



Oregon

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January 23, 2014

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Angela Lazarean, Mid-Willamette Valley Regional Representative
Rob Hallyburton, Community Services Division Manager

SUBJECT: Agenda Item 4, February 13-14, 2014, LCDC Meeting

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

The matter before the Land Conservation and Development Commission (LCDC or commission) is Newberg's amendment to its urban growth boundary (UGB) to accommodate industrial land needs. The submittal before the commission includes:

- A determination of the employment the region is expected to support in 2032;
- Analysis, findings, and conclusions regarding how much employment growth the region can accommodate within the existing UGB;
- Determination of the amount of additional land needed to be added to the UGB; and
- Analysis, findings, and conclusions regarding the appropriate locations for a UGB expansion.

This UGB amendment is reviewed by LCDC "in the manner provided for review of a [periodic review] work task" pursuant to ORS 197.626 and OAR 660-025-0175. This item is before the commission as a referral from the director of the Department of Land Conservation and Development (DLCD or department). This is a review on the record submitted by Newberg. The department's report responds to the submittal and the objections, and recommends what action to take in response to DLCD's analysis and the objections.

The commission may do one or more of the following:

- Approve the submittal;
- Remand the submittal, or a portion of the submittal; or
- Require specific plan or land use regulation revisions to be completed by a specific date.

B. Staff Contact Information

If you have questions about this agenda item, please contact Angela Lazarean, Mid-Willamette Valley Regional Representative, at (503) 934-0056 or angela.lazarean@state.or.us.

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II. SUMMARY OF RECOMMENDED ACTION

For the reasons described in its report, the department recommends LCDC remand the submittal under consideration. The department recommends the commission instruct the city, on remand, to:

1. Demonstrate that the following “site characteristics” identified by the city pursuant to OAR 660-009-0015(2) and OAR 660-024-0060(5) are meaningfully connected with the operation of a target industry or a group of target industries with compatible operational requirements or consider the site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors:

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

Exclude sites that, for community centers, abut residential neighborhood on more than 50 percent of the site perimeter unless effective topographical or road buffers are present or planned.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within one-quarter mile.

Exclude [study areas] that are not predominantly less than 5 percent slope within buildable areas.

2. Explain how the determination of the capacity of the existing UGB to accommodate employment growth considered employment growth on fully developed land.
3. Clarify that the Zimri Road area (Site VI¹) is not adjacent to commercially zoned land, and provide adequate justification as to why this site cannot reasonably accommodate industrial uses, or consider it in the Goal 14 analysis of alternative locations to accommodate industrial land needs under OAR 660-024-0050(4).
4. Adequately justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) is unsuitable for industrial use or consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
5. Adequately justify why Sites 8 and 9 (Newberg-Dundee corridor) are unsuitable for industrial use or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
6. Consider the Waste Management site vacant in the employment land inventory.
7. Supplement the analysis of alternative expansion areas with an adequate factual base to demonstrate the Goal 14 location factors have been considered and balanced.

The department's analysis and reasoning regarding each of these recommendations is discussed in more detail in Chapter VI, Department Response to Objections.

III. BACKGROUND

The city of Newberg is in Yamhill County and had a population in 2010 of 22,068. As explained in the EOA, the city has a strong industrial base with 60 percent more than the national average of its workforce in manufacturing.

¹ The city has labeled potential sites within the existing UGB by roman numerals and those study areas outside the existing UGB by Arabic numerals.

Newberg's economy is based on manufacturing, health care, education, tourism, agriculture, and retail. As the city with the second-largest population in Yamhill County, it serves as the commerce center for the eastern portion of the county's primarily agricultural economy.

In 1995, the city and county jointly established Oregon's first urban reserve. The urban reserve contained 750 acres, which was estimated to accommodate growth through 2020.

In 2003, the Newberg city council formed the Ad Hoc Committee on Newberg's Future. The committee was charged with making recommendations on comprehensive plan updates. The committee felt strongly that the city needed to expand its industrial base so that existing and future residents could work where they live.

The city undertook implementation of the Ad Hoc Committee's recommendations and amended its comprehensive plan. In 2008, the city and county approved an amendment to the urban reserve. LCDC remanded the amendment because the land need included in the urban reserve was too specific. Urban reserves are intended to accommodate generalized land need beyond the 20-year UGB, not to satisfy a need for a specific type of need such as employment land.

In 2010, Newberg adopted amendments to its 2006 Economic Opportunities Analysis (EOA) to address issues raised during the review of the urban reserve, and to update the EOA with current information. The EOA was appealed to LUBA, and it was remanded on several points. The Court of Appeals affirmed LUBA's decision. The city updated the EOA and included it as part of the UGB amendment submittal.

A. Description of the Decision

The city adopted a population forecast of 36,610 residents in 2032 that has been coordinated with Yamhill County. The jurisdictions adopted: an updated EOA; amendments to the Newberg Comprehensive Plan text and the transportation system plan; and changes to the comprehensive plan map by re-designating land inside the existing UGB, amending the UGB, and assigning urban designations to the UGB expansion areas.

Newberg identified a need for a UGB expansion by completing an EOA update. The EOA identified Newberg's economic patterns, forecasts, comparative advantages and disadvantages (strengths and deficiencies); provisions for an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies; and compatibility requirements that limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses. The Newberg Comprehensive Plan contains policies concerning the economic development opportunities in the community.

Newberg's updated EOA estimated the number of sites and acres of buildable industrial land the city will need through 2032, including a determination of site sizes and site characteristics needed. The EOA identified land needs by first determining future industrial employment projections. Second, the EOA projected the proportion of future industrial firms in various small, medium, and large employment and site-size categories. Third, the EOA allocates the future

employment to the various firm and site-size categories, and thus determines the total amount of buildable industrial land needed for the planning period. Finally, the EOA inventories buildable industrial land currently inside the UGB, and thus shows the unmet need for industrial land. Newberg has identified specific site characteristics in its EOA and limited its analysis to land that had those characteristics.

The revised EOA includes a discussion of Newberg’s comparative advantages and disadvantages related to the regional economic marketplace. Newberg has identified four business clusters that are the foundation of its economy and that economic development efforts will be focused on, including: manufacturing and industry, health care, higher education, and the wine/tourism. In addition, it identifies “target industries” that can reasonably be attracted to the city. The target industries are shown in the following table (Table 2 in the adopted findings, Rec. at 5717, and Table 12-18 in the EOA, Rec. at 5859):

Table 1. Newberg Targeted Industries

Business Cluster	Targeted Business Types
Manufacturing and Industry	
High Tech Manufacturing	Semiconductors/silicon, imaging & display technology
	Nano & micro technology, cyber-security, health/medical information technology
	Biotech/bioscience (medical devices, bioinformatics, pharmaceuticals, genomics, anti-virals)
General Manufacturing	Dental equipment
	Metals, machinery, transportation equipment
	Lumber and wood products (value added)
	Sustainable industries (renewable energy, resource efficiency technologies, sustainable building materials, green chemistry)
	Distribution & logistics
	Sports apparel/recreation-related products
Aviation Related	Specialty aircraft equipment, aircraft repair, machine shops, small entrepreneur business
Agriculture	Wineries
	Specialty foods and food processing
	Nursery and agricultural products (value added)
Services	Professional services architecture, engineering, legal and financial services, etc.
	Creative services (advertising, public relations, film and video, web/internet content and design)
Health Care	
	Providence Medical Center Expansion, medical offices, senior services
Higher Education	
	Portland Community College campus, George Fox University expansion, high school vocational training and college preparedness, private post-secondary training
Wine/Tourism	
	Wineries and tasting rooms, restaurants, art studios, theater and entertainment, recreation (golf, bowling), conference facilities, specialty retail

The inventories of industrial and “other employment” lands in the revised EOA indicate a shortage of land for both types of uses. The city has chosen not to address its non-industrial land need at this time.

As part of its overall supply of buildable land, Newberg needs to have sites available to meet the specific needs of industries expected to locate there. Newberg found that economic trends show that just over half (55 percent) of Newberg’s future industrial employment will be located on sites of 10 acres or less. One-third of those new industrial firms that need sites less than 10 acres are expected to find a site through infill, redevelopment, or intensification of existing industrial uses. The city found that the remainder of future industrial employment will require sites over 10 acres outside of the current UGB.

Newberg calculated that it will need to include 131 additional buildable industrial acres and at least three buildable acres of public land within the UGB, for a total need of 134 buildable acres. The city addressed one acre of this need by re-designating land along Adolf Road from Medium Density Residential to Industrial. The city found that remaining land need could only be satisfied by expanding the UGB by 133 gross buildable industrial acres to include:

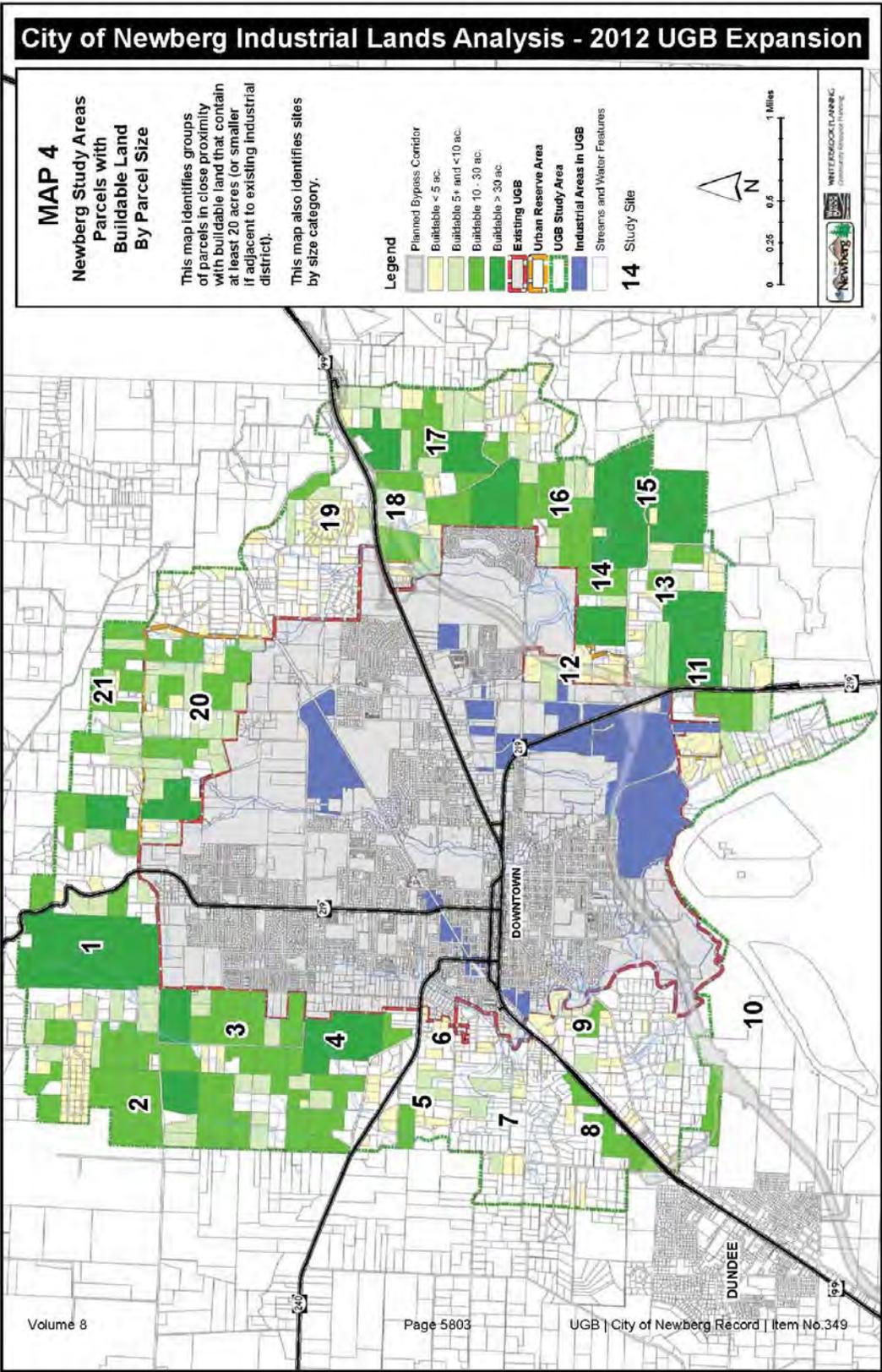
- One 30- to 50-acre site
- One 10- to 30-acre site
- Industrial park sites totaling approximately 70 gross buildable acres, and
- Three gross buildable acres of public land

To determine the location of the UGB amendment, the city used the following steps to comply with the priorities for adding land to a UGB found in ORS 197.298:

1. Inventory land adjacent to and in the vicinity of the UGB that meets the identified site suitability characteristics.
2. Determine whether any suitable land that meets the specified site characteristics exists within first-priority urban reserve area land, and if so, include that land in the UGB.
3. If there is not sufficient suitable urban reserve land to meet the identified need, then determine whether any suitable land exists within second-priority exception areas. If so, also include that land in the UGB.
4. If sufficient suitable exception land cannot be included in the UGB, then include suitable land within fourth-priority farm and forest resource land.
5. At the priority stage that has more suitable land than needed to meet the identified need, the local government must apply the Goal 14 Location Factors, and determine which land of that priority best meets those factors, and then include that land.

The city’s analysis of study areas found lands that met the required site characteristics only outside the UGB and designated exclusive farm use. The study areas are shown in Figure 1. The city and county adopted a 260-acre UGB amendment (a location known locally as the South Industrial Area) intended to meet Newberg’s industrial land needs to 2032. See Figure 1 for map of the area added to the UGB.

Figure 1. UGB expansion study areas.



The city expanded its UGB to include the following:

- 132 buildable acres (260 total acres). Of the 132 buildable acres, 129 buildable acres received a comprehensive plan designation of Industrial (IND), and three buildable acres were designated Public/Quasi-Public (PQ).
- Re-designation of one gross buildable acre (seven total acres) of land already in the UGB from Medium Density Residential (MDR) to Industrial (IND).

This UGB expansion proposes to meet the city’s long-term employment needs as well as a small portion of its public facility needs.

Table 2 below identifies the specific site characteristics that the city found are required for future industrial uses (Table 6 from the adopted findings, Rec. at 5728, and Table 12-23 from the EOA, Rec. at 5869). The city defined these characteristics and used them in screening sites for deciding which lands within the UGB are suitable for targeted industries and which areas outside the UGB are suitable to be brought in.

Table 2. Required Industrial Site Suitability Characteristics

Required Site Characteristic	Description
Site Size	<ul style="list-style-type: none"> • Inventory to include a sufficient number of sites within each site category to meet identified needs (<2 buildable acres, 2 to 10 buildable acres, 10 to 30 buildable acres, and 30 to SO buildable acres). • Site contains a parcel or group of parcels in close proximity with buildable land that contains at least 20 buildable or industrially developed acres (or smaller if adjacent to existing industrial district).
Topography	Exclude: <ul style="list-style-type: none"> • Slopes of 10% or greater, • Sites that are not predominantly less than 5% slope within buildable areas, and • Areas within stream corridors and wetlands.
Proximity	Include parcels or contiguous group of parcels: <ul style="list-style-type: none"> • Within, or adjacent to existing UGB, or as part of group of parcels in the vicinity of the UGB that immediately could be added to the UGB. • Adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district. • That have suitable truck access to a state highway or arterial street within 1/4 mile.
Compatibility	Exclude sites that: <ul style="list-style-type: none"> • Abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park. • Require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

B. Major Legal and Policy Issues

A number of matters related to interpretation and implementation of the statewide planning goals, the administrative rules that implement the goals, and land use statutes have been raised by objectors to Newberg's UGB submittal. Each objection is addressed in detail in Chapter VI of this report. Major issues are addressed in Chapter V, Department Analysis, discussing the precedents and the interpretations the department used in review of the objections.

The major issues in this case, as with any UGB amendment, concern whether the city and county adequately demonstrated a need for additional land within the UGB and whether they selected the proper areas for expansion. Central issues revolve around the city's use of "site characteristics" needed for potential locations to be suitable for employment uses. As explained in more detail in subsequent sections, a city is permitted to remove land from consideration when the city demonstrates that the land does not have the attributes (i.e., "site characteristics") that make it suitable for expected uses. *See* OAR 660-024-0060(5). Several issues have been raised regarding how Newberg established and used site characteristics to determine whether land is suitable for targeted industrial uses. The issue of site characteristics is discussed in more detail in Section V.A of this report.

Objectors have raised other issues related to assessment of need for urban land, and the studies that demonstrate the need. Several objections question the assumptions and methods Newberg employed when it completed the inventory of employment land within the existing UGB. These objections generally do not raise significant policy issues, but rather question application of existing policy to the facts of this case. One objection, however, questions the city's decision to assign no employment growth to existing buildings. The department has not previously encountered this issue, at least under the current set of regulations.

Once a city has demonstrated a need to include additional land within the boundary, its next step is to assess the land that is suitable for expected uses, using the priority of land to include in the boundary contained in ORS 197.298 and then assessing remaining alternatives using the location factors in Goal 14. There are objections to the city's findings and conclusions under these criteria related to whether the city used accurate information and provided adequate findings. These objections do not raise significant new policy issues, but rather question application of existing policy to the facts of this case.

IV. REVIEW CRITERIA, PROCESS & RECORD

A. Decision-making Criteria

The criteria applicable to the amendment of a UGB are found in a number of statutes, goals, and rules. These provisions provide the basis for the department's review in Chapter V.

1. Goals

Statewide Planning [Goal 14](#) is: "To provide for an orderly and efficient transition from rural to urban land use." This goal requires cities to have a UGB to separate urban and urbanizable land

from rural land and provide an orderly transition from rural to urban use. Amendment of a UGB is based on consideration of the following criteria for need under Goal 14:

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).

Four boundary location factors in Goal 14 are used in considering which land gets included in the boundary (in conjunction with [ORS 197.298](#), discussed in subsection 3 of this section):

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.

2. Administrative Rules

[OAR chapter 660, division 24](#) guides application of Goal 14. There rules explain requirements for forecasting population growth, determining land need, inventorying available land, responding to a deficiency of land in the existing UGB, and analyzing boundary location alternatives.

[OAR chapter 660, division 9](#) guides application of Goal 9. This rule explains the requirements for completing an EOA to determine the city's employment need, inventorying employment land, establishing comprehensive plan policies for stating the economic development objectives for the city, and designating industrial and other employment land.

3. Statutes

Once land need has been established, determining where to expand the boundary is directed by the priority of lands in ORS 197.298 (along with boundary location factors in Goal 14, discussed in subsection 1 of this section). The priorities, in order, are:

1. Lands designated as an urban reserve;
2. "Nonresource" lands or "exception" lands which have rural residential or other development;
3. "Marginal lands" designated pursuant to ORS 197.247 [not applicable in Yamhill County];
4. Lower quality farmlands; and
5. Higher quality farmlands.

[ORS 197.712](#) essentially provides a policy and regulatory framework that are carried out in Goal 9 and OAR chapter 660, division 9. The statute does not provide substantive review criteria relevant to the commission's review.

[ORS 197.010\(2\)\(a\)](#) provides legislative land use policy, including these overarching principals:

1. Provide a healthy environment;
2. Sustain a prosperous economy;
3. Ensure a desirable quality of life; and
4. Equitably allocate the benefits and burdens of land use planning.

The statute goes on to provide that the overarching principles provide “guidance” to a public body, such as Newberg, when the public body adopts or interprets goals, comprehensive plans and land use regulations implementing the plans, or administrative rules implementing a provision of statute; or interprets a law governing land use. The statute does not provide substantive review criteria relevant to the commission’s review.

B. Procedural Requirements and Validity of Objections

The process for state review of Newberg’s UGB submittals is governed by [OAR chapter 660, division 25](#). These rules provide timelines for action by interested parties and DLCD. Parties wishing to object to the contents of the submittal must do so within 21 days. OAR 660-025-0140(2).

The director of DLCD has 120 days from the date of submittal to make a decision (OAR 660-025-0150(1)). The director may approve the submittal, remand it, or refer the matter to the Land Conservation and Development Commission (LCDC). In order to expedite final review by the commission, the director decided to refer the Newberg UGB submittal to the commission..

Hearings before the commission are guided by OAR 660-025-0085. In this case, OAR 660-025-0085(5)(c) provides that oral argument is allowed from Newberg, an affected local government, and those who filed one or more valid objections. Newberg may provide general information on the task submittal and address those issues raised in the department review and objections. Persons who submitted objections may address only those issues raised in their objections. OAR 660-025-0085(5)(f). The commission may take official notice of certain laws, as specified in OAR 660-025-0085(5)(h). Otherwise, the commission is limited to the information, evidence and argument in the record. OAR 660-025-0160(2).

OAR 660-025-0160(7) provides that, in response to a referral, the commission must issue an order that does *one or more* of the following:

- (a) Approves the [submittal];
- (b) Remands the [submittal] to the local government, including a date for re-submittal; [or]
- (c) Requires specific plan or land use regulation revisions to be completed by a specific date[.]

OAR 660-025-0140(2) provides that in order for an objection to be valid, it must:

- (a) Be in writing and filed no later than 21 days from the date Newberg mailed the notice;

- (b) Clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated;
- (c) Suggest specific revisions that would resolve the objection; and
- (d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

The department received six letters of objection to Newberg's UGB submittal. The department analyzed the validity of each objection. The department found that all objections satisfy the requirements of OAR 660-025-0140(2) and are valid. The objection letters are available in Attachment A and at http://www.oregon.gov/LCD/Pages/newberg_ugb.aspx. The department's analysis of the objections is provided in Chapter VI.

C. The Written Record for This Proceeding

1. This DLCD staff report including responses to objections.
2. Newberg correspondence, pursuant to OAR 660-025-0130(4)(a), identifying material in the record responsive to objections, dated September 30, 2013.
3. Newberg [Ordinance No. 2013-2761](#), including the exhibits thereto, listed as follows:

Exhibit A: City of Newberg Industrial UGB Expansion and Comprehensive Plan Map Amendment Report and Findings

Appendix A: Newberg Economic Opportunities Analysis (2013)

Appendix B: Comprehensive Plan Text Amendments

Appendix C: Economic Opportunities Analysis and Comprehensive Plan Text Amendment Findings

Appendix D: Yamhill County Coordinated Population Forecast (Excerpt)

Appendix E: Newberg Water Treatment Plant Needs Information

Appendix F: ODOT Build Alternative and Design Options – West Newberg to Hwy 219 Interchange

Appendix G: Newberg South Industrial Area Master Plan – Transportation Plan

Appendix H: Marion County Rural Transportation System Plan Figure 7-1, Strategic Intra/Inter-County Corridors

Appendix I: Site Photos

Appendix J: DLCD Notices of Proposed Amendment

Appendix K: Typical Characteristics of Industrial Sites For Newberg Targeted Industrial Uses

4. The remainder of Newberg's submittal, available at http://www.oregon.gov/LCD/Pages/newberg_ugb.aspx.
5. Yamhill County Ordinance No. 882, including the exhibits thereto.

6. Objections. The department received letters of objection to the submittal from Kathleen Carl, Shirley Cooper, Lee M. Does, Friends of Yamhill County and 1000 Friends of Oregon, Ranee Salmonsson, and Grace Schaad. The validity of the objections is addressed in Section IV.B, Procedural Requirements and Validity of Objections.

The objections are available in Attachment A and on the department website at:
http://www.oregon.gov/LCD/Pages/newberg_ugb.aspx.

7. Any valid exception to this report and response from the department.

V. DEPARTMENT ANALYSIS

A. Goal 9 Site Characteristics

1. Site Characteristics Generally

Several of the statewide planning goals recognize that certain land is unsuitable for particular uses. Goal 9, Economic Development, provides “plans shall be based on inventories of areas *suitable* for increased economic growth and activity,” and for plans to “provide for at least an adequate supply of sites of *suitable* sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies.” (Emphasis added.) Regarding UGB reviews, Goal 14 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.”

The administrative rules carrying out Goal 9 use “site characteristics” as a vehicle to focus a local government’s attention on sites that are suitable for intended employment uses. The relevant rule sections include the following.

OAR 660-009-0015(2): The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses. . . . Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories.

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

Site characteristics are used to establish which sites inside a current UGB are suitable for expected employment growth when a city is establishing or updating its EOA. The EOA may or may not subsequently be used for review of whether the UGB contains an adequate supply of

employment land. That is, a city may use the EOA to inform decisions related to planning for economic development within the UGB.

The administrative rules guiding UGB review also recognize that analysis of unsuitable land serves no purpose and permits a local government to exclude certain land early in the analysis. The UGB rule references the work a city has done under specific goals, in this case Goal 9. The rule provides:

OAR 660-024-0060(5): If a local government has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, the local government may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.

The effect of OAR 660-024-0060(5) is to exclude certain land from further analysis for compliance with the priorities in ORS 197.298 and for consideration under the Goal 14 location factors. The city may limit these analyses to those sites with characteristics making them suitable to accommodate employment needs. *See* Section IV.A, Decision-making Criteria, for the content of ORS 197.298 and Goal 14.

Several parties objected to how Newberg implemented these provisions. The commission is asked to determine the proper interpretation and use of these rules. A general discussion is provided here while the specific objections are addressed in Chapter VI of this report.

Defining site characteristics is important for a city's economic development planning efforts because it focuses the analysis not just on the number of acres or sites needed to accommodate expected employment uses, but also whether the sites are likely to be a place those employment uses would be able to operate. Site characteristics are defined during the analysis of *need* for employment land because a city that chooses to target specific industries should consider whether it needs sites with specific characteristics.

The rules that implement Goal 9 quoted above refer to site characteristics "typical of expected uses" and define the term as attributes "necessary for a particular industrial or other employment use to operate." These provisions were central in opinions by the Land Use Board of Appeals and Court of Appeals, particularly related to the term "necessary."² The LUBA opinion states:

[W]e believe that site characteristics are properly viewed as attributes that are (1) typical of the industrial or employment use and (2) have some meaningful connection with the operation of the industrial or employment use. If the record demonstrates that an attribute is both typical and has some meaningful connection with the operational requirements of the industrial or employment use, we believe OAR 660-009-0005(11) and 660-009-0015(2) would permit the city to list it as a

² *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010) *aff'd* [240 Or App 738](#) (2011). Note that the electronic links are to the slip opinions.

site characteristic. *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5, 19 (2010).

The Court of Appeals affirmed LUBA's opinion, holding that "necessary" site characteristics "are those attributes that are reasonably necessary to the successful operation of particular industrial or employment uses, in the sense that they bear some important relationship to that operation." *Friends of Yamhill County v. City of Newberg*, 240 Or App 738, 747 (2011). The court appears to view LUBA's interpretation of "necessary" and its own as equivalent. The department's review of objections to the city's use of site characteristics utilizes this LUBA opinion.

2. "Particular Use"

Another part of the definition of "site characteristic" not specifically at issue in the LUBA appeal has been raised in objections to the UGB amendment. The objections relate to the clause, "attributes of a site necessary for a particular industrial or other employment use to operate." The policy issue before the commission concerns how closely connected site characteristics must be to a "particular" employment use or group of uses with compatible site needs.

The question more specifically before the commission concerns whether site characteristics may include attributes of an industrial *district* within which industries typically locate, as opposed to those uses that locate within the district. LUBA's two-pronged test requiring demonstration that attributes are "typical of" and "meaningfully connected to" an employment use is relevant to these objections. In its review of objections, the department interprets the administrative rules to require a city to demonstrate that site characteristics describe operational needs of particular employment uses or groups of uses with similar operational needs. The department finds that the term "particular" should be interpreted in a way that allows a city a reasonable and practical path to compliance with the rules while addressing its economic development needs. At the same time, it cannot be construed so broadly that it renders the term "particular" moot.

For example, requiring a city to determine, with substantial evidence, precise operational and siting needs for semiconductor manufacturing, medical device manufacturing, and nano & micro technology manufacturing separately is not practical or reasonable. On the other hand, "manufacturing" is so broad and encompasses so many different "particular uses" that implementing site characteristics at this level would likely not establish an adequate basis for rule compliance, much less address the practical needs of the city. In this example, "high tech manufacturing" could be the appropriate level of aggregation that is still specific enough to be a "particular use." A city could choose to be more specific if its needs dictated it. The site characteristics that define the operational needs of a use could be more detailed when a city defines its needs more specifically.

The result of this analysis would be that the site characteristics a city uses in its employment land need determination and UGB location analysis derive from and are tailored for each employment use, or group of similar uses, the city has determined it will need to accommodate. Conversely, this interpretation would not permit the analysis to focus solely on typical attributes of industrial

districts or parks or on site characteristics not related to the operational needs of particular employment uses.

3. Site Characteristic vs. Goal 14 Location Factors

An objector has raised a concern that the city has improperly used Goal 14 boundary location factors³ as site characteristics. If a particular attribute of land is a valid site characteristic, that land may be removed as a potential UGB expansion area (and notably is not subject to the priorities of land for inclusion in ORS 197.298). Boundary location factors, on the other hand, are “considered” and “balanced” when analyzing alternative areas for UGB expansion and therefore a city is not required to show “compliance” with individual factors.

The issue in the Newberg case revolves around whether a city removed land from consideration at the beginning of the UGB analysis based on factors that should be “considerations” at the end of the analysis. For example, the city removed study areas from consideration for UGB expansion if the area abuts residential neighborhoods on more than 25 percent of the site perimeter unless effective topographical buffers are present; an objector contends this circumstance does not render an area unsuitable for industrial use and therefore should not disqualify the area. The residential compatibility criterion should instead be employed, the objector contends, during consideration of all alternative expansion areas under the Goal 14 location factors (factor 3, “social consequences”). This is important in this case because several study areas that were removed from consideration early in the process are land that would be higher priority under ORS 197.298 than the farmland that was eventually included in the UGB.

See subsection V.A.1, above, for a discussion of LUBA’s two-pronged test for determining the validity of a site characteristic. The department concludes that a valid site characteristic may be used by a city to exclude land from application of the priorities in ORS 197.298 and consideration of the Goal 14 location factors even if that site characteristic is similar to a location factor.

B. Other Provisions

OAR 660-009-0015(1) requires an EOA to “identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends” and states, “This review of trends is the principal basis for estimating future industrial and other employment uses. . .” The submitted EOA contains this information. Rec. at 5821-5842. The department did not receive any objections to the EOA on the basis of alleged failure to comply with this section of the rule. The department finds that the EOA includes the required data and information.

OAR 660-009-0015(4) provides: “The economic opportunities analysis must estimate the types and amounts of industrial and other employment uses likely to occur in the planning area.” The

³ The Goal 14 boundary location factors are: (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.

Newberg EOA includes this analysis, including an employment forecast based on expected share of regional employment growth, assessment of comparative advantages and disadvantages the city possesses. Rec. at 5842-5854. The department finds the EOA includes the proper data, information, and evaluation of employment uses likely to occur and no objections alleged a failure of compliance with this rule.

ORS 197.298 sets forth priorities of land to be evaluated for inclusion in a UGB should a need be demonstrated. The steps Newberg employed to comply with this statute are provided in Section III.A of this report. The department received several objections that asserted the submittal does not comply with this statute. In each case, the objector contends that the city did not include the correct lands in the evaluation because of inappropriate site characteristics, resulting in lower-priority lands being included on the boundary over suitable lands of a higher priority. None of the objections asserts the city employed the statute incorrectly with regards to the *process* it used to evaluate alternative areas for expansion of the boundary. The department finds that the city's method for evaluating areas under ORS 197.298 complies with the requirements of the statute.

The department has not identified any compliance issues that are not raised by objections. See Chapter VI for the department's responses to objections.

VI. DEPARTMENT RESPONSE TO OBJECTIONS

A. 1000 Friends of Oregon and Friends of Yamhill County

The department received a letter signed by representatives of 1000 Friends of Oregon and Friends of Yamhill County (Friends). The letter is included in Attachment A. The letter contains seven objections, some of which include multiple parts. The objector requests a remand on a variety of grounds.

1. Objection 1: Site Characteristics

This objection relates to Goal 9 and Goal 14 and the applicability of "site characteristics" for eliminating land from analysis under the location factors in Goal 14. The objection contends that Newberg has adopted "site characteristics" that lack an adequate factual base, are internally inconsistent, and fail to distinguish and keep separate the site characteristics and Goal 14 location factors. The objection contends the adopted analysis uses overly prescriptive site characteristics that underestimate capacity within the existing UGB to meet the needs of targeted industries and improperly remove land in higher-priority areas outside the UGB from consideration. The objection asserts the submittal violates OAR 660-009-0015(2), OAR 660-024-0060(3), and other statutes, goals, and rules. The objection includes six sub-objections each specifying one or more particular site characteristics alleged to have been improperly applied. Friends objection at 3.

Department analysis. The site characteristics employed in the UGB analysis are displayed in Table 2 in Section III.A of this report. See also the department's description and analysis of site

characteristics in subsection IV.A.1 of this report. This objection addresses whether the city properly applied rule requirements related to the following administrative rules:

OAR 660-024-0060(5): If a local government has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, the local government may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.

OAR 660-009-0015(2): The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses. . . . Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories.

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

The submittal includes findings and discussion on site characteristics (Rec. at 5915-5918) and information on the applicability of the site characteristics to particular types of industries. Rec. at 5880-5888. The city also adopted an analysis of typical characteristics of industrial sites for targeted industries (called the “Site Study” in the objection) as an appendix to the EOA. Rec. at 5967-5970.

Objection 1, and the sub-objections A through F, cite rulings by LUBA and the Court of Appeals, which both the city and the objector interpret to support their case.⁴ Our review must examine the individual site criteria to determine whether the city appropriately construed the requirements of the administrative rule and whether the analysis resulted in an inappropriate selection of lower-priority sites included within the proposed UGB expansion.

The issues largely turn on the effect of this portion of LUBA’s ruling that sets out a two-pronged test for the validity of site characteristics: site characteristics are properly viewed as attributes that (1) are typical of the industrial or employment use and (2) have some meaningful connection with the operation of the industrial or employment use.

The objector argues that an exacting interpretation is required, and that “particular industrial or employment uses” means that each different potential target industry must be analyzed separately for a site characteristic to be valid. The city’s plan designates industrial land to

⁴ See subsections V.A.1 for further explanation of these cases.

accommodate a variety of uses within the industrial comprehensive plan map designation. The city used site criteria it determined are typical and related to its target industries.⁵ The city defined these characteristics as a screening process for deciding which lands already in the UGB will accommodate the needed sites and which additional sites will be considered for inclusion in the UGB.

Friends objects to how the city used several of these site characteristics, contending they should be considered when comparing candidate expansion areas under the Goal 14 location factors, or not at all. The department addresses each specific sub-objection in the following subsections, but the description of the overall objection contains allegations that must be addressed.

First, OAR 660-009-0015(2), quoted above, states that an EOA's identification of needed sites may group employment uses with compatible site characteristics together into common site categories. The definition of "site characteristics," also quoted above, says the characteristics are those necessary for "particular" industries. The objection contends that the city inappropriately applied the site characteristics to broad categories of uses rather than to particular industries. Friends objection at 4.

Second, the objection asserts that the city inappropriately applied site characteristics to industrial *districts* when the administrative rule requires that site characteristics relate to the attributes of individual *sites*. The letter states:

[T]he city concludes that the average characteristics of generalized industrial areas are the site characteristics that all industrial uses must have. The analysis treats land that is not in the middle of the curve as unusable, even though it might have site characteristics that are typical of some industrial uses. Therefore, the EOA fails to consider what is "typical" for particular kinds of industrial uses, and instead considers only what is "predominate" across a sample of industrial districts. Friends objection at 5. (Emphasis in original.)

Friends contends that the city used too broad of a brush in applying required site characteristics because certain target industries do not necessarily require all the listed characteristics.

The city adopted findings addressing why each characteristic is typical of industrial uses and connected the site characteristics with each target industry. Rec. at 5869-5888. The findings explain why each characteristic is found to be reasonable based on interviews with experts and evidence from literature, and why they are "typical" based on a survey of industrial areas in cities around the northern Willamette Valley. The comparison with industrial districts in other cities was part, but not the entirety, of the city's demonstration that the site characteristics are "typical" for target industry sites. The city adopted findings that each target industry requires each site characteristic. Table 12-24 provides the city's findings regarding why each site characteristic is necessary for the target industries. Rec. at 5882-5888. The city found that the necessary site characteristics for each target industry are the same. The adequacy of these findings is discussed in more detail in subsequent subsections addressing specific objections.

⁵ See Table 2 in Section III.A for the site characteristics employed by Newberg.

As the department explained in subsection III.B, Major Legal and Policy Issues, the administrative rules require that site characteristics be typical of and meaningfully connected with particular employment uses. The city's findings explain its rationale for each site characteristic employed based on the typical attributes of industrial districts in a variety of cities and the site needs of industrial areas generally. Only after the city selected the site characteristics were they connected with particular employment uses. This approach does not by itself result in misapplication of relevant administrative rule requirements, but it complicates the analysis and it does not relieve the city of its obligation to demonstrate compliance with those rules. Again, the adequacy of the city's findings is discussed in more detail in subsequent subsections addressing specific objections.

2. Sub-Objection 1A: Separation of Site Characteristics and Goal 14 Location Factors

This sub-objection contends that Newberg has conflated site characteristics and the Goal 14 location factors, that site characteristics and the location factors are practically and legally different, that many of the site characteristics Newberg adopted as "required" are actually locational factors, and that site characteristics should describe what characteristics the *site itself* should possess not *where* it should be located. Friends objection at 5. The objection identifies the following site attributes the city employed as site characteristics, removing study areas from further consideration for UGB expansion, that are more appropriately employed as considerations during application of the location factors.

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

Exclude sites that, for community [commercial] centers, abut residential neighborhood on more than 50% of the site perimeter unless effective topographical or road buffers are present or planned.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district.

The objection contends that, by using Goal 14 locational factors as "required site suitability characteristics," Newberg screened out alternative sites from its Goal 14 locational analysis that are either within the UGB and suitable for industrial use or are outside the UGB and a higher-priority under ORS 197.298. Friends contends this impermissibly elevated some locational factors over other locational factors, instead of balancing them. The objector alleges the city's decision violates Goal 14, ORS 197.298 and OAR 660-024-0060(3).

Department analysis. To appropriately employ a site characteristic under OAR 660-024-0060(5) and OAR 660-009-0015(2), the city must show that the attribute (1) is typical of the expected use and (2) has some meaningful connection with the operation of the use.⁶ Regarding the exclusion of sites that “abut residential neighborhoods on more than 25 percent of the site perimeter unless effective topographical buffers are present” from the inventory of suitable sites within the UGB and from consideration for UGB expansion, the city made the following findings. Rec. at 5878-5879.

Most industrial businesses want to be good neighbors and to be able to fully operate their businesses without constraints imposed by being forced into direct contact with residential neighbors.

According to the public officials and developers/brokers ECO interviewed, industrial areas have operational characteristics that do not blend as well with residential land uses as they do with office and mixed-use areas. Generally, as the function of industrial use intensifies (e.g., heavy manufacturing) so too does the importance of buffering to mitigate impacts of noise, odors, traffic, and 24-hour 7-day week operations.

⁶ The LUBA opinion that articulated this two-pronged test only addressed OAR 660-009-0015(2) and not the similar provision in division 24 for UGB amendments. The department notes that these two rules are not worded the same. The definition of “site characteristics” in OAR 660-009-0005(11) for the purposes of an EOA says they:

. . . include, but are not limited to, a minimum acreage or site configuration including shape and topography, visibility, specific types or levels of public facilities, services or energy infrastructure, or proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes.

OAR 660-024-0060(5) uses “characteristics” rather than “site characteristics,” and the description of these characteristics says “such as parcel size, topography, or proximity. . .”

The scope of the UGB rule appears to be narrower than the economic development rule, so a plausible interpretation would conclude that, since the commission used a different term (“characteristics” versus “site characteristics”), that it meant something different. Because the list of characteristics in the UGB rule is shorter and less inclusive than the economic development rule, one could conclude that the characteristics eligible to be used for eliminating sites from a UGB analysis are more constrained than are those eligible for determining site suitability in an EOA.

The department concludes differently. First, we note that both lists are unconstrained (“include, but are not limited to” and “such as”). Additionally, the UGB rule does not only apply to boundary amendments to accommodate *employment* land needs. OAR 660-024-0060(5) also applies to boundary amendments for residential land; OAR chapter 660, division 8 uses the term “buildable land” (OAR 660-008-0005(2)) and does not mention “characteristics” or “site characteristics.” The department finds that OAR 660-024-0060(5) incorporates these other provisions by reference (“such as”) and does not establish a separate threshold for determining site suitability. Since the other rules use different terms, the department concludes “characteristics” in OAR 660-024-0060(5) is generic and includes the need analyses performed under Goals 9 and 10 (and potentially other goals). To conclude otherwise would negate OAR 660-024-0060(5); “If a local government has specified characteristics. . . that are necessary for land to be suitable for an identified need” refers to the former analysis, completed during development of the EOA or residential buildable lands analysis, and does not imply a new study of specified characteristics to be employed only at the UGB analysis stage.

Newberg's existing industrial users report that it is not prudent to locate industrial development next to residential neighborhoods. One prominent industrial business is currently adjacent to residential development on one side, and says that they have issues with large truck traffic getting mixed in with neighborhood pedestrian, bicycle and vehicle traffic, causing visibility and safety problems. In addition, site noise is undesirable to residential neighbors, whether from the banging and grinding that accompanies manufacturing uses or from onsite loudspeakers used for communication throughout the site. Many industrial uses also have long hours, sometimes even 24 hours a day, compounding noise issues. Other things that can be considered nuisances to residential neighbors are outdoor storage of materials, dust, and vibration; all commonplace things in industrial developments.

[I]t would be feasible to create a large buffer from residential areas on one side of an industrial development, but it would be very difficult to do that on every side without wasting a large amount of usable space. Therefore, being adjacent to a residential neighborhood on 25% of an industrial property's boundary would be feasible, but more than that would seriously hamper the industrial use.

The findings also report that the survey of industrial areas in nearby cities showed those industrial districts generally do not abut residential use on more than 25 percent of its boundary.

The city correctly points out that OAR 660-009-0025(6) strongly encourages cities and counties to manage encroachment and intrusion of uses incompatible with industrial and other employment uses. This rule does not, however, apply to the development of an employment land need determination or which lands should be studied for a UGB expansion.

The objection contends that this and other identified site characteristics are essentially the same as Goal 14 location factor 3 (comparative social consequences), and that the goal and rules require that location factors be "considered and balanced" with other factors in UGB decisions rather than being used to decisively exclude sites.

Regarding Friends' contention that "site characteristics describe what characteristics the *site itself* should possess, not *where* it should be located," the department finds that the location of a site *is* a characteristic of the site and if a location attribute is typical of the expected use and has some meaningful connection with the operation of the use then that site characteristic cannot simply be dismissed as invalid for use in identifying site types under OAR 660-009-0015(2) or limiting consideration of alternative UGB expansion areas under OAR 660-024-0060(5).

The department finds that the explanation in the city's findings does not establish that abutting residential use on more than 25 percent of a site's perimeter is typical of the expected industrial uses and that it is meaningfully connected to the operation of those uses. Wanting to be a good neighbor and not blending well with residential use do not address the *operational needs* of employment uses. Many of the reported incompatibilities (in Table 12-24, Rec. at 5882) involve heavy traffic, but the city employed a separate site characteristic addressing traffic; which of these compatibility characteristics resulted in study areas being excluded, or whether it was a

combination of the two, was not explained. Many reported incompatibilities involve the effects of manufacturing while several of the target industries do not include manufacturing.

The city's findings establish that separating incompatible uses is desirable for both of the uses, and it is therefore an appropriate consideration when performing the balancing of Goal 14 location factors. The department does not agree with Friends' seeming argument that a site characteristic that resembles a Goal 14 location factor cannot be a valid site characteristic. Similarly, the department does not conclude that compatibility can never be a site characteristic that is typical of and meaningfully related to an industrial or other employment use. In this case, however, the city has not sufficiently demonstrated that the particular attribute is connected to the operation of targeted industrial uses.

Regarding exclusion of sites "that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway," the findings state:

Having to route truck traffic through or adjacent to residential neighborhoods also can severely hamper an industrial business's operation. As noted in the previous section, residential streets are not built to accommodate truck traffic. Residents in those areas can be bothered by the vibration, noise, and odor of the truck traffic, and demand that truck traffic be rerouted or limited to certain volumes or hours.

In our review of nearby industrial areas, 88% did not have access through or adjacent to residential areas. Thus, typical industries do not access through residential areas. Rec. at 5879.

The conclusions that mixing industrial and residential traffic can hamper an industrial business's operation and that residential streets are not built to a proper standard may be correct, but the record does not adequately establish that this characteristic has a meaningful connection with the operation of target industrial uses.

The department identified two study areas that were excluded from consideration for UGB expansion solely because they did not satisfy the residential compatibility characteristics. The department does not contend that compatibility among adjacent uses is unimportant and should not be considered in the city's UGB decision-making. Rather, it finds that the record does not support the designation of these as "site characteristics" and that the city should have included additional areas in its UGB location analysis and considered compatibility with adjacent residential uses during consideration of the Goal 14 location factors.

Regarding the exclusion of sites "that, for community centers, abut residential neighborhood on more than 50% of the site perimeter unless effective topographical or road buffers are present or planned," the objection is the same as for the previous two site characteristics: that it is properly included in the consideration and balancing of Goal 14 location factors rather than as a necessary site characteristic. The city's findings explain this characteristic as follows (Rec. at 5899):

It is meaningful to the operation of successful commercial businesses to have good relationships with their neighbors, particularly if those neighbors are

residential in nature. In most cases, being a good neighbor means not bothering those residential neighbors too much with noise, traffic, and other nuisances, and in return the businesses get the patronage of their residential neighbors.

Neighborhood commercial areas can typically be located directly adjacent to residential areas. However, although community commercial centers have fewer nuisance issues than industrial development, those issues still exist to a certain degree. Anecdotal evidence in Newberg suggests that the largest commercial complexes that are directly adjacent to residential development generate many complaints about noise and truck traffic. One way this effect can be mitigated is by having adequate land for solid and vegetated buffers, and by not being surrounded by residential development on all sides so that the commercial center can still effectively function with areas for deliveries, parking, and vehicle travel.

This attribute and explanation suffer from the same problems identified above for industrial land compatibility characteristics. However, the department does not find that the city used this site characteristic to exclude any potential UGB expansion areas from analysis. Rec. at 5747-5742.

Regarding the proximity characteristic, “parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district,” Friends contends that this substitutes for several Goal 14 location factors. Friends objection at 6. The contention that site characteristics describe what characteristics the site itself should possess, not where it should be located, applies to this site characteristic as well.

In review of this part of the sub-objection, the department is again looking for demonstration that the characteristic is typical of the expected use and has some meaningful connection with the operation of the use. The department notes that among the study areas excluded from consideration due to failure to satisfy “proximity” characteristics, only one exclusion (#6, Honey Ln.) was based solely on this industrial/commercial contiguity attribute, and this study area was excluded based on other, non-proximity-related characteristics as well.

The record includes an explanation for the proximity site characteristics that is too lengthy to quote here. Rec. at 5871-5873. The findings rely on evidence from multiple sources that employment uses typically cluster together. The findings address the disputed proximity characteristic along with two others that are not objected to in this sub-objection. The city derived the site characteristics from its study of the industrial districts in similar cities that contain similar industrial uses. The study (“Typical Characteristics of Industrial Sites,” Rec. at 5965-95) considers the characteristics of industrial areas in several northern Willamette Valley cities chosen “because of their similar size and close location to Newberg.” Rec. at 5972. Newberg “identified all industrial areas within these communities” and “used the zoning and comprehensive plan maps from the communities to identify industrial areas.” The study “examined each of these industrial areas and determined whether they either initially developed or had significant redevelopment since 1970, and whether they contained primarily [Newberg’s targeted] industries.” Rec. at 5973.

Although the analysis starts with the attributes of the industrial *areas* rather than with particular employment *uses*, the city has made adequate demonstration that the target industries typically locate in proximity to other employment uses because the tie to those uses has been made. The findings do not, however, demonstrate that there is a meaningful connection between proximity to other employment uses and the operation of the target industries.

The department agrees that proximity to other employment uses is an important consideration for the city to employ in planning for its economic development needs and for accommodating its 20-year urban land need, but the city has not demonstrated that it is a valid “site characteristic” as that term is defined in OAR 660-009-0005(11). We agree with the objector that this factor can be addressed when considering and balancing the Goal 14 location factors for alternative boundary expansion areas.

3. Sub-Objection 1B: District Size and Adjacency to Commercial

The sub-objection addresses the site characteristic:

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.

The objection cites four problems: (1) the characteristic is illogical and creates an internal inconsistency within the EOA, (2) the characteristic is not typical for all of Newberg’s diverse targeted industries, (3) the EOA fails to show that there is an important relationship between a 50-acre district size and the successful operation of particular industrial businesses, and (4) the EOA fails to show that there is an important relationship between commercial land adjacency and the successful operation of the neighboring industrial businesses. Friends objection at 7-14.

Department analysis. Regarding the alleged “problem” that the use of the cited characteristic, in combination with another site characteristic, results in an illogical or inconsistent outcome, the objection does not point to any such outcome in the submittal, but rather makes a hypothetical argument and does not state how the problem results in the submittal failing to comply with an applicable goal, rule or statute. The department finds that this part of the objection contains too little substance to warrant a response.

Regarding whether this site characteristic is typical of Newberg’s target industries, see the department’s analysis of this site characteristic in the previous subsection of this report. While the findings are not extensive with regards to individual target industries, the city did tie the industries to the adjacency characteristic through its study of typical characteristics. The study looked at industrial areas containing Newberg’s target industries. Rec. at 5973. The department finds that this is evidence that a reasonable person would rely on to establish that the target industries typically locate in proximity to other employment uses.

The department considers the third and fourth alleged problems together. The intent of this characteristic is to establish required site attributes for targeted industries that would locate within newly created industrial districts. Rec. at 3230. The effect is to exclude a

study area that is not adjacent to an existing employment center or, if not adjacent to such an area, does not contain at least 50 acres. Regarding whether the adjacency component of this characteristic has some meaningful connection with the operation of the target employment uses, again see the previous subsection of this report. The department finds that the city has not demonstrated that proximity to other employment uses is an operational need for the target industries. Similarly, the 50-acre district size being a “typical” characteristic has been established. The findings state that industrial district size is *beneficial* in several respects, but provide only general connections to operational needs,⁷ so the department cannot find that the city has demonstrated a meaningful connection between industrial district size and the operational needs of target uses.

4. Sub-Objection 1C: Proximity of Residential Land

This sub-objection relates to two site characteristics utilized in the city’s analysis:

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

For community [commercial] centers, abut residential neighborhood on more than 50% of the site perimeter unless effective topographical or road buffers present or planned.

The objection contends that residential compatibility is a Goal 14 location analysis consideration, not a site characteristic. It further contends that, even if residential compatibility were an appropriate site characteristic, the EOA’s rationale for the 25 percent boundary limitation for industrial sites is flawed and there is no evidentiary support whatsoever for the 50 percent residential boundary limitation for commercial sites. Friends objection at 15-19.

Department analysis. See the department’s analysis of the residential compatibility characteristics in subsection 2 of this section regarding sub-objection 1A. Sub-objection 1C essentially provides an alternate argument in case the site characteristics are found to be valid. Since the department has already concluded that this site characteristic is not valid under OAR chapter 660, Division 9, we do not need to address the additional objection.

However, one aspect of this sub-objection warrants further consideration. The city deemed a “residential neighborhood” anything that includes land that is within an urban residential comprehensive plan or zoning district, and rural residential-zoned land with a 2.5-acre or smaller minimum lot size, or developed predominantly with residential lots of 2.5 acres or smaller. Rec. at 5880 (footnote). The objection letter states, “. . . the EOA fails to consider that some residential lands do not need to be buffered, due to large parcel size and distant home placement. The EOA wrongly treats proximity to sparsely populated 2.5-acre rural residential lots as a constraint on

⁷ Only “typical uses have electrical requirements that only are met in industrial or industrial/commercial areas” and “uses have employee bases that need close amenities provided in the district or nearby commercial areas” are offered as operational needs justifying the industrial district size and adjacency characteristics. One or both of these is included for each of the target industries. Rec. at 5882-5888.

par with proximity to a densely populated urban area. . .” Friends objection at 17. The department agrees with the objector. Consideration of compatibility with residential use, whether as a site characteristic or a Goal 14 location factor, should recognize the fundamental difference between urban and rural residential uses. The sparse development in many rural residential areas does not present the same compatibility issues as an urban neighborhood. The department recognizes that some rural residential areas will present compatibility challenges that are appropriate for the city to consider, but this does not justify the general approach used by Newberg. An assessment of the land use pattern, rather than the current zoning designation, is appropriate.

5. Sub-Objection 1D: Traffic Through Residential Areas

This sub-objection relates to the city’s use of the following as a site characteristic:

Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

The objection challenges the city’s looking only at *existing* access, rather than also considering *potential* access. Friends objection at 19-22. The objection contends that the submittal violates relevant goals, statutes, and rules, because it treats residential compatibility as a site characteristic and not a Goal 14 location factor. The objection also states: “Even if residential compatibility were an appropriate site characteristic, the EOA’s rationale for the requirement that truck traffic through or adjacent to a residential area must be routed entirely on a state highway or arterial street is flawed.” Friends objection at 20.

Department analysis. See the department’s analysis of the residential compatibility characteristics in subsection 2 of this section regarding sub-objection 1A. Sub-objection 1D essentially provides an alternate argument in case the site characteristic is found to be valid. Since the department has already concluded that the city has not demonstrated that this site characteristic is valid under OAR chapter 660, Division 9, we do not need to address the additional objection.

6. Sub-Objection 1E: Access to Existing Streets

This sub-objection relates to the following three site characteristics. Friends objection at 22-24.

For neighborhood [commercial] centers – access to major collector or minor arterial street at a minimum.

For community [commercial] centers – access to minor or major arterial.

Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within ¼ mile.

The objection states:

The city's ¼-mile standard is overly prescriptive; there is no set distance required to ensure "adequate access" for all of Newberg's targeted industries. . . . Newberg's targeted industries include a wide range of businesses; the city erred in concluding that all businesses have the same access needs.

. . . the city has not explained why only state highways and arterial roadways should be considered acceptable truck routes.

Regardless of the merits of the city's claims about the need for arterial or state highway access within ¼ mile, those claims are moot because the city made a fatal error by assuming its road network is static. Friends objection at 23.

Friends agrees that vehicular access can be an appropriate site characteristic, but that the city's chosen standard is not adequately connected to particular industrial uses, which inappropriately results in land being found unsuitable for the target industries. The objection letter contends these site characteristics violate OAR 660-009-0015(2), OAR 660-009-0005(11), and Goal 2. Friends objection at 23.

Department analysis. While the objection lists three site characteristics employed by the city to which Friends objects, the explanation addresses only one: "Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within ¼ mile." Since the arguments regarding the other two site characteristics are undeveloped, the department does not consider that part of the sub-objection.

This sub-objection is substantively different from the preceding sub-objections because the objection does not allege these site characteristics are actually Goal 14 location factors. The objection does not cite Goal 14 or its implementing rule as having been violated as a result of the city implementation of these site characteristics.

The city's findings state:

All of the industrial location site literature references how important having good highway access is for industry. Shipping is an integral part of most industrial businesses. Most shipping is done by the highway system, although some is still done by rail and port. . . . Rec. at 5876.

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

It is typical for industries to need to be as close as possible to a major road for easy access; every site in the nearby communities studied was within ¼ mile. Adequate access has a meaningful connection to industry because most businesses rely on being able to receive supplies and ship goods readily and easily. It is harmful to the business, to surrounding uses, and to the safety of pedestrian,

bicycle, and neighborhood traffic to have large trucks regularly traveling through neighborhoods that are not built to handle large truck traffic. Therefore, Newberg has established the following industrial site suitability characteristic: Sites that have suitable truck access to a state highway or arterial street within 1/4 mile. Rec. at 5877.

This site characteristic appears to set a specific objective standard beyond the more usual “adequacy” consideration. If so, it might be argued that the city’s burden to demonstrate a basis for the chosen standard is required. The city’s analysis refers to example industrial areas around the region. There the city’s intent is to provide adequate access. The city arrives at the one-quarter-mile standard by studying the distance of other industrial areas from transportation routes and discovers an upper bound of one-quarter mile, beyond which no examples were identified. From this the city concludes that one-quarter mile is the high end of typical.

When applying this site characteristic for target industries, the findings state that close and suitable truck access is important for each industry. Rec. at 5882-5888. “Close and suitable” is access to a state highway or arterial street within one-quarter mile for each target industry. The department understands that a city would employ objective standards as much as possible in order to streamline its analysis process. The practice is not necessarily a violation of any statute, goal, or rule. While it is plausible that all the target industries have the same access requirements, the city took a general standard based on observed locations of industrial districts (albeit districts that contain one or more of Newberg’s target industries) and applied it to specific industries, without any apparent analysis of the operational needs of those industries.

The objection also mentions that the city has not explained why the city limited its consideration to arterials and state highways and states that major collectors are also designed to accommodate truck traffic. While the department is unable to find an explanation of why the city chose to limit its industrial transportation proximity site characteristic to arterials and state highways, it is reasonable that a city would locate employment areas, which tend to be traffic generators, along streets planned to function for the expected use. Newberg’s choice seems reasonable.

As with other site characteristics addressed in previous sub-objections, the department finds that the submittal adequately demonstrates that the site characteristic is typical of target industrial uses, but that the city has not adequately demonstrated a meaningful connection between the chosen site characteristic and the particular employment uses.

7. Sub-Objection 1F: Predominant Slopes

This sub-objection relates to the city’s use of the following as a site characteristic:

Exclude [study areas] that are not predominantly less than 5% slope within buildable areas.

The objection contends that excluding whole study areas that are not *predominantly* flatter than five percent slope is inappropriate because they may have substantial areas that are suitably flat. Friends objection at 24-26. The objection states study areas are arbitrarily drawn and some

contain both steep and flatter land, and that the portions that are less than five percent slope should not be excluded merely because the suitable lands were placed into study areas with steeper lands. An unchallenged site characteristic excludes land with over a 10 percent slope, and this factor is not tied to the study area. Friends believes the challenged site characteristic leads to an illogical result because a study area may be excluded due to slope when the same land may be found suitable if the study area was drawn differently.

The objection contends that the record contains no evidence that links the characteristics of the larger study areas to the characteristics of smaller, buildable portions of those areas, or to the operational needs of the particular employment uses that could locate therein, so the use of the characteristic does not comply with Goal 2. Friends objection at 25.

Department analysis. OAR chapter 660, division 9 does not provide any guidance regarding how to complete an analysis of site suitability, so it does not address how study areas get drawn or how the analysis within a study area should be performed. Regarding compliance with Goal 9 and the administrative rule, the city must ensure an adequate factual base. Regarding the use of the site characteristic for excluding lands from further analysis under ORS 197.298 and Goal 14 location factors, the implementing rules, OAR chapter 660, division 24, similarly provide no relevant guidance regarding the method of analysis. Regarding compliance with Goal 14 and the administrative rule, the city must ensure an adequate factual base.

The findings include substantial evidence that slope is an important siting consideration, but regarding the specific site characteristics, they state:

The Department of Land Conservation Goal 9 Guidebook includes a definition of constrained land that says that over 10% slope for industrial use is a physical constraint.

One Newberg business stated that they would need a level site with stable soil to facilitate a level concrete floor around 30,000 square feet in size. Two other Newberg examples illustrate the necessity of level sites: Action Equipment's new building, and A-dec's expansion on their existing site. Action Equipment recently located a new facility on level industrial land on Hayes Street. In their site search, they specified a need for a level site. The company manufactures large, long conveyor equipment. The building design had to focus on being large and level in order to accommodate set up, processing, and moving of the equipment, which in some cases is over a hundred feet long. In the second example, even though you would think the A-dec site is level just from looking at it, the topography caused problems when they needed to expand. A-dec had two buildings close together, and had to build a complex ramp to run forklifts from one building to another in order to make the operation work. All of the 25 local and regional industrial districts studied were predominantly less than 5% slope, and all had our targeted industries represented in them.

Therefore, a slope of less than 5% is typical for industrial uses, and slopes over 10% are not considered buildable industrial land. Rec. at 5874-5875. (Footnotes omitted.)

Slope is a valid consideration when assessing suitability for industrial use. In this case, the city does not implement this site characteristic as a required attribute of an industrial *site*, much less a particular *use* because it excluded entire study areas (which the city called “sites”) on this basis when the city’s own findings conclude that only sites with slopes over ten percent are considered unbuildable.

The department recognizes that some amount of averaging is needed in order for a city to reasonably complete the required analyses for Goal 9 and Goal 14 compliance, but in this case the objector identified areas that were predominantly flat enough to be buildable (using the city’s own definition) that were nevertheless disqualified based on slope. It would also be a valid consideration to consider slopes around a buildable site if the findings demonstrated that truck access was not feasible, but the department could find no such findings. The two-part test of “typical” and “meaningful connection with the operation of the industrial or employment use” again applies. The department finds that this anecdotal evidence in these findings does not establish that a five- to ten-percent slope is a site characteristic meaningfully connected to the target industries.

8. Objection 1: Conclusion and Recommendation

The department’s analysis concludes that the Newberg UGB amendment submittal does not contain adequate evidence that the following site characteristics are meaningfully connected with the operation of target industries:

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

Exclude sites that, for community [commercial] centers, abut residential neighborhood on more than 50 percent of the site perimeter unless effective topographical or road buffers are present or planned.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within one-quarter mile.

Exclude [study areas] that are not predominantly less than 5 percent slope within buildable areas.

The department concludes that site characteristics which are typical of industrial districts do not necessarily reflect a connection with the operation of a particular industrial use.

The department recommends that the commission remand the submittal in order for the city and county to either:

1. Demonstrate that site characteristics the city identified under OAR 660-009-0015(2) and OAR 660-024-0060(5) are meaningfully connected with the operation of a target industry or a group of target industries with compatible operational requirements; or
2. Consider these site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors.

9. Objection 2: Site Sizes

The objection contends the EOA, comprehensive plan amendments, and UGB amendment violate OAR 660-009-0015(2), Goal 14, OAR 660-024-0050(4), and Goal 2⁸ because the sizes of sites claimed to be needed to accommodate expected employment growth are not supported by evidence or findings, and are contrary to factual information in the record. Friends objection at 26-31. The objection contends the city used inflated site size assumptions that result in an overly large UGB expansion. The objection further contends that the industrial land need analysis in the EOA makes assumptions without explanation and confuses marketability and need.

Department analysis and recommendation. The department recommends the commission reject this objection.

The city projected industrial land need by estimating the number of firms in each of three categories based on the number of employees at the firm, then assigning an average site size to each category. The total number of employees was based on an employment forecast. The EOA assumes that businesses with 0 to 9 employees need sites that average one acre, businesses with 10 to 74 employees need sites that average five acres, and businesses with 75 or more employees need sites that average 20 and 40 acres. Rec. at 5863. The city prefaced the explanation of its site size need calculations with: “While examples can be found of large sites with few employees, and small sites with many employees, larger employers generally require larger sites. [The city’s

⁸ “OAR 660-009-0015(2) requires the EOA to estimate ‘the number of sites by type reasonably expected to be needed to accommodate the expected employment growth.’ Goal 14 and OAR 660-024-0050(4) require the UGB to be based upon demonstrated need, and a showing that ‘estimated needs cannot reasonably be accommodated on land already inside the UGB.’ Goal 2 requires the city’s decision to have an adequate factual base.” Friends objection at 30.

methodology] is one way to address that dynamic while relating projected industrial site needs to adopted employment projections.” Rec. at 5862.

The objection states:

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

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

Finally, the EOA predicts that four firms with more than 75 employees will locate in Newberg. Between them, these four firms are expected to have 820 employees. The EOA asserts that an infill/redevelopment site (Suntron, R.5862), two 20-acre sites, and one 40-acre site will be needed to accommodate these 820 jobs. The EOA does not explain why two new 20-acre sites and a new 40-acre site were determined to be “needed,” instead of some other combination, such as two 10-acre sites and a 50-acre site, or three 30-acre sites. Friends objection at 27.

The table that displays the results of the calculations (Table 12-20, Rec. at 5863) includes a column with the heading: “Ave. Site Size (Acres).” This column displays the approximate mid-point of each of the size ranges. While the findings do not specifically explain why they used an average site size, use of an average is a common practice for representing a range. The city effectively explained, by virtue of the column identifier, that it used an average (median) to represent the size ranges of sites expected to be needed. The department finds that the city is not required to explain in detail every customarily used step in its analysis. Had the city used something *other than* an average, then an explanation may be warranted. The city relied on expert advice regarding the appropriate size ranges to employ. Rec. at 5863. Based on the foregoing, the department finds that the city’s distribution of the employment forecast to site-size ranges and projecting the median site size to estimate the acreage need is based on substantial evidence and is adequately explained in the findings.

Regarding the allegation that the city confused marketability with need, the objection contends that the adopted findings regarding needed site sizes is “nearly identical” to those remanded by LUBA. Friends objection at 29. The department reviewed the 2009 and 2013 versions of the EOA and found that the sections explaining industrial land need by site size (Rec. at 1263-1268 and 5861-5865, respectively) has been updated to reflect the changes to acreage numbers resulting from the four-year span between the adoptions, and that the supporting text is essentially unchanged. The findings regarding industrial site size as a “site characteristic” for determining suitability (the subject of the LUBA decision), was supplemented in the 2013 version. Rec. at 5869-5871. The new findings cite information provided by the Oregon Business Development Department to verify site size needs. Rec. at 5863, 5868.

As LUBA recognized, determining site characteristics is a somewhat subjective process. Rec. at 2006. Regarding industrial site size requirements, there is no standard parcel size or configuration that applies uniformly. Operational needs vary within any particular industrial category, and from firm to firm. The best a city can provide is an estimate that captures a reasonably significant portion of the target industries, an explanation of its assumptions, and reasonable conclusions. The department finds Newberg did this. The city relied on analysis of observed industrial use in the city and authoritative and expert sources at a state agency and the findings explain the analysis and conclusions. The department concludes that the city's information constitutes an adequate factual base regarding industrial site size needs and is something a reasonable person would rely on.

10. Objection 3: Built Space Capacity

The objection contends that the employment capacity of existing built industrial space was not adequately considered when determining the number of sites needed to accommodate expected employment growth, resulting in the city's EOA, comprehensive plan amendments, and UGB amendment violating OAR 660-009-0015(2), Goal 14, OAR 660-024-0050(4), and Goal 2 (adequate factual base). Friends objection at 31-34. The objection states that there is considerable capacity in existing firms to absorb some of the forecasted job growth, but the city's analysis assumes that all new jobs will be created by new firms. Friends presents data from the EOA that shows industrial employment in the city declined between 2007 and 2010. The objection contends that none of these lost jobs has been assigned to existing employers who rehire laid-off employees. Friends contends it is unreasonable to assume that all employment growth will go to new firms. Friends objection at 33.

Department Analysis and Recommendation. The department recommends that the commission sustain this objection.

The objection cites OAR 660-024-0050(4), which provides in relevant part: "Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB." The rule does not provide any guidance on how to achieve this, so the department's review considers whether the city's findings and conclusions are "reasonable."

The review first examined the city's employment forecast methodology to determine whether the employment land need analysis was based on a forecast that accounted for existing and newly located employers separately. The department found that it does not. The employment forecasts are derived from regional employment projections provided by the Oregon Employment Department, and the regional projections are disaggregated by industry but not type of employer. Rec. at 1024-1025.

The city's findings regarding compliance with OAR 660-024-0050(4) address the inventory of buildable industrial land within the existing UGB performed for the EOA under OAR 660-015-0015(3). The inventory includes consideration of vacant and re-developable employment land. Rec. at 5724-5727. A portion of the employment forecast was assigned to these existing sites

within the UGB. Rec. at 5863. The department found no indication that any of the employment forecast was assigned to fully developed land within the existing UGB.

Friends calculated that 362 lost jobs are distributed to employers on new sites in the EOA. Friends objection at 33. This represents nearly 20 percent of the forecasted employment growth of 1,822. Rec. at 5863. The city relied on its inventory of employment lands and assumed some growth would occur inside the existing UGB, but the department finds no explanation in the record for the amount of employment growth the EOA assumes will be absorbed on fully developed sites. The department concludes that the findings and conclusions in the submittal fail to demonstrate compliance with OAR 660-024-0040(5) because it is reasonable that a portion of job growth will occur in existing buildings. The department recognizes that cities have options regarding the method employed to estimate the capacity of the existing UGB to accommodate job growth, and that no method should be held to an unreasonably high standard for accuracy. The department does not find that the city's lack of assigning employment growth to fully developed land is necessarily an error, but rather that the EOA at least needs to discuss how this aspect of accommodating growth has been accounted for in the analysis.

The objection also contends the submittal violates OAR 660-009-0015(2) because it overestimates "the number of sites by type reasonably expected to be needed to accommodate the expected employment growth" for the same reasons. The department finds that the city needs to explain how it considered employment growth to fully developed land, and it similarly finds that the submittal does not demonstrate compliance with OAR 660-009-0015(2).

The department recommends that the commission sustain this objection and remand the submittal with instructions to the city to explain how it considered employment growth on fully developed land.

11. Objection 4: Inventory of Employment Land

This objection contends that the EOA, comprehensive plan amendments, and UGB amendment fail to comply with OAR 660-009-0015(3), Goal 14, OAR 660-024-0050(1) and (4), and Goal 2, because: (1) they lack the required inventory of suitable vacant and developed land, (2) they instead rely on incomplete and erroneous summary tables and maps that lack an adequate factual base, (3) they are internally inconsistent, and (4) they fail to consider the capacity of all buildable commercial land. Friends objection at 34-38.

The objection asserts that the inventory of industrial and other employment land consists of tables and maps with no explanation of the assumptions used in preparing those tables and maps. Friends objection at 35. The objection goes on to contend that the submittal does not include a description of the site characteristics, development constraints, or infrastructure needs of vacant and developed sites as required by OAR 660-009-0015(3)(a)(B). Friends objection at 36. The objection identifies an example of a parcel that was included in a map of buildable industrial land (Figure 12-11; Rec. at 5891) that does not appear on a summary table of such land (Table 12-1; Rec. at 5890), and concludes the EOA fails to account for all buildable land within the existing UGB. Friends objection at 36.

Finally, Friends asserts: “Had Newberg conducted an accurate, verifiable, legally compliant inventory of employment lands, that inventory would show a surplus of commercial land. Some of this surplus could potentially be rezoned to accommodate industrial employment. Instead, the EOA asserts a deficit of commercial land, even though the city has not updated its inventory of commercial land.” Friends objection at 36. The objection identifies commercial parcels alleged to be suitable for industrial land, reducing the need for a UGB expansion.

Department Analysis and Recommendation. The department recommends the commission reject this objection.

OAR 660-009-0015 imposes specific standards on an inventory of existing employment land.⁹ In this case, the city includes summary tables within the EOA which may not, by themselves, be sufficient to comply with the rule. Rec. at 5889-5892. However, the record also contains a detailed Buildable Land Inventory (BLI). Record at 6551.

This BLI uses a GIS database query to establish the land supply by zone, parcel size, development constraints, and amount of existing development according to definitions in the administrative rule. The base inventory does include commercial zones. The city summarizes the portion of this base inventory that passes the first screen within the EOA. Record at 5724. The city applied established site characteristics to identify eligible sites within the existing UGB. Record at 5729-5732, 5801. The city conducted the inventory as required by OAR 660-009-0015(3)(a)(A). This analysis yielded only one acre of land inside the current UGB that is suitable for re-designation to industrial. The submittal includes adoption of an industrial plan designation for this property. The department finds that Newberg’s employment land inventory was completed in conformity with the requirements of OAR 660-009-0015(3)(a). The objection also alleged the submittal violates OAR 660-024-0050(1); compliance with this rule is achieved through compliance with OAR 660-009-0015, so the department finds no violation of this rule.

Regarding the commercial land component of the inventory, the objection asserts, “Had Newberg conducted an accurate, verifiable, legally compliant inventory of employment lands, that inventory would show a surplus of commercial land.” The evidence provided includes two examples of land designated for commercial use on the Newberg comprehensive plan map that Friends contends was not part of the city’s employment land inventory. Our review of the inventory (Rec. at 6555) indicates that these properties were included. The department does not find that the objection adequately establishes its assertion that Newberg has a surplus of commercial land in its UGB.

⁹ OAR 660-009-0015(3) provides: “Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use.

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

“(A) The description, including site characteristics, of vacant or developed sites within each plan or zoning district;

“(B) A description of any development constraints or infrastructure needs that affect the buildable area of sites in the inventory; * * *”

12. Objection 5: Accommodation of Land Needs

This objection contends that the UGB and comprehensive plan amendments violate Goal 14, ORS 197.298, OAR 660-024-0050(4), OAR 660-024-0060(1), and Goal 2, because they lack an adequate factual base and findings to support a conclusion that a UGB expansion onto prime farmland was necessary; the city failed to demonstrate that land within the UGB and/or higher priority sites outside the UGB could not meet the identified land needs. The objection contends that Newberg's industrial land needs can be accommodated inside the existing UGB, or at least that no farmland needs to be included. The objection includes descriptions of several areas that are not farmland that Friends asserts are suitable to accommodate industrial land needs. Friends objection at 38-55.

Department analysis and recommendation. The department recommends the commission partially sustain this objection. The department recommends the commission remand the submittal for the city, on reconsideration, to:

1. Clarify that the Zimri Road area (Site VI) is not adjacent to commercially zoned land and adequately justify why Site VI is unsuitable for industrial use, or reconsider it in the Goal 14 analysis of lands within the existing UGB that can reasonably accommodate industrial land needs under OAR 660-024-0050(4).
2. *Either* justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) are unsuitable for industrial use *or* consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
3. Adequately justify why these Sites 8 and 9 (Newberg-Dundee corridor) are unsuitable for industrial use, or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
4. Consider the Waste Management site vacant in its employment land inventory.

The department's analysis considers each of the areas where the objector asserts that land of higher priority for inclusion into the UGB than the agricultural land selected by the city should have been included. The applicable rule is a part of OAR 660-024-0050(4), which states, "Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB." The rule contains no standards or process for determining what is "reasonable," so the department's review considers substantial evidence.

Zimri Drive site (inside UGB). The objection contends that Newberg's rationale for excluding 30 buildable acres within the UGB, but outside of current city boundaries, is flawed for several reasons, including (1) inexplicable exclusion of a vacant parcel next to the study area that would bring the study area within one-quarter mile of an existing arterial, (2) no sound explanation of why Zimri Drive itself could not be upgraded from major collector to arterial, (3) inadequate information about an alleged historic structure blocking realignment of access routes, (4) inappropriate claim that the industrial area would negatively impact the nearby Allison Hotel and resort, and (5) an erroneous claim that the site is not adjacent to an existing industrial or commercial district. Friends objection at 39-43.

The city's reasons for excluding the Zimri Road site are described as follows:

Site VI is between Zimri Drive and N. Springbrook Road. While this area does include about 30 buildable acres, it is not adjacent to industrial or commercial areas. It is adjacent to a resort hotel. There would be many conflicts between the dust, noise, smell, and truck traffic of an industrial area and the quiet peace resort users are seeking. It lacks proximity to an arterial or state highway. The closest access would be on Zimri Drive, which still would be over ¼ mile distant from the nearest arterial (unless access was through a site with a historic home, which would not be reasonable). Truck traffic on Zimri would have to go past a residential neighborhood. Truck access from Springbrook Road would be even more distant. Zimri and Springbrook both go north through hilly terrain with grades in excess of 10%, and end at Bell Road, which is narrow, hilly, and windy. So neither reasonably could be redesignated an arterial. Thus, *Site VI is not suitable for redesignation as industrial, and could not reasonably accommodate industrial needs.* Rec. at 5730. (Emphasis in original.)

This explanation of why this area is unsuitable for industrial use points to the following site characteristics implemented by the city (Rec. at 5728):

1. Site contains a parcel or group of parcels in close proximity with buildable land that contains at least 20 buildable or industrially developed acres (or smaller if adjacent to existing industrial district).
2. Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within ¼ mile.
3. Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

The department is recommending the commission remand the submittal based on the second and third of these site characteristics not being valid (*see* subsection VI.A.8 of this report, regarding Friends Objection 1). The department does not find that proximity to a resort hotel or impact on historic property are site suitability characteristics, but that the city employed them during its analysis of whether the Zimri Road area can reasonably accommodate needed industrial uses. We find no facts in the record to support these conclusions.

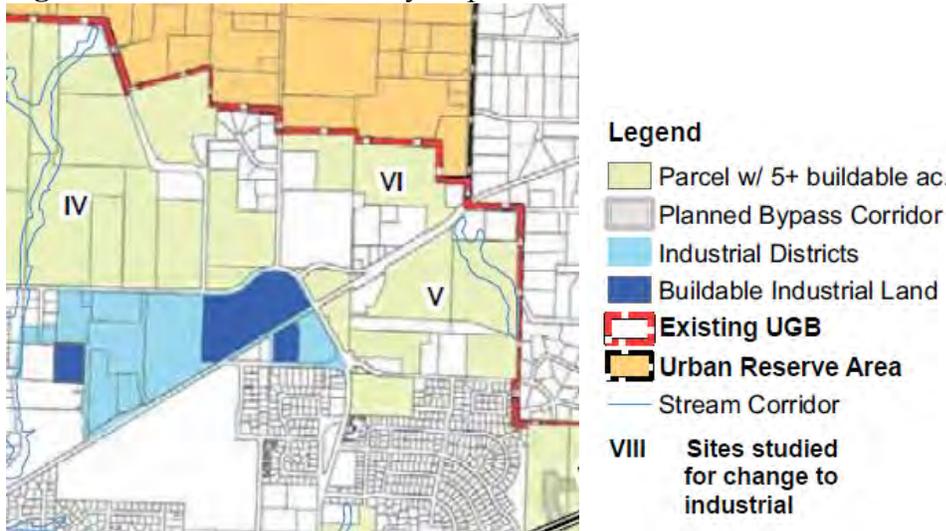
The department has not recommended remand of the first characteristic listed immediately above, site size and adjacency. It is excluded on the adjacency portion, not the acreage portion, of the site characteristic. The objection states, “the city erroneously asserts that Site VI is not adjacent to an existing industrial or commercial district. Both the city’s EOA (R.5902) and the details below from the comprehensive plan map show that Site VI is adjacent to the SD/H Springbrook-Hospitality commercial district.” Friends objection at 43. The objection includes the map in Figure 3 that appears to substantiate its claim (Friends objection at 43).

Figure 3. Zimri Drive site – Friends map



The objector amended the map to label the study area, presumably because the record does not contain a map that shows both the study area and the zoning. The only indication the department finds in the record that identifies the study area is Map 2 (Rec. at 5801), a portion of which is depicted in Figure 4.

Figure 4. Zimri Drive site – city map



This map is ambiguous because it does not provide boundaries of the study area. The green shading indicates parcels over five buildable acres, but the department cannot determine whether this defines the bounds of the study area. The explanation of the study areas states:

This analysis inventoried existing sites within the UGB that may have these characteristics. The analysis first looked for parcels or groups of parcels in close proximity with buildable land that contain at least 20 buildable or industrially developed acres, or parcels adjacent to existing industrial districts. This analysis yielded 14 groups of properties in various areas within the UGB. Exact boundaries of

these groups were not defined, as these boundaries could be refined for sites. These 14 sites are shown on Map 2, and are designated with roman numerals I-XIV. The study then applies the site suitability criteria to these sites, considers the current designation for each site and any prior commitment, then determines whether redesignating that site to industrial would be a reasonable alternative. Rec. at 5728.

The department finds no explanation here, or in the site characteristics, that exclude parcels with less than five acres of buildable lands from analysis. The department concludes that *either* the study area ("Site VI") is adjacent to commercially designated land and the city has not demonstrated that the area cannot reasonably accommodate industrial uses *or* the record does not adequately describe the study area and the submittal does not include an adequate factual base.

In either case, a remand is warranted, and the department recommends the commission remand the submittal to clarify that Site VI is not adjacent to commercially zoned land, and provide adequate justification as to why Site VI cannot reasonably accommodate industrial uses, or consider it in the Goal 14 analysis of alternative locations to accommodate industrial land needs under OAR 660-024-0050(4).

South Springbrook Road Site. A portion of this study area is inside the existing UGB and another part is outside the UGB. The objection contends that Newberg's rationale for excluding this area is flawed for several reasons, including (1) the city's refusal to combine the areas inside and outside of the UGB into one study area, (2) the city's incorrect calculation of the perimeter area dedicated to residential uses, and (3) the city's undocumented claim that the land already inside the UGB is needed for future multi-family residential use. Friends objection at 43-45.

The city's reasons for excluding that portion of the South Springbrook Road site already within the UGB are described as follows:

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

The site is designated mostly High Density Residential and part Medium Density Residential. The Newberg UGB currently has a very meager supply of multi-family residential land, especially high density residential land. Newberg has been actively seeking to increase the supply of multi-family residential land in the UGB. The Ad Hoc Committee on Newberg's Future and the Affordable Housing Committee both recommended this site remain as residential, and even be considered for redesignation as all High Density Residential. The site is well suited to multi-family residential use. Newberg Comprehensive Plan Policy 1.2.a. states, "Medium and high density areas should be located for immediate access to collector streets or minor arterials and should not cause traffic to move through low density areas. High density areas should be easily accessible to arterial streets. They should also be located near commercial services and

public open spaces.” The area is within walking distance to shopping, trails, a community college, and transit. If this were redesignated industrial, finding suitable replacement high density residential land would be very difficult to do, as was demonstrated in recent hearings on a zone change to High Density Residential on Meridian Street. In addition, redesignation as industrial land could result in Measure 37/49 claims for restricting the residential use. *Thus, Site XII is appropriate for multi-family residential use, is not suitable for redesignation as industrial, and could not reasonably accommodate the needed industrial uses.* Rec. at 5731-5732 (Emphasis in original).

The city’s reasons for excluding that portion of the South Springbrook Road site that is not within the UGB are described as follows:

Site 12 abuts residential land on the west, and is across the street from residential to the north. Thus, the site abuts residential on more than 25% of its perimeter. Truck travel would be to Fernwood Road, adjacent to residential areas, or across properties to Springbrook Road, again through residential areas. At the southeastern part of Site 12 is a parcel that will be split by the Newberg-Dundee Bypass. The portion on the west is adjacent to a manufactured dwelling park, and does not meet the compatibility criteria. The portion of that parcel east of the future bypass contains approximately 4.5 acres. It would access Wilsonville Road on the south. The bypass could serve as a buffer to the residential uses on the west. However, that portion abuts residential on the east on more than 25% of its boundary, and therefore this part of the site does not meet the compatibility site characteristic. *Thus Site 12 does not meet the compatibility criteria.* Rec. at 5745 (Emphasis in original).

Before discussing the city’s explanation for exclusion of these areas, the department will address the assertion that the two subareas, one inside the existing UGB and one outside, should have been combined. The department disagrees. The land inside of an existing UGB is subject to a different standard for suitability that is land outside of an existing UGB. The city is required to assess whether lands within its existing UGB can “reasonably” meet the identified need pursuant to OAR 660-024-0050(4), which provides no specific standards as to how that assessment is to be conducted. In contrast, a city may screen lands outside of a UGB for suitability pursuant to OAR 660-024-0060(5), which provides more specific guidance as to the types of factors that may be used to exclude unsuitable lands. The city has much more flexibility in devising standards for considering re-designation of lands within the UGB to meet the identified need, as opposed to identifying standards for consideration of lands outside of the UGB to meet that need. In addition, the land inside the UGB is part of an acknowledged comprehensive plan, and is already designated for certain land uses commensurate with that plan that have been found to meet the city’s long-term needs for land and development upon that land.

Regarding the area that is already within the UGB, the objection asserts that the city has not documented its claim that the land already inside the UGB is needed for future multi-family residential use. Newberg has an acknowledged comprehensive plan that identifies this land as needed for future multi-family residential development. As stated in OAR 660-024-0040(3), Newberg is not required to conduct a simultaneous review and consideration of its residential land needs in conjunction with its employment land needs. Thus the city is not required, as the

objection suggests, to “re-prove” its need for high density residential land. The city has provided reasons in the record as to why the land is still needed for future multi-family residential development, in that it is well-suited for such development based upon policies within Newberg’s comprehensive plan, and that the city would have difficulty in rezoning replacement lands for multi-family development if this subarea was repurposed for future employment uses. The department concludes that the city has an adequate factual basis demonstrating that the portion of the South Springbrook Road area within the existing UGB cannot reasonably accommodate the needed industrial uses.

The objection also disputes the city’s factual basis for excluding Site XII. Part of Newberg’s explanation of why this area is unsuitable for industrial use points to the following site characteristic implemented by the city (Rec. at 5728):

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

In general terms, the department is recommending the commission remand the submittal based upon this site characteristic not being valid (*see* subsection VI.A.8 of this report, regarding Friends Objection 1). In addition to the general concerns regarding this characteristic, the objection notes that a portion of the residential land the city determined is adjacent lies across Springbrook Road from the site, and the city’s own economic opportunities analysis (Rec. at 5878) suggests that 50- to 100-foot-wide roadways could constitute an effective buffer between residential and industrial uses. The city’s findings do not address this issue. However, this site is within the current UGB, and the city is not required to re-designate this land for industrial uses unless it can “reasonably” do so pursuant to OAR 660-024-0050(4). Since the city has already determined that the Site XII is needed for future multi-family residential development (see the preceding paragraph), the objections raised to the city’s methodology on this issue are ultimately irrelevant.

Regarding the area located outside the current UGB, the explanation of why this area is unsuitable for industrial use points to the following site characteristics implemented by the city (Rec. at 5728):

1. Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.
2. Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

The department is recommending the commission remand the submittal based on these site characteristics not being valid (*see* subsection VI.A.8 of this report). These appear to be the only bases for the city’s determination that the area cannot reasonably accommodate needed industrial use, and the department concludes the city has not provided an adequate factual base for that determination.

The department recommends the commission remand the submittal to for the city to *either* justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) is unsuitable for industrial use *or* consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.

Various Surplus Commercial Lands inside UGB: The objection contends that the city failed to properly analyze and include surplus commercial lands in various locations within the current UGB as suitable for industrial rezoning and use. Specifically, the objection noted sites on Portland Road, Hancock, Elliot, and South Springbrook.

The city's reasons for excluding these sites already within the UGB are described as follows:

Site VII is on the north side of Highway 99W. It does include nearly 40 buildable acres. It is not adjacent to an industrial or commercial area (it is a commercial area). It is across the street from Providence Newberg Medical Center. It is adjacent to and can access Highway 99W at the Providence Drive intersection. It abuts residential areas on more than 25 percent of its boundary. There is an approved commercial/residential subdivision tentative plan on a part of the property. It is the only commercial site in the Newberg UGB with large parcels suitable for a community commercial center and high access and visibility to Highway 99W. Newberg has a lack of commercial land. *Thus, Site VII is suitable for commercial employment and residential uses, and is not suitable for redesignation as industrial, and could not reasonably accommodate industrial needs.* Rec. at 5730 (Emphasis in original).

Site XI consists of non-contiguous lots under 5 acres in existing commercial areas. It is on the north side of Hancock Street between Sitka Avenue and Deborah Road. It includes about 8 buildable acres on a few parcels ranging from less than 1 acre to just over 3 buildable acres. These sites meet the site suitability criteria for both commercial and industrial land. Redesignating these lands as industrial would increase the shortage of commercial land in the UGB. *Thus, Site XI is appropriate for its current commercial designations, and could not reasonably be changed to accommodate needed industrial sites.* Rec. at 5731 (Emphasis in original).

The city is required to assess the ability of lands within its existing UGB to meet the land need pursuant to OAR 660-024-0050(1). OAR 660-024-0050(4) provides the only substantive standard for such an assessment, stating that, prior to expanding the UGB, a local government must demonstrate that the estimated needs *cannot reasonably be accommodated* on land already inside the UGB. Land inside the UGB is part of an acknowledged comprehensive plan, and is already designated for certain land uses commensurate with that plan that have been found to meet the city's long-term needs for land and development upon that land.

Newberg's findings, particularly as regarding Site VII, contain several reasons for rejecting re-designation of all or part of the site for industrial land purposes that are disputed in Friends' objection. Several of the objector's arguments in this regard raise questions about the accuracy of the city's findings. However, at its core, the city does not want to re-designate these lands for

industrial purposes because they are commercially designated in the existing, acknowledged comprehensive plan, and the city asserts that it does not have a surplus of such commercially designated land within its UGB. Pursuant to the discussion of the Friends' objection 4, discussed above, the objectors have not provided sufficient evidence that the city's conclusions regarding a shortage of commercial land in Newberg are erroneous. Therefore, the objection as it relates to Sites VII and XI is rejected.

Newberg-Dundee Corridor (Sites 8 and 9): The objection asserts that the city's rationale for excluding land within the corridor along Highway 99 between Newberg and Dundee was flawed, because (1) this area is consists of rural exception lands, with higher priority for inclusion in the UGB than agricultural lands, (2) the city does not provide adequate rationale under ORS 197.298 for selecting farmland instead of these lands, and (3) the city inappropriately used site characteristics to exclude these parcels under OAR 660-024-0060(5). Friends objection at 48-53.

The city's reasons for excluding these sites already within the UGB are described as follows:

Site 8 is 1/3 to 3/4 miles from the UGB, and thus is not adjacent to the UGB. The area is separated from the UGB by the Chehalem Creek Canyon, which would make extension of facilities to the site very problematic. For example, previous studies showed that two miles of wastewater lines and a new wastewater pump station, or anew wastewater treatment plan would be needed to serve this area. Thus, it could not reasonably be added to the UGB in conjunction with adjoining properties. There are three small non-contiguous parcels in the area with county industrial zoning. It does have close access to Highway 99W, though access restrictions along that stretch of roadway may prevent access directly to the highway. The future connection to the bypass between Newberg and Dundee might provide access. *Thus, Site 8 does not meet the industrial/commercial proximity or transportation proximity criteria.*

Site 9 is adjacent to the UGB, although it is separated from the urbanizable area by a stream corridor, which would make serving the site with utilities very difficult. The site is not adjacent to an existing industrial or commercial area, and does not contain sufficient buildable land to allow expansion of the district to provide the same benefits. While it is adjacent to Highway 99W, actual access is restricted due to an intervening rail line. The only other access is Dayton Avenue, which is not an arterial, and has access issues on both ends. *Thus, Site 9 does not meet the industrial/commercial proximity or transportation proximity criteria.* Record at 5742. (Emphasis in original.)

The explanation of why these areas are unsuitable for industrial use points to the following site characteristics implemented by the city (Rec. at 5728):

1. Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district.
2. Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within one-quarter mile.

However, the summary table on Record at 5749 (excerpted in Table 3 below) includes additional reasons for exclusion of Subareas 8 and 9.

Table 3. Excerpt from Summary of Industrial Site Suitability Analysis

Site	Size	Topography	Proximity	Compatibility	Suitable for Industrial?
#8: Fox Farm Rd.	☺ Group of parcels with > 20 buildable acres. Contains some parcels with > 10 buildable acres	☺ Site is predominantly < 5% slope	☹ Not adjacent to UGB, nor part of area that could immediately be added to UGB. Adjacent to Highway 99W, however direct highway access may not be allowed by ODOT. Adjacent to county industrial area.	☹ Unbuffered from residential to north and west	☹ No
#9: Dayton Ave. North	☺ Group of buildable parcels with > 20 acres.	☹ Site is >5% and >10% slopes	☹ Although the area is close to Highway 99W, there is no direct access, so highway or major arterial access would be further than 1/4 mile. Not adjacent to industrial or commercial area, and there is not enough buildable land in the area to allow expansion of the industrial district to provide the benefits of proximity to an industrial or commercial area (commercial/industrial area across highway and rail line).	☹ It may be possible to establish industrial area with buffers from residential. Would require truck travel through residential areas.	☹ No
#10: Riverfront West	☺ Site > 20 buildable acres, includes parcels > 30 buildable acres	☹ Much of site has slopes over 10%	☹ Adjacent to UGB but separated by the stream corridor. Site has sufficient buildable land to allow expansion. No access to state highway or arterial street within 1/4 mile.	☹ Buffered from residential areas by stream corridors. Would require truck travel through residential areas in Dundee.	☹ No

Subarea 8 is also found by the city to not meet the following criteria:

1. Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.
2. And Subarea 9 is also found by the city to not meet the following criteria:
3. Exclude [study areas] that are not predominantly less than 5 percent slope within buildable areas.
4. Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

Each of these site characteristics is considered below.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district.

The objection asserts that the city inappropriately divided up these two subareas and inappropriately excluded parcels from the study area that would have provided contiguity to an existing industrial or commercial area and also the current Newberg UGB. The record does not contain any information as to why the city created these subareas, and excluded other parcels from the subareas.

Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within one-quarter mile.

For Subarea 8, the city's findings are that the subarea "does have close access to Highway 99W, though access restrictions along that stretch of roadway may prevent access directly to the highway." This is not sufficient evidence to conclude that the parcels do not have suitable truck access to a state highway or arterial street.

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

Exclude [study areas] that are not predominantly less than 5 percent slope within buildable areas.

Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

The department is recommending the commission remand the submittal based on these site characteristics not being valid (*see* subsection VI.A.8 of this report, regarding Friends Objection 1).

In conclusion, the department recommends the commission remand the submittal for the city to adequately justify why these Sites 8 and 9 are unsuitable for industrial use, or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.

North Valley-Chehalem Road Area (partly in UGB, also Sites 1 and 3): The objector contends that two of the sites outside of the UGB, Subareas 1 and 3, should have been combined with an adjacent vacant site within the UGB (Site I) into one study area, and would have then qualified for inclusion as industrial land but for the requirement to be within one-quarter mile of an arterial roadway. Friends objection at 54-55.

The city did not address the combination of these three areas as proposed by the objector. Without combination, Subareas 1 and 3 are not adjacent to each other (they are separated by Site I, which is within the UGB). This specific objection does not target any of the decisions the city made regarding the Subareas 1 and 3 or Site I – it only asserts that the city should have been

required to combine the subareas, and doing so would have resulted in a site that satisfied more of the city's site criteria.

The city is required to assess the ability of lands within its existing UGB to meet the land need pursuant to OAR 660-024-0050(1). OAR 660-024-0050(4) provides the only substantive standard for such an assessment, stating that, prior to expanding the UGB, a local government must demonstrate that the estimated needs *cannot reasonably be accommodated* on land already inside the UGB. Land inside the UGB is part of an acknowledged comprehensive plan, and is already designated for certain land uses commensurate with that plan that have been found to meet the city's long-term needs for land and development upon that land. In terms of the UGB expansion process set forth in Goal 14 and OAR 660-024, land inside the UGB is analyzed for its ability to meet identified land needs first under a "reasonably accommodated" test, and if not enough such land exists, then land outside of the UGB is considered for addition to meet identified land needs based upon the locational criteria set forth in ORS 197.298, Goal 14, and OAR 660-024-0060.

Since consideration of lands inside and outside the UGB are subject to different criteria, and are considered at different points in a UGB analysis process, the city is not required to combine lands inside and outside of the UGB into a single subarea for analysis. In fact, such a combination raises new questions and uncertainties since lands within the same subarea are subject to differing legal standards and analyses.

Therefore, the department recommends the commission reject the objection to Newberg's decision as regards combination of Subareas 1 and 3 and Site I into one subarea for analysis.

13. Objection 6: Failure to Demonstrate Need

This objection contends that the city's comprehensive plan amendments and UGB expansion violate Goal 14 and OAR 660-024-0040(1) because they include large sites and acreage in the UGB for which there is no demonstrated need. They also violate Goal 2 because they underestimate the buildable capacity of land added to the UGB. Friends objection at 55-61.

Department analysis and recommendation. The department recommends the commission sustain this objection in part.

This objection contains two sub-objections. Each is addressed in subsequent subsections of this report. Each sub-objection alleges that too much land was included in the UGB expansion.

Sub-Objection 6A, Large Sites. This objection contends the city included more large sites than it says it needs within its proposed UGB expansion. The objection contends that the city's comprehensive plan amendments and UGB expansion violate Goal 14 and OAR 660-024-0040(1) because they include additional large sites in the UGB, for which there is no demonstrated need. They also violate Goal 2 because they underestimate the buildable capacity of land added to the UGB. Friends objection at 56.

The objector contends that the land need is identified as one site in each of two size categories, and the expansion provides two in each category. The city's tables show that the needed land is 131 *net* acres, and the expansion supplies 129 net acres. Although the city's tables may be confusing, the city has not included more land than it has shown is needed.

The objector also contends that one site (the "Waste Management" site) is not properly included in the inventory of available capacity within the existing UGB. Friends objection at 57-59. The city determined that this is an active business location not likely to redevelop during the planning period. Record at 6003. The objection provides evidence that the property is not developed in the form of photographs that show a graveled area with no buildings. The city's statement that it is paved is less convincing, but not particularly relevant as the department agrees with the objector that a paved parking lot is not "developed." OAR 660-009-0005(1) provides: "Developed Land" means non-vacant land that is likely to be redeveloped during the planning period." OAR 660-009-0005(14) provides this definition:

"Vacant Land" means a lot or parcel:

- (a) Equal to or larger than one half-acre not currently containing permanent buildings or improvements; or
- (b) Equal to or larger than five acres where less than one half-acre is occupied by permanent buildings or improvements.

The department finds that the evidence supports the conclusion that property in question is not "developed land."

The city relies partially on the statement, "There is nothing in the record to suggest that Waste Management will abandon this site or develop it into something else." Rec. at 6003. There is nothing apparent in the record that suggests it will *not* be developed, and the department finds that without evidence either way, the city is required to consider the land vacant and available for development. To conclude otherwise would render moot the entire inventory requirement in OAR 660-009-0015(3) or, alternatively, require a city to complete an onerous exercise of documenting the development plans of every owner of vacant employment land in the city.

The department recommends the commission remand the submittal for the city to consider the Waste Management site vacant in its employment land inventory.

Sub-Objection 6B, Extra Acreage. This objection contends that the city's UGB expansion includes 128 acres of unbuildable land on the fringe of the expansion area for which there is no identified need. Friends contends this violates Goal 14 and OAR 660-024-0040(1) because it includes additional acreage, primarily riparian areas, but also some farmed areas within the 100-year floodplain, for which there is no demonstrated need and nearly doubles the size of the proposed expansion area. Friends objection at 59.

Department analysis and recommendation. The department recommends the commission reject this objection.

The city's findings state that it included these buffer areas to promote livability, which is allowed by the second need factor within Goal 14, and to provide recreational amenities for the employees within the industrial area. Rec. at 5791-5792. In addition, the city's proposed comprehensive plan map identifies two park sites. Rec. at 5811. The city chose to use property boundaries, but also the centerlines of drainage courses where appropriate, to create discrete parcels of land for inclusion. Rec. at 5791. Newberg also asserts that it has riparian corridor measures in place to protect riparian resources. Rec. at 5783.

As a general proposition, the department finds that following a property line, natural feature, or other existing boundary is practical because to do otherwise would require a survey and legal description of the new boundary or reliance on an approximate location for the boundary based on a map.¹⁰ The practice may result in some unbuildable or unneeded land being included in the boundary, but the impracticality of placing the UGB in an undescribed location, and the imprecision of any "need" calculation,¹¹ make *de minimis* additions acceptable.

The objection, however, asserts that the city's additional acreage is not "*de minimis*" because the expansion includes nearly twice the acreage of the demonstrated need. Friends objection at 59. The objection includes several reasons the UGB expansion should not include this additional acreage.

First, "the city did not specify proximity to a stream corridor as a characteristic necessary for land to be suitable for its targeted industries." Rec. at 60. The department finds that a city is not required to list unbuildable land as a site characteristic in order to include it in a UGB expansion, for the reasons stated earlier in this subsection. The city did include some statements in its findings that the excess land would have beneficial livability effects for both the industrial and neighboring uses, but the city did not select this location for the UGB amendment *because* it was next to the stream.

Second, the objection points out that "the stream corridors will continue to function as buffers and amenities in their current uses under their county plan designations." Rec. at 60. The department agrees. If buffering were the only reason to include the land in the UGB, the riparian area can serve that function equally well outside the UGB.

The third basis for the objection states:

¹⁰ OAR 660-024-0020(2) provides: "The UGB and amendments to the UGB must be shown on the city and county plan and zone maps at a scale sufficient to determine which particular lots or parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location."

¹¹ OAR 660-024-0040(1) provides: "The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision."

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

The findings for industrial site size in the EOA state, in part:

The most basic characteristic needed by industrial users is site size. Industrial users need adequate land to site buildings, storage areas, outdoor production areas, parking areas, and onsite circulation. They also need or are required to have land for utilities, landscaping, environmental mitigation, and security. Some sites require buffers for noise, smell, vibration, and visual barriers. In addition, industries now find needs to provide amenities for employees such as outdoor park-like or recreation areas for lunches, breaks, or fitness, to increase morale and productivity. . . . These quality of life factors are included in the site size calculation that firms make when looking for a new site. As a result, most industrial sites are only 40% to 60% developable for basic industrial use with remaining areas used for parking, landscaping, buffers, utilities, environmental protections, employee break areas, and security. In addition, many industries require land for long-term expansion so that they aren’t forced to move their business down the road or split their sites, resulting in lost production and investment. Rec. at 5869.

These findings do not unequivocally state that the EOA’s conclusions regarding the industrial site size characteristic include land on-site to serve as buffering. Other findings regarding site size are more general than the quoted passage and are based on surveys and observation of the characteristics of sites where industries have previously located (in Newberg and other communities). Rec. at 5870. The paragraph quoted above includes the only findings regarding the particular activities that will take place on industrial sites: “buildings, storage areas, outdoor production areas, parking areas, and onsite circulation” and “parking, landscaping, buffers, utilities, environmental protections, employee break areas, and security.” The estimate of 40 to 60 percent of the site being developable for industrial use includes normal accessory uses such as parking and utilities in the analysis, not just buffers.

The site size characteristic the city employed in its analysis of suitable sites states: “Inventory to include a sufficient number of sites within each site category to meet identified needs (<2 buildable acres, 2 to 10 buildable acres, 10 to 30 buildable acres, and 30 to 50 buildable acres).” The references herein to “buildable acres” seem to be a recognition that buffers and environmental protections will occur on-site, but not necessarily within buildable areas.

For the reasons stated above, the department concludes that the site size requirements established in the EOA do not assume that buffering and environmental protection will take place exclusively on the buildable portion of the lot and the city’s conclusions do not account for buffering twice.

Finally, the objection contends that (1) the city “unnecessarily included large areas that cannot reasonably accommodate any identified needs” and (2) this case is similar to another that came before the commission in 2004 regarding the McMinnville UGB, where the commission remanded the decision because it included large areas of unbuildable floodplain land. Friends objection at 60.

The objection does not elaborate on how the commission’s McMinnville decision applies except to say it is “similar” to the Newberg action. The department notes that the commission amended Goal 14 and adopted OAR chapter 660, division 24 in 2006. The regulatory framework has changed since the commission’s decision in McMinnville. The objection does not connect its contention with existing regulations. See footnote 10 in this report. Specific requirements now apply that affect the city’s decision regarding where to locate the UGB.

The department further notes that much of the stream corridor land included in the UGB is designated “Public/Quasi-Public” (PQ) on the amended Newberg comprehensive plan map, not Industrial. See Figure 1 of this report. The record includes analysis of alternative sites for a water treatment plan and concludes this is the best location. Record at 5931-5948. None of this land is included to satisfy the city’s industrial land need.

The department concludes that Newberg’s UGB amendment does not include land for which it has not demonstrated a need in a manner that results in noncompliance with relevant goals and rules. The department recommends the commission reject this objection.

14. Objection 7: Goal 14 Location Factors

The objection contends that the city’s UGB and comprehensive plan amendments violate Goal 14 and OAR 660-024-0060(1) and (3) because the city did not determine the change in its UGB boundary consistent with Goal 14 location factors. In particular, the city provided inaccurate information and minimized impacts related to the Goal 14 location factor regarding impacts to nearby farm uses for the study area eventually incorporated into the city’s UGB.

Department analysis and recommendation. The department recommends the commission sustain this objection in part.

Goal 14 requires an evaluation of alternative boundary locations to consider the compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on land outside the UGB, and balance that consideration with other factors.¹² There is no standard that precludes

¹² Goal 14 location factors are: “(1) Efficient accommodation of identified land needs; (2) Orderly and economic provision of public facilities and services; (3) Comparative environmental, energy, economic and social consequences; and (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.”

OAR 660-024-0060(3) provides: “The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.”

a city from amending an UGB in a manner that results in incompatibilities with resource use outside the boundary.

Findings addressing Goal 14 location factor 3 are found in the record at 5761-5763. The entirety of the findings regarding factor 4 state:

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

All three boundary alternatives have minimal borders with agricultural land. There is little significant difference between the three alternatives.

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

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

Boundary Alternative C would border agricultural land on the both the north and south side, and adjacent to Site 11.6. This has the longest border of the three alternatives. Rec. at 5763-5764.

The boundary alternatives map is provided in Figure 5. Rec. at 5810. The objection asserts that the city has mislabeled one of the maps with “water features” that are actually farm and forest land. The map is reproduced from the objection letter in Figure 6. (Sites 11 and 14 roughly correspond to the area included in the UGB.) While the map does appear to be somewhat mislabeled when compared to the aerial photography, the existence of a forested riparian area still exists on a portion of the east side of the area proposed for the UGB expansion, thus providing the asserted buffer. While the objector is correct that the areas proposed for UGB expansion is adjacent to farmland to the east as well as south, the proposed UGB areas are buffered from the farmland by a wide riparian area. The department recommends the commission reject this portion of the objection.

Figure 5. Boundary alternatives map.

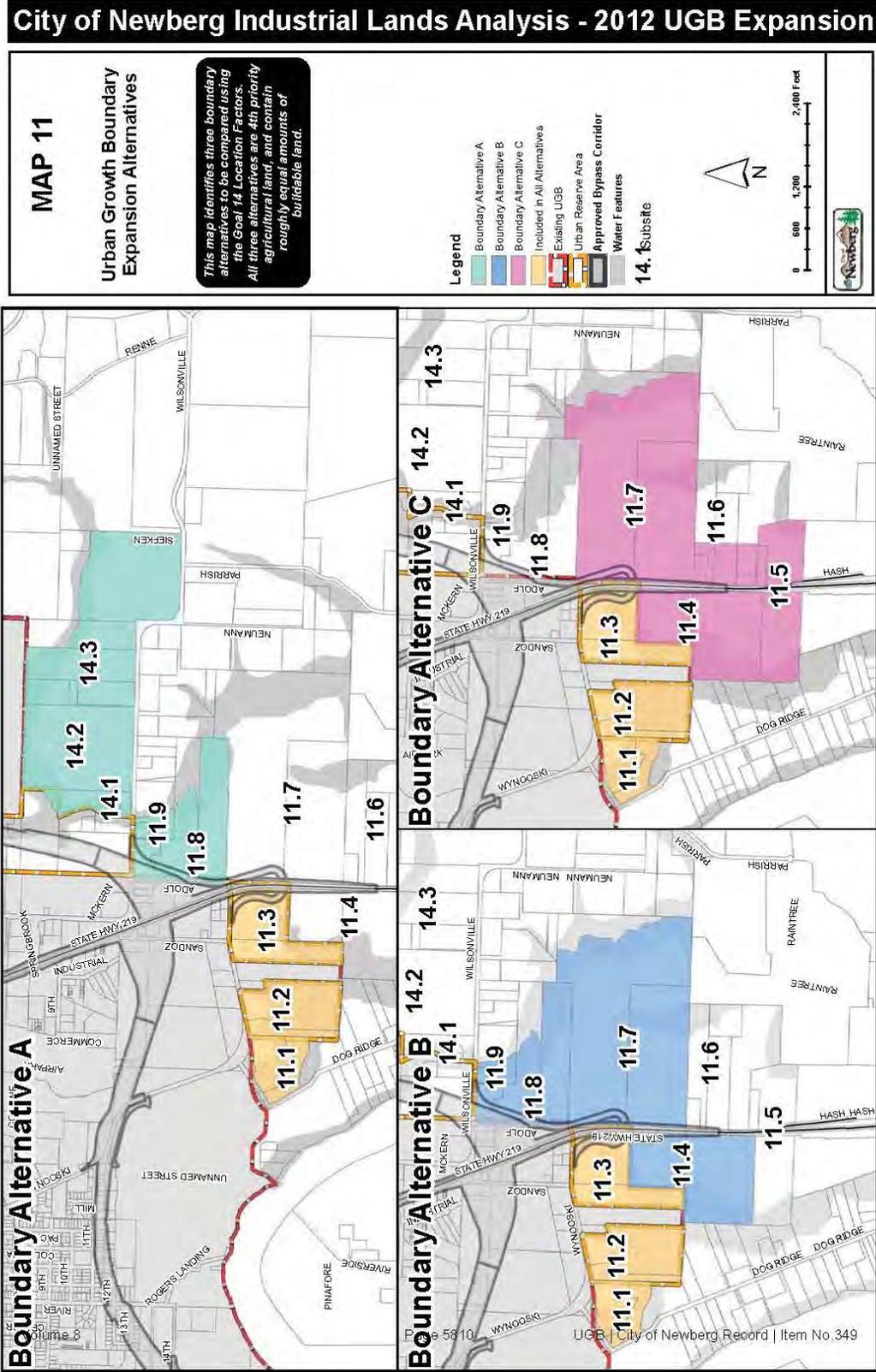


Figure 6. Expansion Area with Aerial Photograph



The objection also contends “the city’s findings consist of a speculative, generic, over-simplified statement that does not meet the requirements for an adequate Goal 14, factor 4 analysis.” Friends objection at 64. The department agrees that the findings do not describe the nature of the farm use in the vicinity or the effects of the urban use proposed, so no meaningful comparison of the effects of alternative boundary locations can result. Since all of the alternative areas are in close proximity, even overlapping, the expected level of findings and analysis may be different in this case than would be expected for more widely distributed alternatives. The department believes that at least some specific consideration of the nature of the farm use in the area and potential impacts from industrial use is needed. Additionally, since the department is recommending remand of the UGB amendment on other grounds, additional alternative expansion area areas may be included upon reconsideration of the amendment. That reconsideration should include a more complete consideration of alternatives under the Goal 14 location factors. The department recommends the commission sustain this portion of the objection.

The department also notes that the findings do not include any discussion of how the location factors were “balanced.” This does not necessarily result in an inadequate factual base in this case because the same alternative was shown as the best choice when considering each of the four location factors. Again, since the department recommends remand of the submittal, the city should, on reconsideration, include a discussion of how the Goal 14 location factors are “balanced,” in addition to how they are “considered.”

Finally, the objection asserts that the city did not adequately consider the relative impacts of alternative UGB locations on farmland in northern Marion County. The city addressed the Marion County Rural Transportation Plan (RTSP) in its findings related to compliance with Goal 12, Transportation. Rec. at 5788. The city found that the routes that industrial traffic from Newberg are likely to use to get to Interstate 5 are designated as “Strategic Intra/Inter-County Corridors” and freight routes in the county plan. The city found that “the UGB amendment is consistent with the planned function of these routes, and the goals and policies contained in the Marion County RTSP.” Rec. at 5789. These findings do not specifically address in the impact of the industrial traffic on *farm use*, the city has demonstrated that Marion County has planned for the routes at issue to accommodate the regional traffic demand. There has been no allegation that the traffic generated from the UGB expansion area would create impacts on farmland or farm use different from that resulting from existing and other planned uses. There has been no demonstration that the industrial traffic generated in Newberg from some alternative location, even within the existing UGB, would have less impact on the Marion County roads than would the adopted expansion area. The department recommends the commission reject this portion of the objection.

The department recommends the commission remand the submittal with instruction for the city to supplement the analysis of alternative expansion areas with an adequate factual base to demonstrate the Goal 14 location factors have been considered and balanced.

B. Kathleen Carl

This objection relates to Goal 14, Location Factor 4: “Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.” The objection contends the city did not consider testimony regarding the effect of the UGB amendment on agriculture in northern Marion County due to the increased traffic on road between Newberg and the Donald interchange. The objection requests a remand of the UGB with the following instructions:

- (a) Reconsider the proposal in the light of the harm that increased traffic will do to northern Marion County farmers
- (b) Reconsider the proposal in the light of the harm done to the farm economy, and
- (c) Remove the agricultural land from the UGB expansion because there are other areas in the UGB that have less impact on agriculture as well as land in urban reserves and on exception lands.

Department Analysis and Recommendation. See subsection VI.A.14 regarding Friends objection 7. The department recommends that the commission reject an objection that is essentially the same as that contained in the Carl letter. The department recommends the commission reject this objection also.

The Carl objection is more fully explained than was the Friends objection, however, warranting additional explanation. This objection points out an alleged incompatibility. Specifically, the letter contends the city should have considered “increased traffic on McKay and Ehlen roads going through the Donald interchange and affecting the many slow-moving pieces of farm

equipment in this important agricultural area of Marion County” in its analysis of alternative expansion areas. The department construes the phrase “nearby agricultural and forest activities” in Location Factor 4 to refer to reasonably close proximity to the proposed expansion area. The expansion area is more than a mile from the nearest farmland in Marion County and several miles from the Donald interchange. The traffic that Ms. Carl objects to is not confined to the immediate vicinity of the alternative expansion areas, and the department finds Goal 14 does not require such broad analysis of “nearby” activities. The Yamhill and Marion county transportation system plans are required to address such impacts on their roads (OAR chapter 66, division 12), and the department finds transportation system planning to be the appropriate method for addressing traffic impacts so far from the UGB.

The objection letter also states: “the city of Newberg did not consider the consequences of their UGB expansion to the farming economy. This is another factor (3) which must be used when determining the boundary location of a UGB, per Goal 14, ORS 197.128.” Location Factor 3 requires the city to consider “comparative environmental, energy, economic and social consequences” in its analysis of alternative expansion areas. The department reviewed Ms. Carl’s testimony to the city (Rec. at 3839, 5538) and this objection and is unable to ascertain what economic effects the city should have considered beyond conversion of farmland. Conversion is included in another part of the UGB analysis, specifically the application of priorities under ORS 197.298. The department concludes that this part of the objection does not demonstrate that the submittal fails to address Goal 14 Location Factor 3 appropriately.

For these and the reasons stated in subsection VI.A.14, the department recommends the commission reject this objection.

C. Shirley Cooper

This objection relates to Goal 14 and the efficiency of land inside the UGB and how ORS 197.298 priorities were applied for sites outside the UGB. The objection contends that land needed for employment uses is readily available in the South Springbrook and Zimri Drive areas of the city. The objection further contends that these two areas alone give more than adequately varied sites and sizes for the stated anticipated growth needs for industrial sites as stated in city’s data needs projections. In addition, the objection contends that urban reserve and exception lands in the South Springbrook and Dundee/Newberg Corridor areas were inappropriately excluded from consideration as needed industrial lands.

The objector requests a remand with instructions to remove farmland and to utilize instead those areas already within UGB and, alternatively, to accommodate the anticipated industrial needs within UGB and on higher priority land in urban reserves and exception areas.

Department Analysis and Recommendation. See subsection VI.A.12 regarding Friends objection 5. The department recommends that the commission sustain in part an objection that is essentially the same as that contained in the Cooper letter. The department recommends the commission sustain this objection in part, as well.

This objection cites three areas that can accommodate the identified need: South Springbrook, Zimri Drive, and Newberg/Dundee Corridor. All of these areas are addressed extensively in subsection VI.A.12, and that analysis and conclusions are incorporated here by reference. The department recommends the commission remand the submittal for the city to:

1. Clarify that the Zimri Road area (Site VI) is not adjacent to commercially zoned land, and provide adequate justification as to why Site VI cannot reasonably accommodate industrial uses, or consider it in the Goal 14 analysis of alternative locations to accommodate industrial land needs under OAR 660-024-0050(4).
2. Either justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) is unsuitable for industrial use or consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
3. Adequately justify why Sites 8 and 9 (Newberg-Dundee corridor) are unsuitable for industrial use, or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.

D. Lee M. Does

This objection relates to Goal 14 and the efficiency of land inside the UGB, and how ORS 197.298 priorities were applied for sites outside the UGB. The objection contends that Newberg's UGB proposal failed to include available lands in several locations. Total acreage available within the described areas allegedly meets or exceeds the acreage Newberg included in the adopted expansion. Furthermore, the alternative lands described in the proposal contain higher-priority soils and there is land already available within the South Springbrook Urban Reserve and Newberg-Dundee corridor to meet those needs.

The objector requests a remand with instructions to remove the contested agricultural land and instead accommodate Newberg's industrial land needs by utilizing existing properties within the current UGB as well as higher-priority lands in urban reserves and exception areas.

Department analysis and recommendation. See subsection VI.A.12 regarding Friends objection 5. The department recommends that the commission sustain in part an objection that is essentially the same as that contained in the Does letter. The department recommends the commission sustain this objection in part, as well.

This objection cites several areas that can accommodate the identified need. All of these areas are addressed extensively in subsection VI.A.12, and the analysis and conclusions in that subsection are incorporated here by reference. The department recommends the commission remand the submittal for the city to:

1. Clarify that the Zimri Road area (Site VI) is not adjacent to commercially zoned land, and provide adequate justification as to why Site VI cannot reasonably accommodate industrial uses, or consider it in the Goal 14 analysis of alternative locations to accommodate industrial land needs under OAR 660-024-0050(4).

2. Either justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) is unsuitable for industrial use or consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
3. Adequately justify why Sites 8 and 9 (Newberg-Dundee corridor) are unsuitable for industrial use, or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.

E. Grace Schaad

This objection relates to Goal 14 and the efficiency of land inside the UGB and how ORS 197.298 priorities were applied for sites outside the UGB. The objection contends that Newberg has passed over land for industrial development that is already inside of the current UGB that meets the same “site characteristics” as the proposed South Industrial Area. The objection further contends that the city passed over land in the current urban reserve area and in exception areas that could accommodate industrial development.

The objector requests a remand with instructions to remove the high value agricultural land, and direct the city to accommodate industrial development needs on land within the city, on land within the current UGB, on land within the current urban reserve area, or on exception land.

Department analysis and recommendation. See subsection VI.A.12 regarding Friends objection 5. The department recommends that the commission sustain in part an objection that is essentially the same as that contained in the Schaad letter. The department recommends the commission sustain this objection in part, as well. This objection cites several areas that can accommodate the identified need. All of these areas are addressed extensively in subsection VI.A.12, and the analysis and conclusions from that subsection are incorporated here by reference.

F. Ranee Salmonsson

This objection relates to preserving farmland and how ORS 197.298 priorities were applied for sites outside the UGB. The objection contends that sites that are not high value farmland contain land that is appropriate for industrial development, thus resulting in the city’s decision to include prime farmland into the UGB for industrial use to be a violation of ORS 197.298. The objection also states that the city’s presumption that it should focus its growth on industrial uses is flawed, and that the city should instead focus on the growth of its agricultural-related tourism sector, which is heavily land dependent.

Department analysis and recommendation. See subsection VI.A.12 regarding Friends objection 5. The department recommends that the commission sustain in part an objection that is essentially the same as that contained in the Salmonsson letter. The department recommends the commission sustain this objection in part, as well. This objection cites several areas that can accommodate the identified need. All of these areas are addressed extensively in subsection VI.A.12, and the analysis and conclusions from that subsection are incorporated here by reference.

VII. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

A. Recommendation

For the reasons described in chapters V and VI of this report, the department recommends that the commission remand the Newberg UGB amendment submittal for further development of the record and analysis. The department recommends the commission instruct the city, on remand, to:

1. Demonstrate that the following “site characteristics” identified by the city pursuant to OAR 660-009-0015(2) and OAR 660-024-0060(5) are meaningfully connected with the operation of a target industry or a group of target industries with compatible operational requirements, or consider the site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors:

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

Exclude sites that, for community centers, abut residential neighborhood on more than 50 percent of the site perimeter unless effective topographical or road buffers are present or planned.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within one-quarter mile.

Exclude [study areas] that are not predominantly less than 5 percent slope within buildable areas.

2. Explain how the determination of the capacity of the existing UGB to accommodate employment growth considered employment growth on fully developed land.
3. Clarify that the Zimri Road area (Site VI) is not adjacent to commercially zoned land, and provide adequate justification as to why this site cannot reasonably accommodate industrial

uses, or consider it in the Goal 14 analysis of alternative locations to accommodate industrial land needs under OAR 660-024-0050(4).

4. Adequately justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) is unsuitable for industrial use or consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
5. Adequately justify why Sites 8 and 9 (Newberg-Dundee corridor) are unsuitable for industrial use or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
6. Consider the Waste Management site vacant in the employment land inventory.
7. Supplement the analysis of alternative expansion areas with an adequate factual base to demonstrate the Goal 14 location factors have been considered and balanced.

B. Proposed Motion

Recommended Motion: I move the commission remand Newberg's urban growth boundary amendment submittal based on the findings and conclusions in the director's report, with specific instructions as defined in Section VII.A of the report.

C. Optional Motions

Remand on other bases: I move the commission remand Newberg's urban growth boundary amendment submittal based on the findings and conclusions in the director's report, with the following changes: ____.

For approval: I move that the commission approve Newberg's urban growth boundary amendment submittal based on the commission's findings that: _____.

ATTACHMENT

A. Objection letters



Willamette Valley Office • PO Box 51252 • Eugene, OR 97405 • (541) 520-3763 • fax (503) 223-0073
Portland Office • 133 SW Second Ave, Suite 201 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389
Central Oregon Office • 115 NW Oregon Ave #21 • Bend, OR 97701 • (541) 719-8221 • fax (866) 394-3089

September 16, 2013

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

Re: Objections to City of Newberg submittal

Dear Mr. Rue and Ms. Lazarean:

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

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

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

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

INTRODUCTION

Until recently, Newberg had a large supply of high quality industrial land in the areas now covered by the Springbrook Oaks Specific Plan and the Springbrook Master Plan.¹ Between 1999 and 2007, the city systematically rezoned most of this land for other uses,² even as it was citing a critical need for more industrial land as a justification for expanding its urban reserves, which LCDC remanded in 2009.³

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

¹ See R.6011-13 for a more complete timeline of the events described below.

² R.6019-20, R.6045, R.6252-65 (Springbrook Oaks); R.6224, R.6652-53 (Springbrook Master Plan area)

³ R.6080-82, R.6155-56

private landowner to pursue inclusion of his land – Class I and II soils zoned for Exclusive farm Use – in the UGB.⁴ In 2009, the city began master planning this landowner’s property, along with other prime farmland under county jurisdiction, for an industrial district – prior to its inclusion in the UGB, prior to adoption of an *EOA* to justify need, and prior to an analysis of alternative locations.⁵

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

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

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

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

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

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

⁴ R.6266-82

⁵ R.697-801

⁶ R.6300, R.2371, R.4107, R.5833

⁷ R.6309, R.1263, R.2401, R.5862

⁸ Record, R.6329, R.2408, R.5869

⁹ See Objection 6 below

¹⁰ Audio record, Item 13

¹¹ R.5647

¹² R.5150

¹³ R.5537, R.6651-52

The Department should not acknowledge the submittal. Instead, it should be returned to the city and county with instructions to develop a proposal that is consistent with the relevant statutes, goals, and administrative rules.

OBJECTION 1: SITE CHARACTERISTICS

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

Introduction

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

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

OAR 660-009-0005(11):

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

OAR 660-009-0015(2):

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

OAR 660-009-0025(1):

Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories.

In its remand of Newberg’s 2010 *EOA*, LUBA devised a two-pronged test to interpret these requirements. In order to be a valid site characteristic: (1) the attribute must be typical of the expected use and (2) the attribute must have some meaningful connection with the operation of the use. LUBA further held that “typical” attributes are those that are “typically required for a business to operate successfully.”¹⁴ The Court of Appeals upheld LUBA’s test, noting that “‘necessary’ site characteristics are those attributes that are reasonably necessary to the successful operation of *particular* industrial or employment uses, in the sense that they bear some important relationship to that operation.” (Emphasis added) *Friends of Yamhill County v. City of Newberg*, 240 Or App 238 (2011).

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

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

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

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

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

¹⁴ *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010).

separate inquiry, which is beyond the scope of the *Site Study*. (R.5967) The layout could have more to do with the physical characteristics of the cities themselves, and with the many forces that operate over time as an area develops, rather than any specific business needs.

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

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

For example, based on the *Site Survey*, the *EOA* concludes that *all* industrial sites for its targeted industries must have “suitable truck access to a state highway or arterial within 1/4 mile” that does not require “travel through or adjacent to a residential neighborhood.” Yet certain targeted industries do not need that, based on the *EOA* itself. For professional and creative services (legal, financial, web design, etc.) the *EOA* merely states that “they benefit from close access, even if only for passenger vehicles.”¹⁵

For other industries, the *EOA* uses examples of businesses that are located *outside* of the districts that are part of the site survey. Thus, there is no evidence in the record to support *any* conclusions regarding these businesses' site characteristics. See, at a minimum, the references in Table 12-24 to businesses in Dundee, Beaverton, Hood River, and Aurora, as well as to Berry Noir, which is on land zoned EFU that is within the city's proposed UGB expansion.¹⁶

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

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

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

Industrial & Commercial “Compatibility” Site Characteristics

¹⁵ R.5869, 5877, 5887-88

¹⁶ R.5882-88, R.708

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

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

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

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

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

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

Industrial “Proximity” Site Characteristics:

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

As discussed in the following Sub-Objection 1B, this site characteristic is meant to address the efficient provision of land and public facilities, residential compatibility, economic efficiency, and energy efficiency. Therefore, it is actually several Goal 14 location factors masquerading as a site characteristic: Factor 1 (efficient accommodation of identified land needs), Factor 2 (orderly and economic provision of public facilities and services), and Factor 3 (social, economic and energy consequences). It is not itself a bona fide *site* characteristic.

Sub-Objection 1A Conclusion: By using Goal 14 locational factors as "Required Site Suitability Characteristics," Newberg has a) impermissibly screened out many alternative sites from its Goal 14 locational analysis that are either within the UGB or are a higher-priority under ORS 197.298; and b) impermissibly elevated some locational factors over other locational factors, instead of balancing them. Therefore, the city's decision violates Goal 14, ORS 197.298 and OAR 660-024-0060(3).

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

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

We object to the following site characteristic:

"Adjoin an existing industrial or commercial area, or an area with sufficient buildable land [50 acres] to allow expansion of the industrial district."¹⁷
(Industrial sites, *EOA* Table 12-23, R.5869)

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

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

District Size & Adjacency to Commercial, Problem #1:

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

"Site contains a parcel or group of parcels in close proximity with buildable land that contains at least 20 buildable or industrially developed acres (or smaller if adjacent to existing industrial district)."¹⁸

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

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

¹⁷ *EOA* p. 54, see p. 58 for clarification that "sufficient buildable land" means 50 acres (R. 5869, R. 5873)

¹⁸ *EOA* p. 54, R.5869

That doesn't make sense, since in either case the end result would be the same: a 25-acre industrial district.

District Size & Adjacency to Commercial, Problem #2:

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

The areas surveyed by the city’s *Site Study* are not representative of all the industrial districts in the study area. We identified 12 smaller districts that were improperly excluded from the *Site Study*.¹⁹ Since the *Site Study* reviewed only 25 sites, the effect of excluding the 12 smaller sites is significant. The selection of a non-representative sample badly skewed the outcome of the report: the *Site Study* concluded that industrial districts tend to be large simply because it ignored the districts that are small. All but one of the 12 excluded districts are smaller than 50 acres, and 10 districts are smaller than 20 acres.²⁰

When these 12 excluded districts are added back to the 25 districts examined by the *Site Study*, the results are much different: about half of the 37 districts are smaller than 50 acres, and about one-third are smaller than 20 acres.²¹ Thus, the city erred in concluding that “typical” industrial districts are larger than 50 acres. The record shows that there is no particular size of district that is most common; they are evenly distributed throughout the range. It would equally reasonable to conclude that “typical” industrial districts are *less* than 50 acres.

It is unsurprising that there is no particular district size that is “typical”. Just as there is no one size of individual industrial lot that is universally seen across all industry, there is no one size of industrial district that is uniformly seen across all types of industry, or across all communities.²² The evidence in the record shows that businesses thrive across a wide range of industrial district sizes; there is no one-size-fits-all “typical” district that all industries typically require to operate successfully.

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

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

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

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

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

²² For example, wineries are one of Newberg’s targeted industries. The only winery in the *Site Study* is located in a 20-50 acre district. (R. 5981)

District Size & Adjacency to Commercial, Problem #3:

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

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

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

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

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

The *EOA* contains²³ seven justifications for the claim that it is “necessary” for industries to locate in 50-acre districts. (R.5882-88, R.5871) As discussed in Sub-Objection 1A, all of these justifications are actually Goal 14 location factors, and not bona fide industrial operational requirements. Therefore, they cannot be addressed by a Goal 9 site characteristic.

Each *EOA* justification is addressed below:

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

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

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

²³ Table 12-24 and page 56 (R.5882-88 and R.5871)

If there is a legitimate concern that some candidate lands *cannot* be served with adequate roadways or electrical facilities, then the *EOA* can be amended to add a site characteristic that lands must be serviceable. If a site is deemed serviceable, then as those lands are annexed and developed, the city's transportation improvement process will ensure that the needed roadways are built, and the electrical service provider will be able to extend the needed electrical facilities.

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

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

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

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

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

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

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

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

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

Claim: “Uses have employee bases that need close amenities provided in the district or nearby commercial areas.”

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

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

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

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

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

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

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

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

Obviously, most of these businesses would not be shuttling parts and supplies by hand carrying them next door, or by running a forklift down the city street to the next block. Instead, the materials would be loaded on a truck. Once there, the difference between delivering to a location in the same industrial district versus across town is probably five to ten minutes. Most of the time involved in shuttling parts and supplies would be spent packing, loading, unloading, and unpacking, not driving – no matter where in Newberg the businesses were located.

The record contains no evidence that businesses would be unable to sell their supplies and parts to other Newberg businesses, or that transport would cost appreciably more, if the businesses were in new industrial areas smaller than 50 acres in size, or not adjacent to an existing industrial or commercial area.

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

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

This claim is difficult to understand, since most facility expansions require land that is *directly* adjacent to the current facility; land on “close sites” generally isn’t helpful. For example, forklifts cannot ferry materials down the street, and conveyors cannot cross over adjacent properties to reach the expansion site. The *EOA* itself acknowledges this; it states that sites should be sized in order to accommodate future expansion, because splitting a business across two sites would result in “lost production and investment.”²⁴

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

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

District Size & Adjacency to Commercial, Problem #4:

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

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

²⁴ *EOA* page 54: “In addition, many industries require land for long-term expansion so that they aren’t forced to move their business down the road or split their sites, resulting in lost production and investment.”

Why are so many of these industrial districts adjacent to residential and commercial land? The most likely reasons are coincidence and historical development patterns. Uses must be proximate simply due to the realities of spatial organization; there are only so many ways to lay out a city. Proximity of industrial land to other zones is an inevitable outcome, and doesn't necessarily have a larger meaning. The record contains no evidence that industrial adjacency to commercial is any more deliberate or necessary than the even more common adjacency to residential.

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

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

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

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

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

²⁵ Newberg Municipal Code 15.322.020: Permitted buildings and uses.

- 10. Bakeries, wholesale and retail.
- 11. Banks.
- 12. Building maintenance services.
- 14. Car washes, coin-operated or mechanical.
- 17. Convenience grocery stores with a maximum of 2,000 square feet.
- 20. Equipment rental yards.
- 30. Plumbing supplies and services.
- 32. Printing and publishing.
- 33. Public and private parking areas and garages.

Even if it *could* be demonstrated that clustering industries in larger districts would result in additional “close amenities” that would increase businesses’ ability to attract and retain qualified employees, as discussed in Sub-Objection 1A, this would still be a Goal 14 Factor 3 (economic consequences) locational analysis consideration, not a site characteristic.

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

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

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

- 1) A 50-acre or larger district size is “typical” for each of Newberg’s targeted industries.
- 2) There is an important relationship between a 50-acre district size and the successful operation of particular industrial uses within the district.
- 3) There is an important relationship between commercial land adjacency and the successful operation of particular neighboring industrial uses.

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

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

36. Repair garages.

37. Restaurants.

38. Secondhand stores.

39. Service stations.

44. Theaters, drive-ins.

45. Transit centers.

characteristic: “Adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.”

Sub-Objection 1C: Proximity to residential

We object to the following site characteristics regarding residential compatibility:

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

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

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

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

This statement acknowledges that buffers can be provided between new industrial areas and existing residential.²⁶ However, the *EOA* not only excludes sites that have more than 25% adjacency with residential areas unless buffers are already present; it relies solely on *Site Study* (R.5965-5995) to conclude that buffering more than 25% of a boundary would be infeasible.

First, the areas surveyed by the city's *Site Study* are not representative of all the industrial districts in the study area. As previously discussed, we have identified 12 districts that were improperly excluded from the *Site Study* – all but three have more than 25% adjacency to residential land.²⁷

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

²⁷ See Attachment 13 to our June 2, 2011 letter, which identified 15 sites missing from the original *Site Study*. (R.6475-6505) Of these, Forest Grove-1, Forest Grove-2, and Sherwood-1 have been added to the revised March 2013 *Site Study*. All but three of the 12 excluded sites (the Canby-2, McMinnville-2, and the Woodburn-1 sites) have obvious residential adjacency that exceeds 25%.

When these 12 excluded districts are added back to the 25 districts examined by the *Site Study*, the results are much different: 11 of the 37 districts (about 1/3) have more than 25% unbuffered adjacency to residential.²⁸ Thus, the city erred in concluding that “typical” industrial districts have less than 25% unbuffered residential adjacency.

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

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

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



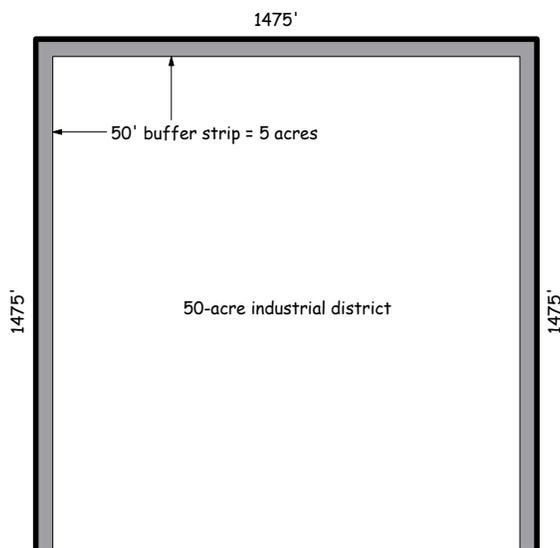
R.6498

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

²⁸ Two of the original sites, plus 11 of the excluded sites, had more than 25% residential adjacency.

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

³⁰ One acre = 43,560 sq. ft. 50 acres = 2,178,000 sq. ft. = 1475’ x 1475’ district dimensions. Buffer strip = 3 x 1475’ x 50’ = 221,250 sq. ft. = 5 acres.



The *EOA* also fails to consider that Newberg’s targeted industries have differing residential compatibility challenges, and hence do not require identical buffering strategies. For example, cyber-security and architectural firms – two of the city’s targeted industries – do not generate noises and odors on a par with metals manufacturers and lumber mills. (R.5859) As with other site characteristics, the city based this characteristic on, and applied it to, overall industrial *districts* rather than the tailoring the characteristics to provide the site attributes that are necessary for *particular industrial uses*.

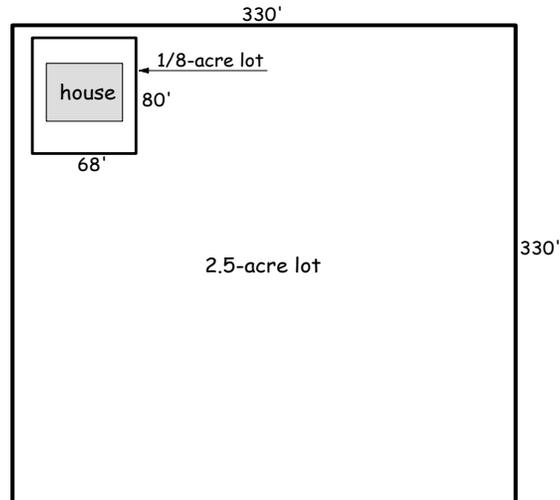
Fourth, the *EOA* fails to consider that some residential lands do not need to be buffered, due to large parcel size and distant home placement. The *EOA* wrongly treats proximity to sparsely populated 2.5-acre rural residential lots as a constraint on par with proximity to a densely populated urban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

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

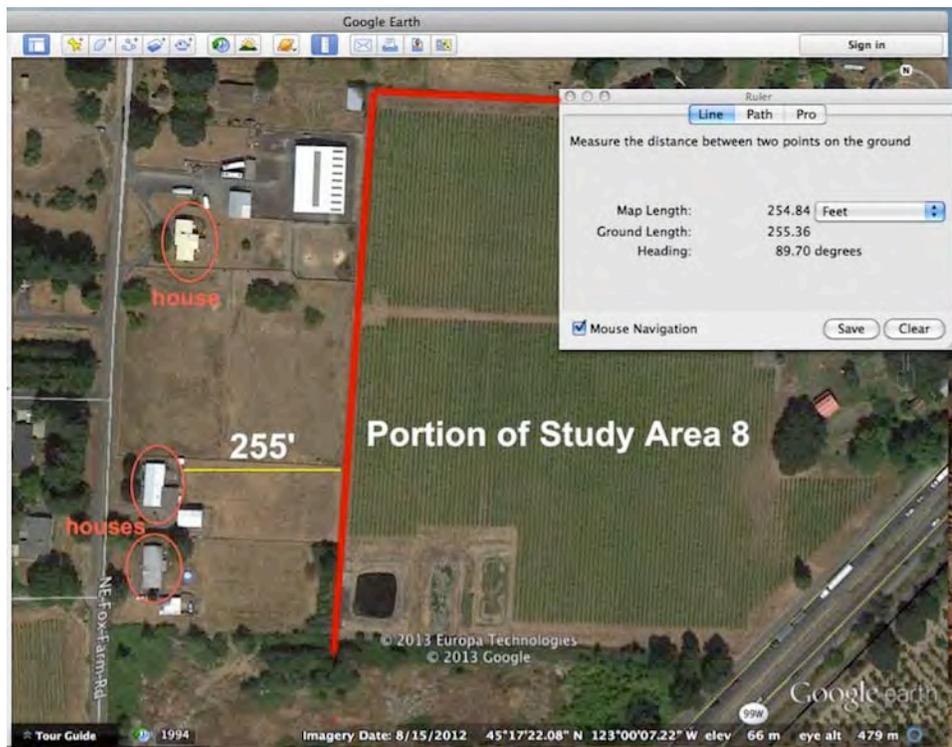
In rural residential areas, there is far more separation between houses and adjacent uses than in urban areas. As shown by the below diagram, a 2.5-acre rural lot is roughly 20 times larger than a typical 1/8-acre urban lot.³² There is no evidence to support the conclusion that conflicts between rural residential and adjacent industrial uses will be of equal magnitude as conflicts in urban areas, or that buffering requirements would be identical.

³¹ The *EOA* explains, “Some sites require buffers for noise, smell, vibration, and visual barriers. *** As a result, most industrial sites are only 40% to 60% developable for basic industrial use with remaining areas used for parking, landscaping, buffers, utilities, environmental protections, employee break areas, and security.” (R.5869)

³² One acre = 43,560 sq. ft. 2.5 acres = 108,900 sq. ft. = 330’ x 330’ dimensions. Newberg minimum lot size = 5,000 sq. ft. per Newberg Zoning Standards Matrix. 1/8 acre = 5,445 sq. ft. = 68’ x 80’ dimensions. (R.5674, 5696)



Below is a screenshot of a Google Earth aerial view of a portion of study area Site 8 (Fox Farm Road) in the Newberg-Dundee corridor north of Highway 99. (R.5674, 5806) It shows three adjacent rural residential homes, and Google's measurement (yellow line) of 255 feet from the edge of the home to the edge of the study area. This distance is far wider than the 50-100 feet that the *EOA* states is adequate to create a buffer area. (R.5878) Most likely, these homes will not require *any* buffering from industrial uses in study area Site 8. If they do, there is ample room on either the residential lot or the industrial parcel for vegetative screening.



R.5674

This example clearly illustrates why the city should not categorically exclude from consideration *all* potential UGB expansion areas that have more than 25% perimeter adjacency to rural residential land, without regard to the number and location of residential structures. Instead, the

city should examine each site individually, to determine whether or not there is a bona fide potential conflict. In those few cases where a conflict is found to be likely, the city can then assess whether 50-100' buffer strip can be established.

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

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

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

- 1) Unbuffered residential perimeter adjacency of 25% or less is universally "typical" for all of Newberg's targeted industries.
- 2) Buffering more than 25% of an industrial site's perimeter is universally infeasible for all of Newberg's targeted industries, and all potential industrial sites.
- 3) Buffering is universally required for all of Newberg's targeted industries.
- 4) Buffering is universally required for all rural residential parcels up to 2.5 acres, regardless of parcel size, shape, and home placement (or lack of home).
- 5) Unbuffered residential perimeter adjacency of candidate commercial lands cannot exceed 50%.

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

Sub-Objection 1D: Traffic through residential areas

We object to the following industrial site characteristic regarding residential compatibility:

“Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.” (R.5869)

As background, the arterials in Newberg today pass through and adjacent to residential areas, including arterials that serve industrial users.³³ A good example is the A-Dec site at the north end of town. To reach the highway, industrial traffic from the A-Dec area must take a long route along minor arterials that pass through residential areas on both sides: Mountainview Drive, College Street, and Springbrook Road. There are many other examples of this situation in Newberg and surrounding cities.

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

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

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

The city does not explain why state highways and arterial streets are considered acceptable truck routes through residential neighborhoods, but no other streets – such as major collectors – could be acceptable. Both arterials and major collectors traverse residential areas. Major collectors are nearly as wide as arterials, and like arterials, do not provide any parking and have bikeways on both sides.³⁴

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

³³ Comparison of *Newberg Transportation System Plan* and *Newberg Zoning Map* (R.6506-07)

³⁴ Figure 6-2 from the *Newberg Transportation System Plan* shows that major collectors are very similar to minor arterials; the only difference between them is the center turn lane. (R.6737)

less on a more heavily travelled minor arterial street than on a major collector that has nearly identical physical and functional characteristics.³⁵

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

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

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

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

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

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

³⁵ Because this site characteristic addresses compatibility with residential neighborhoods, it is actually a Goal 14 Factor 3 (social consequences) location factor. See Sub-Objection 1A.

- 1) *Only* state highways and arterial roadways can be acceptable truck routes through residential neighborhoods, and not major collectors, which are physically and functionally similar to minor arterials.
- 2) *Only* present-day street configurations can be considered when evaluating proximity to state highways, arterials, and/or major collectors, and not the access that *could* be provided once a new industrial area is developed.
- 3) *All* of Newberg’s targeted industries generate significant truck traffic.

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

Sub-Objection 1E: Access to existing streets

We object to the following site characteristics:

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

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

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

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

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

“It is typical for industries to need to be as close as possible to a major road for easy access; every site in the nearby communities studied was within ¼ mile. Adequate access has a meaningful connection to industry because most businesses rely on being able to receive supplies and ship goods readily and easily. It is harmful to the business, to surrounding uses,³⁶ and to the safety of pedestrian, bicycle, and neighborhood traffic to have large trucks regularly traveling through neighborhoods that are not built to handle large truck traffic.” (R.5877)

³⁶ To the extent that this site characteristic addresses compatibility with surrounding uses, it is actually a Goal 14 Factor 3 (social consequences) location factor. See Sub-Objection 1A.

We agree with the city's statement: "Adequate access has a meaningful connection to industry because most businesses rely on being able to receive supplies and ship goods readily and easily." However, per the Court of Appeals, "'necessary' site characteristics are those attributes that are reasonably necessary to the successful operation of *particular* industrial or employment uses." (Emphasis added) *Friends of Yamhill County v. City of Newberg*, 240 Or App at 747. The city's ¼-mile standard is overly prescriptive; there is no set distance required to ensure "adequate access" for all of Newberg's targeted industries. As noted above, Newberg's targeted industries include a wide range of businesses; the city erred in concluding that *all* businesses have the same access needs.

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

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

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

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

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

- 1) Location within ¼ mile of an arterial or state highway is universally "typical" for *all* of Newberg's targeted industries.

³⁷ A ¼-mile square contains 40 acres; most industrial districts considered by the *Site Study* are larger than that.

2) *Only* state highways and arterial roadways can be acceptable truck routes, and not major collectors, which are physically and functionally similar to minor arterials.

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

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

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

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

The *EOA* contains two industrial site characteristics related to slope:

“Exclude:

- Slopes of 10% or greater
- Sites³⁸ that are not predominantly less than 5% slope within buildable areas”
(R.5869)

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

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

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

³⁸ For purposes of this site characteristic, the city misinterprets the word “site” to mean the UGB alternatives analysis study areas, not individual building sites. For example, the *Findings* exclude the entire study area Site 20 – which is hundreds of acres in size – because more than half of the overall study area is over 5% slope: “Site 20 is the North Hills URA. This site is predominantly over 5% slope, and has many areas >10% slope. Thus, Site 20 does not meet the topography criteria.” (Rec. 5741)

“All of the 25 local and regional industrial districts studied were predominantly less than 5% slope, and all had our targeted industries represented in them. Therefore, a slope of less than 5% is typical for industrial uses, and slopes over 10% are not considered buildable industrial land.” (R.5875)

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

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

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

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

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

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

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

³⁹ An example of this is Site 20: North Hills URA. (R.5804) This is a very large study area that is over a mile long and a half-mile wide, and that contains hundreds of acres. It is primarily sloped, but contains a block of flat farmland along Zimri Drive, a major collector. This portion of the study area contains suitable, buildable industrial land, but it was excluded from consideration because the majority of the much larger overall study area exceeded 5% slope. (R.6733) Another example is Site 1 on North Valley Road.

within the *EOA*, when viewed alongside another established site characteristic: “Exclude slopes of 10% or greater.” Implicit in the *EOA*’s assertion that “slopes over 10% are not considered buildable industrial land” is an acknowledgment that slopes under 10% *are* buildable industrial land.

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

- 1) Slopes of 5% or less are universally “typical” for all of Newberg’s targeted industries.
- 2) There is any meaningful relationship between the slope characteristics of the city’s arbitrarily chosen study areas and the characteristics of the smaller, buildable portions of those areas, or the operational needs of individual businesses that could locate therein.

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

OBJECTION 2: SITE SIZES

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

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

The *EOA* projects industrial land need through 2030 by estimating the number of firms in each of three size-of-workforce categories, then assigning an average site size to each category. It also assigns job growth to either infill and redevelopment sites, or to new sites. It is reproduced below.

Table 12- 20: Site Size Distribution by Firm Employment Through 2032⁴³

Emps. per Firm	Percent of Emp.	Number of New Emps.	Number of Firms	Sites Needed	Size Range (Acres)	Ave. Site Size (Acres)	Ave. ROW Need (Acres)	Gross Buildable Acres Needed
0-9	15%	273	46	23	<2	1	0.15	26
				23				infill & redevelopment
10 to 74	40%	729	21	14	2 - 10	5	0.75	81
				7				infill & redevelopment
75 +	45%	820	4	2	10 - 30	20	1.00	42
				1	30 - 50	40	2.00	42
				1	infill & redevelopment		0	
Total	100%	1,822	71	71				191

Source: Winterbrook Planning 2009, Newberg Planning Division 2012

R.5863

This table assumes that businesses with 0-9 employees need sites that average one acre in size, businesses with 10-74 employees need sites that average five acres, and businesses with 75 or more employees need sites that average 20 and 40 acres. The city's decision does not adequately support or explain these arbitrary assumptions. Instead, substantial evidence in the record and in the *EOA* itself supports smaller site sizes.

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

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

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

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

Instead of explaining how the average site size assumptions were derived, the *EOA* points to the following table, which lists "site size ranges" for different industries.

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

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

*ECO/WB: EcoNorthwest and Winterbrook Planning

**Outside Investment Prospects, OECDD (OBDD), Oct 2008

R.5864

The extreme variation in the various ranges renders Table 12-21 useless for determining Newberg's actual land needs. For example, "Sustainable Industries" may need a site anywhere from 5 acres to 200 acres in size. Food processing ranges from 1 acre to 150 acres. Biotech ranges from 5 acres to 60 acres. Airport-related businesses need anywhere from 1 acre to 70 acres. The table and accompanying text provide no guidance on how to select a site size from within the given range.

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

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

clusters include firms that could potentially require 10-30 acre sites, and nine include firms that could potentially require 30-50 acre sites.

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

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

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

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

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

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

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

Furthermore, the scant evidence in the record that could help determine appropriate site size needs actually undermines the city’s conclusions. As discussed above, the city’s decision assumes that one acre of land can accommodate 6-7 employees.⁴⁰ However, the *EOA* itself suggests that Newberg expects its employment capacity to be substantially higher; it cites three

⁴⁰ For example, Table 12-20 (R.5863) states that a 6-employee firm requires a 1-acre site, and a 35-employee firm requires a 5-acre site.

manufacturing businesses that “employ slightly over 1,000 people on 67 acres of industrial land” and assumes that Newberg will have “similar success” in the future:

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

The *EOA* also assumes that all businesses larger than 75 employees – which collectively will employ 820 people – require sites large than 10 acres, and that most will require sites in the 20-40 acre range. However, these site sizes are much larger than those used by the majority of Newberg’s current large industrial employers:⁴¹

COMPANY	EMPLOYEES	ACRES
A-Dec	952	44
Suntron	220	12
Climax Portable	131	2.7
Marus Dental	100	2

A-Dec, Suntron, Climax, and Marus are examples of industries that Newberg has targeted and for which it is proposes to provide large sites: dental equipment, machinery, and high-tech.⁴² The employment capacity of these sites is 18-50 employees per acre. The *EOA* does not explain why all future large employers will instead need sites of at least 20-40 acres each, when Newberg’s existing businesses in the same employee size range, and of the same type, locate on 2-12 acre sites.

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

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

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

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

⁴² See *EOA* Table 12-22. (R.5865)

record demonstrating that smaller sites would be adequate, the city's decision violates these provisions of law.

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

OBJECTION 3: BUILT SPACE CAPACITY

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

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

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

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

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

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

The below table shows that from 2007 to 2010, Newberg shed 552 industrial jobs – almost 20% of the city's industrial job base:

NEWBERG INDUSTRIAL SECTORS	Percent Industrial Use⁴³	2007 Total Jobs⁴⁴	2007 Industrial Jobs	2010 Total Jobs⁴⁵	2010 Industrial Jobs	Industrial Job Change 2007-2010
Construction	30%	773	232	387	116	(116)
Manufacturing	91%	2608	2373	2,164	1969	(404)
Wholesale	82%	103	84	115	94	10
TWU	82%	178	146	119	98	(48)
Information	40%	57	23	51	20	(2)
Prof. & Bus. Services	14%	430	60	370	52	(8)
Other Services	40%	397	159	439	176	17
TOTALS			3,077		2,525	(552)

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

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

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

⁴³ *EOA* Table 12-19 (R.5862)

⁴⁴ January 2010 *EOA*, Table 12-10 (R.1111)

⁴⁵ *EOA* Table 12-9 (R.5839)

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

⁴⁷ Table 12-19. (R.5862)

Table 12- 20: Site Size Distribution by Firm Employment Through 2032⁴³

Emps. per Firm	Percent of Emp.	Number of New Emps.	Number of Firms	Sites Needed	Size Range (Acres)	Ave. Site Size (Acres)	Ave. ROW Need (Acres)	Gross Buildable Acres Needed
0-9	15%	273	46	23	<2	1	0.15	26
				23	infill & redevelopment			0
10 to 74	40%	729	21	14	2 - 10	5	0.75	81
				7	infill & redevelopment			0
75 +	45%	820	71	2	10 - 30	20	1.00	42
				1	30 - 50	40	2.00	42
				1	infill & redevelopment			0
Total	100%	1,822	71	71				191

Source: Winterbrook Planning 2009, Newberg Planning Division 2012

R.5863

The *EOA* explains some of the assumptions:

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

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

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

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

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

Conclusion: OAR 660-009-0015(2) requires the *EOA* to estimate “the number of sites by type reasonably expected to be needed to accommodate the expected employment growth.” Goal 14 and OAR 660-024-0050(4) require the UGB to be based upon demonstrated need, and a showing

that “estimated needs cannot reasonably be accommodated on land already inside the UGB.” Goal 2 requires that the UGB amendment, the comprehensive plan amendments, and the *EOA* have an adequate factual base.

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

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

OBJECTION 4: INVENTORY OF EMPLOYMENT LAND:

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

Failure to prepare a legally compliant employment land inventory

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

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

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

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

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

⁴⁸ “Vacant” and “developed” are further defined in OAR 660-009-0005. “Developed Land” means non-vacant land that is likely to be redeveloped during the planning period. Therefore, for purposes of Goal 9, “developed land” actually means land that, although already developed to some extent, has additional development capacity. “Developed land” can include sites that are partially vacant, as well as sites that are fully developed with structures, but are deemed likely to redevelop due to age or other factors.

(C) For cities and counties within a Metropolitan Planning Organization, the inventory must also include the approximate total acreage and percentage of sites within each plan or zoning district that comprise the short-term supply of land.

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

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

In 2009, the City of Newberg prepared a Buildable Lands Inventory that was subsequently remanded by LUBA. In *Friends Of Yamhill County V. City Of Newberg*, 62 Or LUBA 211 (2010). LUBA concluded: “there is not an adequate factual base in the record to support the city’s exclusion of land from the inventory....”⁴⁹

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

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

In testimony to Yamhill County,⁵⁰ the city pointed to what it considers its inventory of employment land- the summary tables and maps labeled “Buildable Industrial Land, Newberg UGB, 2012” (R.5890-91) and “Buildable Commercial Land, Newberg UGB, 2010” (R.5900, 5902).

These summaries are the *only* indication in the record of what the city considers to be its supply of vacant and developed employment land. They are not an adequate substitute for an accurate, verifiable, legally compliant inventory of employment lands.⁵¹

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

⁴⁹ R.6345

⁵⁰ R.6004

⁵¹ At a minimum, an adequate inventory would identify buildable parcels and the amount of vacant and/or redevelopable land each one contains, and identification of any development constraints or infrastructure needs that affect the buildable area of sites.

other employment land, including commercial land. Instead, the city apparently extrapolated the remanded inventory based on assumptions not contained in the comprehensive plan.

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

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

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

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

Commercial land missing from summary tables and maps

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

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

⁵² Comparing Table 12-1 and Figure 12-6 from the draft February 2012 *EOA* (R.4318-19) to Table 12-1 and Figure 12-11 from the adopted May 2013 *EOA* (R.5890-91) illustrates this problem. This error results in the unnecessary inclusion of an additional site in the UGB expansion. It also is an internal inconsistency in the *EOA*.

Newberg Has a Commercial Surplus

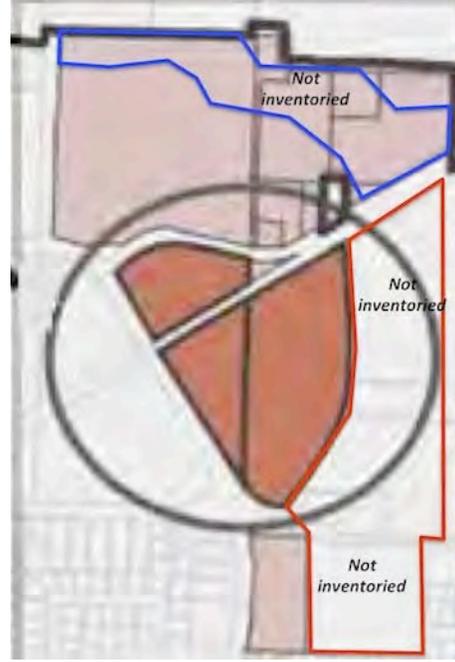


R.6753

from Springbrook Master Plan

DEVELOPMENT STANDARDS	VILLAGE
ALLOWED USE*	<ul style="list-style-type: none"> ❖ Retail ❖ Restaurants ❖ Attached Dwelling Units ❖ Manufactured Home ❖ Multi-Family Units ❖ Home Occupations ❖ Church ❖ Artist Studios ❖ Passive or Active Use Parks ❖ Agriculture ❖ Civic Uses: <ul style="list-style-type: none"> Train Depot Community Center Museum Post Office Library ❖ Day Care ❖ Group Care Facilities ❖ Financial Institutions ❖ Winery ❖ Medical Clinics ❖ Office ❖ Transportation facilities and improvements and utility services ❖ Any other building or use determined to be similar to uses listed in this District
PROHIBITED USE	Drive throughs, outside storage; temporary storage allowed
NEWBERG ZONE DISTRICT MODELED AFTER **	C-3
BUILDING AND SITE STANDARDS	

EOA COMMERCIAL INVENTORY – pg. 77



R.6754



The un-inventoried commercial land is outlined in red and is less than 1/4 mile from an existing arterial. It could be rezoned, in whole or in part, to accommodate industrial use.⁵³ Alternatively, surplus commercial land elsewhere, such as Portland Road or Elliot Road, could be redesignated for industrial use. Newberg is required to consider such re-zonings to meet its industrial land

⁵³ Its current zoning already allows wineries, one of Newberg’s targeted industries.

shortage, per OAR 660-024-0050(4): “Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB.”

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

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

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

OBJECTION 5: ACCOMODATION OF LAND NEEDS

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

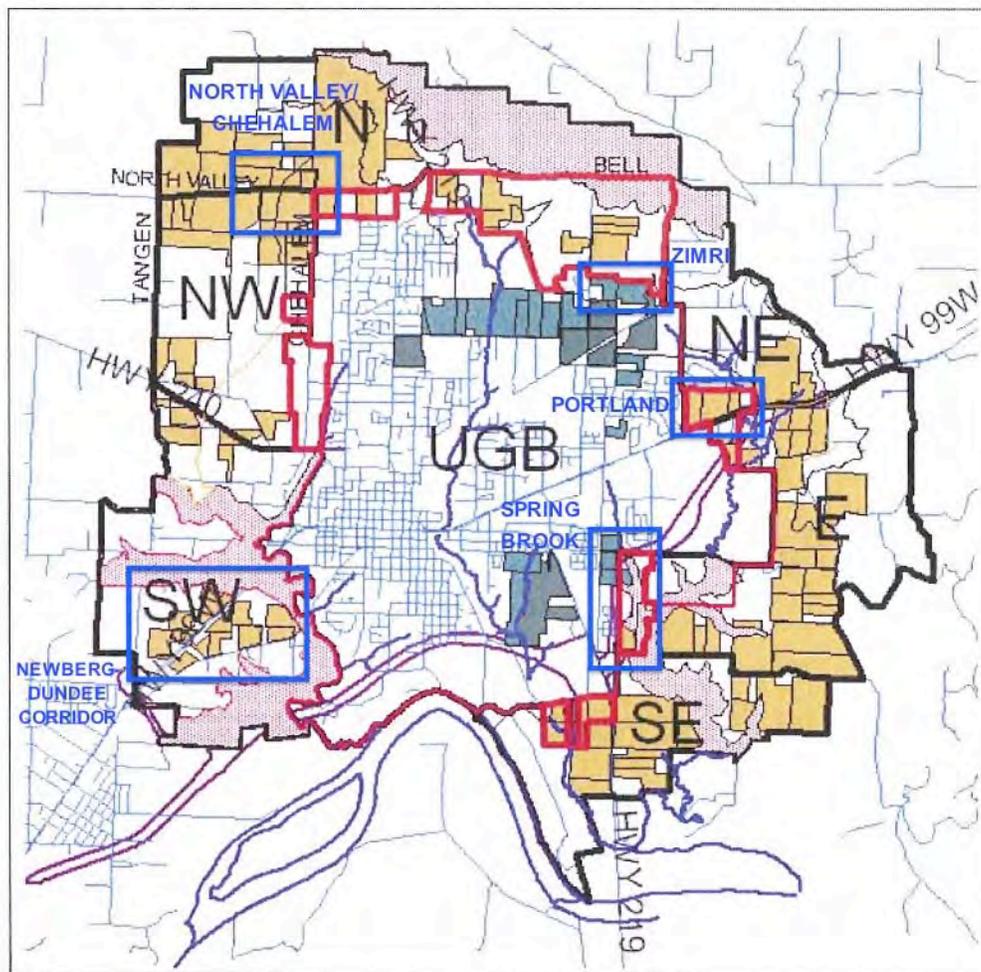
Under Goal 14 and OAR 660-024-0050(4), prior to expanding an urban growth boundary, a local government must demonstrate that needs cannot reasonably be accommodated on land already inside the UGB.

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

This prioritization reflects sound land use and economic policy – it focuses growth on lands for which the public and private sectors have already made investments, helps foster walkable communities, and protects the agricultural land base that supports the #2 industry in the state and, what is by some measures, the #1 industry in Yamhill County.

Newberg's proposed UGB expansion includes 194 acres of agricultural land, the lowest priority for inclusion in the UGB.⁵⁴ Newberg's UGB amendment violates these provisions of law because the city's industrial land need could reasonably be accommodated on suitable land already inside the UGB, or on suitable higher priority urban reserve and exception lands. It is not necessary to include *any* farmland in the city's UGB expansion. Many of these suitable areas are shown in this figure from the Ad-Hoc Committee on Newberg's Future Final Report, and are separately discussed below:

Figure 2. Large Buildable Sites with Good Access and Services Inventory



Newberg Future Land Use Options
Final Report, July 21, 2005

37

R.281, R.6756 (sites labeled with blue text and boxes)

Zimri Drive (Site VI)

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

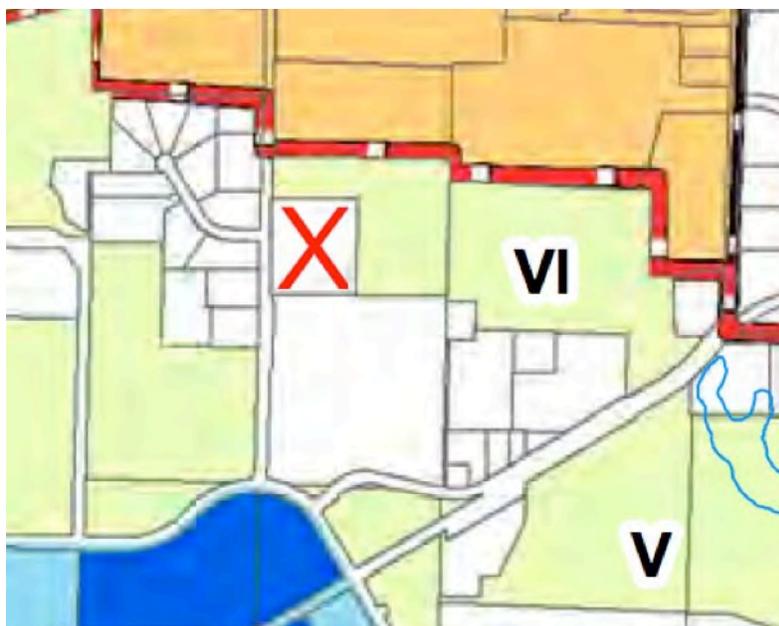
⁵⁴ Findings, Table 13 (R.5766).

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

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

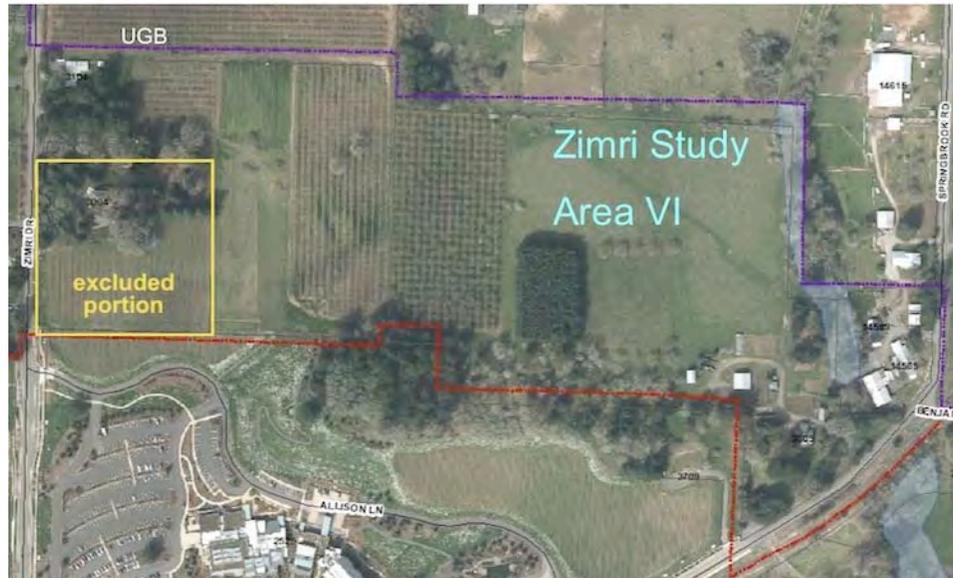
The closest access would be on Zimri Drive, which still would be over ¼ mile distant from the nearest arterial (unless access was through a site with a historic home, which would not be reasonable). Truck traffic on Zimri would have to go past a residential neighborhood. Truck access from Springbrook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

Like its previous argument, the city's new argument is factually wrong. First, as we pointed out in local testimony, in configuring the study area, the city inexplicably excluded a large, mostly vacant parcel at the SW corner of Site VI that is well within 1/4 mile of the existing arterial, Mountainview Drive. The excluded area is marked with a red X in the clipping below, from the *Findings' Map 2*.

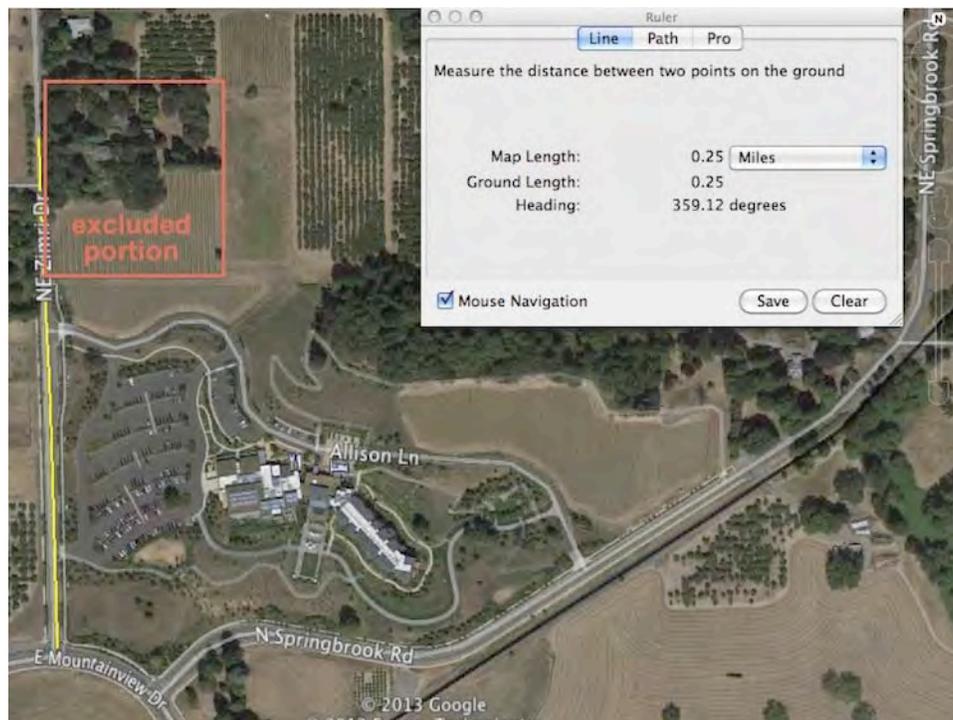


R.5664

The Newberg GIS map and Google Earth screenshots reproduced below show that this excluded parcel has vacant buildable land (currently in farm use), and that it is less than ¼ mile from Mountainview Drive, an existing arterial street. Despite our previous testimony, the city still offers no explanation as to why this parcel was not included in the study area. If it were included, the study area would be within ¼ mile of an existing arterial.



R.5681



R.5682

Second, Zimri Drive itself is designated as a major collector, according to the Springbrook Master Plan. The city does not explain why this $\frac{1}{4}$ mile of major collector that separates Site VI from the existing arterial cannot be upgraded to arterial standards when Site VI is annexed into the city and urbanized.⁵⁵ Instead, the city appears to believe that since portions of Zimri Drive

⁵⁵ As explained in Objection 1D, the city also failed to justify the required site characteristic for access via an arterial, and not a major collector. Like arterials, major collectors are through-traffic streets with no on-street parking, and are sufficient for most industrial access. The only difference between them is that arterials have a

that lie to the north of Site VI exceed 10% grade, and since Zimri Drive terminates at Bell Road, which is “narrow, hilly, and windy,” this somehow precludes the *other* parts of Zimri Drive that are already within the UGB from being upgraded to arterial status. However, the record contains multiple examples of roads in Newberg that are designated arterials only for a portion of their length.⁵⁶ Further, the city has *already* made the choice to upgrade the Site VI portion of Zimri Drive to major collector status. As previously noted, major collectors are physically identical to arterials, with the exception of the center turn lane.

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

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

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

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

The *EOA* states, quoting EcoNorthwest:

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

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

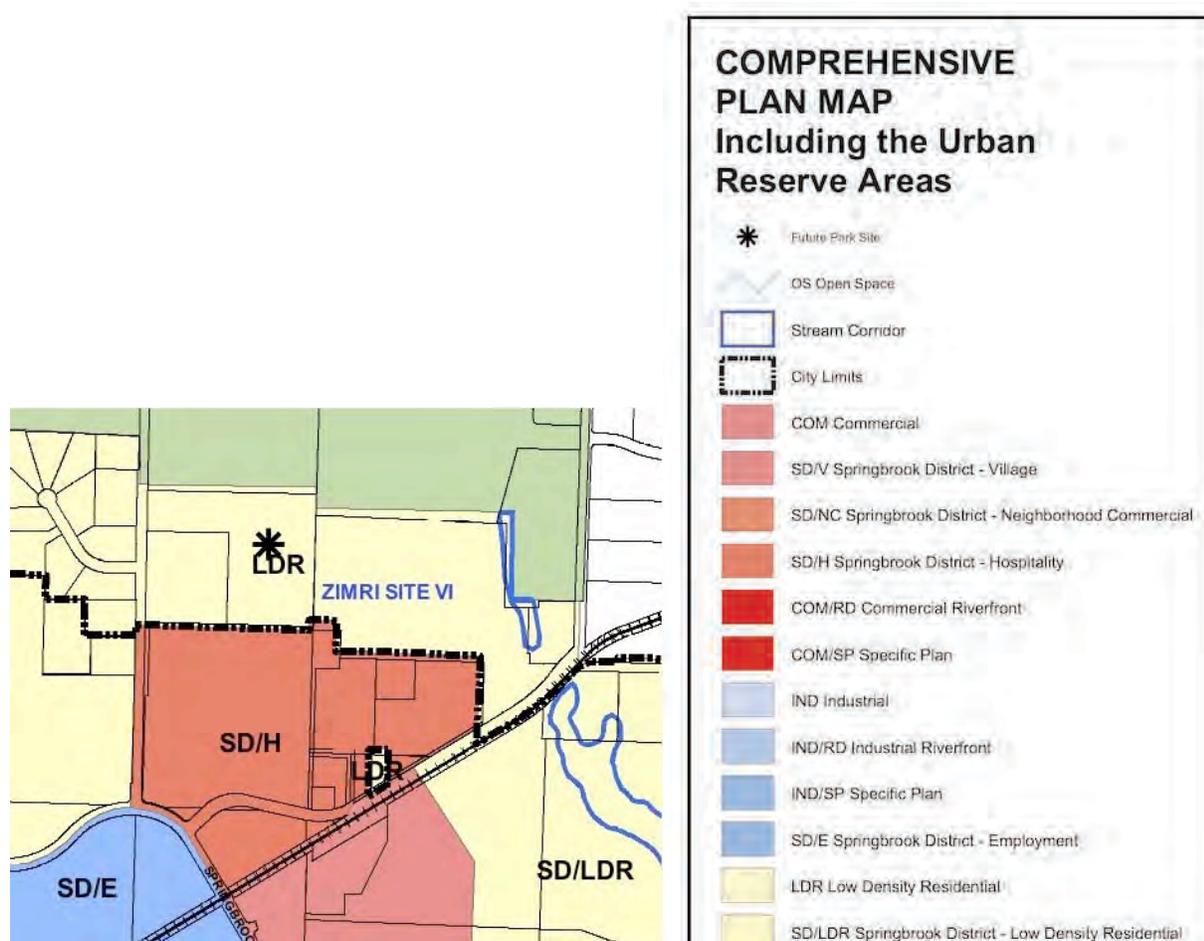
center turn lane, and major collectors do not. (R.6737) The city has not presented any evidence to support its conclusion that major collectors cannot provide adequate industrial access.

⁵⁶ R.5683

⁵⁷ See *Findings*, Map 1 (R.5800) and details below from Newberg Comprehensive plan maps

Moreover, as discussed in Objection 1, the city’s generic site characteristics do not distinguish between its disparate target industries. While some of the target industries may produce “dust, noise, smell, and truck traffic,” there is no evidence to support a conclusion that they *all* do.

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



R.5991, Zimri Site VI labeled in blue

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

S. Springbrook Road (Site XII and Site 12)

Site XII and Site 12 consist of unincorporated, urbanizable land within the UGB and adjacent land in the South Springbrook Urban Reserve, but outside the city limits. Site XII (urbanizable land in the UGB) is largely vacant. Site 12 (South Springbrook URA) has only a handful of structures and is developed at densities of considerably less than 1 dwelling per 10 acres.

Together, these two areas from a contiguous block of developable land currently zoned for rural residential use that meet the city’s “Required Industrial Site Suitability Characteristics.” They are illustrated below:



R.4469

We testified that this block of developable land should have been studied as one study area.⁵⁸ The city did not respond to our testimony, nor do the findings address the contiguous area as a whole, even though the city’s *Economic Opportunities Analysis Findings* acknowledge that, “Where blocks [of] vacant rural residentially designated land can be found, they are to be considered for industrial uses.” (R.5923)

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

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

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

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

⁵⁸ In fact, several developable parcels lie partially within Site XII and partially within Site 12. (R.5300-5301)

However, the “residential land on the west” that the city claims is abutting URA Site 12 is the adjacent UGB Site XII. The contiguous block of land was broken into two areas and studied separately, so each area abuts the other. UGB Site XII is urbanizable land that is plan-designated for residential use, but is largely vacant.

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

This argument should be rejected.

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

Second, residential uses, including multifamily residential, have much less exacting requirements than those Newberg adopted for its targeted industries.⁵⁹ Rather than expand onto prime farmland, which is the lowest priority for inclusion in a UGB, the city could instead redesignate this land for industrial and redesignate other land for multi-family residential within the existing UGB or expand the UGB for residential use onto higher priority land.

Surplus Commercial Lands

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

Moreover, commercial uses have much less exacting requirements than those Newberg adopted for its targeted industries.⁶⁰ Rather than expand onto prime farmland, which is the lowest priority for inclusion in a UGB, the city should instead redesignate suitable commercial land; and, if a need exists, designate other land for commercial use within the existing UGB or expand the UGB for commercial use onto higher priority land.

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

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

⁶⁰ Compare “Required Industrial Site Suitability Characteristics” (R.5869) to “Required Commercial Site Suitability Characteristics” (R.5897)

According to the Newberg Ad-Hoc Committee on Newberg’s Future Final Report, the site can “meet Newberg’s need for large industrial sites” and “could be developed for a single user or as an industrial park.”⁶¹

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

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



R.5684

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

The *Findings* also wrongly assert that Site VII is the only commercial site with large parcels suitable for a community commercial center. However, the College/Mountainview site is within the city limits. It is zoned for commercial use and it is adjacent to State Hwy 219 and has 12 buildable acres, large enough for a community commercial center.⁶²

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

⁶¹ Newberg Future Land Use Options, Final Report, July 21, 2005, p. 41. (R.285)

⁶² 10-15 acres are needed, per the *EOA*. (R.5900, 5902)

The city also rejected the area because “it is not adjacent to an industrial or commercial area.” As discussed in Sub-Objection 1B, this is not a reasonable site suitability requirement supported by evidence in the record. Nonetheless, the adjacent medical complex fits the city’s cited reasons for requiring adjacency to a commercial area and its quasi-public plan designation cannot be used as a pretext to dismiss it. Moreover, the site is only about 500 feet from an extensive commercial district that includes Fred Meyer, Safeway, and many other commercial businesses.⁶³

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

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

Other commercial sites within the UGB.

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



R.6709

⁶³ R.3865. This commercial district is also adjacent to the industrial area that includes the former Suntron property

Parcels along Hancock, Elliot, and S. Springbrook are in an area of existing quasi-industrial uses and the city should consider their redesignation as well. Commercial uses have much more flexible siting requirements than industrial uses. Any shortfall of commercial land can be met without resorting to the conversion of prime farmland, which is by law the lowest priority for inclusion within a UGB.

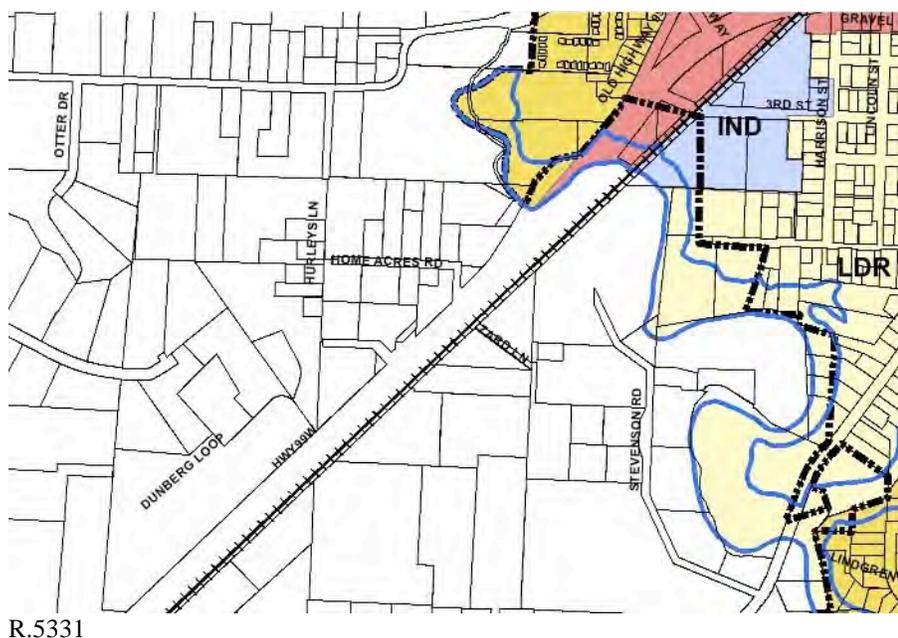
Moreover, the surrounding area is already well-served by a plethora of commercial uses, including major retailers, supermarkets, restaurants, services, and professional offices.⁶⁴ If the city does need additional commercial development, it is not in this part of town.

Newberg-Dundee Corridor

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

The city analyzed two isolated areas of the corridor. One does not include lands adjacent to the UGB (Site 8). The other does include lands adjacent to the existing industrial district (Site 9.) The city then concluded that the entire area is not suitable for industrial use.⁶⁵

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



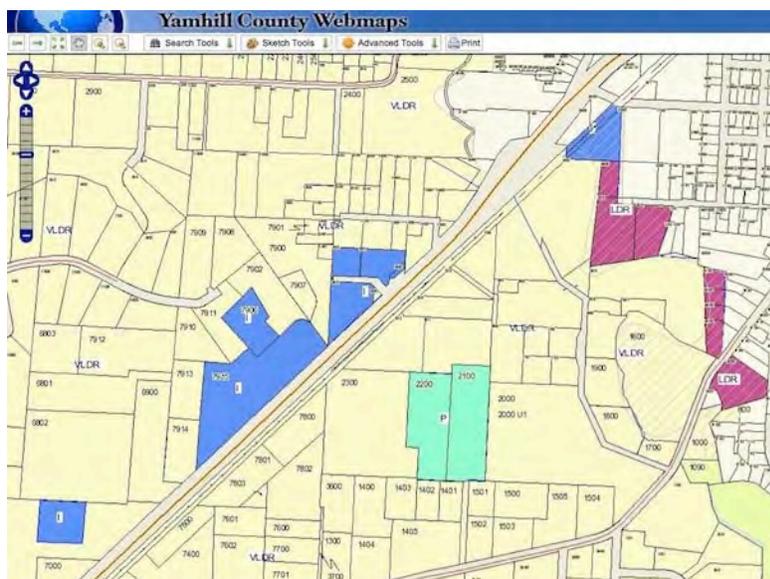
In the map above the dashed line depicts the city limits, the colored area defines the UGB, and the blue lines depict land within the stream corridor. Note that the UGB extends to the outer

⁶⁴ R.3865

⁶⁵ R. 5742.

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

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



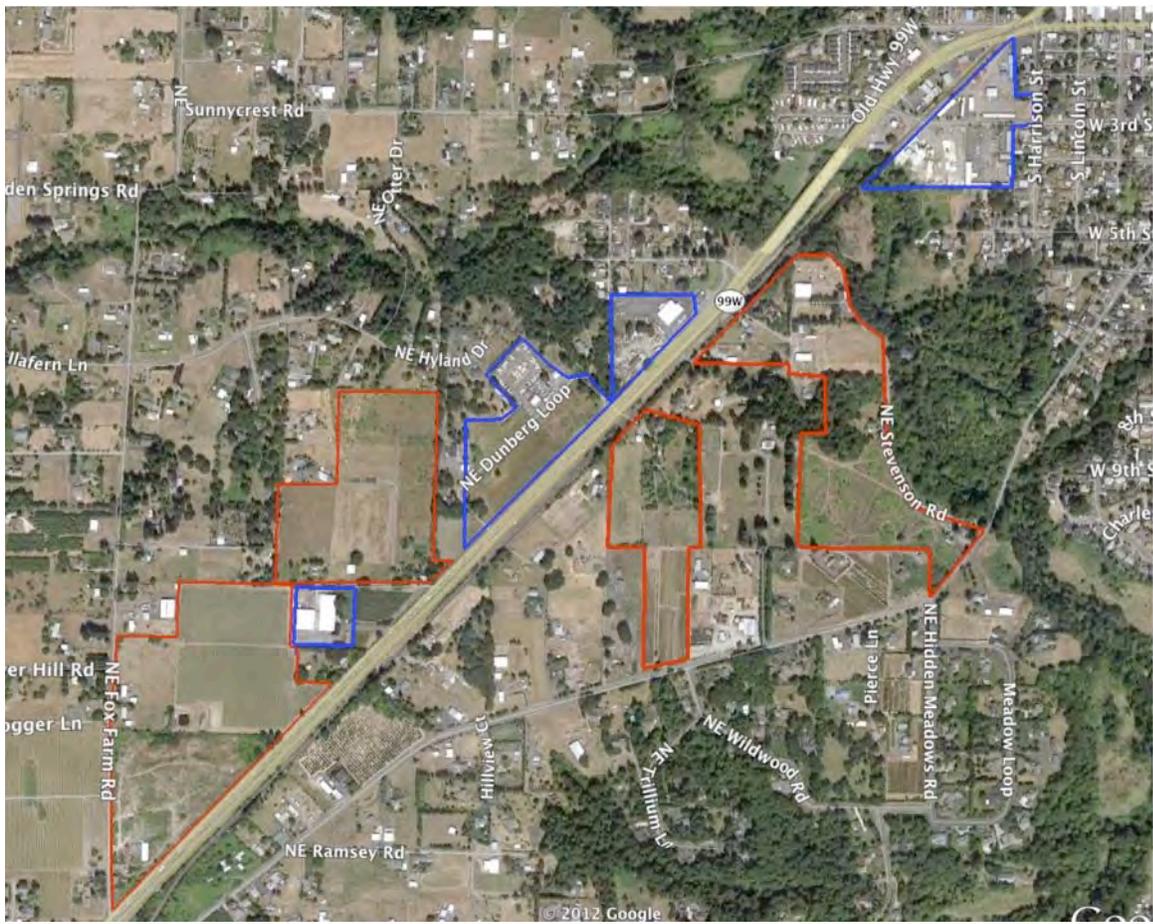
R.5332

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



R.5805

Contrary to the city's conclusions, the corridor contains a large block of land adjacent to the UGB and existing industrial districts. The map below shows buildable industrial sites in red and existing industrial districts in blue. As noted above, the parcels along Stevenson Road and Zard Lane extend past the red line and border industrial land within the UGB.



R.5333

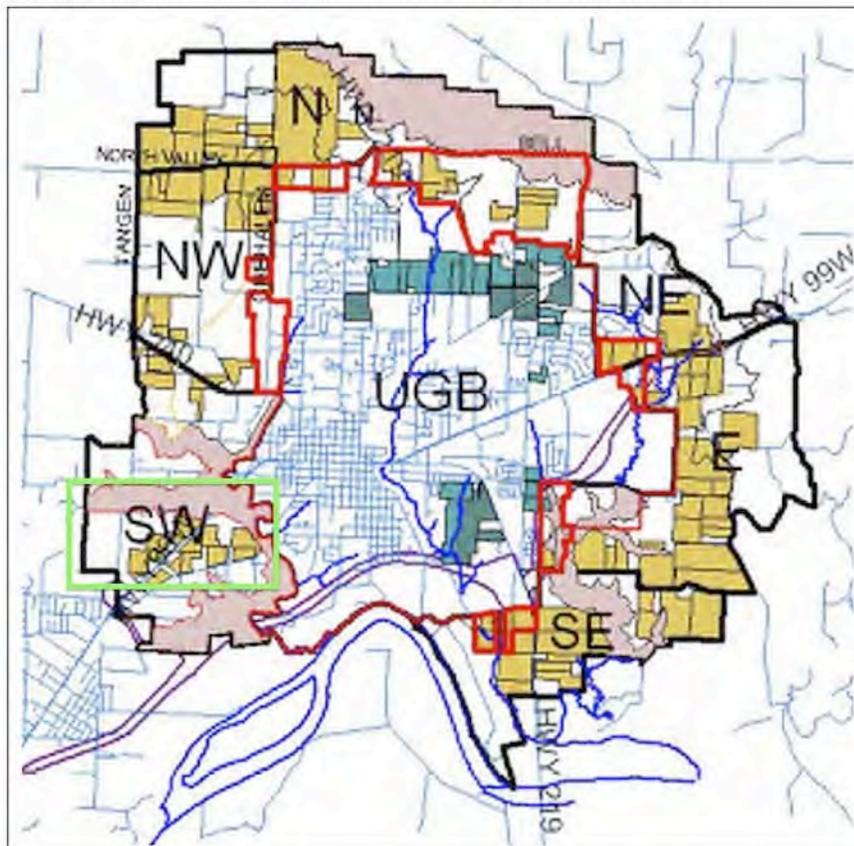
The Newberg-Dundee Corridor can supply two industrial sites in the < 2-acre size range, six industrial sites in the 2-10 acre size range, three industrial sites in the 10-30 acre size range, and one industrial site in the 30-50 acre size range.

Similar information is also shown on page 37 of the Ad-Hoc Committee’s final report, which is reproduced below.

Table 13. Large Sites (5+ acres) With Good Access and Services
 Parcels with Less Than 10% Slope, Good Access, Good Services

Study Area	5+ Buildable Acres		20+ Buildable Acres	
	#	Total Acres	#	Total Acres
North	21	561 ac	6	376 ac
Northeast	6	127 ac	2	81 ac
Northwest	18	269 ac	6	173 ac
Southwest	16	175 ac	1	25 ac
Southeast	12	330 ac	5	228 ac
East	24	567 ac	10	394 ac
UGB	27	332 ac	3	68 ac
Total	124	2,361 ac	33	1,345 ac

Figure 2. Large Buildable Sites with Good Access and Services Inventory



Newberg Future Land Use Options
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37

R.5334, Newberg-Dundee Corridor sites labeled with green rectangles

Under ORS 197.298, exception areas like the Newberg-Dundee corridor must be included in the UGB ahead of farmland unless:

- a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;
- b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or
- c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.”

None of these three narrow justifications apply here. Each is discussed separately below:

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

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

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

It is within, or adjacent to the existing UGB.

It adjoins an industrial or commercial area.

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

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

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

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

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

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

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

⁶⁷ R.740

Table II-6: Cost of Providing Urban Services per Buildable Acre

Analysis Area	Buildable Acres	Service Area Cost in Millions	Service Cost in Thousands Per Acre	High Medium Low
North A ¹	388	10.43	26.9	High
North B ¹	393	13.11	33.4	High
NE A ²	148	7.00	54.0	High
NE B ³	159	3.02	19.0	Low
East A ³	597	9.45	15.8	Low
East B ¹	361	18.40	51.0	High
SE A ¹	88	2.37	26.9	High
SE B ³	223	5.00	22.4	Medium
SE C ¹	190	2.20	11.6	Low
SW A ²	163	4.13	25.5	High
SW B ¹	139	4.68	33.7	High
SW C ¹	194	8.11	41.8	High
SW D ¹	256	8.67	33.9	High
NW B ³	418	7.23	17.3	Low
NW A ²	273	6.50	23.8	Medium
Total	4504	110.3	437	
Average			24.5	

R.5336

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

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

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

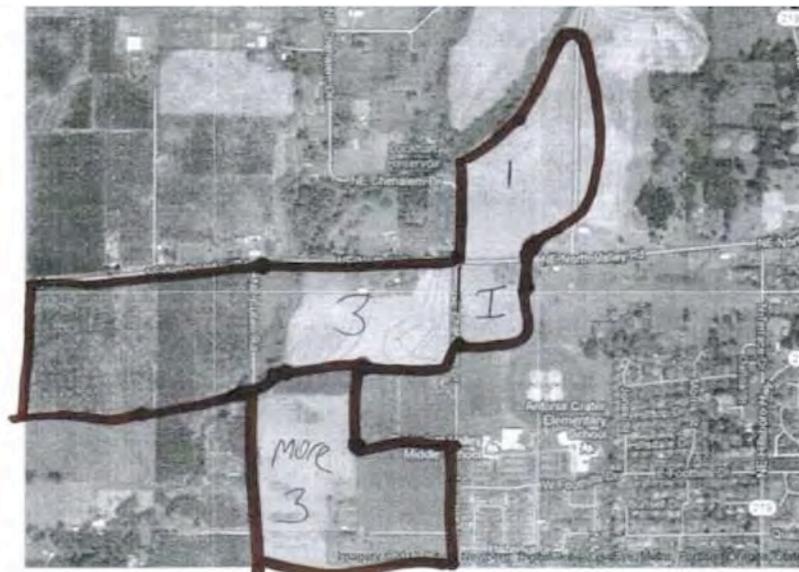
The Newberg-Dundee corridor can reasonably accommodate identified land needs. Under ORS 197.298 it is a lower higher priority for including in the UGB than land in urban reserves, but it is a higher priority for inclusion than resource land.

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

North Valley/Chehalem Road (Modified Site I (in UGB) and Sites 1 & 3 (EFU))

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

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



R.3891

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

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

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

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

⁶⁹ R.5683

⁷⁰ See *Findings*, Maps 2, 4, and 5 at R5801-04. See also topographical map and aerial photo at R.3890-91.

As further explained in Sub-Objections 1D and 1E, the city errs in:

- (a) Assuming that the road network is static. Undeveloped land is not typically served by city arterials because there is no development to serve.
- (b) Assuming that some or all of its disparate targeted industries cannot be adequately served by major collectors.

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

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

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

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

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

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

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

OBJECTION 6: FAILURE TO DEMONSTRATE NEED

The comprehensive plan and UGB amendments violate Goal 14, OAR 660-024-0040(1), and Goal 2, because they expand the UGB to include more large sites and more acreage than the city needs, and because they underestimate the buildable capacity of land added to the UGB.

Under Goal 14 and its implementing rules, a city must have a demonstrated need for land it adds to its UGB. Generally, "a local government is not permitted to establish an urban growth boundary containing more land than the locality 'needs' for future growth." *Families For Responsible Govt*, 64 Or App at 243

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

Sub-Objection 6A: Extra Sites

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

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

Land Needs That Only Can Be Met by UGB Expansion

As shown in Table 7, Newberg has an unmet need for one 30- to 50-acre site, one 10- to 30-acre site, 51 acres of 2- to 10-acre sites, and 20 acres of sites under 2 acres in size.

Table 7: Industrial Land Supply and Need through 2032

Size Range (Acres)	Number of Sites - 2012 UGB	Buildable Acres - 2012 UGB	2032 Needed Buildable Sites	2032 Needed Gross Buildable Acres	2032 Deficit # of Sites	2032 Deficit Buildable Acres
<2	5	6	23	26	(18)	(20)
2 to 10	7	30	14	81	(7)	(51)
10 to 30	1	24	2	42	(1)	(18)
30 to 50	0	0	1	42	(1)	(42)
Total	13	60	40	191	(27)	(131)

R.5733

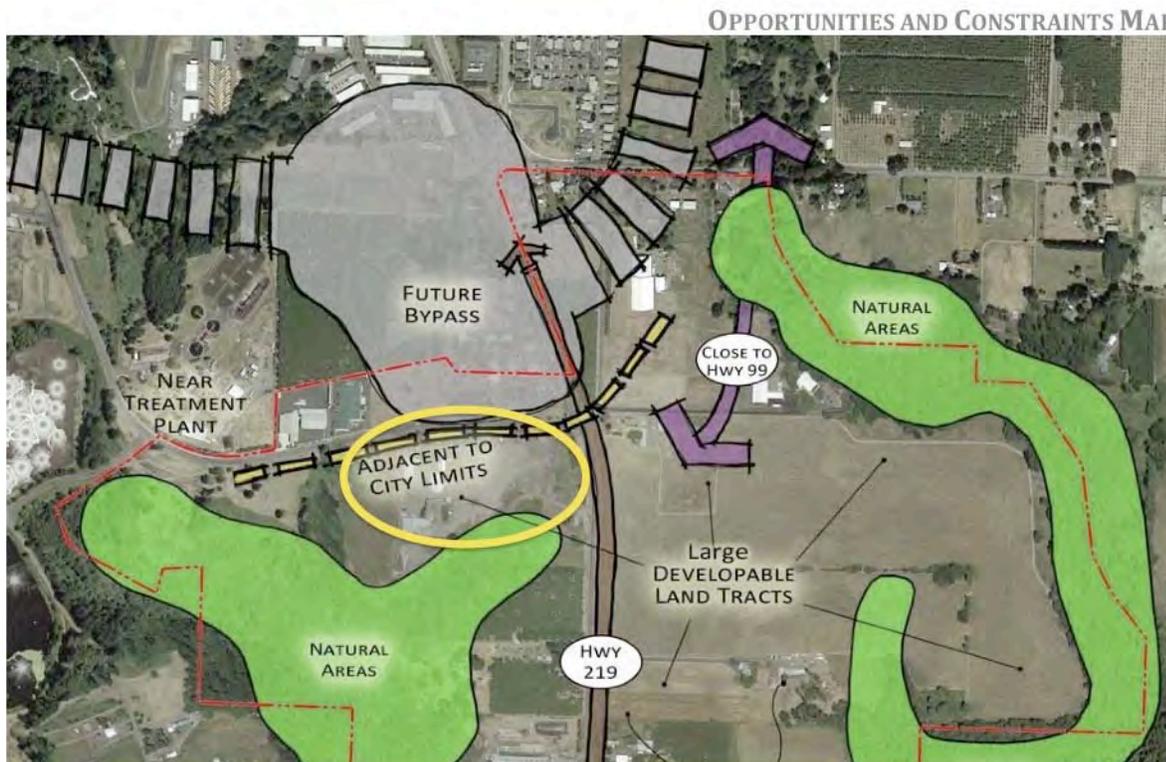
Instead, the city has added *two* sites in the 10-30 acres size range (tax lot 3228-1100 & tax lot 3228-1900) and *two* sites in the 30-50 acre size range (tax lot 3228-900 and tax lot 3228-1000).⁷¹ This is also illustrated in the city's *Findings* (R.5757, 5767-68):

Table 10: Buildable Acres in Boundary Alternatives

	Alternative A	Alternative B	Alternative C
Buildable Acres	128	125	126
10-30 ac. sites	2	2	2
30-50 ac. sites	2	2	2

⁷¹ In addition to the problems described in the body of this sub-objection, the city has also classified tax lots 1100 and 1900 as two 10-30 sites, even though they are adjacent and could be combined into one 30-50 acre site. Thus, these two parcels could satisfy the city's need for a 30-50 site, and the dumpster storage site (tax lot 1200) described in the next paragraph could satisfy the city's need for a 10-30 acre site.

In addition, the city has almost entirely discounted a *third* 10-30 acre site included in the expansion: Tax Lot 3228-01200 located south of Wynooski, just west of Highway 219. This is a 13.3-acre parcel identified in the South Industrial Area Master Plan as a *large, developable tract* (area circled in yellow).



R.715

For purposes of the UGB amendment, however, city staff classified most of Tax Lot 3228-01200 as having no capacity to accommodate industrial needs because it has some dumpsters stored on it. The city, in testimony to the county made after the record was closed to all other parties, makes two new assertions regarding this site.⁷²

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

⁷² R.6003



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

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



City photograph of TL 3228-01200, classified by the city as developed (R.5956)

Second, in the same testimony to the county, the city also asserts that:

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

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

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

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

Sub-Objection 6B: Extra acreage

The city’s UGB expansion includes 128 acres of unbuildable land on the fringe of the expansion area, for which there is no identified need.⁷³ This nearly doubles the size of the proposed expansion area. Most of this unbuildable land is in floodplain and in stream corridors (land adjacent to streams). Some of this land is resource land in agricultural use; some of it is forested.⁷⁴

Newberg justifies including these additional acres as follows:

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

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

⁷⁴ See photographs from R.5697 and R.5807 reproduced in our Objection 7 (Locational Factors).

industrial area cannot be met in other areas not immediately adjacent to the future industrial area.” (R.5792)

The *Findings* also assert:

“The stream corridors serve very important functions as buffers and amenities for the adjacent industrial development. They are only needed to be included in the UGB if the adjoining upland portion also is included.”⁷⁵

This assertion of demonstrable need should be rejected.

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

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

Third, in determining its needed site sizes, the city factored in a need for buffers and outdoor park-like areas *on site*. These were *included* as part of its buildable land needs calculations: Newberg based its needed site sizes in part on a conclusion that “most industrial sites are only 40% to 60% developable for basic industrial use,” with remaining areas used for buffers, environmental protections and employee amenities, among other uses.⁷⁶

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

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

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

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

⁷⁵ *Findings* page 47, footnote 14. (R.5754)

⁷⁶ *EOA*, p. 54. (R.5869)

the unbuildable floodplain portions of these sites from the UGB or justify a need for these lands for urban use under Goal 14, Factors 1 and 2.”⁷⁷

In its subsequent order, the Commission remanded the portions of the “Grandhaven,” “Norton Lane,” and “Three Mile Lane” UGB expansion areas that lie within the 100-year floodplain based on the Director’s report and the Oregon Court of Appeals’ decision in *Milne v. City of Canby*, 195 Or App 1, 96 P3d 1267 (2004).⁷⁸

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

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

OBJECTION 7: GOAL 14 LOCATIONAL FACTORS

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

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

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

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

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

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

⁷⁷ Staff report to LCD, March 30, 2004

⁷⁸ Partial approval and remand order No. WK Task- 001646

There is little significant difference between the three alternatives.

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

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

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

It is not accurate that all three alternatives, including the selected Boundary Alternative B, only have “minimal border with agricultural land” and that Alternative B “would border agricultural land only on the south side.”⁷⁹ To the contrary, the expansion area adopted by the city borders land designated for exclusive farm use to the east as well as to the south – a distance of about 1.75 miles. This includes nearly a mile of border that is not buffered by any roadway or stream.

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



R.5807

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

⁷⁹ Because it is inaccurate, the city’s decision also violates Goal 2’s requirement that the plan amendment have an adequate factual base.



R.705

Finally, the aerial photograph below also illustrates this mislabeling.



R.5697

Second, the city's findings consist of a speculative, generic, over-simplified statement that does not meet the requirements for an adequate Goal 14, factor 4 analysis. Among its flaws:

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

do those negative impacts extend? Do those conflicts extend to nearby agricultural land in Marion County?

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

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

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

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

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

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

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

⁸⁰ R.1533, R.1611

⁸¹ R.1547, R.1518, R.1691, R.1545, R.1546, R.3805, R.3839, R.5643, R.5658

⁸² For example, the consequences of truck traffic through an urban neighborhood must be balanced with the comparative consequences of extending services past the urban fringe and the comparative economic consequences of taking prime farmland out of production and/or of routing industrial truck traffic on roads used by farm machinery. Instead, the city pre-empted this comparison by using site characteristics to eliminate all candidate lands that might generate truck traffic through residential areas. Without that comparison, the city lacks an adequate ESEE analysis and has not adequately addressed the locational factors of Goal 14.

energy, economic and social consequences of alternative boundary locations, including boundary locations not previously considered due to location factors posing as site characteristics.

CONCLUSION

To recap, Newberg’s proposal:

- 1) Inflates the sizes of industrial sites claimed to be needed
- 2) Uses factually unsupported, internally inconsistent “site characteristics,” many of which are actually Goal 14 location factors, as artificial screens to eliminate higher priority land from consideration
- 3) Fails to consider the employment capacity of existing built industrial space
- 4) Lacks the required inventory of suitable vacant and developed land, and fails to consider the capacity of all buildable commercial land
- 5) Expands the UGB onto Class II, cultivated farmland even though lands already within the UGB and/or higher priority sites outside the UGB could meet the identified site needs
- 6) Includes more large sites and more acreage than the city needs
- 7) Does not determine the UGB boundary consistent with Goal 14 locational factors

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

Sincerely,



Mia Nelson
1000 Friends of Oregon
PO Box 51252
Eugene, OR 97405



Sid Friedman
Friends of Yamhill County
PO Box 1083
McMinnville OR 97128

Director Jim Rue
Department of Land Conservation and Development
RE: City of Newberg UGB inclusion

Director Rue:

I am writing an objection to the City of Newberg's UGB expansion. Previously I both spoke publicly and wrote a letter to the City of Newberg objecting to some aspects of the UGB expansion. Now I am identifying some deficiencies in the work task done by the City of Newberg.

Under Goal 14, ORS 197.298, one factor (4) in boundary location of the UGB is "Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB." In my testimony I highlighted the incompatibility of the proposal with agriculture in northern Marion County due to the increased traffic on McKay and Ehlen roads going through the Donald interchange and affecting the many slow-moving pieces of farm equipment in this important agricultural area of Marion County. The Marion County Farm Bureau also wrote a letter about deleterious effects of this UGB expansion to farming, including the effects of traffic on rural Marion County roads. Despite this testimony, the City of Newberg never considered the comparative traffic impacts to northern Marion County farmers as a factor in choosing alternatives.

In addition, my previous testimony emphasized the huge economic value of agriculture in the northern Willamette Valley, including the area around Newberg. Again, the city of Newberg did not consider the consequences of their UGB expansion to the farming economy. This is another factor (3) which must be used when determining the boundary location of a UGB, per Goal 14, ORS 197.128

The specific revisions that I suggest to resolve my objections are that DLCD remand this decision back to Newberg with instructions to (a) reconsider their proposal in the light of the harm that increased traffic will do to northern Marion County farmers, (b) reconsider their proposal in the light of the harm done to the farm economy, and (c) remove the agricultural land from the UGB expansion because there are other areas in the UGB that have less impact on agriculture as well as land in urban reserves and on exception lands.

Thank you,

Kathleen Carl
Hubbard, Oregon 97032

PO Box 13604
Salem, OR 97309

August 23, 2013

Department of Land Conservation & Development
635 Capitol St. NE Suite 150
Salem, Oregon 97301

DEPT OF
AUG 28 2013
LAND CONSERVATION
AND DEVELOPMENT

Attn: Jim Rue, Director
Angela Lazarean, Willamette Valley Regional Representative
Larry French, Periodic Review Specialist

RE: Urban Growth Boundary Amendment adopted 7-18-13
Planning Docket PA-01-10
Applicant: City of Newberg
Yamhill County Ordinance 882

I submit the following to state my objections to the 7-18-13 adoption by Yamhill county commissioners of city of Newberg's UGB amendment. I believe to expand the boundary is not appropriate in that the city has not met all the criteria under Goal 14 and State Statute.

I have participated in many public meetings/hearings of the UGB expansion since the first original presentation and public hearing for the city of Newberg's plan of an Industrial Park development. I have spoken in person at some of the meetings held in Newberg, firstly at Adec and Senior center many years ago at the inception and presentation to the public of the idea. I have also made numerous written statements on the issue, which are on record.

Firstly, I believe the city has violated Goal 14 in that the city has failed to take into consideration the existing lands already within the present urban growth boundary. The options open and readily available are along existing road of South Springbrook and another along Zimri Drive. These two areas alone give more than adequate varied sites and sizes for the stated anticipated growth needs for industrial sites as stated in city's data needs projections. These sites also have excellent existing traffic flow patterns which would eliminate the need for major arterial alterations. These areas should have been given more serious consideration prior to focus on expansion of UGB boundary onto prime farm land.

It is my understanding that Goal 14 precludes expansion of boundary lines where growth needs can be met by utilizing lands already within UGB existing boundary. These existing properties can meet the city's needs and I believe the city has violated this very clearly defined rule.

Secondly, I believe the city has not observed the definitive priority rules pertaining to reserves and exception lands under ORS 197.298 covering urban reserve areas and exception areas. These lands are the South Springbrook urban reserve area and the Dundee/Newberg Corridor areas. These rules are specific in that urban reserves and exception areas should be used prior to expanding onto prime farm land areas. Further the rules specifically cover that should some reserve lands not be adequate to accommodate projected needs, rulings are specific in detail as to applicable and reasonable usage from within each of the first, second, third and fourth stages of priority usage. The city and county should adhere to these clearly stated rules for utilizing urban reserves and exception lands before expansion of existing boundary.

It appears to me that the language in current policy/rules is clear for designated higher priority lands and existing land already within boundary. These parcels should be utilized prior to expansion of boundary onto farmland. I believe, therefore, that it is in order for DLCD to send the decision back to City Newberg w/instructions to delete/remove the agricultural farm land and to utilize instead those areas already within UGB; to accommodate the anticipated industrial needs within UGB and on higher-priority land in urban reserves and exception areas.

This would be more appropriate action and remain within the scope of the existing goals and rules.....

Respectfully submitted



Shirley Cooper
1616 Aldersgate Lane
Newberg, Oregon 97132

cc. Newberg Planning Dept.
PO 970
Newberg, Or 97132

Yamhill County Commissioners
535 NE Fifth St
McMinnville, Or 97128

Lee M. Does
Amy L. Does, PhD.

8802 Flagler
Nordland, Washington 98358

Date: 01 September, 2013

Periodic Review/Plan Amendment Specialist
Dept. Land Conservation & Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301

DEPT OF
SEP 13 2013
LAND CONSERVATION
AND DEVELOPMENT

re: UGB-09-001, Objection

Dear DLCD Specialist:

This letter is to inform you of my continued opposition to the City of Newberg's proposed UGB-09-001 expansion. As a farm owner in Newberg, I personally testified at the 06 June 2013 hearing of the Yamhill County Board of Commissioners. Although I've recently retired and left the area, I intend to follow this issue to its conclusion.

I believe that UGB-09-001 is in violation of statewide planning goal 14:

"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."

The attached video was presented at the June 2013 Yamhill County hearing. As described in the video, Newberg's UGB proposal failed to include available lands along South Springbrook Road, near Zimri Drive, on Portland Road, and also along Springbrook Road. Total acreage available within the described areas meets or exceeds the acreage Newberg is requesting under UGB-09-001.

Furthermore, the alternative lands described in the video contain higher-priority soils than the primarily Class II EFU land the city is seeking under its proposed UGB-09-001 expansion. I believe UGB-09-001 violates ORS 197.298: "High-quality farmland can be included in the UGB if no other areas can reasonably accommodate the use." As shown in the attached video, higher-priority lands are already available within the South Springbrook Urban Reserve and Newberg-Dundee corridor.

The lands described in the attached video are generally contiguous to/more easily serviced than the EFU land the city is seeking under UGB-09-001. I would again cite Goal 14:

"The location of the urban growth boundary and changes to the boundary shall be determined... 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 consequence."

My objections are based upon what I view as a clear interpretation of Oregon's existing land use laws. In my opinion, UGB-09-001 was crafted primarily to satisfy a preexisting agreement between the city of Newberg and the absentee land owner of one of the parcels to be included. With respect to the most expedient resolution to my objections as outlined above and in my prior testimony against UGB-09-001, I believe DLCD should remand UGB-09-001 to Newberg with instructions to remove the contested agricultural land and instead accommodate Newberg's industrial land needs by utilizing existing properties within the current UGB as well as higher-priority lands in urban reserves and exception areas.

Sincerely,



Lee M. Does

enc: CD "UGB-09-001_Higher Priority Alternatives"

To: Jim Rue, Director DLDC
From: Grace Schaad
Re: City of Newberg UGB Expansion
Date: 9 Sept 13

The record will show that I have testified before the Newberg City Council and the Yamhill County Commissioners in opposition to the urban growth boundary expansion by the City of Newberg onto 260 acres for industrial development in what is named "The South Industrial Area."

The basis for my objections are as follows:

- 1- The statewide planning goal #14 states:
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

The City of Newberg has passed over land for industrial development that is already inside of the current urban growth boundary. As I previously testified, there is land in the UGB available for industrial use that meets the same "site characteristics" as the proposed South Industrial Area. Examples include: vacant land along both North Springbrook and South Springbrook Road, vacant land along Mountain View Drive and lower Zimri Drive, the area between Newberg and Dundee and parcels nearer the city center already zoned as industrial.

Most of these examples are in areas that are already "industrialized" and have infrastructure in place or in close proximity.

- 2- ORS 197.298 identifies the priority of land to be included within an urban growth boundary for the protection of high value farm land

The City of Newberg not only passed over land already in urban growth boundary that could be infilled, refilled or developed, the City passed over land in the current urban reserve area and in exception areas that could accommodate industrial development. Examples include: the area between Newberg and Dundee and the South Springbrook Road URA.

Land in the urban reserve area and the exception land between Newberg and Dundee should have been included in the UGB before high value farm land. The City of Newberg passed over exception land that is farmland of lesser value in favor of high value farm land south and east of the City. ORS 197.298 requires that "inclusion of lower priority lands" be the lands included before high value farm land to protect "higher priority lands."

In order to resolve my objection to the inclusion of high value farm land in the urban growth boundary of the City of Newberg for industrial development, the Department of Land Conservation and Development should remand the proposed UGB expansion with the instructions to remove the high value agricultural land, and direct the City to accommodate industrial development needs on land within the City, on land within the current UGB, on land within the current urban reserve area or on exception land.

Grace Schaad
31525 NE Schaad Rd
Newberg, OR 97132

DATE: 12 September, 2013
FROM: Rane Solmonsson, 32300 NE Old Parrett Mt. Rd., Newberg, OR
TO: Oregon Department of Land Conservation and Development
RE: City of Newberg Adoption of amendment to its Urban Growth Boundary

I am writing in objection to the decision made by the City of Newberg on May 20, 2013 regarding adoption of an amendment to its Urban Growth Boundary (UGB) that includes 260 total acres of farmland into the UGB. The records will show that I have testified in objection to the form of the proposed amendment by giving oral testimony, inasmuch as the 260 acres contains prime, irreplaceable farmland and due to the fact that there are vacant business sites already within the city that show that the city's justification for the need for this land is not warranted.

I believe that the amendment does not comply with the statewide planning goals outlined in ORS 197.298, which states "...high quality farmland can only be included in the UGB if no other areas can reasonably accommodate the use." Opponents testified on a number of occasions as to appropriate sites that can meet the criteria for reasonably accommodating industrial use. Sites that meet this guideline include the Newberg-Dundee corridor, parcels along North Springbrook and South Springbrook Roads, as well as parcels along the lower portion of Zimri Drive and Mountain View Drive.

As a citizen of this community for 34 years, I object to the presumption that Newberg's growth should focus on industrial uses. This is contrary to the area's agricultural heritage and ignores the rapidly increasing growth of its agricultural-related tourism sector, which is heavily land dependent. Indeed, the city has ignored the importance of high value farmland, which has now been brought to the country's attention. As quoted recently in the August 9th, 2013 edition of the *Capital Press*, Richard Rominger of the American Farmland Trust noted in regards to loss of farmland in California and the U.S. in general, "...the continued loss of farmland is a national security issue because it threatens biodiversity, the state's economy and U.S. food security."

I request that the Oregon Department of Land Conservation and Development remand the issue back to the City of Newberg and recommend that the city removes at least a portion of the 260 acres that is the highest value farmland. The City has failed to prove that there is a justified need for including this high value farmland and has taken it preemptively when there are indeed other appropriate sites already in the UGB and/or the URA.

Thank you for your consideration.

Sincerely,

Ranee Solmonsson