

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
REMAND OF CITY OF NEWBERG (City Ordinance No. 2023-2911) AND
YAMHILL COUNTY (County Ordinance No. 930)
NEWBERG URBAN RESERVE AMENDMENT**

DLCD Order # 001941

February 16, 2024

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I. DECISION

For the reasons explained in this order, the Department of the Land Conservation and Development (DLCD or department) concludes that the submittal from the City of Newberg (city) and Yamhill County (county) identified as City Ordinance No. 2023-2911 and Yamhill County Ordinance No. 930, does not comply with the requirements of the applicable statewide planning goals, statutes, and administrative rules. The submittal is remanded.

II. REVIEW PROCEDURES AND CRITERIA

A. PROCEDURAL CONSIDERATIONS

Oregon Revised Statutes (ORS) 197.610 to 197.651 and Oregon Administrative Rule (OAR) 660-025-0175 authorize the DLCD Director (director) to review a land use decision submitted

“in the manner provided for [periodic review].”¹ ORS 197.626(1); OAR 660-025-0175(1). The city and county submitted notice of their respective ordinances establishing urban reserves for the city to the department on October 20, 2023, simultaneously mailing notice of the decisions to all participants during the local decision-making process.² The director has “not later than 120 days of the date the department received the task submittal from the local government” to make a decision. OAR 660-025-0150(3). The director may approve the submittal, remand it, or refer the matter to the Land Conservation and Development Commission (LCDC or commission). OAR 660-025-0150. The director elects to remand the city and county’s submittal in this matter.

OAR 660-025-0150(5) provides: “If the department received one or more valid objections to the * * * plan amendment, the director must either issue an order * * * or refer the * * * plan amendment to the commission for review.” The department received three objections.

B. VALIDITY OF OBJECTIONS

The department received three objections to the city and county’s adoption of urban reserves.³ Among those final land use decisions statutorily required to be submitted to the commission for review are the establishment or amendment of certain urban reserves. ORS 197.626(1)(c). After a local government makes a final decision that adds more than 50 acres to an area within an urban reserve, OAR 660-025-0140 provides the procedures required for local governments to give notice of that final decision. OAR 660-025-0140 provides in part:

“(1) After the local government makes a final decision on a * * * comprehensive plan amendment listed in ORS 197.626(1) and OAR 660-025-0175, the local government must notify the department and persons who participated at the local level orally or in writing during the local process or who requested notice in writing. The local government notice must contain the following information:

“(a) Where a person can review a copy of the local government’s final decision, and how a person may obtain a copy of the final decision;

“(b) The requirements listed in section (2) of this rule for filing a valid objection to the work task or comprehensive plan amendment listed in OAR 660-025-0175; and

“(c) That objectors must give a copy of the objection to the local government.

“(2) Persons who participated orally or in writing in the local process leading to the final decision may object to the local government’s submittal. To be valid, objections must:

¹ ORS 197.610 to 197.651 provide the procedures regarding DLCD’s review of post-acknowledgment plan amendments, including urban reserve amendments. OAR chapter 660, division 25 sets forth the rules regarding periodic review, including the review of urban reserve designations submitted to the department.

² The Newberg City Council approved Ordinance No. 2023-2911 and the Yamhill County Board of Commissioners approved County Ordinance No. 930; these ordinances amend the URA for the city.

³ ORS 195.137(2) defines “Urban reserve” to mean “lands outside of an urban growth boundary [UGB] that will provide for * * * [f]uture expansion over a long-term period; [and t]he cost-effective provision of public facilities and services within the area when the lands are included within the [UGB].” *See also* OAR 660-021-0010(1).

“(a) Be in writing and filed with the department’s Salem office no later than 21 days from the date the local government sent the notice;

“(b) Clearly identify an alleged deficiency in the * * * adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;

“(c) Suggest specific revisions that would resolve the objection; and

“(d) Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.

“(3) Objections that do not meet the requirements of section (2) of this rule will not be considered by the director or commission.”

The department turns now to its validity determinations for each objection, based on consistency with OAR 660-025-0140.

1. FRIENDS OF YAMHILL COUNTY

On November 9, 2023, Friends of Yamhill County e-mailed a letter to the department objecting to the city and county’s submittal. Friends of Yamhill County provided a copy of the objection to both the city and county, as required by OAR 660-025-0140(1)(c).

a. OAR 660-025-0140(2)(a)

The city and county mailed notice of their respective decisions to the department on October 20, 2023. The city and county simultaneously mailed notice of the decisions to those parties who participated during the local decision-making process. Friends of Yamhill County e-mailed its objection to the department on November 9, 2023, 19 days after the city and county mailed the notice of the decision. Because the department received Friends of Yamhill County’s objection within 21 days of the date the city and county sent the parties notice of the decisions, the department concludes that this objection was timely filed under OAR 660-025-0140(2)(a).⁴

b. OAR 660-025-0140(2)(b)

The Friends of Yamhill County objection identifies several deficiencies in the county and city’s decisions, including arguing that (1) the projected urban reserve land need lacks an adequate factual base as required by OAR 660-021-0030(1); (2) the decisions fail to address the Goal 14 locational factor findings under OAR 660-021-0030(2); and (3) the decisions fail to adequately perform the comparative sites analysis required by OAR 660-021-0030(3)–(4). Further, the objection provides specific reasons for these objections. Therefore, the department finds that the objection satisfies OAR 660-025-0140(2)(b).

⁴ OAR 660-025-0020(1) (“‘Filed’ or ‘Submitted’ means that the required documents have been received by [DLCD] at its Salem, Oregon office.”).

c. OAR 660-025-0140(2)(c)

Friends of Yamhill County requests that the city's submittal be remanded to resolve the deficiencies identified in the objection as provided in OAR 660-025-0150(1)(b). This statement suggests specific revisions that would resolve the objection, and therefore satisfies OAR 660-0250-140(2)(c).

d. OAR 660-025-0140(2)(d)

Friends of Yamhill County states that it participated in the local process and that their letters of objection are in the record. This statement satisfies OAR 660-025-0140(2)(d).

e. CONCLUSION

Friends of Yamhill County's objection to the city and county's submittal is a valid objection. Therefore, the director will address the objection.

2. JOE HUGHES AND CORINNE WATERBURY

On November 10, 2023, the department received an e-mailed letter for objectors Joe Hughes and Corinne Waterbury (Hughes and Waterbury) objecting to the city and county's submittal. Hughes and Waterbury provided a copy of the objection to both the city and county, as required by OAR 660-025-0140(1)(c).

a. OAR 660-025-0140(2)(a)

The city and county mailed notice of their respective decisions to the department on October 20, 2023. The city and county simultaneously mailed notice of the decisions to those parties who participated during the local decision-making process. Hughes and Waterbury e-mailed their objection to the department on November 10, 2023, 20 days after the city and county mailed the notice of the decision. Because DLCD received the objection within 21 days of the date the city and county sent the parties notice of the decisions, the objection was timely filed under OAR 660-025-0140(2)(a); OAR 660-025-0020(1).

b. OAR 660-025-0140(2)(b)

Hughes and Waterbury object to the submittal regarding various aspects of OAR chapter 660, division 21, specifically OAR 660-021-0030(4) relating to the inclusion of a site with lower priority under the provisions of the rule. This component of the objection satisfies ORS 660-025-0140(2)(b). While Hughes and Waterbury also object to the findings related to compliance with OAR 660-021-0030(2), analysis of the Goal 14 locational factor findings and locational analysis, they do not develop this objection by specifying why the submittal is out of compliance with this factor. Therefore, this portion of the objection fails to satisfy OAR 660-025-0140(2)(b).

c. OAR 660-025-0140(2)(c)

Hughes and Waterbury request that the city’s submittal be denied for lack of compliance with the requirements of OAR chapter 660, division 21. While the department does not have authority to “deny” an urban reserve submittal, the department may remand the submittal to the city and county for lack of compliance with the requirements of OAR chapter 660, division 21. This statement satisfies OAR 660-025-0140(2)(c).

d. OAR 660-025-0140(2)(d)

Hughes and Waterbury provide copies of the letters filed on their behalf demonstrating their participation in the local process. The objection satisfies OAR 660-025-0140(2)(d).

e. CONCLUSION

The department has determined that Hughes and Waterbury’s objection to the city and county’s submittal is a valid objection with regard to compliance with OAR 660-021-0030(4). Therefore, the department will address the objection in making this decision. The department will not address Hughes and Waterbury’s objections under OAR 660-021-0030(2) because they provide no additional information by which to determine if his objection is warranted.⁵

3. TRACY TOMASELLI

On November 7, 2023, Tracy Tomaselli e-mailed a letter to the department objecting to the city and county’s decision. Ms. Tomaselli provided a copy of the objection to both the city and county, as required by OAR 660-025-0140(1)(c).

a. OAR 660-025-0140(2)(a)

The city and county mailed notice of their respective decisions to the department on October 20, 2023. The city and county simultaneously mailed notice of the decision to those parties who participated during the local decision-making process. Ms. Tomaselli e-mailed her objection to the department on November 7, 2023, 17 days after the city and county mailed the notice of the decision. Because the department received Ms. Tomaselli’s objection within 21 days of the date the city and county notified her of the submittal, the department concludes that the objection is timely under OAR 660-025-0140(2)(a); OAR 660-025-0020(1).

b. ORS 660-025-0140(2)(b)

Ms. Tomaselli objects to a lack of conflict-of-interest statements from Newberg Mayor Rosacker at any of the city’s deliberations regarding the application other than at the meetings of the Newberg Urban Area Management Commission (NUAMC).

Ms. Tomaselli also identifies objections to the submittal regarding various aspects of OAR chapter 660, division 21, starting with an assertion that, under OAR 660-021-0030(1), the city

⁵ However, in addition to its own review, the department will address those objections raised by Friends of Yamhill County under OAR 660-021-0030(2) as Friends of Yamhill County raised those objections with more specificity.

does not need to expand its urban reserve at this time because the existing urban reserve provides enough land for a 20-year need to 2051.

Ms. Tomaselli's next objections relate to OAR 660-021-0030(3) and (4). While her objection does not specifically cite to those sections of OAR chapter 660, division 21, she includes the entire text of OAR 660-021-0030 in her objection. Ms. Tomaselli asserts that the city could have met the identified need with rural lands that are not farmland, could have met the need with farmland that has lesser value soils than the applicant's parcel, and did not choose lands that cost less to serve with urban public facilities as shown in the city's adopted analysis. Ms. Tomaselli also includes the text of ORS 197.298 in her argument that the city did not follow the required priority of lands in its decision to add the applicant's parcel to the Newberg URA. These portions of the objection satisfy OAR 660-025-0140(2)(b).

Ms. Tomaselli objects based upon the federal Endangered Species Act of 1973, stating that this area is a potential for habitat of Streaked Horned Larks and Northern Spotted Owls. However, Ms. Tomaselli provides no additional information regarding this objection. This portion of the objection fails to satisfy OAR 660-025-0140(2)(b).

c. OAR 660-025-0140(2)(c)

Ms. Tomaselli recommends the city: 1) wait until it is closer to the 2051 timeline before considering addition of new urban reserves; 2) add designated "exception" lands (lands not designated as farmland) before adding other resource lands to the urban reserve; and 3) perform additional public facilities planning before adding new lands to the existing urban reserve. This statement satisfies OAR 660-025-0140(2)(c).

d. OAR 660-025-0140(2)(d)

Ms. Tomaselli states that she signed up to speak at one of the NUAMC meetings that was postponed and did speak at a city council meeting. Record 395. This statement satisfies OAR 660-025-0140(2)(d).

e. CONCLUSION

The department has determined that Ms. Tomaselli's objection to the submittal is a valid objection with regard to compliance with various aspects of OAR 660-021-0030 and the analogous law to ORS 197.298. Therefore, the department will address those portions of the objection. The department will not address Ms. Tomaselli's objections regarding Mayor Rosacker's conflict of interest statements or the federal Endangered Species Act because Ms. Tomaselli does not provide any additional information to justify these objections.

III. DESCRIPTION AND OVERVIEW OF URBAN RESERVE SUBMITTAL

The submittal adds approximately 95.3 acres to the existing Newberg Urban Reserve Area (URA). The city and county approved the amendment in the form of a quasi-judicial application

submitted by Bryan and Kathy Bellairs and Bestwick, LLC. The site is located east of the city and is currently zoned for exclusive farm use (EFU). The city and county have a process for considering such requests that first sends the application to the NUAMC, comprised of elected officials from both the city and county. Both the Newberg City Council and the Yamhill County Board of Commissioners then consider the recommendation of the NUAMC and make a final decision. If both the City Council and Board of Commissioners approve the proposal, it becomes a final decision and is either submitted to the department or, if less than 50 acres, becomes final unless appealed to the Land Use Board of Appeals (LUBA). Because this action approved an addition of an amount of land greater than 50 acres, review is under ORS 197.626(1)(e).

In 1995, the city designated a URA to accommodate ten years of urban development, from 2010 to 2020. The URA has not been expanded since the initial designation of the area, but the UGB has been expanded a number of times to include portions of the URA needed to accommodate urban growth. The existing urban reserve is approximately 556 acres in size. Record at 398.

In 2005, the city adopted an updated land need and supply analysis into its comprehensive plan. This analysis updated the city's buildable land inventory and determined housing, employment, and public and semi-public land needs for the 20-year planning period from 2005 to 2025. Additionally, the analysis evaluated land needs for the period from 2026-2040, but the city did not expand the URA to accommodate that need, nor was it required to do so. This post-acknowledgement plan amendment was reviewed and approved by the department. This action is distinct from the 2021 completion of a Buildable Land Inventory, Housing Needs Analysis, Economic Opportunity Analysis, and Public and Semi-Public Land memorandum, which were accepted by the Newberg City Council, but not officially adopted nor acknowledged by the department. Record at 400.

Subsequent to the 2005 analysis, the city considered expansions of the urban reserve twice prior to the subject application. In 2006, the NUAMC denied an application to expand the urban reserve and it did not progress further. In 2008-2009, the city and county approved an URA expansion, but the department remanded the decision, and it did not progress further. Record at 393.

In reviewing this application, the city and county decided that they should approve this application. The city and county came to this conclusion as follows:

- The existing comprehensive plan provisions from 2005 designated an UGB for the years 2005-2025 (20 years) and determined a need for expansion of the URA to meet needs to the year 2041 (36 years, or 16 years beyond the 20-year UGB; note that the director remanded the city's actual URA expansion proposal in 2009). Record at 398-399. However, 2021 documents, "accepted" but not adopted by the city, estimated need for housing, employment, and public lands for a 20-year period beginning in 2021 that are not satisfied by lands within the existing UGB. Additionally, the applicant for this URA amendment provided analysis of land needs for an additional ten years, to 2051, which implicates the URA. Record at 400-401. The population projections the city and county used to come to these conclusions were issued by the Portland State University

Population Research Center, and the city and county determined they were required by state law to use this forecast to make this URA decision. Record at 399.

- The analysis provided by the applicant indicates that Newberg will need to add 472 acres of buildable land to its UGB by 2051, ten years beyond the 2041 UGB period. However, the current URA provides only 75 acres of buildable land – thus there is a need for expansion of the city’s URA to provide 397 additional acres of buildable land to meet projected UGB needs by 2051. The applicant’s parcel, which has 68 buildable out of approximately 95 total acres, is well within this need. Record at 404.
- The applicant provided a comparative site analysis of candidate areas that could be added to the URA and focused its analysis on the serviceability of these candidate areas, analyzing how easy or difficult, inexpensive or costly, it would be to provide urban services to each candidate area. Based on the applicant’s analysis, the city and county determined that the candidate areas that are of higher priority under OAR 660-021-0030(3) for inclusion into an urban reserve, because they are not farm or forest lands or are farm and forest lands of lesser soil quality than the applicant’s parcel, could satisfy only about half of the 397-acre urban reserve land need to 2051. Record at 409. Therefore, the city and county made a decision to add the applicant’s parcel to the Newberg URA. Record at 419.

IV. DIRECTOR’S REVIEW

A. JURISDICTION

The director, and if appealed or referred by the director, the commission, has exclusive jurisdiction to review certain urban reserve designations pursuant to ORS 197.626, OAR 660-021-0070, and OAR 660-025-0040(2)(c). ORS 197.626 provides, in pertinent part:

“(1) A local government shall submit for review and [LCDC] shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633 [rules pertaining to periodic review] * * *:

“* * *

(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 or more within its [UGB];”

The city and county ordinances propose an expansion of the Newberg URA of approximately 95.3 acres. Record at 8–10, 328.

B. SCOPE OF REVIEW

Where the director reviews an urban reserve submittal under ORS 197.626, she does so “in the manner provided for [periodic review.]” ORS 197.626(1). That review is to determine whether

the decision adopting the urban reserve and any related matters comply with the applicable statewide planning goals, their implementing rules, and applicable state statutes. OAR 660-025-0175(1)(c). The director confines the review of evidence to the records provided by the city and county. ORS 197.633(3).

C. STANDARD OF REVIEW

The director reviews the submittals in the manner provided for periodic review. ORS 197.626(1). Review in the manner of periodic review is subject to the standard of review provided in ORS 197.633(3):

“(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government’s decision.

“(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

“(c) For issues concerning compliance with applicable laws, is whether the local government’s decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, * * * and land use regulations. The commission shall defer to a local government’s interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, ‘complies’ has the meaning given to the term ‘compliance’ in the phrase ‘compliance with the goals’ in ORS 197.627.”

Thus, the director considers whether the submittal is consistent with the applicable statutes, statewide planning goals, administrative rules, the city’s comprehensive plan, the Yamhill County Comprehensive Plan, and is supported by substantial evidence. OAR 660-025-0160(2)(a) and (c). The urban reserve submittal was processed as a quasi-judicial land use decision.

Quasi-judicial decisions involve individualized decisions that apply existing comprehensive plans and land use regulations. Local ordinances, state statutes, and LCDC rules specify procedural and substantive requirements for applications, hearings, decisions, and preserving issues for appeal, and case law from LUBA and the appellate courts further define local and state law requirements. ORS 227.175 contains mandatory procedures for a city review of all land use applications and contain requirements for specific types of applications and ORS 197.797 contains requirements for local government land use hearings.

The legal requirement for “adequate findings” in a quasi-judicial land use proceeding before a city is codified in ORS 227.173(3), which explicitly requires:

“Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered

relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.”

LUBA has explained that adequate findings identify the applicable law and the evidence relied upon and explain how the evidence led to the conclusion on compliance with approval standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).

Local governments may incorporate documents from the record into their decisions. But such incorporations must clearly specify which documents are incorporated. *Freedman v. City of Grants Pass*, 57 Or LUBA 385 (2008).

Findings must address all applicable statutes, administrative rules, and land use regulations and all of the elements in those individual authorities. If not, then the findings are inadequate to demonstrate compliance with all applicable law. *Kliwer v. City of Bend*, 73 Or LUBA 321 (2016).

Finally, the director also considers the objections. In reviewing objections, the director only need consider those that “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 268 (2011).

D. APPLICABLE LAW

ORS 197A.245(1)(a) authorizes local governments to “cooperatively designate lands outside [UGBs] as urban reserves” subject to ORS 197.610 to 197.626. LCDC has adopted rules in OAR chapter 660, division 21 to govern designation and amendment of urban reserves.

OAR 660-021-0020 authorizes cities and counties to cooperatively designate URAs. OAR 660-021-0030(1) allows cities to designate URAs constituting at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the UGB.

OAR 660-021-0030(2) requires inclusion of land within an URA to be based upon “the locational factors of Goal 14 and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, [agricultural and forest lands].” The rule implements this requirement in OAR 660-021-0030(3) and (4) with a “priority” analysis, requiring addition of land not designated for agriculture or forestry as first priority (with non-high value agricultural or forest land that is completely surrounded by such land being included in this category). Next in priority are “marginal” lands, then lower quality agricultural and forest land, and lastly, higher quality agricultural and forest land. Lower priority land can be included if higher priority land is unsuitable because future urban services cannot “reasonably” be provided due to topographical or other physical constraints, or maximum efficiency of land uses requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.

OAR 660-021-0040 sets forth planning requirements for URAs to preserve them for efficient future urban uses. OAR 660-021-0040(2) requires county land use regulations that limit subdivisions to lots of at least ten acres and require clustering of new development, pre-platting

of lots, waivers of remonstrance against future annexation by a city, and regulations for siting new development on existing lots for the purpose of ensuring potential urban development and public facilities. OAR 660-021-0040(3) prohibits rezones to higher density or intensity of uses in an urban reserve. OAR 660-021-0040(4) requires continued zoning of agricultural and forest lands for resource use while they are in an urban reserve. OAR 660-021-0040(6) prohibits premature provision of urban services to URAs, while encouraging continued planning for provision of such urban services in the future.

OAR 660-021-0050 requires the city, county and any special districts to enter into an agreement governing land use regulation and provision of services within the URA.

Goal 2 establishes a land use planning process and policy framework as a basis for all decisions and actions related to use of land. Goal 2 also requires an adequate factual base for such decisions and actions.

In addition to state statute, planning goals, and administrative rules, the director reviews the city's adopted urban reserve for compliance with applicable parts of the Newberg Comprehensive Plan and the Yamhill County Comprehensive Plan.

E. DIRECTOR EVALUATION

The director reviews the urban reserve amendment submittal to determine whether the City of Newberg Ordinance No. 2023-2911 and Yamhill County Ordinance No. 930 comply with the applicable statewide planning goals, statutes, and administrative rules, identified in Section IV.D. ORS 197.633(3)(c). In reviewing for compliance with the applicable statewide planning goals, ORS 197.627 provides:

“[C]ompliance with the goals’ means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.”

The city and county submittal includes Exhibit “B” to county Ordinance No. 2023-2911, that presents the city’s determination that the applicant’s requested URA expansion is in compliance with all relevant statewide planning goals.⁶ Record at 331-382. The director has reviewed those findings and concludes that the URA submittal does not comply with all applicable goals.

In support of that conclusion, the director makes the following focused conclusions:

1. Goal 2

a. Coordination

Goal 2 provides “[e]ach plan and related implementation measure shall be coordinated with the plans of affected governmental units.” As used in Goal 2, a comprehensive plan is “coordinated”

⁶ The city’s findings in Exhibit “B” were provided in support of Yamhill County’s ordinance, along with findings of compliance with county criteria. Record at 8-9.

once “the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible.” ORS 197.015(5).

The city and county findings related to Goal 2 are contained in two paragraphs. Record at 357. In this situation the primary need for city coordination was with Yamhill County. Yamhill County’s adoption of the proposed amendment indicates that the city did coordinate with the county. Record at 8-9. The city also requested comments from various potentially affected state and local agencies, and special districts. Record at 390–91.

b. Reliance on acknowledged documents

Goal 2 requires as follows:

“City, county, state, and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.

“All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents.”

The city’s adopted findings reference updates to their housing needs analysis (HNA), economic opportunities analysis (EOA), and evaluation of the city’s public and semi-public land needs based on the current Portland State University Population Research Center’s population forecasts issued in 2020. Record at 371-72. These studies collectively project a deficiency of 192 acres within the city’s UGB by the end of a 2021-2041 planning period. Record at 371-72. The city did not incorporate any of the studies into its comprehensive plan.

Due to the operation of ORS 197A.270, and as established in *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001), a city must address an identified residential land deficit concurrent with adoption of a housing capacity study.⁷ Alternatively, a city may utilize the “sequential urban

⁷ ORS 197A.270(5) provides:

“If the needed housing is greater than the housing capacity, the local government shall take one or both of the following actions to accommodate allocated housing need for which there is insufficient housing capacity to accommodate over the next 20 years:

“(a) Amend its [UGB] to include sufficient buildable lands to accommodate allocated housing need for the next 20 years consistent with the requirements of ORS 197A.285 and statewide planning goals. As part of this process, the local government shall consider the effects of actions taken pursuant to paragraph (b) of this subsection. The amendment must include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities must be a coordinated process between the affected public school districts and the local government that has the authority to approve the [UGB].

“(b) Take any action under ORS 197A.100 (3), whether or not the action was described in an approved housing production strategy, that demonstrably increases housing capacity or produces additional needed housing. Actions under this paragraph may include amending a comprehensive plan or land use regulations to include new measures

growth boundary” process as provided in OAR 660-025-0185 to establish a work plan allowing adoption of a housing capacity study prior to addressing an identified deficit in residential land. At this time, the city has completed neither of those actions, but instead has “accepted” the studies and not adopted an ordinance incorporating the HNA, EOA, or the public and semi-public land analyses into the comprehensive plan. Consequently, the department has yet to consider a request to acknowledge any such plan amendments, because an “acceptance” of these documents does not constitute a valid amendment to the Newberg Comprehensive Plan.

Despite the lack of consistency with the city’s own comprehensive plan, as required by Goal 2, the city’s findings, and the applicant’s analysis utilize data and analysis from the 2021 HNA as the basis for estimating the URA land need for the period from 2041-2051. Record at 371-72, 1212-13, and 1252.

The city’s adopted findings regarding Goal 2 compliance do not mention the requirement to establish an adequate factual basis for this land use decision based on the adopted and acknowledged comprehensive plan. Record at 357. The applicant’s final written argument to the city asserts that because the unacknowledged HNA, EOA, and semi-public land needs analyses were based on a more conservative population forecast than the city’s currently adopted and acknowledged land needs analyses, they simply confirm the conclusions in the acknowledged documents. Record at 1971-73. The city adopted this assertion in its July 17, 2023 staff report and provided additional information to show that the “need” numbers in the 2021 unacknowledged planning documents were significantly less than those projected and acknowledged in 2005. Record at 399-402. The applicant asserts that *Shamrock Homes LLC v. City of Springfield*, 68 Or LUBA 1 (2013) is applicable to the urban reserve expansion decision.

The *Shamrock Homes* decision remanded the City of Springfield’s adoption of a plan amendment because the city justified its decision by referring to an EOA adopted three years earlier by resolution, not ordinance, and did not submit the document to DLCD for acknowledgment as required by ORS 197.615 (the equivalent of the city’s “acceptance” of its HNA rather than adoption and submittal as a Post-Acknowledgment Plan Amendment to DLCD). However, in its decision LUBA stated that if “the city cited to the more recent CIBL/EOA only to *confirm* its conclusion based on the acknowledged EOA or Goal 9 comprehensive plan elements that Goal 9 is satisfied, then we see no error in such an approach.” *Shamrock Homes*, 68 Or LUBA at 13 (emphasis in original). Because the city had not done this in its findings justifying its decision, LUBA remanded the decision. *Id.* at 54.

The director finds that the *Shamrock Homes* decision is not appropriate precedent for this situation involving a URA amendment. The *Shamrock Homes* decision included speculation regarding permissible and non-permissible consideration of Springfield’s non-adopted EOA update in relation to the older adopted and acknowledged EOA in the context of a zone change and comprehensive plan amendment. Ultimately, the decision was remanded in part to clarify findings on this matter. The decision to expand a URA is a much more complex decision, over a much larger timeframe than the zone change and comprehensive plan amendments in *Shamrock*

that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate needed housing for the next 20 years without expansion of the [UGB].”

Homes. Analysis of a city's future land needs 30 to 50 years into the future must include consideration of recent development and demographic trends, new state laws, and potential land use efficiency measures associated with UGB amendments. For these reasons, the extrapolation of URA needs based on non-adopted and non-acknowledged analysis has the potential to significantly "miss the mark" in anticipating the city's future land needs. A claim that the numbers are confirming because they are "more conservative" than the numbers acknowledged in the Newberg Comprehensive Plan in 2005, is an overly simplistic approach to a complicated question involving future urban growth and is not sufficient to satisfy the test for confirmation allowed by *Shamrock Homes, Id.* at 12-13.

The city's approach is more similar to the use of unacknowledged studies that the Court of Appeals has considered and rejected as not complying with Goal 2. In *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 124 P3d 1249 (2005), the Court of Appeals considered whether a city can rely on data from a buildable lands inventory that was not incorporated into its comprehensive plan in making a determination that a proposed plan amendment is consistent with Goal 10. The court held that "a planning decision based on a study contemplated by a comprehensive plan but not incorporated into the comprehensive plan after the study is carried out is not a planning decision that is made on the basis of the comprehensive plan and acknowledged planning documents, as is required by Goal 2." 203 Or App at 216. Similarly, the Court of Appeals previously determined that Metro failed to comply with Goal 2 by estimating land need for the designation of urban reserves based on urban growth report studies that were not adopted or acknowledged. *D.S. Parklane Development, Inc v. Metro*, 165 Or App 1, 21-22, 994 P2d 1205 (2000).

There are additional instances in the record indicating that the city used unacknowledged documents to support its decision. The applicant's analysis, and the local government's findings in support of the URA proposal, rely on an alternatives analysis and Goal 14 consistency analysis for purposes of OAR 660-021-0030(2) that removed almost half of the total acreage in the study area identified for purposes of OAR 660-021-0030(2).⁸ The subject alternatives analysis and Goal 14 consistency analysis primarily relied upon unacknowledged documents to make its conclusions. Specifically, the applicant based their cost estimate analysis on the 2007 Newberg Urban Reserve Expansion Study Areas Public Utilities Cost Estimates Report, prepared by the city in support of the 2007 URA Report and adjusted by the applicant for inflation. Record at 1445-1462. The subject report from 2007 is not part of the city's acknowledged planning documents and was part of the documents submitted to support the city's 2007 URA proposal, which was ultimately remanded by DLCDC in 2009. Additionally, the application materials (Record at 1445-46), state that the methodology for the applicant's buildable lands inventory (Record at 6227-32), which was the basis used by the local government's decision for the alternatives analysis required by OAR 660-021-0030(2), relied upon the city's 2021 Housing Needs Analysis, which is also an unacknowledged document. The record provides no discussion of provisions in the actual adopted and acknowledged Newberg Comprehensive Plan indicating that these materials are confirming. *Shamrock Homes*, 68 Or LUBA at 12-13.

⁸ Record at 8-251 (County action), Record at 328-1973 (City Council action), Record at 5122-6544 (NUMAC action), Record 6154-6296 (Applicant's comparative site analysis and exhibits: Exhibit A: Study Areas Public Facilities Cost Estimates Results and Methodology; Exhibit B: Study Area Buildable Lands Inventory and Methodology; Addendum (3/1/22) and exhibits).

Therefore, based on the record, the director finds that the current proposal relies upon the 2007 cost estimates report, as well as an unacknowledged buildable lands inventory and housing needs analysis to justify the 48% reduction of lands considered buildable in the study area, the "reasonably serviceable analysis" for purposes of OAR 660-021-0030(4)(a), and the overall approval of the proposed URA designation.

For the reasons stated above, summarized as reliance on documents not within the city's adopted and acknowledged comprehensive plan and without reference to what is actually within the comprehensive plan, the decision is inconsistent with the requirements of Goal 2.

2. URBAN RESERVES: OAR CHAPTER 660, DIVISION 21 PROVISIONS

As stated earlier, the director reviewed the city and county's decision based upon the rules provided in OAR chapter 660, division 21. Those rules govern the establishment of urban reserves as authorized by ORS 197A.245.

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

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

a. Purpose and Definition: 660-021-0000 and 660-021-0010

This division interprets and implements ORS 197A.230 through 197A.250 and statewide planning goals pertaining to urbanization. Rules in this division authorize planning for areas outside UGBs to be reserved for eventual inclusion in an UGB and to be protected from patterns of development that would impede urbanization.

b. Authority to Establish Urban Reserve: OAR 660-021-0020

Where URAs are adopted or amended, they shall be shown on all applicable comprehensive plan and zoning maps, and plan policies and land use regulations shall be adopted to guide the management of these reserves in accordance with the requirements of this division.

c. Determination of Urban Reserve: OAR 660-021-0030(1)

OAR 660-021-0030(1) allows cities and counties to designate urban reserves constituting at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the UGB. In 1995, the city and county designated a URA to accommodate ten years of urban development, from 2010 to 2020. The URA has not been

expanded since the initial designation of the area, but the UGB has been expanded a number of times to include portions of the URA needed to accommodate urban growth.

In 2005, the city adopted an updated land need and supply analysis into Section V of the comprehensive plan. Section V and associated analysis updated the city's buildable land inventory and determined housing, employment, and public and semi-public land needs for the 20-year planning period from 2005 to 2025. Additionally, the analysis evaluated land needs for the period from 2026-2040, but the city did not expand the URA to accommodate that need, nor was it required to do so. This post-acknowledgement plan amendment was reviewed and approved by the department. Record at 400. This action is distinct from the 2021 completion of a Buildable Land Inventory, Housing Needs Analysis, Economic Opportunity Analysis, and Public and Semi-Public Land memorandum, which were accepted by the Newberg City Council, but not officially adopted nor acknowledged by the department.

Subsequent to the 2005 analysis, the city considered expansions of the URA twice prior to the subject application. In 2006, the NUAMC denied an application to expand the URA and it did not progress further. In 2008/2009, the city and county approved an expansion of the URA, but the decision was remanded by the department and did not progress further. Record at 393.

Given the adoption and acknowledgement of the city's land need and supply analysis in 2005, the director finds that a proposal to expand the URA is within the allowable timeframe for the establishment of a URA for the 2035-2055 time period, as provided in OAR 660-021-0030(1). Record at 568. However, as explained under the Goal 2 section of this decision, because the data and analysis used to support the proposed urban reserve expansion have not been adopted by the city or acknowledged by the department, the director finds that the analysis of the city's land need and supply does not provide an adequate factual basis for the determination of the URA under OAR 660-021-0030(2).

Additionally, in their decisions the city and county rely on the 2020 Portland State University population forecast as a base to justify additional land need for development to accommodate that population. The city and county assert that they are required by state law to use this forecast, instead of the acknowledged population forecast from 2005 currently in the comprehensive plan, when reviewing this application to expand its urban reserve. Record at 399.⁹ Assuming that the submittal must be based on the 2020 population forecast under ORS 195.033(3), the city and county are missing the intervening plan elements that would lead them to a decision as to whether to expand its urban reserve or not, namely an adopted and acknowledged housing needs analysis, economic opportunities analysis, public lands need analysis, and UGB decision, that are the path to an eventual decision on an urban reserve. The city and county are essentially engaging in the process backwards, by first using a 2020 population forecast to amend its urban reserve without first adopting the foundational plan amendments listed above. The assertion that the enactment of ORS 195.033 fundamentally altered the required use of population forecasts is belied by the fact that the predecessor statute which placed the requirement for coordinated

⁹ ORS 195.033(3) provides:

“A local government with land use jurisdiction over land for which the center issues population forecasts under subsection (2) of this section shall apply the current final population forecast when changing the comprehensive plan or a land use regulation of the local government.”

population forecasts upon counties (*former* ORS 195.036), also mandated the use of those forecasts in comprehensive planning; thus, there was no change of law regarding allowing the use of population forecasts outside of the context of an integrated, updated comprehensive plan process as is asserted by the city and county. A local government is required to use updated population forecasts, but not in a way that undermines the intent and process of comprehensive planning envisioned by the statewide planning goals.

To summarize, the director finds that the submittal does not comply with the requirements of OAR 660-021-0030(1) because it does not have an adequate factual basis to support the URA expansion.

d. Determination of Urban Reserve: OAR 660-021-0030(2)

OAR 660-021-0030(2) requires that inclusion of land within a URA be based upon the locational factors of Goal 14¹⁰ and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land. In determining whether land is suitable for inclusion in urban reserves, OAR 660-021-0030(2) requires that, prior to including any lower priority land in URAs pursuant to OAR 660-021-0030(4), the local government must conduct an alternative sites analysis sufficient to demonstrate that nonresource lands cannot reasonably accommodate the need that justifies the inclusion of land under OAR 660-021-0030(4). In order to find that land is suitable for inclusion in URAs under OAR 660-021-0030(2), the local government must define a threshold for each applicable Goal 14 factor and determine with respect to the lands studied whether the land achieves that defined threshold for each of the applicable Goal 14 factors. The section 2 requirement that local governments determine the suitability of land entails that some measure of suitability be defined based on the Goal 14 factors and that measure should be applied consistently. Overall, the locational factors of Goal 14, as applied in the urban reserve context, direct urbanization onto exception lands before resource lands.

This URA proposal was initiated by a private property owner and processed as a quasi-judicial land use application by the local government. As such, the alternatives analysis required by OAR 660-021-0030(2) is located in the applicant's submitted materials and is titled 'Comparative Site Analysis.' Record at 1389-1444. The city and county adopted the applicant's comparative site analysis and relied upon it as justification for their submittal, and the finding

¹⁰ Goal14, Boundary Location provides:

"The location of the UGB and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197A.320 * * * and with consideration of the following factors:

"(1) Efficient accommodation of identified land needs;

"(2) Orderly and economic provision of public facilities and services;

"(3) Comparative environmental, energy, economic and social consequences; and

"(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB."

that the proposed property is appropriate for inclusion in the URA. The comparative site analysis states that it was developed based on the following factors:

- *Category of land*: resource land or exception land;
- *Provision of public services*: utility costs;¹¹
- *Topographical and physical constraints*: Major rivers or other water bodies that would require new creek crossings to serve an area. Topographic features such as canyons or steep slopes that would require new water reservoirs or pump stations to serve an area;
- *Existing rural development/small parcels*: small parcels and rural development are considered a physical constraint that decreases the feasibility of redevelopment and can contribute to an area being deemed unsuitable as a URA;
- *Buildable area*: Based on an unacknowledged buildable lands inventory prepared in 2021.¹² Record at 1398-99.

Notably, the applicant's analysis does not address three of the four Goal 14 factors required by OAR 660-021-0030(2). While focusing on provision of public facilities, the analysis located in the record at 1389-1444 does not specifically discuss efficient accommodation of identified land needs (Factor 1), does not discuss with any specificity comparative environmental, energy, economic, and social consequences (Factor 3), and does not discuss compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB (Factor 4). The city and county findings (attached to the ordinance approving the application) cite the applicant's analysis without further discussion of the Goal 14 factors. Record at 373.¹³ The Goal 14 locational factors "are not independent criteria; when the factors are applied to compare alternative boundary locations and to determine the UGB location the city must show that it considered and balanced all the factors." OAR 660-024-0067(7). *See also 1000 Friends of Oregon v. Metro*, 174 Or App 406, 409-10 (2001). Specific to the designation of urban reserves, the Court of Appeals affirmed LUBA's holding "that local governments 'must apply each Goal 14 [locational] factor equally and include lands in urban reserves only where all of the factors justify that inclusion.'" *D.S. Parklane Development, Inc.*, 165 Or App at 24.

The director addresses the requirement in OAR 660-021-0030(2) that the city show "a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land" in discussions under OAR 660-021-0030(3) and (4) below.

Even the applicant's analysis of public facilities impacts under Goal 14, Location Factor 2 (efficient provision of public services) lacks any analysis about future urban transportation facilities/services. Record at 372-373, 1401, 1445 and 6154-6296 (Applicant's comparative site

¹¹ Calculated based on the inflationary increase to estimates in the Newberg Urban Reserve Expansion Study Areas Public Utilities Cost Estimates Report, prepared by the city in 2007 in support of the 2007 URA Report.

¹² Constraints that were deducted from buildable land area calculations include floodplains, wetlands, stream corridors, landslide hazards, slopes over 25 percent, and the area planned for the Newberg-Dundee Bypass. DOWL (the applicant's consultant) then deducted 25 percent for public Newberg URA Expansion infrastructure and rights of way.

¹³ The comparative site analysis prepared by the applicant and adopted by the city does not classify its analysis pursuant to the four Goal 14 factors and is almost exclusively focused in fact on Factor 2, regarding public facilities. Record at 1389-1485.

analysis and exhibits: Exhibit A: Study Areas Public Facilities Cost Estimates Results and Methodology; Exhibit B: Study Area Buildable Lands Inventory and Methodology; Addendum (3/1/22) and exhibits). While approval of a regional/area specific transportation master plan is not required prior to URA approval for an area, the term “public facilities,” as it is used in Goal 14, includes transportation facilities.¹⁴ As follows, an analysis of the Goal 14 locational factors should include some analysis of the expected transportation facilities required as the area urbanizes, in the context of orderly and economic provision of public facilities and services. While there was no information provided in this record regarding transportation facilities, in the context of the applicant’s alternatives analysis, the initial 2007 URA proposal submittal included a Southeast Transportation Improvement Plan Record at 5771-72), that detailed the numerous transportation improvements required if the subject property was to be brought into the URA and eventually urbanized. In the city’s denial of a proposal for inclusion of the same general property in the URA in 2006, the local government findings state:

The applicant has either minimized or not dealt with the impacts to several other transportation facilities and possible improvements to accommodate increased development. Road projects addressing those impacts and needed improvement could include the access from Corral Creek Road to Hwy 99W both before and after construction of the bypass; improvements to Corral Creek Road itself; a new North-South collection road passing through the site; improvements to Fernwood Road, improvements to Wilsonville Road, and construction of a roundabout where the North-South collection road connects with Fernwood Road.

Record at 5743. Those findings went on to state that the “major issue for [the site] is transportation: the improvements that will be needed for development of this and other properties in the area[.]”Record at 5747. While the application materials for the current URA proposal included consistency findings for the transportation planning rule and Goal 12, they lacked any recognition of transportation public facilities in the context of Goal 14 boundary location analysis. Considering that transportation facilities were thoroughly considered and analyzed as part of the 1995 URA approval, and that the record indicates that transportation improvements are an important consideration for URA expansion, it is reasonable that the submittal should consider transportation in the current URA proposal under OAR 660-021-0030(2). The director finds that the application materials and the local government’s approval findings for the current URA proposal lack any demonstration that the amount of transportation improvements required as public services for the property were equally considered in the evaluation of the economic provision of public facilities and services. Information on the record indicates that there are significant traffic issues anticipated with urbanization of this area, so an analysis of why the subject property should not be excluded from the study area based on economic provision of public services is warranted for consistency with OAR 660-021-0030(2).

To summarize, the director finds that the city and county decision does not comply with the requirements of OAR 660-021-0020(2) for two reasons: 1) the decision does not contain sufficient analysis for three of the four Goal 14 Location Factors; and 2) the decision does not

¹⁴ *Concerned Citizens of the Upper Rogue v. Jackson County*, 33 Or LUBA 70 (1997).

contain sufficient analysis of transportation issues encapsulated in Factor 2 of Goal 14, orderly and economic provision of public facilities and services.

- e. Determination of Urban Reserve: OAR 660-021-0030(3)(a)-(c) and OAR 660-021-0030(4)(a)-(b)

For ease of discussion, this order combines discussion of compliance of the submittal with these two provisions of the urban reserve rule.

OAR 660-021-0030(3) sets out the priority for consideration of lands to add to a URA. First priority consists of lands that are not farm or forest lands because they have either been designated with an “exception” to the Statewide Planning Goals protecting farm and forest lands or they have been designated as “nonresource” lands, in both instances in an acknowledged local government comprehensive plan. First priority may also include farm or forest lands completely surrounded by exception areas except for very high-quality agricultural lands. Second priority consists of “marginal lands,” of which there are none in Yamhill County. Third, and lastly, priority consists of land designated in an acknowledged comprehensive plan for agriculture or forestry, with lowest priority given to higher value farm or forest land.

OAR 660-021-0030(4) sets out two circumstances in which the local government may alter the priority scheme and substitute lower priority land for higher priority land. The local government must find that higher priority land is inadequate to accommodate the land need for one or more of two reasons, as follows:

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

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

If specific higher priority sites are excluded on the basis of section 4, the priority scheme of section 3 determines what lower priority lands are included in their place.

The applicant’s analysis first differentiated between buildable and non-buildable lands, based on the unacknowledged BLI prepared in 2021, which resulted in a total buildable land area in all the study areas of 2,848 acres. Record at 1401.

A summary of the land acreage analyzed is included below. Record at 1466. The applicant’s site is in the East A subarea. Note, while the applicant’s table does not include totals for resource land (land zoned under Goal 3 and Goal 4 to protect farm and forest land) and exception land (land for which an exception to Goal 3 or 4 was approved and acknowledged in the Yamhill County Comprehensive Plan), those figures are – 1,504 net buildable acres of exception land and 1,344 net buildable acres of resource land.

Table 2: Summary of Buildable Acres by Study Area

Study Area	Total Gross Acres	Net Buildable Acres-Resource Land	Net Buildable Acres-Exception Land	Total Net Buildable Acres
North A	671	239	37	276
North B	472	24	204	228
Northeast A	298	0	79	79
Northeast B	239	75	54	129
East A	619	340	27	367
East B	440	0	223	223
Southeast A	199	0	58	58
Southeast B	300	158	1	159
Southeast C	236	65	82	146
Southwest A	256	0	137	137
Southwest B	214	0	108	108
Southwest C	277	0	171	171
Southwest D	514	0	239	239
Northwest A	501	255	64	319
Northwest B	302	188	20	208
Total				2,848

Source: DOWL Study Areas Buildable Lands Analysis Calculations - 2021.

Record at 1466.

To justify adding the East A subarea (location of the applicant’s property) to the urban reserve pursuant to OAR 660-021-0030(3) and (4), the following findings were necessary:

- The city’s identified need for 397 buildable acres cannot be accommodated by the 1,504 acres of exception land within the study area because future urban services could not reasonably be provided.
- Presuming exception lands could not accommodate the need, among the 1.344 buildable acres of resource (farm and forest) lands, 397 acres on lands with lower quality agricultural soils were not available to meet the need because future urban services could not reasonably be provided.

In contrast, the city and county, through the applicant addressed these needed findings as follows.

First, the applicant’s analysis looked at the buildable acres in each study area based on a variety of factors throughout the application materials including:

- Minimal amounts of Class 1 soils.
- Large areas free of development constraints (such as steep slopes and landslide susceptibility).
- A large average parcel size that is conducive to master planning efforts (approximately 15 acres or larger, many of which are vacant).
- Minimal active agricultural uses on the site.

- Private and public utility costs.

Record at 1223, 1232. The applicant appears to have conflated the criteria in OAR 660-021-0030(2)-(5) with the factors identified above, with no discussion of how Goal 14 Boundary Location Factors and other considerations are balanced in this analysis. Additionally, the applicant identifies these areas as buildable lands, which confuses the above-identified factors with the definition of “buildable” residential lands provided in OAR 660-008-0005(2).¹⁵ To be clear, although an employment needs analysis may identify a need for large-lot industrial lands that may inform a UGB amendment decision, parcels below 15 acres in size should not be eliminated from consideration to meet future residential land needs, as was done in the applicant’s land use narrative and analysis. Record at 1232. *See* “safe harbor” at OAR 660-024-0050(2).

Based on the application materials, other exception lands that would require crossing intervening resource lands to provide water or gravity sanitary sewer service were also removed (North A, East A, and East B exception lands). Record at 1471.

Following the removal of exception lands subject to the constraints described above, a capacity analysis of the city’s sanitary sewer system and the feasibility of gravity connections was performed for the remaining exception lands. This was based upon the ability to provide sewer capacity at a development density of 6.48 dwelling units per acre. After the capacity analysis was performed, several study areas were excluded based on what the applicant determined were constrained connection capabilities to the city’s existing sanitary sewer system. Of note, the study assumed that any areas which could not be provided with gravity sewer service (no pump stations necessary) could be excluded from consideration under OAR 660-021-0030(4)(a) since they could not “reasonably be provided” with sewer service. Record 1470-71 and 1472-80 for area-specific findings on sewer).

To analyze the feasibility of water service to the remaining exception lands, elevations of these lands were compared to the water service zones identified in the city’s Water Master Plan

¹⁵ OAR 660-008-0005(2) provides:

‘Buildable Land’ means residentially designated land within the [UGB], including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered ‘suitable and available’ unless it:

- “(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;
- “(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18;
- “(c) Has slopes of 25 percent or greater;
- “(d) Is within the 100-year flood plain; or
- “(e) Cannot be provided with public facilities.”

(WMP), which has a 20-year planning period to 2035. Lands that were not expected to be served within the WMP planning period (2035), were removed from consideration. Record at 1472.

To summarize, pursuant to OAR 660-021-0030(4), the applicant determined the following lands did not meet a reasonably serviceable threshold for purposes of the applicant's alternatives analysis and conclusions:

- Lands that cannot be provided with city sewer service at a density of 6.48 du/acre;
- Exception lands that would require crossing of intervening resource land to provide service;
- Lands that cannot be served with gravity sewer services; and
- Lands in the city's WMP that are not expected to be served within the WMP planning period (2035). Record at 1471-72.

This analysis resulted in the applicant excluding the entire North A exception lands study area. Record at 1472. Following this exclusion, the applicant analyzed specific improvements for public utility service in each subarea that applicant had determined would be required. Ultimately this analysis allowed the applicant to reduce the amount of exception lands for consideration to 151.62 acres. Record at 1485. This amount was then amended in a later addendum to 213.62 acres. Record at 1561. Based on this analysis the applicant concluded that the city would continue to have a deficit of approximately 248.4 acres of land to satisfy the URA's 30-year land need. Therefore, under OAR 660-021-0030(3)(c), the applicant concluded that the city and county must next consider resource lands of lower soil capability to meet land needs for the 30-year planning horizon. Record at 1480.

Turning to resource lands, applicant considered the study areas consisting of resource lands, in this situation all lands are zoned for agriculture.

Within land designated as resource land there is a hierarchy, where land with lower class soils are prioritized above land with higher class soils. When incorporating resource land, OAR 660-021-0030(3) provides that farm or forest lands with lower quality soils (such as Class IV or higher) are higher priorities for inclusion than lands with higher quality soils (such as Class I, II, and III soils). A summary of the percentages of soil classification types for each of the identified study areas are presented in the table below:

Table 5. Soil Capability Class of Subarea Resource Lands³

Study Area	Approximate percent of agricultural land in each study area per Soil Capability Class				Priority Based on Soil Classification
	I	II	III	IV-VIII	
North A	19%	42%	12%	28%	Medium ¹
North B	0%	2%	29%	69%	High ¹
Northeast B	15%	23%	33%	29%	Medium
East A	24%	44%	21%	12%	Medium
Southeast A	0%	17%	79%	4%	High ¹
Southeast B	18%	50%	14%	18%	Medium
Southeast C	20%	21%	18%	42%	Medium
Northwest A	69%	13%	11%	8%	Low
Northwest B	37%	46%	16%	0%	Low

Source: GIS data derived from Yamhill County Soil Survey, Version 3, Sep 10, 2019, Nonirrigated Capability Class, National Resource Conservation Service

¹) Earlier findings showed that the subarea cannot reasonably be served with future public facilities due to topographical and physical constraints.

Record at 1417, 5208.

A map in the record at 5209, depicts the areas of resource land that were considered in the applicant’s analysis.

For resource lands, the city and county and the applicant used a similar methodology for examining the reasonable provision of public facilities and services as it did with its analysis of rural “exception” lands pursuant to OAR 660-021-0030(4)(a). By excluding lands that could not be served by gravity sewer and that were not within the 2035 Newberg Water Master Plan, the city and the applicant eliminated the North B and Southeast A subareas from consideration, subareas that have less high value soils and would therefore receive priority for inclusion in the URA under OAR 660-021-0030(3)(c). The city then chose among the remaining subareas of equal priority for inclusion in the URA, that applicant’s parcel met the identified need due to its relative lack of Class I high value agricultural soils. Record at 376-77.

Finally, the applicant’s analysis, adopted by the city and county, showed that approximately 213 acres of exception lands as described in OAR 660-021-0030(3)(a) were appropriate to be added to the URA. Record at 375. The commission’s interpretation of OAR 660-021-0030(3) would require inclusion of these lands first, before any lower priority lands described in OAR 660-021-0030(3)(c) are added to the URA. However, the city and county chose not to add the approximately 213 acres of exception lands along with the 95.3 acres that were proposed by the applicant. Record at 359-60, 438-39, 484. The city and county made the following finding:

“OAR 660-021-0030(4) provides that lower priority land (*i.e.*, Resource Land) may be included within the URA if land of higher priority cannot meet the identified land need. Notably, this provision does not state that all reasonably serviceable exception land must first be brought into the URA before reasonably serviceable resource land, simply that if the identified demand cannot be met, lower priority land may be included within the URA.” Record at 375.

The legal standard for exclusion of higher priority lands in the study area under OAR 660-021-0030(3) based upon OAR 660-021-0030(4)(a) is not meant to be a low bar. Any factors that the city and county wish to develop and apply in determining whether lands can or cannot reasonably accommodate the identified land need because of difficulties in providing public facilities and services, must be developed and applied with diligent recognition of the legislature's explicit mandate to protect agricultural land from conversion to urban use. ORS 215.243(2). Factors that may have the effect of eliminating alternative sites because they are somewhat more expensive to develop are inadequate to demonstrate the eliminated alternative site cannot reasonably accommodate the identified need.

The department understands the rule for excluding higher priority lands classified under OAR 660-021-0030(3) pursuant to OAR 660-021-0030(4)(a) generally as follows: future urban services "could not reasonably be provided" means that a local government must show that it is not reasonable to provide urban services to the site after analyzing topographical and physical constraints (e.g., slopes, water bodies, roadways) in the context of:

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

The LCDC order remanding the city's urban reserve amendment (the 2007 proposal) in 2010 states:

"The Commission interprets OAR 660-021-0030(4)(a) as allowing local governments to consider costs of providing services to exclude lands (due to topographical or other physical constraints), but also notes that the text of the rule requires local governments to show that '* * * *future* urban services cannot *reasonably* be provided * * *.' Given that such a showing must be made for the future planning period, typically 30 to 50 years in the future, the Commission believes that this standard will normally be difficult to meet." LCDC Order, 10-Remand-001778 at 8-9 (2010) (emphasis in original). Record at 570-571.

Based on the application materials submitted and the alternatives analysis, the city and county approved inclusion of exclusively high priority resource land in the URA, before the addition of the identified 248.4 acres of reasonably serviceable exception land, in conflict with the required priorities of OAR 660-021-0030(3). The director agrees with the findings made by city staff in their preliminary findings recommending of the application, as follows:

"Several site conditions that the applicant and public comments listed as arguments for URA inclusion have not been acknowledged because they don't meet the strict requirements of state law. For example, large parcel size, ideal for master planning, was included by the [a]pplicant as a reason for inclusion of the subject site into the URAs, and the need for Pickleball courts. However, these factors, while beneficial from a comprehensive planning perspective, [do] not fall under any of the criteria listed in OAR 660-021-0030. The Engineering Division comments (Attachment 3a, 3b and 3c), indicate

that existing development in exception areas that is highly parcelized could be seen as a physical constraint. In certain subareas, the constraint is represented through utility costs. However, that is not consistent with the hierarchy as it relates to both Exception and Resource Lands, that implements the provisions of OAR 660-0021.¹⁶ Ultimately, based on all the information described above, the [a]pplicant's argument does not provide the findings to support a recommendation to include the subject 95.3 acres, consisting of Resource Land into the URAs at this time." Record at 5210

Similarly, in the 2009 remand order of the 2007 URA proposal, which also included the subject property, the director found:

"Exception land surrounding Newberg, like elsewhere in the state, is extensively parcelized and developed in a manner that makes it clearly less attractive for urbanization compared to flat, undeveloped farmland. The department understands that providing future urban services to these exception areas is less reasonable if the analysis is a narrow examination of what land is merely easiest, least costly, or most convenient to develop. However, the priority scheme for bringing land into a URA is intentionally weighted to avoid development of resource land, particularly valuable farmland. Newberg proposes inclusion of extremely productive agricultural land within the URA. The burden to do so is very high[.]" DLCDC Order 001767 at 16 (2009). Record at 775-76.

Applicant's analysis mistakenly construes the meaning pursuant to OAR 660-021-0030(4)(a) of what constitutes a situation where public facilities and services cannot be reasonably provided, which include: 1) the elimination of any areas that would require sewer pump stations, and 2) the elimination of any areas not included in the city's water master plan, which plans for development to the year 2035. While sewage pump stations increase the cost of providing sewer service, they are used widely in Oregon and are not a bar to reasonable provision of public services. Regarding water service, development of any of these future URAs is projected to occur after the year 2041, which is beyond the planning date for the existing water master plan. A growing city such as Newberg can reasonably be expected to be required to periodically update such plans, including to plan to provide water service to areas not included in current plans.

The director does not assert here that the city and county are precluded from removing lands from consideration based upon the need for a sewer pump station to serve a particular area. Where the city and county, based upon the applicant's analysis, have erred is in adopting a complete exclusion of any lands from consideration based upon the need for a sewer pump station. A more nuanced approach to the issue, looking at the specifics and magnitude of the need for sewer pumps, may be appropriate and may exclude some, if not all, of these areas from consideration for inclusion in an urban reserve. But the adopted study does not take such an approach.

Similarly, there are situations in water system planning where certain lands may not be "reasonably" provided with urban services due to the magnitude of the costs necessary to pump water to higher elevations and provide new water storage facilities. However, a blanket exclusion

¹⁶ Specifically, OAR 660-021-0030(4)(a) and (b),

of lands just because they are not expected to be served within a 2035 time period that is well before the expected urbanization does not include the level of analysis and findings that is justified and consistent with a finding under OAR 660-021-0030(4)(a) regarding the “reasonable” provision of public facilities and services.

Overall, the cost of urban services can be spread over many uses over the longer period of time as planned for a URA adoption. Local jurisdictions have some discretion in applying the Goal 14 locational factors, and the statutory/rule priorities, but statutory and goal policy sideboards continue to exist, and the director finds that this location decision is contrary to the intent of the commission’s urban reserve policy.

The director also determines that the city and county decision to add the approximately 95-acre resource land property owned by the applicant while not concurrently adding the 213 acres of developable higher priority exception land is not consistent with OAR 660-021-0030(3) and (4). OAR 660-021-0030(3) begins with “[l]and found suitable for an urban reserve may be included within an urban reserve only according to the following priorities[.]” The director interprets this provision differently from the city and county – the city must first, or at least concurrently, add the 213 acres of higher priority exception lands before, or as well as, the approximately 95 acres in the applicant’s property. The director’s interpretation is also consistent with LUBA’s findings in *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999), *aff’d*, 165 Or App 1, 994 P2d 1205 (2000). As summarized by LUBA:

“Accordingly, we conclude that correct application of [s]ection 4 requires the local government to categorize the inventory of suitable lands according to their [s]ection 3 priorities and subpriorities, and then, in considering a specific site under one of the [s]ection 4 exceptions, determine that no higher priority land is adequate to meet the particular [s]ection 4 need.” *Parklane*, 35 Or LUBA at 600.

To summarize, the director finds that the submittal does not comply with the requirements of OAR 660-021-0030(3) and (4).

f. Determination of Urban Reserve: OAR 660-021-0030(5)

This rule provides that “[f]indings and conclusions concerning the results of the consideration required by this rule shall be adopted by the affected jurisdictions.” The city and county’s submittal includes such findings and conclusions.

g. Urban Reserve Area Planning and Zoning, and Urban Reserve Agreements: OAR 660-021-0040 -0050

Because the director finds errors in the urban reserve amendment, as provided above, it is unnecessary to evaluate compliance with OAR 660-021-0040 and OAR 660-021-0050 at this time.

h. SUMMARY

To summarize, the director finds that the city and county did not comply with OAR 660-021-0030(1) to (4) because:

- The city and county used the 2020 Portland State University population forecast to estimate land need under OAR 660-021-0030(1) without adopting this forecast into its comprehensive plan in a coordinated manner;
- The city and county did not analyze all four Goal 14 location factors in a comparative analysis as is required by OAR 660-021-0030(2). Within Factor 2, the city did not provide an analysis of transportation facilities impacts or issues;
- The city and county did not appropriately apply the “reasonably serviceable” exception in OAR 660-021-0030(4)(a), by improperly weighting the provision of sewer and water service in a way as to preclude first priority exception lands described in OAR 660-021-0030(3)(a) from inclusion in the urban reserve; and
- The city and county did not meet the identified need for urban reserve lands by adding the 213 acres of developable first priority exception lands described in OAR 660-021-0030(3)(a) prior to, or concurrently with, adding the applicant’s property to the [URA].

F. RESPONSE TO OBJECTIONS

For valid objections, OAR 660-025-0140(6) requires that the department either sustain or reject each one based on the statewide planning goals, or applicable statutes or administrative rules. The department turns to those objections found valid in Section II. B of this order.

1. FRIENDS OF YAMHILL COUNTY

The Friends of Yamhill County objection identifies objections to the submittal regarding various aspects of OAR chapter 660, division 21. The objections and department responses are as follows:

“The city’s findings in response to the requirements of OAR 660-021-0030(1) relies on a housing needs analysis and an economic opportunities analysis completed and updated in 2021. The county adopted the city’s findings by reference. These analyses have not been adopted by the city as amendments to the comprehensive plan. Relying on these documents violates statewide planning Goal 2.” Friends of Yamhill County Objection 2 (internal citations and footnote omitted).

The department sustains this objection. *See* discussion on pages 11-15 of this report.

“The city findings regarding the Goal 14 locational factors rely on the applicant’s original submittal. These findings point to the applicant’s comparative sites analysis, which does not address the locational factors or county the other criteria in OAR 660-021-0030(2).” Friends of Yamhill County Objection 3 (internal citations omitted).

The department sustains this objection. *See* discussion on pages 17-20 of this report.

Regarding the comparative sites analysis, Friends of Yamhill County objects as follows:

- The city and county impermissibly equated “topographical or other physical constraint” as rural residential development that is more expensive to serve with water and sewer than the applicant’s farmland property.
- The city and the county conflated “[h]igher relative cost” with “unreasonable” to provide services, and also based its analysis on current costs to provide services, rather than costs that might be expected in 30 to 50 years, appropriate in the context of an urban reserve.
- The city and county included a novel theory that, since the calculated need for urban reserves land exceeds the acreage in the serviceable exception areas by more than 95 acres, the applicant’s property can be added to the reserves before the exception areas get included. This reading conflicts with rule requirements. Friends of Yamhill County Objection 4-6.

The director sustains this objection. *See* discussion on pages 20-27 of this report.

2. JOE HUGHES AND CORRINE WATERBURY

Hughes and Waterbury object that the submittal incorrectly finds compliance with OAR 660-021-0030(4). In particular, Hughes and Waterbury argue that the decision errs by 1) including the applicant’s parcel of resource land without first including the suitable exception lands identified by the city and county’s adopted analysis; and 2) improperly analyzing the private costs of facilities and services to exclude higher priority lands from consideration pursuant to OAR 660-021-0030(4)(a). Hughes and Waterbury objection at 2-4.

The director sustains this objection. *See* discussion on pages 20-27 of this report.

3. TRACY TOMASELLI

Tomaselli objects to the city’s use of the “priority” provisions of OAR 660-021-0030(3) and (4) to include resource lands over higher priority lands. According to Tomaselli, “Bringing the area into the URA prior to exception lands is not consistent with orderly and efficient development and does not preserve rural land and character consistent with the Newberg’s Comprehensive Plan Urbanization Goal 1.” Tomaselli Objection at 1.

The director sustains this objection. *See* discussion on pages 19-25 of this report. While this report does not specifically address compliance with any provisions of the Newberg Comprehensive Plan, Tomaselli’s objection relates on a fundamental level to the state’s URA administrative rules in OAR chapter 660, division 21, which this report addresses on pages 20-27,

Tomaselli objects to the city’s failure to follow the priorities for land to be added to its UGB because the city did not follow the priorities set forth in ORS 197.298. Tomaselli Objection at 4.

The director overrules this objection. After recent statutory changes, ORS 197.298 applies only to the Metro UGB. Tomaselli may be thinking of ORS 197A.320, a statute analogous to ORS 197.298 for cities outside of Metro, but this statute also only applies to UGBs. The “priority of

land” provisions for URAs are found in OAR 660-021-0030(3) and (4), which Tomaselli separately references and the department addresses above.

Tomaselli also objects to the city’s determination of any need to expand its URA:

“Pursuant to OAR 660-021-0030(1), the City is not required to expand their URAs at this time. The City’s existing URAs consist of 556 gross acres of land. Existing URAs can meet the projected UGB needs into 2041.” Tomaselli Objection 1.

The director agrees that the city has not demonstrated the need to expand its urban reserve in the manner required by OAR 660-021-0030(1). *See* discussion on pages 11-15 of this report. Accordingly, the director sustains this objection.

V. CONCLUSION

Based on this review, the director remands the city and county’s decision.

THEREFORE, IT IS ORDERED THAT:

City Ordinance No. 2023-2911 and Yamhill County Ordinance No. 930 are remanded.

DATED THIS 16th DAY OF FEBRUARY, 2024.



Brenda Bateman, Ph.D., Director
Department of Land Conservation and Development

NOTICE: You may be entitled to LCDC review of this order. Administrative review may be obtained by filing a petition for review within 21 days from the service of this final order. Administrative review is pursuant to the provision of OAR 660-025-0150(6).

CERTIFICATE OF SERVICE

I certify that on February 16, 2024, I served the attached **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT REMAND OF CITY OF NEWBERG (City Ordinance No. 2023-2911) AND YAMHILL COUNTY (County Ordinance No. 930) NEWBERG URBAN RESERVE AMENDMENT DLCD Order # 001941** by mailing in a sealed envelope, with first-class postage prepaid, a copy thereof addressed as follows:

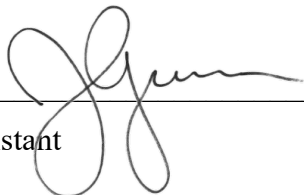
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