike and Cathy Stuhr, and Amy and Lee Does. All appeals were properly filed within 21 days of the director's decision and are considered by the department in this report.

IV. REVIEW CRITERIA AND RECORD

A. Substantive Review Criteria

1. Statewide Planning 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.
2. ORS 195.137 to 195.145.

3. OAR, chapter 660, division 21 – Urban Reserves

B. Procedural Review Criteria

OAR chapter 660, division 25 – Periodic Review

OAR 660-025-0130 (Submission of Completed Work Task)

OAR 660-025-0140 (Notice and Filing of Objections)

OAR 660-025-0150 (Director Action and Appeal of Direction Action)

OAR 660-025-0160 (Commission Review of Referrals and Appeals)

OAR 660-025-0170 (Review of UGB Amendments and URA Designations)

C. The Record

Newberg submitted the 2007 Urban Reserve Area Justification & Findings Report (Findings Report) to the department on August 28, 2008. The city included a copy of the local written record (more than 3,300 pages) with the Findings Report.

On September 19, 2008 the city supplemented the record with an index of oversized documents and maps used in the local proceedings and available for review at the Newberg city offices.

On October 22, 2008 the city supplemented the record to include approximately 590 pages of additional material relied on by the city in making its decision but inadvertently left out of the original August 28 submittal. The city notified all parties of its submittal of the record supplement.

Objections – Review Criteria and Record

a. The city asserts as a general basis for appeal that the director applied an incorrect evidentiary standard in review of the URA submittal. Citing *City of West Linn v. LCDC*, 201 Or App 419, 119 P3d 285 (2005), the city asserts that the proper standard of review by the department and the commission is whether there is substantial evidence in support of the local government decision. The city maintains that the extensive local record representing several years of study and citizen involvement provides substantial evidence supporting the city's findings and conclusions.

Response: The department recommends that the commission reject this objection.

The department agrees that a urban reserve designation submittal have an adequate factual base under Goal 2 and recognizes the fact that the city undertook an extensive process of analysis and public review that yielded a considerable amount of evidence in the local record. The department respects that the local government has discretion in its land use decision-making. The department's review, however, focused on whether the local decisions are consistent with state law and commission policy, and whether the record supported local decisions consistent with legal standards and commission policy. Where substantial evidence in the record supports Newberg's adopted findings concerning compliance with the goals and the Commission's administrative rules, the Commission nevertheless must determine whether the findings lead to a

correct conclusion under the goals and rules. *Oregonians in Action v. LCDC*, 121 Or App 497, 504, 854 P2d 1010 (1993).

b. 1000 Friends objects to the inclusion of three documents² in the record supplement filed by the city on October 22, 2008.

Response: The department recommends that the commission sustain the objection.

1000 Friends asserts that while the objectionable materials were placed before the City Council, they were not done so in the context of deliberations on the URA. Review of the January 22, 2008, Council minutes by the department suggests that documents in question were related to an update on the Dayton Avenue pump station, and not related to the proposed URA.

V. ANALYSIS

Designation of a URA is a two-step exercise. First, a local government identifies a long-term land need for the community. Second, a local government undertakes a locational analysis to identify lands appropriate for inclusion in the URA.

A. Need Analysis

OAR chapter 660, division 21 provides that an urban reserve area 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 planning horizon used to establish a UGB. Local governments must adopt findings specifying the number of years over which the designated urban reserves are intended to supply land.³

1. Overall Need

At the outset of the current URA planning exercise, the city determined that it would plan for a period extending through the year 2040. The existing Newberg UGB contains sufficient land (approximately 1,180 acres) to meet needs through approximately the year 2024. Therefore, the planning period for the URA includes an additional 16 years worth of land.⁴

The city established a population forecast coordinated with Yamhill County, assessed its residential, employment, and institutional land needs, and compared estimated buildable land needs with the existing land supply, including the existing city limits and the 2006 UGB amendment. The city adopted a series of post-acknowledgement plan amendments addressing its population forecast, its analysis of land needs and buildable lands, and implementing

² (1) City of Dundee Wastewater Facility Plan amendment, (2) Report to City Council at work session 01/22/08 regarding Dayton Avenue pump station, and (3) Newberg City Council minutes date January 22, 2008.

³ OAR 660-021-0030(1). Beyond this requirement, there are no specific rules/safe harbors to guide the analysis of land needs for a URA.

⁴ The UGB includes approximately a 15-year supply of land. Updating the UGB to a full 20-year supply will result in a URA that contains just the minimum 10-year supply.

comprehensive plan policies. Categories of land (buildable acres) to be included in the URA to address projected needs for the period from 2007–2040 are depicted in Table 1.

Table 1. Total Land Need 2007–2040

Residential	947 acres
Commercial	85 acres
Industrial	226 acres
<u>Institutional</u>	<u>407 acres</u>
TOTAL	1,665 acres

The director’s decision concluded that Newberg had correctly identified its overall land need through 2040.

Objections – Overall Need

a. 1000 Friends of Oregon objects to the director’s conclusion that the city has correctly identified an overall need for approximately 1,665 acres of buildable land for inclusion in the URA.

Response: The department recommends that the commission sustain this objection.

The department understands the objection of 1000 Friends to be that it is inconsistent for the department on one hand to agree with the city’s determination of an overall need for land through 2040 but on the other hand disagree with findings about components of the overall need, namely industrial and institutional land need. 1000 Friends maintains that different methodologies yield different estimates of land need, causing uncertainty about the ultimate acreage the city is planning for.

The director’s decision reflected a nuanced approach to reviewing Newberg’s analysis and conclusions about land need. Fundamentally, the department believes that the city undertook an appropriate analysis of land need. The department did not conduct an independent evaluation of land needs and is not substituting its judgment for that of the city. To this degree, the department can agree that the city’s overall findings and conclusions are reasonable.⁵

Nevertheless, the department reviewed the city’s analysis of specific land needs and concluded the city’s decisions were not supported by the local record and are contrary to the intent of urban reserves. As a result, the department recommends that the city undertake additional work to clarify its analysis and findings about specific land needs (see discussion below). With further work, the department believes that the city can correct the deficiencies, and in doing so will provide a more defensible position for its future employment land needs.

⁵ Guidance about forecasting land need from UGB rules (OAR 660-024-0040(1)) provides that “determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.”

As a result of this objection, the department clarifies the point originally found in the director's decision: the department agrees with the city's approach to determining land need through 2040. The department does *not* recommend that the commission accept the city's conclusion that 1,665 acres of land is needed through 2040.

b. Mike and Cathy Stuhr object to the director's conclusion that the city has identified sufficient land to meet identified needs through the year 2040.

Response: The department recommends that the commission reject this objection.

The department does not agree with the objector that the city's conclusion about the amount of land needed is "clearly less than that needed to satisfy the stated 2040 land need." As noted above, the department believes that the city has generally approached the analysis of overall land need in a reasonable fashion but must address deficiencies with the evaluation of specific land needs.

c. Mike and Cathy Stuhr object to the director's conclusion that the city had demonstrated a land need for the year 2040 while faulting the city's analysis of specific need for large sites and livability. The objectors assert that the city has estimated needed land consistently with the urban reserve rule, and that the department's review should have ended with that conclusion. According to the objectors, further evaluation of specific needs for large sites or for livability is unwarranted. Consideration of Goal 14 need factors is appropriate for a UGB proposal, but not a criterion for establishing a URA.

Response: The department recommends that the commission reject this objection.

The department understands this objection to mean that a local government planning for urban reserves should only identify a gross acreage of needed land without consideration of specific land needs. A local government is entitled to identify specific characteristics that it must accommodate when it evaluates what land included in the URA, but when it does so the decision must comply with relevant goals and rules.

2. Large Site Need

As part of its overall land need, Newberg identified subsets of land need dependent on unique and specific site characteristics – "large site" and "complete neighborhoods and livability." The city asserts that both these specific needs can only be met on large tracts of undeveloped land in the proposed URA. Together, these unique and specific needs total 925 acres, or about 56 percent of the 2040 land need identified for the URA. "Large site" need is addressed first.

As part of its 2040 land need, Newberg identified 542 acres of land need for commercial, industrial and institutional uses, which the city concluded can only be addressed by including large, relatively flat parcels in URA. That need is summarized as follows:

Table 2. Large Site Industrial, Commercial, Institutional Need 2007 – 2040

Industrial need	200	acres
Commercial need	15	acres
<u>Institutional need</u>	<u>327</u>	<u>acres</u>
TOTAL	542	acres

Large Site Industrial Need

The city concluded that of an overall 2040 industrial land need totaling 226 acres, 200 acres must be brought into the URA as flat sites larger than 20 acres. Acreage in large, flat parcels would assure that the city had ample buildable employment land to market and develop for prospective industries. The director concluded that the city had not justified this specific land need.

The city’s analysis and findings do not support a specific need for 200 acres composed of large, flat parcels that can only be accommodated by bringing farmland into the URA. While the city assessed future economic development opportunities and potential employment land needs in an analysis of demand of industrial and office land, it failed to identify specific target industries and attendant land needs in the manner provided for in an Economic Opportunities Analysis (EOA) consistent with Goal 9. Lacking a level of detailed analysis consistent with Goal 9, the city lacks an adequate factual base for its conclusions about the future need for land with specific characteristics. The director found that speculation about the future demand for a type of urban land was insufficient to justify a land need to be satisfied through designation of a URA.⁶

The Newberg Comprehensive Plan identifies local and regional economic development opportunities. The plan identifies industry clusters emphasized in the Portland metropolitan region and concludes that Newberg *may* be able to capitalize on some businesses within the identified clusters, as well as existing manufacturing, medical services, higher education, and the wine/tourism industries found in the local area. However, neither analysis in the comprehensive plan nor the city’s Findings Report identify specific target industries, the site needs for target industries, or why the city’s economic development strategy specifically requires up to 200 acres of large, flat land outside its existing UGB. Without this analysis, the city’s conclusion of a specific need for large, flat parcels that can only be accommodated by bringing farmland into the URA is not adequately supported.

The director’s decision conceded that some additional industrial land will be necessary to supply the city’s long-term needs, and that some of that land will involve development of large, flat parcels outside the current UGB. However, until the city demonstrates the specific need, it cannot assume an acreage figure that must be accommodated in a URA.⁷

⁶ A separate, but related, question is whether a community can identify specific economic development opportunities and type of land needs with precision more than 20 years into the future.

⁷ This finding does not preclude the city from planning for a 20-year supply of industrial land within its UGB nor amending its UGB to accommodate a specific industrial need not otherwise provided for in the 20-year industrial

Objections – Large Site Industrial Need

a. The city makes two objections to the director’s decision concerning the identification of large, flat parcels for industrial use. The city asserts (1) Goal 9 or Goal 9 rules are not the appropriate review standard for URA, that designation of a URA is governed only by OAR chapter 660, division 21, and (2) the local record provides sufficient support for the city’s conclusions about need for large industrial parcels.

Response: The department recommends that the commission reject this objection.

Regarding the objection about appropriate review standards, the department recommends that the commission reject the inference that urban reserve designation is guided solely by OAR chapter 660, division 21 to the exclusion of compliance with other goals such as Goal 9. Under ORS 197.626, the Commission has exclusive jurisdiction to review the city's designation of urban reserve under ORS 195.145 “in the manner of periodic review under ORS 197.628 to 197.650.” OAR 660-025-0040(1). The Commission reviews the urban reserves designation submittal for compliance with the statewide planning goals and applicable statutes and administrative rules. OAR 660-025-0040(1). For periodic review submittals under ORS 197.628 to 197.650, “compliance with the goals” means the submittal “on the whole, conform[s] with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.” ORS 197.747.

Moreover, the city undertook an EOA and analyzed employment land needs in the manner provided for in Goal 9 and OAR chapter 660, division 9. Where a submittal relies heavily on an EOA, or where a submittal relies heavily on the same technique as OAR chapter 660, division 9 for determining future employment needs as a basis for identifying employment land need, the department will consider the EOA in reviewing the submittal for compliance with Goal 9.

In deciding this aspect the city’s conclusions regarding the specific need for large, flat sites for industrial uses, the director found that the city must “connect the dots” along the string of analyses starting with an analysis of economic opportunities, to identification of target industries, the specific site characteristics of those target industries, and how those site characteristics translate into specific acreage requirements. The director concluded the URA designation decision did not adequately demonstrate the amount of industrial land needed.

While the department believes the employment land analysis is deficient to justify a specific land need, it does not believe that the error is difficult to resolve. On remand, the city may clearly identify the specific target industries that it is planning for and follow through with identification of specific site characteristics and land needs. Coordination of this analysis with the Oregon Economic and Community Development Department would provide a strong foundation to support the city’s conclusions.

land inventory. If the city identifies in its EOA a specific need that cannot be met within the existing UGB, it can and should amend the UGB to accommodate that specific need.

b. 1000 Friends asserts that the director’s report incorrectly accepted the city’s overall land need, despite finding deficiencies with the analysis of large site industrial land needs. 1000 Friends asserts that the analysis of large industrial sites is not supported by the record and is inconsistent with other analysis undertaken by the city showing land need based on population and employment growth.

Response: The department recommends that the commission sustain this objection.

As discussed above, the department agrees that the city’s overall need should not be acknowledged in the face of inconsistencies about component parts.

Large Site Commercial Need

The city’s analysis of commercial land needs suffers similar deficiencies as the needs analysis for industrial land. The department recommends that the commission uphold the director’s finding that the city has not justified a specific need for commercial land that can only be satisfied by including large parcels in the URA.

In its analysis, the city identifies an overall 2040 commercial land need of 45 acres and concludes that 30 acres of future commercial land need can be accommodated within the existing UGB, leaving an unaddressed need of 15 acres proposed for inclusion in the URA.

The city has posited, however, that commercial land to be included in the URA must be composed of large, flat parcels to accommodate a preference for a shopping center. While the Newberg Comprehensive Plan articulates a general preference for neighborhood (3–5 acre) and community (10–15 acre) shopping centers and against regional (20–30 acre) shopping centers,⁸ the plan lacks specific policies for retail development and the URA analysis makes no finding demonstrating why a 15-acre shopping center site potentially developed between year 2026 and 2040 can only be accommodated on a large, flat site in the proposed URA.

Objections – Large Site Commercial Need

a. The city objects that the director’s decision did not adequately consider information in the record showing a need for an additional 15-acre site to meet commercial needs through the year 2040. The city notes that the Ad Hoc Committee and city consultants/staff thoroughly considered site characteristics appropriate for future growth needs.

Response: The department recommends that the commission reject this objection.

⁸ “The Urban Land Institute has identified three types of shopping centers that *potentially could be developed in communities such as Newberg*: neighborhood centers, community centers and regional centers. A large regional shopping center is not consistent with Newberg’s desire to maintain a small town feeling and have a complete community rather than a bedroom suburb, smaller neighborhood and community shopping centers are preferred. Comprehensive Plan,” p. 68. [Emphasis added]

The department does not disagree that the city needs additional commercial land in the future or that additional land may be required outside the existing UGB. However, the nature of commercial retail development is significantly different from industrial land development – much more flexible in terms of site characteristics. The director did not dispute that development of commercial retail on large, flat parcels may be easier or less expensive, but such convenience does not demonstrate how an urban reserve designation that requires conversion of resource land complies with the statewide planning goals.

Large Site Institutional Need

The city asserts that 80 percent of the identified long-term need for institutional uses (327 of 407 acres) can only be accommodated on large, flat parcels in the proposed URA. The city maintains that the need for parks (145 acres) and schools (182 acres) can only be accommodated on large, flat parcels of farmland outside the existing UGB. The city coordinated its analysis and identification of long-term need with the Chehalem Park and Recreation District and with the Newberg School District and identified site requirements based on plans and guidelines of those districts. The city concluded that 4–6 community parks (20 acres each), one district/city park of 25 acres, a high school site (30–50 acres), a middle school site (16–20 acres), an elementary school site (10–12 acres) and an alternative high school site (3–5 acres) could only be accommodated on large, flat parcels outside the existing UGB and within the proposed URA.

The director concluded that while the city appropriately coordinated with park and school districts to identify future land needs and that the districts and the city appeared to prefer large, flat sites, the Findings Report does demonstrate that the future park and school needs can *only* be satisfied on large, flat sites in the proposed URA.⁹ The director's decision agrees that some long-term institutional land need may be accommodated on large, flat sites but the city has not demonstrated how a preference for such sites translates into a specific land need for this URA.

Objections – Large Site Institutional Need

a. The city objects that the director's decision failed to recognize land needs identified in the comprehensive plan and site suitability criteria adopted in coordination with service providers. The city objects to the apparent contradiction in the department's view that the city appropriately coordinated with service providers but disagrees with the outcome of that coordination effort.

Response: The department recommends that the commission reject this objection.

The department disagrees with the city that the specific school suitability criteria are appropriate given the broader state policy objective of promoting compact and efficient urban development

⁹ The city's analysis and findings about school needs are inconsistent. Two sources report 2025 school needs as 87 acres (Ad Hoc Committee final report) or 99 acres (Supplemental Record, p. 124). The URA findings report needed to year 2040 as 182 acres of large-site need (p. 39) and 177 acres of large-site need (Table I-3). The size of the discrepancies may be less significant than the lack of clear explanation about how the city arrived at its conclusions.

consistent with Goal 14. The city apparently has assumed that two-thirds of future school site needs must be accommodated on large, flat sites, requiring the inclusion of resource land in the URA or UGB. The department has extensive experience around the state with school siting issues in which it consistently sees school districts and local governments expressing land needs based on high estimates of desired acreage and locational criteria that emphasize flat, undeveloped tracts.¹⁰ The department consistently maintains that site preferences do not translate into site needs.

b. 1000 Friends objects that the director's report could not have concluded that the city appropriately identified an overall land need when the institutional lands subset of the overall need is not supported by the record. 1000 Friends objects that the analysis land needs for institutional uses assumes a need for excessively large sites or that all land for institutional land must be buildable.

Response: The department recommends that the commission sustain this objection.

Overall Conclusion: Large Site Need

The urban reserve rule does not specify how land need must be calculated. The determination must however be consistent with the goals, including Goal 14 – Urbanization. That goal provides, “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.”

Looking solely at the relative short-term development costs, meeting a future land use via large undeveloped tracts is preferable to accommodating comparable land uses in a more constrained environment utilizing smaller parcels and/or redevelopment tools. However, preference alone does not equate to “need” and Newberg has not justified particular circumstances in its comprehensive plan policies or particular development needs unique to the city that establish a separate, specific need for industrial, commercial, or institutional uses that can only be satisfied by including large, flat undeveloped tracts in the URA. Some future land uses understandably will utilize flat farmland, particularly given Newberg's setting. However, the department recommends that the commission conclude that identifying a specific land need for large, flat parcels skews subsequent steps of selecting land for inclusion in the URA in violation of Goal 14, notably avoiding higher priority exception land simply because it is parcelized or more difficult to develop.

The department recommends that the commission reject objections by the city that it provided sufficient rationale to identify specific land need for industrial, commercial, and institutional land that can *only* be met by the inclusion of large flat parcels in this designation of urban reserves.

3. Complete Neighborhoods and Livability Need

In addition to its stated large site need, Newberg also identifies a need for 383 acres of land for “complete neighborhoods” and “community livability” that can only be addressed by inclusion

¹⁰ This situation exists in Newberg; the school district owns a site well outside the existing UGB and proposed for inclusion in the URA. See Appendix F, Map 2.

of large parcels in the URA. The city asserts that it is actively promoting a planning concept of “complete neighborhoods” as the antithesis to strip commercial development and that the city’s preference for complete neighborhoods constitutes a livability need under Goal 14 that cannot be met in highly-parcelized rural exception areas. The department finds that the submittal has not demonstrated a separate and specific livability need that can only be satisfied by large parcels in the URA is inconsistent with Goal 14 and OAR chapter 660, division 21.

Goal 14 directs local governments “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*” [emphasis added]. The establishment of UGBs is based on Goal 14 “need” factors, including “(2) demonstrated need for housing, employment opportunities, *livability* or uses such as public facilities, streets and roads, schools, parks or open space * * *” [emphasis added]. However, the language of Goal 14 does not create a specific livability need to justify the inclusion of large tracts of undeveloped land within an urbanizing area to meet the need.

Case law and LCDC periodic review decisions provide some guidance about the meaning of “livability” in the context of determining urban and urbanizable land. In sum, no specific livability need can be derived from the goals or statutes and a local government’s effort to show such a need requires a comprehensive and thorough assessment of community conditions and a policy basis in the local comprehensive plan. The following references further clarify the criteria for successfully identifying and meeting a livability need:

The livability factor in Goal 14 may not be satisfied simply by identifying a discrete negative livability factor, such as a high tax rate being required for moderate levels of school revenue, and then showing that the negative livability factor might be alleviated by the proposed UGB amendment. If the livability consideration could be satisfied so easily, it would be a meaningless limitation on the establishment and expansion of the UGB. Rather, a correct application of the livability criterion requires, in addition to identification of a significant livability problem, an evaluation of probable positive and negative livability impacts that may occur if the UGB is amended to solve the identified livability problem. *1000 Friends of Oregon v. Metro Service Dist*, 18 Or LUBA 311, 319-320 (1989).

and,

* * * The Commission recognizes that the city, on remand, adopted specific comprehensive plan policies for livability in lieu of its original concept of “livability” (October 2001). Nevertheless, the Commission concurs with the Department’s recommendation and determines that livability, even as set forth in the city’s more detailed policies, is not a “specific identified land need” under the meaning of that phrase in ORS 197.298(3) * * * Acknowledgement Order 03-WKTASK-001534, the Periodic Review of the Comprehensive Plan for the City of North Plains, July 13, 2003.

Early in Newberg’s effort to evaluate long-term land needs, the Ad Hoc Committee developed a set of values, visions, goals and policies guiding community development efforts. Based on this work, the City Council adopted comprehensive plan policies that inform the concept of a

livability need in Newberg.¹¹ However, the policies stop short of saying that community livability cannot reasonably be accommodated on lands of higher priority under OAR 660-021-0030(3), but can only be satisfied on large parcels in a URA. The city's URA findings address the benefits of master-planned communities to achieving a desirable urban form including complete (and livable) communities, but do not identify specific requirements that demonstrate that livability need can only be addressed on large tracts at the periphery of the existing Newberg urban area.

The director's decision found that, lacking a compelling and definitive justification of a specific land need of livability based on developing large tracts, the Findings Report did not establish a livability need that is sufficient under Goal 14 used to justify the URA decision.

Objections – Livability Need

a. The city objects that the director's decision failed to recognize established and legitimate Goal 14 livability needs. The city maintains that planning for livability is essential to its comprehensive planning program given factors unique to the community.

Response: The department recommends that the commission reject this objection.

Commission precedent has been that no specific "livability" need exists in terms of identifying acreage necessary to inclusion in a URA or UGB. This position does not prevent Newberg or any other local government from planning to optimize community livability. None of the factors noted by the city as contributing to livability (urban densities, healthy economy, cost-effective public facilities, needed housing, etc.) are absent in areas that do not comprise large, flat parcels of currently undeveloped farmland. The department recommends that the commission find that Newberg should be able to achieve community livability objectives on any land designated urban reserve and ultimately included in the urban growth boundary.

Overall Need Analysis Conclusion. The department recommends that the commission find that the city has undertaken an analysis to determine an overall need for land to accommodate urban uses to the year 2040. The department recommends that the commission not endorse a specific number in that the city has not demonstrated a specific land need for industrial, commercial, and institutional uses or to satisfy "livability" needs that can only be satisfied on large tracts of land.

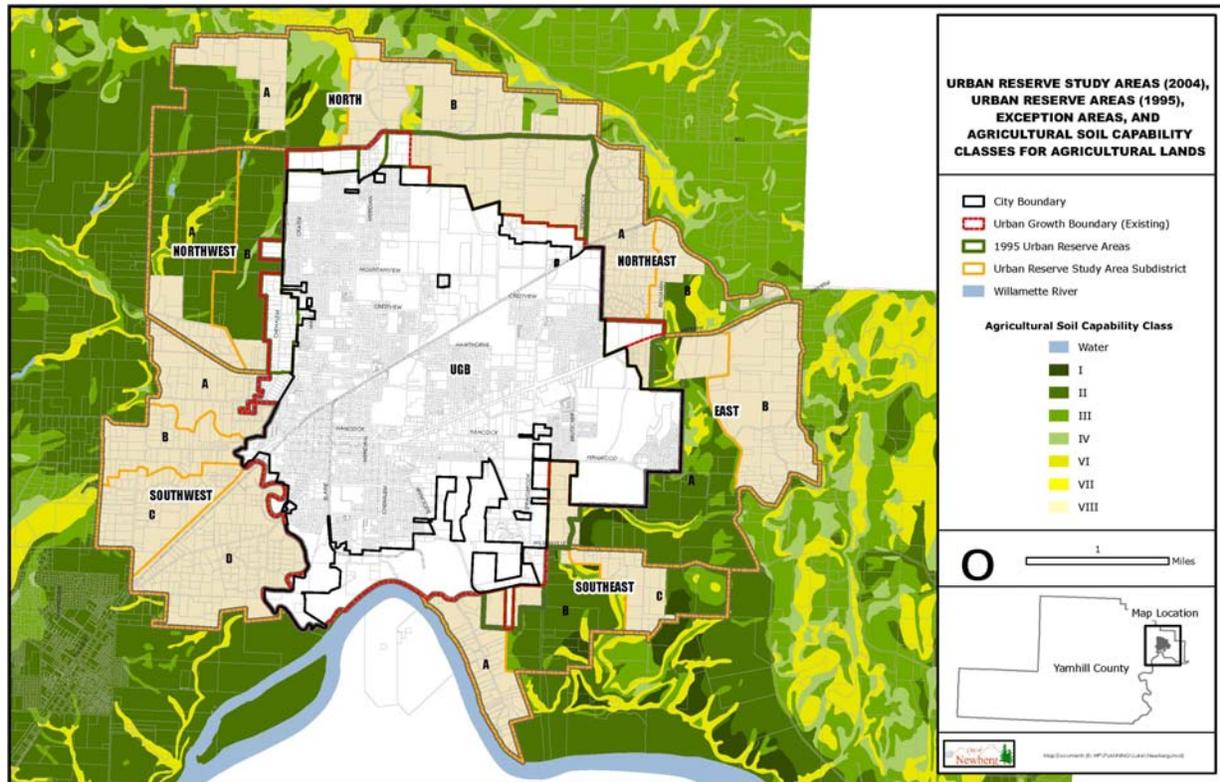
B. Location Analysis

The second step of designating a URA involves assessing which land to designate as urban reserve in order to accommodate the previously identified need. A local government must study land adjacent to and near the urban area for its suitability for inclusion in the urban reserve and

¹¹ "To develop and maintain the physical context needed to support the livability and unique character of Newberg" Urban Design Goal J.2. "Measures should be taken to prevent having areas east and southeast of the proposed bypass isolated from the rest of the City. Substantial development of complete neighborhoods should occur on both sides of the proposed bypass" Urban Design Policy J.2.e.

then designate land for inclusion in the urban reserve according to a priority scheme set forth in OAR 660-021-0030(3).¹²

Figure 3. Newberg Urban Reserve Study Areas



Newberg examined approximately 4,200 buildable acres of land adjacent to and near the existing UGB that could potentially accommodate year 2040 land needs.¹³ The city established six study

¹² 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.

¹³ Study area criteria:

- a) Include land generally within 0.5 miles (but not more than .75 miles) of the UGB
- b) Exclude land abutting the Dundee UGB
- c) Exclude land across the Willamette River
- d) Exclude land above 460 MSL elevation (above which water service determined infeasible)

areas (themselves divided into subareas) to facilitate analysis of land for designation as urban reserve. Approximately 60 percent of the study area is composed of exception land or land included in the 1995 URA, about 40 percent of the study area is planned and zoned as resource (farm and forest) land.

Table 3 illustrates how Newberg applied the urban reserve rules to arrive at its final selections for the 2007 URA. Columns of the table represent steps corresponding to provisions of OAR chapter 660, division 21; rows of the table identify the type of land need (general, large site, livability) included in the URA at each step as well as the particular study area included as a result of that step.

Table 3. Sequential Application of Urban Reserve Rule Provisions of 2007 URA

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
660-021-030(1)	660-021-030(3)(a)	660-021-030(3)(a)+(4)(a)	660-021-030(3)(a)+(4)(b)	660-021-030(3)(c)	660-021-030(3)(c)
Determine 2040 Land Need (Build. Ac.)	Include 1995 URAs (Exception Areas)	Include Reasonably Serviceable Exception Areas	Include Intervening Resource Land	Include Relatively Low Value Soils	Include Relatively High Value Soils
General Need 1,123 ac.	354 ac.	265 ac.	57 ac.	38 ac.	6 ac.
Large Site Need 542 ac.	0 ac.	0 ac.	15 ac.	10 ac.	517 ac.
Livability Need	-	-	Newberg SE TP 24 ac.	Newberg SE TP 188 ac.	Newberg SE TP S Industrial Reserve 171 ac.
Remaining Year 2040 Need 1,665 ac.	1,311 ac.	1,046 ac.	950 ac.	714 ac.	20 ac.
URAs Included	<ul style="list-style-type: none"> ▪ North Hills ▪ Klimek Lane ▪ Springbrook South ▪ Wynooksi Rd 	<ul style="list-style-type: none"> ▪ Corral Cr Rd North* ▪ Wilsonville Rd Except. ▪ South* ▪ W 1st St ▪ Canyon Ln ▪ Honey Ln ▪ Hwy 240 ▪ Old Yamhill Hwy 	<ul style="list-style-type: none"> ▪ Wilsonville Rd NW ▪ Corral Cr Rd North* 	<ul style="list-style-type: none"> ▪ Benjamin Rd* ▪ Corral Cr Rd South* 	<ul style="list-style-type: none"> ▪ Wilsonville Rd NE ▪ South* ▪ Chehalem Rd ▪ Cullen Rd ▪ Wilsonville Rd. SE

Source: City of Newberg Planning & Building Dept. 2007
 *These URAs have both exception areas and resource land.

These steps yield the following amounts of land selected for designation as URA. This tabulation shows that the URA is heavily weighted to inclusion of lower priority resource land over higher priority exception land.

1. Include reasonably serviceable land designated in the 1995 URA.	354 buildable acres
2. Include reasonably serviceable exception areas.	265 buildable acres
3. Include intervening resource land.	96 buildable acres
4. Include resource land of lower capability.	236 buildable acres
5. Include resource land of higher capability.	<u>694 buildable acres</u>
Total	1,645 buildable acres

Land selected for inclusion in the URA comprises 620 acres (38 percent) of higher priority exception land (including 1995 URA) and approximately 1,025 (62 percent) of lower priority resource land.

For the reasons below, the department recommends that the commission uphold the director's finding that the city has not established that the proposed URA designation is consistent with applicable review criteria. The policy for urban reserves emphasizes the importance and need to avoid urbanizing resource land and instead selecting land for urbanization (URA and UGB) that is already committed to some level of development and planning for more intensive urbanization in future years. The city's Findings Report does not establish how the selections of significantly more lower priority resource land (including some highly productive farmland) over higher priority committed exception land complies with that policy. This outcome is driven by how the city identified land needs for large, flat parcels (farmland), and how the city evaluated the serviceability of higher priority exception land adjacent and near the existing UGB.

Future Urban Services: Reasonably Serviceable Exception Land. Newberg's first step in designating land for inclusion in the URA involved including all land designated as URA in 1995 that had not yet been brought into the UGB. This step captured 354 buildable acres into the proposed URA. The department finds this step is consistent with rule requirements.

The city next identified exception land adjacent to and near the current UGB and evaluated topographic and other physical considerations to determine whether that land could address identified land needs. In evaluating exception areas, the city made two key conclusions: One, all exception lands are unsuitable for meeting the city's large site needs since exception lands are often divided into smaller parcels; and two, 265 acres of exception land can reasonably be provided with urban services and would be designated urban reserve.

Subsection A, above, extensively discussed the city's needs analysis. Discussion here focuses on the city's application of the priority scheme for bringing land into the URA.

The intent of the priority scheme of OAR 660-021-0030(3) is for a local government to include the entire supply of higher priority (exception) land within a URA that can reasonably accommodate its identified need before turning to lower priority resource land. In doing so, a

local government has the ability to apply certain limited exceptions¹⁴ to the priority scheme. In this case, Newberg makes extensive use of these exceptions that are not supported by the record and are contrary to the rule.

The following discussion outlines Newberg’s conclusion to include lower priority resource land in the URA in place of higher priority exception land as intended by the priority scheme because of the unreasonableness of providing urban services to the higher priority land.

OAR 660-021-0030(4)(a) provides that a local government may “pass over” higher priority land for inclusion in a URA when it determines urban services could not reasonably be provided due to topographical or other physical constraints. The local government is not obligated to show that it is impossible to provide services, but that it is unreasonable to provide urban services due to topographical or other physical constraints.¹⁵

While the rule does not specify how a local government is to determine whether it is reasonable to provide urban services to a given area, the criterion clearly is subjective and may allow a local government to establish different elements in different situations to address reasonableness. The department understands the rule generally as follows:

“Future urban services could not reasonably be provided” means that a local government must show that it is not reasonable to provide urban services after analyzing topographical and physical constraints (e.g., slopes, water bodies, roadways) in the context of:

- the relative cost of providing urban services to constrained lands and to alternatives;
- the amount of land constrained (i.e., a high cost may be reasonable for serving a large area but not a small one); and
- the planning horizon (i.e., what is not unreasonable for a 25-year plan may be reasonable for a 45-year plan).

Local governments must consider these conditions in light of the intent of urban reserves to ultimately urbanize exception land adjacent to existing urban areas, to avoid conversion of resource land to urban uses, and to provide for cost-effective provision of urban public facilities and services.

¹⁴ 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.

¹⁵ The Legislature has defined an urban reserve as land outside a UGB that will provide for *cost-effective public facilities and services when urbanized* [emphasis added]. ORS 195.137:

* * *

(2) “Urban reserve” means lands outside 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.

In general, Newberg excluded land north, northeast, and east of the existing urban area due to the cost of building new water distribution facilities (reservoirs and pump stations), and did not include land southwest of the existing urban area due to a major drainage way that makes connections to the existing urban sewer system costly and impractical. The city also identified a relatively low amount of urbanizable exception land, or the low yield that such land would bring if included in the city’s urban growth boundary as contributing factors to a decision that higher priority land cannot reasonably served. The city’s conclusions are summarized in Table 4.

Table 4. Summary of areas with topographically and physically constrained areas

Study Area	Topographical and Physical Constraints	Reasonably Serviceable Portion
Southwest Area	Largely separated by Chehalem Creek. Would require multiple sewage pump stations and miles of sewer lines, or a new sewage treatment plant in the area. Significant rural residential development already in area. Topographic and physical constraints (e.g., branching creeks and canyons) and significant facilities needed make service unreasonable.	Small areas in West First Street, Canyon Lane, and Honey Lane, and Old Yamhill Hwy. could be served with planned Highway 240 sewage pump station
Northwest (Exception Area)	Areas would require multiple sewage pump stations; significant development in the area. Lack of adequate storm system adds to cost. Significant infrastructure needed to overcome topographic constraints makes service unreasonable.	Highway 240 area could be served by future Highway 240 sewer pump station
North Area	Most of the area would require a second and third high level water reservoir. Area contains some steep slopes and rapid changes in elevation. Sewage service in North A would require multiple pump stations. High parcelization and development in some areas. Overall extensive facility needed to serve small area makes service to higher elevations unreasonable.	None
Northeast Area	Area is in zone 1, 2, 3, and 4 water service levels, requiring multiple reservoirs and pump stations. Area contains significant existing development, which is physical barrier to extending services. Significant infrastructure needed to overcome topographic constraints coupled with very low yield makes service unreasonable.	
East Area (East of Corral Creek Rd.)	Most of the area would require a second and third high level water reservoir. Area contains steep slopes. Sewage service would require multiple pump stations. High parcelization and development in some areas. Overall extensive facilities needed to overcome topographic constraints to serve small area makes service unreasonable.	None.
Southeast Area A (Dog Ridge Road)	Area is separated from sewage treatment plant by Hess Creek. Sewage service would require new pump station. High parcelization and development and limited infill opportunities. Overall extensive facilities needed to overcome topographic constraints to serve small area makes service unreasonable.	None.

(URA Findings Report, Table 4, p. 28)

The discussion below analyzes the city’s findings about two study areas (Southwest and Northeast) in greater detail showing how the city’s approach to the issue of reasonableness of providing urban services led to the city’s conclusions. The department recommends that the commission reject the analysis and outcome that resulted in only seven percent of buildable exception land in the Southwest study area and only 13 percent of buildable exception land in the Northeast study area selected for inclusion in the URA. The department recommends that the commission find that Newberg did not appropriately apply the priorities scheme and the

reasonably serviceable exception in OAR 660-021-0130(4) in light of the commission’s policy intent expressed in the urban reserve rules.

Objections – “Reasonably Serviceable”

- a. The city asserts that the director and the department have imposed an unreasonable standard on local governments to justify whether “future urban services could not be reasonably provided.” The city asserts that the standard used by the director and the department is at odds with *Hildenbrand v City of Adair Village*, 217 Or App 623, 177 P3d 40 (2008) which the city says gives local government discretion to determine what makes it unreasonable to provide urban services to land of higher priority.
- b. The Stuhrs assert that the director’s report and the department’s narrow focus on the priorities for including land in the urban reserve and exceptions to the priorities scheme improperly overlooks application of the Goal 14 locational factors. The objectors assert that the broader review including consideration of the Goal 14 locational factors yields the conclusion that exception lands were appropriately excluded from the urban reserve by the city.

Response: The department recommends that the commission reject these objections.

The department agrees that the city undertook an extensive analysis that encompassed the full extent of Goal 14 locational factors. However, the locational factors of Goal 14 apply to determine which lands of the same priority under OAR 660-021-0030(3) a local government should select in designating urban reserves. The rule provides that “Inclusion of land within an urban reserve shall be based on 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 lands.*” OAR 660-021-0030(2) (emphasis added). The department’s concern, however, is that the analysis emphasized exceptions to the priorities scheme to the extent that the city’s decision resulted in two-thirds of land included in the URA comprising lower priority resource land. The director found that the URA decision did not support the conclusion that the Goal 14 factors provided adequate justification that certain exception areas could not “reasonably” be served with public facilities.

The specific factual situation in *Hildenbrand* is distinguishable from the situation in Newberg which proposes a broad exception to the priorities across a wide area proposed in Newberg. Unlike Adair Village, which was expanding its UGB, Newberg is planning for urbanizable land needed beyond the 20-year horizon provided for in the city’s UGB. Moreover, Newberg is planning for in excess of 1,000 acres for which the cost of urban services can be spread over many uses over a longer period. Local jurisdictions have some discretion in applying the location factors in Goal 14, and the statutory/rule priorities, but statutory and goal policy sideboards continue to exist, and the director found that the extant URA location decision was contrary to the intent of the commission’s urban reserve policy.

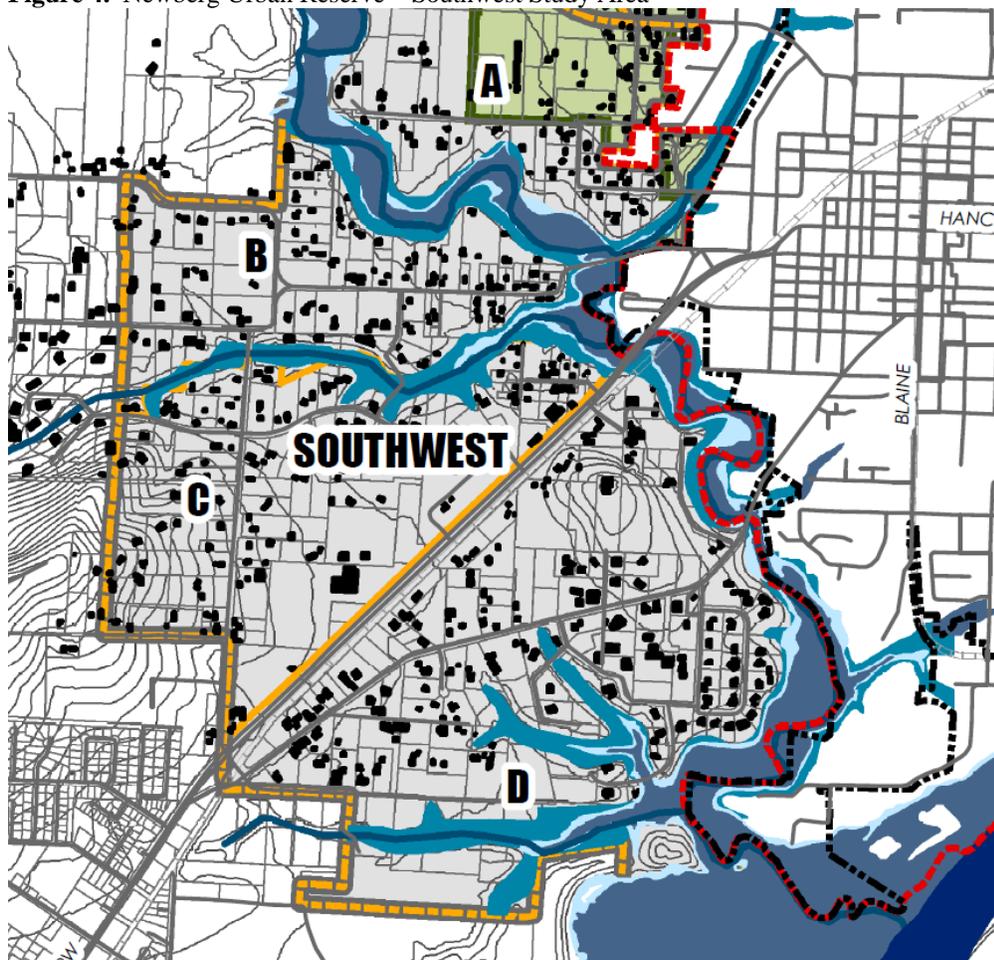
Additionally, the standard of review of an urban reserves designation submittal by the director and the commission is broader than LUBA’s standard of review for a land use decision. While LUBA is charged with reviewing specific challenge to a land use decision as prescribed by ORS

197.835 to include substantial evidence challenges; the director and commission are additionally, and more broadly tasked with determining whether an urban reserves designation submittal complies with the statewide planning goals.

Southwest study area

The Southwest study area (and the Northeast study area, discussed below) illustrates how the city analyzed serviceability in light of existing development patterns and physical constraints. In both cases, the city concludes the areas should not be included in the URA.

Figure 4. Newberg Urban Reserve – Southwest Study Area



The city asserts that because most of the southwest study area is separated from the current UGB by Chehalem Creek, and it is near the same elevation of the city's sewer treatment plant, urban services could not reasonably be provided to the area. The city cited factors contributing to the conclusion that urban services could not reasonably be provided:

- 1) The area is highly parcelized with the median lot size of about two acres;
- 2) Most parcels have existing structures that discourage connecting streets and infill;

- 3) Development in the exception areas is most dense adjacent to the existing UGB, forcing urban services to “leap frog” past existing areas to reach more easily developed outlying tracts;
- 4) Provision of future urban services depends on annexation which is unlikely to be supported by property owners in the exception area.

The city analyzed the cost of providing sewer service to the exception land and concluded that the amount of investment required to construct additional sanitary sewer lines and pump stations is unreasonably high given the perceived yield of new developable urban land in the exception area.

The director agreed that the southwest study area is separated from the Newberg urban area by a relatively large stream course that poses challenges to providing urban services to the area. Several existing sanitary sewer pump stations move effluent from in and near the area to the city’s water treatment plant. The Findings Report determined that urban development of the area would require upgrading of at least the pump stations, if not construction of an additional wastewater treatment plant. Existing parcels served by individual water and septic systems would require conversion to a municipal system; the cost of improvements, however, are unknown, as are the consequences to property owners who have invested in rural levels of service. The city concluded that financial and political costs of urbanizing the area made the provision of future urban services unreasonable.

Nevertheless, the Findings Report does not establish that the southwest area could not reasonably be served with sewer. New pump stations could move effluent to existing and/or upgraded pump stations.¹⁶ A new wastewater treatment plant serving southwest Newberg and the adjacent city of Dundee could be built, although the city has concluded it would not do so.¹⁷ Options exist to serve the area, but they are costly, potentially controversial, and may only be realized over a long period of time.

The director found that the city’s conclusion that it was unreasonable to serve the area and instead to focus urbanization on undeveloped farmland is inconsistent with the urban reserve rule, does not appropriately evaluate the reasonableness of providing urban services over the next 30 years, and is not supported by the record. For the urban reserve study area encompassing a significant amount of higher priority exception land, the director found that the city did not adequately establish that the area in question could not be reasonably served with future urban services. The area encompasses a substantial amount of land already committed to non-resource development. The study area includes a variety of larger parcels that could likely be developed at urban intensities. Analysis in the record is inconclusive about the technical merits of providing service to the area and does not evaluate the long-term feasibility of urbanizing the area. Plans relied upon by the city in reaching its conclusion to exclude higher priority land from

¹⁶ In August 2007, city staff reported options for serving the southwest study area concluding that options exist, but would be very costly to the city.

¹⁷ The city has an adopted sewer master plan, although the plan is not part of its comprehensive plan. The plan, not included in the record, does not call for a new wastewater treatment plant in the southwest area.

the URA are not part of the acknowledged comprehensive plan. Without adequate factual base that establishes that providing future urban services is unreasonable, the priority scheme of the administrative rule directs inclusion of the higher priority exception land in the URA.

Objections – Southwest study area

a. The city objects that the director’s decision did not recognize substantial evidence in the record that the entirety of Goal 14 factors shows that the Southwest study area cannot be reasonably served and that the area should not be included in the urban reserve. The city further asserts that full consideration of all Goal 14 locational factors and all evidence support the city’s decision. The city cites a number of factors (parcelization, existing structures, annexation requirements, and cost of new sewer facilities) as contributing its conclusion that future urban services cannot reasonably be provided to the area.

Response: The department recommends that the commission reject this objection.

As discussed above the department views the issue not exclusively one of substantial evidence, but one of evaluating evidence in the local record to determine consistency with state law and commission policy expressed in the Goals or other administrative rules. The city seems to propose that the amount of evidence in its proceeding is sufficient to override established priorities of statute and rule that focus urbanization away from resource land to areas of existing development.

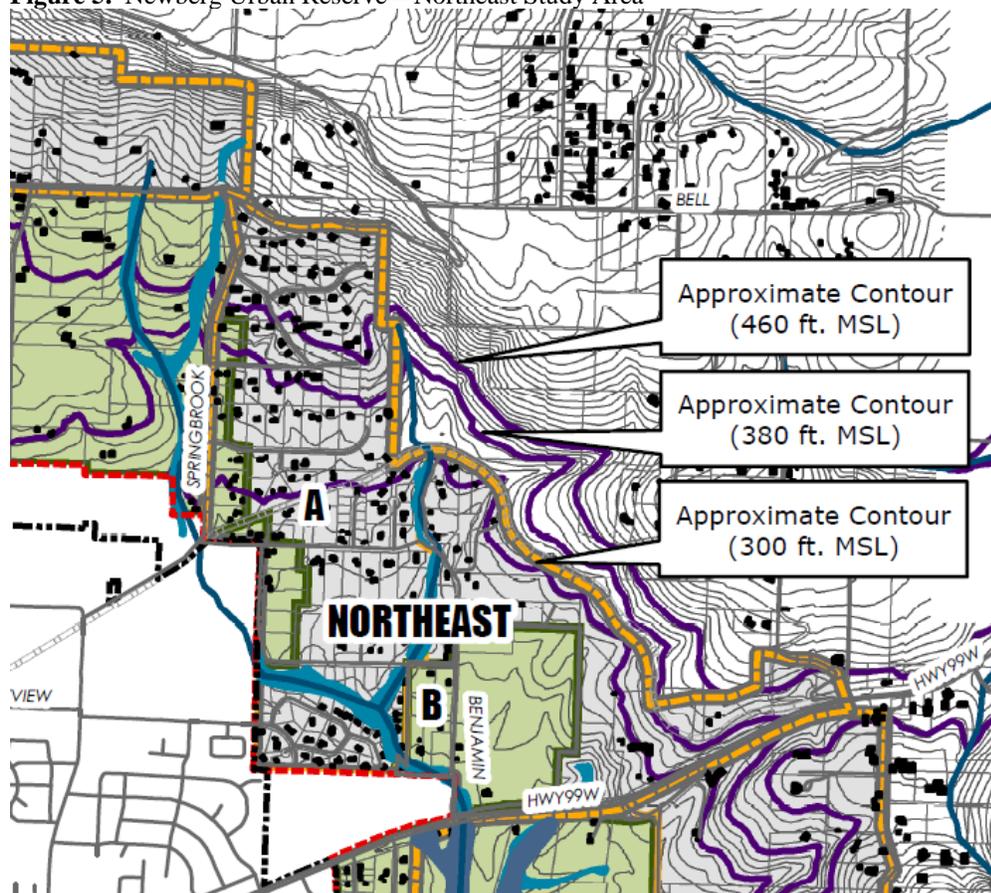
Northeast study area

The northeast study area comprises about 75 percent exception land and 25 percent resource land. The exception land is primarily rural residential development on a hillside above the city. The city determined that steep slopes in the area make provision of future urban services, primarily water service, unreasonable. Similar to conclusions about development of the southwest study area, the city finds that the existing pattern of low-density development will make urbanization very difficult because costly investments in infrastructure likely will not be recaptured on land where the existing land use pattern makes development at urban densities difficult at best, and reasonably unlikely over the foreseeable future given expressed opposition of area landowners.

Parcelization and residential development patterns may be considered in determining whether areas can reasonably accommodate the proposed use. *1000 Friends of Oregon v. Metro*, 38 Or LUBA 565, 587-588 (2000), *aff’d, rev’d and rem’d on other grounds*, 174 Or App 406, 26 P3d 151 (2001). However, parcelization or development patterns, or both, must alone or together with other considerations reduce the suitability of an area for the use to the point where the city concludes that the area is unable to reasonably accommodate the need it has identified under Goal 14, factors 1 and 2. It is not sufficient to determine that parcelization or development patterns, or both make an area less efficient or more difficult to develop for the use. *Residents of Rosemont v. Metro*, 38 Or LUBA 199, 238 (2000) *aff’d, rev’d and rem’d on other grounds*, 173 Or App 321, 21 P3d 1108 (2001).

The director found that, while city’s water service plan identifies future reservoirs and distribution for the northern portion of the urban area, that plan has not been adopted as part of the city comprehensive plan and only addresses serviceability through the year 2025. As such, the plan is not an adequate basis to evaluate the reasonableness of providing services to future urban areas out to 2040. Moreover, a significant portion of the study area lies below 460 feet elevation, the city’s maximum elevation for providing water service, and thus should be treated as an area where urban services are reasonable.

Figure 5. Newberg Urban Reserve – Northeast Study Area



The submittal indicates that the “political costs” of urbanizing the area made the provision of future urban services unreasonable due to the expressed opposition of area landowners. The submittal does not demonstrate how that consideration is relevant in determining whether the area can reasonably accommodate the identified need. Because land found suitable for urban reserves can be included in urban reserves only under the priorities established in OAR 660-021-0030(3), a local government cannot apply criteria extrinsic to the urban reserve rule to exclude otherwise suitable land from consideration, where doing so alters the inventory of suitable lands in a manner that allows designation of lands in violation of the OAR 660-0021-0030(3) priorities. *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516, 583 (1999). The submittal does not demonstrate that political opposition to annexation renders the exception lands unable to reasonably accommodate the identified need. *Residents of Rosemount v. Metro*,

38 Or LUBA at 237. Likewise, a service provider’s lack of interest in providing service to an area does not necessarily mean that services cannot be provided in an orderly fashion. *City of West Linn v. LCDC*, 201 Or App 419, 436-437 (2005).

Finally, the Findings Report conclusion that the cost of urban services (including water, sewer and storm drainage) is among the highest of all study areas is not supported by corroborating information to explain the analysis of costs. The director found that the city had not demonstrated, consistent with urban reserve policy, that provision of future urban services to the area is unreasonable given that the city’s water plan is not an adopted comprehensive plan policy and much of the study area does not possess the serviceability characteristics the city has relied upon to not designate land for inclusion in the URA.

Objections – Northeast study area

a. The city objects that the director’s decision did not recognize substantial evidence in the record that the entirety of Goal 14 factors show that the Northeast study area cannot be reasonably served and that the area should not be included in the urban reserve.

Response: The department recommends that the commission reject this objection.

Conclusion: Reasonably Serviceable

The city evaluated approximately 2,225 acres of exception land (in addition to the 1995 URA). From these lands, the city concluded that only 265 acres (12 percent) could be reasonably served with urban services due to topographic or other physical constraints and could thus be included in the 2007 URA. The director found that the city’s conclusions are not supported by analysis in the record and are contrary to the intent of urban reserves policy.

Maximum Efficiency: Intervening Resource Land. In applying the priorities scheme, a local government may include lower priority resource land necessary to include higher priority land.¹⁸ Newberg used this provision to include two areas comprising a total of 96 acres of lower priority land resource in order to include approximately 161 acres of higher priority exception land. The lower priority resource land is among the best farmland evaluated by the city for potential inclusion in the URA; much of the intervening land is composed of capability class I, II, and III soils.

The department finds that the city has not shown why maximum efficiency of land use *requires* lower priority resource land be included to provide services to higher priority exception lands. The city provides conclusions but cites little specific evidence of how it would maximize efficient land use by including high value resource land simply in order to bring in exception

¹⁸ OAR 660-021-0030(4) Land of lower priority under section (3) of this rule may be included if * * * (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.

land.¹⁹ In this case, the director concluded that because of the very high quality of the resource land in question, the city has an equally high burden to demonstrate why such lands must be considered for the URA. While Newberg has chosen not to designate extensive amounts of exception land as URA elsewhere around the city, it concludes with little explanation that an exception area not contiguous to the existing UGB should be urbanized and necessitates the urbanization of high value resource land to accomplish this. The Findings Report has not established that the conclusion is supportable.

Objections – Maximum Efficiency: Intervening Resource Land

a. The city objects that the director’s decision failed to recognize that intervening resource land was included in the urban reserve in order to also include exception land in the urban reserve. The city asserts that provision of public services to reach exception land proposed for inclusion makes inclusion of resource land appropriate, and that the city has done what is reasonable to avoid including the highest capability agricultural soils in the urban reserve.

Response: The department recommends that the commission reject this objection.

As explained to this point of the report, the department recommends that the commission find that the city has misapplied the urban reserve rules, leading to an outcome that necessitates (from the city’s perspective) inclusion of both exception land not contiguous to the current UGB and intervening agricultural land. From the department’s perspective, the submittal has not established that other exception areas could not reasonably accommodate the use and the city would not have reached this point had it appropriately followed the statutory/rule priorities and included other exception land proximate to the current UGB (Southwest and Northeast areas).

Objections – Transition from rural to urban land uses

a. Amy and Lee Does assert that a regional transportation corridor plan must be in place before approval of the URA, arguing that selection of land for inclusion in the URA and the transition of rural to urban necessitate resolution of traffic issues.

Response: The department recommends that the commission reject this objection

The land included in the URA remains rural in both name and function until added to the Newberg UGB. A future decision to expand the UGB will be based on a subsequent analysis that addresses adequate provision of urban services and facilities.

¹⁹ Without more justification, the city’s decision to include lower priority lands appears to contradict the rationale for excluding exception lands in other parts of the city. Map 8 of the Findings Report identifies three potential future pump stations located in the southeast study area. Two future pump stations would be needed to serve an exception area included in the URA by virtue of including lower priority resource land. A third pump station appears necessary to serve an east study area exception area similarly included in the URA by including lower priority resource land. The city’s decision does not explain why these proposed pump stations are more justified than upgrading or building new water treatment facilities to serve land of higher urban reserve priority such as the rejected southwest study area.

Overall Location Analysis Conclusion. The director found that the city has not sufficiently justified its conclusions reached in the location analysis phase of designating a URA. As a result, the city has not properly applied the priorities of OAR 660-021-0030(3).

The city makes a case that including higher priority exception land in the URA is a difficult and costly proposition. Exception land surrounding Newberg, like elsewhere in the state, is extensively parcelized and developed in a manner that makes it clearly less attractive for urbanization compared to flat, undeveloped farmland. The director and department understand that providing future urban services to these exception areas is less reasonable if the analysis is a narrow examination of what land is merely easiest, least costly, or most convenient to develop. However, the priority scheme for bringing land into a URA is intentionally weighted to avoid development of resource land, particularly valuable farm land. Newberg proposes inclusion of extremely productive agricultural land within the URA. The burden to do so is very high; the department concludes that the city has not met the burden.

Newberg chose not to include a significant amount of higher priority exception land because it concluded future urban services could not reasonably be provided to the areas. While the local record makes it clear that there was extensive community discussion about where to grow the community, the record does not support the city's conclusions to pass over large amount of higher priority exception land and to designate lower priority resource land based on a finding that it is unreasonable to provide future urban services to exception lands. Lacking substantial evidence in the record, the department cannot conclude that the city appropriately applied the requirements of OAR 660-021-0030.

VI. CONCLUSION

The director concluded that Newberg has not justified the designation of urban reserves it determined were needed to accommodate future growth through the year 2040, and found that the city's decisions do not comply with OAR chapter 660, division 21, on two key steps in the process: 1) identification of need; and 2) application of the priorities for selecting land for the urban reserve area.

The director found that the city erred in identifying specific land needs for large, flat parcels that could only be accommodated by including lower priority resource land in the urban reserve. The city provided insufficient justification of a specific large parcel need for industrial, commercial, and institutional uses. The director also found that the city's designation of a specific "livability" need for large, flat parcels of resource land as urban reserves is inconsistent with Goal 14. The errors in defining need were significant, and made correct selection of land that meets the priority scheme for selecting urban reserve areas nearly impossible.

The director found that the city's determination of land need led to selection of lower priority resource land as the only means to meet the identified need and, therefore, the proposed urban reserve area does not comply with OAR 660-021-0030. The director further found that the city's proposed exceptions to the priorities for selecting urban reserves lack an adequate factual base

necessary to demonstrate that lower priority resource land must be included in the urban reserve before higher priority (exception) land.

VII. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

As with a periodic review task, the commission has four options for a decision this URA designation:

- uphold the director's decision to remand the urban reserve designation;
- reverse the director's decision and approve the urban reserve designation;
- partially approve the local decision and remand the remainder of the decision (on the same or different grounds than the director's remand); or
- approve the local decision with specific amendments required.

Based on the analysis and findings above, the department recommends that the commission take the following actions:

1. Remand the local government decision regarding identification of land need for the URA with instructions to apply the following guidelines for any revisions the city/county may make.
 - a) Revise estimates of land need for large sites to identify specific target industries, site characteristics, and acreage needs for identified target industries, and demonstrate which of those specific needs, if any, cannot be met on land already within the UGB;
 - b) Revise estimates of land need for large sites to remove a specific need for large, flat parcels to accommodate commercial land needs;
 - c) Revise estimates of land need for large sites to reduce land estimates for school facility land needs
2. Remand the local government decision with direction to eliminate “complete neighborhoods and livability” need as justification for inclusion of large sites in the URA.
3. Remand the local government decision with direction to include land in the Southwest study area and the Northeast study area to accommodate residential needs and corresponding institutional lands the local government believes are appropriately sited nearby so as to achieve community objectives for livability.
4. Remand the local government decision with direction to exclude agricultural land for inclusion in the URA for uses except for large parcel industrial land needs justified in 1, above, consistent with the priorities in OAR 660-021-0130(3).

Recommended Motion: I move staff recommendation that the commission remand the Newberg urban reserve designation decision for (1) reconsideration of land need related to large sites for industrial, commercial, and institutional land needs, (2) exclusion of “complete neighborhoods and livability” as the basis of need for large tracts included in the URA, (3) reconsideration of land in the Southwest and Northeast study areas to accommodate identified

residential land need, and (4) reconsideration of land included in the URA to exclude land presently planned and zoned for agricultural uses for land except for large sites needed to accommodate industrial lands, based on the department's report and responses to objections.

Alternative Motion 1: I move that the Commission remand the urban reserve designation decision to the city for: **[delete any of the preceding four items the commission finds should be approved]**, based on department's report and responses to objections;

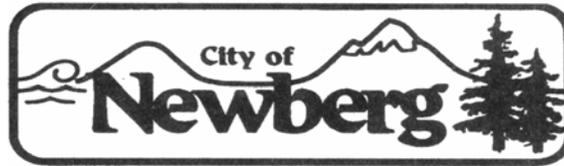
and in addition to address the following issue(s) raised in the objection(s) **[list each issue and the objector who raised it]**.

Alternative Motion 2: I move that the commission approve the urban reserve designation decision based on the city's findings and oral argument; the commission sustains the objections of the City of Newberg and Mike and Cathy Stuhr, and rejects the objections of 1000 Friends of Oregon and Amy and Lee Does.

ATTACHMENTS

- A. City of Newberg appeal letter, May 1, 2009
- B. Shetterly, Irick, Ozias (Stuhr) appeal letter, April 30, 2009
- C. 1000 Friends of Oregon appeal letter, April 30, 2009
- D. Amy & Lee Does appeal letter, April 26, 2009
- E. Map Atlas – Newberg Urban Reserve
 - Map 1 – Urban Reserve Area
 - Map 2 – Newberg Special Area Plan Boundaries
 - Map 3 – Study Areas, Exception Areas, Agricultural Soils
 - Map 4 – Yamhill County Zoning
 - Map 5 – Slopes
 - Map 6 – Water Features
 - Map 7 – Transportation System Plan
 - Map 8 – Sanitary Sewer System Plans
 - Map 9 – Topographically and Physically Constrained Areas
- F. Director's Report, Order No. 001767, April 10, 2009.

City of Newberg
414 E. First Street
P.O. Box 970
Newberg, OR 97132



City Manager
(503) 537-1261

Planning and Building Department

P.O. Box 970 • 414 E. First Street • Newberg, Oregon 97132 • (503) 537-1240 • Fax (503) 537-1272

May 1, 2009

Via e-mail larry.french@state.or.us
hand delivered, and first class mail

Mr. Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

Re: Appeal by City of Newberg of DLCD Remand Order of Urban Reserve
File No. 2008-005 (Order 001767) – City of Newberg and Yamhill County

Dear Mr. Whitman:

I am writing on behalf of the City of Newberg to appeal DLCD Remand Order of Urban Reserve File No. 2008-005 (Order 001767), dated April 10, 2009, to the Land Conservation and Development Commission. This appeal is made pursuant to OAR 660-025-0150.

Under OAR 660-025-0150 (4) (b), the local government may appeal the Director's remand to LCDC. The City of Newberg is the local government who made the decision, and thus has standing to appeal. The urban reserve also was adopted by Yamhill County, as required by the Urban Reserve Rule. In this context, we will use the term "Newberg" to refer to the joint decision by the City of Newberg and Yamhill County to adopt an urban reserve.

As a preliminary, I would like to thank the Department for its assistance on this project throughout the process. Although staff has changed several times, different representatives have participated in many of the public meetings we have held over the past five years that led us to the adoption of the urban reserve. Staff has been available to answer questions and give us guidance along the way. We are particularly thankful for Steve Oulman and the attention and information he has given us along the way. While we certainly are very disappointed with the remand decision, and feel there are several substantive errors, we don't want these comments to detract from our appreciation of the Department staff's efforts.

Also as a preliminary, I would hope that the Commission would take a few moments to review the public involvement process summary, contained in Record pp 3193-3203.

Creation of the urban reserve is the result of a very extensive public involvement process that began in December 2003. That process involved extensive visioning, over 100 public events, and participation of many hundreds of neighbors, citizens, property owners, and officials. That we were able to achieve substantial agreement upon the amount, type, and direction of growth for the Newberg area for the next 31 years is a phenomenal achievement in the community. The LCDC review process is an odd process where only the objectors, not the supporters get heard. While we certainly respect the opinions of the four objectors, I would hope the commission would "listen to the silence" of the hundreds who would support this work, but are barred from expressing this support by odd state rules.

This process also included extensive professional work from many of the best professionals in the state. It represents an investment of hundreds of thousands of public dollars primarily from the City of Newberg, but also Yamhill County, and the State of Oregon. While it is costly, we know this is an excellent investment in our future that will pay dividends to the City, the County, the State, and its citizens for many years to come.

General Basis for Appeal: The Department applied the incorrect evidentiary standard to its review. An LCDC order reviewing a local government decision designating urban reserves under ORS 197.626 is subject to review by the Court of Appeals under ORS 197.650. ORS 197.650(1) provides that LCDC's order may be appealed "in the manner provided by ORS 183.482." In *City of West Linn v. LCDC*, 201 Or App 419, 427-28, 119 P3d 285 (2005) (UGB expansion through periodic review), the Court explained that the "in the manner provided by ORS 183.482" language in ORS 197.650 invokes the substantial evidence standard of review found in ORS 183.482. See *1000 Friends of Oregon v. LCDC (Lane Co.)*, 305 Or 384, 404-05, 752 P2d 271 (1988). Regardless of whether an appealed decision is legislative in nature, it is subject to review for adequate support in the record. The substantial evidence standard of ORS 183.482(8)(c) requires LCDC to find that substantial evidence in support of a local government finding of fact exists "when the record, viewed as a whole, would permit a reasonable person to make that finding." *City of West Linn*, 201 Or App 428-29.

In many cases, as will be explained further below, DLCD has not applied the correct evidentiary standard. Many of the relevant findings of fact with which DLCD disagrees meet the substantial evidence standard and therefore should have been sustained. Therefore, we must appeal the Department's decision.

Proposed resolution: In reviewing the Department's decision, we ask that regarding each basis for remand, the Commission review whether Newberg's decision is supported by substantial evidence in the record. The record contains over 3,000 pages and is the culmination of years of careful study and review, and we ask that the Commission give very careful consideration to years of extensive consideration and deliberation, and give deference to Newberg's decision where it is supported by substantial evidence. We previously provided DLCD with a letter and excerpts from the record to more easily identify key documents. We certainly are available to respond to questions about location of documents within the record.

Basis for Appeal 1: With regard to lack of justification for the identification of a specific need for 200 acres of industrial land as flat sites of 20 or more acres, the DLCD Remand Order (a) incorrectly relied on a supposed requirement to comply with Goal 9 and the Goal 9 Rules; and (b) did not adequately consider information in the record related to: targeted industrial employment opportunities, their suitability requirements, and the application site suitability requirements to determine whether land should be designated as urban reserves to meet identified industrial site needs. This information is found in the City's acknowledged Comprehensive Plan, Economic Opportunities Analysis (EOA), Urban Reserve Area Justification Report, and supporting studies referenced in these adopted plans.

Discussion (a): The DLCD Remand Order, at page 5, concludes the City failed to justify a specific industrial land need for 200 acres on flat sites of 20 acres or more, in part based on the following:

"[The City] failed to identify specific target industries and attendant land needs in the manner required by an Economic Opportunities Analysis (EOA) consistent with Goal 9. Lacking a level of detailed analysis consistent with Goal 9, the city lacks an adequate factual base for its conclusions about the future need for land with specific characteristics. * * *"

Goal 9 contains no mention of an EOA. The Goal 9 **Rules** contain provisions governing EOA's (*see* OAR 660-009-0015), but OAR ch 660, div 9, applies only to plans for areas within UGBs, and comprehensive plans are required to be amended to comply with Division 9 only at the time of periodic review pursuant to ORS 197.712(3). There is simply nothing in OAR 660-021-0030, Goal 9 or the Goal 9 Rules that requires a city's determination of the amount of land needed within its urban reserves to be based on an EOA that satisfies the Goal 9 Rules. In *D.S. Parklane Development, Inc. v. Metro*, 165 Or App 1, 5, 994 P2d 1205 (2000), held that the designation of urban reserves is governed **only** by OAR Chapter 660, Division 21, and other standards specifically cited therein. Therefore, any failure of the City's urban reserve designation decision to demonstrate compliance with the Goal 9 Rule requirements for EOA's does not provide grounds for remanding the City's decision.

Discussion (b): The other reason given in the DLCD Remand Order for why the City failed to justify a specific industrial land need, is also found on page 5:

"* * * However, neither analysis in the comprehensive plan nor the city's Findings Report identify [sic] specific target industries, the site needs for target industries, or why the city's economic development strategy specifically requires up to 200 acres of large, flat land outside its existing UGB. Without this analysis, the city's conclusion * * * is not adequately supported."

The above quoted language seems to be saying (1) that the City's decision is not supported by an adequate analysis identifying specific target industries, establishing the

site needs of those target industries, and explaining why 200 acres of large, flat sites are needed to meet those site needs, and (2) that analysis must be found in the Comprehensive Plan or the Findings Report.

In Newberg's case, the City's acknowledged EOA (Table 12-13) identifies a need for 307 acres of industrial land to meet industrial site suitability requirements through the Year 2040. There is a specific need found for eleven large sites of 20 or more acres each. (Record at p. 231) The EOA specifically references industrial clusters that require large sites. (Record at pp. 225-226) The EOA references *The Report to the City Council: Recommendations for Newberg's Future* (the Ad Hoc Committee Report) as the source for this identified need. The industrial site need table in the EOA is also set forth in the acknowledged Comprehensive Plan. (Record at pp. 202-203) The Comprehensive Plan also references the Ad Hoc Committee Report.

The Ad Hoc Committee Report includes a detailed memorandum from Winterbrook Planning that describes the site characteristics required by targeted industries as required by OAR 660-009-0025 (2). This memo references work done by ECONorthwest related to targeted industrial employment types which is consistent with targeted industrial clusters identified in the EOA. (Supplemental Record at pp. 165-167) The Winterbrook Memo identifies objective requirements for site size, acreage, topography and proximity characteristics as required by Goal 9. (Supplemental Record at pp. 112-115) The Winterbrook Memo proceeds to evaluate industrial sites within the UGB and determined that (a) there is a deficit of suitable sites within the UGB, and (b) the SE Study Area along Highway 219 meets identified site requirements. (Supplemental Record at pp. 115-117) The URA Justification Report reaches the same conclusion. (Record at pp. 3129)

Most of the evidence discussed above is found in documents that have been adopted as part of the Comprehensive Plan (*e.g.* the EOA) or are referenced in the Comprehensive Plan (*e.g.*, the Ad Hoc Committee Report). In any case, there is no legal requirement that every piece of evidence relied upon by the City must be adopted as part of the Comprehensive Plan. In *D.S. Parklane*, 165 Or App at 22, the Court of Appeals said that under Goal 2, "the question is whether the land use action itself, *i.e.*, the determination of the amount of needed land, is consistent with and based upon the applicable plan and 'related implementation measures.'" In *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 214-16, 124 P3d 1249 (2005) (comprehensive plan amendments for Newberg-Dundee Bypass), the Court of Appeals quoted this language from *D.S. Parklane*, and concluded that a planning decision based on a study that was not incorporated into the comprehensive plan "is a planning decision that is not made on the basis of the comprehensive plan and acknowledged planning documents, as is required by Goal 2." However, in both of these cases, the documents the local governments sought to rely on were not consistent with, and produced results different from, what would have been produced if the comprehensive plan had been relied on. Here, Newberg has relied on the findings and conclusions in its comprehensive plan -- what the DLCD Remand Order says is lacking is more detail on how the conclusions were reached. Whether such additional detail is required is arguable, but to the extent it is needed, it can be found in the evidentiary record, as identified above.

In conclusion, the record includes the expert identification of targeted industrial types and their site requirement, applies these criteria to determine the adequacy of the City's industrial land supply. Without telling the City why the extensive discussion of these issues found in its Comprehensive Plan and the EOA adopted as part of the Plan is inadequate, the Department's decision concludes that Newberg hasn't provided sufficient justification for its specific industrial land need. Moreover, the DLCD Remand order apparently did not consider information in the record, cited by the City, that is referenced in the acknowledged Comprehensive Plan and EOA. For these reasons, the City of Newberg respectfully disagrees with the Director's decision.

Proposed resolution: Acknowledge that the City has:

1. Prepared a targeted industries analysis based;
2. Identified objective site requirements of the targeted industries; and
3. Evaluated alternative sites within the UGB; and
4. Adequately justified a need for 200 acres of industrial land on flat sites of 20 or more acres to be included in the urban reserves.

Basis for Appeal 2: The DLCD Remand Order did not adequately consider information in the record related to: targeted commercial employment opportunities, their suitability requirements, and the application of site suitability requirements to determine whether land should be designated as urban reserves to meet identified commercial site needs. This information is found in the City's acknowledged Comprehensive Plan, Economic Opportunities Analysis (EOA), Urban Reserve Area Justification Report, and supporting studies referenced in these adopted plans.

Discussion: The City determined it has a need for 15 acres of commercial urban reserve land in a large, flat sites. The DLCD Remand Order, at page 6, finds the City's justification to be inadequate:

“* * * While the Newberg Comprehensive Plan articulates a general preference for neighborhood (3-5 acre) and community (10-15 acre) shopping centers and against regional (20-30 acre) shopping centers, the plan lacks specific policies for retail development and the URA analysis makes no finding demonstrating why a 15-acre shopping center site potentially developed between year 2026 and 2040 can only be accommodated on a large, flat site in the proposed URA.” [Footnote omitted.]

In Newberg's case, the City's acknowledged EOA (Table 12-10) identifies a need for 109 acres of commercial land to meet commercial site suitability requirements through the Year 2040. Most of this need can be met within the existing UGB. The EOA cites Urban Land Institute studies to support the need for a site of 10-15 acres that meet identified site requirements. (Supplemental Record at p. 238) The EOA specifically references *The Report to the City Council: Recommendations for Newberg's Future* (the Ad Hoc Committee Report) as the source for this identified need. The commercial site

need table in the EOA is also set forth in the acknowledged Comprehensive Plan. (Record at p. 200) The Comprehensive Plan also references the Ad Hoc Committee Report.

The Ad Hoc Committee Report includes a detailed memorandum from Winterbrook Planning that describes the site characteristics required by targeted types of commercial development as required by OAR 660-009-0025 (2). This memo references research by the Urban Land Institute related to commercial shopping centers. The Winterbrook Memo identifies objective site size, topographical and proximity characteristics for small, medium and large shopping centers as required by Goal 9. (Supplemental Record at pp. 160-164) The URA Justification Report reaches the conclusion that most of Newberg's commercial shopping needs can be met within the existing UGB, but that one 15-acre community shopping center site that meets identified site requirements is needed outside the UGB to meet 2040 land needs. (Record at 3116)

The record includes the expert identification of targeted commercial development types and their site requirement, and applies these criteria to determine the adequacy of the City's commercial land supply. As explained in the preceding section, not every piece of evidence relied on by the City has to be incorporated into the City's comprehensive plan. The Director's decision concludes that Newberg's justification is inadequate, without considering information in the record that is referenced in the acknowledged Comprehensive Plan and EOA. For these reasons, the City of Newberg respectfully disagrees with the Director's decision.

Proposed resolution: Acknowledge that the City has:

1. Prepared a commercial site needs analysis;
2. Identified objective site requirements of small and medium sized shopping centers;
3. Evaluated alternative sites within the UGB; and
4. Properly justified its conclusion that an additional 15-acre site is required to meet 2040 commercial land needs outside the existing UGB.

Basis for Appeal 3: The Remand Order failed to acknowledge the institutional land needs as contained in the City's adopted and acknowledged comprehensive plan, and institutional site suitability criteria.

Discussion: Newberg's institutional land needs are contained within Newberg's adopted and acknowledged comprehensive plan. The plan shows a need for 597 acres of institutional land through 2040 (Record at 202). This was based on very detailed analysis of future institutional needs, contained in the *Ad Hoc Committee on Newberg's Future Report to City Council, July 2005* (Record at 117). This was developed in close coordination with the Chehalem Parks and Recreation District, the Newberg School District, and other institutions. That analysis details specifically needs for various sizes of schools, parks, and other institutional needs through 2040. Identified needs include:

3 elementary schools (10-12 acres)

- 1 middle school (16-20 acres)
- 2 high schools (30-50 acres)
- 1 alternative high school (3-5 acres)
- Private schools (20 acres total)
- 8-12 neighborhood parks (3-5 acres)
- 4-6 community parks (average 20 acres)
- 2 district/city parks (25 acres)

The ad hoc committee report contains specific site suitability criteria for each of these uses (Record 120-122), including specific requirements for these sizes and topography requirements. For example, for school sites, the criteria state, "School sites should be relatively flat, generally less than 5% slope, and not more than 10% slope. A portion of the site may exceed these slope criteria, so long as at least 90% of the site falls within the <10% slope category." (Record at 120) The ad hoc committee report also contains an assessment of potential locations that would have these characteristics (Record pp. 122-123).

The findings at Record 3131-3135 contain a detailed assessment of future institutional land needs, and which can be accommodated in the UGB. The findings show that 407 of those acres cannot be accommodated within the UGB. (Record at 3137) 327 of those acres are for large sites (Record at 3116).

The Remand Order on page 7 states, "The department finds that the city appropriately coordinated with park and school districts to identify future land needs. However, while the city's preference for large, flat sites may be understandable, the Findings Report does not justify why the future park and school needs can only be satisfied on large, flat sites in the proposed URA." Further on page 7, the Remand Order states, ". . . preference alone does not equate to 'need' . . ."

It is not clear from these statements exactly to what the Department is objecting. It appears it acknowledges the need for 407 acres of institutional land within the urban reserve. It appears to accept that the sizes and site characteristics for these land needs were appropriate and established on an adequate factual basis ("the city appropriately coordinated with the park and school districts to identify future land needs"). It then appears to reject that argument; describing those "appropriately coordinated" needs simply as "preferences" when it realizes those needs can't be met within rural exception areas. This is error. Either the site sizes and site characteristics are appropriate land needs based on substantial evidence, or they are not.

Proposed resolution: We ask that the Commission acknowledge Newberg's identified institutional land needs, including large site needs, as contained in the findings. We also ask that the Commission acknowledge use of the size and site characteristics used in the findings, and acknowledge they were based on an adequate factual basis and substantial evidence in the record.

Basis for Appeal 4: The Remand Order failed to acknowledge established and legitimate Goal 14 livability needs.

Discussion: Urban reserves are designated to be reserved for future inclusion in an urban growth boundary through the Goal 14 UGB amendment process. OAR 660-021-0000. One purpose of Goal 14 is “. . . to provide for livable communities.”¹ While there is no direct rule that states how local governments are supposed to create livable communities in the context of designating urban reserves, there are two related rules that do give guidance. The first is the Goal 14 land need factors, which state that UGB amendments are to be based on a “(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).” “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..”² [**bold added**]

While the needs for housing, employment, streets, roads, schools, and parks can be translated fairly objectively into acres of land with certain sizes, slopes, etc., “livability” cannot so clearly be translated. Using the analogy of a quilt, needs for housing, stores, parks, schools, and industry can be thought of as the patch squares that make up the quilt. “Livability” is not a separate patch, but the thread that weaves throughout the quilt to hold each patch in place, bind the patches together, and adorns the quilt.

A second place one can look for guidance on what would be appropriate livability characteristics is in the Metro urban reserve rule OAR 660-027-0050. While not directly applicable since Newberg is outside of Metro, that rule contains the following factors:

Factors for Designation of Lands as Urban Reserves

Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:

¹ The full goal text of Goal 14 is “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.”

² The full ext of the land need section states:

“**Land Need** Establishment and change of urban growth boundaries shall be based on the following:
(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and
(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).

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. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.”

(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;

*(2) Includes sufficient development capacity to **support a healthy economy**;*

*(3) Can be **efficiently and cost-effectively served with public schools and other urban-level public facilities and services** by appropriate and financially capable service providers;*

(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;

(5) Can be designed to preserve and enhance natural ecological systems;

*(6) Includes sufficient **land suitable for a range of needed housing types**;*

(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and

(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.” [bold added]

Newberg has adopted as part of its Comprehensive Plan livability criteria that are closely aligned with those in the Metro urban reserve rule. These include:

“GOAL: 2 To develop and maintain the physical context needed to support the livability and unique character of Newberg.

POLICIES:

- a. Maintain Newberg’s individuality as a community with a proud agricultural heritage.*
- b. Provide for a sense of small, local neighborhoods, while also providing for commerce and industry.*
- c. Neighborhoods should be designed to promote safety and interaction with neighbors, with items such as walking paths and neighborhood parks.*
- d. Community commercial centers are preferred to a large, regional shopping center.*
- e. Measures should be taken to prevent having areas east and southeast of the proposed bypass isolated from the rest of the City. Substantial development of complete neighborhoods should occur on both sides of the proposed bypass.”*

While LCDC’s own rules have codified a livability need, the Commission and LUBA have struggled with the appropriate application of that need. While consideration of livability needs to be an integral part of planning, the Commission has in the past decided, as referenced in Remand Order page 8, that it would look askance at an effort to include land **solely** to meet a livability need (i.e. just thread and no quilt).

As required by Goal 14, Newberg did evaluate and demonstrate its needs for housing, employment, public facilities, streets, roads, schools, parks, open space, and livability. However, as noted in the findings:

- (1) Newberg added **0** acres to the urban reserve solely to meet livability needs. That is, all land was included in order to meet a specific acreage need for housing, employment, or other facilities. (Record pp. 3114-3115)
- (2) Newberg **did not** attempt to justify an exception from for the land priorities of OAR 660-021-0030(3) based solely on a livability need. (Record p. 3123, 3149)

What Newberg did do is carefully consider its future, and how it could create a livable community. That is why it made sure that areas added to the urban reserve could have parks, schools, and residential areas in close proximity, could be walkable, and that it did not designate isolated pockets of urban reserve that would not be part of any complete community.

The Department's remand effectively rejects the ability to create livable communities. The Department's remand seems to direct creation of a community where schools and parks are placed on one end of the city where large lots exist, and all future housing is placed on the other side of the city as infilling front, side and rear yards of existing established rural residential neighborhoods. The Department accepts that Newberg may create a 1665 acre urban reserve to accommodate thousands of new residents, but rejects the notion that anywhere in those 1665 acres there should be a community shopping center for those people to walk to and buy bread and groceries. The remand seems to direct that instead of creating a suitable, cohesive industrial district on land well suited to that purpose, that Newberg should encourage industrial uses to be inserted into rural residential areas where space exists.

A good illustration of how Newberg applied this livability need is shown in the Corral Creek Road North area (See attached illustration). The Corral Creek Road North area contains 45 acres of exception land on lots of about 10 acres each. The area is within 350 feet of the current UGB. The land is fairly level. In short, the area appears to meet all the objective criteria to be included in the urban reserve.

Looking further at the area with "livability" in mind reveals other issues. The area is essentially isolated from the rest of Newberg. It is bounded on the north by Highway 99W, with only minimal, dangerous access (Record at 159, 552). It is bounded on the west and south by EFU lands, and on the east by vineyards. The planned Newberg-Dundee bypass³ corridor separates the area from the bulk of Newberg. The area would have no access to parks, schools, trails, shopping areas, or the other elements that create a livable community. Including just this chunk of exception land and no other land would be the antithesis creating livable communities. It would be in direct violation of

³ The Newberg-Dundee bypass is contained in the adopted and acknowledged Newberg Transportation System Plan, in the adopted and acknowledged Yamhill County Transportation System Plan, and in the adopted Oregon Highway Plan.

Newberg's adopted and acknowledged livability policy that, "Measures should be taken to prevent having areas east and southeast of the proposed bypass isolated from the rest of the City. Substantial development of complete neighborhoods should occur on both sides of the proposed bypass."

Instead, the community looked toward ways of creating a complete community and meeting the community's livability needs. As described in Record p. 3201, the City has held extensive meetings with the area residents and property owners to plan for an area that includes not just the exception land found in the Corral Creek Road North area, but additional land in the Corral Creek Road South and Wilsonville Road areas. The area provides opportunities for walking trails, a connected street system, parks, school, shopping areas, all within close distance of future residences. (Record at 158)

The City found:

"As a result of these public outreach efforts, it has been agreed that this area should provide for a mix of commercial, institutional and residential land uses, connected by a master street plan. Located in the western portion of the East and Southeast Study Areas, the planning area includes a combination of farmland and rural exception areas. The master plan for this area will provide for livability needs identified in the Urban Design Goals and Policies of the Newberg Comprehensive Plan." (Record at 3117)

Fortunately, including the entire area fit in line very nicely with the OAR 660-021-0030 priorities and the Goal 14 locational factors. Remaining EFU land within the Corral Creek Road North area logically can be included under as an intervening exception under OAR 660-021-0030 (4)(b). Land within the Corral Creek Road South area is some of the least productive farm land surrounding the UGB, thus rises to the top of in the priority scheme after reasonably serviceable exception areas. (Record at 3157) By including the entire area, land could be used efficiently (Locational Factor 1), public facilities and services could be provided in an orderly and economical manner (Location Factor 2), travel times and distances could be minimized (Location Factor 3: Environmental and Energy consequences), infrastructure costs could be distributed equally, parks schools, and commercial areas could find appropriate locations (Location Factor 3: economic and social consequences), and streets could be designed that divert urban traffic away from existing agricultural uses (Location Factor 4: compatibility with nearby farm use). Thus, including the plan area met the OAR 660-021-0030 priorities **AND** the Goal 14 location factors **AND** the City's identified livability needs.

The Department's remand states, "Lacking a compelling and definitive justification of a specific land need of livability based on developing large tracts the department finds that the Findings Report has not established a livability need that is sufficient under Goal 14 used to justify a UGB amendment or a URA." (Remand Order, page 9). We obviously disagree: the findings are compelling, definitive, specific, and sufficient under Goal 14. Newberg did not attempt to get approved the "thread without the quilt" as the Department has been concerned with in other locations.

We can see how the findings may have been misconstrued as forwarding that argument. If the Commission would feel more comfortable if Newberg revises its findings so they aren't misconstrued as solely a livability need, we would be willing to do that.

Proposed resolution: Newberg's designation of the Southeast Transportation Plan area as an urban reserve is justified based on the Goal 14 locational factors and the OAR 660-021-0030(3) land priority factors. We would agree to revise the findings to restate the livability needs so that it does not appear as an additional acreage need or an inclusion solely on livability needs. However, we don't anticipate this changing which land is included or not included in the URA.

Basis for Appeal 5: The Remand Order failed to recognize that there is substantial evidence in the record that the Goal 14 locational factors show that the Southwest area is not suitable for inclusion in the urban reserve, and that the area cannot reasonably be served with public facilities and services.

Discussion: In order to include an area into the Urban Reserve, there are a number of criteria that must be met. These include:

- (1) The land must be *suitable* for an urban reserve area, based on the *locational* factors of Goal 14 (OAR 660-021-0030(2));
- (2) The suitable land must meet the *priority* for inclusion of land in an urban reserve (OAR 660-021-0030 (3); and (4)); and the local government must show there are *no reasonable alternatives* that would require less, or have less effect upon, resource land (OAR 660-021-0030 (2)).

There has been only one appellate Court decision on the designation of urban reserves under OAR Chapter 660, Division 021. In *D.S. Parklane*, 165 Or App at 25, the Court of Appeals held that the suitability for urban reserve determination required by OAR 660-021-0030(2) requires a balancing of all Goal 14 locational factors, rather than reliance on any one isolated factor. In short, if consideration of the Goal 14 locational factors results in a determination that an area is not "suitable" as an urban reserve, that area need not be considered in the priority assessment under OAR 660-021-0030 (3) and (4).

The DLCD Remand Order rejects all of Newberg's suitability characteristics, completely ignores the locational factors of Goal 14, and then misapplies the priority factors. Thus, we must appeal on this basis.

Goal 14 Locational factors: OAR 660-021-0030(2), states: "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." [bold added] There are findings and substantial evidence in the record that show the Southwest area was properly determined to be unsuitable as an urban reserve based on the Goal 14 locational factors, and therefore was appropriately excluded.

Surprisingly, the Remand Order makes virtually no mention of the Goal 14 locational factors. On page 2 of the remand, the Department lists Goal 14 under “substantive review criteria.” It poses the question, “In designating urban reserves land, did the city properly apply the locational factors of Goal 14 to demonstrate that there are no reasonable alternatives that will require less, or have less effect upon, resource land, and designate urban reserves consistent with priority for including land in the urban reserve?” We disagree with the apparent assertion that the Goal 14 factors are solely intended to demonstrate that there are no reasonable alternatives that would affect less resource land. They are, as stated above, intended to determine which lands are suitable as urban reserves, which then are reviewed under the priorities.

More disconcerting is that this is the last mention made in the remand of the Goal 14 locational factors. The Department made no attempt to respond to whether the City properly applied the Goal 14 locational factors, and in fact suggests a remand to consider possible urban reserve designations that clearly don’t meet the factors.

Goal 14 states that the following location factors must be considered:

- (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.*

Said differently, in determining which areas to include in an urban reserve, a local government must:

- (1) Choose to include land where needs can be accommodated efficiently over lands where needs could be accommodated in an inefficient manner. For example, a local government is directed to look away from parcelized and developed areas with little infill and redevelopment potential, and look toward land with greater amounts of buildable land where compact urban development can be created.
- (2) Choose to include land where public facilities and services can be provided in an orderly and economic manner over lands where they cannot. For example, a local government would look toward land that could be served by an existing sewer system and away from land that would require creation of an expensive new system that would serve few properties.
- (3) Choose to include land where there are more positive and fewer negative environmental, energy, economic, and social consequences over land with more detrimental consequences. For example, if expanding the urban reserve into one area would have really bad economic or social consequences, such as costing millions to develop a new sewer treatment plant and disrupting a fully developed rural residential subdivision, and expanding into another area would have really good economic and social consequences, such as providing opportunities for needed housing, parks, schools, walkable neighborhoods, and local commercial services in close proximity, the local government is directed toward the latter.

(4) Choose to include land where urban uses would be or could be made compatible with nearby farm and forest uses on EFU or Forest land. For example, a local government might choose to include land where roads could be built to direct traffic away from farm lands over land where traffic would be directed through farm lands.

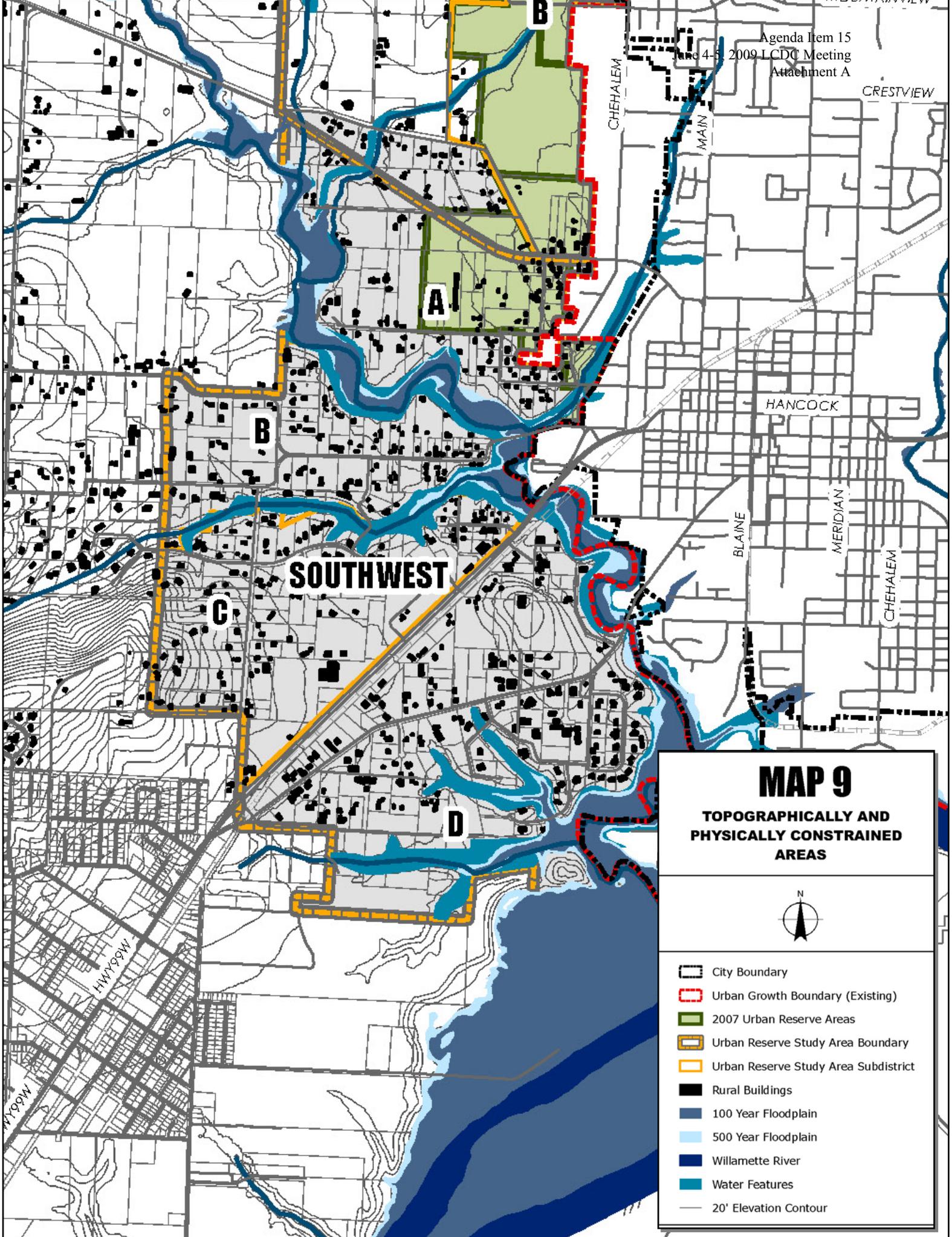
Clearly, there is never one proposal that will be the best in every category. Thus, a local government must consider all of the above factors, and choose the locations that best meet all the factors. In *D.S. Parklane*, 165 Or App at 25, the Court of Appeals states, “LUBA also held – correctly – that local governments ‘must apply each Goal 14 [locational] factor equally and include land in urban reserves only where all of the factors justify that inclusion.’”[brackets in original]. Conversely, a local government is prohibited from including land in an urban reserve where the Goal 14 factors do not justify that inclusion.

The Southwest area is separated from the Newberg UGB by the Chehalem Creek canyon. The area contains several rural residential subdivisions with lots of 1-2 acres and developed rural home sites. Highway 99W and a rail line also cross and further divide the area. It is crossed in several places by large forks of this canyon, leaving a large amount of the land within floodplains and stream corridors, and slicing the area into smaller, distinctive pods. We have attached a copy of a map of this area from the record for ease of use. Because of this, several sanitary sewer pump stations also would be required to serve the area. In addition, preliminary service analysis reveals that either a new sewer treatment plant would need to be built to serve this area or two miles of sewer gravity and force main plus an additional pump station would be needed. (Record pp. 3148)

There is substantial evidence in the record to show that the Goal 14 locational factors do not justify inclusion of the Southwest area. This evidence includes:

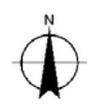
(1) Land needs in the area could not be accommodated efficiently. The findings and record indicate:

- *“Southwest Study Areas A, B, C and D are highly parcelized. The median lot size is about two acres, and two-thirds of the properties in the area have less than two buildable acres.*
- *Most parcels have existing structures. As shown on Map 9, in most case the location of structures on existing parcels is not conducive the efficient redevelopment. Homes typically are located so as to discourage connecting streets; flag lot development often is limited to one additional home per lot.*
- *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 future urbanization of outlying areas. Since these homes do not have an incentive to participate in the costs of extending urban services, in most cases urban services would*



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
- Rural Buildings
- 100 Year Floodplain
- 500 Year Floodplain
- Willamette River
- Water Features
- 20' Elevation Contour

have to “leap frog” past existing developed areas to reach outlying properties.

- *Annexation is required in order to extend sanitary sewer and water services that facilitate urban development. The presence of densely developed rural lots between the UGB and outlying, marginally larger lots makes it highly unlikely that annexation would be supported by the majority of land owners or property owners, as required by state law.*
- *In the Southwest Study Area, from a practical standpoint, Newberg would need to “leapfrog” over intervening small, developed parcels to reach the relatively few larger exception parcels between Newberg and Dundee. Cherry stem annexations, which are generally unaccepted by case law, would be required to achieve this dubious objective. These factors contribute to the City’s overall conclusion that topographic and land development patterns in the Southwest Study Area, taken together, generally make it infeasible to provide urban services.” (Record at 3151).*

(2) The Southwest Area could not be provided with public facilities and services in an orderly and economic manner. ORS 195.137 and OAR 660-021-0010 (1) define an urban reserve as land outside a UGB that will provide for **cost-effective public facilities and services** when urbanized.⁴ Thus this locational factor effectively becomes a mandatory suitability criterion. The findings state:

“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. Chehalem Creek and several branches cross the areas south and west of Newberg. A considerable amount of the area is within the floodplain and stream corridors, making a large amount of this area unbuildable.

The City’s recently adopted 2007 Sewerage Master Plan Update does not include facilities to serve the remaining upland areas. The upland areas are near the same elevation as the City’s sewage treatment plant and around two miles away. There are existing sewage facilities to the east of this area, such as the Dayton Avenue pump station, but the City’s recently adopted Sewerage Master Plan identified that these facilities are near, at, or beyond capacity already. Thus, they cannot be used to sewer the south and west areas. So a series of new sewer pump stations would need to be installed plus two miles of force main and gravity mains to get to the plant. An alternative that would need to be seriously considered to provide sewer service would be to construct a new sewage treatment plant on the

⁴OAR 660-021-0010 (1) defines an “Urban Reserve” as follows:

(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.

west side to serve the area. In either case, it would be unreasonable to require such a significant effort to overcome the physical and topographic constraints to serve the area.” (Record at 3120) Additional information in at Record 1656.

- (3) Including the area would have severe negative economic consequences. According to the findings:

“Extensive development in many areas is also a physical constraint to providing future urban services. If an area already mostly subdivided and developed without services, then owners have little incentive to pay the high costs of extending services to their neighborhoods to reap marginal benefits of further development. Coordinating service provision in an area is also very problematic. If one property owner wants to develop, then that one owner would need to extend full urban services long distances past other properties, which would be financially prohibitive. Local improvement districts can be formed, but if there are a large number of property owners, achieving sufficient support for a district is very problematic.

The cost of providing urban services to exception areas that require multiple sewage pump stations (i.e., lower elevation areas that cannot be served by gravity flow sewer), new sewage treatment plants, or water pump stations plus a new reservoir (i.e., higher elevation areas) typically two to three times the cost of providing urban services to land that does not require such facilities. In addition to initial construction cost, pump stations have much higher maintenance costs and consume much more energy than facilities that rely on gravity.” (Record at 3120)

- (4) Including the area would have negative energy consequences. According to the findings:

“As noted in the Newberg Urban Reserve Area Public Facilities Cost Analysis, the Southwest Study Area would require multiple sanitary sewer pump stations, which consume more energy than gravity flow sewer.” (Record at 3162)

“In addition to initial construction cost, pump stations have much higher maintenance costs and consume much more energy than facilities that rely on gravity.” (Record at 3120)

- (5) Including the area would have severe negative social consequences. According to the findings:

“In addition, there would be severe negative social consequences of extending urban development into areas of already subdivided and built rural residential housing in the Northeast, Southeast, and Southwest areas. These areas provide needed housing for those desiring acreage homesites, and have been developed with the expectations that these neighborhoods would continue near current

densities. Imposing urban densities in what would be a piecemeal fashion in these neighborhoods would disrupt established communities.” (Record at 3161)

In addition, there are also numerous pieces of testimony in the record about negative social consequences of including this area. (See Record starting at 1695).

Additional findings in the record address the environmental consequences, and compatibility with farm and forest uses. (See Record starting at 3159).

The inescapable conclusion is that the Southwest area fails to meet the Goal 14 locational factors, and that the Southwest area therefore is unsuitable for inclusion in the urban reserve.

The Department’s silence on these factors leaves us puzzled. It appears the Department entirely overlooked the Goal 14 locational factors, and the findings and evidence in the record that were cited by the City. Newberg cannot, on remand, similarly overlook these factors. Although we could add more evidence and study, we can’t see how we could arrive at a different conclusion.

Priority:

OAR 660-021-0030 (3) and (4) lists the following priorities for including land in urban reserves:

*(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.
[bold added]

As noted above, the Southwest area simply is not suitable for designation as an urban reserve. Therefore, the City is not obliged at all to consider it any further. Nevertheless, under a “belt and suspenders” approach, Newberg did consider whether the Southwest Area would meet the OAR 660-021-0030 priorities. The Southwest area is a picture perfect example of lands that should be excluded from an urban reserve under an OAR 660-021-0030 (4)(a) reasonable service exception.

The findings state:

“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. Chehalem Creek and several branches cross the areas south and west of Newberg. A considerable amount of the area is within the floodplain and stream corridors, making a large amount of this area unbuildable.

The City’s recently adopted 2007 Sewerage Master Plan Update does not include facilities to serve the remaining upland areas. The upland areas are near the same elevation as the City’s sewage treatment plant and around two miles away. There are existing sewage facilities to the east of this area, such as the Dayton Avenue pump station, but the City’s recently adopted Sewerage Master Plan identified that these facilities are near, at, or beyond capacity already. Thus, they cannot be used to sewer the south and west areas. So a series of new sewer pump stations would need to be installed plus two miles of force main and gravity mains to get to the plant. An alternative that would need to be seriously considered to provide sewer service would be to construct a new sewage treatment plant on the west side to serve the area. In either case, it would be unreasonable to require such a significant effort to overcome the physical and topographic constraints to serve the area.

The cost of providing urban services to exception areas that require multiple sewage pump stations (i.e., lower elevation areas that cannot be served by gravity flow sewer), new sewage treatment plants, or water pump stations plus a new reservoir (i.e., higher elevation areas) typically two to three times the cost of providing urban services to land that does not require such facilities. In addition to initial construction cost, pump stations have much higher maintenance costs and consume much more energy than facilities that rely on gravity.

Extensive development in many areas is also a physical constraint to providing future urban services. If an area already mostly subdivided and developed without services, then owners have little incentive to pay the high costs of extending services to their

neighborhoods to reap marginal benefits of further development. Coordinating service provision in an area is also very problematic. If one property owner wants to develop, then that one owner would need to extend full urban services long distances past other properties, which would be financially prohibitive. Local improvement districts can be formed, but if there are a large number of property owners, achieving sufficient support for a district is very problematic.

This report finds that future urban services could not reasonably be provided to the Southwest Area due to topographic and physical constraints. (Record at 3121)

Additional evidence of this can be found at (Record pp. 1758-1766 and 1803-1812), including attached maps and tables.

The Remand Order, at page 14, states, “The department finds that the city’s conclusion is inconsistent with the urban reserve rule and does not appropriately evaluate the reasonableness of providing urban services over the next 30-years and is not supported by the record.” The Remand Order, at page 12, also sets out a new test for determining whether “future urban services could not reasonably be provided”-- one requiring local governments to show that it is not reasonable to provide urban services, after analyzing topographical and physical constraints, “in the context of:”

- the relative cost of providing urban services to constrained land and to alternatives;
- the amount of land constrained (i.e., a high cost may be reasonable for a [sic] serving a large area but not a small one); and
- the planning horizon (i.e., what is not unreasonable [sic] for a 25-year plan may be reasonable for a 45-year plan).

This new test will be exceedingly difficult to satisfy and is strikingly at odds with how the Court of Appeals has interpreted the virtually identical language in ORS 197.298(3)(b) for including lower priority land within a UGB where “future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints.” In *Hildenbrand v. City of Adair Village*, 217 Or App 623, 635-36, 177 P3d 40 (2008), the Court of Appeals gave considerable deference to the city/county findings regarding the reasons why it was unreasonable to provide urban services to a particular higher priority area, and upheld LUBA’s conclusion that the local governments’ conclusion regarding the unreasonableness of providing urban services to the higher priority land was supported by substantial evidence in the whole record.

Here, by its very nature, urban reserve planning requires a longer-term view than the amendment of a UGB. A local government is obligated to at least consider in a broad way the future ability to provide urban services to an area. Newberg has done this. The City’s decision is supported by substantial evidence in the record. The evidence in the record includes maps of potential sewer services, assessment of the amount of land that could be served, estimates of the relative cost of providing that service, and even

evidence that Newberg considered a number of options. See Record pp. 1758-1766, 1803-1812, 3151-3152.

Proposed resolution: We ask that LCDC acknowledge that Newberg legitimately excluded the Southwest area, and accept the adopted findings that the area is not suitable for inclusion based on the Goal 14 locational factors under OAR 660-021-0030(2), or legitimately should be excluded based on the exception allowed under OAR 660-021-0030(4)(a). As an alternative, we would accept a remand that directs Newberg to revise its findings to apply the priorities and exceptions only to land that is suitable for inclusion in an urban reserve based on its Goal 14 locational factor assessment. However, we feel this would not alter the ultimate outcome.

Basis for Appeal 6: The Remand Order failed to recognize that there is substantial evidence in the record that the Goal 14 locational factors show that the Northeast area is not suitable for inclusion in the urban reserve, and that the area cannot reasonably be served with urban public facilities and services.

Discussion: Similar to the Southwest Area, the findings show that the Northeast area is not suitable for inclusion in the Urban Reserve based on the Goal 14 locational factors. In addition, the findings show that future urban services could not reasonably be provided to this area due topographic and physical constraints.

Findings show that the Northeast area is not suitable for inclusion in the urban reserve under the Goal 14 locational factors. Those findings include:

- The land is not suitable for urban development. The area already is mostly subdivided and developed into rural residential subdivisions with 1 and 2 acre lots that are developed with homes. There is little if any infill and redevelopment potential: residents view their home sites as fully developed (Record at 3152). There is no land that would meet large site needs for schools, institutions, shopping centers, or industry (Record at 112)
- Public facilities and services cannot be provided to the area in an orderly and economic manner. Because the area is already subdivided and developed, services cannot be extended to serve any of the area in anything but an expensive and piecemeal fashion. Without such coordinated extension of services, no single infill development could bear the cost of extension. (Record at 3152) The area is split by several water service levels, which would require construction of new reservoirs and water systems at several levels to serve the area. There is inadequate development potential to make the expense cost effective (Record at 3152).
- There would be severe negative social consequences to including the area because it would disrupt established communities. The area contains a number of rural residential subdivisions. These areas provide needed housing for those desiring acreage home sites, and have been developed with the expectations that these neighborhoods would continue near current densities. Imposing urban densities in what would be a piecemeal fashion in these neighborhoods would disrupt established communities. Residents of the area have

stated that they view their properties as fully developed, and not as lots with infill potential. Residents in the area have expressed adamant opposition to urban development. Clear evidence of this is found many places in the record (Record at 539 564, 564, 571, 1035 – 1037, 1659, and others)

Thus, the findings and substantial evidence in the record support the conclusion that the Northeast Area is not suitable for inclusion in the urban reserve according to the Goal 14 locational factors. The analysis could have stopped there and not considered the OAR 660-021-0030(3) and (4) priorities. However, Newberg did continue and apply those priorities in the findings. Newberg found that the area qualified for an OAR 660-021-0030(4)(a) reasonable service exception. Findings are as follows:

- *Northeast Area. A large portion of the Northeast Area is exception land. This area is hampered by a number of topographical and physical constraints that make providing future urban services unreasonable. These include:*
 - *The area is already mostly subdivided and developed. The area consists of several rural residential subdivisions that are developed with homes. The average lot size is approximately 2 acres. Residents of the area have stated that they view their properties as fully developed, and not as lots with infill potential.*
 - *On the off chance that one property owner would decide to partition, that one owner would need to extend full urban services (sewer, water, and drainage) past other properties that are not and likely will not develop. It would be unreasonable to expect that a property owner would be able to bear the financial burden of installing such facilities.*
 - *The road system in the area is rural. In order to further divide, an urban street system would need to be developed. 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. The few individual property owners choosing to develop could not reasonably upgrade the road system for the entire area.*
 - *Annexation is required in order to extend sanitary sewer and water services that facilitate urban development. The presence of densely developed rural lots between the UGB and outlying, marginally larger lots makes it highly unlikely that annexation would be supported by the majority of land owners or property owners, as required by state law.*
 - *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 northeast area is even higher than the highest level planned to serve the adjacent North Hills URA, making it unreasonable to serve.*

- *The area east of the Benjamin Road subarea is also above the 300' contour. Due to its separation from the North Hills URA, it likely could not be served without creating a separate reservoir. This would be a significant and unreasonable expense.*
- *The total cost of service in the area is unreasonably high: one of the highest of any subarea. This is due to the topographic and physical constraints noted above.*

Thus, future urban services could not reasonably be provided to the Northeast Area due to topographical and physical constraints. [bold added] (Record 3152-3153)

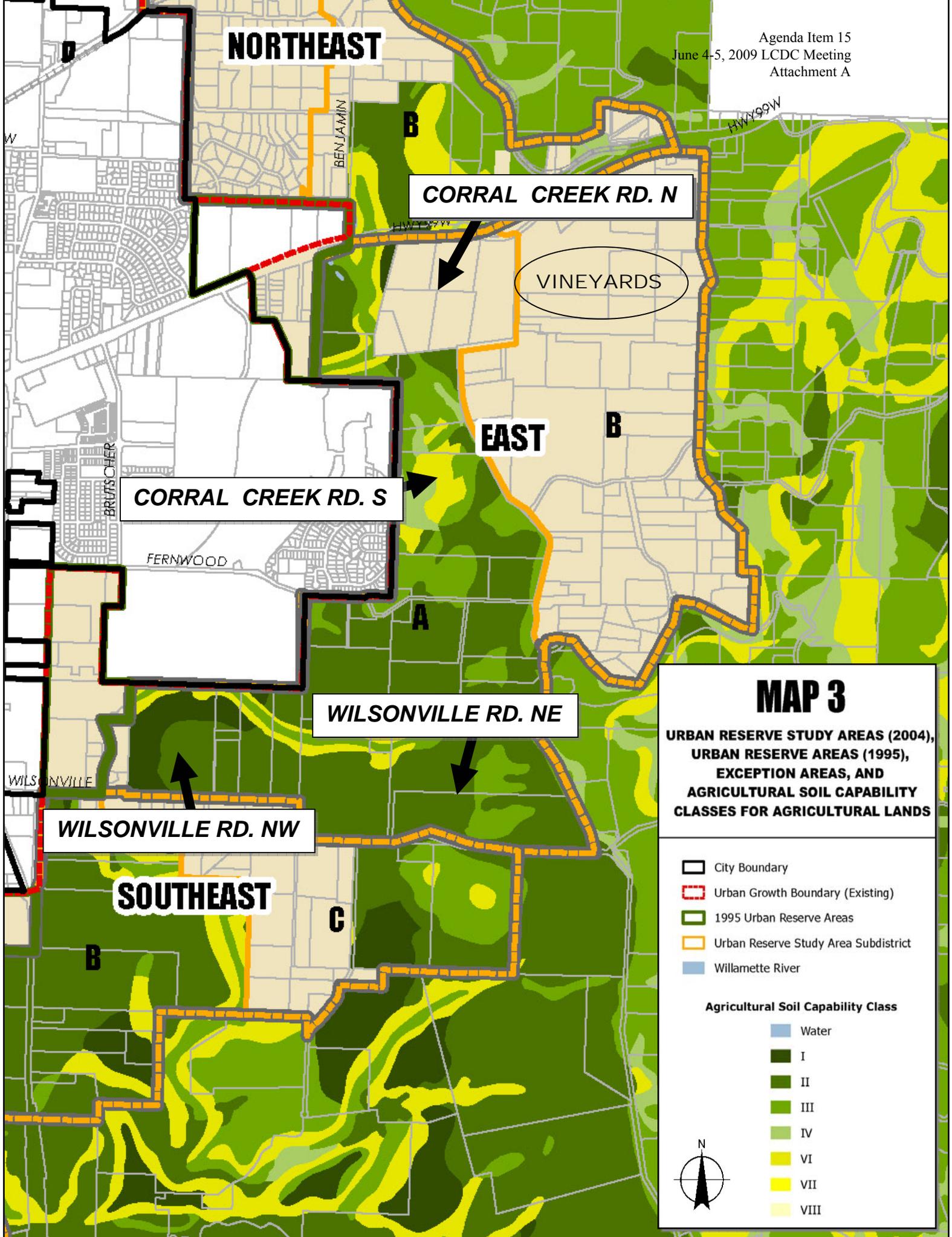
Substantial evidence in the record includes maps of the service levels and topography, lot layouts, home sites, and general serviceability analysis (see Record p. 3204 and 3221).

Proposed resolution: We ask that LCDC acknowledge that Newberg legitimately excluded the Northeast area, accept the adopted findings that the area is not suitable for inclusion in an urban reserve based on the Goal 14 locational factors, or legitimately should be excluded based on the exception allowed under OAR 660-021-0030(4)(a). As an alternative, we would accept a remand that directs Newberg to revise its findings to apply the priorities and exceptions only to land that is suitable for inclusion in an urban reserve based on its Goal 14 locational factor assessment. We do not, however, anticipate that this would change which lands are included in the urban reserve.

Basis for Appeal 7: The Remand Order failed to acknowledge that the resource land in the Corral Creek Road North area was properly included in the urban reserve as "intervening resource land" under OAR 660-021-0030(4)(b).

Discussion: The attached map shows the location of the Corral Creek Road North Area. This area includes approximately 45 buildable acres of exception land and 24 buildable acres of resource land. The resource land lies between the current Newberg UGB/URA and the exception land. The resource land in the Corral Creek Road North Area is 90 percent surrounded by exception land, the UGB, exception land in the 1995 URA, and Highway 99W. A map showing this area from the record is attached for convenience.

OAR 660-021-0030(4)(b) allows inclusion of resource land in an urban reserve if "Maximum efficiency of land uses within a proposed urban reserve area requires inclusion of lower priority lands in order to include or to provide services to higher priority lands." We have termed this as "intervening resource land." The record shows that sewer, water and street service would need to be extended through the Corral Creek Road North resource lands in order to serve the Corral Creek Road North exception lands (Record at 3220). Evidence in the record includes: Maps of potential future sewer lines (Record at 3220) traversing the agricultural land to serve the exception area, maps showing transportation plans with roads extending from the UGB to serve the exception



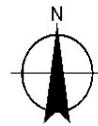
MAP 3

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



land area. (Record at 3219), and volumes of testimony on the importance of including this area as whole (Record at 158, 552, and many more places).

The Department rejected this evidence and states, “The department finds that the city has not shown why maximum efficiency of land use *requires* lower priority resource land to be included to provide services to higher priority exception lands.” (Emphasis in original.) Remand Order, p. 16.

It is puzzling why the Department remanded inclusion of the Corral Creek Road North urban reserve on this basis, and what the Department expects the City to do upon remand. Does the Department expect Newberg to create an “island” urban reserve including just the non-contiguous exception land (to achieve “maximum” efficiency)? Does the Department expect Newberg to exclude this exception land from the URA because is it 350 feet away from the UGB? Or is the Department expecting Newberg to return with more text to further describe what is obvious: that this resource land must be included in the urban reserve to allow inclusion of the exception land.

Proposed resolution: Acknowledge that the resource land portion of Corral Creek Road North was correctly included in the Urban Reserve as intervening resource land under OAR 660-021-0030(4)(b).

Basis for Appeal 8: The Remand Order failed to acknowledge that resource land in the Wilsonville Road Northwest area was properly included in the urban reserve as "intervening resource land" under OAR 660-021-0030(4)(b).

Discussion: The Wilsonville Road Northwest area is bounded on the north by land in the UGB, on the west by exception land within the 1995 URA, on the south by rural exception land, and on the east by resource land. 80 percent of the boundary of this area adjoins exception or urban land. The findings included this area in the urban reserve under OAR 660-0210030(4)(b), which states, “Maximum efficiency of land uses within a proposed urban reserve area requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.”

The findings state, “Similarly, in order to develop the Wilsonville Road Exception Area, utilities, streets, and pathways must be extended along and in some cases through the Wilsonville Road NW resource area.” (Record at 3149). Evidence in support of this includes maps utilities, streets extended along and in some cases through the area (Record at 3219, 3220). The maps and records show that street and utility improvements that would serve the exception area on the south side of Wilsonville Road would also serve the resource land on the north side of the road, clearly achieving “maximum efficiency of land use.” The cost analysis also is predicated on both area being included. (Record p. 3209-3210) Findings and evidence also clearly show the area meets the Goal 14 locational factors.

OAR 660-021-0030(3)(c) establishes priorities for including suitable land in the urban reserve. Third priority resource lands are to be sub-prioritized according to soil

capability class. The sub section (4)(b) “intervening resource land” exception is designed to include land that otherwise would be excluded if maximum efficiency of land use requires it to be included to provide services to other higher priority land.

Under the findings, the Wilsonville Road subarea is lower quality soil and thus higher priority for inclusion than other resource lands that were included (Record at 3157). Newberg also applied the 4(b) intervening exception to the Wilsonville Road NW subarea, stating that maximum efficiency of land use required the inclusion of that area to include Wilsonville Road SW first priority exception area in the urban reserve.

While we hold to this conclusion, in fact reaching this conclusion may not be necessary. If Newberg were not to apply the 4 (b) intervening exception, the Wilsonville Road NW subarea would still be included in the urban reserve according to the priorities due to its relative soil quality.

The Remand Order states, “The lower priority resource land is among the best farm land evaluated by the city for potential inclusion in the URA; much of the intervening land is composed of capability class I, II, and III soils.” Remand Order, p. 16. The Remand Order also states, “In this case, the department maintains that because of the very high quality of the resource land in question the city has an equally high burden to demonstrate why such lands must be considered for the URA.” *Id.* Nothing in the OAR 660-021-0030(4)(b) exceptions language directs that any consideration be given to the class of intervening land, therefore the department’s argument is legally incorrect.

However, we are not unsympathetic to the department’s argument, and agree that including class I, II, and III soils should not be taken lightly. In Newberg’s case, there are several factors that need to be considered:

- (1) Newberg’s physical context is that it is surrounded by Parrett Mountain, Chehalem Mountain, and Class I, II, and III soils. There are very few Class IV, V, and VI soils outside that are not on the mountainsides.
- (2) Newberg is relatively small compared to other urban areas, such as Metro. You can circumnavigate the entire urban area comparatively quickly and exhaust all possible expansion possibilities.
- (3) This is Newberg’s second urban reserve designation. The first designation in 1995 contained entirely rural exception and some intervening land. In short – all the low hanging fruit was picked. It is not unreasonable, therefore, that this second time around, middle and higher hanging fruit will need to be picked.
- (4) The 2007 URA designated sufficient land to accommodate estimated needs through about 2040. OAR-660-021-0030(1) states, “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.” Therefore Newberg has designated nearly the least amount of land it could

under rule for the urban reserve. Newberg could have chosen to pursue a much more extensive urban reserve. Delay in acknowledging the URA also could result in Newberg having to add even more agricultural land into the urban reserve to insure it has the minimum 10-year supply required.

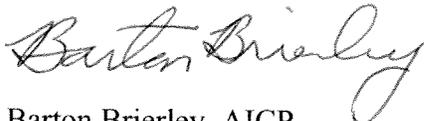
Proposed resolution: Either acknowledge inclusion of the Wilsonville Road NW area in the urban reserve, or remand with directions to reassess the area and not apply the subsection (4)(b) intervening exception unless this area would otherwise need to be excluded due to the subsection (3) priorities.

Overall Proposed Resolution: As stated above, there is substantial evidence in the record that Newberg's urban reserve designations comply with applicable requirements of the Urban Reserve Rule. We ask that the Commission reject the Department's Remand Order, and acknowledge the Urban Reserve as adopted by the City and County, finding that it is based compliance with the urban reserve rule and upon substantial evidence in the record.

As we have noted above, in several cases Newberg applied a "belt and suspenders" approach to findings. That is, it found that a particular decision was justified on two bases when only one was required. This may have caused some confusion on the Department's part. Thus, we would be willing to accept a limited remand directing Newberg to apply only those criteria essential to justifying the urban reserve.

If you have any questions on this, please contact me at 503-537-1212.

Sincerely,



Barton Brierley, AICP
Planning and Building Director

cc: Steve Oulman, Corinne Sherton, Greg Winterowd, Lee and Amy Does, Sid Friedman, Grace Schaad, Lane Shetterly, Cathy Stuhr, Yamhill County Staff – Ken Friday

**SHETTERLY
IRICK
OZIAS**



LANE P. SHETTERLY
MARK IRICK (1952-2007)
TERESA OZIAS
ANTHONY B. JAMES

Agenda Item 15
June 4-5, 2009 LCDC Meeting
Attachment B

ATTORNEYS AT LAW

189 SW ACADEMY STREET • PO BOX 105 • DALLAS, OREGON 97338
TELEPHONE 503-623-6695 • FAX: 503-623-6698

April 30, 2009

*Via Fax - (503) 378-5518
and First Class Mail*

Mr. Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

DEPT OF
MAY 01 2009
**LAND CONSERVATION
AND DEVELOPMENT**

Re: Appeal by Mike and Cathy Stuhr of DLCD Remand Order of Urban Reserve File No. 2008-005 (Order 001767) - City of Newberg

Dear Mr. Whitman:

I am writing on behalf of the above-named Mike and Cathy Stuhr, to appeal DLCD Remand Order of Urban Reserve File No. 2008-005 (Order 001767), dated April 10, 2009, to the Land Conservation and Development Commission. This appeal is made pursuant to OAR 660-025-0150.

My clients filed a valid objection to the City of Newberg Urban Reserve Area (URA) Amendment Adoption, and have standing to appeal pursuant to OAR 660-025-0150 4). *See* letter of objection dated September 17, 2008. They further participated at the local level during the local process leading to the adoption of the URA Amendment by providing written and oral testimony. *See* Record, pp. 543, 561, 749, 1494, 2785-88, 2791-93 and 3056.

My clients appeal the Director's Decision and Order (Director's Decision) rejecting their objection that the city failed to include sufficient land to meet the stated 2040 land needs.

In other respects, my clients applaud and support the city's URA Amendment, and appeal other critical elements of the Director's Decision remanding the city's decision designating URAs, as set forth below.

First Ground for Appeal - Insufficient Land Supply

The city's acknowledged comprehensive plan identifies a need for 1665 acres of buildable land beyond that already in the Urban Growth Boundary (UGB) to meet land needs through 2040. (URA Justification Report, p. 6.)



Mr. Richard Whitman

April 30, 2009

Page 2

The justification for the URA Amendment, as stated in the Justification Report, is "to provide sufficient buildable and suitable land to meet 2040 growth needs, consistent with the requirements of the Urban Reserve Rule." (URA Justification Report, p. 19.) In fact, however, the URA actually provides only 1645 acres (Justification Report, p. 20), or 1627 acres (Justification Report, p. 44), or 1619 acres (Notice of Urban Reserve Area Amendment Adoption, August 28, 2008) of buildable land. Either way, the acreage identified in the adopted URA is insufficient to meet the city's land supply needs through 2040, as identified in the comprehensive plan, and according to the stated purpose of the URA.

OAR 660-021-0030(1) states:

"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."

In this case, the city has specified the "particular number of years" over which the URA is "intended to provide a supply of land" as being until 2040. While there is some confusion in the record as to the actual amount of "buildable and suitable" acres of land provided by the URA, which also should be clarified, it is clearly less than that needed to satisfy the stated 2040 land need.

The Commission should reverse the Director's Decision, which acknowledged "minor discrepancies" in the city's findings, but nevertheless supported the city's determination of the amount of land to be included in the URA, and remand the submittal with instructions to (1) clarify the record as to the amount of acres added by the URA and (2) based on that clarification add the number of acres needed, in accordance with the criteria for inclusion under OAR 660-021-0030, to satisfy the identified 2040 land need.

Second Ground for Appeal - Improper application of Goal 14 "Land need" factors to the determination of the "amount of land" to be included in Urban Reserve under OAR 660-021-0030(1).

The designation of urban reserve areas is governed by the Urban Reserve Rule. *D.S. Parklane Development, Inc. v. Metro*, 165 Or App 1, 5, 994 P2d 1205 (2000). The rule begins in section (1) with the determination of an estimated land supply of developable land for a "particular number of years." OAR 660-021-0030(1) provides:



Mr. Richard Whitman
April 30, 2009
Page 3

“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.”

Once the local government has determined the “amount of land estimated” for the “particular number of years,” the next step is to determine the land to be included within the urban reserve. That step begins with OAR 660-021-00030(2):¹

“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.”

The Director’s Decision finds that Newberg has “demonstrated a need for 1,665 acres of land to accommodate urban uses to the year 2040.” Director’s Decision and Order, page 9. Under the Urban Reserve Rule, that should end the inquiry under subsection (1) as to the amount of land properly included within the urban reserve, and the next inquiry should address the locational factors of land to be included. The Director’s Decision and Order, however, goes on to critique the city’s “need” for industrial, commercial and institutional land in the urban reserve under a Goal 14 “land need” analysis. Such an analysis is entirely appropriate for an urban growth boundary amendment, but is not required in order for the city to designate an urban reserve, and is not a review criteria under the Urban Reserve Rule.²

¹ The numbered provisions of the rule are to be applied sequentially. *D.S. Parklane Development, Inc. v. Metro*, 165 Or at 20.

² Having said that, it is good practice for a city to consider the Goal 14 land need factors in determining an urban reserve, and Newberg is to be commended for having done so in this case. For one thing, it is good planning. For another, the land a city designates for urban reserve will have to meet the Goal 14 land need factors when the city later amends its UGB to bring land in. Addressing those need factors in the urban reserve process helps to ensure that the lands designated for urban reserve will be good candidate lands for a UGB amendment. But Goal 14 speaks in terms of “demonstrated need,” while OAR 660-021-00030(1) speaks in terms of a supply of land “estimated” to be necessary for the period of the urban reserve. Demonstrating a land need for a UGB amendment under Goal 14 is not the same thing as estimating a land supply for an urban reserve.



Mr. Richard Whitman
April 30, 2009
Page 4

The department's application of the Goal 14 land need factors to the designation of an urban reserve is most clearly stated in the subsection entitled "Conclusion: Large Site Need" on page 7:

"The urban reserve rule does not specify how land need must be calculated.³ The determination must however be consistent with Goal 14 - Urbanization.⁴ The goal states, 'In determining need, local governments may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.'"

The language quoted in the Decision, above, is from the "land need" factors of Goal 14. But OAR 660-021-0030 does not refer to or incorporate the land need factors of Goal 14 into the Urban Reserve Rule. It is noteworthy that the Urban Reserve Rule *does*, however, expressly incorporate the Goal 14 *location factors* in determining the land to be included within the urban reserve. OAR 660-021-0030(2). If the commission had intended that the Goal 14 land need factors be incorporated as required criteria into the Urban Reserve Rule, it presumably would have done so expressly, as it did by incorporating the Goal 14 location factors. It did not do so, however, and it is error for the department to conclude that "how land need must be calculated" for an urban reserve *must* be determined by applying the Goal 14 land need factors.

In its analysis of industrial "large site needs," the Director's Decision faults the city's analysis and findings for failing to "identify specific target industries and attendant land needs in the manner required by an Economic Opportunities Analysis (EOA) consistent with Goal 9."⁵ The Decision, however, does not cite any authority for the proposition that

³ This sentence is correct.

⁴ This sentence is correct as to the Goal 14 location factors; it is not correct as to the Goal 14 land need factors.

⁵ The Decision is even more explicit on this point in its response to the 1000 Friends of Oregon objection on page 18:

"The city's analysis of economic opportunities falls short of the requirement for an EOA contemplated by the Goal 9 rule and thus does not provide sufficient justification for the amount or type of employment lands the city asserts are needed and subsequently identified for inclusion in the URA."



Mr. Richard Whitman
April 30, 2009
Page 5

Goal 9 is applicable to the determination of the amount of land to be included in an urban reserve. In fact, the Urban Reserve Rule does not require – or even suggest the need for – an EOA or the applicability of Goal 9 or the Goal 9 Rule to designation of urban reserves. Neither do Goal 9 or the Goal 9 Rule purport to be applicable to designation of urban reserves under the Urban Reserve Rule. To impose such a rigorous level of analysis and findings for an urban reserve is not only contrary to the Urban Reserve Rule, but blurs the distinction between an urban growth boundary amendment and designation of an urban reserve.⁶

The Decision errs in the same way in its evaluation of what it calls “Complete Neighborhoods and Livability Needs.” Decision, page 7. In that section, the Decision again applies a rigorous Goal 14 land need analysis to the urban reserve. The cases cited in the Decision in support of the department’s position⁷ are cases decided under the Goal 14 land need factors. As such, they are not determinative of the analysis of the designation of an urban reserve under the Urban Reserve Rule.

Further, on page 9 of the Decision, the department states:

“Lacking a compelling and definitive justification of a specific land need of livability based on developing large tracts the department finds that the Findings Report has not established a livability need that is sufficient under Goal 14 used to justify a UGB or a URA.”

It is clear in this statement and throughout the Decision that the department has conflated an urban growth boundary amendment with the designation of an urban reserve, and what

⁶ It also seriously undermines the utility of the Urban Reserve Rule, as demonstrated by two statements on page 5 of the Decision. The Decision says, “The department finds that speculation about the future demand for a type of urban land is insufficient to justify a land need to be satisfied through designation of a URA.” This sentence is footnoted with the following statement: “A separate, but related, question is whether a community can identify specific economic development opportunities and type of land need with precision more than 20 years into the future.” Read together, these two statements suggest that the department would require an EOA in order to justify a “land need” for an urban reserve for industrial, commercial and institutional land, while at the same time expressing skepticism that it could be done. This is a Catch-22 that begs the question how such a “land need” could ever be shown.

⁷ *1000 Friends of Oregon v. Metro Service Dist.*, 18 Or LUBA 311 (1989) and Acknowledgment Order 03-WKTASK-001534 (North Plains), July 13, 2003.



Mr. Richard Whitman
April 30, 2009
Page 6

must be shown for both. That is error.

Under OAR 660-021-0030(1), the city must *estimate* the land supply required for the period of the urban reserve and support its decision with findings. Newberg has done that.⁸ The applicable standard of review for the city's determination is the substantial evidence test. Under that test, the department has determined that "Newberg has correctly identified an overall need for buildable land for the planning period through 2040. That need is approximately 1,665 acres." Decision, page 4. That determination should have ended the department's analysis of what it calls the "land need" for the purpose of this urban reserve, without resort to the Goal 14 land need factors as applied to particular types of land.

The director's remand based on the determination that the city failed to meet the Goal 14 land need analysis for its urban reserve should be reversed and the city's determination of the amount of *estimated* land supply should be affirmed.⁹

Third Ground for Appeal – Improper application of Goal 14 "locational" factors to determination of land to be included in Urban Reserve under OAR 660-021-0030(2).

OAR 660-021-0030(2) provides that "[i]nclusion of land within an urban reserve shall be based upon the location factors of Goal 14 and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land."¹⁰ The rule directs cities and counties to study lands adjacent to or near the UGB "for suitability for inclusion within urban reserves, as measured by the factors [i.e., the Goal 14 factors] and criteria set forth in this section [i.e., section (2) of the rule]. Local governments shall then designate,

⁸ As noted above, Newberg is to be commended for having applied the Goal 14 land need factors in determining its urban reserve, and the appellants do not concede that the city did not satisfy the factors. The point is that they were not required to satisfy them for an urban reserve designation the way they would be required to amend their UGB.

⁹ Except to the extent the commission is persuaded to remand the determination and direct the city to add more land, as sought in the First Ground for Appeal, above.

¹⁰ As noted above, the Goal 14 location factors are expressly made applicable to the determination of land to be included in an urban reserve. OAR 660-021-0030(2). The Goal 14 need factors, however, are not made a part of or applicable to the Urban Reserve Rule.



Mr. Richard Whitman
April 30, 2009
Page 7

for inclusion within urban reserves, that suitable land which satisfies the priorities in section (3) of this rule.”¹¹

The department has concluded that “the city identified sufficient land from which to designate an urban reserve area.” Decision, page 9. It finds, however, that the city “has not adequately established that serviceability issues are an appropriate basis for exclusion of land from designation in the URA.” Decision, page 10.

The department’s analysis of the city’s designation of land for inclusion in (and exclusion from) the urban reserve is based on the priorities in section (3) of the rule. In focusing on

¹¹ Section (3) provides: “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.”

Section (4) provides exceptions to the priorities of section (3):

“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.”



Mr. Richard Whitman
April 30, 2009
Page 8

section (3), the department overlooks the prior application of the Goal 14 location factors under section (2) of the rule, and the cases that inform the application of those factors.

The "location factors" of Goal 14 are as follows:

"The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 *and* with consideration of the following 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." (Emphasis added.)

Recent court decisions have highlighted the interplay between and application of the provisions of ORS 197.298 and the additional Goal 14 boundary location factors that together inform the analysis of the Newberg urban reserve and provide support for the city's conclusions.

ORS 197.298, referred to in the above-quoted language from Goal 14, is the "priority of lands" statute; it provides that progressively lower priority lands may be included within a UGB if higher priority land "is inadequate to accommodate the amount of land needed." See, *City of West Linn v. LCDC*, 201 Or App 419, 440, 119 P3d 285 (2005). By its terms, the statute applies "[i]n addition to any requirements established by rule addressing urbanization." ORS 197.298(1). Under the statute, the highest priority is given to urban reserve land. ORS 197.298(1)(a). Then, if urban reserve land "is inadequate to accommodate the amount of land needed," the next priority goes to exception land. ORS 197.298(1)(b). If exception land is likewise "inadequate to accommodate the amount of land needed," the third priority goes to marginal land. ORS 197.298(1)(c). Finally, if marginal land "is inadequate to accommodate the amount of land needed," the fourth priority goes to agriculture or forestry land, or both. ORS 197.298(1)(d). The statute allows for exceptions to these priorities if specific types of land needs cannot be reasonably accommodated on higher priority lands, future urban services could not reasonably be provided to higher priority lands due to topographical or other physical constraints, or maximum efficiency of land uses requires inclusion of lower priority lands in order to include or provide services to higher priority lands. ORS 197.298(3).



Mr. Richard Whitman
April 30, 2009
Page 9

The Goal 14 location factors are to be applied coincident with ORS 197.298, as "requirements established by rule." *City of West Linn*, 201 Or App at 440.

The *City of West Linn* case was recently relied on by the Court of Appeals in *Hildenbrand v. City of Adair Village*, 217 Or App 623, 177 P3d 40 (2008). In that case, the court approved the city's decision, in expanding its UGB, to include fourth priority lands over an exception area based on findings by the local government that extension of sewer and water services to the exception area would be cost prohibitive because of the need for expensive borings under Highway 99W; a more efficient transportation system could be engineered on land not part of the exception area; and the exception area was not configured to accommodate a stated plan objective of "compact community development" and plan growth management policies favoring a "village center" and a transportation system disassociated from the highway. 217 Or App at 634. On appeal to the Land Use Board of Appeals, LUBA held that it was reasonable to include resource land within the UGB "over existing exception areas if urban services cannot reasonably be provided due to physical constraints." LUBA found that the high cost of extending services across the highway to the exception area, coupled with findings that inclusion of the exception area "within the UGB would be contrary to adopted Plan policies" justified the inclusion of lower priority resource land in the UGB rather than the higher priority exception area. 217 Or App at 634-35.

On appeal to the Court of Appeals, the court rejected the argument that LUBA erred in allowing the inclusion of *any* lower-priority land in the UGB without proof that the quantity of *all* types of higher-priority lands was inadequate. The court observed that the petitioners' argument was inconsistent with the plain language of ORS 197.298 and that "whether there is 'inadequate' land to serve a need depends on not only the constraints identified by ORS 197.298(3), but also the criteria for locating an urban growth boundary expansion under Goal 14. * * * Thus, the ranking of land under ORS 197.298(1) is a function of its priority classification as urban reserve land, exception land, marginal land, or resource land, as well as the application of the qualitative factors under Goal 14 and ORS 197.298(3)." 217 Or App at 634-35.

The petitioners argued that the city's findings on the expense to extend services under the highway (as a basis for excluding the exception land across the highway) were not relevant because Highway 99W is not a "physical constraint" to the provision of services under ORS 197.298(3). The court held nothing in the statute limits "physical constraints" to natural



Mr. Richard Whitman
April 30, 2009
Page 10

constraints. "An artificial barrier to the extension of services, such as the state highway in this case, is nonetheless a physical constraint." 217 Or App at 635.

The court also held that the findings on plan policies about community form, growth management and transportation needs were relevant to the boundary location, relying on the four boundary location factors under Goal 14:

"Those factors allow comparison of needed transportation improvements in the alternative expansion areas as part of the consideration of the '[o]rderly and economic provision of public facilities and services.' *It is likewise proper to consider the effects of an expansion on compact growth and community form in assessing the '[c]omparative * * * social consequences' of the alternative expansion areas.*" 217 Or App at 635. (Emphasis added.)¹²

These cases – the *City of Adair Village* case, in particular – are instructive in analyzing the Newberg URA submittal, and the choices the city has made to exclude certain "high priority" exception areas and include certain "low priority" areas of resource land.

The city has excluded some exception areas because it found topography and elevation would make it unduly expensive or burdensome to provide public services. (E.g., land north of Bell Road in the North and Northeast study areas above the 460-foot contour and land east of Corral Creek Road above the 300-foot contour in the East study area (Justification Report, p. 60)¹³; land west of Chehalem Creek (Justification Report, pp. 27, 55); Southeast Area A (Justification Report, p. 61; *see also* Table 4, Justification Report, p. 28 and *Newberg Urban Reserve Area Expansion Study Areas Public Utility Cost Estimates*, Justification Report, pp. 111 - 117.)

These are clearly considerations under the Goal 14 location factors (and under ORS 297.198(3)) that allow the city to exclude those areas from consideration as being

¹² The court held that LUBA had erred in failing to require the city and county to justify the quantity of land included in the UGB amendment under the "demonstrated need" requirements of *former* Goal 14, but that outcome does not affect the court's discussion of the ORS 197.298 and Goal 14 location factors.

¹³ Conversely, the city has appropriately included some resource land with lower soil capability classes in the Corral Creek Road S. area upon the finding that it "*can* reasonably be provided with public services." (Justification Report, pp. 29, 50.) (Emphasis added.)



Mr. Richard Whitman
April 30, 2009
Page 11

unsuitable. (Although the Goal 14 location factors are to be applied under OAR 660-021-0030(2) in determining suitability of land for inclusion in an urban reserve even before applying the land priorities under section (3) of the rule – and the exceptions to the priorities under rule section (4) – the same factors would allow those lands to be excluded in favor of higher priority lands under section (4) of the rule.)

Other exception lands have been excluded by the city for the reason that existing low-density rural development on the land would make it unreasonably expensive to urbanize and provide urban services. (E.g., Southwest area (Justification Report, pp. 27 - 28, 58); Northwest area (Justification Report, p. 59); Northeast area (Justification Report, pp. 59 - 60; See also Table II - 6 (Justification Report, p. 57).) These considerations are likewise permissible under *City of Adair Village*, which recognized that “physical constraints” are not limited to “natural constraints.” Like the highway in *City of Adair Village*, the low-density rural development on exception lands excluded by the city in this case is a “physical constraint” within the meaning of ORS 19.298(3) and OAR 660-021-0030(4), as well as a barrier to “orderly and economic provision of public facilities and services” under Goal 14 location factor two.

Resource land within the Corral Creek Road N. and Wilsonville Road Northwest areas was included for “maximum efficiency” to serve adjacent exception areas (Justification Report p. 29, 56), as expressly allowed by ORS 197.298 and the rule.

Exclusion of certain exception areas in consideration of the city’s adopted and acknowledged policies of compact form and livability is likewise permissible under the statute and the Goal 14 location factors, as applied by the court in *City of Adair Village*.

The standard by which Newberg’s decision to exclude certain “high priority” lands is to be measured is the substantial evidence test. Rather than apply that straightforward standard to the evidence in the record, taken as a whole, the department has developed a new interpretation of “Future urban services could not reasonably be provided”¹⁴ that is

¹⁴ “Future urban services could not reasonably be provided” means that a local government must show that it is not reasonable to provide urban services after analyzing topographical and physical constraints (E.g., slopes, water bodies, roadways) in the context of:

- “ • the relative cost of providing urban services to constrained lands and to alternatives;
- “ • the amount of land constrained (i.e., a high cost may be reasonable for a [sic] serving a



ATTORNEYS AT LAW

Mr. Richard Whitman
April 30, 2009
Page 12

significantly more rigorous than the standard the court apparently applied to the same language found in ORS 197.298(3), and then declares the city's findings under this test to be insufficient. While the court in *City of Adair Village* was interpreting the statute, and the department is interpreting the rule, the similarity of the language between the two strongly suggests that the court's interpretation of the statute should guide the interpretation of the rule. The court in *City of Adair Village* gave substantial deference to the city's findings in its application of the substantial evidence test. The department should do the same.¹⁵

The director's remand to apply the location requirements of the urban reserve rule consistent with the Director's Decision should be reversed and the city's determinations of land to include and exclude from the urban reserve should be upheld.

Thank you for your consideration.

Yours very truly,

LANE P. SHETTERLY

cc: Mr. Barton Brierly
City of Newberg (via email and first class mail)

Ms. Corrine Sherton (via email)

-
- large area but not a small one);
the planning horizon (i.e., what is not unreasonable for a 25-year plan may be reasonable for a 45-year plan)."

¹⁵ The department's strong preference to reject the inclusion of resource land in the urban reserve is clearly indicated by this statement on page 16 of the Decision: "The department understands that providing future urban services to these exception areas is less reasonable if the analysis is a narrow examination of what land is merely easiest, least costly, or most convenient to develop. However, *the priority scheme for bringing land into a URA is intentionally weighted to avoid development of resource land, particularly valuable farm land.*" (Emphasis added.) This statement is contrary to law. The priority scheme is intended to require cities to look first to high priority land for inclusion, but also to allow them to include lower priority lands instead, if supported by the evidence. That is precisely what Newberg has done in this case.



ATTORNEYS AT LAW

Mr. Richard Whitman
April 30, 2009
Page 13

Mr. John O'Neil
Mr. Matt Wellner
Metropolitan Land Group (via email)

Mr. and Mrs. Mike Stuhr (via email)

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534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0070
 Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389
 Willamette Valley Office • 189 Liberty Street NE, Suite 307A • Salem, OR 97301 • (503) 371-7261 • fax (503) 371-7596
 Central Oregon Office • PO Box 242 • Bend, OR 97709 • (541) 382-7557 • fax (541) 317-9129

April 30, 2009

Land Conservation and Development Commission, John Van Landingham, Chair
 Oregon Land Conservation and Development Department, Richard Whitman, Director
 635 Capitol Street, Suite 150
 Salem, OR 97301-2540

Subject: Appeal Of Remand Order No. 001767, City of Newberg Urban Reserve Area Designation

Dear Chair Van Landingham and Members of the Commission:

1000 Friends of Oregon and Friends of Yamhill County hereby appeal the Department remand order No. 001767, concerning a 2,146-acre expansion of the Newberg Urban Reserve. 1000 Friends of Oregon and Friends of Yamhill County participated at the local level, filed valid objections to the submittal, and have standing to file this appeal.

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. These 2,146 acres include 1,645 buildable acres.

We concur with the conclusion reached by the Department that the City failed to comply with the relevant law by: 1) identifying specific land needs for large, flat parcels that could only be accommodated on high-value farmland; and 2) including large blocks of resource land, while excluding higher-priority exception lands.

However, we must appeal one key conclusion reached by the Department:

“The Department finds that Newberg has correctly identified an overall need for buildable land for the planning period through 2040. That need is approximately 1,665 acres [beyond the existing UGB].”¹

This conclusion is inconsistent with the record and the Department’s specific findings regarding industrial and institutional land.

1. The record does not support the conclusion that Newberg has correctly identified an overall need for approximately 1,665 acres of buildable land beyond the existing UGB through 2040.

¹ Order No. 001767, p. 4

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LAND CONSERVATION
AND DEVELOPMENT

Newberg has identified four categories of land need- residential, commercial, industrial, and institutional. For two of these categories- industrial and institutional- the *amount* of needed land the city identified is based on the purported need for large, flat parcels.

As explained below, absent the need for large, flat parcels the amount of needed land in these two categories would be much smaller. Since the city has failed to justify the need for large, flat parcels the city has not justified the amount of land it claims to need for industrial and institutional uses.

Moreover, the Department explicitly found that:

“The city’s analysis... does not provide sufficient justification for the *amount* or type of employment lands the city asserts are needed and subsequently identified for inclusion in the URA.”² (emphasis added)

The Department also sustained our 4th objection which stated:

“There is not an adequate factual basis to support the amount of public and semi-public land included in the URA.”³

Since the Department has found that the city has not justified the *amount* of industrial and institutional land it asserts are needed, the Commission should reject the conclusion that the city has correctly identified the overall need for buildable land.

A. Industrial Land

Newberg found a need for a total of 291 buildable acres of industrial land from 2007 through 2040, including 226 acres beyond the existing UGB.⁴

The city’s conclusion regarding the amount of needed industrial land is largely based on 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].”⁵

The Department explicitly rejected this rationale as unsupported:

² Order No. 001767, p. 18

³ *Id.*

⁴ Newberg Urban Reserve Area Justification Report and Findings, (URA Report), Table I

⁵ URA Report, p. 34

“However, neither analysis in the comprehensive plan nor the city’s Findings Report identify specific target industries, the site need for target industries, or why the city’s economic development strategy specifically requires up to 200 acres of large, flat land outside its existing UGB.”⁶

Since the city has not identified specific target industries or their site needs, there is no basis to support the city’s conclusion that it needs a total of 291 buildable acres of industrial land, through 2040, including an additional 226 acres beyond the existing UGB.

The asserted need for 291 buildable acres is roughly *quadruple* the amount of industrial land that the city found would be needed through 2040 based on a *high* employment growth scenario. The URA Report and Findings identify a need for 71 buildable acres of industrial land for the period of 2007-2040 based on a “high employment growth scenario.”⁷ All or virtually all of this need could be met on the city’s existing supply of buildable industrial land remaining in the acknowledged UGB or on other lands within the existing acknowledged URA.

Conclusion

Because neither the comprehensive plan, nor the URA Report, nor the EOA identify specific target industries or their site requirements, there is no 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 much land is needed, approval also would violate OAR 660-021, which requires a URA to be based on demonstrated need, on 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 Commission should remand the submittal with instructions to base the URA on the need for 71 buildable acres of industrial land from 2007 through 2040 identified in the URA Report and Findings based on a “high employment growth scenario.”

Since this 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.

⁶ Order No. 001767, p. 5

⁷ URA Report, pp. 33-34

B. Public and Semi-Public Land (Institutional Land)

Newberg found a need for a total of 589 *buildable* acres of land for parks, schools, and other public and semi-public uses from 2007 through 2040, including 407 buildable acres beyond the existing UGB.⁸ Of this, the city asserts that, “327 acres will be needed on large, flat sites, (i.e. farm land).”⁹

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

“We have reviewed the basis upon which the city has determined the land need, and are concerned that *the acreages for schools and parks appear to be excessive...* current professional guidelines do not support 50 acres for a high school. Most high schools occupy between 20 and 30 acres at most. Many urban high schools use even less. Also, the report doesn’t indicate whether the city explored the sharing of park/school facilities? If not, the city should explain why that was not considered, as the provision of shared facilities would reduce the overall amount of land needed.”¹⁰ (emphasis added)

Newberg has projected its institutional land need based in part on an assumption that excessively large sites are needed for the various uses, *and* that the entire area of the sites, including park sites, must be buildable. Newberg and the local park district have a long history of accommodating a portion of park needs on unbuildable land.

Since city is asserting a need for institutional acreage that the Department has found to be excessive there is not an adequate basis to support the conclusion that the sum total of the buildable acreage in those various sites-589 acres- is needed.

Conclusion

There is not an adequate factual basis to conclude that Newberg will need 589 buildable acres of institutional land from 2007 through 2040. 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 much buildable land is needed, approval also would violate OAR 660-021, which requires a URA to be based on demonstrated need, on 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.”

⁸Newberg Urban Reserve Area Justification Report and Findings, (URA Report), Table 1

⁹URA Report, p. 42

¹⁰ Letter from DLCD and ODA to City of Newberg, October 1, 2007

Remedy

The Commission 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) Direct Newberg to make corresponding revisions to the size of its URA expansion.

2. The supplemental record filed by the City of Newberg improperly includes material that was not part of the local record.

The City of Newberg submitted the 2007 Urban Reserve area Justification & Findings Report to the Department on August 28, 2008 and included a copy of the local record with the report.

On October 22, 2008 the city filed a supplement to the record. Three of the supplemental documents were not part of the city's local record in the URA proceedings.¹¹ These documents appear at pages 567-587 of the supplemental record.

We objected to the submittal of these three items and their inclusion in the record before the Department. The Department rejected our objection, stating:

“The department disagrees with the objection that some documents in the record supplement postdate the city's final action”¹²

The department's conclusion misses the crux of our objection to these materials. Whether or not they postdate the city's final action is immaterial. They were not part of the local record in the local URA proceedings and therefore their inclusion in the record before the Department and the Commission would violate OAR 660-025-00130.

Remedy

The documents listed above should be removed from the record of this proceeding since they were not part of the local record.

Sincerely,

¹¹ The three documents are the City of *Dundee* Wastewater Facility Plan Amendment, a Report to City Council at Work Session 1/22/08 re: Dayton Ave Pump Station, and Newberg City Council Minutes dated January 22, 2008.

¹² Order No. 001767, p. 17



Sid Friedman
1000 Friends of Oregon



Ilsa Perse
Friends of Yamhill County

Cc: Barton Brierly, City of Newberg
Ken Friday, Yamhill County
Grace Schaad, Objector
Lane Shetterly, representing Objectors Mike and Cathy Stuhr
Lee and Amy Does, Objectors

COPY

10730 NE Renne Rd.
Newberg, OR 97032
April 26, 2009

DEPT OF

APR 29 2009

LAND CONSERVATION
AND DEVELOPMENT

John Van Landingham, Chair
Richard Whitman Director
Oregon Land Conservation and Development Department
635 Capitol Street, Suite 150
Salem, OR 97301-2540

Dear Sirs:

We were pleased to hear that the DLCD has remanded Newberg's Urban Reserve File No. 2008-005 (Order 001767). The URA proposal needs more work.

We find that DLCD agrees with Newberg that 1,665 acres of buildable land is necessary. Yet two essential issues remain;

- The type and location of expansion land
- The orderly and efficient transition of identified lands from urban to rural use

The type and location of lands (OAR 660 division 21)

We agree with DLCD that the City needs to reduce its inclusion of resource land in its proposed URA. We agree that large tracts of fertile flat land need to be excluded from development until existing supplies of lesser quality land have been exhausted.

The orderly and efficient transition of identified lands from rural to urban use (State Planning Goal 14)

Choosing the best land to include in a URA also means identifying land that can readily be transitioned to urban use. (The locational factors of Goal 14 require the city to address the orderly provision of public facilities and services.) Traffic planning is critical to the transition process.

Although the city has no legal obligation to undertake traffic planning for this proposal, we believe Newberg is unique and that traffic planning is essential to choosing the best lands to include in its URA.

Newberg depends on highways 99W and 219 for movement of commuters and goods. Highway 99W is undebatably a current regional bottleneck. A Newberg-Dundee bypass has been proposed but its funding and construction are unlikely. Erik Havig of ODOT said in a March 28, 2007 letter to the Newberg Planning and Building Director: "...there is no doubt that the total sum of this additional growth [the additional growth anticipated in the URA proposal] cannot be adequately served without the bypass." Even with a bypass in place, Portland-bound traffic would be diverted onto a highway already at capacity.

We believe that Newberg's transportation issues go beyond Newberg. Simply outlining a grid of neighborhood roads and defining interchanges with highway 99W (or a bypass) will not solve the gridlock that will occur on 99W as Newberg and other communities along this transportation corridor continue to grow.

We believe that a regional corridor plan must be developed with input from ODOT and planners from all the communities which impact traffic in the region.

A regional corridor plan must be put in place before this URA can be approved—otherwise Newberg cannot reasonably select lands for orderly transition to urban use.

We believe the DLCD is in a unique position as a state-level entity to require such a cooperative strategy --- thus ensuring the future livability of this special area.

Respectfully,



Amy Does, Ph.D. and Lee M. Does

Newberg Urban Reserve

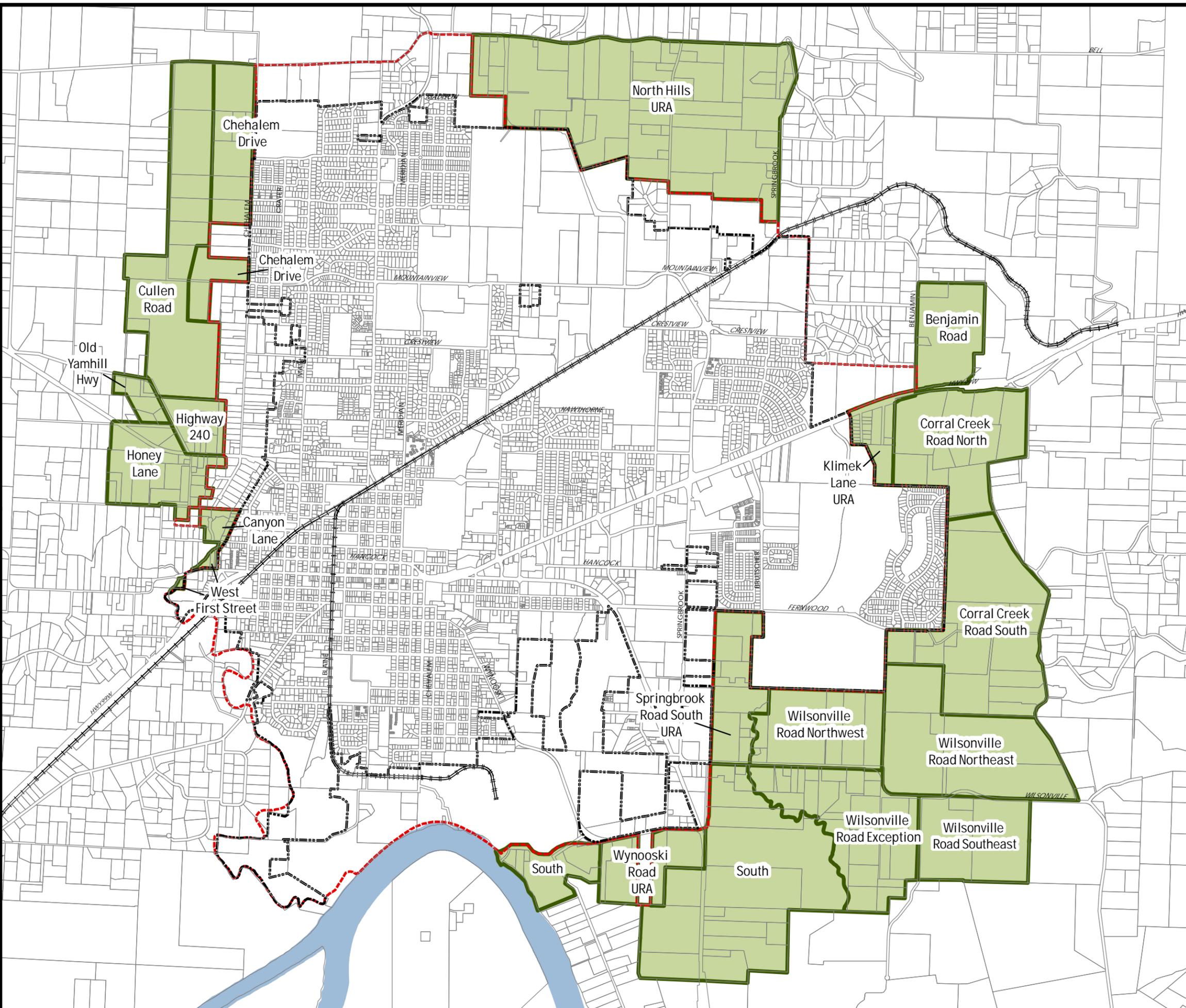
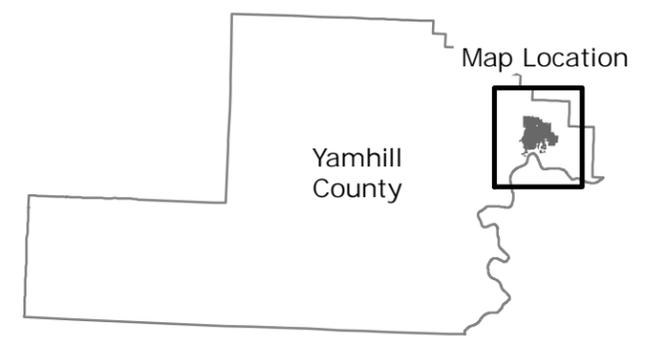
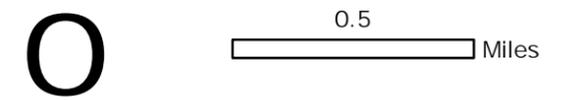
Map Atlas

MAP 1

2007 URBAN RESERVE AREA NEWBERG, OREGON

As Proposed For Adoption

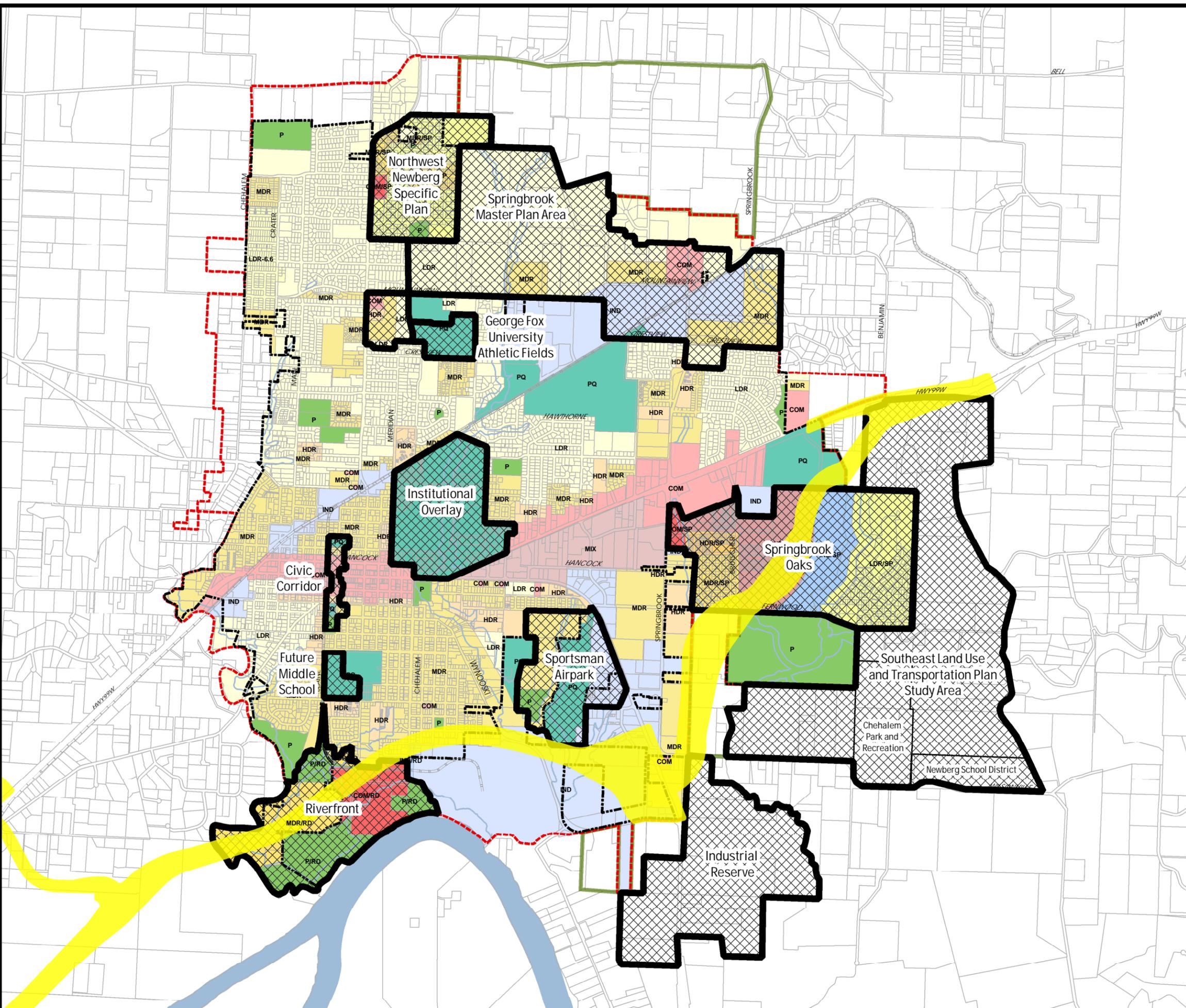
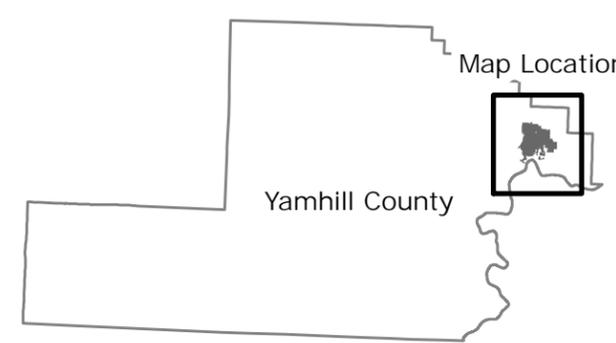
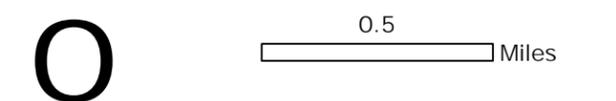
-  City Boundary
-  Urban Growth Boundary
-  2007 Urban Reserve Areas
-  Lot Line
-  Rail Road Tracks
-  Willamette River



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



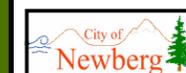
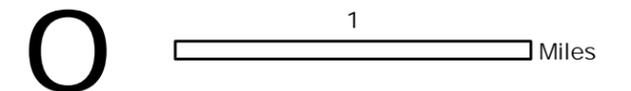
MAP 4

YAMHILL COUNTY ZONING, 2006

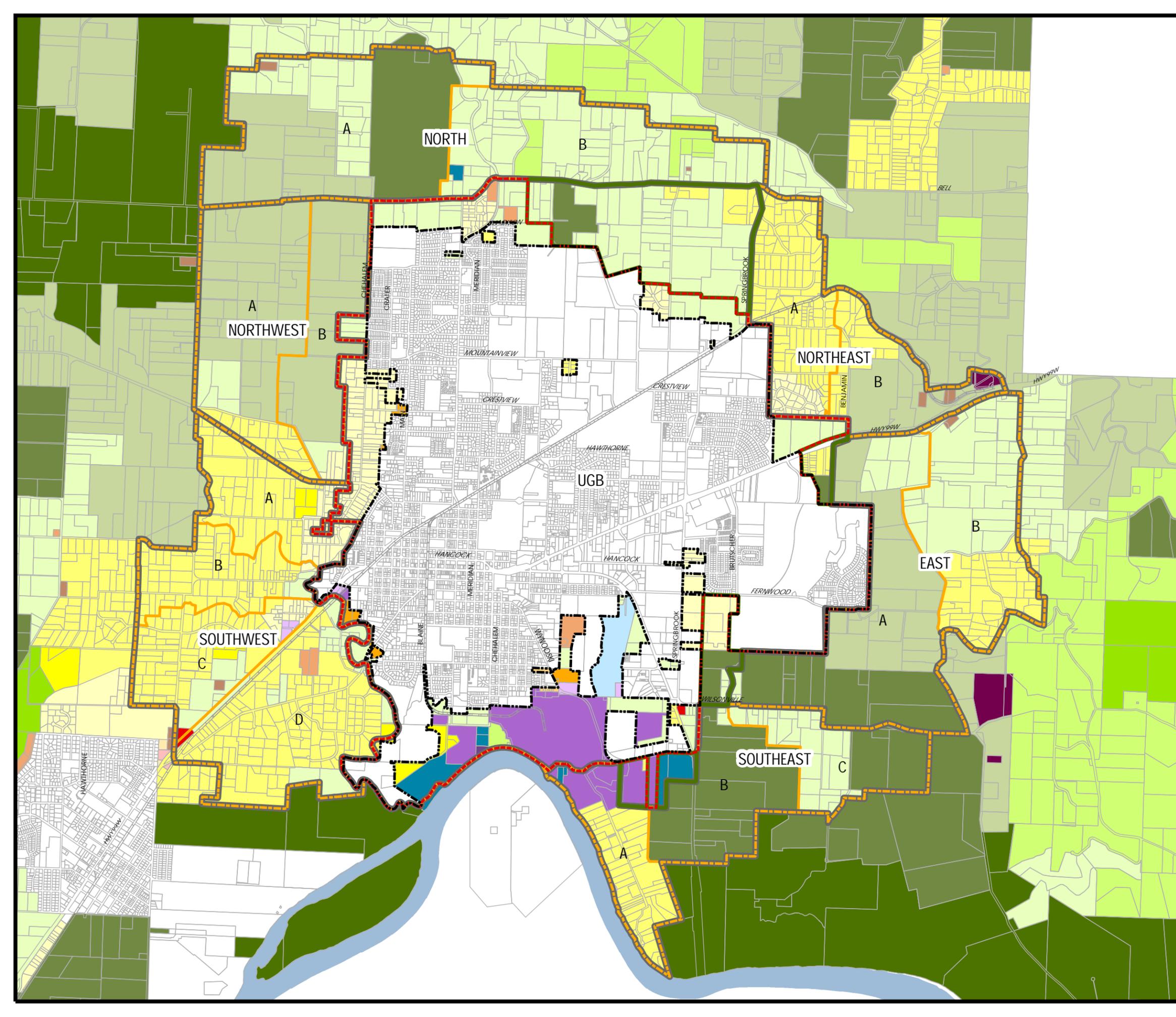
- City Boundary
- Urban Growth Boundary (Existing)
- Urban Reserve (Existing)
- Urban Reserve Study Area Subdistrict
- Urban Reserve Study Area Boundary
- Willamette River

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		



Map Document: (K: WP\PLANNING\Luke\Newberg.mxd)



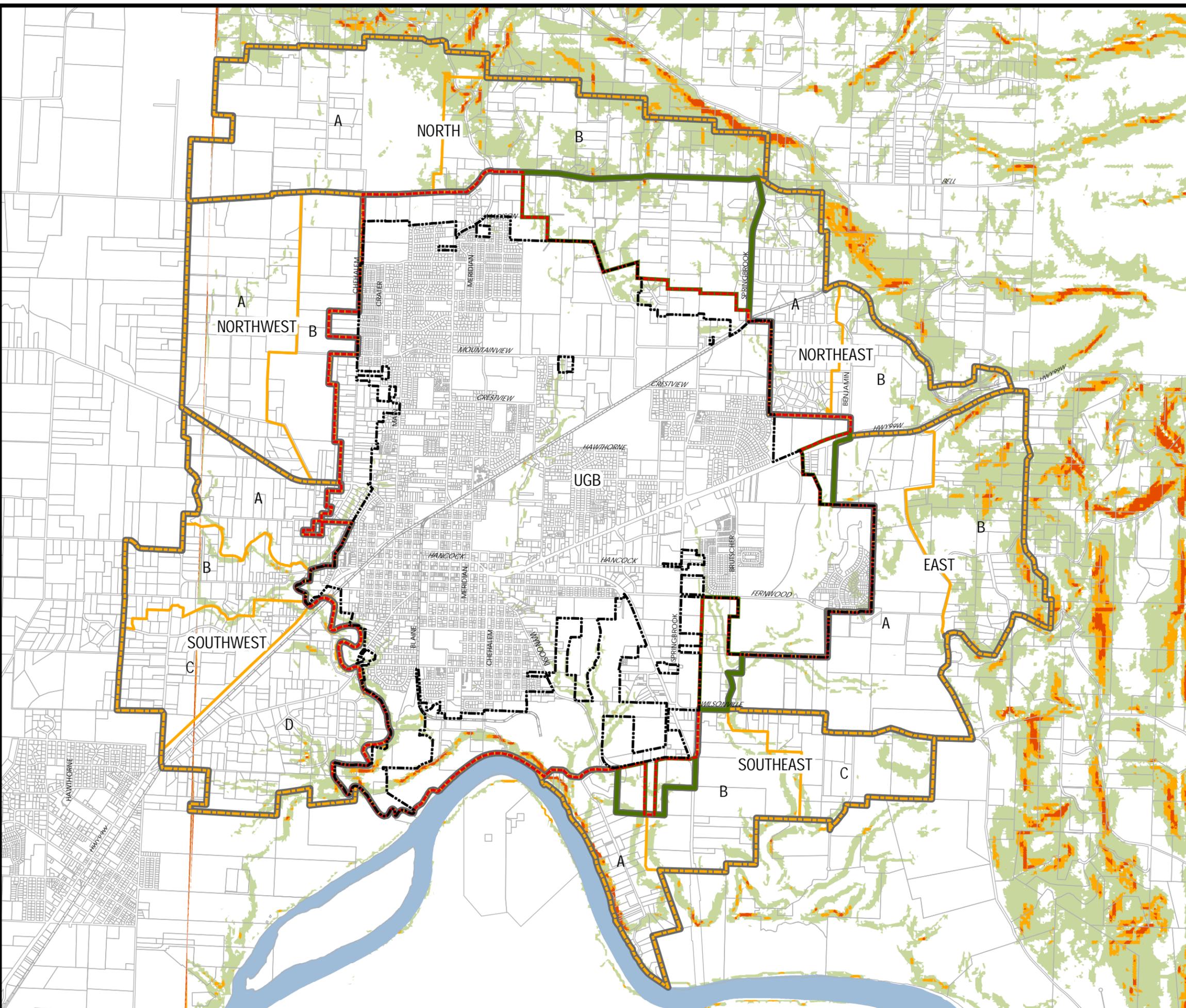
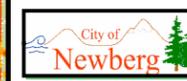
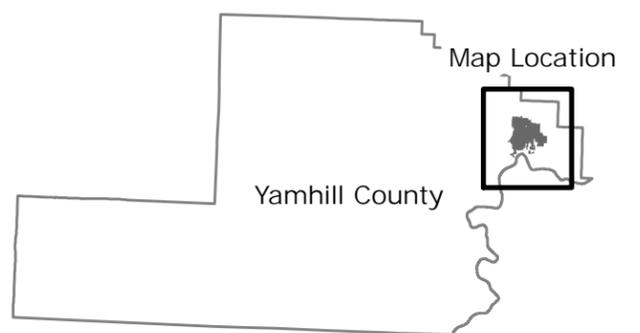
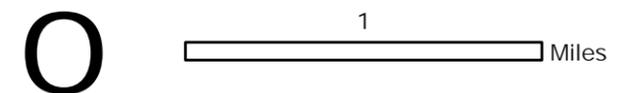
MAP 5

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 %



MAP 6

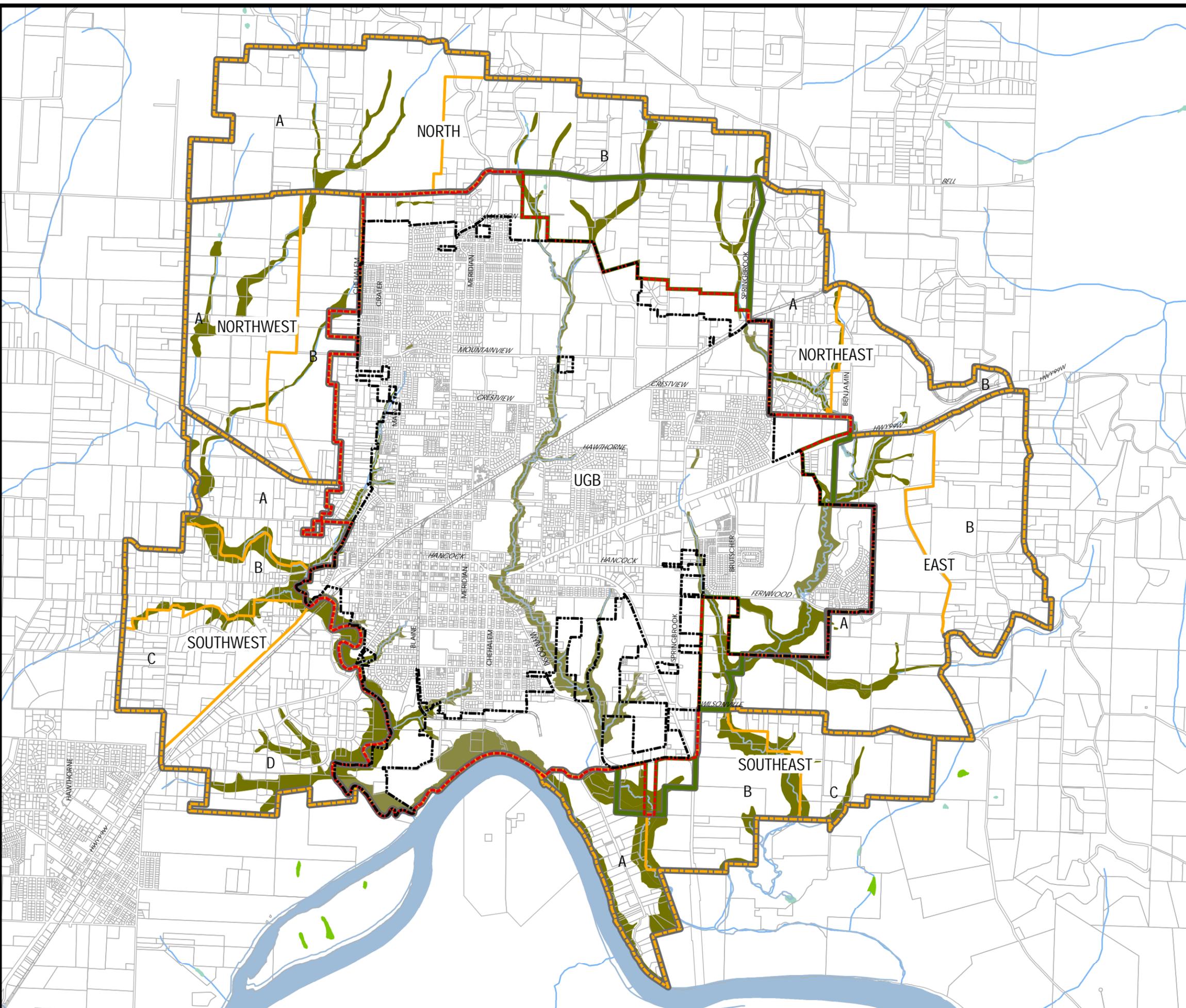
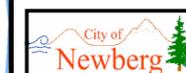
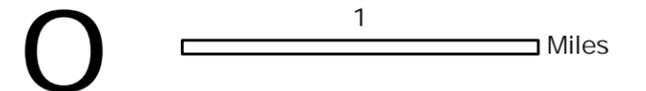
URBAN RESERVE STUDY AREAS WATER FEATURES, 2006

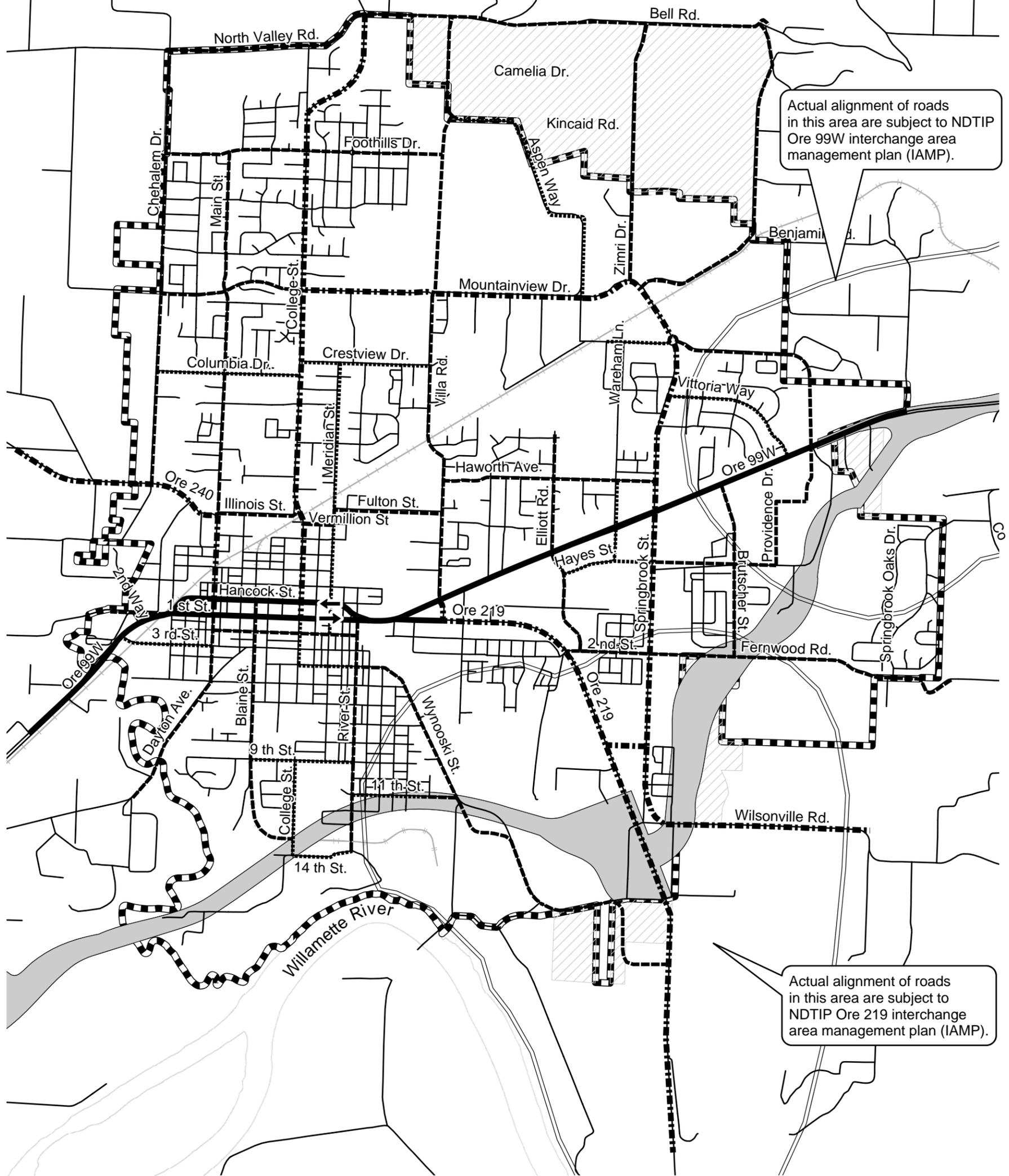
-  City Boundary
-  Urban Growth Boundary (Existing)
-  Urban Reserve (Existing)
-  Urban Reserve Study Area Subdistrict
-  Urban Reserve Study Area Boundary
-  Stream
-  Willamette River
-  National Wetlands Inventory*: PEM1Y
-  National Wetlands Inventory*: POWKZh

*Descriptions for the National Wetlands Inventory classification codes referenced above, are as follows:

PEM 1y = Freshwater, wetlands often referred to as marshes, bogs, and swamps. Considered saturated/semipermanent/seasonal.

POWKZh= Open water and intermittently exposed. Considered permanent.





LEGEND

-  Statewide Highway
-  Major Arterial
-  Minor Arterial
-  Major Collector
-  Minor Collector
-  Interchange Area Management Plan Boundary
-  Urban Growth Boundary
-  1995 Urban Reserve Area
-  Railroad
-  Streets
-  River

Notes:

- Streets located outside of Urban Growth Boundary are outside of Newberg's jurisdiction. If a proposed roadway alignment extends outside the UGB, then a plan amendment is required. Improvements recommended would need to be coordinated with Yamhill County.

MAP 9

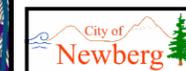
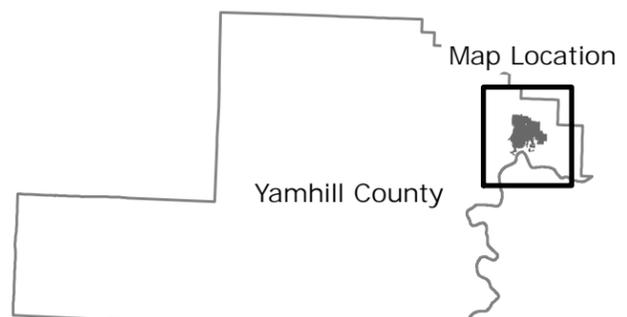
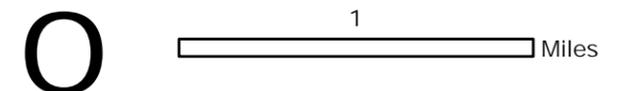
TOPOGRAPHICALLY AND PHYSICALLY CONSTRAINED AREAS

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

Approximate Contour
(460 ft. MSL)

Approximate Contour
(380 ft. MSL)

Approximate Contour
(300 ft. MSL)



**Department of Land Conservation and Development
Report on City of Newberg
Urban Reserve Area Designation (File No. 2008-005)
Order No. 001767**

April 10, 2009

TABLE OF CONTENTS

I.	Director's Decision	1
II.	Background	1
	A. Local Action	1
	B. Major Legal and Policy Issues	2
III.	Review Criteria	2
	A. Substantive Review Criteria	2
	B. Procedural Review Criteria	3
	C. The Record	3
IV.	Analysis	3
	A. Need Analysis	4
	B. Location Analysis	9
V.	Response to Objections	17
	A. 1000 Friends of Oregon	17
	B. Grace Schaad and Lee M. and Amy L. Does	20
	C. Mike and Cathy Stuhr	20
VI.	Conclusion and Recommendation	20

I. DIRECTOR'S DECISION

The director finds that the City of Newberg has not applied requirements of OAR chapter 660, division 21 as required by law, and that its findings and conclusions related to the designation of urban reserves surrounding the community are inadequate. As a result, the submittal is remanded to the city for proceedings consistent with this order.

II. BACKGROUND

A. Local Action

Newberg's designation of approximately 2,150 acres as urban reserves (of which approximately 1,650 acres are considered buildable) marks the second time the city and Yamhill County have designated urban reserves surrounding the Newberg. In 1995, the city and county designated

916 acres (750 acres buildable) to accommodate anticipated urban growth needs until approximately 2020.

In 2004, Newberg began assembling technical information and holding public forums to consider the city's future growth and development needs. A citizen advisory task force, the Ad Hoc Committee on Newberg's Future (Ad Hoc Committee) undertook studies and evaluations to forecast future population growth, to identify buildable land in the community, to assess the need for residential, commercial and industrial land, and to designate an urban reserve area (URA) to accommodate long-term population growth through the year 2040.

Based on recommendations from the Ad Hoc Committee, the City Council adopted a series of post-acknowledgment comprehensive plan amendments updating the city's plans and policies relating to a coordinated population forecast, residential land needs, economic development, public facilities and services, and growth management strategies. In 2006, the city also amended the Newberg urban growth boundary (UGB) to address unmet urban land needs. In October 2007, the Newberg City Council adopted initial urban reserve designations. Subsequent coordination with Yamhill County resulted in a revised proposal re-adopted by the City Council in July 2008; the Yamhill County Board of Commissioners followed with county adoption of the same.

B. Major Legal and Policy Issues

Newberg's 2007 urban reserve area designation presents the department with two important questions:

1. Did the city properly identify the need for land outside the urban growth boundary that will provide for future expansion over a long-term period and promote the cost-effective provision of public facilities and services?
2. In designating urban reserve land, did the city properly apply the locational factors of Goal 14 to demonstrate that there are no reasonable alternatives that will require less, or have less effect upon, resource land, and designate urban reserves consistent with priorities for including land in the urban reserve?

III. REVIEW CRITERIA

A. Substantive Review Criteria

1. Statewide Planning 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.
2. ORS 195.137 to 195.145.
3. OAR, chapter 660, division 21 – Urban Reserves

B. Procedural Review Criteria

1. ORS 197.626 Expanding urban growth boundary or designating urban or rural reserves subject to periodic review.¹
2. OAR chapter 660, division 25 – Periodic Review
 - OAR 660-025-0130 (Submission of Completed Work Task)
 - OAR 660-025-0140 (Notice and Filing of Objections)
 - OAR 660-025-0150 (Direction Action and Appeal of Direction Action).²

C. The Record

Newberg submitted the 2007 Urban Reserve Area Justification & Findings Report (Findings Report) to the department on August 28, 2008. The city included a copy of the local written record with the report. That local record, including more than 3300 indexed pages, is available from the department.

On September 19, 2008 the city supplemented the record with an index of oversized documents and maps used in the local proceedings and available for review at the Newberg city offices.

On October 22, 2008 the city supplemented the record to include approximately 590 pages of additional material relied on by the city in making its decision but inadvertently left out of the original August 28 submittal. The city notified all parties of its submittal of the record supplement. 1000 Friends of Oregon objected to the record supplement; that objection is addressed below in Section V.

IV. ANALYSIS

¹ ORS 197.626. A metropolitan service district that amends its urban growth boundary to include more than 100 acres, or that amends the district's regional framework plan or land use regulations implementing the plan to establish urban reserves designated under ORS 195.145(1)(b), a city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve under ORS 195.145, or a county that amends the county's comprehensive plan or land use regulations implementing the plan to establish rural reserves designated under ORS 195.141, shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.650.

² Within 120 days of receiving the submittal from the local government, the director must act to (1) issue an order approving the local government submittal, (2) issue an order remanding the local government submittal, or (3) refer the local government submittal to LCDC for review and action. The local government may waive the 120-day deadline or the commission may grant the director and extension. The 120-day deadline for review of Newberg's urban reserve designation was December 29, 2008. By letter of December 2, 2008 the city granted the director an additional 60 days in which to act.

Designation of a URA is a two-step exercise. First, a local government identifies a long-term land need for the community. Second, a local government undertakes a locational analysis to identify lands appropriate for inclusion in the URA.

A. Need Analysis

OAR chapter 660, division 21 provides that an urban reserve area 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 planning horizon used to establish a UGB. Local governments must adopt findings specifying the timeframe over which the urban reserves are intended to supply land.³

At the outset of the current URA designation project, the city determined that it would plan for a period running through the year 2040. The existing UGB is estimated to contain sufficient land (approximately 1,180 acres) to meet needs through the year 2024. Therefore, the planning period for the URA includes an additional 16 years worth of land.

Newberg analyzed its long-term land needs by relying on more extensive guidance about development of a UGB where that guidance informs decisions about a URA. The city established a population forecast coordinated with Yamhill County, assessed its land needs across a variety of categories, and compared estimated buildable land needs with the existing land supply, including the existing city limits and the 2006 UGB amendment. The city completed the analysis with a series of plan amendments, each individually adopted and acknowledged through the post-acknowledgment plan amendment process.

Newberg identified categories of buildable land to be included in the URA to address projected needs for the period from 2007 – 2040, depicted in Table 1.

Table 1. Total Land Need 2007–2040

Residential	947 acres
Commercial	85 acres
Industrial	226 acres
<u>Institutional</u>	<u>407 acres</u>
TOTAL	1,665 acres

As part of this overall buildable land need, Newberg also identified a subset of land need dependent on unique and specific site characteristics. As a result, the city calculated it needs 542 acres to meet future “large site” needs, and 383 acres to meet future “complete neighborhoods and livability” needs. The city asserts that both these specific needs can only be met on large tracts of undeveloped land in the proposed URA. Together, these unique and specific needs total 925 acres or about 56 percent of the year 2040 land need identified for the URA.

³ OAR 660-021-0030(1). Beyond this requirement, there are no specific rules/safe harbors to guide the analysis of land needs for a URA.

The department finds that Newberg has correctly identified an overall need for buildable land for the planning period through 2040. That need is approximately 1,665 acres. The department also finds, however, that Newberg’s justification of specific land needs for large, relatively flat tracts of land is not justified and cannot serve as the basis for selection of urban reserve land in the locational analysis. The department also finds that there is no specific “livability” need under Goal 14 as proposed by Newberg in order to support selection of land for inclusion in the URA.

Large Site Need. For the time period between 2007 and 2040, Newberg identified 542 acres of land need for commercial, industrial and institutional uses which the city concluded can only be addressed by including large, relatively flat parcels in URA. That need is categorized as follows:

Table 2. Large Site Need 2007 – 2040

Industrial need	200	acres
Commercial need	15	acres
<u>Institutional need</u>	<u>327</u>	<u>acres</u>
TOTAL	542	acres

Industrial

The city concluded that of the overall 2040 industrial land need totaling 226 acres, 200 acres must be brought into the URA as flat sites larger than 20 acres. Acreage in large, flat parcels would assure that the city had ample buildable employment land to market and develop for prospective industries. The department concludes that the city has not justified this specific land need.

The city’s analysis and findings do not support a specific need for 200 acres comprised of large, flat parcels that can only be accommodated by bringing farmland into the URA. While the city assessed future economic development opportunities and potential employment land needs in an analysis of demand of industrial and office land, it failed to identify specific target industries and attendant land needs in the manner required by an Economic Opportunities Analysis (EOA) consistent with Goal 9. Lacking a level of detailed analysis consistent with Goal 9, the city lacks an adequate factual base for its conclusions about the future need for land with specific characteristics. The department finds that speculation about the future demand for a type of urban land is insufficient to justify a land need to be satisfied through designation of a URA.⁴

The Newberg Comprehensive Plan identifies local and regional economic development opportunities. The plan identifies industry clusters emphasized in the Portland metropolitan region and concludes that Newberg *may* be able to capitalize on some businesses within the identified clusters. The comprehensive plan further asserts that the city’s economic development efforts should be focused on traded-sector clusters with existing strength in the local area: manufacturing, medical services, higher education, and the wine/tourism industry. However,

⁴ A separate, but related, question is whether a community can identify specific economic development opportunities and type of land needs with precision more than 20 years into the future.

neither analysis in the comprehensive plan nor the city's Findings Report identify specific target industries, the site needs for target industries, or why the city's economic development strategy specifically requires up to 200 acres of large, flat land outside its existing UGB. Without this analysis, the city's conclusion of a specific need for large, flat parcels that can only be accommodated by bringing farmland into the URA is not adequately supported.

The department expects that some additional industrial land will be necessary to supply the city's long-term needs, and that some of that land will involve development of large, flat parcels outside the current UGB. However, until the city demonstrates the specific need, it cannot assume an acreage figure that must be accommodated in a URA.⁵

Commercial

The city's analysis of commercial land needs suffers similar deficiencies as the needs analysis for industrial land. The department finds that the city has not justified a specific need for commercial land that can only be satisfied by including large parcels in the URA.

In its analysis, the city identifies an overall 2040 commercial land need of 45 acres and concludes that 30 acres of future commercial land need can be accommodated within the existing UGB, leaving an unaddressed need of 15 acres proposed for inclusion in the URA.

The city has constructed an argument, however, that commercial land to be included in the URA must be composed of large, flat parcels to accommodate a preference for a shopping center. While the Newberg Comprehensive Plan articulates a general preference for neighborhood (3–5 acre) and community (10–15 acre) shopping centers and against regional (20–30 acre) shopping centers,⁶ the plan lacks specific policies for retail development and the URA analysis makes no finding demonstrating why a 15-acre shopping center site potentially developed between year 2026 and 2040 can only be accommodated on a large, flat site in the proposed URA.

Institutional

The city asserts that 80 percent of the identified long-term need for institutional uses (327 of 407 acres) can only be accommodated on large, flat parcels in the proposed URA. The city asserts that the need for parks (145 acres) and schools (182 acres) can only be accommodated on large, flat parcels of farmland outside the existing UGB. The city coordinated its analysis and

⁵ This finding does not preclude the city from planning for a 20-year supply of industrial land within its UGB nor amending its UGB to accommodate a specific industrial need not otherwise provided for in the 20-year land industrial land inventory. If the city identifies a specific need that cannot be met within the existing UGB, it can and should amend the UGB to accommodate that specific need.

⁶ “The Urban Land Institute has identified three types of shopping centers that *potentially could be developed in communities such as Newberg*: neighborhood centers, community centers and regional centers. A large regional shopping center is not consistent with Newberg's desire to maintain a small town feeling and have a complete community rather than a bedroom suburb, smaller neighborhood and community shopping centers are preferred. Comprehensive Plan,” p. 68. [Emphasis added]

identification of long-term need with the Chehalem Park and Recreation District and with the Newberg School District and identified site requirements based on plans and guidelines of those districts. The city concluded that 4–6 community parks (20 acres each), one district/city park of 25 acres, a high school site (30–50 acres), a middle school site (16–20 acres), an elementary school site (10–12 acres) and an alternative high school site (3–5 acres) could only be accommodated on large, flat parcels outside the existing UGB and within the proposed URA.

The department finds that the city appropriately coordinated with park and school districts to identify future land needs. However, while the city’s preference for large, flat sites may be understandable, the Findings Report does not justify why the future park and school needs can *only* be satisfied on large, flat sites in the proposed URA.⁷ The department understands and expects that some long-term institutional land need may be accommodated on large, flat sites but the city has not demonstrated how a preference for such sites translates into a specific land need.

Conclusion: Large Site Need

The urban reserve rule does not specify how land need must be calculated. The determination must however be consistent with Goal 14 – Urbanization. The goal states, “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.”

Looking solely at the relative short-term development costs, meeting a future land use via large undeveloped tracts is preferable to accommodating comparable land uses in a more constrained environment utilizing smaller parcels and/or redevelopment tools. However, preference alone does not equate to “need” and Newberg has not justified particular circumstances in its comprehensive plan policies or particular development needs unique to the city that establish a separate, specific need for industrial, commercial, or institutional uses that can only be satisfied by including large, flat undeveloped tracts in the URA. Some future land uses understandably will utilize flat farmland, particularly given Newberg’s setting. However, the department finds and concludes that identifying a specific land need for large, flat parcels without extensive analysis and justification skews subsequent steps of selecting land for inclusion in the URA in violation of Goal 14, notably avoiding higher priority exception land simply because it is parcelized or more difficult to develop.

Complete Neighborhoods and Livability Need. In addition to its stated large site need, Newberg also identifies a need for 383 acres of land for “complete neighborhoods” and “community livability” that can only be addressed by inclusion of large parcels in the URA. The city asserts that it is actively promoting a planning concept of “complete neighborhoods” as the antithesis to strip commercial development and that the city’s preference for complete neighborhoods constitutes a livability need under Goal 14 that cannot be met in highly-parcelized rural exception areas. The department finds that a separate and specific livability

⁷ The city’s analysis and findings about school needs are inconsistent. Two sources report 2025 school needs as 87 acres (Ad Hoc Committee final report) or 99 acres (Supplemental Record, p. 124). The URA findings report needed to year 2040 as 182 acres of large-site need (p. 39) and 177 acres of large-site need (Table I-3). The size of the discrepancies may be less significant than the lack of clear explanation about how the city arrived at its conclusions.

need that can only be satisfied by large parcels in the URA is inconsistent with Goal 14 and OAR chapter 660, division 21.

Goal 14 directs local governments “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*” [emphasis added]. The establishment of UGBs is based on Goal 14 “need” factors, including “(2) Demonstrated need for housing, employment opportunities, *livability* or uses such as public facilities, streets and roads, schools, parks or open space * * *” [emphasis added]. However, the language of Goal 14 does not create a specific livability need to justify the inclusion of large tracts of undeveloped land within an urbanizing area to meet the need.

Case law and LCDC periodic review decisions provide some guidance about the meaning of “livability” in the context of determining urban and urbanizable land. In sum, no specific livability need can be derived from the goals or statutes and a local government’s effort to show such a need requires a comprehensive and thorough assessment of community conditions and a policy basis in the local comprehensive plan. The following references further clarify the criteria for successfully identifying and meeting a livability need:

The livability factor in Goal 14 may not be satisfied simply by identifying a discrete negative livability factor, such as a high tax rate being required for moderate levels of school revenue, and then showing that the negative livability factor might be alleviated by the proposed UGB amendment. If the livability consideration could be satisfied so easily, it would be a meaningless limitation on the establishment and expansion of the UGB. Rather, a correct application of the livability criterion requires, in addition to identification of a significant livability problem, an evaluation of probable positive and negative livability impacts that may occur if the UGB is amended to solve the identified livability problem. *1000 Friends of Oregon v. Metro Service Dist*, 18 Or LUBA 311, 319-320 (1989).

and,

* * * The Commission recognizes that the city, on remand, adopted specific comprehensive plan policies for livability in lieu of its original concept of “livability” (October 2001). Nevertheless, the Commission concurs with the Department’s recommendation and determines that livability, even as set forth in the city’s more detailed policies, is not a “specific identified land need” under the meaning of that phrase in ORS 197.298(3) * * * Acknowledgement Order 03-WKTASK-001534, the Periodic Review of the Comprehensive Plan for the City of North Plains, July 13, 2003.

Early in Newberg’s effort to evaluate long-term land needs, the Ad Hoc Committee developed a set of values, visions, goals and policies guiding community development efforts. These values, visions, goals, and policies, on the whole, direct planning efforts that will enhance the community’s overall livability. The Ad Hoc Committee recommended, and the City Council

adopted, comprehensive plan policies that inform the concept of a livability need in Newberg.⁸ However, the policies stop short of saying that community livability can only be satisfied on large parcels in a URA. The city's URA findings address the benefits of master-planned communities to achieving a desirable urban form including complete (and livable) communities, but do not identify specific requirements that demonstrate that livability need can only be addressed on large tracts at the periphery of the existing Newberg urban area.

Lacking a compelling and definitive justification of a specific land need of livability based on developing large tracts the department finds that the Findings Report has not established a livability need that is sufficient under Goal 14 used to justify a UGB amendment or a URA.

Overall Need Analysis Conclusion. The department concludes that the city has demonstrated a need for 1,665 acres of land to accommodate urban uses to the year 2040. The department further concludes that the city has not demonstrated a specific land need for industrial, commercial, and institutional uses or to satisfy "livability" needs that can only be satisfied on large tracts of land.

B. Location Analysis

The second step of designating a URA involves assessing which land to designate as urban reserve in order to accommodate the previously identified need. A local government must study land adjacent to and near the urban area for its suitability for inclusion in the urban reserve and then designate land for inclusion in the urban reserve according to a priority scheme set forth in OAR 660-021-0030(3).⁹

Newberg examined approximately 4,200 buildable acres of land adjacent to and near the existing UGB that could potentially accommodate year 2040 land needs.¹⁰ The city established six study

⁸ "To develop and maintain the physical context needed to support the livability and unique character of Newberg" Urban Design Goal J.2. "Measures should be taken to prevent having areas east and southeast of the proposed bypass isolated from the rest of the City. Substantial development of complete neighborhoods should occur on both sides of the proposed bypass" Urban Design Policy J.2.e.

⁹ 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.

¹⁰ Study area criteria:

- a) Include land generally within 0.5 miles (but not more than .75 miles) of the UGB
- b) Exclude land abutting the Dundee UGB
- c) Exclude land across the Willamette River

areas (themselves divided into subareas) to facilitate analysis of land appropriate for designation as urban reserve. Within the study areas, approximately 2,580 acres (61 percent) is planned and zoned as exception land (including the city’s 1995 URA designation) and approximately 1,540 acres (39 percent) is planned and zoned as resource land (farm and forest land). No land within the study areas is designated as “nonresource land” or “marginal land.”

The department has concerns with how the study areas were selected, but concludes that, nevertheless, the city identified sufficient land from which to designate an URA. As discussed below, the department determines that the Findings Report has not adequately established that serviceability issues are an appropriate basis for exclusion of land from designation in the URA

Table 3 illustrates how Newberg applied the rule to arrive at the final selections for the 2007 URA.

Table 3. Sequential Application of Urban Reserve Rule Provisions of 2007 URA

Step 1 660-021-030(1)	Step 2 660-021-030(3)(a)	Step 3 660-021-030(3)(a)+(4)(a)	Step 4 660-021-030(3)(a)+(4)(b)	Step 5 660-021-030(3)(c)	Step 6 660-021-030(3)(c)
Determine 2040 Land Need (Build. Ac.)	Include 1995 URAs (Exception Areas)	Include Reasonably Serviceable Exception Areas	Include Intervening Resource Land	Include Relatively Low Value Soils	Include Relatively High Value Soils
General Need 1,123 ac.	354 ac.	265 ac.	57 ac.	38 ac.	6 ac.
Large Site Need 542 ac.	0 ac.	0 ac.	15 ac.	10 ac.	517 ac.
Livability Need	-	-	Newberg SE TP 24 ac.	Newberg SE TP 188 ac.	Newberg SE TP S Industrial Reserve 171 ac.
Remaining Year 2040 Need 1,665 ac.	1,311 ac.	1,046 ac.	950 ac.	714 ac.	20 ac.
URAs Included	<ul style="list-style-type: none"> ▪ North Hills ▪ Klimek Lane ▪ Springbrook South ▪ Wynooksi Rd 	<ul style="list-style-type: none"> ▪ Corral Cr Rd North* ▪ Wilsonville Rd Except. ▪ South* ▪ W 1st St ▪ Canyon Ln ▪ Honey Ln ▪ Hwy 240 ▪ Old Yamhill Hwy 	<ul style="list-style-type: none"> ▪ Wilsonville Rd NW ▪ Corral Cr Rd North* 	<ul style="list-style-type: none"> ▪ Benjamin Rd* ▪ Corral Cr Rd South* 	<ul style="list-style-type: none"> ▪ Wilsonville Rd NE ▪ South* ▪ Chehalem Rd ▪ Cullen Rd ▪ Wilsonville Rd. SE

Source: City of Newberg Planning & Building Dept. 2007
 *These URAs have both exception areas and resource land.
 URA Findings Report, Table 6, p. 30

d) Exclude land above 460 MSL elevation (above which water service determined infeasible)

These steps yield the following amounts of land selected for designation as URA. This breakout shows that the URA is heavily weighted to inclusion of lower priority resource land over higher priority exception land.

1. Include reasonably serviceable land designated in the 1995 URA.	354 buildable acres
2. Include reasonably serviceable exception areas.	265 buildable acres
3. Include intervening resource land.	96 buildable acres
4. Include resource land of lower capability.	236 buildable acres
5. Include resource land of higher capability.	<u>694 buildable acres</u>
Total	1,645 buildable acres

The total of land selected for inclusion in the URA comprises 620 acres (38 percent) of higher priority exception land (including 1995 URA), approximately 1,025 (62 percent) of lower priority resource land.

For the reasons below, the department concludes that the city has not established that the proposed URA designation is consistent with applicable review criteria and cannot be approved. The policy for urban reserves emphasizes the importance and need to avoid urbanizing resource land and instead selecting land for urbanization (URA and UGB) that is already committed to some level of development and planning for more intensive urbanization in future years. The city's Findings Report does not establish how the selections of significantly more lower priority resource land (including some highly productive farmland) over higher priority committed exception land complies with that policy. This outcome is driven by how the city identified land needs for large, flat parcels (farmland) discussed in subsection A of this section, and how the city evaluated the serviceability of higher priority exception land adjacent and near the existing UGB.

Future Urban Services: Reasonably Serviceable Exception Land. Newberg's first step in designating land for inclusion in the URA involved including all land designated as URA in 1995 that had not yet been brought into the UGB. This step captured 354 buildable acres into the proposed URA. The department finds this step is consistent with rule requirements.

The city next identified exception land adjacent to and near the current UGB and evaluated topographic and other physical considerations to determine whether that land could address identified land needs. In evaluating exception areas, the city made two main conclusions: One, all exception lands are unsuitable for meeting the city's large site needs since exception lands are often divided into smaller parcels; and two, 265 acres of exception land can reasonably be provided with urban services and would be designated urban reserve.

The intent of the priority scheme of OAR 660-021-0030(3) is for a local government to include the entire supply of higher priority (exception) land within a URA that can reasonably accommodate its identified need before turning to lower priority resource land. In doing so, a

local government has the ability to apply certain limited exceptions¹¹ to the priority scheme. In this case, Newberg makes extensive use of these exceptions that are not supported by the record and are contrary to the rule.

The following discussion outlines Newberg's conclusion to include lower priority resource land in the URA in place of higher priority exception land as intended by the priority scheme because of the unreasonableness of providing urban services to the higher priority land.

OAR 660-021-0030(4)(a) provides that a local government may "pass over" higher priority land for inclusion in a URA when it determines urban services could not reasonably be provided to due to topographical or other physical constraints. The local government is not obligated to show that it is impossible to provide services, but that it is unreasonable to provide urban services due to topographical or other physical constraints.¹²

While the rule does not specify how a local government is to determine whether it is reasonable to provide urban services to a given area, the criterion clearly is subjective and may allow a local government to establish different elements in different situations to address reasonableness. The department understands the rule generally as follows:

"Future urban services could not reasonably be provided" means that a local government must show that it is not reasonable to provide urban services after analyzing topographical and physical constraints (e.g., slopes, water bodies, roadways) in the context of:

- the relative cost of providing urban services to constrained lands and to alternatives;
- the amount of land constrained (i.e., a high cost may be reasonable for a serving a large area but not a small one); and
- the planning horizon (i.e., what is not unreasonable for a 25-year plan may be reasonable for a 45-year plan).

Local governments must consider these conditions must be considered be in light of the intent of urban reserves to ultimately urbanize land adjacent to existing urban areas, to avoid conversion

¹¹ 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.

¹² The Legislature has defined an urban reserve as land outside a UGB that will provide for *cost-effective public facilities and services when urbanized* [emphasis added]. ORS 195.137:

* * *

(2) "Urban reserve" means lands outside 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.

of resource land to urban uses, and to provide for cost-effective provision of urban public facilities and services.

Newberg’s physical setting influenced how the city applied the priority scheme and the exemption from the priorities. A significant portion of land designated in Newberg’s 1995 URA and exception land surrounding the existing Newberg UGB is hillside land or land separated from the existing urban area by topographic features that the city asserts makes future urban development unlikely. In general, the city did not include land north, northeast, and east of the existing urban area due to the cost of building new water distribution facilities (reservoirs and pump stations), and did not include land southwest of the existing urban area due to a major drainage way that makes connections to the existing urban sewer system costly and impractical. The city also identified the relatively low amount of urbanizable land, or the low yield that such land would bring if included in the city’s urban growth boundary as contributing factors to a decision that higher priority land is not reasonably served. The city’s conclusions are summarized in Table 4.

Table 4. Summary of areas with topographically and physically constrained areas

Study Area	Topographical and Physical Constraints	Reasonably Serviceable Portion
Southwest Area	Largely separated by Chehalem Creek. Would require multiple sewage pump stations and miles of sewer lines, or a new sewage treatment plant in the area. Significant rural residential development already in area. Topographic and physical constraints (e.g., branching creeks and canyons) and significant facilities needed make service unreasonable.	Small areas in West First Street, Canyon Lane, and Honey Lane, and Old Yamhill Hwy. could be served with planned Highway 240 sewage pump station
Northwest (Exception Area)	Areas would require multiple sewage pump stations; significant development in the area. Lack of adequate storm system adds to cost. Significant infrastructure needed to overcome topographic constraints makes service unreasonable.	Highway 240 area could be served by future Highway 240 sewer pump station
North Area	Most of the area would require a second and third high level water reservoir. Area contains some steep slopes and rapid changes in elevation. Sewage service in North A would require multiple pump stations. High parcelization and development in some areas. Overall extensive facility needed to serve small area makes service to higher elevations unreasonable.	None
Northeast Area	Area is in zone 1, 2, 3, and 4 water service levels, requiring multiple reservoirs and pump stations. Area contains significant existing development, which is physical barrier to extending services. Significant infrastructure needed to overcome topographic constraints coupled with very low yield makes service unreasonable.	
East Area (East of Corral Creek Rd.)	Most of the area would require a second and third high level water reservoir. Area contains steep slopes. Sewage service would require multiple pump stations. High parcelization and development in some areas. Overall extensive facilities needed to overcome topographic constraints to serve small area makes service unreasonable.	None.
Southeast Area A (Dog Ridge Road)	Area is separated from sewage treatment plant by Hess Creek. Sewage service would require new pump station. High parcelization and development and limited infill opportunities. Overall extensive facilities needed to overcome topographic constraints to serve small area makes service unreasonable.	None.

(URA Findings Report, Table 4, p. 28)

The city’s approach to using the “reasonably serviceable” exemption to the rule’s priority scheme is best illustrated by the city’s exclusion of higher priority exception land in two URA study areas. The two areas, discussed more fully below, are the most obvious exception areas for

inclusion in a URA because of their proximity to the urban area and relative intensity of development.

The southwest URA study area included approximately 832 buildable acres of exception land of which the city ultimately selected about 60 acres (7 percent) for the URA. The northeast study area included approximately 407 acres (305 acres higher priority exception, 102 acres lower priority resource) of which the city selected 53 acres (13 percent¹³) for the URA.

Southwest study area

The city asserts that because most of the southwest study area is separated from the current UGB by Chehalem Creek, and it is near the same elevation of the city's sewer treatment plant, urban services could not reasonably be provided to the area. The city cited factors contributing to the conclusion that urban services could not reasonably be provided:

- 1) The area is highly parcelized with the median lot size of about two acres;
- 2) Most parcels have existing structures that discourage connecting streets and infill;
- 3) Development in the exception areas is most dense adjacent to the existing UGB, forcing urban services to "leap frog" past existing areas to reach more easily developed outlying tracts;
- 4) Provision of future urban services depends on annexation which is unlikely to be supported by property owners in the exception area.

The city analyzed the cost of providing sewer service to the exception land and concludes that the amount of investment required to construct additional sanitary sewer lines and pump stations is unreasonably high given the perceived yield of new developable urban land in the exception area.

The department concludes that the city has established that the southwest study area is largely separated from the Newberg urban area by a relatively large stream course that poses challenges to providing urban services to the area. Several existing sanitary sewer pump stations move effluent from in and near the area to the city's water treatment plant. The Findings Report determined that urban development of the area clearly would require upgrading of at least the pump stations, if not construction of an additional wastewater treatment plant. Existing parcels served by individual water and septic systems would require conversion to a municipal system; the cost of improvements, however, are unknown, as are the consequences to property owners who have invested in rural levels of service. City staff concluded that financial and political costs of urbanizing the area made the provision of future urban services unreasonable.

Nevertheless, the Findings Report does not establish that the southwest area could not be served with sewer. New pump stations could move effluent to existing and/or upgraded pump

¹³ 48 acres (90%) of the included land is lower priority resource land.

stations.¹⁴ A new wastewater treatment plant serving southwest Newberg and the adjacent city of Dundee could be built, although the city has concluded it would not do so.¹⁵ Options exist to serve the area, but they are costly, potentially controversial, and may only be realized over a long period of time. Based on an extensive discussion of the advantages and disadvantages of providing future urban services to a priority exception area, the city concluded that it was unreasonable to serve the area and instead to focus urbanization on undeveloped farmland.

The department finds that the city's conclusion is inconsistent with the urban reserve rule and does not appropriately evaluate the reasonableness of providing urban services over the next 30-years and is not supported by the record. For the urban reserve study area encompassing a significant amount of higher priority exception land, the department cannot find that the city adequately established that the area in question could not be reasonably served with future urban services. The area encompasses a substantial amount of land already committed to non-resource development. The study area includes a variety of larger parcels that could likely be developed at urban intensities. Analysis in the record is inconclusive about the technical merits of providing service to the area and does not evaluate the long-term feasibility of urbanizing the area. Plans relied upon by the city in reaching its conclusion to exclude higher priority land from the URA are not part of the acknowledged comprehensive plan. Without adequate factual base that establishes that providing future urban services is unreasonable, the priority scheme of the administrative rule directs inclusion of the higher priority exception land in the URA.

Northeast study area

The northeast study area comprises about 75 percent exception land and 25 percent lower priority resource land. The exception land is primarily rural residential development on a hillside above the city. The city determined that steep slopes in the area make provision of future urban services, primarily water service, unreasonable. Similar to conclusions about development of the southwest study area, the city finds that the existing pattern of low-density development will make urbanization very difficult because costly investments in infrastructure likely will not be recaptured on land where the existing land use pattern makes development at urban densities difficult at best, and reasonably unlikely over the foreseeable future given expressed opposition of area landowners.

The department finds that while city's water service plan identifies future reservoirs and distribution for the northern portion of the urban area, that plan has not been adopted as part of the city comprehensive plan and only addresses serviceability through the year 2025. As such, the plan is not an adequate basis to evaluate the reasonableness of providing services to future urban areas out to 2040. Moreover, a significant portion of the study area lies below 460 feet elevation, deemed the limit for providing water service, and thus should be treated as an area where urban services are reasonable. Finally, the Findings Report conclusion that the cost of

¹⁴ In August 2007, city staff reported options for serving the southwest study area concluding that options exist, but would be very costly to the city.

¹⁵ The city has an adopted sewer master plan, although the plan is not part of its comprehensive plan. The plan, not included in the record, does not call for a new wastewater treatment plant in the southwest area.

urban services (including water, sewer and storm drainage) is among the highest of all study areas is not supported by corroborating information to explain the analysis of costs. The department finds and concludes that the city has not demonstrated, consistent with urban reserve policy, that provision of future urban services to the area is unreasonable given that the city's water plan is not an adopted comprehensive plan policy and much of the study area does not possess the serviceability characteristics the city has relied upon to not designate land for inclusion in the URA.

Conclusion: Reasonably Serviceable

The city evaluated approximately 2,225 acres of exception land (in addition to the 1995 URA). From these lands, the city concluded that only 265 acres (12 percent) could be reasonably served with urban services due to topographic or other physical constraints and could thus be included in the 2007 URA. The department finds that the city's conclusions are not supported by analysis in the record and are contrary to the intent of urban reserves policy.

Maximum Efficiency: Intervening Resource Land. In applying the priorities scheme, a local government may include lower priority resource land necessary to include higher priority land.¹⁶ Newberg used this provision to include two areas comprising a total of 96 acres of lower priority land resource in order to include approximately 161 acres of higher priority exception land. The lower priority resource land is among the best farm land evaluated by the city for potential inclusion in the URA; much of the intervening land is composed of capability class I, II, and III soils.

The department finds that the city has not shown why maximum efficiency of land use *requires* lower priority resource land be included to provide services to higher priority exception lands. The city provides conclusions but cites little specific evidence of how it would maximize efficient land use by including high value resource land simply in order to bring in exception land.¹⁷ In this case, the department maintains that because of the very high quality of the resource land in question, the city has an equally high burden to demonstrate why such lands must be considered for the URA. While Newberg has chosen not to designate extensive amounts of exception land as URA elsewhere around the city, it concludes with little explanation that an exception area not contiguous to the existing UGB should be urbanized and necessitates the urbanization of high value resource land to accomplish this. The Findings Report has not established that the conclusion is supportable.

¹⁶ OAR 660-021-0030(4) Land of lower priority under section (3) of this rule may be included if * * * (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.

¹⁷ Without more justification, the city's decision to include lower priority lands appears to contradict the rationale for excluding exception lands in other parts of the city. Map 8 of the Findings Report identifies three potential future pump stations located in the southeast study area. Two future pump stations would be needed to serve an exception area included in the URA by virtue of including lower priority resource land. A third pump station appears necessary to serve an east study area exception area similarly included in the URA by including lower priority resource land. The city's decision does not explain why these proposed pump stations are more justified than upgrading or building new water treatment facilities to serve land of higher urban reserve priority such as the rejected southwest study area.

Overall Location Analysis Conclusion. The department finds that the city has not sufficiently justified its conclusions reached in the location analysis phase of designating a URA. As a result, the city has not properly applied the priorities of OAR 660-021-0030(3).

The city makes a case that including higher priority exception land in the URA is a difficult and costly proposition. Exception land surrounding Newberg, like elsewhere in the state, is extensively parcelized and developed in a manner that makes it clearly less attractive for urbanization compared to flat, undeveloped farmland. The department understands that providing future urban services to these exception areas is less reasonable if the analysis is a narrow examination of what land is merely easiest, least costly, or most convenient to develop. However, the priority scheme for bringing land into a URA is intentionally weighted to avoid development of resource land, particularly valuable farm land. Newberg proposes inclusion of extremely productive agricultural land within the URA. The burden to do so is very high; the department concludes that the city has not met the burden.

Newberg chose not to include a significant amount of higher priority exception land because it concluded future urban services could not reasonably be provided to the areas. While the local record makes it clear that there was extensive community discussion about where to grow the community, the record does not support the city's conclusions to pass over large amount of higher priority exception land and to designate lower priority resource land based on a finding that it is unreasonable to provide future urban services to exception lands. Lacking substantial evidence in the record, the department cannot conclude that the city appropriately applied the requirements of OAR 660-021-0030.

V. RESPONSE TO OBJECTIONS

A. 1000 Friends of Oregon (1000 Friends)

1. In a November 13, 2008 letter, 1000 Friends objects to Newberg's filing of a record supplement. They also object to use of the record supplement in a letter from the city (October 28, 2008) responding to original objections. They claim that several documents in the supplement postdated the city's final action on the URA and that none of the record supplement was available for public review as required by OAR 660-025-0130(3)(b).

Department response: The department sustains the objection in part. In its review, the department concluded that the city has not sufficiently documented its analysis and conclusions about land need and the selection of land for inclusion in the URA. Information in the record supplement was helpful, but not persuasive to the city's case.

The department agrees with the objection that items in the local record not included in the original submittal (record supplement) were not specifically identified to potential objectors for review during the period for submitting objections to the department.

The department disagrees with the objection that some documents in the record supplement postdate the city's final action. The Newberg City Council took action on the URA in October 2007, and in July 2008 readopted a substantially similar proposal following coordination with Yamhill County and revisions to its initial decision.

2. 1000 Friends asserts that the city has understated its existing supply of industrial land and mischaracterized land as unavailable, for example land currently used for outdoor storage or land affected by alignment of the potential Newberg-Dundee bypass.

Department response: The department rejects this objection. The city's inventory of buildable land is reasonably well documented. The department recognizes that post-acknowledgement plan amendments and a UGB amendment completed during the period of time when the city was evaluating land needs for the URA confuse the accounting exercise.

The city's findings do not conclude that outdoor storage is unbuildable, only that the existing supply has some comparative disadvantages. Outdoor storage may not be the highest and best use, but the city is reasonable in its assumptions about existing lands and potential future needs.

Regarding questions related to the Newberg-Dundee bypass, the city may rely on its comprehensive plan for identifying the potential facility when planning future land needs. Yamhill County has taken goal exceptions for the future corridor; it is a planned land use in the city and county plans.¹⁸

3. 1000 Friends asserts that the URA includes an overestimated need for industrial land that is unjustified. 1000 Friends asserts that the city has adopted an employment forecast based on a high employment growth scenario into the future and additional land based on an economic opportunities analysis that is only relevant for a 20-year planning period.

Department response: The department agrees in part with this analysis. We disagree that OAR chapter 660, division 9 precludes a local government from identifying target industry land needs for a planning period beyond the 20-year horizon required for a UGB.

For the reasons explained above, the department has concluded that Newberg has not justified a specific future industrial land need that can only be satisfied on large, flat parcels included in the URA. The city's analysis of economic opportunities falls short of the requirements for an EOA contemplated by the Goal 9 rule and thus does not provide sufficient justification for the amount or type of employment lands the city asserts are needed and subsequently identified for inclusion in the URA.

4. There is not an adequate factual basis to support the amount of public and semi-public land included in the URA.

¹⁸ Two related issues about the bypass. (1) The bypass is NOT a planned facility for purpose of identifying transportation facilities or transportation system capacity to support future land uses. (2) The city's findings are unclear whether the amount of land affected by the bypass represents land associated with the corridor identified in the federal draft environmental impact statement (DEIS) or if the amount represents land associated with the actual facility alignment right-of-way, an amount that could be significantly less.

Department response: The department sustains this objection. As noted above, the department concludes that the city has not sufficiently justified a specific land need for institutional land uses that can only be satisfied by large parcels in the URA. A local government must work with appropriate service providers such as park and school districts to estimate future land needs, and the local governments have some discretion about the standards they employ to estimate future land need. However, there must be a basis for conclusions about land need. The department concludes that the city did not provide a sufficient rationale for its identification of land need that can only be satisfied through inclusion of large parcels in the URA.

5. There is not an adequate factual basis to support the commercial land need that forms the basis for the URA.

Department response: The department sustains this objection. As noted above, the department concludes that the city has not sufficiently justified a specific land need for shopping center land that can only be satisfied by large parcels in the proposed URA.

6. 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

1000 Friends argues that while ORS 197.298(3)(a) provides an exemption to the priority scheme for inclusion of land in a UGB based on a specific land need, no such exemption exists for designating a URA. 1000 Friends asserts that there is therefore no legal basis for a city to include land in a URA based on a specific land need as Newberg proposes.

Department response: The department rejects this objection. While the department agrees that the Findings Report has not established a “specific types of identified land needs” as that term is used in ORS 197.298(3)(a), under the priority scheme for selecting urban reserve land, a local government may consider a defined need such as large parcels for industrial development. That is because inclusion of land within an urban reserve must be based in part on a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land. Assuming that a local government establishes an identified need and demonstrates that no reasonable alternative will meet the need, it may meet the identified need on resource lands. To be clear, the Findings Report is not adequate to establish a need for large, flat parcels. The department interprets OAR 660-021-0030 to allow a local government to consider the site needs of urban uses to be accommodated by an urban reserve. Nevertheless, the department has concluded that Newberg did not justify a specific land need for large parcels or to meet a livability need and therefore cannot attempt to accommodate the need through selection of certain lands for inclusion in the URA.

b. Improper application of criteria

1000 Friends asserts that the city inappropriately applied the priority scheme when analyzing land in URA study areas. They cite specific aspects of the city’s decision related to individual

study areas or exception areas that they believe are not supported by the city's analysis and conclusions. 1000 Friends asserts that the city's conclusions that urban services cannot reasonably be provided is not supported and that the city should have included most, if not all higher priority exception land rather than lower priority resource land.

Department response: The department has concluded that the city has not adequately justified its conclusions that exception lands should not be included in the URA based on the reasonableness of providing urban services or the need to maximize efficiency of land uses in the URA. Therefore, the department sustains the objection.

B. Grace Schaad and Lee M. and Amy L. Does

Ms. Schaad's objection states that the city has not addressed the issue of the orderly provision of services, specifically the issue of adequate transportation facilities in the areas identified as Corral Creek Road north, Corral Creek Road south and Wilsonville Road northeast.

The Does' objection contends Newberg failed to recognize and provide solutions for anticipated urban-level traffic flows within the proposed URA, particularly within those areas identified as Corral Creek North and Corral Creek South.

Department Response: Until such time as the city expands the Newberg UGB, land included in the URA is not "urban," nor are urban levels of development or urban public facilities/services permitted. The objectors' opinions notwithstanding, the department finds that the city has undertaken long-range transportation planning for the southeast URA in the form of the Southeast Transportation Plan (yet to be adopted). Moreover, the city has comprehensive plan policies directing transportation planning for the area as it urbanizes, and the city is obligated by state law to plan for urban services and facilities when it brings land into the UGB. The objectors cite no legal requirement obligating the city to undertake such planning at the time of designating the URA.

The department rejects these objections.

C. Mike and Cathy Stuhr

This objection states the city failed to include sufficient land supply to meet the stated 2040 land needs. The objectors note that while the city identified a need for 1,665 acres of buildable land, the amount of land proposed for the URA is something less than this amount, i.e., 1,645 acres (Findings Report, page 20 & page 30).

Department Response: The department agrees that there are relatively minor discrepancies reported in the city's findings. A local government must adopt findings specifying the number of years over which a URA is intended to provide a supply of land. The city has done so. It proposed a URA for roughly 15-year supply of buildable land beyond the 20-year supply in the UGB. The city is planning consistent with the requirement to address land needs for between 10 and 30 years beyond the planning horizon for the UGB.

VI. CONCLUSION & DECISION

The department concludes that Newberg has not justified the designation of urban reserves it determined were needed to accommodate future growth through the year 2040. The department finds that the city's decisions do not comply with OAR chapter 660, division 21, on two key steps: 1) identification of need; and 2) application of the priorities for selecting land for the urban reserve area.

The department finds that the city erred in identifying specific land needs for large, flat parcels that could only be accommodated by including lower priority resource land in the urban reserve. The city provided insufficient justification of a specific large parcel need for industrial, commercial, and institutional uses. The department also finds that the city's designation of a specific "livability" need for large, flat parcels of resource land as urban reserves is inconsistent with Goal 14. The errors in defining need were significant, and made correct selection of land that meets the priority scheme for selecting urban reserve areas nearly impossible.

The department finds that the city's determination of land need led to selection of lower priority resource land as the only means to meet the identified need and, therefore, the proposed urban reserve area does not comply with OAR 660-021-0030. The department further finds that the city's proposed exceptions to the priorities for selecting urban reserves lack an adequate factual base necessary to demonstrate that lower priority resource land must be included in the urban reserve before higher priority (exception) land.

The City of Newberg's decision designating urban reserve areas is remanded.